

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIZABETH LITTLE, CATHY
ARMSTRONG, CLAIR AWAD, KELLY
BRANCH, SUZANNE FITZGERALD, MARI
GUNN, SARAH HERNANDEZ, STACY
VAIL, CHRISTINA VANVLIET, BILLIE
BARNETTE, and ROBERT RULLO, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

UNILEVER UNITED STATES, INC.,
AEROPRES CORPORATION, and VOYANT
BEAUTY, LLC

Defendants.

Case No. 3:22-CV-01189

**AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiffs Elizabeth Little, Cathy Armstrong, Clair Awad, Kelly Branch, Suzanne Fitzgerald, Mari Gunn, Sarah Hernandez, Stacy Vail, Christina VanVliet, Billie Barnette, and Robert Rullo (“Plaintiffs”) bring this action on behalf of themselves and the Classes defined below against Defendants Unilever United States, Inc. (“Unilever”), Aeropres Corporation (“Aeropres”), and Voyant Beauty, LLC (“Voyant”) (each a “Defendant” and collectively “Defendants”). Plaintiffs make the following allegations based upon (a) personal knowledge, (b) the investigation of counsel, and (c) information and belief.

INTRODUCTION

1. This class action arises out of Defendants’ respective roles in the manufacture, marketing, labeling, distribution, and sale of dry shampoo products (the “Unilever Dry Shampoo Products” or the “Products”) under the Unilever brands “Suave,” “TIGI,” “TRESemmé,” “Dove,” “Nexxus,” and “Living Proof” without disclosing to or warning consumers that the

Products contain, and/or have a risk of containing, benzene, a known human carcinogen.¹

2. Pharmaceutical testing laboratory Valisure, LLC (“Valisure”) tested for benzene in a number of Unilever Dry Shampoo Products, and Valisure’s testing found that the levels of benzene in Unilever Dry Shampoo Products significantly exceeded the guidelines established by the FDA for “drug product[s] with a significant therapeutic advance,” of 2 parts per million (“ppm”).² In fact, Valisure found that approximately 50% of the Unilever Dry Shampoo Products it tested contained benzene that exceeded (and often far exceeded) the FDA’s 2ppm limit, including benzene levels that tested as high as *31 times* the 2ppm limit, and that approximately 70% of the Dry Shampoo Products contained detectable levels of benzene. Given that the Unilever Dry Shampoo Products are consumer products – *not* drug products – these results are even more concerning. Further, because Unilever’s Dry Shampoo Products have no significant therapeutic purpose, the presence of benzene is unacceptable – particularly at these substantial levels.³

3. The test results showing benzene contamination in Unilever’s Dry Shampoo

¹ The Unilever Dry Shampoo Products include, but are not limited to the following: 1) Suave: Hair Refresher Matte Dry Shampoo, Refresh and Revive Dry Shampoo; 2) TIGI: Bed Head Oh Bee Hive Dry Shampoo, Bed Head Dirty Secret, Rockaholic Dirty Secret Dry Shampoo, Rock Dry Shampoo, Catwalk Transforming Dry Shampoo, Revitalizing Dry Shampoo; 3) TRESemmé: Fresh Clean Dry Shampoo, Brunette Clean Dry Shampoo, Volume Dry Shampoo, Between Washes Fresh & Clean Dry Shampoo, Between Washes Fresh & Clean Dry Shampoo; 4) Dove: Volume and Fullness Dry Shampoo, Unscented Dry Shampoo, Ultra Clean Dry Shampoo, Rose Bloom Dry Shampoo, Orange Blossom Dry Shampoo, Invisible Dry Shampoo, Fresh & Floral Dry Shampoo, Fresh Coconut Dry Shampoo, Foam Dry Shampoo, Detox and Purify Dry Shampoo, Care Between Washes Go Active Dry Shampoo Wipes, Care Between Washes Go Active Dry Shampoo, Care Between Washes Clarifying Dry Shampoo, Care Between Washes Brunette Dry Shampoo; 5) Nexxus: Nexxus Dry Shampoo Refreshing Mist for Volume; 6) Living Proof: Perfect Hair Day Dry Shampoo, Perfect Hair Day Advanced Clean Dry Shampoo.

² FDA, *FDA alerts drug manufacturers to the risk of benzene contamination in certain drugs* (June 9, 2022); <https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-drug-manufacturers-risk-benzene-contamination-certain-drugs>

³ *Id.*; see also National Cancer Institute, *Cancer-Causing Substances, Benzene*, <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/benzene>

Products were disclosed to Unilever, but Unilever denied the presence of benzene in *any* of its Dry Shampoo Products and continued to sell the Products to the public despite the evidence of the benzene contamination. Several of the Plaintiffs thus filed the initial complaint against Unilever on September 21, 2022, disclosing the test results and the existence of the benzene contamination in Unilever's Products. Approximately one month later, on or about October 18, 2022, Unilever issued a voluntary recall of a hundreds of lots of its Dry Shampoo Products (including Dove, Nexxus, Suave, TIGI, and TRESemmé Products) due to "potentially elevated levels of benzene," based on Unilever's "internal investigation" that purportedly "identified propellant as the source [of the contamination]." ⁴ Unilever's recall was and is an unequivocal acknowledgement of the danger posed by its Dry Shampoo Products but, as outlined below, it was purposefully limited, insufficient to remedy the harm it has caused to the consuming public, and does not properly account for Plaintiffs' and the Classes' claims.

4. Benzene is a known human carcinogen. ⁵ Benzene is proven to cause cancer in humans, including blood cancers such as leukemia. ⁶ And Unilever has consistently acknowledged that "Benzene is classified as a human carcinogen" and that exposure can "result in cancers including leukemia and blood cancer of the bone marrow and blood disorders which can be life threatening." In addition to cancer, direct exposure of the eyes, skin, or lungs to benzene can cause tissue injury and irritation. ⁷ There effectively is no safe exposure

⁴ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/unilever-issues-voluntary-us-recall-select-dry-shampoos-due-potential-presence-benzene#:~:text=FOR%20IMMEDIATE%20RELEASE;https://cdn.sanity.io/files/92ui5egz/production/37c6fa84b8f3c825ef1d86bb3ba90d54417e795a.pdf>

⁵ National Cancer Institute, *Cancer-Causing Substances, Benzene*, <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/benzene>.

⁶ *Id.*

⁷ Centers for Disease Control and Prevention, *Facts About Benzene* (2018), <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>

limit for benzene.

5. Defendants are well aware of the serious dangers caused by exposure to benzene. Indeed, this was not Unilever’s first recall of products due to the presence of benzene.⁸ Unilever previously recalled certain lots of aerosol body sprays based on a review that likewise showed that “unexpected levels of benzene came from the propellant,”⁹ which Unilever and its manufacturer, Voyant, attributed to Aeropres, a supplier of the propellant used in the manufacture of Unilever’s Dry Shampoo Products. Notably, Aeropres was also responsible for the contamination of other consumer products, admitting to Bayer Healthcare LLC (“Bayer”) that its propellant was contaminated with benzene, causing Bayer to issue a recall of certain aerosol spray drug products.

6. Accordingly, when Aeropres notified Voyant that its propellant was contaminated with benzene – the same product component used in the Unilever Dry Shampoo Products – each Defendant knew that the Unilever Dry Shampoo Products contained, or risked containing, benzene. Yet, despite the fact that the propellant supplied by Aeropres came from the same facility and involved the same (or similar) product, Unilever failed to issue a recall of the Dry Shampoo Products until October 2022 – well over a year after learning of the contamination and then only in response to Plaintiffs’ initiating the instant action.

7. Given Unilever’s representations of commitment to product safety, Unilever knew or should have known of the dangerous and carcinogenic effects of benzene and should have known that it was producing products that contained, or risked containing, benzene.

⁸ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/unilever-issues-voluntary-nationwide-recall-suave-24-hour-protection-aerosol-antiperspirant-powder>.

⁹ *Id.*

Indeed, Unilever touts and promotes its “strict quality controls” to “limit the presence of benzene” in its products. Nevertheless, Unilever produced, marketed, promoted, labeled, distributed, and sold adulterated and misbranded Dry Shampoo Products containing benzene.

8. Plaintiffs are purchasers and users of Unilever Dry Shampoo Products. Plaintiffs purchased the Unilever Dry Shampoo Products for use in accordance with the directions provided on their packaging. Plaintiffs did so because they believed the Unilever Dry Shampoo Products had been manufactured using acceptable standards and practices and that they were safe. However, the Unilever Dry Shampoo Products are toxic, dangerous, unmerchantable products that are unfit for their intended purpose and use. Plaintiffs and the Classes would not have purchased and used the Unilever Dry Shampoo Products or would have paid less for the Unilever Dry Shampoo Products if they had known of the presence of benzene rendering them unsafe (or known of the significant risk that the Products contained benzene) and have, therefore, not received the benefit of their bargain.

9. Plaintiffs bring this action on behalf of themselves and the Classes (defined below) to recover damages and equitable relief for: (i) breach of express warranty; (ii) breach of implied warranty; (iii) fraudulent misrepresentation; (iv) fraud by omission; (v) negligent misrepresentation; (vi) unjust enrichment; (vii) violation of state consumer protection statutes; and (viii) strict liability.

PARTIES

10. Plaintiff Elizabeth Little (“Plaintiff Little”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of Connecticut. Between 2019 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Suave and Dove from stores in and around Thomaston, CT.

11. Cathy Armstrong (“Plaintiff Armstrong”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of California. Between 2018 and 2022 Plaintiff purchased Unilever Dry Shampoo Products including Dove from CVS and Walmart stores in and around San Diego, CA.

12. Plaintiff Clair Awad (“Plaintiff Awad”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of New York. Between 2017 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Dove from stores in and around North Bellmore, NY, including Walmart.

13. Plaintiff Kelly Branch (“Plaintiff Branch”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of Texas. Between 2020 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Suave and Dove from Target, as well as Dollar General and Walmart stores, in and around Bryan, TX.

14. Plaintiff Suzanne Fitzgerald (“Plaintiff Fitzgerald”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of Texas. Between 2018 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Suave, TRESemmé, Dove, and Nexus from Walmart, Target, and HEB stores in and around Corpus Christie, TX.

15. Plaintiff Mari Gunn (“Plaintiff Gunn”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of Illinois. Between 2014 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Suave, Dove, and Nexxus from Ulta, Sallies, Target, Walmart, Walgreens stores in and around Chicago, IL.

16. Plaintiff Sarah Hernandez (“Plaintiff Hernandez”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of California. Between

May and July of 2022, Plaintiff purchased Unilever Dry Shampoo Products including Living Proof directly from the Living Proof website.

17. Plaintiff Stacy Vail (“Plaintiff Vail”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of Texas. Between 2019 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Suave, TRESemmé, and Dove from Walmart, Target, Amazon and HEB stores in and around Kyle, Texas.

18. Plaintiff Christina VanVliet (“Plaintiff VanVliet”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of New York. Between 2019 and 2022, Plaintiff purchased Unilever Dry Shampoo Products including Dove and TRESemmé from Target and Walmart stores in and around Holmes, NY.

19. Plaintiff Billie Barnette (“Plaintiff Barnette”) is a natural person and is, and at all times relevant hereto has been, a citizen and resident of the State of Florida. Plaintiff Barnette has regularly purchased and used Unilever Dry Shampoo Products including Dove Dry Shampoo and Fullness (lot code 03130KK79) during the past 15 years at Target and Walmart locations; and, specifically, purchased these Products in or about February 2022 at Target in Yulee, Florida and in or about June 2021 at Walmart in Kingsport, Tennessee.

20. Plaintiff Robert Rullo (“Plaintiff Rullo”) is, and was at all relevant times, a resident of Bedford County, Pennsylvania. In 2021, Plaintiff Rullo purchased Bedhead Oh Bee Hive Volumizing Dry Shampoo (the “Bedhead Product”) and has purchased and used Unilever Dry Shampoo Products during the relevant time period.

21. Plaintiffs all reviewed, purchased, and used the Products as directed by Unilever without any knowledge that the Dry Shampoo Products contained benzene or that the Products posed health risks from benzene. Plaintiffs would not have purchased the Dry Shampoo Products

had they known that the Products contained dangerous levels of benzene, after reviewing the Product labeling.

22. Due to Unilever's false, misleading, and deceptive representations, concealment, and omissions regarding the Unilever Dry Shampoo Products containing benzene, Plaintiffs purchased and/or paid more for the Unilever Dry Shampoo Products than they would have had they known the truth about the Unilever Dry Shampoo Products. The Products Plaintiffs received were worthless because they contain or risked containing the known carcinogen benzene. Alternatively, Plaintiffs paid a premium that they would have never paid had they known the Unilever Dry Shampoo Products contained or risked containing benzene. Accordingly, Plaintiffs were injured in fact and lost money as a result of Unilever's improper conduct.

23. Plaintiffs would be willing to purchase or consider purchasing the Unilever Dry Shampoo Products in the future if they could be certain that the Unilever Dry Shampoo Products no longer contained (or risked containing) benzene.

24. Defendant Unilever United States, Inc. ("Unilever") is a subsidiary of the dual-listed company consisting of Unilever N.V. in Rotterdam, Netherlands and Unilever PLC in London, United Kingdom and selling notable brand names such as Suave, TIGI, TRESemmé, Dove, Nexxus, and Living Proof.

25. Unilever is a Delaware corporation with its principal place of business in Englewood Cliffs, New Jersey and is a citizen of Delaware and New Jersey. On information and belief, Unilever designed, developed, and/or manufactured the Unilever Dry Shampoo Products primarily in Connecticut, where Unilever has maintained a substantial multi-decade presence, employing numerous individuals conducting the research and development of, and

manufacturing and compliance operations for, its hair care products and particularly Unilever Dry Shampoo Products, including product engineers and scientists, regulatory and compliance specialists, and product designers. As recently as 2020, Unilever was reported to have approximately 400 employees in its Trumbull, CT campus, in addition to other Connecticut-based employees.

26. On information and belief, Suave, TIGI, TRESemmé, Dove, Nexxus, and Living Proof are cosmetic brands that are wholly owned by Unilever, which sells and markets its Unilever Dry Shampoo Products under these brand names.

27. Unilever manufactures the Dry Shampoo Products, and markets, labels, distributes, and sells the Unilever Dry Shampoo Products throughout the United States through the Suave, TIGI, TRESemmé, Dove, Nexxus, and Living Proof brand names. Unilever created and/or authorized the false, misleading, and deceptive advertisements, packaging, and labeling of the Unilever Dry Shampoo Products.

28. Defendant Aeropres Corporation is a corporation organized and existing under the laws of the State of Louisiana, with its principal place of business at 1324 North Hearne, Suite 200, Shreveport, Louisiana 71137. Aeropres designed, developed, manufactured, and/or supplied benzene-contaminated propellant used in the Unilever Dry Shampoo Products that were sold to Plaintiffs and the consuming public throughout the United States.

29. Defendant Voyant Beauty, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 6710 River Road, Hodgkins, Illinois 60525. Voyant designed, developed, manufactured, and/or supplied the Unilever Dry Shampoo Products that were sold to Plaintiffs and the consuming public throughout the United States.

JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2)(A), because this is a class action with aggregate claims exceeding \$5,000,000, exclusive of interest and costs, and Plaintiffs and most members of the proposed Class are citizens of states different from Defendants.

31. The Court has personal jurisdiction over Defendants because they transact business in the United States, including in this District, when they participated in the development of Dry Shampoo Products in this District, marketed the Unilever Dry Shampoo Products in this District, and have availed themselves of the consumer marketplace in this District. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendants transact significant business in this District and because a substantial part of the conduct giving rise to this complaint took place within this District. Critical research and development of Unilever Dry Shampoo Products, along with regulatory affairs related to such products, on information and belief occurred in Connecticut, particularly in the Unilever facility in Trumbull and also in New Haven and other Connecticut locations. In addition, Plaintiff Little is a citizen and resident of Connecticut.

FACTUAL ALLEGATIONS

A. Aeropres Supplies The Propellant For The Unilever Dry Shampoo Products.

32. Aeropres “is a manufacturer and distributor of high-purity gases to a wide variety of markets” and purports to be “the largest manufacturer and marketer of ecologically safe

propellants, which are used in a variety of spray cans from hair spray and mousses to shaving cream and spray paint.”¹⁰

33. Unilever has identified Aeropres as the supplier of the propellant used for Unilever Dry Shampoo Products during the relevant period herein. While Aeropres makes propellants throughout the United States, the propellants used in the Unilever Dry Shampoo Products were obtained from the Morris, Illinois facility (“Morris Facility”) and/or the Manhattan, Illinois facility (“Manhattan Facility”).

34. According to Aeropres, as the “leading provider of aerosol propellants in the U.S.,” it “set[s] the industry standard with [its] high-quality products,” producing propellants “under stringent specifications to ensure consistent performance and safety.”¹¹

35. In direct contrast to that standard, Aeropres has supplied benzene-contaminated propellant for use in consumer products. Following an internal investigation in 2021, Aeropres identified its propellant as a source of benzene contamination in products using its propellant as a component.

36. On or around August 11, 2021, Aeropres notified the manufacturer of Bayer Lotrimin® AF and Tinactin® antifungal spray products (the “Bayer Products”) that propellant supplied from the Morris Facility and used for the Bayer Products was contaminated with benzene.¹² The manufacturer immediately notified Bayer of the contamination, and Bayer issued

¹⁰ <http://www.aeropres.com/about/>

¹¹ <https://www.aeropres.com/products/>

¹² *Bayer Healthcare LLC v. Aeropres Corp.*, No. 1:23-cv-04391 (N.D. Ill. 2023) (Dkt. No. 1 at ¶ 72).

a recall of all unexpired Bayer Products in October 2021, instructing consumers to “stop using” the Bayer Products.¹³

37. Aeropres, in recognizing its fault, told Bayer that it “regrets this development as it is not in keeping with Aeropres’ standards of product manufacture,” and warned that “the nature of the hydrocarbon origin of the raw materials precludes our ability to assure that there are no residual solvents in the finished product.”¹⁴

38. Aeropres further explained that “benzene can only be introduced into Aeropres’ products by way of contamination of its natural gas liquid feedstock.”¹⁵

39. [REDACTED]

40. Aeropres at all times knew that its propellant was included in the Unilever Dry Shampoo Products, which would be sold to consumers and applied to consumers’ bodies.

41. Despite this knowledge, Aeropres failed to ensure that the propellant supplied for the Unilever Dry Shampoo Products did not contain the well-known carcinogen benzene. Further, at no time did Aeropres even test for benzene in its propellant.

42. [REDACTED]

¹³ *Id.* at ¶¶ 74-76.

¹⁴ *Id.* at ¶ 72-73.

¹⁵ *Id.* at ¶ 73.

[REDACTED]

[REDACTED]

[REDACTED]

43. As a result, the Unilever Dry Shampoo Products containing Aeropres' propellant did contain, or were at risk of containing, benzene for the duration of Aeropres' supply of propellant for the Dry Shampoo Products.

B. Voyant Manufactured Unilever Dry Shampoo Products Contaminated with Benzene.

44. Voyant is a contract manufacturer of beauty and personal care products, including hair care products, for leading brands – including Unilever Dry Shampoo Products. Voyant employs over 4,000 employees at over 12 locations in the United States, Canada, and Europe, including a facility in Elkhart, Indiana (the “Elkhart Facility”), where Unilever Products were manufactured.

45. Similar to Aeropres, Voyant claims to “always do the right thing,” “conducting business with uncompromising integrity and ethics.”¹⁶

46. Voyant used the propellant supplied by Aeropres to manufacturer Unilever Dry Shampoo Products that were purchased by Plaintiffs and the class.

47. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁶ <https://www.voyantbeauty.com/about-voyant-beauty/>

Despite Voyant’s and Unilever’s knowledge of the benzene contamination, and the fact that Aeropres’ propellant was used in the manufacture of the Dry Shampoo Products, Unilever and Voyant conducted *no investigation of contamination of Dry Shampoo Products*, instead limiting the investigation – inexplicably – to a single unrelated product.

48. Importantly, neither Voyant nor Unilever tested for benzene contamination in *any* Unilever aerosol spray products utilizing propellant, including the Dry Shampoo Products. [REDACTED]

[REDACTED] Thus, through at least the end of 2021, this meant that any propellant contaminated with benzene, not just that supplied by Aeropres, contaminated or risked contaminating, Unilever’s Dry Shampoo Products. And, as discussed herein, given that the Dry Shampoo Products are cosmetic products – not drug products with a significant therapeutic advance – the presence of benzene at any level was and is unacceptable.

49. Voyant has continuously faced questions about its failure to properly investigate benzene contamination in the products it manufactures, as evidenced by the fact that on April 20, 2023, the FDA sent a warning letter to Accra-Pac, Inc. dba Voyant Beauty (the “Warning Letter”), citing, *inter alia*, its failure to perform adequate investigations into benzene contamination of Voyant’s cosmetic products and over-the-counter aerosol drug products.¹⁷

50. Among other things, the FDA noted concern that testing indicates “the quality assurance within [Voyant’s] facility is not functioning in accordance with CGMP requirements,” and instead Voyant and its “customers selectively tested reserve samples of finished drug

¹⁷ <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/accra-pac-inc-dba-voyant-beauty-643600-04202023>

products with higher propellant concentrations but failed to adequately test other reserve samples to identify if all drug product batches were impacted.”¹⁸

51. According to the FDA, Voyant’s “ability to accurately trace propellant is undermined by [its] failures to test for benzene in each batch of the incoming propellants and to routinely test for benzene in [its] propellant storage tanks.”¹⁹

52. The FDA further warned Voyant that it is directly “responsible for the quality of drugs [it] produce[s] as a contract facility, regardless of agreements in place with product owners.”²⁰

53. That Voyant’s inadequate response to the FDA came years after its investigation into benzene contamination of the Unilever Dry Shampoo Products further calls into question the safety of the Unilever Dry Shampoo Products manufactured by Voyant and reflects that Voyant permitted benzene contamination to go unchecked for an indefinite period of time, and that Voyant’s failures to adhere to good manufacturing practices have resulted in more widespread contamination of the Products.

54. Voyant at all times knew that the Unilever Dry Shampoo Products would be sold to consumers and applied to consumers’ bodies.

55. Despite this knowledge, Voyant failed to ensure that Unilever Dry Shampoo Products did not contain the well-known carcinogen benzene, or that components of the Unilever Dry Shampoo Products used during the manufacturing process did not contain benzene.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

C. Unilever Represents and Promotes the Unilever Dry Shampoo Products as Safe and Suitable for Use and Fails to Disclose and Conceals the Presence or Risk of Carcinogenic Benzene in the Unilever Dry Shampoo Products

56. Personal care products are a multi-billion-dollar industry in the United States. In 2019 alone, the retail value of personal care products was estimated to be greater than \$100 billion in North America.

57. Consumers have become increasingly concerned about the effects of synthetic and chemical ingredients in products that they and their family members put on and/or into their bodies. Consumers are demanding the removal of toxic contaminants, such as benzene, from the personal care products that they use in daily care routines, such as sunscreens, deodorants and antiperspirants, and other over-the-counter personal care products because consumers do not want dangerous chemical-laden formulations in these personal care products that are directly inhaled and/or applied to and absorbed by large areas of the skin.²¹

58. Unilever knows this and seeks to capitalize on consumers' product safety concerns.

59. Unilever heavily promotes the safety of its products. For example, Unilever's website represents that "Product safety is our top priority. Our home and personal care products are used every day by millions of people around the world. People trust us to provide them with products that are safe for them, their families and the environment."²²

60. Unilever additionally represents that all of its products, including acquired brands and companies, adhere to Unilever's strict safety protocols. "At a minimum we ensure

²¹ See, e.g., <https://www.law360.com/articles/1489231/procter-gamble-sued-over-carcinogen-in-deodorant-sprays>; <https://www.law360.com/articles/1396438/neutrogena-sued-over-claims-sunscreen-contains-benzene>

²² <https://www.unilever.com/brands/whats-in-our-products/how-do-we-choose-our-ingredients/>

our products comply with applicable laws. In several areas we set our standards higher than those required by law. When this happens we also expect our suppliers and partners to meet these standards. Similarly, when we take on a new brand or a new company we work to ensure they meet our standards as soon as possible.”²³

61. Unilever touts the safety and science embedded in the development of all of its products. “Safe and sustainable by design: How we build safety and environmental sustainability into every product innovation.” Unilever’s website represents:

“We ensure that our products are safe for consumers and workers and have a positive impact on the environment.

Our Safety and Environmental Assurance Centre’s (SEAC) industry-leading safety and environmental sustainability science has been developed and applied in partnership with external experts over many years. We use this science across Unilever, working with our colleagues to **ensure that our products and processes are safe and sustainable by design** and that our purpose-led brands can be confident in the statements they make about product and ingredient safety, health, environmental sustainability and the planet. SEAC scientists work closely with other scientists across Unilever at every stage of a product’s life, from discovering and designing new concepts through to fully embedding new technologies in our product innovations and understanding product use and disposal by consumers across the world. By being involved at the very beginning, SEAC scientists can provide essential safety and environmental sustainability guidance throughout the innovation process.

Those partnerships across Unilever allow us to apply the best creative, leading-edge science and to truly design safety and sustainability into our products. This means **new Unilever products and processes are *always* designed to ensure that they are safe for our consumers to use, for our workers to make, and for the environment.**”²⁴

62. Unilever further underscores the fact that SEAC, its team of scientists, is dedicated to safety, health, and environmentalism: “SEAC is a team of industry-leading safety

²³ <https://www.unilever.com/brands/whats-in-our-products/how-do-we-choose-our-ingredients/>

²⁴ <https://www.unilever.com/planet-and-society/safety-and-environment/safe-and-sustainable-by-design/>
(emphasis added)

and environmental sustainability scientists. They use the latest techniques, deep scientific expertise and an evidence-based approach to ensure that **our products are safe for consumers** and workers and better for the environment.”²⁵

63. With respect to Unilever’s brands of Dry Shampoo Products, Unilever markets, distributes, and sells its Products in the same or similar manner, misrepresents and/or fails to disclose or conceals the presence of benzene (or risk of benzene in the Products), and makes the same or similar representations about the safety and quality of its Dry Shampoo Products.

64. For example, Unilever brand Suave represents: “Before making our products available to consumers, we make health and safety our top priority.”²⁶ “All Suave formulas are safe to use and meet the highest global standards in safety and quality.”²⁷ “We rigorously assess all Suave products to ensure all ingredients, manufacturing and labeling comply with applicable laws and regulations all over the world.”²⁸ “Safety Assessments [are conducted to] make sure that we only use what is needed to provide safe and effective products.”²⁹ “Regulatory Assessment ensures that our products, their ingredients, how they are manufactured and labeled comply with all federal and state laws.”³⁰ In addition, Unilever brand Suave represents that “we focus on one thing. Creating quality products” and that Suave hair products are made of “select

²⁵ <https://www.unilever.com/planet-and-society/safety-and-environment/leading-safety-and-environmental-sustainability-sciences/> (emphasis added)

²⁶ <https://www.suave.com/us/en/dmdm-hydantoin-products-information.html>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

natural ingredients” – “so you can trust we’ve got the good stuff.”³¹

65. Unilever brand Dove touts its robust commitment to consumer health: “We care about our customers and the environment, so our products are as safe as they are caring. We want to give our customers the best experience using our products, so our ingredients always comply with regulations and meet our safety and environmental standards (which often go beyond regulatory requirements).”³² “[W]e want to give you products you can trust” and “[Dove] care[s] about how we make our products and what goes into them.”³³

66. Unilever brand TRESemmé, showing full awareness of the importance of benzene-free products, represents: “TRESemmé does not use benzene as an ingredient in our products. Any trace amount of benzene detected in the final products usually occurs due to its natural presence in certain raw materials, and we have strict quality controls in place that limit the presence of benzene and ensure compliance with the highest global safety standards.”³⁴ Further, Unilever brand TRESemmé describes the same rigorous testing standards, including Unilever’s Safety Assessments and Regulatory Assessment, that Unilever conducts for Suave products; and “TRESemmé products use only the highest quality ingredients to create safe, science-backed, professional-quality formulas to give you salon quality hair at home.”³⁵

67. Unilever brand Living Proof utilizes a science motif for its “PhD” products (which doubles for marketing purposes as “perfect hair day”), and emphasizes the rigor of its

³¹ <https://www.suave.com/us/en/about.html>

³² <https://www.dove.com/us/en/secure/contactus/faq.html>

³³ <https://www.dove.com/us/en/stories/about-dove.html>

³⁴ <https://www.TRESemme.com/us/en/contact-us/faq.html>

³⁵ <https://www.tresemme.com/us/en/about-us/facts-on-tresemme-product-ingredient-safety/>

product testing: “Every single product is rigorously developed and tested at our in-house laboratories in Boston—not too far from our original home at MIT University.”³⁶ Further highlighting these rigorous testing standards, Unilever represents that “[s]afety and quality are always at the backbone of every single formula we make.”³⁷

68. Notably, for Unilever brand Nexxus, Unilever represents that to “find out what is in Nexxus products,” consumers simply need to “check the product label for details or check the ingredients tab on the individual product pages.”³⁸ This, of course, has been rendered false.

69. Specifically, Unilever has consistently represented to the consuming public and in public media that its products are safe from harmful benzene.

70. For example, in December 2021, following the discovery of benzene in certain aerosol spray sunscreens made by several other companies, and subsequent investigations into the use of aerosol in a variety of consumer products concerning the potential presence of and risk from benzene, Bloomberg reported that “Unilever said in an emailed statement it conducted a ‘robust investigation’ of its antiperspirants and deodorants and is **confident in their safety**.”³⁹

71. Yet, in March of 2022, Unilever announced a recall of several Suave deodorant products due to the presence of benzene, which the company acknowledged is a “human carcinogen” that “can result in cancers including Leukemia and blood cancer of the bone marrow and blood disorders which can be life threatening.”⁴⁰

³⁶ <https://www.livingproof.com/our-story.html>

³⁷ <https://www.livingproof.com/our-science/how-we-formulate.html>

³⁸ <https://www.nexxus.com/us/en/faq/>

³⁹ <https://www.bloomberg.com/news/articles/2021-12-29/toxins-in-household-products-leave-fda-chasing-a-vapor-trail> (emphasis added)

⁴⁰ <https://www.unileverusa.com/news/press-releases/2022/unilever-issues-voluntary-nationwide-recall-of-suave-24hour/>

72. Unilever attributed the presence of benzene in the Suave deodorant products to the fact that (like Unilever Dry Shampoo Products in this action) the recalled Suave deodorants were aerosol spray products and stated that Benzene is not an ingredient: “While benzene is not an ingredient in any of the recalled products, the review showed that unexpected levels of benzene came from the propellant that sprays the product out of the can.”⁴¹

73. Notwithstanding the “robust investigation” Unilever told Bloomberg it conducted and the internal review that uncovered elevated levels of benzene in certain of its deodorant products, Unilever has consistently maintained that its products are safe from benzene, representing on its website: “[W]e have strict quality controls in place that limit the presence of benzene in our products so that any traces found fall within safe levels.”⁴² Indeed, Unilever reinforced its representations of and commitment to safety (on information and belied at the time of the Suave deodorant recall), stating that:

Benzene is not an ingredient that we add to our products. Any benzene detected in the final product usually occurs because of its natural presence in certain raw materials. We have strict quality controls in place that limit the presence of benzene in our deodorant, skincare and haircare products and require that any traces found fall within defined safety levels. All of our products are rigorously assessed by our safety scientists and meet the highest global standards in quality and safety as well as applicable laws and regulations, so that you can have complete trust in Suave.⁴³

74. Not only does Unilever promote that its Products are healthy and safe, it also expressly instructs that the Dry Shampoo Products are not limited to occasional use but also for

⁴¹ *Id.*

⁴² <https://www.unilever.com/brands/whats-in-our-products/your-ingredient-questions-answered/controlling-impurities/>

⁴³ <https://www.suave.com/us/en/dmdm-hydantoin-products-information.html>
(emphasis added)

daily (and regular, repeated) use.⁴⁴

75. Yet, benzene is not a listed ingredient on the labels, product packaging, or on marketing or promotional materials or on-line advertising for any of the Unilever Dry Shampoo Products manufactured, distributed, or sold by Unilever.

76. In addition, Unilever Dry Shampoo Products' packaging and labels (and Unilever's marketing and promotional materials) do not warn that Unilever Dry Shampoo Products contain, or risk containing, benzene, a carcinogenic chemical known to cause cancer in humans.

77. Plaintiffs and the Class are reasonable consumers who do not have the scientific knowledge or wherewithal to independently determine that the Unilever Dry Shampoo Products contained, or were at risk of containing, benzene, or to understand the true nature of the Products' ingredients. Consumers must and do rely on Unilever to provide them with accurate information on the ingredients in the Unilever Dry Shampoo Products, particularly given the products contain or were at risk of containing, benzene – facts that are material to consumers given its propensity to cause adverse health effects.

78. The Unilever Dry Shampoo Products' packaging does not identify benzene or the risk of benzene. Indeed, benzene is not listed in the ingredients section, nor is there any warning about the inclusion (or even potential inclusion) of benzene in the Unilever Dry Shampoo Products. This leads reasonable consumers to believe the Unilever Dry Shampoo Products do not contain benzene.

⁴⁴ See, e.g., <https://www.suave.com/us/en/products/hair-refresher-dry-shampoo.html>;
<https://www.livingproof.com/perfect-hair-day/advanced-clean-dry-shampoo/R1024.html>

79. However, despite the fact that the Unilever Dry Shampoo Products' labeling and ingredient listing do not list benzene, the Unilever Dry Shampoo Products contain (or risk containing) benzene.

D. Benzene Is a Known Human Carcinogen with No Safe Exposure Level

80. Research has demonstrated that there is no safe level of benzene exposure.⁴⁵

81. Benzene is a colorless, flammable liquid that can occur from natural processes, such as forest fires or volcanoes, or from artificial human manufacturing activities.⁴⁶

82. Benzene can be absorbed through the skin during contact with a source of benzene.⁴⁷

83. Benzene is a known human carcinogen, meaning that it is known to cause cancer. Studies have shown that rates of leukemia are higher in humans exposed to high levels of benzene.⁴⁸ Studies have also suggested links to the following cancers: (1) childhood leukemia; (2) acute lymphocytic leukemia; (3) chronic lymphocytic leukemia; and (4) other blood-related cancers such as multiple myeloma and non-Hodgkin lymphoma in adults (collectively, "Benzene- caused Cancer(s)").⁴⁹

⁴⁵ Martyn T. Smith, *Advances in Understanding Benzene Health Effects and Susceptibility*, 31 ANNUAL REVIEW OF PUBLIC HEALTH 133 (Apr. 21, 2010), <https://www.annualreviews.org/doi/full/10.1146/annurev.publhealth.012809.103646>. See also Exposure to Benzene: A Major Public Health Concern, WORLD HEALTH ORG. (2010), <https://www.who.int/publications/i/item/WHO-CED-PHE-EPE-19.4.2>; F.T. Hunter, *Chronic Exposure to Benzene (Benzol): The Clinical Effects*, 21 J. Indus. Hygiene & Toxicology 331 (1939), <https://www.cabdirect.org/cabdirect/abstract/19402700388>. (last visited November 9, 2022).

⁴⁶ American Cancer Society, *Benzene and Cancer Risk*, <https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html>

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

84. Lab studies on lab rats and mice have shown that when benzene is inhaled or swallowed it causes different types of tumors to develop.⁵⁰ These results support the finding of an excess risk of leukemia in humans.⁵¹

85. The United States Department of Health and Human Services (“DHHS”) has determined that benzene causes cancer in humans.⁵² Long-term exposure to high levels of benzene in the air can cause leukemia, cancer of the blood-forming organs.⁵³

86. The National Toxicology Program (hereinafter “NTP”) has regarded benzene as “*known to be a human carcinogen* based on sufficient evidence of carcinogenicity from studies in humans.”⁵⁴

87. Similarly, the World Health Organization (“WHO”) and the International Agency for Research on Cancer (“IARC”) have classified benzene as a Group 1 compound thereby defining it as “carcinogenic to humans.”⁵⁵ The World Health Organization has further warned that “human exposure to benzene has been associated with a range of acute and long-term adverse health effects and diseases, including cancer and haematological effects,”⁵⁶ and, like the DHHS, has linked benzene exposure to acute lymphocytic leukemia, chronic

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Centers for Disease Control and Prevention, *Facts About Benzene* (2018), <https://emergency.cdc.gov/agent/benzene/basics/facts.asp> (last visited July 20, 2022); <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>.

⁵³ *Id.*

⁵⁴ Benzene, Report on Carcinogens, Fourteenth Edition, DEPT. OF HEALTH AND HUMAN SERVICES (Nov. 3, 2016), <https://ntp.niehs.nih.gov/ntp/roc/content/profiles/benzene.pdf>.

⁵⁵ Benzene, IARC MONOGRAPHS ON THE EVALUATION OF CARCINOGENIC RISKS TO HUMANS, Volume 120 (2018) https://publications.iarc.fr/_publications/media/download/6043/20a78ade14e86cf076c3981a9a094f45da6d27cc.pdf; https://monographs.iarc.who.int/wp-content/uploads/2019/07/Classifications_by_cancer_site.pdf.

⁵⁶ <https://www.who.int/teams/environment-climate-change-and-health/chemical-safety-and-health/health-impacts/chemicals/benzene>

lymphocytic leukemia, multiple myeloma, and non-Hodgkin lymphoma.⁵⁷

88. The National Institute for Occupational Safety and Health (“NIOSH”) recommends that workers who expect to be exposed to benzene at concentrations of 0.1 ppm wear protective equipment and defines “inhalation, skin absorption, ingestion, skin and/or eye contact” as exposure routes.⁵⁸

89. The NIOSH and CDC identify “exposure routes” for benzene to include: “inhalation, skin absorption, ingestion, skin and/or eye contact.”⁵⁹

90. “Direct exposure [to benzene] of the eyes, skin, or lungs to benzene can cause tissue injury and irritation.”⁶⁰ Therefore, because use of the Products involves spraying aerosol-propelled benzene directly onto consumers’ bodies, it is particularly dangerous.

91. The FDA classifies benzene as a “Class 1 solvent.” Accordingly, FDA guidance states that benzene should not be used in the manufacture of any component of a drug product, and only if benzene use is “**unavoidable** to produce a drug product with significant therapeutic advance,” then a strict limit of 2 ppm should apply.⁶¹ Dry shampoo products are regulated by the FDA as *cosmetics*, not drugs. Since dry shampoos contain no active pharmaceutical ingredient for a “therapeutic” purpose, any significant detection of benzene should be deemed unacceptable.⁶²

⁵⁷ *Id.*

⁵⁸ *NIOSH Pocket Guide to Chemical Hazards: Benzene*, CDC, <https://www.cdc.gov/niosh/npg/npgd0049.html>

⁵⁹ *Id.*

⁶⁰ *Facts About Benzene*, CDC (last updated Apr. 4, 2018) <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>

⁶¹ FDA, *FDA alerts drug manufacturers to the risk of benzene contamination in certain drugs* (June 9, 2022), <https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-drug-manufacturers-risk-benzene-contamination-certain-drugs>.

⁶² *Id.*; FDA, *FDA Authority Over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated*

92. The Federal Food, Drug, and Cosmetics Act (“FDCA”) prohibits the marketing of adulterated or misbranded cosmetics in interstate commerce and specifies that a product is adulterated if “it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under conditions of use as are customary and usual” and is misbranded if “its labeling is false or misleading in any particular.”⁶³

93. The FDA has recently announced a number of recalls of various products contaminated with benzene, including hand sanitizers, sunscreens, anti-fungal sprays, antiperspirants, and certain dry shampoos that are not the subject of this action, but which likewise demonstrate the potential for harm and concerns over benzene contamination.⁶⁴

E. Testing Shows Unilever’s Dry Shampoo Products Contain, or Risk Containing, Benzene

94. Unilever failed in its obligations concerning the manufacture of its Dry Shampoo

(March 8, 2021), <https://www.fda.gov/cosmetics/cosmetics-laws-regulations/fda-authority-over-cosmetics-how-cosmetics-are-not-fda-approved-are-fda-regulated>. See also 21 U.S.C. §§331(a), 361(a), 362(a).

⁶³ FDA, *FDA Authority Over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated* (March 8, 2021), <https://www.fda.gov/cosmetics/cosmetics-laws-regulations/fda-authority-over-cosmetics-how-cosmetics-are-not-fda-approved-are-fda-regulated>. See also 21 U.S.C. §§331(a), 361(a), 362(a).

⁶⁴ See, e.g., FDA, *Scentsational Soaps & Candles, Inc. Voluntarily Expands Nationwide Recall of Scented Hand Sanitizers Due to the Presence of Methanol (Wood Alcohol), Benzene and Acetaldehyde* (May 13, 2021), <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/scentsational-soaps-candles-inc-voluntarily-expands-nationwide-recall-scented-hand-sanitizers-due#recall-announcement>; FDA, *Johnson & Johnson Consumer Inc. Issues Voluntary Recall of Specific NEUTROGENA® and AVEENO® Aerosol Sunscreen Products Due to the Presence of Benzene* (July 14, 2021), <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/johnson-johnson-consumer-inc-issues-voluntary-recall-specific-neutrogenar-and-aveenor-aerosol>; FDA, *Bayer Issues Voluntary Recall of Specific Lotrimin® and Tinactin® Spray Products Due to the Presence of Benzene* (October 1, 2021), <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/bayer-issues-voluntary-recall-specific-lotriminr-and-tinactinr-spray-products-due-presence-benzene>; FDA, *P&G Issues Voluntary Recall of Specific Old Spice and Secret Aerosol Spray Antiperspirants and Old Spice Below Deck Aerosol Spray Products Due to Detection of Benzene* (Nov. 23, 2021), <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>; FDA, *P&G Issues Voluntary Recall of Aerosol Dry Conditioner Spray Products and Aerosol Dry Shampoo Spray Products* (Dec. 17, 2021), <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/pg-issues-voluntary-recall-aerosol-dry-conditioner-spray-products-and-aerosol-dry-shampoo-spray> (last visited July 20, 2022).

Products, allowing benzene contamination in consumer products to go unchecked, and then failed to take action when contamination in Aeropres' propellant and included in the Products by Voyant was confirmed in and around September 2021.

95. In January through May 2022, Defendants' collective shortfalls were further confirmed when Valisure tested certain Unilever Dry Shampoo Products. The Valisure Results (set forth herein) show that the Unilever Dry Shampoo Products are contaminated, and have a risk of being contaminated, with unsafe levels of benzene.

96. Valisure tested 36 unique batches of Unilever Dry Shampoo Products. The results show significant numbers of benzene in Unilever Dry Shampoo Products. Almost 50% (17) of the 36 Unilever batches tested above 2ppm – the FDA's "strict" limit for *drug* products, and an additional 8 batches tested between the Limit of Quantification that Valisure set at 0.18 ppm to reflect measurable/detectable levels of benzene, and 2ppm, bringing the total amount of tested products containing benzene to almost 70% of the batches tested (25 of the 36 batches). Even more startling are the levels of benzene in the Unilever Products tested, which yielded multiple results of 5, 10, 15, 20 and, in one sample, over **31 times** the 2 ppm strict limit set by the FDA for drug products, including ten samples that tested over **10 times** the FDA's level, and fifteen Unilever samples that tested above twice the 2 ppm strict FDA limit). The Unilever Dry Shampoo Products are cosmetics, *not drugs*, rendering these results even more egregious.

97. The Valisure Results showing the Unilever Dry Shampoo Products with detectable levels of benzene, above Valisure's 0.18 Limit of Quantification, are set forth in the table below:

| Brand | UPC | Lot | Description | Benzene Concentration (PPM) |
|--------------|--------------|------------|--|------------------------------------|
| TRESemmé | 022400004495 | 04201KK17 | TRESemmé Between Washes Dry Shampoo - Fresh & Clean - 5 oz | 63.3 |
| TIGI | 615908432671 | 04301KK07 | TIGI Bed Head Dirty Secret Dry Shampoo - 6.2 oz | 59.3 |
| Suave | 079400391483 | 05141KK09 | Suave Professionals Refresh & Revive Dry Shampoo - 4.3 oz | 47.9 |
| Suave | 079400391483 | 05151KK09 | Suave Professionals Refresh & Revive Dry Shampoo - 4.3 oz | 36.3 |
| TIGI | 615908431285 | 07210KK01 | TIGI Bed Head Oh Bee Hive Volumizing Dry Shampoo - 5 oz | 18 |
| TIGI | 615908432701 | 06110KK01 | TIGI Bed Head Dirty Secret Dry Shampoo - 2.1 oz | 15.2 |
| TIGI | 615908432701 | 05051KK08 | TIGI Bed Head Dirty Secret Dry Shampoo - 2.1 oz | 14.5 |
| Dove | 079400449351 | 05201KK74 | Dove Refresh & Revive Care Between Washes Dry Shampoo - Fresh Coconut - 5 Oz | 13.4 |
| TIGI | 615908419788 | 06266KK22 | TIGI Bed Head Rockaholic Dirty Secret Dry Shampoo - 6.3 oz | 12.3 |
| Dove | 079400449351 | 06101KK75 | Dove Refresh & Revive Care Between Washes Dry Shampoo - Fresh Coconut - 5 oz | 11.1 |
| TRESemmé | 022400002422 | 08200KK16 | TRESemmé Volume Clean Dry Shampoo - Warm Petals - 7.3 oz | 11 |
| TRESemmé | 022400005683 | 06031KK07 | TRESemmé Pro Pure Dry Shampoo Clean - No Visible Residue - 5 oz | 8.55 |
| TIGI | 615908419788 | 07254KK01 | TIGI Bed Head Rockaholic Dirty Secret Dry Shampoo - 6.3 oz | 6.94 |
| Dove | 079400202444 | 06171KK48 | Dove Refresh & Revive Care Between Washes Dry Shampoo - Volume & Fullness - 5 oz | 6.26 |
| TIGI | 615908432671 | 07140KK04 | TIGI Bed Head Dirty Secret Dry Shampoo - 6.2 oz | 5.4 |

| | | | | |
|--------------|--------------|-----------|---|-------|
| Nexus | 605592646638 | 07300KK05 | Nexus Dry Shampoo Refreshing Mist With Pearl Extract - 5 oz | 3.17 |
| TIGI | 615908432671 | 07140KK04 | TIGI Bed Head Dirty Secret Dry Shampoo - 6.2 oz | 2.65 |
| Nexus | 605592646638 | 07300KK05 | Nexus Dry Shampoo Refreshing Mist With Pearl Extract - 5 oz | 1.4 |
| TRESemmé | 022400005256 | 07161KK19 | TRESemmé Fresh Clean Dry Shampoo - Fresh Bouquet - 7.3 oz | 1.36 |
| Living proof | 855685006485 | E21096F | Living proof. Perfect hair Day - Dry Shampoo - 4 oz | 0.972 |
| Nexus | 605592646638 | 02010KK04 | Nexus Dry Shampoo Refreshing Mist With Pearl Extract - 5 oz | 0.611 |
| TRESemmé | 022400005683 | 02210KK03 | TRESemmé Pro Pure Dry Shampoo Clean - With 100% Natural Tapioca Cleanser - 5 Oz | 0.561 |
| Living proof | 855685006492 | E21222R | Living proof. Perfect hair Day - Dry Shampoo - 1.8 oz | 0.512 |
| Living proof | 855685006492 | E21223R | Living proof. Perfect hair Day - Dry Shampoo - 1.8 oz | 0.317 |
| TIGI | 615908431285 | 09091KK06 | TIGI Bed Head Oh Bee Hive Volumizing Dry Shampoo - 5 oz | 0.184 |

98.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(a) [Redacted]
[Redacted]

(b) [Redacted]
[Redacted]

(c) [Redacted]
[Redacted]

(d) [Redacted]
[Redacted]

(e) [Redacted]
[Redacted]

(f) [Redacted]
[Redacted]

(g) [Redacted]
[Redacted]

(h) [Redacted]
[Redacted]

(i) [Redacted]
[Redacted]

100. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

101. Both the Valisure and Impact Analytical testing results contrast markedly with Unilever's public statements.

102. The consistency with which unacceptable levels of benzene were detected by Valisure and Impact Analytical in the Unilever Dry Shampoo Products they tested indicates that the Products Plaintiffs and members of the Classes purchased contained impermissible levels of benzene.

F. Unilever Knowingly Sold the Unilever Dry Shampoo Products Containing, or Having a Risk of Containing, Benzene to Plaintiffs and the Classes

103. Benzene is not a listed ingredient on the label of any of the Unilever Dry Shampoo Products. Yet, Unilever knew or should have known that the Unilever Dry Shampoo Products contained, or were at risk of containing, carcinogenic benzene given that the Products utilize an aerosol propellant, particularly in light of all the product testing Unilever purports to conduct, its representations of product safety, the fact that Unilever manufactures and sells products (including the Dry Shampoo Products) that utilize aerosol propellant, the various consumer products in the industry recalled because of benzene contamination and risks, and Unilever's prior recall of certain deodorant products for those same reasons.

104. As described herein, other personal care products recently have been identified as contaminated with benzene, including in Petitions filed with the FDA by Valisure.

105. For example, in May 2021, Valisure found benzene present in several brands of

aerosol spray sunscreen.⁶⁵ This prompted Johnson & Johnson in July 2021 to voluntarily recall all lots of five Neutrogena and Aveeno aerosol sunscreen product lines. According to Johnson & Johnson, “[i]nternal testing identified low levels of benzene in some samples of the products. Consumers should stop using the affected products[.]”⁶⁶

106. Similarly, on November 4, 2021, Valisure announced the detection of high levels of benzene in several brands and batches of antiperspirant body sprays, which are considered drug products by the FDA, as well as in deodorant body spray products, which FDA generally regulates as cosmetics.⁶⁷

107. In response to these benzene results in body spray products, on November 23, 2021, Procter & Gamble Company (“P&G”) issued a voluntary recall of certain of its Old Spice and Secret aerosol spray antiperspirants due to the “presence of benzene detected in some products.”⁶⁸ Then, on December 17, 2021, P&G voluntarily recalled more than 30 of its aerosol spray dry shampoo and dry conditioner products (“P&G Dry Shampoo Recall”), such as Pantene, Aussie, Herbal Essences, Waterless, and Old Spice products due to the “presence of benzene detected in some products.”⁶⁹ The P&G Dry Shampoo Recall noted, among other things, that “[f]ollowing recent reports that indicated traces of benzene in some aerosol spray

⁶⁵ <https://www.valisure.com/valisure-newsroom/fda-citizen-petition-5-benzene-in-sunscreens>.

⁶⁶ <https://www.jnj.com/johnson-johnson-consumer-inc-issues-voluntary-recall-of-specific-neutrogena-and-aveeno-aerosol-sunscreen-products-due-to-the-presence-of-benzene>

⁶⁷ <https://www.valisure.com/valisure-newsroom/fda-citizen-petition-6-benzene-in-body-spray-products>.

⁶⁸ <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>.

⁶⁹ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/pg-issues-voluntary-recall-aerosol-dry-conditioner-spray-products-and-aerosol-dry-shampoo-spray>

products, we began a review of our total portfolio of aerosol products.”⁷⁰

108. P&G admitted “[w]hile benzene is not an ingredient in any of our products, our review showed that unexpected levels of benzene came from the propellant that sprays the product out of the can. We detected benzene in aerosol dry shampoo spray products and aerosol dry conditioner spray products.”⁷¹

109. At the time, Bloomberg inquired with Unilever concerning the safety of its products. According to Bloomberg, “Unilever said in an emailed statement it conducted a ‘robust investigation’ of its antiperspirants and deodorants and is confident in their safety.”⁷²

110. However, in September 2021, Unilever became directly aware that the propellant supplied for the manufacture of Unilever Products was contaminated with benzene – a fact Unilever chose not to share, instead touting the safety of its products.

111. Yet several months later, in March 2022, Unilever announced the decision to recall several Suave spray deodorant products due to the presence of benzene, which the company acknowledged is a “human carcinogen” that “can result in cancers including Leukemia and blood cancer of the bone marrow and blood disorders which can be life threatening.”⁷³

112. Prompted by an FDA Citizen Petition filed by Valisure in November 2021 concerning benzene in body spray products, which included elevated and unacceptable levels of

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² <https://www.bloomberg.com/news/articles/2021-12-29/toxins-in-household-products-leave-fda-chasing-a-vapor-trail>

⁷³ <https://www.unileverusa.com/news/press-releases/2022/unilever-issues-voluntary-nationwide-recall-of-suave-24hour/>

benzene in Unilever's Suave-brand antiperspirant products,⁷⁴ Unilever conducted an internal review and reportedly found benzene in those products. Unilever attributed the presence of benzene to the propellant. "While benzene is not an ingredient in any of the recalled products, the review showed that unexpected levels of benzene came from the propellant that sprays the product out of the can."⁷⁵

113. Unilever publicly reinforced its representations that its products are safe from harmful levels of benzene, stating on its website: "we have strict quality controls in place that limit the presence of benzene in our products so that any traces found fall within safe levels."⁷⁶ And though it announced a recall of Suave deodorant, Unilever trumpeted on the Suave website that:

Benzene is not an ingredient that we add to our products. Any benzene detected in the final product usually occurs because of its natural presence in certain raw materials. We have strict quality controls in place that limit the presence of benzene in our deodorant, skincare and haircare products and require that any traces found fall within defined safety levels. All of our products are rigorously assessed by our safety scientists and meet the highest global standards in quality and safety as well as applicable laws and regulations, so that you can have complete trust in Suave.⁷⁷

114. When Valisure's test results showing benzene contamination in Unilever's Dry Shampoo Products were provided to Unilever in July 2022, Unilever vehemently denied the presence of benzene in *any* of its Dry Shampoo Products and continued to sell the Products to the public despite the significant evidence of benzene contamination in Products. This time, there

⁷⁴ Valisure Citizen Petition On Benzene In Body Spray Products, at 12-13, <https://www.valisure.com/valisure-newsroom/fda-citizen-petition-6-benzene-in-body-spray-products>

⁷⁵ <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/unilever-issues-voluntary-nationwide-recall-suave-24-hour-protection-aerosol-antiperspirant-powder>

⁷⁶ <https://www.unilever.com/brands/whats-in-our-products/your-ingredient-questions-answered/controlling-impurities/>

⁷⁷ <https://www.suave.com/us/en/dmdm-hydantoin-products-information.html>

was no Citizen Petition by Valisure disclosing test results. [REDACTED]

[REDACTED]

[REDACTED]

115. Several of the Plaintiffs filed the initial complaint against Unilever on September 21, 2022, publicly disclosing the existence of the test results and the benzene contamination in Unilever’s Dry Shampoo Products. Approximately one month later, on or about October 18, 2022, Unilever issued a voluntary recall of hundreds of lots of its Dry Shampoo Products (including Dove, Suave, Nexxus, TIGI, and TRESemmé Products) due to “potentially elevated levels of benzene,” based on Unilever’s “internal investigation” that purportedly “identified propellant as the source [of the contamination].”⁷⁸ Notably, consumers were told to “stop using the affected aerosol dry shampoo products.”⁷⁹

116. Unilever’s recall identified numerous lots of the following Products as containing dangerous levels of the known carcinogen, benzene:

- (a) Bed Head Oh Bee Hive Dry Shampoo
- (b) Bed Head Oh Bee Hive Volumizing Dry Shampoo
- (c) Bed Head Dirty Secret Dry Shampoo
- (d) Bed Head Rockaholic Dirty Secret Dry Shampoo
- (e) Dove Dry Shampoo Volume and Fullness
- (f) Dove Dry Shampoo Fresh Coconut
- (g) Dove Dry Shampoo Fresh and Floral
- (h) Dove Dry Shampoo Ultra Clean
- (i) Dove Dry Shampoo Invisible
- (j) Dove Dry Shampoo Detox and Purify
- (k) Dove Dry Shampoo Clarifying Charcoal
- (l) Dove Dry Shampoo Go Active
- (m) Nexxus Dry Shampoo Refreshing Mist
- (n) Nexxus Inergy Foam Shampoo

⁷⁸ [https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/unilever-issues-voluntary-us-recall-select-dry-shampoos-due-potential-presence-benzene#:~:text=FOR%20IMMEDIATE%20RELEASE;and see note 4,](https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/unilever-issues-voluntary-us-recall-select-dry-shampoos-due-potential-presence-benzene#:~:text=FOR%20IMMEDIATE%20RELEASE;and%20see%20note%204,) *supra*.

⁷⁹ *Id.*

- (o) Suave Dry Shampoo Hair Refresher
- (p) Suave Professionals Dry Shampoo Refresh and Revive
- (q) TRESemmé Dry Shampoo Volumizing
- (r) TRESemmé Dry Shampoo Fresh and Clean
- (s) TRESemmé Pro Pure Dry Shampoo

117. In addition, Unilever's recall included the majority of the lots tested by Valisure set forth above showing benzene contamination.

118. Unilever's recall was and is an unequivocal acknowledgement of the danger posed by its Dry Shampoo Products, but it is underinclusive and insufficient. Unilever's recall of the Products fails to remedy the harm suffered by, and risk to, consumers because: (1) The recall only covers products within certain lots "produced" before *October 2021*, so that products sold after that date or in different lots contaminated by benzene (likely given the test results and evidence of contamination), were and are still being sold and used by consumers – subjecting them to harm; (2) Consumers must provide proof of purchase to receive a refund, which is unlikely for such routine consumer cosmetic products, and without proof of purchase, consumers are limited to a cash refund for only a single product, despite the fact that consumers regularly purchase such products; (3) Unilever failed to adequately advertise the recall and inform consumers of its terms (and the FDA recall announcement did not link to Unilever's recall); (4) Though Unilever claims to have identified the source of the contaminant – it has never publicly disclosed that information, and it has not announced any changes to its manufacturing and distribution process to prevent future contamination; and Unilever is, upon information and belief, still using propellant in the manufacture of its Dry Shampoo Products, (5) Unilever failed to disclose how widespread the benzene contamination is and the levels (in ppm) detected in the Dry Shampoo Products, particularly concerning given that there is "no safe level of benzene" exposure, yet Unilever downplayed the harm in the recall notice, which was conducted "out of

an abundance of caution;” and, to the present, has never disclosed or identified the levels of benzene in its Dry Shampoo Products; (6) The recall does not fully compensate consumers in states like New York, who are entitled to statutory damages under the state’s consumer protection laws; and (7) Unilever has not offered to compensate consumers for the cost of medical monitoring based on their use of Dry Shampoo Products contaminated by benzene.

G. Defendants Manufactured, Supplied, and/or Sold Adulterated and Misbranded Dry Shampoo Products to Plaintiffs and the Classes

119. Despite Defendants’ obligations with respect to manufacturing, marketing, processing, packing, labeling, distribution, and sale described above, Defendants failed to comply with its federal and state statutory and common law duties and obligations by placing the Unilever Dry Shampoo Products, which are unsafe and not fit for their intended use and purpose, into the stream of commerce.

120. Defendants, as the manufacturers, marketers, processors, packers, distributors, and sellers responsible for Unilever Dry Shampoo Products had (and still have) an ongoing duty to ensure the Unilever Dry Shampoo Products – which Defendants at all times knew would be sold to consumers and applied to consumers’ bodies – did not (and do not) contain dangerous levels of benzene.

121. Had Defendants complied with their duties under federal and state law to observe proper supply, manufacturing, marketing, processing, packing, labeling, and/or distribution practices, benzene contamination of the Unilever Dry Shampoo Products would not have occurred.

122. Further, as the suppliers, manufacturers, marketers, processors, packers, distributors, and/or sellers of Unilever Dry Shampoo Products, Defendants had and still has an ongoing duty to disclose the existence (or risk) of benzene in Unilever Dry Shampoo Products,

which they failed to do.

123. Had Defendants adopted proper and/or adequate testing and safety procedures and practices to ensure that the Products it was placing into the stream of commerce did not contain dangerous carcinogens such as benzene, they would have discovered that their supply, manufacturing, marketing, processing, packing, labeling, and/or distribution processes were deficient and would have detected benzene in the Products and prevented placing the contaminated Products into the stream of commerce.

124. Defendants' failures described above allowed benzene to be present in Unilever Dry Shampoo Products. Benzene is a known carcinogenic and thus the Unilever Dry Shampoo Products are "adulterated" under the FDCA because they contain a "poisonous or deleterious substance which may render [the Unilever Dry Shampoo Products] injurious to users. under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual." 21 U.S.C. §361(a). In addition, the FDCA deems the Dry Shampoo Products "adulterated" if they have been "prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been injurious to health." 21 U.S.C. §361(c).

125. The Dry Shampoo Products are "misbranded" under the FDCA because the Product labels do not disclose the presence of benzene, rendering them "false" and "misleading." 21 U.S.C. §362(a).

126. Federal law prohibits the sale of any cosmetic product that is adulterated or misbranded and renders such products illegal to sell. 21 U.S.C. §331(a). Given that the FDA prohibits the sale of adulterated and misbranded products, such products are worthless and have no value.

127. Similarly, the states in which the Plaintiffs reside contain food, drug and cosmetic acts and laws which follow and are consistent with the FDCA, likewise rendering Unilever's sale of "adulterated" and "misbranded" Products illegal. The Products, therefore, are worthless and valueless. *See* the Florida Drug and Cosmetic Act, Fla. Stat. § 499.001, *et seq.* (*see, e.g.*, §§ 499.005, 499.008, and 499.009); the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620/, *et seq.*; the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §110100, *et seq.*; New York Cons. Laws, Education Law (Adulterated and Misbranded Cosmetics) NY Educ. Law. § 6818; the Connecticut Food, Drug and Cosmetic Act, Conn. Gen. Stat. § 21a-91 *et seq.*; the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa. Stat. § 780-101 *et seq.*; and the Texas Food, Drug and Cosmetic Act, Tex. Health & Safety Code § 431.001 *et seq.*

128. As a result of Defendants' failure to keep benzene out of the Unilever Dry Shampoo Products, consumers, including Plaintiffs and the Classes, have been exposed to dangerous levels of benzene, a known carcinogen, by simply following the directions found on the packaging of Unilever Dry Shampoo Products.

129. Further, the Products' labeling fails to disclose that the Unilever Dry Shampoo Products contain benzene. And the absence of this disclosure conveys that benzene is not contained in the Unilever Dry Shampoo Products, which independent third-party testing – and Unilever's recall of the Dry Shampoo Products – has shown to be false. As a result of Unilever's failures, consumers, including Plaintiffs and the Classes, have been exposed to dangerous levels of benzene, a known carcinogen.

130. The benzene contamination (or risk of contamination) in the Unilever Dry Shampoo Products is a material fact for any consumer item (and for any reasonable consumer),

and especially so for a product that typically is used as often as daily for years.

131. Defendants' false, misleading, and deceptive misrepresentations, and concealment and/or omissions, regarding the ingredients of the Unilever Dry Shampoo Products are likely to continue to deceive and mislead reasonable consumers and the public, as they have already deceived and misled Plaintiffs and members of the Classes.

132. Defendants' false, misleading, and deceptive misrepresentations, and concealment and/or omissions, were and are material and intentional because people are concerned with what is in the products that they are putting onto and into their bodies, particularly dangerous, cancer-causing chemicals. Consumers such as Plaintiffs and the members of the Classes are influenced by the ingredients listed and not listed. Unilever knew that if it had not concealed and/or omitted that the Unilever Dry Shampoo Products contained benzene, then Plaintiffs and the Classes would not have purchased the Unilever Dry Shampoo Products at all or would have paid less for the Unilever Dry Shampoo Products.

H. Consumers, Including Plaintiffs and the Classes, Have Been Harmed by Defendants

133. Defendants' representations and warranties (and concealment and omissions) were intended to, and did, induce Plaintiffs and those similarly situated to trust and rely on Defendants and purchase the Unilever Dry Shampoo Products. Defendants knowingly concealed and/or omitted the presence of benzene in order to induce and mislead reasonable consumers to purchase the Unilever Dry Shampoo Products.

134. Plaintiffs and other similarly situated consumers, read, were exposed to, and relied on Unilever's representations and warranties and Dry Shampoo Product labels, and were induced to believe that the Unilever Dry Shampoo Products were safe and suitable for use, and purchased and used them as a result. None of the Unilever Dry Shampoo Products' packaging or

marketing materials warned that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

135. Defendants falsely represented and warranted the contents, characteristics, ingredients, safety, and quality of the Unilever Dry Shampoo Products because Defendants knew that Plaintiffs and similarly situated consumers would never have purchased the Unilever Dry Shampoo Products if truthful or accurate information had been provided. At all times, Defendants had a duty to provide only accurate and truthful representations, warranties, and information about the Unilever Dry Shampoo Products, and the aforesaid conduct breached that duty. As a result, Plaintiffs and those similarly situated were economically harmed.

136. Plaintiffs purchased and used the Unilever Dry Shampoo Products without knowing or having reason to know that the Unilever Dry Shampoo Products contained, or risked containing, dangerous levels of benzene. Had Plaintiffs known that the Unilever Dry Shampoo Products contained, or risked containing, dangerous levels of benzene, they would not have purchased the Unilever Dry Shampoo Products at all or would have paid less for the Unilever Dry Shampoo Products.

137. Plaintiffs and the Classes bargained for dry shampoo products that conformed with Defendants' representations and warranties regarding the contents, characteristics, ingredients, safety, and quality as well as the Products' labels and did not contain dangerous levels of carcinogens such as benzene. Plaintiffs were deprived of the benefit of the bargain when they received Unilever Dry Shampoo Products, which contained or risked containing dangerous levels of benzene in them. Further, pursuant to Unilever's recall, Plaintiffs and the members of the Classes were instructed to cease using the Unilever Dry Shampoo Products, rendering them worthless. Plaintiffs and the Classes are thus entitled to full or partial refunds

for the amounts paid for the Unilever Dry Shampoo Products they purchased on the basis that they have been deprived of the benefit of their bargain.

I. Plaintiffs and Members of the Classes Require Medical Monitoring

i. Plaintiffs and Class Members Have a Significantly Increased Risk of Contracting Benzene-Caused Cancer Due to Regular Usage of the Products

138. As alleged herein, Plaintiffs regularly used the Dry Shampoo Products.

139. Based on prevailing scientific evidence, and the classifications adopted by numerous agencies, regulatory bodies, and scientific organizations discussed *supra*, exposure to benzene via skin absorption can cause cancer, including leukemia and other blood-related cancers.

140. Plaintiffs used the Dry Shampoo Products manufactured and distributed by Defendants as directed by the Products' labels. This often meant that Plaintiffs used the Products daily. These Products, unbeknownst to Plaintiffs, contained benzene, a known carcinogen.

141. Thus, as a direct and proximate result of using Unilever's Dry Shampoo Products for years, Plaintiffs are at a significantly increased risk of contracting Benzene-caused Cancers. Plaintiffs' lengthy duration of exposure to benzene from Defendants' Products warrants additional medical testing not routinely provided to the public at large.

ii. Plaintiffs and Members of the Classes Require Diagnostic Medical Testing

142. Physicians evaluate a person's exposure to toxic and carcinogenic substances, including benzene, when determining what diagnostic testing and treatment is necessary.

143. A reasonably prudent person would conclude that Plaintiffs' repeated exposure to significant, unsafe levels of benzene over lengthy periods of time necessitates specialized testing (with resultant treatments) that is not generally given to the public at large as a part of routine medical care.

144. The available monitoring regime, discussed in greater detail below, is reasonably necessary and specific for individuals exposed to products known to significantly increase the risk of Benzene-caused Cancers because of exposure to benzene. It is different from that normally recommended in the absence of exposure to this risk of harm (in kind and/or frequency) and is not generally available in a general practitioner setting.

145. The available medical monitoring regime will mitigate the development of and health effects associated with Benzene-Caused Cancers, improving prognosis, outcome, and quality of life, and reducing medical costs.

146. Consistent with best practices, Plaintiffs seek to implement a medical monitoring program which begins with screening to determine whether more invasive or costly tests are warranted. This screening may be conducted via questionnaire, in-person before a medical practitioner, or via a tele-health appointment.

147. Medical practitioners will review the questionnaire or the results of a screening appointment to determine whether additional testing, such as a blood test, for purposes of diagnosis is required. Leukemia and other Benzene-Caused Cancers are typically found via blood tests and can be detected before symptoms begin.⁸⁰

148. Additional testing may include blood tests and/or bone marrow tests.⁸¹ Blood tests allow doctors to determine whether an individual has abnormal levels of red or white blood cells or platelets, which may suggest leukemia, or can show the presence of leukemia cells.⁸² Bone marrow tests are used to determine whether leukemia cells which can avoid detection in

⁸⁰ <https://www.mayoclinic.org/diseases-conditions/leukemia/diagnosis-treatment/drc-20374378>.

⁸¹ *Id.*

⁸² *Id.*

blood tests are present.⁸³

149. Screening and testing in the medical monitoring program will likely occur for an extended period of time. This permits the medical practitioners to monitor changes in symptoms or follow anomalies that may appear in tests over time and accommodates latency periods associated with the Benzene-Caused Cancers.

TOLLING AND ESTOPPEL

A. Discovery Rule Tolling

150. Plaintiffs and the members of the Class and Subclasses had no way of knowing about Defendants' conduct with respect to the presence of carcinogenic benzene.

151. Neither Plaintiffs nor any other members of the Class or Subclasses, through the exercise of reasonable diligence, could have discovered the conduct alleged herein. Further, Plaintiffs and members of the Class and Subclasses did not discover (and could not have discovered) and did not know of facts that would have caused a reasonable person to suspect that Defendants were engaged in the conduct alleged herein.

152. For these reasons, all applicable statutes of limitation have been tolled by discovery rule with respect to claims asserted by Plaintiffs and members of the Class and the Subclasses.

B. Fraudulent Concealment Tolling

153. By failing to provide notice of the presence of carcinogenic benzene in the Unilever Dry Shampoo Products, Defendants concealed its conduct and the existence of the claims asserted herein from Plaintiffs and the members of the Class and Subclasses.

⁸³ *Id.*

154. Upon information and belief, Defendants intended its acts to conceal the facts and claims from Plaintiffs and members of the Classes and Subclasses. Plaintiffs and the members of the Class and Subclasses were unaware of the facts alleged herein without any fault or lack of diligence on their part and could not have reasonably discovered Defendants' conduct. For this reason, any statute of limitations that otherwise may apply to the claims of Plaintiffs or members of the Class or Subclasses should be tolled.

C. Estoppel

155. Defendants were under a continuous duty to disclose to Plaintiffs and the members of the Classes the risks of consuming the Unilever Dry Shampoo Products.

156. Unilever knowingly, affirmatively, and actively concealed or recklessly disregarded the true risks of consuming the Unilever Dry Shampoo Products and led consumers to believe they were safe and suitable for consumption.

157. Accordingly, Defendants are estopped from relying on any statutes of limitations in defense of this action.

CLASS ALLEGATIONS

158. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and (3), and 23(c)(4).

159. Plaintiffs seek certification of the following Class and Subclasses:

160. Plaintiffs seek class certification on behalf of a class defined as follows (the "Class"):

CLASS: All persons in the United States who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations.

161. Plaintiffs seek certification on behalf of the following subclasses (collectively

referred to as the “Subclasses,” and collectively, with the Class, the “Classes”) defined as follows:

CALIFORNIA SUBCLASS: All persons who were or are citizens of the State of California who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “California Subclass”).

CONNECTICUT SUBCLASS: All persons who were or are citizens of the State of Connecticut who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “Connecticut Subclass”).

FLORIDA SUBCLASS: All persons who were or are citizens of the State of Florida who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “Florida Subclass”).

ILLINOIS SUBCLASS: All persons who were or are citizens of the State of Illinois who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “Illinois Subclass”).

NEW YORK SUBCLASS: All persons who were or are citizens of the State of New York who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “New York Subclass”).

PENNSYLVANIA SUBCLASS: All persons who were or are citizens of the Commonwealth of Pennsylvania who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “Pennsylvania Subclass”).

TEXAS SUBCLASS: All persons who were or are citizens of the State of Texas who purchased any of the Unilever Dry Shampoo Products for personal, family or household use within the applicable statute of limitations (the “Texas Subclass”).

162. Plaintiffs reserve the right to modify or refine the definitions of the Class or Subclasses based upon discovery of new information and to accommodate any of the Court’s manageability concerns.

163. **Ascertainability.** The proposed Class and Subclasses are readily ascertainable because they are defined using objective criteria to allow class members to determine if they are part of a Class or Subclass. Further, the Class and Subclasses can be readily identified through records maintained by Defendants.

164. **Numerosity (Rule 23(a)(1)).** The Classes and Subclasses are so numerous that joinder of individual members herein is impracticable. The exact number of members of the Class and Subclasses, as herein identified and described, is not known; upon information and belief there are hundreds of thousands, if not millions, of individuals who purchased the Unilever Dry Shampoo Products.

165. **Commonality (Rule 23(a)(2)).** Common questions of fact and law exist for each cause of action and predominate over questions affecting only individual Class and Subclass members, including the following:

(a) whether the Unilever Dry Shampoo Products contain, or risked containing, benzene;

(b) whether Defendants knew of should have known that the Unilever Dry Shampoo Products contained, or risked containing, benzene;

(c) whether Defendants had a duty to disclose, and wrongfully failed to disclose, that the Unilever Dry Shampoo Products, including components thereof, contained, or risked containing, benzene;

(d) whether Defendants misrepresented material facts and/or failed to disclose materials facts in connection with the manufacturing, packaging, labeling, marketing, distribution, and sale of the Unilever Dry Shampoo Products;

(e) whether Defendants' representations and omissions on the labeling of the

Unilever Dry Shampoo Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;

(f) whether Defendants represent to consumers that the Unilever Dry Shampoo Products have characteristics, benefits, or qualities that they do not have;

(g) whether Defendants had inadequate testing and safety standards, and had a duty to disclose, and wrongfully failed to disclose same;

(h) whether Defendants had knowledge that their representations, concealment and/or omissions were false, deceptive, and/or misleading;

(i) whether Defendants continue to make representations and/or omissions, and/or conceal facts, despite knowledge that the representations and/or omissions are false, deceptive, and/or misleading;

(j) whether Unilever breached its express warranties;

(k) whether Unilever breached its implied warranties;

(l) whether Defendants engaged in fraudulent, deceptive, misleading, unlawful, and/or unfair trade practices;

(m) whether Unilever engaged in false advertising;

(n) whether Unilever made negligent and/or fraudulent misrepresentations and/or omissions, and/or fraudulently concealed facts;

(o) whether Plaintiffs and the members of the Class and Subclasses are entitled to actual, statutory, and punitive damages;

(p) whether Unilever unjustly retained a benefit such that restitution is appropriate; and

(q) whether Plaintiffs and members of the Class and Subclasses are entitled to

declaratory and injunctive relief.

166. **Typicality (Rule 23(a)(3)).** Plaintiffs' claims are typical of the claims of the proposed Classes and Subclasses. Plaintiffs and the Classes and Subclasses (as applicable) suffered injuries because of Defendants' wrongful conduct that is uniform across the Classes and Subclasses.

167. **Adequacy (Rule 23(a)(4)).** Plaintiffs have and will continue to represent and protect the interests of the Classes and Subclasses fairly and adequately. Plaintiffs have retained counsel competent and experienced in complex litigation and class actions. Plaintiffs have no interest that is antagonistic to those of the Classes and Subclasses, and Defendants have no defenses unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes and Subclasses, and they have the resources to do so. Neither Plaintiffs nor Plaintiffs' counsel have any interest adverse to those of the other members of the Classes and Subclasses.

168. **Substantial Benefits.** This class action is appropriate for certification because class proceedings are superior to other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Classes and Subclasses is impracticable. The prosecution of separate actions by individual members of the Classes and Subclasses would impose heavy burdens upon the Courts and Defendants, would create a risk of inconsistent or varying adjudications of the questions of law and fact common to members of the Classes and Subclasses, and would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. This proposed class action presents fewer management difficulties than individual litigation, and provides the benefits of single adjudication, economies of scale,

and comprehensive supervision by a single court. Class treatment will create economies of time, effort, and expense and promote uniform decision-making.

169. Class certification, therefore, is appropriate under Fed. R. Civ. P. 23(b)(3) because the above common questions of law or fact predominate over any questions affecting individual members of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

170. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) because Defendants acted or refused to act on grounds generally applicable to the Class and Subclasses, so that final injunctive relief or corresponding declaratory relief is appropriate as to the Class and Subclasses as a whole.

171. In the alternative, the common questions of fact and law, *supra*, are appropriate for issue certification on behalf of the proposed Class and Subclasses under Fed. R. Civ. P. 23(c)(4).

172. Plaintiffs reserve the right to revise the foregoing class allegations and definitions based on facts learned and legal developments following additional investigation, discovery, or otherwise.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

BREACH OF EXPRESS WARRANTY

Against Defendant Unilever by Plaintiffs Individually and on Behalf of the Class or, Alternatively, the Subclasses

173. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

174. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Unilever for breach of express warranty.

175. Unilever manufactured, distributed, packaged, labeled, marketed, and sold the Unilever Dry Shampoo Products into the stream of commerce with the intent that the Unilever Dry Shampoo Products would be purchased by Plaintiffs and the Class and Subclasses.

176. Unilever expressly warranted, advertised, and represented to Plaintiffs and the Class and Subclasses that the Unilever Dry Shampoo Products were safe and appropriate for human use.

177. Unilever made these express warranties regarding the Unilever Dry Shampoo Products' quality and fitness for use in writing through its website, advertisements, and marketing materials and on the Unilever Dry Shampoo Products' packaging and labels. These express warranties became part of the basis of the bargain that Plaintiffs and the Class and Subclasses entered into upon purchasing Unilever Dry Shampoo Products. These affirmations of fact and/or promises became part of the basis of the bargain, and the contract, that Plaintiffs and the Class and Subclasses entered into with Unilever upon purchasing the Unilever Dry Shampoo Products.

178. Unilever's advertisements, warranties, and representations were made in connection with the sale of the Unilever Dry Shampoo Products to Plaintiffs, the Class, and the Subclasses. Plaintiffs, the Class, and Subclasses relied on Unilever's advertisements, warranties, and representations regarding Unilever Dry Shampoo Products in deciding whether to purchase Unilever's products.

179. Unilever's Products do not conform to Unilever's affirmations of fact and promises, in that they are not safe, healthy, and appropriate for human use.

180. Unilever therefore breached its express warranties by placing Products into the stream of commerce and selling them to consumers, when their use had dangerous effects and

was unsafe, rendering these products unfit for their intended use and purpose, and unsafe and unsuitable for consumer use as marketed by Unilever. These associated health effects substantially impair the use, value, and safety of the Unilever Dry Shampoo Products.

181. Unilever was aware, or should have been aware, of the presence of the human carcinogen benzene in the Unilever Dry Shampoo Products and therefore was aware or should have been aware of the toxic or dangerous health effects of the use of the Unilever Dry Shampoo Products, but nowhere on the package labeling on Unilever's websites, or other marketing materials did Unilever warn Plaintiffs and members of the Class and Subclasses of the presence of benzene, or risk of benzene, in the Unilever Dry Shampoo Products or the dangers it posed.

182. Instead, Unilever concealed the presence of benzene in the Unilever Dry Shampoo Products and deceptively represented that the Unilever Dry Shampoo Products were safe, healthy, and appropriate for human use. Unilever thus utterly failed to ensure that the material representations it was making to consumers were true.

183. Benzene was present in the Unilever Dry Shampoo Products when they left Unilever's possession or control and were sold to Plaintiffs, members of the Class and Subclasses. The dangers associated with use of the Unilever Dry Shampoo Products were undiscoverable by Plaintiffs, members of the Class and Subclasses at the time of purchase of the Unilever Dry Shampoo Products.

184. Unilever is the manufacturer, marketer, advertiser, distributor, labeler, and seller of the Unilever Dry Shampoo Products and thus had exclusive knowledge and notice of the fact that the Unilever Dry Shampoo Products did not conform to the affirmations of fact and promises.

185. In addition, or in the alternative, to the formation of an express contract, Unilever made each of the above-described representations to induce Plaintiffs and members of the Class and Subclasses to rely on such representations.

186. Unilever's affirmations of fact and promises were material, and Plaintiffs and members of the Class and Subclasses reasonably relied upon such representations in purchasing the Unilever Dry Shampoo Products.

187. All conditions precedent to Unilever's liability for its breach of express warranty have been performed by Plaintiffs or members of the Class or Subclasses.

188. Affording Unilever an opportunity to cure its breaches of written warranties would be unnecessary and futile here. Unilever had ample opportunity to test its products for benzene and to modify its manufacturing processes to ensure benzene was not present in the Unilever Dry Shampoo Products to make them safe and healthy for use by Plaintiffs and members of the Class and Subclasses.

189. In any event, Unilever was provided with pre-suit notice of its breaches of warranty when certain Plaintiffs sent Unilever a letter containing the basis of their claims.

190. As a direct and proximate result of Unilever's breaches of express warranty, Plaintiffs and members of the Classes and Subclasses have been damaged because they did not receive the products as specifically warranted by Unilever. Plaintiffs and members of the Class and Subclasses did not receive the benefit of the bargain and suffered damages at the point of sale stemming from their payment and/or overpayment for the Unilever Dry Shampoo Products.

191. Plaintiffs and the Class and Subclasses seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available

thereunder for Unilever's failure to deliver goods conforming to their express warranties and resulting breach.

SECOND CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY

**Against Defendant Unilever by Plaintiffs Individually and on Behalf of the Class or,
Alternatively, the Subclasses**

192. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

193. Plaintiffs bring this claim individually and on behalf of the members of the proposed Classes against Unilever for breach of implied warranty of merchantability.

194. Unilever is a merchant, manufacturer, marketer, warrantor, and seller of goods – the Unilever Dry Shampoo Products – to Plaintiffs and the Class and Subclasses and knew or had reason to know of the specific use for which the Unilever Dry Shampoo Products were purchased.

195. Plaintiffs and the proposed Class and Subclass are consumers who purchased the Unilever Dry Shampoo Products manufactured, sold, and marketed by Unilever throughout the United States.

196. An implied warranty that the Unilever Dry Shampoo Products were merchantable arose by operation of law as part of the sale of the Unilever Dry Shampoo Products.

197. At all times mentioned herein, Unilever manufactured, distributed, or supplied Products, and prior to the time the Unilever Dry Shampoo Products were purchased by Plaintiffs and the Class and Subclasses, Unilever impliedly warranted to them that the Unilever Dry Shampoo Products were of merchantable quality, fit for their ordinary and intended use, and conformed to the promises and affirmations of fact made on the Unilever Dry Shampoo Products'

labels and packaging, including that the Unilever Dry Shampoo Products were safe and appropriate for human use. Plaintiffs and the Class and Subclasses relied on Unilever's promises and affirmations of fact when they purchased the Unilever Dry Shampoo Products.

198. Benzene existed in the Unilever Dry Shampoo Products when the Unilever Dry Shampoo Products left Unilever's possession or control and were sold to Plaintiffs and members of the proposed Class and Subclasses. The presence of benzene in the Unilever Dry Shampoo Products was undiscoverable by Plaintiffs and members of the proposed Class and Subclasses at the time of their purchases.

199. Contrary to these representations and warranties, the Unilever Dry Shampoo Products were not merchantable or reasonably fit for either the use they were intended or the uses reasonably foreseeable by Unilever and did not conform to Unilever's affirmations of fact and promises as use of the Unilever Dry Shampoo Products was accompanied by the risk of exposure to benzene and to developing benzene-caused cancers, which does not conform to the packaging.

200. Unilever breached its implied warranties by selling Products that failed to conform to the promises or affirmations of fact made on the packaging or label as use of each Product was accompanied by the risk of exposure to benzene and to developing benzene-caused cancers, which does not conform to the packaging, rendering the Unilever Dry Shampoo Products unfit for their intended use and purpose and impairing the use, value, and safety of the Unilever Dry Shampoo Products. Unilever had, and has, exclusive knowledge of the material facts concerning the defective nature of the Unilever Dry Shampoo Products.

201. Unilever was, or should have been, on notice of this breach, as it was on notice that the process used to manufacture the Unilever Dry Shampoo Products was likely to result in

the presence of benzene in the Unilever Dry Shampoo Products.

202. In any event, Unilever was provided with pre-suit notice of its breaches of warranty when certain Plaintiffs sent Unilever a letter containing the basis of their claims.

203. Privity exists because Unilever impliedly warranted to Plaintiffs and the Class and Subclasses through the warranting, packaging, advertising, marketing, and labeling that Products were natural, and suitable for use and made no mention of the attendant health risks associated with use of the Unilever Dry Shampoo Products.

204. Furthermore, Plaintiffs and members of the proposed Class and Subclasses were at all material times the intended third-party beneficiaries of Unilever and its agents in the distribution of the sale of its Products. Unilever exercises substantial control over the outlets that sell the Unilever Dry Shampoo Products, which are the same means by which Plaintiff and members of the proposed Class and Subclasses purchased the Unilever Dry Shampoo Products. Unilever's warranties are not intended to apply to distributors but are instead intended to apply to consumers, including Plaintiffs and the proposed Class and Subclasses, to whom Unilever directly markets through labels and product packaging, and who review the labels and product packaging in connection with their purchases. As a result, the warranties are designed and intended to benefit the consumers, including Plaintiffs and the proposed Class and Subclasses, who purchase the Unilever Dry Shampoo Products. Privity therefore exists based on the foregoing and because Unilever impliedly warranted to Plaintiffs and the proposed Class and Subclasses through the packaging that the Unilever Dry Shampoo Products were safe and suitable for human use.

205. As a direct and proximate result of Unilever's conduct, Plaintiffs, the Class, and the Subclasses have suffered actual damages in that each of the Unilever Dry Shampoo Products

they purchased is worth less than the price they paid and/or that they would not have purchased at all if they had known of the attendant health risks associated with the use of each of the Unilever Dry Shampoo Products.

206. Plaintiffs, the Class, and the Subclasses seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Unilever's failure to deliver goods conforming to their implied warranties and resulting breach.

THIRD CLAIM FOR RELIEF

FRAUDULENT MISREPRESENTATION

Against Defendant Unilever by Plaintiffs Individually and on Behalf of the Class or, Alternatively, the Subclasses

207. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

208. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclasses against Unilever for fraudulent misrepresentation.

209. Unilever falsely represented to Plaintiffs, the Class, and the Subclasses that the Unilever Dry Shampoo Products did not contain unsafe levels of carcinogens and were safe for human use. The Products, however, contained, or had a significant risk of containing, the carcinogenic benzene, which does not conform to the packaging. Therefore, Unilever has made misrepresentations about the Unilever Dry Shampoo Products.

210. Unilever's misrepresentations regarding the Unilever Dry Shampoo Products are material to a reasonable consumer because they relate to the safety, quality, and cancer-causing properties of the Unilever Dry Shampoo Products. A reasonable consumer would attach importance to such representations and would be induced to act thereon in deciding whether or not to purchase the Unilever Dry Shampoo Products.

211. Unilever intentionally, knowingly, and recklessly made these misrepresentations to induce Plaintiffs, the Class, and the Subclasses to purchase the Unilever Dry Shampoo Products.

212. Unilever knew that its representations about the Unilever Dry Shampoo Products were false, or that there was a significant likelihood that they were false, in that the Unilever Dry Shampoo Products either did contain, or had a significant risk of containing, unsafe amounts of the carcinogen benzene, which does not conform to the Unilever Dry Shampoo Products' labels, packaging, advertising, and statements. Unilever knowingly allowed its packaging, labels, advertisements, promotional materials, and websites to intentionally mislead consumers, such as Plaintiffs, the Class, and the Subclasses.

213. Plaintiffs, the Class, and the Subclasses did in fact rely on these misrepresentations and purchased Products to their detriment. Given the deceptive way Unilever advertised, represented, and otherwise promoted the Unilever Dry Shampoo Products, the reliance Plaintiffs, the Class, and the Subclasses placed on Unilever's misrepresentations was justifiable.

214. As a direct and proximate result of Unilever's conduct, Plaintiffs, the Class, and the Subclasses have suffered actual damages in that they purchased Products that were worth less than the price they paid and/or that they would not have purchased at all had they known of the risk of the presence of unsafe levels of benzene in the Unilever Dry Shampoo Products and the health risks, including cancer, associated with the use of the Unilever Dry Shampoo Products that does not conform with the Unilever Dry Shampoo Products' labels, packaging, advertising, and statements.

215. Plaintiffs, the Class, and the Subclasses seek actual damages, injunctive and

declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

216. Unilever's conduct was wanton, willful, egregious, and in reckless disregard for the rights of Plaintiffs and the Classes and justifies an award of punitive damages.

FOURTH CLAIM FOR RELIEF

FRAUD BY OMISSION

Against Defendant Unilever by Plaintiffs Individually and on Behalf of the Class or, Alternatively, the Subclasses

217. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

218. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclass against Unilever for fraud by omission.

219. Unilever actively and knowingly concealed from and failed to disclose to Plaintiffs, the Class, and the Subclasses that use of Products is accompanied by a risk of exposure to the carcinogen benzene, which carries with it the risk of developing benzene-caused cancers and which does not conform to the Unilever Dry Shampoo Products' labels, packaging, advertising, and statements.

220. Unilever was under a duty to disclose to Plaintiffs, the Class, and the Subclasses the true safety, quality, characteristics, fitness for use, and suitability of the Unilever Dry Shampoo Products because: (1) Unilever was in a superior position to know the true state of facts about its Products; (2) Unilever was in a superior position to know the risks associated with the use of, characteristics of, and suitability of the Unilever Dry Shampoo Products for use by individuals; (3) Unilever knew that Plaintiffs, the Class, and the Subclasses could not reasonably have been expected to learn or discover that the Unilever Dry Shampoo Products were misrepresented in the packaging, labels, advertising, and websites prior to purchasing the

Unilever Dry Shampoo Products; (4) Unilever's packaging and labels disclosed misleading information to consumers by omitting that the Unilever Dry Shampoo Products contain (or risk containing) benzene; and (5) based on Unilever's partial statements on the Unilever Dry Shampoo Products' labels and packaging that gave a misleading impression to reasonable consumers that the Unilever Dry Shampoo Products are safe and suitable for use, without further information on the presence of, and risk of, benzene that had not been disclosed, Unilever assumed the obligation to make a full and fair disclosure of the whole truth.

221. Unilever knows its customers trust the quality of its products and that they expect the Unilever Dry Shampoo Products to be safe and suitable for use and to not contain or have a risk of containing carcinogenic benzene. Unilever also knows that certain consumers seek out and wish to purchase personal care products that possess high-quality ingredients free of toxins, contaminants, or chemicals, and that these consumers will pay more for those personal care products that they believe possess these qualities.

222. Due to the omissions on the Unilever Dry Shampoo Products' packaging, Unilever had a duty to disclose the whole truth about the presence, and risk, of carcinogenic benzene in the Unilever Dry Shampoo Products to Plaintiffs and the proposed Class and Subclasses. Unilever failed to discharge its duty to disclose the presence or risk of benzene in the Unilever Dry Shampoo Products.

223. The facts concealed or not disclosed by Unilever to Plaintiffs, the Class, and the Subclasses were material in that a reasonable consumer would have considered them important when deciding whether to purchase the Unilever Dry Shampoo Products.

224. Plaintiffs and the Class and Subclasses justifiably relied on Unilever's omissions to their detriment. The detriment is evident from the true quality, characteristics, and risk

associated with the use of Products, which is inferior when compared to how Products are advertised and represented by Unilever.

225. As a direct and proximate result of Unilever's conduct, Plaintiffs, the Class, and the Subclasses have suffered actual damages in that they purchased Products that were worth less than the price they paid and/or that they would not have purchased at all had they known of the health risks associated with the use of the Unilever Dry Shampoo Products which do not conform to the Unilever Dry Shampoo Products' labels, packaging, advertising, and statements.

226. Plaintiffs, the Class, and the Subclasses seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

227. Unilever's conduct was wanton, willful, egregious, and in reckless disregard for the rights of Plaintiffs and the Classes and justifies an award of punitive damages.

FIFTH CLAIM FOR RELIEF

NEGLIGENT MISREPRESENTATION

Against Defendant Unilever by Plaintiffs Individually and on Behalf of the Class or, Alternatively, the Subclasses

228. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

229. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclasses against Unilever for negligent misrepresentation.

230. Because Unilever has superior knowledge regarding the quality and safety of its ingredients and products and because Plaintiffs and members of the proposed Class and Subclasses trust and rely on Unilever to provide accurate and truthful information regarding the Unilever Dry Shampoo Products, which Plaintiffs and members of the proposed Class and

Subclasses cannot ascertain on their own, Unilever had a duty to Plaintiffs, the Class, and the Subclasses to exercise reasonable and ordinary care in the developing, testing, manufacture, marketing, distribution, and sale of Products.

231. Unilever breached its duty to Plaintiffs, the Class, and the Subclasses by developing, testing, manufacturing, advertising, marketing, distributing, and selling products to Plaintiffs, the Class, and the Subclasses that did not have the ingredients, qualities, characteristics, and suitability for use as advertised by Unilever.

232. Unilever packaged, labeled, marketed, and advertised the Unilever Dry Shampoo Products in a manner indicating that the Unilever Dry Shampoo Products were and are, among

other things, safe and suitable for use. However, the Unilever Dry Shampoo Products contained, or were at risk of containing, carcinogenic benzene, which does not conform to the packaging. Therefore, Unilever has made misrepresentations about the Unilever Dry Shampoo Products.

233. Unilever's misrepresentations regarding the Unilever Dry Shampoo Products are material to a reasonable consumer because they relate to the ingredients, safety, and quality of the Unilever Dry Shampoo Products, which the consumer is receiving and paying for. A reasonable consumer would attach importance to such representations and would be induced to act thereon in deciding whether or not to purchase the Unilever Dry Shampoo Products.

234. At all relevant times when such misrepresentations were made, Unilever knew or had been negligent in not knowing that the Unilever Dry Shampoo Products contained, or were at risk of containing, carcinogenic benzene. Unilever has no reasonable grounds for believing its misrepresentations were not false and misleading.

235. Unilever knew or should have known that the ingredients, qualities, and characteristics of the Unilever Dry Shampoo Products were not as advertised or suitable for their intended use and were otherwise not as warranted and represented by Unilever yet continued selling the Unilever Dry Shampoo Products. Specifically, Unilever knew or should have known that: (1) the manufacturing process used to produce the Unilever Dry Shampoo Products resulted in the presence of benzene in the Unilever Dry Shampoo Products or a substantial risk that benzene would be found in the Unilever Dry Shampoo Products, and (2) the Unilever Dry Shampoo Products were otherwise not as warranted and represented by Unilever.

236. Unilever intended that Plaintiffs and members of the proposed Class and Subclasses would rely on these representations, as evidenced by the intentional and conspicuous placement of the misleading representations on the Unilever Dry Shampoo Products' packaging by Unilever, as well as its advertising, marketing, and labeling of the Unilever Dry Shampoo Products as, among other things, safe and suitable for use.

237. Plaintiffs and members of the proposed Class and Subclasses have reasonably and justifiably relied on Unilever's negligent misrepresentations when purchasing the Unilever Dry Shampoo Products, and had the correct facts been known, would not have purchased the Unilever Dry Shampoo Products at all, or would have paid less for them.

238. As a direct and proximate result of Unilever's conduct, Plaintiffs, the Class, and the Subclasses have suffered actual damages in that they purchased Products that were worth less than the price they paid and/or that they would not have purchased at all had they known they contained, or risked containing, the carcinogen benzene that is known to cause the Benzene-caused Cancers which does not conform to the products' labels, packaging, advertising, and

statements.

239. Plaintiffs, the Class, and the Subclasses seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available.

SIXTH CLAIM FOR RELIEF

UNJUST ENRICHMENT

Against Defendant Unilever by Plaintiffs Individually and on Behalf of the Class or, Alternatively, the Subclasses

240. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

241. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclasses against Unilever for unjust enrichment.

242. Plaintiffs, the Class, and the Subclasses conferred substantial benefits on Unilever through their purchase and use of Products. Unilever knowingly and willingly accepted and enjoyed these benefits.

243. Unilever either knew or should have known that the payments rendered by Plaintiffs, the Class, and the Subclasses were given with the expectation that the Unilever Dry Shampoo Products would have the qualities, characteristics, and suitability for use represented and warranted by Unilever. As such, it would be inequitable for Unilever to retain the benefit of the payments under these circumstances when Plaintiffs and the proposed Class and Subclasses did not receive the benefit of the Unilever Dry Shampoo Products for which they bargained.

244. Unilever's acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Unilever to retain the benefits without payment of the value to Plaintiffs, the Class, and the Subclasses because Unilever's labeling of the Unilever Dry Shampoo Products was misleading to consumers, which caused injuries to Plaintiffs and the

proposed Class and Subclasses because they would not have purchased the Unilever Dry Shampoo Products or would have paid less for the Unilever Dry Shampoo Products had they known that they contained, or risked containing, carcinogenic benzene.

245. As a direct and proximate result, Plaintiffs, the Class, and the Subclasses are entitled to recover from Unilever all amounts wrongfully collected and improperly retained by Unilever, plus interest thereon.

246. Plaintiffs lack an adequate remedy at law.

247. Plaintiffs and the proposed Class and Subclasses seek restitution, disgorgement, imposition of a constructive trust, and/or other appropriate injunctive and declaratory relief, and any other just and proper relief available under the laws.

SEVENTH CLAIM FOR RELIEF

CONNECTICUT UNFAIR TRADE PRACTICES ACT

Conn. Gen. Stat. Ann. § 42-110a, *et seq.*

Against Defendants Unilever, Aeropres, and Voyant on behalf of Connecticut Plaintiff and Connecticut Subclass

248. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

249. Connecticut Plaintiff Little and Connecticut Subclass Members are or were residents of Connecticut at all relevant times herein.

250. Defendants are “persons” as defined by C.G.S.A. § 42-110a(3).

251. Connecticut Plaintiff Little and Connecticut Subclass Members are actual or potential consumers of Unilever Dry Shampoo Products purchased in Connecticut.

252. At all times mentioned herein, Defendants engaged in “trade” or “commerce” in Connecticut as defined by C.G.S.A. § 42-110a(4), in that they engaged in the “advertising,” “sale,” and “distribution” of any “goods,” “services,” “property,” “articles,” “commodities,” or “things of value” in Connecticut.

253. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” C.G.S.A. § 42-110b(a).

254. For the reasons discussed herein, Defendants violated and continue to violate CUTPA by engaging in the herein described deceptive or unfair acts or practices proscribed by C.G.S.A. § 42-110a. *et seq.* (and by violating the Connecticut Food, Drug and Cosmetic Act, Conn. Gen. Stat. § 21a-91 *et seq.* by manufacturing, distributing, and selling adulterated and misbranded Products). Defendants’ acts and practices, including its material omissions, described herein, were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

255. Defendants repeatedly advertised on the labels for the Unilever Dry Shampoo Products, on websites, and through national advertising campaigns, among other items, that the Unilever Dry Shampoo Products were and are safe, suitable and fit for their intended use and purpose. Defendants failed to disclose the material information that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

256. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers to induce them to purchase the Unilever Dry Shampoo Products without being aware that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene. As a direct and proximate result of Defendants’ unfair and deceptive acts or practices, Connecticut Plaintiff Little and Connecticut Subclass Members suffered damages by purchasing the Unilever Dry Shampoo Products in reliance on Defendants’ statements because they would not have purchased the Unilever Dry Shampoo Products had they known the truth, and they received a product that was worthless, and/or worth less, because the

Products contain or risk containing carcinogenic benzene.

257. Defendants' deceptive trade practices caused injury in fact and actual damages to Connecticut Plaintiff Little and Connecticut Subclass Members in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products Connecticut Plaintiff Little and Connecticut Subclass members purchased, which allowed Defendants to profit at the expense of Connecticut Plaintiff Little and Connecticut Subclass Members. The injuries to Connecticut Plaintiff Little and Connecticut Subclass Members were to legally protected interests. The gravity of the harm of Defendants' actions is significant and there is no corresponding benefit to consumers of such conduct.

258. Defendants' unlawful conduct is continuing, with no indication of Defendants' intent to cease this fraudulent course of conduct, posing a threat of future harm to Connecticut Plaintiff Little and Connecticut Subclass Members, such that prospective injunctive relief is necessary because, inter alia, Connecticut Plaintiff Little and Connecticut Subclass Members cannot rely on the labels in the future to determine whether the Products contain benzene. Connecticut Plaintiff Little and Connecticut Subclass Members seek relief for the injuries they have suffered as a result of Defendants' unfair and deceptive acts and practices, including, but not limited to, actual damages, restitution, penalties, injunctive and declaratory relief, attorneys' fees and costs, as well as any other just and proper relief, pursuant to C.G.S.A. § 42 -110g and applicable law.

EIGHTH CLAIM FOR RELIEF

CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

Cal. Civ. Code §§1750 *et seq.*

Against Defendant Unilever for Monetary Damages and Injunctive Relief, and Against Defendants Aeropres and Voyant for Injunctive Relief, on Behalf of California Plaintiffs and California Subclass

259. Plaintiffs incorporate the forgoing allegations as if fully set forth herein.

260. Plaintiffs Armstrong and Hernandez and the California Subclass are or were residents of California and purchased the Unilever Dry Shampoo Products in California.

261. Plaintiffs Armstrong and Hernandez and the California Subclass have provided Unilever notice of the specific complaint and damages in accordance with Cal. Civ. Code §1782.

262. An affidavit in accordance with Cal. Civ. Code § 1780 has been filed concurrently with this Consolidated Amended Complaint.

263. Plaintiffs Armstrong and Hernandez and the California Subclass are “consumer[s]” as that term is defined in Cal. Civ. Code §1761(d).

264. The Products are “goods,” as that term is defined in Cal. Civ. Code §1761(a).

265. Defendants are each a “person” as that term is defined in Cal. Civ. Code §1761(c).

266. Each purchase of the Unilever Dry Shampoo Products by Plaintiffs and the California Subclass constituted a “transaction” as that term is defined in Cal. Civ. Code §1761(e).

267. Defendants’ conduct alleged herein violates the following provisions of California’s Consumers Legal Remedies Act (the “CLRA”):

A. Cal. Civ. Code §1770(a)(5), by negligently, recklessly, and/or intentionally representing that the Unilever Dry Shampoo Products were and are safe for use by individuals when in fact they contain, or risk containing, an unsafe chemical, benzene, which could cause a Product user to develop Benzene-caused cancers;

B. Cal. Civ. Code §1770(a)(7), by negligently, recklessly, and/or intentionally

representing that the Unilever Dry Shampoo Products were of a particular standard, quality, or grade, when they were of another;

C. Cal. Civ. Code §1770(a)(9), by negligently, recklessly, and/or intentionally advertising the Unilever Dry Shampoo Products with intent not to sell them as advertised; and

D. Cal. Civ. Code §1770(a)(16), by representing that the Unilever Dry Shampoo Products have been supplied in accordance with previous representations when they have not.

268. Defendants were obligated to disclose the presence of, and risk of, carcinogenic benzene in the Unilever Dry Shampoo Products because: (a) Defendants had exclusive knowledge of the presence of benzene in the Unilever Dry Shampoo Products that were not known or reasonably accessible to Plaintiffs Armstrong and Hernandez and the California Subclass; (b) Defendants actively concealed the presence of carcinogenic benzene in the Unilever Dry Shampoo Products from Plaintiffs Armstrong and Hernandez and the California Subclass; and (c) Defendants made partial statements on the Unilever Dry Shampoo Products labels and packaging that gave the misleading impression to reasonable consumers, including Plaintiffs Armstrong and Hernandez and the California Subclass, without further information on the presence of carcinogenic benzene that had not been disclosed.

269. Plaintiffs Armstrong and Hernandez and the California Subclass relied on Defendants' representations when purchasing the Unilever Dry Shampoo Products.

270. Plaintiffs Armstrong and Hernandez and the California Subclass were deceived by Defendants' deceptive, fraudulent, and unconscionable acts and practices in that had they known the truth they would not have purchased the Unilever Dry Shampoo Products or would have paid

less for the Unilever Dry Shampoo Products.

271. As a direct and proximate result of these violations, Plaintiffs Armstrong and Hernandez and the California Subclass have been harmed, and that harm will continue unless Defendants are enjoined from using the misleading marketing described herein in any manner in connection with the advertising and sale of the Unilever Dry Shampoo Products.

272. Defendants' deceptive trade practices caused injury in fact and actual damages to Plaintiffs and the California Subclass in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products Plaintiffs Armstrong and Hernandez and the California Subclass purchased, which allowed Defendants to profit at the expense of Plaintiffs Armstrong and Hernandez and the California Subclass.

273. Plaintiffs Armstrong and Hernandez and the California Subclass seek relief, including monetary damages, for the injuries they have suffered because of Unilever's practices, as provided by the CLRA and applicable law.

274. In addition, Unilever's unlawful conduct is continuing, with no indication of Unilever's intent to cease this fraudulent course of conduct, posing a threat of future harm to Plaintiffs Armstrong and Hernandez and California Subclass, such that prospective injunctive relief is necessary because, inter alia, California Plaintiffs and California Subclass Members cannot rely on the Product labels in the future to determine whether the Products contain benzene.

275. Voyant's and Aeropres' unlawful conduct also is continuing, with no indication of their intent to cease this fraudulent course of conduct, posing a threat of future harm to Plaintiffs Armstrong and Hernandez and California Subclass, such that prospective injunctive relief is necessary because, inter alia, California Plaintiffs and California Subclass Members cannot rely

on the Product labels in the future to determine whether the Products contain benzene. Plaintiffs seek injunctive relief from Aeropres and Voyant, but reserve the right to amend to assert monetary damages against them.

NINTH CLAIM FOR RELIEF

CALIFORNIA FALSE ADVERTISING LAW

Cal. Bus. & Prof. Code §17500 *et seq.*

**Against Defendants Unilever, Aeropres, and Voyant on Behalf of California Plaintiffs
and California Subclass**

276. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

277. Plaintiffs Armstrong and Hernandez and the California Subclass are or were residents of California and purchased the Unilever Dry Shampoo Products in California.

278. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

279. Defendants' untrue and misleading statements significantly impacted the public because the Unilever Dry Shampoo Products are sold nationwide, including in California, and there are millions of consumers of the Unilever Dry Shampoo Products, including Plaintiffs Armstrong and Hernandez and California Subclass.

280. Defendants claimed the Products were and are properly manufactured, free from defects, and safe for their intended uses.

281. As set forth herein, Defendants' claims that the Unilever Dry Shampoo Products were and are safe for use by individuals were false because the Unilever Dry Shampoo Products in fact contain or risk containing an unsafe chemical, benzene, which could cause a user to suffer adverse health effects from use of the Unilever Dry Shampoo Products and were likely to deceive the public.

282. Defendants' claims that the Unilever Dry Shampoo Products were and are

safe for use by individuals were and are untrue and misleading because they failed to mention the presence of an unsafe chemical, benzene, which could cause a Product user to suffer adverse health effects from use of the Unilever Dry Shampoo Products.

283. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers to induce them to purchase the Unilever Dry Shampoo Products without being aware that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

284. Defendants knew, or reasonably should have known, that all these claims were untrue or misleading and likely to deceive the public.

285. As a direct and proximate result of Defendants' false advertising, Plaintiffs Armstrong and Hernandez and the California Subclass have been harmed, and that harm will continue unless Defendants are enjoined from using the misleading marketing described herein in any manner in connection with the advertising and sale of the Unilever Dry Shampoo Products.

286. As a direct and proximate result of Defendants' false advertising, Plaintiffs Armstrong and Hernandez and the California Subclass suffered damages by purchasing the Unilever Dry Shampoo Products because they received a product that was worthless, and/or worth less, because it contains, or risks containing, carcinogenic benzene, and they would not have purchased or would have paid less for the Unilever Dry Shampoo Products had they known this fact.

287. Defendants' false advertising caused injury in fact and actual damages to Plaintiffs Armstrong and Hernandez and the California Subclass in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products Plaintiffs Armstrong and

Hernandez and the California Subclass purchased, which allowed Defendants to profit at the expense of Plaintiffs Armstrong and Hernandez and the California Subclass.

288. Plaintiffs Armstrong and Hernandez and California Subclass lack an adequate remedy at law that is equal to the equitable relief sought herein.

289. In addition, Defendants' unlawful conduct is continuing, with no indication of Defendants' intent to cease this fraudulent course of conduct, posing a threat of future harm to Plaintiffs Armstrong and Hernandez and California Subclass, such that prospective injunctive relief is necessary because, inter alia, California Plaintiffs and California Subclass Members cannot rely on the Product labels in the future to determine whether the Products contain benzene. Plaintiffs Armstrong and Hernandez and the California Subclass are entitled to injunctive and equitable relief and restitution in the amount they spent on the Unilever Dry Shampoo Products, as well as any other just and proper relief, pursuant to Cal. Bus. & Prof. Code §17535 and applicable law.

TENTH CLAIM FOR RELIEF

CALIFORNIA UNFAIR COMPETITION LAW

Cal. Bus. & Prof. Code §§ 17200 *et seq.*

Against Defendants Unilever, Aeropres, and Voyant on behalf of California Plaintiffs and California Subclass

290. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

291. Plaintiffs Armstrong and Hernandez and the California Subclass are or were residents of California and/or purchased the Unilever Dry Shampoo Products in California.

292. The California Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

293. For the reasons discussed herein, Defendants violated and continue to violate the California's Unfair Competition Law by engaging in the herein described fraudulent, deceptive,

unfair acts or practices proscribed by Cal. Bus. & Prof. Code §17200 *et seq.* Defendants' acts and practices, including their material omissions, described herein, were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

294. Defendants fraudulently represented that the Unilever Dry Shampoo Products were and are safe for use by individuals when in fact they contain, or risk containing, an unsafe chemical, benzene, which could cause a Product user to develop cancer from use of the Unilever Dry Shampoo Products.

295. As alleged herein, Defendants unlawfully advertised the Unilever Dry Shampoo Products using false or misleading claims, such that Defendants' actions as alleged herein violate at least the following laws:

- A. California Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et seq.*;
- B. California False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.*
- C. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301, *et seq.* and
- D. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §110100, *et seq.*

296. Defendants' conduct with respect to the labeling, packaging, advertising, marketing, and sale of the Unilever Dry Shampoo Products is unfair because Defendants' conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the gravity of the harm to their victims.

297. Defendants' conduct with respect to the labeling, packaging, advertising, marketing, and sale of the Unilever Dry Shampoo Products is also unfair because it violates public policy as declared by specific constitutional, statutory, or regulatory provisions,

including, but not limited to, the California Consumers Legal Remedies Act and the California False Advertising Law.

298. Defendants' conduct with respect to the labeling, packaging, advertising, marketing, and sale of the Unilever Dry Shampoo Products is also unfair because the consumer injury is substantial, not outweighed by benefits to consumers or competition, and not one that consumers, themselves, can reasonably avoid.

299. As a direct and proximate result of Defendants' false advertising, Plaintiffs Armstrong and Hernandez and the California Subclass have been harmed, and that harm will continue unless Defendants are enjoined from using the misleading marketing described herein in any manner in connection with the advertising and sale of the Unilever Dry Shampoo Products.

300. As a direct and proximate result of Defendants' fraudulent, unfair, and unlawful practices, Plaintiffs Armstrong and Hernandez and the California Subclass suffered damages by purchasing the Unilever Dry Shampoo Products because they received a product that was worthless, and/or worth less, because the Products contain, or risk containing, carcinogenic benzene, and they would not have purchased or would have paid less for the Unilever Dry Shampoo Products had they known this fact.

301. Unilever's fraudulent, unfair, and unlawful practices caused injury in fact and actual damages to Plaintiffs Armstrong and Hernandez and the California Subclass in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products Plaintiffs and the California Subclass purchased, which allowed Unilever to profit at the expense of Plaintiffs and the California Subclass.

302. Plaintiffs Armstrong and Hernandez and California Subclass lack an adequate

remedy at law that is equal to the equitable relief sought herein.

303. In accordance with Cal. Bus. & Prof. Code §17203, Plaintiffs and the California Subclass seek an order enjoining Defendants from continuing to conduct business through fraudulent, unfair, or unlawful acts and practices. Defendants' misconduct is continuing, with no indication of Defendants' intent to cease this fraudulent, unlawful, and unfair course of conduct, posing a threat of future harm to Plaintiffs Armstrong and Hernandez and California Subclass, such that prospective injunctive relief is necessary, and because, inter alia, California Plaintiffs and California Subclass Members cannot rely on the Product labels in the future to determine whether the Products contain benzene.

304. Plaintiffs Armstrong and Hernandez and the California Subclass also seek an order for the restitution of all monies from the sale of the Unilever Dry Shampoo Products, which were unjustly acquired through acts of fraudulent, unfair, or unlawful acts and practices, as well as any other just and proper relief, pursuant to Cal. Bus. & Prof. Code §17203 and applicable law.

ELEVENTH CLAIM FOR RELIEF

NEW YORK CONSUMER PROTECTION LAW

N.Y. Gen. Bus. Law §349

Against Defendants Unilever, Aeropres, and Voyant on behalf of New York Plaintiff and the New York Subclass

305. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

306. New York Plaintiffs Awad and Van Vliet and New York Subclass members are or were residents of New York and/or purchased the Unilever Dry Shampoo Products in New York.

307. New York Plaintiffs Awad and Van Vliet and New York Subclass members are actual or potential consumers of the Unilever Dry Shampoo Products.

308. At all times mentioned herein, Defendants engaged in “trade” or “commerce” in New York in that they engaged in the advertising, offering for sale, sale, and distribution of property or any other articles, commodities, or things of value in New York.

309. N.Y. Gen. Bus. Law §349(a) provides “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

310. For the reasons discussed herein, Defendants violated and continue to violate N.Y. Gen. Bus. Law §349 by engaging in the herein described deceptive or unfair acts or practices proscribed by N.Y. Gen. Bus. Law §349 (and by violating N.Y. Cons. Laws, N.Y. Educ. Law. §6818 *et seq.* by manufacturing, distributing, and selling adulterated and misbranded Products). Defendants’ acts and practices, including its material omissions, described herein, were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

311. Defendants’ deceptive trade practices significantly impacted the public because the Unilever Dry Shampoo Products are sold nationwide, including in New York, and there are millions of consumers of the Unilever Dry Shampoo Products, including New York Plaintiffs Awad and Van Vliet and New York Subclass members.

312. Defendants repeatedly advertised on the labels for the Unilever Dry Shampoo Products, on websites, and through national advertising campaigns, among other items, that the Unilever Dry Shampoo Products were and are safe and suitable for individual use. Defendants failed to disclose the material information that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

313. Defendants’ representations and omissions were material because they were likely

to deceive reasonable consumers to induce them to purchase the Unilever Dry Shampoo Products without being aware that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, New York Plaintiffs Awad and Van Vliet and New York Subclass members suffered damages by purchasing the Unilever Dry Shampoo Products because they would not have purchased the Unilever Dry Shampoo Products had they known the truth, and they received a product that was worthless, and/or worth less, because the Products contain or risked containing carcinogenic benzene.

314. Defendants' deceptive trade practices caused injury in fact and actual damages to New York Plaintiffs Awad and Van Vliet and New York Subclass members in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products New York Plaintiffs Awad and Van Vliet and New York Subclass members purchased, which allowed Defendants to profit at the expense of New York Plaintiffs Awad and Van Vliet and New York Subclass members. The injuries to New York Plaintiffs Awad and Van Vliet and New York Subclass members were to legally protected interests. The gravity of the harm of Defendants' actions is significant and there is no corresponding benefit to consumers of such conduct.

315. Defendants' conduct is ongoing and continuing, such that prospective injunctive relief is necessary pursuant to N.Y. Gen. Bus. Law §349(h), with no indication of Defendants' intent to cease this fraudulent course of conduct, posing a threat of future harm to New York Plaintiffs Awad and Van Vliet and New York Subclass members, such that prospective injunctive relief is necessary, and because inter alia, New York Plaintiffs and New York Subclass Members cannot rely on the Product labels in the future to determine whether the

Products contain benzene.

316. New York Plaintiffs Awad and Van Vliet and New York Subclass members seek actual damages and attorneys' fees and are entitled to injunctive and equitable relief for the injuries they have suffered as a result of Unilever's unfair and deceptive acts and practices, including, but not limited to, actual damages, restitution, penalties, injunctive and declaratory relief, attorneys' fees and/or costs, as well as any other just and proper relief, as provided by N.Y. Gen. Bus. Law §349 and applicable law.

TWELFTH CLAIM FOR RELIEF

NEW YORK CONSUMER PROTECTION LAW

N.Y. Gen. Bus. Law §350

Against Defendants Unilever, Aeropres, and Voyant on behalf of New York Plaintiff and the New York Subclass

317. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

318. New York Plaintiffs Awad and Van Vliet bring this claim individually and on behalf of the New York Subclass.

319. GBL § 350 prohibits “[f]alse advertising in the conduct of any business, trade, or commerce.” N.Y. Gen. Bus. Law § 350.

320. Pursuant to the statute, false advertising is defined as “advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a(1).

321. Based on the foregoing, Defendants have engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of GBL § 350.s

322. Defendants knew consumers such as the New York Plaintiffs Awad and Van Vliet and New York Subclass members are actual or potential consumers of the Unilever Dry

Shampoo Products. and New York Plaintiffs Awad and Van Vliet and the members of the New York Subclasses were purchasing the Products for personal use and therefore had a duty to ensure the Dry Shampoo Products did not contain carcinogens.

323. Defendants thus concealed and omitted material facts regarding the true nature of the Products, specifically that the Products contained dangerous levels of benzene, were adulterated, and were unsafe for use. Had New York Plaintiffs Awad and Van Vliet and members of the New York Subclasses been apprised of these facts, they would have been aware of them and would not have purchased the Products.

324. As a result of Defendants' false, misleading, and deceptive statements and representations of fact, New York Plaintiffs Awad and Van Vliet and members of the New York Subclasses have suffered and continue to suffer economic injury.

325. As a result of Defendants' violations, New York Plaintiffs Awad and Van Vliet and members of the New York Subclasses have suffered damages due to said violations because: (a) they paid a premium price in the amount of the full purchase price of the Products based on Defendants' deceptive conduct; and (b) the Dry Shampoo Products do not have the characteristics, uses, benefits, or qualities as promised.

326. On behalf of themselves and other members of the New York Subclasses, New York Plaintiffs Awad and Van Vliet seek to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

THIRTEENTH CLAIM FOR RELIEF

TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT
Tex. Bus. & Com. Code §17.41, *et seq.*
Against Defendants Unilever, Aeropres, and Voyant on behalf of Texas Plaintiff and the
Texas Subclass

327. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

328. Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members are or were residents of Texas and consumers within the meaning of the Texas Deceptive Trade Practices Act (“TDTPA”), Tex. Bus. & Com. Code §17.45(4), who purchased the Unilever Dry Shampoo Products in Texas.

329. Plaintiffs Branch, Fitzgerald, and Vail provided written notice of the specific complaint and damages to Defendants in accordance with Tex. Bus. & Com. Code §17.505 by, *inter alia*, letters containing the basis of Plaintiffs Branch, Fitzgerald, and Vail’s claims.

330. At all material times herein, Defendants engaged in “trade” or “commerce” as defined by the TDTPA, Tex. Bus. & Com. Code §17.45(4).

331. The TDTPA, Tex. Bus. & Com. Code §17.46(a), makes it unlawful to commit “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce.”

332. For the reasons discussed herein, Defendants violated and continue to violate the TDTPA by engaging in the herein described unconscionable, false, misleading, deceptive, and unfair acts or practices proscribed by the TDTPA Tex. Bus. & Com. Code §§17.41, *et seq.*, including but not limited to the following:

a. representing that the Unilever Dry Shampoo Products have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, in violation of Tex. Bus. & Com. Code §17.46(b)(5);

b. representing that goods or services are of a particular standard, quality, or grade when they are of another, Tex. Bus. & Com. Code §17.46(b)(7);

c. advertising goods or services with intent not to sell them as advertised, Tex. Bus. & Com. Code §17.46(b)(9);

d. failing to disclose information concerning its goods or services which was known at the time of the transaction and such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, Tex. Bus. & Com. Code §17.46(b)(24); and

e. manufacturing, distributing, and selling adulterated and misbranded Products in violation of Tex. Health & Safety Code § 431.001 *et seq.*

333. Defendants' acts and practices, including its material omissions, described herein, were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably in reliance on Defendants' acts and practices under the circumstances, to their detriment.

334. Defendants repeatedly advertised on the labels for the Unilever Dry Shampoo Products, on websites, and through national advertising campaigns, among other items, that the Unilever Dry Shampoo Products were and are safe and suitable for individual use. Defendants failed to disclose the material information that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

335. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers to rely and induce them to purchase the Unilever Dry Shampoo Products without being aware that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

336. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members suffered damages by purchasing the Unilever Dry Shampoo Products because they would not have purchased the Unilever Dry Shampoo Products had they known the truth, and they received

a product that was worthless, and/or worth less, because the Products contain or risked containing carcinogenic benzene.

337. Defendants' deceptive trade practices caused injury in fact and actual damages to Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members purchased, which allowed Defendants to profit at the expense of Texas Plaintiffs and Texas Subclass members. The injuries to Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members were to legally protected interests. The gravity of the harm of Defendants' actions is significant and there is no corresponding benefit to consumers of such conduct.

338. Defendants' unlawful conduct is continuing, with no indication of Defendants' intent to cease this fraudulent course of conduct, posing a threat of future harm to Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members, such that prospective injunctive relief is necessary because, inter alia, Texas Plaintiff and Texas Subclass Members cannot rely on the Product labels in the future to determine whether the Products contain benzene.

339. Texas Plaintiffs Branch, Fitzgerald, and Vail and Texas Subclass members seek relief for the injuries they have suffered as a result of Defendants' unfair and false, misleading, or deceptive acts and practices, including, but not limited to, actual damages, restitution, penalties, injunctive and declaratory relief, attorneys' fees and/or costs, as well as any other just and proper relief, as provided by Tex. Bus. & Com. Code Ann. §17.50 and applicable law.

FOURTEENTH CLAIM FOR RELIEF

ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT
ILCS Ch. 815, ACT 505, *et seq.*
Against Defendants Unilever, Aeropres, and Voyant on behalf of Illinois Plaintiff
and the Illinois Subclass

340. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

341. Illinois Plaintiff Gunn and Illinois Subclass members are or were residents of Illinois and/or purchased the Unilever Dry Shampoo Products in Illinois.

342. Defendants are each a “person” as defined by 815 ILCS 505/1.

343. Illinois Plaintiff Gunn and Illinois Subclass members are actual or potential consumers as defined by 815 ILCS 505/1(e) of the Unilever Dry Shampoo Products.

344. At all times mentioned herein, Defendants engaged in “trade” or “commerce” in Illinois as defined by 815 ILCS 505/1(f), in that they engaged in the “advertising,” “offering for sale,” “sale,” and “distribution” of any “property,” “article,” “commodity” or “thing of value” in Illinois.

345. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) provides that “[u]nfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act’... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

346. For the reasons discussed herein, Defendants violated and continues to violate ICFA by engaging in the herein described deceptive or unfair acts or practices proscribed by 815 ILCS 505/1, *et seq.* (and by violating ILCS 410 ILCS 620/ *et seq.* by manufacturing,

distributing, and selling adulterated and misbranded Products). Defendants' acts and practices, including their material omissions, described herein, were intended to, likely to, and did in fact, deceive and mislead members of the public, including consumers acting and relying reasonably under the circumstances, to their detriment.

347. Defendants repeatedly advertised on the labels for the Unilever Dry Shampoo Products, on its websites, and through national advertising campaigns, among other items, that the Unilever Dry Shampoo Products were and are safe, suitable, and fit for their intended purpose use and purpose. Defendants failed to disclose the material information that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene.

348. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers to induce them to purchase the Unilever Dry Shampoo Products without being aware that the Unilever Dry Shampoo Products contained or risked containing carcinogenic benzene. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Illinois Plaintiff Gunn and Illinois Subclass members suffered damages by purchasing the Unilever Dry Shampoo Products in reliance on Defendants' statements because they would not have purchased the Unilever Dry Shampoo Products had they known the truth, and they received a product that was worthless, and/or worth less, because the Products contain or risk containing carcinogenic benzene.

349. Defendants' deceptive trade practices caused injury in fact and actual damages to Illinois Plaintiff Gunn and Illinois Subclass members in the form of the loss or diminishment of value of the Unilever Dry Shampoo Products Illinois Plaintiff Gunn and Illinois Subclass members purchased, which allowed Defendants to profit at the expense of Illinois Plaintiff and Illinois Subclass members. The injuries to Illinois Plaintiff Gunn and Illinois Subclass members

were to legally protected interests. The gravity of the harm of Defendants' actions is significant and there is no corresponding benefit to consumers of such conduct.

350. Defendants' unlawful conduct is continuing, with no indication of Defendants' intent to cease this fraudulent course of conduct, posing a threat of future harm to Illinois Plaintiff Gunn and Illinois Subclass members, such that prospective injunctive relief is necessary because, inter alia, Illinois Plaintiff and Illinois Subclass Members cannot rely on the Product labels in the future to determine whether the Products contain benzene.

351. Illinois Plaintiff Gunn and Illinois Subclass members seek relief for the injuries they have suffered as a result of Defendants' unfair and deceptive acts and practices, including, but not limited to, actual damages, restitution, penalties, injunctive and declaratory relief, attorneys' fees and/or costs, as well as any other just and proper relief, as provided by 815 ILCS 505/10a and applicable law. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

FIFTEENTH CLAIM FOR RELIEF

FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT ("FDUTPA")

Fla. Stat. §§ 501.201, *et seq.*

Brought Against Defendants Unilever, Aeropres, and Voyant on behalf of Florida Plaintiff and the Florida Subclass

352. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

353. Florida Plaintiff Barnette and Florida Subclass members are or were residents of Florida and/or purchased Unilever Dry Shampoo Products in Florida.

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

355. Defendants engaged in unfair and deceptive practices that violated the FDUTPA as described above.

356. Defendants engaged in “trade or commerce” in Florida within the meaning of the FDUTPA by, inter alia, selling Products in Florida and to Florida residents. *See Fla. Stat. § 501.203(8)*.

357. Defendants caused to be made or disseminated through Florida and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Florida Plaintiff Barnette and the other Florida Subclass members and otherwise engaged in activities with a tendency or capacity to deceive, as alleged herein.

358. In violation of the FDUTPA, Defendants employed unfair and deceptive acts or practices, fraud, false pretense, misrepresentation, or concealment, suppression or omission of a material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of its Products containing benzene. Defendants knowingly concealed, suppressed and omitted materials facts regarding the existence of benzene in the Products and misrepresented the standard, quality, or grade of the Products, which directly caused harm to Florida Plaintiff Barnette and the Florida Subclass.

359. Defendants actively suppressed the fact that the Products contain the benzene because of materials, workmanship, design, and/or manufacturing shortfalls conducted by Defendants. Further, Defendants employed unfair and deceptive trade practices by failing to detect and prevent benzene from infiltrating the Products within a reasonable time in violation of the FDUTPA.

360. Defendants also actively suppressed and failed to disclose benzene on the Products labels and manufactured, distributed, and sold adulterated and misbranded cosmetics in violation of the Florida Food, Drug and Cosmetic Act, Fla. Stat., § 499.001 *et seq.*, as alleged herein, the violation of which constitutes a violation of FDUTPA.

361. As alleged above, Defendants have known of the existence of benzene in its Products and dangerous, cancer-causing propensities of benzene for years. Prior to the Products being sold, Defendants knew or should have known they contained benzene due to pre-production testing, quality control audits/investigations, and other pre-sale manufacturing/design assessments, including but not limited to the “strict quality control processes” that Defendants publicly touted to consumers. Defendants nevertheless failed to disclose and actively concealed the existence of benzene in the Products.

362. Defendants’ unfair and deceptive trade practices were likely intended to deceive a reasonable consumer. Florida Plaintiff Barnette and Florida Subclass members had no reasonable way to know that the Products contained benzene or were defective in workmanship, design, and/or manufacture. Defendants possessed superior knowledge as to the quality and characteristics of the Products, including the benzene within the Products, and any reasonable consumer would have relied on Defendants’ misrepresentations and omissions, as Florida Plaintiff Barnette and Florida Subclass members did.

363. Defendants intentionally and knowingly misrepresented material facts and omitted material facts regarding the Products with an intent to mislead Florida Plaintiff Barnette and the Florida Subclass members.

364. Defendants knew or should have known that their conduct violated the FDUTPA.

365. Defendants owed Florida Plaintiff Barnette and the Florida Subclass members a duty to disclose the true nature and character of the Products and the existence of benzene therein because Defendants:

- a. Possessed exclusive knowledge of the benzene;
- b. Intentionally concealed the foregoing from Florida Plaintiff Barnette and the Florida Subclass;
- c. Represented that goods had sponsorship, approval, characteristics, uses, and benefits that they do not have;
- d. Provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data, and other information to consumers regarding the performance, reliability, quality, and nature of the Products;
- e. Represented that goods or services were of a particular standard, quality, or grade, when they were of another;
- f. Engaged in unconscionable commercial practices in failing to reveal material facts and information about the Products, which did, or tended to, mislead Plaintiff Barnette and Florida Subclass members about facts that could not reasonably be known by the consumer;
- g. Failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- h. Caused Florida Plaintiff Barnette and Florida Subclass members to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through its conduct;
- i. Failed to reveal material facts to Florida Plaintiff Barnette and Florida Subclass members with the intent that they would rely upon the omission; and
- j. Made material representations and statements of fact to Florida Plaintiff Barnette and Florida Subclass members that resulted in them reasonably believing the represented or suggested state of affairs to be other than what they actually were.

366. Florida Plaintiff Barnette and Florida Subclass members have suffered an injury in fact, including the loss of money or property, as a result of Defendants' unfair, unlawful,

and/or deceptive practices. In purchasing their Products, Florida Plaintiff Barnette and Florida Subclass members relied on the misrepresentations and/or omissions of Defendants with respect to the ingredients therein. Defendants' representations were untrue because the Products contain an additional ingredient that Defendants intentionally omitted from the Products' labels: cancer-causing benzene. Had Florida Plaintiff Barnette and Florida Subclass members known this, they would not have purchased their Products and/or paid as much for them. Accordingly, Florida Plaintiff Barnette and Florida Subclass members overpaid for their Products and did not receive the benefit of their bargain.

367. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the state of Florida and nationwide.

368. Florida Plaintiff Barnette, individually and on behalf of the Florida Subclass members, request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to provide declaratory relief, attorneys' fees, and any other just and proper relief available under the FDUTPA.

SIXTEENTH CLAIM FOR RELIEF

PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

73 Pa. Cons. Stat. Ann. § 201-1, et seq.

Against Defendants Unilever, Aeropres, and Voyant on behalf of Pennsylvania Plaintiff and the Pennsylvania Subclass

369. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

370. Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members are or were residents of Pennsylvania and/or purchased Unilever Dry Shampoo Products in Pennsylvania.

371. At all times mentioned herein, Defendants engaged in “trade” or “commerce” in Pennsylvania, as defined by 73 Pa. Cons. Stat. Ann. § 201-2(3), in that they advertised, offered for sale, and/or sold or provided goods, property, or services primarily for personal, family, or household purposes, and advertised, solicited, offered for sale, and sold “services,” “property,” “article[s],” “commodit[ies],” or “thing[s] of value” in Pennsylvania.

372. Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members are persons with the meaning of 73 Pa. Const. Stat. Ann. § 201-2(2) who purchased Unilever Dry Shampoo Products “primarily for personal, family or household purposes.” 73 Pa. Const. Stat. Ann. § 201-9.2.

373. Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Cons. Stat. Ann. § 201-3, provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce . . . are hereby declared unlawful.”

374. Defendants engaged in deceptive, unfair, and unlawful trade acts or practices in the course of their business, vocation, or occupation, in violation of 73 Pa. Cons. Stat. Ann. § 201-3, as described herein, including but not limited to the following:

- (a) Caused likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of Unilever Dry Shampoo Products, in violation of 73 Pa. Cons. Stat. Ann. § 201-2(4)(ii)
- (b) Knowingly or recklessly made a false representation as to the characteristics, ingredients, uses, and benefits of Unilever Dry Shampoo Products, in violation of 73 Pa. Cons. Stat. Ann. § 201-2(4)(v);
- (c) Represented that Unilever Dry Shampoo Products are safe and healthy for use when it knew or should have known Unilever Dry Shampoo Products contain or risk containing benzene, in violation of 73 Pa. Cons. Stat. Ann. § 201-2(4)(xxi);

(d) Advertised Unilever Dry Shampoo Products with an intent not to sell it as advertised, in violation of 73 Pa. Cons. Stat. Ann. § 201-3;

(e) Failed to disclose the material information that Unilever Dry Shampoo Products contained or risked containing benzene when such failure to disclose such information was intended to induce Pennsylvania Plaintiff and the Pennsylvania Subclass to enter into transactions to purchase Unilever Dry Shampoo Products, in violation of 73 Pa. Cons. Stat. Ann. § 201-3(xxi); and/or

(f) violating 35 Pa. Stat. § 780-101 *et seq.*, by, *inter alia*, manufacturing, distributing, and selling adulterated and misbranded Unilever Dry Shampoo Products.

375. As detailed herein, Defendants' deceptive trade practices significantly impacted the public because Unilever Dry Shampoo Products is sold nationwide, including in Pennsylvania, and there are millions of actual or potential consumers of Unilever Dry Shampoo Products, including Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members.

376. Defendants' representations and concealment and/or omissions were material because they were likely to deceive reasonable consumers to induce them to purchase Unilever Dry Shampoo Products without being aware that Unilever Dry Shampoo Products contained or risked containing benzene.

377. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members suffered damages by purchasing Unilever Dry Shampoo Products because they would not have purchased Unilever Dry Shampoo Products had they known the truth, and they received a product that was worthless, and/or worth less, because it contains or risks containing benzene.

378. Defendants' deceptive trade practices caused injury in fact and actual damages to Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members in the form of the loss or diminishment of value of Unilever Dry Shampoo Products Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members purchased, which allowed Defendants to profit at the expense

of Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members. The injuries to Pennsylvania Plaintiff and Pennsylvania Subclass Members were to legally protected interests. The gravity of the harm of Defendants' actions is significant and there is no corresponding benefit to consumers of such conduct.

379. Defendants' unlawful conduct is continuing, with no indication of Defendants' intent to cease this fraudulent course of conduct, posing a threat of future harm to Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members, such that prospective injunctive relief is necessary because, inter alia, Pennsylvania Plaintiff and Pennsylvania Subclass Members cannot rely on the Product labels in the future to determine whether the Products contain benzene.

380. Pennsylvania Plaintiff Rullo and Pennsylvania Subclass Members seek relief for the injuries they have suffered as a result of Defendants' unfair and deceptive acts and practices, including, but not limited to, actual damages, restitution, penalties, injunctive and declaratory relief, attorneys' fees and/or costs, as well as any other just and proper relief, as provided by 73 Pa. Cons. Stat. Ann. § 201-9.2 and applicable law.

SEVENTEENTH CLAIM FOR RELIEF

NEW JERSEY CONSUMER FRAUD ACT

Against Defendant Unilever on behalf on Plaintiffs and the Classes

381. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

382. The New Jersey Consumer Fraud Act, N.J. Stat. §§ 56:8-1 ("NJCFA") prohibits any "act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise." *See* N.J. Stat. § 56:8-2.

383. At all relevant times, Plaintiffs, members of the Classes, and Unilever were “persons” within the meaning of the NJCFA, *see* N.J. Stat. § 56:8-1(d), and Plaintiffs and the members of the Classes were and are members of the public that the NFCFA is designed to safeguard.

384. Unilever willfully and purposefully engaged in deceptive and unfair acts and practices, misrepresentation, and the concealment, suppression, and omission of material facts they intended others to rely upon in connection with the sale of the merchandise as defined by N.J. Stat. § 56:8-1(c) in violation of N.J. Stat. § 56:8-2 as described in the allegations above.

385. Unilever’s misrepresentations, concealment, and omissions in the sale of the Unilever Dry Shampoo Products detailed above were acts or practices in the conduct of trade or commerce.

386. Unilever’s misrepresentations, concealment, and omissions in the sale of the Products detailed above impact the public interest.

387. Unilever’s misrepresentations, concealment, and omissions in the sale of the Unilever Dry Shampoo Products detailed above were unfair because they inequitably enriched Unilever at the expense of Plaintiffs and members of the Classes.

388. Unilever’s misrepresentations, concealment, and omissions in the sale of the Unilever Dry Shampoo Products detailed above were unfair because they offended public policy, and were so oppressive that Plaintiffs and members of the Classes had little alternative but to submit, which caused consumers substantial injury.

389. Unilever’s misrepresentations and omissions in the sale of the Products were unfair in that they violated the well-established public policies of protecting consumers from

avoidable dangers and that the manufacturer of products is responsible for ensuring that they are fit for human use.

390. Plaintiffs and members of the Classes have suffered ascertainable loss as a direct and proximate result of Unilever's conduct because (i) Plaintiffs and members of the Classes did not receive Dry Shampoo Products that were properly manufactured, free from defects, and safe for intended use, and were therefore worthless and/or worth less than what Plaintiffs and members of the Classes' bargained for, (ii) as a result of the benzene contamination, Plaintiffs' and members of the Classes' Dry Shampoo Products were adulterated, misbranded, illegal to sell, and therefore worthless, and (iii) Plaintiffs and members of the Classes were advised by Unilever pursuant to Unilever's recall to cease using (and thus discard) the contaminated Products, which rendered the Products unusable and worthless.

391. As a direct and proximate result of the foregoing acts and practices, Unilever has received, or will receive, income, profits, and other benefits which it would not have received if it had not engaged in the violations described herein.

392. As a result, Plaintiffs and members of the Classes seek relief including, *inter alia*, refund of amounts recovered by Unilever for the Dry Shampoo Products, injunctive relief, damages, treble damages, attorney's fees, and costs pursuant to N.J. Stat. §§ 56:8-2.11 and 56:8-19.

EIGHTEENTH CLAIM FOR RELIEF

STRICT LIABILITY

Against Defendant Unilever on behalf of Plaintiffs and the Classes, or Alternatively, the Subclasses

393. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

394. Unilever designed, manufactured, distributed, and/or sold the Dry Shampoo Products in question within the ordinary course of its business.

395. Plaintiff purchased the Dry Shampoo Products.

396. The Dry Shampoo Products contain cancer-causing benzene which renders them unsafe for consumer use and likely to cause grave bodily harm including cancer and are therefore unsafe and worth less than if they did not contain benzene.

397. Unilever knew or should have known of the dangerous and defective nature of the Dry Shampoo Products at the time of their design, manufacture, sale, testing, transportation, distribution, supply, and use.

398. Notwithstanding, Unilever failed to take safety precautions to prevent harm to Plaintiffs and the Classes and failed to warn and/or instruct Plaintiffs and the members of the Classes of the defective and unreasonably dangerous nature of the Dry Shampoo Products.

399. Unilever's defective and unreasonably dangerous Dry Shampoo Products directly and proximately caused harm to Plaintiff and the Class.

400. Plaintiffs and the members of the Classes used the Dry Shampoo Products in a manner of use reasonably anticipated by Unilever.

401. As a result of the Dry Shampoo Products containing cancer-causing benzene, they are unreasonably dangerous and defective when put to the use anticipated by Unilever.

402. As a direct and proximate result of the dangerous and defective condition of Unilever's Dry Shampoo Products and failure to warn of the dangers thereof, Plaintiffs and the Classes have suffered harm.

403. At the time of Unilever's design, manufacture, processing, distribution, marketing, selling, supplying and/or use of the Products at issue, Unilever knew of, should have

known of, or recklessly disregarded, the dangerous condition of the Dry Shampoo Products and sold them with deliberate and/or intentional disregard for not making any warning, instruction, or other precaution to prevent injuries or damages and thereby showed complete indifference to and/or conscious disregard for the rights and/or safety of others.

404. Unilever specifically placed profits ahead of the health, rights, and safety of others by intentionally selling (or selling with reckless disregard) the Dry Shampoo Products even though they contain cancer-causing benzene and by concealing material facts about the Dry Shampoo Products.

405. Unilever's conduct was willful, wanton, and/or in reckless disregard for the safety and rights of Plaintiff and the Classes.

406. Plaintiffs and the Classes are entitled to damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for relief and judgment against Defendants as follows:

A. An order certifying this action as a class action, certifying the Class and Subclasses requested herein, designating Plaintiffs as the representatives of the Class and Subclasses, appointing Plaintiffs' counsel permanent lead counsel to the Class and Subclasses (and counsel to the Executive Committee), and requiring Defendants to bear the costs of a class action;

B. A judgment against Defendants on all counts alleged herein;

C. Awarding Plaintiffs and the Class and Subclasses economic, compensatory, actual, statutory, consequential damages, in an amount to be determined at trial;

D. Awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs and the Class and Subclasses as the result of its unlawful, unfair, fraudulent business practices described herein;

E. Injunctive and/or declaratory relief, as permitted and as the Court deems just and proper;

F. Awarding damages and/or costs for medical monitoring;

G. Awarding Plaintiffs and the Class and Subclass reasonable attorneys' fees and costs as allowed by law;

H. Awarding pre-judgment and post-judgment interest, as permitted by law;

I. Awarding punitive damages, as allowed by law; and

J. Granting such other and further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

DATED: January 29, 2024

/s/ Steven L. Bloch

SILVER GOLUB & TEITELL LLP

Steven L. Bloch ct31246

Ian W. Sloss ct31244

One Landmark Sq., 15th Fl.

Stamford, CT 06901

Tel: (203) 325-4491

Fax: (203) 325-3769

sbloch@sgtlaw.com

isloss@sgtlaw.com

*Interim Lead Counsel for Plaintiffs and the
Proposed Classes*

SAUDER SCHELKOPF

Joseph G. Sauder*

1109 Lancaster Avenue

Berwyn, PA 19312

Telephone: (888) 711-9975

Facsimile: (610) 421-1326

jgs@sstrialawyers.com

SQUITIERI & FEARON, LLP

Stephen J. Fearon, Jr.*

305 Broadway, 7th Floor

New York, New York 10007

P: (212) 421-6492

F: (212) 421-6553

stephen@sfclasslaw.com

**Admitted pro hac vice*

*Executive Committee for the Proposed
Classes*