

1 **BRADLEY/GROMBACHER, LLP**

2 Marcus J. Bradley, Esq. (174156)
3 Kiley L. Grombacher, Esq. (245960)
4 31365 Oak Crest Drive, Suite 240
5 Westlake Village, California 91361
6 Telephone: (805) 270-7100
7 Facsimile: (805) 270-7589
8 E-Mail: mbradley@bradleygrombacher.com
9 kgrombacher@bradleygrombacher.com
10 *Attorneys for Plaintiff and the Putative Class*

11 **AYLSTOCK, WITKIN, KREIS & OVERHOLTZ, PLLC**

12 SIN-TING MARY LIU (282884)
13 17 E. Main St., Suite 200
14 Pensacola, Florida 32502
15 Telephone: 850-202-1010
16 Facsimile: 850-916-7449
17 E-Mail: mliu@awkolaw.com

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

20 CRYSTAL ZURBA, Individually
21 and on Behalf of All Others
22 Similarly Situated,

23 Plaintiff,

24 v.

25 CHURCH & DWIGHT CO., INC.;

26 Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF THE UNFAIR COMPETITION LAW;
2. VIOLATIONS OF THE FALSE ADVERTISING LAW;
3. NEGLIGENT MISREPRESENTATION/OMISSION;
4. STRICT PRODUCT LIABILITY - FAILURE TO WARN; and
5. STRICT PRODUCT LIABILITY - MANUFACTURING DEFECT

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLASS ACTION COMPLAINT

Plaintiff, Chrystal Zurba (“Plaintiff”), individually and on behalf of all others similarly situated, files this Class Action Complaint (“CAC”) against Defendant Unilever United States Incorporated (“Defendant”), and in support states the following:

NATURE OF THE ACTION

1. This is a class action lawsuit by Plaintiff, and others similarly situated, who purchased and used Batiste™ dry shampoo products. Defendant distributes, markets and sells these products over-the-counter (“OTC”) under the brand name Batiste™. Batiste™ dry shampoo products have been found by an independent laboratory to be contaminated and/or adulterated with benzene, a known human carcinogen. The presence of benzene in Batiste™ dry shampoo products was not disclosed in the products’ label other otherwise made known to consumers, in violation of California law. Plaintiffs and the putative class suffered economic damages due to Defendant’s misconduct (as set forth below) and they seek, among other things, injunctive relief and restitution for the full purchase price of the product(s) they purchased. Plaintiff alleges the following based upon personal knowledge as well as investigation by counsel, and as to all other matters, upon information and belief. Plaintiff further believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act, [28 U.S.C. § 1332\(d\)\(2\)](#), because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and is a class action in which there are more than 100 class members and many members of the class are citizens of a state different than Defendant.

///

1 Defendant may be served with process through its registered agent, National
2 Registered Agents, Inc., 28 Liberty Street, New York, NY 10005.

3 **INTRODUCTION**

4 6. Around 2020, Valisure LLC and ValisureRX LLC (“Valisure”), an
5 analytical pharmacy, ran tests on dozens of manufacturers’ sunscreen products,
6 primarily aerosol products. Through its testing, Valisure discovered that several
7 aerosol sunscreen products contained benzene, a known human carcinogen, with
8 values ranging from less than 0.1 parts per million (“ppm”); to 0.10 ppm to 2 ppm,
9 to more than 2 ppm.¹

10 7. Based on its findings, on May 25, 2021, Valisure filed a Citizen Petition
11 with the Food and Drug Administration (“FDA”) asking the agency to recall all
12 batches of sunscreen products that contained 0.1 ppm or more of benzene on the basis
13 that they are adulterated under federal law and pose known risks to human health..²
14 At that time, Valisure advised the FDA, as well as the aerosol manufacturing
15 community, that “the presence of benzene appears to be from contamination in the
16 identified sunscreen products.” *Id.*

17 8. After Valisure’s Citizen Petition was filed in May 2021, litigation
18 related to benzene contamination in sunscreen began immediately, including against
19 Defendant’s competitor Johnson & Johnson (“J&J”). J&J began an internal
20 investigation, and quickly discovered that the source of its products’ benzene
21 contamination was the propellant that sprays the product out of the can. Less than
22 two months later, on July 14, 2021, J&J announced it was voluntarily recalling all
23 lots of Neutrogena and Aveeno aerosol sunscreen product lines due to the presence
24
25

26 _____
27 ¹ [https://assets-global.website-
files.com/6215052733f8bb8fea016220/62728f83d7f91acc8572e9ee_FDA-
2021-P-0497-0001_attachment_1.pdf](https://assets-global.website-files.com/6215052733f8bb8fea016220/62728f83d7f91acc8572e9ee_FDA-2021-P-0497-0001_attachment_1.pdf)

28 ² *Id.*

1 of benzene discovered in samples of the recalled products.³

2 9. Also in July 2021, Valisure’s CEO stated in an interview that the root
3 cause of the benzene contamination would likely be traced to contaminated raw
4 materials, and that he did not believe that the problem was limited to aerosol
5 sunscreens, or sunscreens in general,⁴ thus again putting all aerosol manufacturers on
6 notice that the benzene contamination issue was likely a much broader.

7 10. On November 3, 2021, Valisure filed another Citizen Petition with the
8 FDA—this time to address benzene contamination in various manufacturers’
9 antiperspirant and deodorant products. Through its testing, Valisure discovered that
10 several manufacturers’ aerosol antiperspirant and deodorant products contained
11 benzene.⁵ Valisure found that products containing butane were at higher risk of
12 having elevated benzene levels and warned that “propellants’ like butane, isobutane,
13 propane, and alcohol are commonly used and could potentially be sources of benzene
14 contamination.”⁶ By November 23, 2021, manufacturers began issuing recalls of
15 aerosol deodorant and antiperspirant products.⁷

16 11. By December 2021, the FDA was advising manufacturers to test for
17 benzene contamination, indicating that the cause of benzene contamination may be
18 related to the propellant isobutane.⁸

19 _____
20 ³ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/johnson-johnson-consumer-inc-issues-voluntary-recall-specific-neutrogena-and-aveenor-aerosol>.

21 ⁴ <https://www.reuters.com/world/us/fda-investigating-how-known-carcinogen-wound-up-jj-sunscreen-2021-07-16/>.

22 ⁵ https://assets-global.website-files.com/6215052733f8bb8fea016220/626af96f521a0584e70e50eb_Valisure%20FDA%20Citizen%20Petition%20on%20Body%20Spray%20v4.0%5B260%5D.pdf.

23 ⁶ <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-body-spray-products>.

24 ⁷ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/pg-issues-voluntary-recall-specific-old-spice-and-secret-aerosol-spray-antiperspirants-and-old-spice>.

25 ⁸ <https://www.bostonglobe.com/2021/12/23/business/fda-tells-drugmakers-test-benzene-contamination/>.

1 12. On October 31, 2022, Valisure filed yet another Citizen Petition with
2 the FDA—this time to address potential benzene contamination in various
3 manufacturers’ dry shampoo products, including Batiste dry shampoo products.
4 Valisure found that most of the Batiste dry shampoo products that were tested had
5 excessive levels of benzene:⁹

6 13. Plaintiff and putative Class member each purchased and used one or
7 more of the following Batiste dry shampoo products that were specifically identified
8 by Valisure as containing benzene at or above 0.1 ppm:

9	Brand	UPC	Lot	Description
10	Batiste	5010724529836	RF1125	Dry Shampoo Bare - 4.23 oz
11	Batiste	5010724529836	RF1155	Dry Shampoo Bare - 4.23 oz
12	Batiste	5010724529836	RF0113	Dry Shampoo Clean & Light Bare - 6.73 fl oz
13	Batiste	5010724527467	RF1054	Dry Shampoo Plus Brilliant Blonde - 6.73 fl oz
14	Batiste	5010724527399	RF9077	Dry Shampoo Floral & Flirty Blush - 1.6 fl oz
15	Batiste	5010724529836	RF1181	Dry Shampoo Bare - 4.23 oz
16	Batiste	5010724527443	RF1131	Dry Shampoo Plus Divine Dark - 6.73 fl oz
17	Batiste	5010724527375	RF0231	Dry Shampoo Floral & Flirty Blush - 6.73 fl oz
18	Batiste	5010724527443	RF9345	Dry Shampoo Plus Divine Dark - 6.73 fl oz
19	Batiste	5010724527443	LR0083	Dry Shampoo & a Hint of Colour for Dark Hair - 6.73 fl oz
20				
21				
22				
23				
24				
25				

26
27 ⁹ https://assets-global.website-files.com/6215052733f8bb8fea016220/6360f7f49903987d8f4f4309_Valisure%20FDA%20Citizen%20Petition%20on%20Benzene%20in%20Dry%20Shampoo%20Products_103122.pdf
28

1	Batiste	5010724533123	RF1167	Dry Shampoo Dark Hair - 6.35 oz
2	Batiste	5010724527511	RF1259	Dry Shampoo Tropical Exotic Coconut -
3				4.23 oz
4	Batiste	5010724527481	RF1103	Dry Shampoo Original Classic Clean - 4.23
5				oz
6	Batiste	5010724527481	RF0167	Dry Shampoo Clean & Classic Original -
7				6.73 fl oz
8	Batiste	5010724529836	RF0352	Dry Shampoo Clean & Light Bar - 6.73 fl
9				oz
10	Batiste	5010724527450	LR9099	Dry Shampoo Light & Breezy Fresh - 6.73
11				fl oz
12	Batiste	5010724527399	RF7132	Dry Shampoo Floral & Flirty Blush - 1.6 fl
13				oz
14	Batiste	5010724527535	RF8361	Dry Shampoo Coconut & Exotic Tropical -
15				1.6 fl oz
16	Batiste	5010724527399	RF8253	Dry Shampoo Floral & Flirty Blush - 1.6 fl
17				oz
18	Batiste	5010724533048	RF1204	Dry Shampoo Original Classic Fresh - 6.35
19				oz
20	Batiste	5010724527535	RF1350	Dry Shampoo Tropical Exotic Coconut -
21				1.06 oz
22	Batiste	5010724532966	FG1183	Volumizing Dry Shampoo - 6.73 fl oz
23				<u>(hereafter collectively referred to as</u>
24				“Products”). ¹⁰

14. Defendant knew or should have known of the Products’ benzene contamination well before Valisure’s October 2022 petition. Defendant was required to subject the Products to rigorous quality assurance guidelines and applicable laws and regulations. *See* 21 CFR 211.84 (representative samples of each shipment of each lot shall be collected for testing of active and inactive components (or raw materials) to ensure compliance with all established specifications). If Defendant had actual knowledge that there was a risk the Products could be

¹⁰ Discovery may reveal additional Products manufactured, sold, and distributed by Defendant that are affected by this action and Plaintiff reserves their right to include any such products in this action.

1 contaminated with benzene prior to Valisure’s October 2022 petition, the company
2 had an obligation to ameliorate and disclose that risk to consumers. If Defendant did
3 not have actual knowledge that the Products could be contaminated with benzene
4 prior to the October 2022 petition, Defendant was reckless and/or negligent as a
5 sophisticated producer of personal care products.

6 15. Upon information and belief, to the extent Defendant disclaimed
7 knowledge of the Products’ benzene contamination prior to Valisure’s October 2022
8 petition, the company gained actual knowledge of that risk as early as July 2021.
9 Around that time, Defendant’s top competitors began recalling aerosol products due
10 to the presence of benzene and immediately faced litigation based on those recalls.
11 Valisure’s CEO was likewise warning at that time that the benzene contamination
12 would likely be traced to contaminated raw materials. Moreover, in November 2021,
13 Valisure confirmed the presence of benzene in dozens of aerosol antiperspirants and
14 deodorants, resulting in massive recalls and ensuing litigation.

15 16. Despite Defendant’s knowledge of the pervasive risk of benzene
16 contamination in the Products, Defendant have failed to warn consumers of this
17 known danger. Instead, Defendant chose to maximize its profits and delay the costs
18 of immediately recalling the defective products it sold at the expense of its trusting
19 customers who were unwittingly increasing their exposure to benzene contamination
20 in the Products and continued to buy the Products. Consumers, like Plaintiff,
21 depended on Defendant to disclose those risks but were, instead, presented with false,
22 misleading, or incomplete representations regarding the safety and benefits of the
23 Products and suffered damages as a result.

24 **BACKGROUND ON BENZENE**

25 17. Benzene is used primarily in the chemical and pharmaceutical
26 industries, as a starting material and intermediate in the synthesis of numerous
27 chemicals, and in gasoline. The major United States source of benzene is petroleum.
28 The health hazards of benzene have been recognized for over one hundred years.

1 Benzene was “[f]irst evaluated by IARC in 1974 . . . and was found to be carcinogenic
2 to humans (Group 1), a finding that has stood since that time.”¹¹ As noted by the
3 IARC:

4 In the current evaluation, the Working Group again
5 confirmed the carcinogenicity of benzene based on
6 *sufficient evidence* of carcinogenicity in humans, *sufficient*
7 *evidence* of carcinogenicity in experimental animals, and
8 *strong* mechanistic evidence. . . . The Working Group
9 affirmed the strong evidence that benzene is genotoxic, and
10 found that it also exhibits many other key characteristics of
11 carcinogens, including in exposed humans. In particular,
12 benzene is metabolically activated to electrophilic
13 metabolites; induces oxidative stress and associated
14 oxidative damage to DNA; is genotoxic; alters DNA repair
15 or causes genomic instability; is immunosuppressive; alters
16 cell proliferation, cell death, or nutrient supply; and
17 modulates receptor-mediated effects.¹²

18 18. The Food and Drug Administration (“FDA”) similarly recognizes that
19 “[b]enzene is a carcinogen that can cause cancer in humans”¹³ and classifies benzene
20 as a “Class 1” solvent that should be “avoided.”¹⁴ And the National Institute for
21 Occupational Safety and Health (“NIOSH”) recommends protective equipment be
22 worn by workers expecting to be exposed to benzene at concentrations of 0.1 ppm
23 and defines “skin absorption” as an exposure route.¹⁵ According to the National
24 Toxicology Program (“NTP”), benzene is “*known to be a human carcinogen* based
25 on sufficient evidence of carcinogenicity from studies in humans.”¹⁶

26 ¹¹ Benzene / IARC Working Group on the Evaluation of Carcinogenic Risks to
27 Humans (2017: Lyon, France), at p. 33.

28 ¹² *Id.* at 34.

¹³ <https://www.fda.gov/food/chemicals/questions-and-answers-occurrence-benzene-soft-drinksand-other-beverages#q1>.

¹⁴ <https://www.fda.gov/media/71737/download>.

¹⁵ Centers for Disease Control and Prevention. *The National Institute for Occupational Safety and Health (NIOSH), Benzene* (<https://www.cdc.gov/niosh/npg/npgd0049.html>).

¹⁶ <http://ntp.niehs.nih.gov/go/roc/content/profiles/benzene.pdf> (emphasis added).

1 19. “Even in trace amounts, benzene is known to pose a health risk from
2 exposure routes that include inhalation, ingestion, dermal absorption, and skin or eye
3 contact.”¹⁷

4 20. FDA’s Guidance for Industry Q3C provides that “Solvents in Class 1
5 [i.e. benzene] . . . should not be employed in the manufacture of drug substances,
6 excipients, and drug products because of their unacceptable toxicities or deleterious
7 environmental effect.”¹³ That provision provides in full:

8 III. SOLVENTS GROUPED BY CLASS Solvents in Class
9 1 [i.e. benzene] should not be employed in the manufacture
10 of drug substances, excipients, and drug products because
11 of their unacceptable toxicity or their deleterious
12 environmental effect. However, if their use is unavoidable
13 in order to produce a drug product with a significant
14 therapeutic advance, then their levels should be restricted
15 ... [to 2 ppm], unless otherwise justified.¹⁸

16 21. Thus, although benzene should not be employed in the manufacture of
17 drug substances, it may be used in manufacturing *some* drug substances when (1) its
18 use is “unavoidable” to produce a drug product with (2) “significant therapeutic
19 advance.” Defendant’s Products do not meet this safe harbor exception. This is
20 because the use of benzene in the manufacture of the Products is not “unavoidable,”
21 nor does the use of benzene in the Products provide a “significant therapeutic
22 advance.”

23 22. That the use of benzene is entirely avoidable is illustrated by Valisure’s
24 testing, which showed variation of benzene contamination in the batches of Batiste
25 and other manufacturers’ dry shampoos that were tested. Some of the dry shampoo
26 products tested contained detectible and/or or elevated levels of benzene and some
27 did not. Given that benzene was detected in some dry shampoo products but not in

28 ¹⁷ Hudspeth, A., et al., Independent Sun Care Product Screening for Benzene
Contamination, Environmental Health Perspectives, 130:3, Online Publication
29 March 2022.

¹⁸ Food and Drug Administration, Q3C – Tables and List Guidance for Industry
(2017) (<https://www.fda.gov/media/71737/download>).

1 others is evidence in itself that benzene is not required in its manufacture. Moreover,
2 the Products do not represent a “significant therapeutic advance.” The FDA has never
3 considered dry shampoo products as representing a “significant therapeutic
4 advance.” And, considering the long history and widespread use of dry shampoo and
5 foam shampoo products, it does not appear that such products constitute a significant
6 therapeutic advance.

7 23. Following Valisure’s May 2021 petition, the FDA began working with
8 drug and cosmetic manufacturers on the specific issue of benzene contamination.
9 This work has resulted in the agency issuing FDA Alerts, most recently on June 9,
10 2022, *reminding* manufacturers that they “should not use benzene in the manufacture
11 of drugs.”¹⁹ The FDA’s latest Alert further notes that this prohibition is consistent
12 with the agency’s 2017 guidance document: “Consistent with the recommendations
13 of the ICH Q3 guidance, manufacturers should not use benzene in the manufacture
14 of drugs.”²⁰ Accordingly, the FDA has worked with numerous manufacturers over
15 the past 1 ½ years to recall drug and cosmetic aerosol products contaminated with
16 benzene.²¹

17 24. Benzene is not listed as an active or inactive ingredient (or otherwise
18 identified as being present) on any of the labels of Defendant’s Products.

19 25. Defendant was required to disclose the presence of benzene in its
20 Products. Moreover, the Defendant is not authorized to withhold information about
21
22

23
24 ¹⁹ <https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-drug-manufacturers-risk-benzene-contamination-certain-drugs> (June 9, 2022).

25 ²⁰ <https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-drug-manufacturers-risk-benzene-contamination-certain-drugs> (June 9, 2022); Food and
26 Drug Administration, *Q3C – Tables and List Guidance for Industry* (2017)
27 (<https://www.fda.gov/media/71737/download>).

28 ²¹ Since Valisure’s May 2021 petition, there have been 11 nationwide recalls of aerosol products due to benzene contamination.

1 the presence of benzene on the basis that benzene is a “residual solvent.”²² This is
2 because the use of benzene in the manufacture of dry shampoo is not “unavoidable,”
3 and its use in the Products does not constitute a “significant therapeutic advance.”
4 Nor has the use of benzene in the manufacture of dry shampoo products been strongly
5 justified in a risk-benefit analysis.

6 26. Similar to FDA’s Guidance for Industry Q3C, the FDA’s Residual
7 Solvent Guidance on the use of “residual solvents” for drug products (USP General
8 Chapter) provides that because Class 1 cancer causing agents (like benzene) do not
9 “provide therapeutic benefit,” they should be “avoided” absent a showing that their
10 use is “strongly justified” in a risk-benefit analysis. General Chapter 467 provides:

11 Because residual solvents do not provide therapeutic
12 benefit, they should be removed, to the extent possible, to
13 meet ingredient and product specifications, good
14 manufacturing practices, or other quality-based
15 requirements. Drug products should contain no higher
16 levels of residual solvents than can be supported by safety
17 data. Solvents that are known to cause unacceptable
18 toxicities (Class 1, Table 1) [e.g., benzene] should be
19 avoided in the production of drug substances, excipients,
20 or drug products unless their use can be strongly justified
21 in a risk-benefit assessment.²³

22 27. Upon information and belief, Defendant has never conducted a “risk
23 benefit assessment” regarding the use of benzene as a residual solvent in its Products,
24 much less “strongly justified” its use before the FDA. Nor is the use of benzene as a
25 residual solvent in manufacturing aerosol antiperspirant products “supported by the
26 safety data” in light of the known health risks associated with exposure to benzene
27 as detailed herein.

28 ²² See Residual Solvent Guidance, “Residual Solvents in Drug Products Marketed
in the United States” (2009) (applying standards in USP General Chapter
Residual Solvents).

²³

https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/generalChapter467Current.pdf (USP General Chapter Residual Solvents).

1 28. The FDCA defines “cosmetics” by their intended use, as “articles
2 intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise
3 applied to the human body...for cleansing, beautifying, promoting attractiveness, or
4 altering the appearance[.]” Federal Food, Drug, and Cosmetic Act § 201(i).
5 “Cosmetic companies have a legal responsibility for the safety of their products and
6 ingredients.”²⁴

7 29. Similarly, in California, “‘Cosmetic’ means any article, or its
8 components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into,
9 or otherwise applied to, the human body, or any part of the human body, for
10 cleansing, beautifying, promoting attractiveness, or altering the appearance.” Cal.
11 Health & Safety Code § 109900.

12 30. Federal law and California law contain parallel statutes with respect to
13 the misbranding and adulteration of cosmetics.

14 31. The manufacture of any misbranded or adulterated cosmetic is
15 prohibited under federal law²⁵ and California state law.²⁶

16 32. The introduction into commerce of any misbranded or adulterated
17 cosmetic is similarly prohibited.²⁷

18 33. The receipt in commerce of any adulterated or misbranded cosmetic is
19 also unlawful.²⁸

20 34. Among the ways a cosmetic may be adulterated are: “If it consists in
21

22 ²⁴<https://www.fda.gov/cosmetics/resources-consumers-cosmetics/cosmetics-safety-qa-personal-care-products>.

23 ²⁵ See 21 U.S.C. §331(g).

24 ²⁶ See Cal. Health & Safety Code § 111765 (“It is unlawful for any person to
25 manufacture, or sell any cosmetic that is misbranded.”); [Cal. Health & Safety Code § 111700](#) (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer
26 for sale any cosmetic that is adulterated.”).

27 ²⁷ 21 U.S.C. §331(a); Cal. Health & Safety Code § 111710 (“It is unlawful for any
28 person to receive in commerce any cosmetic that is adulterated or to deliver or
proffer for delivery any such cosmetic.”).

²⁸ 21 U.S.C. §331(c); Cal. Health & Safety Code § 111710.

1 whole or in part of any filthy, putrid, or decomposed substance; or . . . whereby it
2 may have been rendered injurious to health;²⁹

3 35. A cosmetic is misbranded “[i]f its labeling is false or misleading in any
4 particular.”³⁰

5 36. Defendant wrongfully advertised and sold the Products without any
6 labeling to indicate to consumers that these Products contain benzene. The following
7 exemplar is representative of the label contained on the Products purchased by
8 Plaintiff and putative class members:

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24

25 ²⁹ 21 U.S.C. §361. *See* Cal. Health & Safety Code § 111680 (“Any cosmetic is
26 adulterated if it contains in whole or in part of any filthy, putrid, or decomposed
27 substance.”); Cal. Health & Safety Code § 111670 (“A cosmetic is adulterated
if it bears any poisonous or deleterious substance that may render it injurious to
users under the conditions of use prescribed in the labeling or advertising of the
cosmetics, or under conditions of use as are customary or usual.”)

28 ³⁰ 21 U.S.C. §352(a)(1); Cal. Health & Safety Code § 111730 (same).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



37. Plaintiff and members of the putative class read and relied on the Products’ labels in deciding to purchase and use the Products. Defendant’s omission of the presence of benzene on the labels was a material factor in influencing Plaintiffs’ decision to purchase and use the Products. Plaintiffs would not have purchased and used the Products, or would have paid less for them, had she known the Products contain, or may contain, benzene. Thus, Plaintiff and members of the putative class have “lost money” as a result of Defendant’s misrepresentations and

1 have standing to do so.

2 38. Plaintiff also has standing to represent members of the putative class
3 because there is sufficient similarity between the specific Products purchased by the
4 Plaintiff and the Products not purchased by Plaintiff. Specifically, *all* of the Products
5 are marketed in substantially the same way – as “dry shampoo”— and *all* of the
6 Products fail to include labeling indicating to consumers that the Products contain
7 benzene. Accordingly, the misleading effect of *all* of the Products’ labels are
8 substantially the same.

9 39. Because Defendant did not disclose benzene, a known human
10 carcinogen, is present in the Products purchased by Plaintiff and the putative class
11 members, the Products are adulterated and misbranded. As noted by the World Health
12 Organization, there is no “no safe level of benzene” exposure, so it is unsuitable for
13 human application as an ingredient in dry shampoo.³¹

14 40. In addition to Product labeling, Defendant makes a significant number
15 of representations and/or warranties regarding the safety of the Products in its
16 advertising. For example, Defendant assures consumers that (1) it “provide[s] safe
17 and effective products for consumers”³²; (2) it “provid[es] effective products that are
18 safe for our consumers”³³; (3) it “develop[s] effective products that are safe for our
19 consumers”³⁴; (4) “our safety assurance is global and science-based”³⁵; (5) “all our
20 products are thoroughly evaluated to be used safely and effectively”³⁶; (6) “[b]ased
21 on our safety assessment, we provide proper use instructions and ingredient and
22 safety related statements on package label and product website”³⁷; (7) its “Product

23
24 ³¹ <https://www.who.int/ipcs/features/benzene.pdf>.

25 ³² <https://churchdwright.com/responsibility/>.

26 ³³ <https://churchdwright.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

27 ³⁴ <https://churchdwright.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

28 ³⁵ <https://churchdwright.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

³⁶ <https://churchdwright.com/responsibility/guiding-principles.aspx>.

³⁷ <https://churchdwright.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

1 Development and Quality Compliance teams ensure that the finished product (and
2 ingredients) meet all specifications”³⁸; (8) its “Finished Product Evaluation ensures
3 safety use of our products under normal use and reasonably foreseeable misuse
4 conditions”³⁹; (9) its “Post-market Surveillance and Evaluation . . . ensure[s] the
5 safety, performance and quality expectations are met”⁴⁰; (10) it has a “commitment
6 to safe products via monitoring and improvements”⁴¹; (11) “[t]oday, none of the
7 chemicals on our master [Chemicals of Concern] list will be used in any of our
8 formulations”⁴²; (12) “[w]e devote significant attention and care to transparently
9 disclosing ingredient and safety information for our products”⁴³; (13) “[w]e have
10 mastered consumer safety worldwide”⁴⁴; (14) “[w]e always do business in a
11 responsible and ethical manner in accordance with our Global Operating Guiding
12 Principles,” which “set out the minimum standards we require of ourselves and our
13 vendors to ensure”⁴⁵; (15) “it is in compliance with ethical and applicable legal
14 requirements”⁴⁶; (16) it “compl[ies] with all other applicable legal, governmental,
15 regulatory and professional requirements”⁴⁷; (17) “[w]e require our vendors to be law
16 abiding and, at a very minimum, to comply with all applicable legal, governmental,
17 regulatory and professional requirements, . . . including those relating to the subject
18 matter of these Guiding Principles”⁴⁸; (18) “[a]ll of . . . our suppliers are expected to
19
20

21 ³⁸ <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

22 ³⁹ <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

23 ⁴⁰ <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

24 ⁴¹ <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

25 ⁴² <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

26 ⁴³ <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

27 ⁴⁴ <https://churchdwight.com/pdf/Sustainability/2021-Sustainability-Report.pdf>.

28 ⁴⁵ <https://churchdwight.com/responsibility/guiding-principles.aspx>.

⁴⁶ <https://churchdwight.com/responsibility/guiding-principles.aspx>.

⁴⁷ <https://churchdwight.com/responsibility/guiding-principles.aspx>.

⁴⁸ <https://churchdwight.com/responsibility/guiding-principles.aspx>.

1 comply with our Global Operations Guiding Principles”⁴⁹; and (19) “[w]e clearly
2 display all key ingredient and safety information for all our products.”⁵⁰

3 41. Defendant advertises that it has implemented a Four Step Safety
4 Assurance Process “to reassure our consumers that we make safe and effective
5 products,”⁵¹ while failing to disclose that its Products contain, or may contain,
6 benzene.

7 42. Defendant claims it “recognizes that it is important for consumers to
8 know the contents of the products they use in their homes and for their families,”⁵²
9 but then fails to inform consumers that its Products contain, or may contain, benzene.

10 43. Defendant represents that “[i]f you want to know what’s in one of our
11 products simply look for the product below and click to learn more” from its product
12 ingredient disclosure form,⁵³ suggesting to consumers that all of the Products’
13 contents are disclosed therein. Yet, benzene is not disclosed as being in any of the
14 Defendant’s Products, whether as an ingredient, solvent, or otherwise.

15 44. Plaintiff and members of the putative class read and relied on one or
16 more of the aforementioned representations (¶¶ 34-37) in deciding to purchase and
17 use the Products. Plaintiff would not have purchased the Products, or would have
18 paid less for them, had she known that these claims were false and misleading.

19 45. The aforementioned representations and omissions are false and/or
20 misleading because nowhere on the Products’ labels (or elsewhere in Defendant’s
21 marketing of the Products) does Defendant insinuate, state, or warn consumers that
22 the Products contain, or may contain, benzene.

23 **CLASS ALLEGATIONS**

24 46. Plaintiff brings this action on behalf of herself and all other similarly

25 ⁴⁹ <https://churchdwright.com/responsibility/guiding-principles.aspx>.

26 ⁵⁰ <https://churchdwright.com/responsibility/our-products.aspx>.

27 ⁵¹ <https://churchdwright.com/responsibility/our-products.aspx>.

28 ⁵² <https://churchdwright.com/our-brands/product-safety.aspx>.

⁵³ <https://churchdwright.com/ingredient-disclosure/default.aspx>.

1 situated class members (hereafter the “Class”) pursuant to Rule 23(a), (b)(2) and
2 (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following
3 class against Defendant for violations of California state laws and/or similar laws in
4 other states:

5 **Nationwide Class**

6 All consumers who purchased, for personal use and consumption, any
7 Batiste™ dry shampoo product in the United States of America and/or
8 its territories for from November 22, 2018 to the present.

9 Excluded from the Class are individuals who allege personal bodily
10 injury resulting from the use of Batiste™ dry shampoo product. Also
11 excluded from this Class is Defendant, any parent companies,
12 subsidiaries, and/or affiliates, officers, directors, legal representatives,
13 employees, co-conspirators, all governmental entities, and any judge,
14 justice or judicial officer presiding over this matter.

15 47. In the alternative, Plaintiff brings this action on behalf of herself and all
16 other similarly situated California consumers pursuant to Rule 23(a), (b)(2) and
17 (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following
18 Sub-Class:

19 **California Sub-Class**

20 All consumers who purchased, for personal use and consumption, any
21 Batiste™ dry shampoo product in the State of California from
22 November 22, 2018 to the present.

23 Excluded from the Class are individuals who allege personal bodily
24 injury resulting from the use of Batiste™ dry shampoo products. Also
25 excluded from this Class is Defendant, any parent companies,
26 subsidiaries, and/or affiliates, officers, directors, legal representatives,
27 employees, co-conspirators, all governmental entities, and any judge,
28 justice or judicial officer presiding over this matter.

48. Plaintiff and their counsel will fairly and adequately protect and
represent the interests of each member of the Class. Plaintiff has retained counsel
experienced in complex litigation and class actions. Plaintiff’s counsel has

1 successfully litigated other class action cases similar to those here and have the
2 resources and abilities to fully litigate and protect the interests of the Class. Plaintiff
3 intends to prosecute this claim vigorously. Plaintiff has no adverse or antagonistic
4 interests to those of the Class, nor is Plaintiff subject to any unique defenses.

5 49. The members of the Class are so numerous that joinder of all members
6 of the Class is impracticable. Plaintiff is informed and believes that the proposed
7 Class contains thousands of purchasers of Defendant's Products who have been
8 damaged by Defendant's conduct as alleged herein. The precise number of Class
9 members is unknown to Plaintiff at this time.

10 50. Plaintiff's claims are typical to those of all class members because
11 members of the class are similarly injured through Defendant's uniform misconduct
12 described above. Specifically, Plaintiff was subject to Defendant's deceptive claims
13 that accompanied each and every Batiste Product in Defendant's collection.
14 Moreover, Plaintiff is advancing the same claims and legal theories on behalf of
15 herself and all members of the Class.

16 51. Plaintiff's claims raise questions of law and fact common to all members
17 of the Class, and they predominate over any questions affecting only individual Class
18 members. The claims of Plaintiff and all prospective Class members involve the same
19 alleged defect. These common legal and factual questions include the following:

- 20 (a) whether Defendant's Products contain benzene;
- 21 (b) whether Defendant's omissions are true, or are
22 misleading, or objectively reasonably likely to deceive;
- 23 (c) whether the alleged conduct constitutes violations of the
24 laws asserted;
- 25 (d) whether Defendant's alleged conduct violates public
26 policy;
- 27 (e) whether Defendant engaged in false or misleading
28 advertising;

1 (f) whether Plaintiff and the Class members are entitled to
2 damages and/or restitution and the proper measure of
3 that loss; and

4 (g) whether an injunction is necessary to prevent Defendant
5 from continuing to market and sell defective and
6 adulterated Products that contain benzene, a known
7 human carcinogen.

8 52. Plaintiff and her counsel will fairly and adequately protect and represent
9 the interests of each member of the Class. Plaintiff has retained counsel experienced
10 in complex litigation and class actions. Plaintiff's counsel has successfully litigated
11 other class action cases similar to those here, including litigating and settling the J&J
12 sunscreen benzene contamination multi-district litigation. Plaintiff also has the
13 resources and abilities to fully litigate and protect the interests of the Class. Plaintiff
14 intends to prosecute this claim vigorously. Plaintiff has no adverse or antagonistic
15 interests to those of the Class, nor is Plaintiff subject to any unique defenses.

16 53. A class action is superior to the other available methods for a fair and
17 efficient adjudication of this controversy. The damages or other financial detriment
18 suffered by the Plaintiff and individual Class members is relatively small compared
19 to the burden and expense that would be entailed by individual litigation of their
20 claims against Defendant. It would thus be virtually impossible for Plaintiff and Class
21 members, on an individual basis, to obtain effective redress for the wrongs done to
22 them. Further, it is desirable to concentrate the litigation of the Class members'
23 claims in one forum, as it will conserve party and judicial resources and facilitate the
24 consistency of adjudications. Plaintiff knows of no difficulty that would be
25 encountered in the management of this case that would preclude its maintenance as
26 a class action.

27 54. The Class also may be certified because Defendant has acted or refused
28 to act on grounds applicable to the Class, thereby making appropriate final

1 declaratory and/or injunctive relief with respect to the members of the Class as a
2 whole.

3 55. Plaintiff seeks preliminary and permanent injunctive and equitable relief
4 on behalf of the entire Class, on grounds generally applicable to the entire Class, to
5 enjoin and prevent Defendant from engaging in the acts described above, such as
6 continuing to market and sell Products that are adulterated with benzene, and
7 requiring Defendant to provide a full refund of the purchase price of the Products to
8 Plaintiff and Class members.

9 56. Unless a class is certified, Defendant will retain monies received as a
10 result of their conduct that were taken from Plaintiff and the Class members. Unless
11 a Class-wide injunction is issued, Defendant will continue to commit the violations
12 alleged and the members of the Class and the general public will continue to be
13 misled.

14 **FIRST CAUSE OF ACTION**

15 **(Violations of the Unfair Competition Law (the “UCL”), Cal. Bus.**
16 **& Prof. Code § 17200, *Et Seq.* Against Defendant on Behalf of**
17 **California Sub-Class)**

18 57. Plaintiff incorporates by reference and re-alleges each and every
19 allegation contained above, as though fully set forth herein.

20 58. The UCL prohibits any “unlawful, unfair or fraudulent business act or
21 practice and unfair, deceptive, untrue or misleading advertising....” Cal. Bus. & Prof.
22 Code § 17200.

23 *Fraudulent Acts and Practices*

24 59. Any business act or practice that is likely to deceive members of the
25 public constitutes a fraudulent business act or practice under the UCL. Similarly, any
26 advertising that is deceptive, untrue or misleading constitutes a fraudulent business
27 act or practice under the UCL.

28 60. Defendant has engaged, and continues to engage, in conduct that is

1 likely to deceive members of the public. This conduct includes representing in its
2 labels that the Products do not contain benzene when the Products do contain
3 benzene.

4 61. Similarly, Defendant has engaged, and continues to engage, in
5 deceptive, untrue, and misleading advertising by representing that their Products are
6 safe and effective (*see* ¶¶ 34-37) even though the Products contain benzene, and thus,
7 poses a risk to human health.

8 62. By committing the acts alleged above, Defendant has engaged in
9 fraudulent business acts and practices, which constitute unfair competition within the
10 meaning of Business & Professions Code §17200.

11 *Unlawful Acts and Practices*

12 63. The violation of any law constitutes an unlawful business practice under
13 Business & Professions Code §17200.⁵⁴

14 64. Defendant’s conduct also violates Cal. Health & Safety Code § 111730,
15 which prohibits the sale of any misbranded product. The Products contain labeling
16 which omits the fact that the Products contain benzene, suggesting to consumers that
17 the Products are safe and effective and are not potentially harmful to human health
18 when used as directed. Such labeling is “false and misleading in any particular” in
19 violation of Health & Safety Code § 111730.

20 65. By violating the Cal. Health and Safety Code § 111730, Defendant has
21 engaged in unlawful business acts and practices which constitute unfair competition
22 within the meaning of Cal. Bus. & Prof. Code § 17200.

23 *Unfair Acts and Practices*

24 66. Any business practice that offends an established public policy or is
25 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers
26 constitutes an “unfair” practice under the UCL.

27 ⁵⁴ Defendants’ conduct also violates Section 5 of the Federal Trade Commission
28 “(“FTC”) Act, 15 U.S.C. § 45, which prohibits unfair methods of competition
and unfair or deceptive acts or practices in or affecting commerce.

1 67. Defendant has engaged, and continues to engage, in unfair business
2 practices. This conduct includes representing that the Products do not contain
3 benzene when in fact they do.

4 68. Defendant has engaged, and continues to engage, in conduct that
5 violates the legislatively declared policies against committing unfair methods of
6 competition and unfair or deceptive acts or practices in or affecting commerce.
7 Defendant gained an unfair advantage over its competitors, whose advertising for
8 Products must comply with the UCL.

9 69. Defendant’s conduct, including misrepresenting the safety and efficacy
10 of the Products, is substantially injurious to consumers. Consumers are purchasing
11 and using Batiste Products without knowledge that the Products are, or may be,
12 adulterated with a human carcinogen. Moreover, such conduct has, and continues to
13 cause, substantial injury to consumers. Consumers, including Plaintiff, would not
14 have paid money, or would have paid less money, for Products adulterated and/or
15 potentially adulterated with a human carcinogen but for Defendants’ false labeling,
16 advertising, and promotion. Thus, Plaintiff and the putative Class have “lost money
17 or property” as required for UCL standing, and such an injury is not outweighed by
18 any countervailing benefits to consumers or competition.

19 70. Indeed, no benefit to consumers or competition results from Defendant’s
20 conduct. Since consumers reasonably rely on Defendant’s representations of the
21 safety information contained in the Products’ labels and through advertising, and
22 injury resulted from ordinary use of the Products, consumers could not have
23 reasonably avoided such injury.

24 71. By committing the acts described above, Defendant has engaged in
25 unfair business acts and practices which constitute unfair competition within the
26 meaning of the UCL.

27 72. An action for injunctive relief and restitution is specifically authorized
28 under Cal. Bus. & Prof. Code 17203.

1 73. Wherefore, Plaintiff prays for judgment against Defendants, as set forth
2 hereafter. Defendants' conduct with respect to the labeling, advertising, marketing,
3 and sale of the Products is unfair because Defendant's conduct was immoral,
4 unethical, unscrupulous, or substantially injurious to consumers and the utility of its
5 conduct, if any, does not outweigh the gravity of the harm to its victims.

6 74. In accordance with California Business & Professions Code section
7 17203,⁵⁵ Plaintiff seeks an order enjoining Defendants from continuing to conduct
8 business through fraudulent or unlawful acts and practices and to commence a
9 corrective advertising campaign. Defendant's conduct is ongoing and continuing,
10 such that prospective injunctive relief is necessary.

11 75. On behalf of Plaintiff and the putative Class, Plaintiff also seeks an order
12 for the restitution of all monies spent on the Products, which were acquired through
13 acts of fraudulent, unfair, or unlawful competition.⁵⁶ In addition, because the
14 Products either contain benzene or risk containing benzene, a known human
15 carcinogen, the measure of restitution should be rescission and full refund insofar as
16 the Products and their associated labels are worthless. But for Defendant's
17 misrepresentations and omissions, Plaintiff would have paid nothing, or paid
18 significantly less, for Products that contain benzene or may contain benzene. Indeed,
19 there is no discernible "market" for an OTC dry shampoo product that is or may be
20 adulterated with a known poison. As recognized by the World Health Organization,
21 "[b]enzene is carcinogenic to humans, and no safe level of benzene can be
22

23 _____
24 ⁵⁵ "Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction." Cal. Bus.
26 & Prof. Code § 17203.

27 ⁵⁶ "Actions for relief pursuant to this chapter shall be prosecuted . . . by a person
28 who has suffered injury in fact and lost money or property as a result of the
unfair competition." Cal. Bus. & Prof. Code § 17204.

"The court may make such orders or judgments . . . as may be necessary to restore
to any person in interest any money or property, real or personal, which may
have been acquired by means of such unfair competition." Cal. Bus. & Prof.
Code § 17203.

1 recommended.”⁵⁷ As a result, the Products are rendered valueless.

2 76. By reason thereof, Plaintiff and members of the putative Class are
3 entitled to injunctive and equitable relief, and restitution in the amount they spent on
4 the Products.

5 **SECOND CAUSE OF ACTION**

6 **(Violations of California’s False Advertising Law, California Business &**
7 **Professions Code §§17500, Et. Seq., Against Defendant on Behalf of the**
8 **California Sub-Class)**

9 77. Plaintiff incorporates by reference and re-alleges each and every
10 allegation contained above, as though fully set forth herein.

11 78. California’s False Advertising Law (“FAL”) prohibits any statement in
12 connection with the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof.
13 Code §17500.

14 79. As set forth herein, Defendant omits from its Products’ label that the
15 Products contain, or might contain, benzene. This omission is false and likely to
16 deceive the public because some of its Products do in fact contain benzene.

17 80. Similarly, Defendant’s advertising claims that their Products’ are safe
18 and effective are untrue or misleading because such claims fail to disclose that the
19 Products are, or may be, adulterated with benzene, a cancer causing chemical which
20 poses a health risk even at “trace levels” of exposure.

21 81. Defendant knew, or reasonably should have known, that its advertising
22 claims were untrue or misleading.

23 82. Defendant’s conduct is ongoing and continuing, such that prospective
24 injunctive relief is necessary, especially given Plaintiff’s desire to purchase
25 Defendant’s Products in the future if she can be assured that the Products are
26 unadulterated and meet the advertising claims. Absent injunctive relief, Defendant
27 may continue to advertise, promote and sell adulterated Products that deceive the

28 ⁵⁷ <https://www.who.int/ipcs/features/benzene.pdf>.

1 public as to their contents and safety. Plaintiff is thus likely to again be wronged in a
2 similar way. For instance, if Plaintiff encounters Defendant's Products in the future
3 and there is risk those Products still contain benzene, Plaintiff may mistakenly rely
4 on the Product's label to believe that Defendant eliminated benzene when it did not.

5 83. By reason thereof, Plaintiff and members of the putative Class are
6 entitled to injunctive and equitable relief, and restitution in the amount they spent on
7 the Products.

8 **THIRD CAUSE OF ACTION**

9 **Negligent Misrepresentation/Omission**

10 **(On Behalf of the Nationwide Class and California's Sub-Class)**

11 84. Plaintiff incorporates by reference and re-alleges each and every
12 allegation contained above, as though fully set forth herein.

13 85. Through its labeling and advertising, Defendant made representations to
14 the Plaintiff and the Class members concerning the contents of its Products.

15 86. Defendant has a duty to provide accurate information to consumers with
16 respect to the contents of its Products as detailed above.

17 87. Defendant failed to fulfill its duty to accurately disclose, through its
18 labeling, advertising or otherwise, that its Products contain benzene or may contain
19 benzene.

20 88. Additionally, Defendant has a duty to not make false representations
21 with respect to its Products.

22 89. Defendant failed to fulfill this duty when it made false representations
23 regarding the quality and safety of the Products as detailed above.

24 90. Such failures to disclose on the part of Defendant amount to negligent
25 omission and the representations regarding the quality and safety of the product
26 amount to negligent misrepresentation.

27 91. Defendant's conduct constitutes fraud in the inducement in that it
28 occurred in connection with misrepresentations, statements or omissions which

1 caused the Plaintiff and putative Class members to enter into a transaction (i.e. to
2 purchase Defendant's Products). Plaintiff would not have purchased, or would have
3 paid less for, the Products had she known they were or could be contaminated with
4 benzene. As such, Defendant's fraudulent activities occurred independent of the
5 contract to purchase.

6 92. Plaintiff and the other members of the Class reasonably relied upon such
7 representations and omissions to their detriment.

8 93. By reason thereof, Plaintiff and the other Class members have suffered
9 damages in an amount to be proven at trial.

10 **FOURTH CAUSE OF ACTION**

11 **Strict Product Liability – Failure to Warn**

12 **(On Behalf of the Nationwide Class and California's Sub-Class)**

13 94. Plaintiff incorporates by reference and re-alleges each and every
14 allegation contained above, as though fully set forth herein.

15 95. Defendant knew, or should have known, that its Products contain or may
16 contain benzene, a known human carcinogen.

17 96. Defendant had a duty to warn Plaintiff and the putative Class about the
18 presence of benzene in its Products.

19 97. Defendant had a duty to warn Plaintiffs and the putative Class about the
20 dangers of the presence of benzene in its Products.

21 98. Defendant knew that the risk of exposure to benzene from use of its
22 Products was not readily recognizable to an ordinary consumer, including Plaintiff,
23 and that consumers would not inspect the product for benzene content.

24 99. Defendant did not warn Plaintiff and the putative Class that the Products
25 contained, or may contain, benzene or about the dangers of the presence of benzene
26 in its Products.

27 100. Defendant failed to fulfill this duty when it made affirmative
28 representations regarding the quality and safety of the Products as detailed above.

1 Such affirmative representations regarding the safety of the Products constitute
2 negligent misrepresentations which are independent of Plaintiff's economic losses.

3 101. Plaintiff and other putative Class members have lost time and suffered
4 aggravation attempting to find alternative dry shampoo products to purchase.
5 Plaintiff and the putative Class have also suffered distress by not knowing the level
6 of benzene they were exposed to, or potentially exposed to, and the health effects of
7 such exposure.

8 102. Plaintiff and the putative Class members have suffered damages by
9 purchasing Products in a manner promoted by Defendant, and in a manner that was
10 reasonably foreseeable by Defendant. Plaintiff and the members of the putative Class
11 would not have purchased Defendant's Products, or they would have paid less for
12 them, had they known they contained or may contain benzene.

13 103. Plaintiff and the putative Class were justified in their reliance on
14 Defendant's labeling and advertising of the Products for use as dry shampoo.

15 104. By reason thereof, Plaintiffs and the Class have suffered damages in an
16 amount to be proven at trial.

17 **FIFTH CAUSE OF ACTION**

18 **Strict Product Liability – Manufacturing Defect**

19 **(On Behalf of the Nationwide Class and California's Sub-Class)**

20 105. Plaintiff incorporates by reference and re-alleges each and every
21 allegation contained above, as though fully set forth herein.

22 106. The Products contained a manufacturing defect when they left the
23 possession of Defendant. Specifically, the Products differ from Defendant's intended
24 result or from other lots of the same product line because they contain benzene.

25 107. Plaintiff and members of the putative Class used the Products in a way
26 that was reasonably foreseeable to Defendant.

27 108. As a result of the defects in the manufacture of the Products, Plaintiffs
28 and the Class suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
3 situated, prays for judgment against the Defendant as to each and every count,
4 including:

- 5 A. An order declaring this action to be a proper class action, appointing
6 Plaintiff and their counsel to represent the California Sub-Class, and
7 requiring Defendant to bear the costs of class notice;
- 8 B. An order enjoining Defendant from selling the Products;
- 9 C. An order enjoining Defendant from suggesting or implying that they are
10 safe and effective for human application;
- 11 D. An order requiring Defendant to engage in a corrective advertising
12 campaign and engage in any further necessary affirmative injunctive
13 relief, including recalling all Products contaminated or potentially
14 contaminated with benzene;
- 15 E. An order awarding declaratory relief, and any further retrospective or
16 prospective injunctive relief permitted by law or equity, including
17 enjoining Defendant from continuing the unlawful practices alleged
18 herein, and injunctive relief to remedy Defendant’s past conduct;
- 19 F. An order requiring Defendant to pay restitution/damages to restore all
20 funds acquired by means of any act or practice declared by this Court to
21 be an unlawful, unfair, or fraudulent business act or practice, untrue or
22 misleading advertising in violation of the above-cited authority, plus
23 pre- and post-judgment interest thereon;
- 24 G. An order requiring Defendant to disgorge any ill-gotten benefits
25 received from Plaintiff and members of the Sub-Class as a result of any
26 wrongful or unlawful act or practice;
- 27 H. An order requiring Defendant to pay all actual and statutory damages
28 permitted under the counts alleged herein;

- 1 I. An order awarding attorneys' fees and costs to Plaintiffs and the
- 2 California Sub-Class; and
- 3 J. An order providing for all other such equitable relief as may be just and
- 4 proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a trial by jury on all issues so triable.

7
8 DATED: November 22, 2022.

9 **BRADLEY/GROMBACHER, LLP**

10 By: /s/ Kiley Grombacher

11 Marcus J. Bradley, Esq. (174156)
12 Kiley L. Grombacher, Esq. (245960)
13 31365 Oak Crest Drive, Suite 240
14 Westlake Village, California 91361
15 Telephone: (805) 270-7100
16 Facsimile: (805) 270-7589
17 E-Mail: mbradley@bradleygrombacher.com
18 kgrombacher@bradleygrombacher.com

19 **AYLSTOCK, WITKIN, KREIS &
20 OVERHOLTZ, PLLC**

21 SIN-TING MARY LIU (282884)
22 17 E. Main St., Suite 200
23 Pensacola, Florida 32502
24 Telephone: 850-202-1010
25 Facsimile: 850-916-7449
26 E-Mail: mliu@awkolaw.com

27 *Attorneys for Plaintiff and the Putative Class*

28