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11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**  
 13 **LOS ANGELES DIVISION**

14 DIANE HOWARD, CHATHAM  
 15 MULLINS, WILLIAM EISMAN,  
 16 CHRISTIAN M. RAINEY, and TRACEY  
 17 CUOMO, on behalf of themselves, and all  
 18 others similarly situated, and the public,

19 Plaintiffs,

20 v.

21 ALCHEMEE, LLC, TARO  
 22 PHARMACEUTICAL USA, INC., and  
 23 DOES 1 to 50, Inclusive,

24 Defendants.

Civil Action No.

**CLASS ACTION COMPLAINT**

**CONSUMER FRAUD, BREACH OF  
EXPRESS & IMPLIED  
WARRANTIES, AND UNJUST  
ENRICHMENT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs, DIANE HOWARD, CHATHAM MULLINS, WILLIAM EISMAN,  
2 CHRISTIAN M. RAINEY, and TRACEY CUOMO on behalf of themselves, the  
3 proposed Class and Subclasses (defined *infra*), and the public, bring this Class Action  
4 Complaint (“Class Action”) against Defendants, alleging the following upon Plaintiffs’  
5 personal knowledge, or where Plaintiffs lacks personal knowledge, upon information  
6 and belief, including the investigation of counsel.

7 **I. INTRODUCTION**

8 1. This is a consumer fraud Class Action to redress the economic harms  
9 caused by Defendants’ sale of benzoyl peroxide acne treatment drug products (“BPO  
10 Products”) without warning consumers the BPO Products contain unsafe levels of the  
11 potent human carcinogen benzene, and that the BPO Products were at risk of degrading  
12 further into benzene under normal use, handling, and storage conditions.

13 2. The BPO Products are “drugs” used to treat acne vulgaris (“acne”) and are  
14 formulated with a chemical called benzoyl peroxide (“BPO”), along with other inactive  
15 ingredients, to make acne treatment creams, washes, scrubs, and bars. Before being  
16 sold to the public, the BPO Products must be made in conformity with current good  
17 manufacturing practices and must conform to quality, safety, and purity specifications.  
18 Defendants’ Products did not.

19 3. BPO Products should not contain benzene, nor degrade into benzene,  
20 except under extraordinary circumstances.<sup>1</sup> A drug is “adulterated” if it consists in  
21 whole or in part of any filthy, putrid, or decomposed substance, is impure, or mixed  
22 with another substance.<sup>2</sup> Under the FDA Act, it is a crime to introduce or deliver “into  
23 interstate commerce any food, drug, device, tobacco product, or cosmetic that is  
24 adulterated or misbranded.”<sup>3</sup> If benzene is found in any on-market or post-market  
25 Products, the drug is considered unlawful and adulterated and the drug manufacturer

26 \_\_\_\_\_  
27 <sup>1</sup> Food and Drug Administration, *Q3C – Tables and List Guidance for Industry* (2017),  
<https://www.fda.gov/media/71737/download>.

28 <sup>2</sup> 21 U.S.C. § 351(a)(2011); *see also* § 351(b)-(d) (noting that a lack of purity or mixture with another substance also renders drug adulterated).

<sup>3</sup> 21 U.S.C. § 331(a)(2010).

1 must contact the FDA to initiate a voluntary recall.<sup>4</sup>

2 4. Throughout this Complaint, references to federal law and FDA regulation  
3 are merely to provide context and are not intended to raise a federal question of law.  
4 All claims alleged herein arise out of violations of state law, which in no way conflict,  
5 interfere with, or impose obligations that are materially different than those imposed by  
6 federal law.

7 5. The BPO Products marketed and sold by the Defendants decomposed into  
8 benzene rendering them materially different than advertised, *i.e.*, by containing unsafe  
9 levels of benzene. Benzene is a known human carcinogen. Studies dating to the 1800s  
10 have led to a consensus within the medical and scientific communities that benzene  
11 exposure, even in low amounts, increases the risk of blood cancers and other adverse  
12 effects.

13 6. In 2023, Valisure, LLC,<sup>5</sup> an independent, accredited laboratory that has  
14 developed analytical methods to test drugs and consumer products for public safety,  
15 tested a representative sample of BPO and non-BPO products and found the BPO  
16 Products had dangerous levels of benzene, many multiple times higher than allowed in  
17 any regulated drug.<sup>6</sup> Using industry standard gas chromatography and detection by  
18 mass spectrometry (“GC-MS”) instrumentation, with selected ion flow tube mass  
19 spectrometry (“SIFT-MS”) for detection of benzene released into the air around certain  
20

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21 <sup>4</sup> Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in*  
22 *Certain Drugs*, <https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-drug-manufacturers-risk-benzene-contamination-certain-drugs> (last visited Feb. 9, 2024).

23 <sup>5</sup> Valisure is an independent third-party analytical laboratory that is accredited to International Organization for  
24 Standardization (“ISO/IEC”) 17025:2017 standards for chemical testing (PJLA Accreditation Number 94238). In  
25 response to rising concerns about drug shortages, generics, and overseas manufacturing, Valisure developed and validated  
26 methods to test medications and consumer products distributed in the United States. Valisure has tested a variety of drug  
27 and consumer healthcare products for benzene including sunscreens, antiperspirants, body sprays, hand sanitizers, and dry  
28 shampoos for benzene. Valisure’s testing results submitted to the FDA in its Citizen’s Petitions, were widely publicized in  
the media leading to numerous recalls of contaminated consumer products. *See* Valisure Citizen’s Petition on Benzoyl  
Peroxide (March 5, 2024), pp. 6-7, *see also* Valisure Detects Benzene in Sunscreen, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>; Bruce Y. Lee, Forbes, *FDA: P&G Recalls Antiperspirant Sprays Due To Cancer Risk Of Benzene* (Nov. 24, 2021), <https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32>; *see also* Sandee LaMotte, CNN, *Antiperspirant recall: What the finding of a cancer-causing chemical means for you* (Dec. 1, 2021), <https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html>.

<sup>6</sup> Valisure FDA Citizen’s Petition on Benzoyl Peroxide (March 6, 2024).

1 BPO Products, the Products were incubated to temperatures common during consumer  
 2 use, handling, and storage and then sampled for benzene.<sup>7</sup> Levels as high as 1600 parts  
 3 per million (ppm) were found in common BPO Products.<sup>8</sup> Unexpectedly, researchers  
 4 found that benzene was released into the surrounding air even when the BPO Products’  
 5 packaging was closed raising concern for even more inhalation exposures—a  
 6 particularly pernicious form of exposure to benzene.<sup>9</sup> For the non-BPO products tested,  
 7 benzene was not present, or at trace levels below 2 ppm.<sup>10</sup> Valisure filed a FDA  
 8 Citizen’s Petition on March 5, 2024 demanding an immediate BPO Product recall.<sup>11</sup>  
 9 The Petition is pending.<sup>12</sup>

10 7. The high levels of benzene found led Valisure to conduct a stability study  
 11 on a diverse market sweep of BPO Products and formulations. Valisure’s results show  
 12 that on-market BPO Products can form over 800 times the conditionally restricted FDA  
 13 concentration limit of 2 ppm for benzene, and the evidence suggests this problem  
 14 applies broadly to BPO Products currently on the market.<sup>13</sup> Incubation of a Proactiv®  
 15 product at the temperature of a hot car (70°C), a temperature the Products are expected  
 16 to be exposed to through normal consumer and distributor handling, resulted in the  
 17 detection of benzene in a compact car’s volume of air at ~1,270 times the  
 18 Environmental Protection Agency’s (“EPA”) calculated threshold for increased cancer  
 19 risk by long-term inhalation exposure to benzene.<sup>14</sup> Many of the other popular BPO  
 20 Products had benzene levels many times higher than the 2 ppm benzene threshold  
 21 leading Valisure to conclude that on-market BPO Products appear to be fundamentally  
 22

---

23 <sup>7</sup> *Id.*

24 <sup>8</sup> *Id.* at 17.

25 <sup>9</sup> *Id.* at 23.

26 <sup>10</sup> *Id.* at 15 (“76 non-BPO products had no detectable benzene or values below 0.1ppm. 6 non-BPO products  
 27 contained traces of benzene below 2 ppm, which could be due to various inactive ingredients used in consumer products  
 28 that have been theorized to contain trace benzene”).

<sup>11</sup> Valisure BPO Citizen’s Petition (March 5, 2024).

<sup>12</sup> Valisure’s Petition was still pending as of this Class Action’s filing.

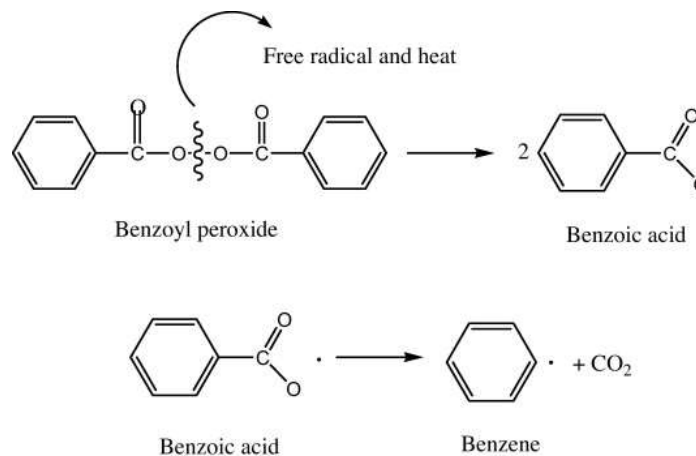
<sup>13</sup> Valisure, LLC, (March 6, 2024), *Valisure Discovers Benzoyl Acne Treatment Products are Unstable and Form Benzene*, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March 6, 2024).

<sup>14</sup> *Id.*

1 unstable and form unacceptably high levels of benzene.<sup>15</sup>

2 8. Although the BPO Products have been found to have high levels of  
3 benzene, Defendants never listed benzene among the ingredients or anywhere on the  
4 Products' labels, containers, advertising, or on its websites. Defendants never warned  
5 anyone the Products had benzene or were at risk of benzene contamination.

6 9. Defendants knew or should have known the BPO Products contain and/or  
7 degraded into benzene when exposed to expected consumer use, handling, and storage  
8 conditions. BPO is known, within the scientific community (but not among consumers)  
9 to degrade into benzene according to the mechanism below:<sup>16</sup>



18 10. Defendants misled Plaintiffs, the Class, the Subclasses, and the public by  
19 representing the BPO Products only had the ingredients listed, and not benzene.  
20 Defendants misled Plaintiffs, the Class, the Subclasses, and the public by representing  
21 the BPO Products were safe while concealing material health and safety information  
22 known to them, *e.g.*, the BPO Products degraded to benzene, or were contaminated  
23 with benzene. Defendants misled Plaintiffs, the Class, the Subclasses, and the public  
24 by giving the BPO Products long expiration dates of 2-3 years, affirming to consumers  
25

26 <sup>15</sup> *Id.*

27 <sup>16</sup> The disposition of benzoyl peroxide to form benzene. Benzoyl peroxide is known to thermally decompose to  
28 form two molecules of benzoyloxy radicals that can further decompose to benzoic acid or phenyl radicals with liberation of  
carbon dioxide. The phenyl radicals can then produce benzene. See Shang-Hao Liu, et al, *Thermal hazard evaluation of  
the autocatalytic reaction of benzoyl peroxide using DSC and TAM III*, THERMOCHIMICA ACTA, Volume 605, Pages  
68-76, (2015), ISSN 0040-603, <https://www.sciencedirect.com/science/article/pii/S004060311500057X>.

1 the BPO Products were safe for use for years when Defendant knew or should have  
2 known the BPO Products degraded much sooner to benzene.

3 11. Defendants' statements and omissions of material health and safety  
4 information unreasonably placed Plaintiffs, the Class, the Subclasses, and the public at  
5 risk of exposure to benzene without their knowledge and consent. Defendants'  
6 statements about the Products were false, misleading, unsubstantiated, and blatantly  
7 deceptive.

8 12. As a result of Defendants' misconduct and consumer deception, the  
9 Plaintiffs, the Class, the Subclasses, and the public have been economically harmed, as  
10 they purchased a product that they otherwise would have never purchased. They were  
11 also physically harmed by being exposed to a known human carcinogen.

12 13. This Class Action is necessary to redress the harms caused to Plaintiffs, the  
13 Class, and Subclass members who bought the Products believing them to be safe and  
14 only containing the ingredients on the Products' labels, containers, in advertising, and  
15 on Defendants' websites. This Class Action is further necessary to expose Defendants'  
16 ongoing consumer fraud and to enjoin Defendants from continuing their misconduct  
17 and deception to protect the public.

18 14. Plaintiffs bring this Class Action on behalf of themselves, and on behalf of  
19 those similarly situated, and seek to represent a National Class of consumers who  
20 bought the Products and State Subclasses of consumers from Connecticut, Hawaii,  
21 Illinois, Maryland, Missouri, Massachusetts, Nevada, New York, Ohio, Pennsylvania,  
22 Rhode Island, and Washington (defined *infra*). Plaintiffs seek damages, reasonable  
23 attorneys' fees and costs, interest, restitution, other equitable relief, including an  
24 injunction and disgorgement of all benefits and profits Defendants received from  
25 misconduct.

## 26 **II. THE PARTIES**

27 15. Plaintiff Diane Howard is an Illinois resident, located in Sangamon County,  
28 who bought BPO Products including, but not limited to, Proactiv+ Skin Smoothing



1 Exfoliator, Proactiv Cleanse-Renewing Cleanser, Proactiv Emergency Blemish Relief,  
2 and Proactiv Repairing Treatment from October 2018 to August 2023. Plaintiff has  
3 suffered economic damages and a result of Defendants' violations of the consumer  
4 protection laws alleged herein. Plaintiff would never have purchased Defendants' BPO  
5 Products had Defendants warned about the presence of benzene or that it could degrade  
6 into benzene.

7       16. Plaintiff Chatham Mullins is a Massachusetts resident, located in Suffolk  
8 County, who bought BPO Products including, but not limited to, Proactiv+ Skin  
9 Smoothing Exfoliator, Proactiv Solution® Renewing Cleanser, Proactiv+ Pore  
10 Targeting Treatment, Clearasil Stubborn Acne Control 5 in 1 Spot Treatment Cream,  
11 Equate Beauty 10% Benzoyl Peroxide Acne Treatment Gel, and Walgreens' Daily  
12 Creamy Benzoyl Peroxide Acne Face Wash from 2005 to 2023. Plaintiff has suffered  
13 economic damages and a result of Defendants' violations of the state consumer  
14 protection laws alleged herein. Plaintiff would never have purchased Defendants' BPO  
15 Products had Defendants warned about the presence of benzene or that it could degrade  
16 into benzene.

17       17. Plaintiff William Eisman is a Missouri resident, located in Warren County,  
18 who bought BPO Products including, but not limited to, Proactiv+ Skin Smoothing  
19 Exfoliator, Proactiv Solution® Renewing Cleanser, Proactiv+ Pore Targeting  
20 Treatment, and Proactiv Emergency Blemish Relief from 2013 to 2024. Plaintiff has  
21 suffered economic damages and a result of Defendants' violations of the consumer  
22 protection laws alleged herein. Plaintiff would never have purchased Defendants' BPO  
23 Products had Defendants warned about the presence of benzene or that it could degrade  
24 into benzene.

25       18. Plaintiff Christian M. Rainey is a Washington resident, located in Pierce  
26 County, who bought BPO Products including, but not limited to, Proactiv Emergency  
27 Blemish Relief, Proactiv+ Pore Targeting Treatment, Proactiv+ Skin Smoothing  
28 Exfoliator, and Proactiv Solution Renewing Cleanser from 2008 to February 2024.

1 Plaintiff has suffered economic damages and a result of Defendants’ violations of the  
2 consumer protection laws alleged herein. Plaintiff would never have purchased  
3 Defendants’ BPO Products had Defendants warned about the presence of benzene or  
4 that it could degrade into benzene.

5 19. Plaintiff Tracey Cuomo is a Connecticut resident, located in Middlesex  
6 County, who bought BPO Products including Proactiv Solution Renewing Cleanser and  
7 Proactiv Emergency Blemish Relief from March 2022 to July 2023. Plaintiff has  
8 suffered economic damages and a result of Defendants’ violations of the consumer  
9 protection laws alleged herein. Plaintiff would never have purchased Defendants’ BPO  
10 Products had Defendants warned about the presence of benzene or that it could degrade  
11 into benzene.

12 20. Defendants Alchemee LLC (“Alchemee”) is a citizen of California with its  
13 principal place of business at 120 Broadway, Suite 500, Santa Monica, California  
14 90401. Defendants Taro Pharmaceuticals U.S.A., Inc. is the parent company of  
15 Alchemee. Taro and Alchemee sell and distribute BPO Products under the brand name  
16 Proactiv. The Proactiv Products include, *inter alia*: (1) Proactiv+ Skin Smoothing  
17 Exfoliator, (2) Proactiv Solution® Repairing Treatment, (3) Proactiv Solution®  
18 Renewing Cleanser, (4) Proactiv+ Pore Targeting Treatment, and (5) Proactiv  
19 Emergency Blemish Relief. At all relevant times, Alchemee conducted business and  
20 derived substantial revenue from its manufacturing, advertising, marketing,  
21 distributing, and selling of the Products within the State of California and in this  
22 District.

23 21. Defendants Taro Pharmaceuticals U.S.A., Inc. (“Taro”) is a citizen of New  
24 York with its principal place of business in Hawthorne, New York. Taro is the parent  
25 company of Alchemee. Taro and Alchemee sell and distribute BPO Products under the  
26 brand name Proactive. At all relevant times, Taro conducted business and derived  
27 substantial revenue from its manufacturing, advertising, marketing, distributing, and  
28 selling of the Products within the State of California and in this District.

1 22. The term “Defendants” and/or “Defendants” refers to the Alchemee and/or  
2 Taro pending further discovery into the roles and responsibilities of each and or  
3 collectively regarding the BPO Products.

4 23. Defendants and their agents promoted, marketed, and sold the Products in  
5 California and in this District. The unfair, unlawful, deceptive, and misleading  
6 advertising and labeling of the Products were prepared and/or approved by Defendants  
7 and their agents and were disseminated by Defendants and their agents through labeling  
8 and advertising containing the misrepresentations alleged and disseminated uniformly  
9 through advertising, packaging, containers, and via websites and social media.

### 10 **III. JURISDICTION AND VENUE**

11 24. This Court has jurisdiction over this matter because the amount in  
12 controversy exceeds \$5 million satisfying 28 U.S.C. § 1332(d)(2) for subject matter  
13 jurisdiction. This Court has supplemental jurisdiction over any state law claims under  
14 28 U.S.C. § 1367.

15 25. Venue is proper in the District under 28 U.S.C. § 1391(b) because a  
16 substantial part of the events or omissions giving rise to the claims occurred in this  
17 District and Defendants Alchemee resides in this District.

18 26. This Court has personal jurisdiction over the Defendants Alchemee and  
19 Taro because Defendants Alchemee is a resident of California, and further both  
20 Defendants Alchemee and Taro transact business in California, including in this  
21 District, have substantial aggregate contacts with the State of California, including in  
22 this District, engaged in misconduct that has and had a direct, substantial, reasonably  
23 foreseeable, and intended effect of injuring people in this District, and purposely  
24 availed themselves of the benefits of doing business in the State of California, and in  
25 this District.

26 27. To the extent applicable, the Court also has pendant personal jurisdiction  
27 over claims alleged against Defendants that involve the same common nucleus of facts  
28 and actions that give rise to Plaintiff’s claims that otherwise have proper personal

1 jurisdiction within this Court.

2 **IV. GENERAL ALLEGATIONS**

3 28. Fifty million Americans suffer from acne annually.<sup>17</sup> Acne is the most  
4 common skin condition in the United States with a prevalence among adolescents of  
5 almost 95 percent.<sup>18</sup> Acne can begin as early as age seven and, for some, can persist  
6 through adulthood and into ages 50s and 60s.<sup>19</sup> Millions of acne sufferers seek  
7 treatment every year making it a billion-dollar industry and a key business segment for  
8 Defendants, who are among America's most prominent companies.

9 29. Some of Defendants most profitable acne treatment products contain BPO.  
10 To make the finished BPO Products, BPO, a dry white powder, is mixed with other  
11 ingredients to create topical drug creams, cleansers, scrubs, and washes for use on the  
12 face and body. BPO is formulated into these Products at concentrations up to 10%.  
13 Defendants' BPO Products include: Proactiv+ Skin Smoothing Exfoliator, Proactiv  
14 Solution® Repairing Treatment, Proactiv Solution® Renewing Cleanser, Proactiv+  
15 Pore Targeting Treatment, and Proactiv Emergency Blemish Relief.

16 **A. DEFENDANTS ARE INDUSTRY LEADERS WHO AFFIRMED**  
17 **THEIR COMMITMENT TO SCIENCE AND SAFETY**

18 30. Defendants' Products are widely marketed, available, sold, and used by  
19 children, teenagers, and adults throughout the United States and the world. The acne  
20 treatment industry is a highly competitive billion-dollar market. To remain relevant and  
21 top of mind, Defendants spend millions of dollars every year promoting the Products  
22 directly to consumers, including teenagers on social media and through music sites like  
23 Tik Tok and Snap Chat, which skew young. Defendants make promises to consumers  
24 to influence their purchasing decisions such as affirming the Products are tested,  
25 backed by science, and approved by dermatologists. Defendants told consumers they  
26 should buy their Products because Defendants are market leaders and acne experts who

27 \_\_\_\_\_  
<sup>17</sup> American Association of Dermatology, <https://www.aad.org/media> (visited October 24, 2023).

28 <sup>18</sup> JL Burton et al., *The prevalence of acne vulgaris in adolescence*, BR J DERMATOL,(1971);85(2):119–126.

<sup>19</sup> *Id.*

1 care about consumers, the environment, and only sell safe and tested Products.

2 31. Proactiv is a registered trademark of Taro and is distributed in the U.S.  
3 through Taro’s subsidiary, Alchemee, based in Santa Monica, California. Taro  
4 marketed itself to Plaintiffs, the Class, and Subclasses, as a research-based international  
5 pharmaceutical company whose success and growth were founded upon its  
6 commitment to research and development. Taro was started in the 1950s and entered  
7 the U.S. market in the 1980s. Taro makes hundreds of prescriptions, over the counter,  
8 and generic topical dermatological products used by millions of Americans every year,  
9 including well known products such as hydrocortisone and antibiotic creams.<sup>20</sup> Taro  
10 employs hundreds of scientists globally with 16% of its employees working in research  
11 and development.<sup>21</sup>

12 32. Defendants’ Proactiv brand has been wildly popular among teenagers due  
13 to Defendants’ use of celebrity influencers and direct marketing to teenagers on social  
14 media sites including TikTok and its predecessor site Musical.ly.

15 **B. DEFENDANTS DID NOT COMPLY WITH FDA’S TESTING**  
16 **REQUIREMENTS BEFORE SELLING THE BPO PRODUCTS TO**  
17 **THE PUBLIC**

18 33. Despite Defendants’ position as a market leader and social media  
19 influencer popular among teenagers, Defendants did not adequately test their Products  
20 before selling them to Plaintiffs, the Class, the Subclasses, and the public. Defendants’  
21 Products are “drugs” regulated by the FDA. As with any regulated drug, Defendants  
22 must follow current good manufacturing practices (“CGMPs”), have scientifically  
23 sound specifications, and must have test procedures and processes to ensure the drug’s  
24 components (active and inactive ingredients), and finished products are safe. Both raw  
25 ingredient materials and finished batches must be tested before released to the public to  
26 confirm they meet specifications for identity, strength, quality, and purity.<sup>22</sup> If testing

27 \_\_\_\_\_  
28 <sup>20</sup> Taro Pharmaceuticals Industries, Ltd., USA, <https://www.taro.com/usa> (last visited October 24, 2023).

<sup>21</sup> Taro Pharmaceuticals Industries, Ltd., USA (March 31, 2023) *Form 20-F*, <http://www.sec.gov/edgar.shtm>.

<sup>22</sup> 21 C.F.R. § 211.84 (1978); *see also* 21 C.F.R. § 211.160 (1978).

1 results of the raw materials or finished product do not conform with the specifications,  
 2 the product cannot be sold to the public. Defendants must also re-test any Products  
 3 subject to deterioration.<sup>23</sup> Any Products not made in conformity with the CMGPs is  
 4 considered “adulterated” under 501(a)(2)(B) of the Food, Drug, and Cosmetic Act.<sup>24</sup>

5 34. Defendants must also do stability testing to understand the “shelf life” of  
 6 the Products and to assign an expiration date. It is well known that certain chemical  
 7 ingredients can degrade or change because of environmental, and storage conditions  
 8 such as light, moisture, temperature, and humidity, or because of the passage of time.  
 9 The stability testing should cover all expected distributor and consumer storage,  
 10 handling, and use conditions and must be done using “reliable, meaningful, and specific  
 11 test methods.”<sup>25</sup> If stability testing finds a drug product is not stable under expected  
 12 storage or use conditions, degrades, or create toxic byproducts, the product cannot be  
 13 sold to the public.

14 35. The CGMPs and stability test requirements are there to ensure drug  
 15 products are safe for public use. These are the minimum requirements. Because the  
 16 drug manufacturers are self-regulated, the FDA must rely on drug manufacturers, the  
 17 public, and concerned citizens to report unsafe drugs. The FDA cannot force a drug  
 18 manufacturer to recall a contaminated drug.<sup>26</sup>

19 **C. DEFENDANTS KNEW OR SHOULD HAVE KNOWN THE BPO**  
 20 **PRODUCTS DEGRADED TO BENZENE UNDER NORMAL USE**  
 21 **AND HANDLING**

22 36. Defendants knew or should have known the Products degrade to benzene  
 23

24 <sup>23</sup> 21 C.F.R. § 211.160(b)(1)(1978).

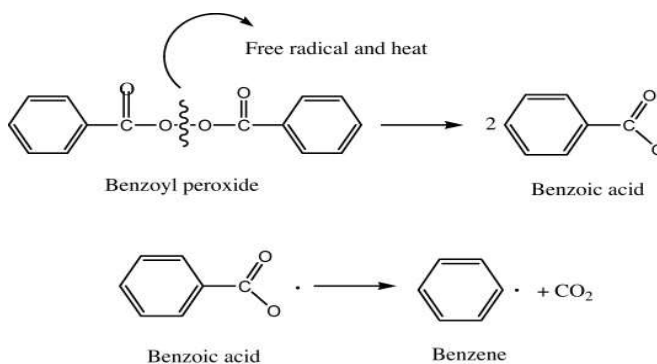
25 <sup>24</sup> 21 C.F.R. § 225.1 (1976). Under 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act a drug is  
 26 considered “adulterated” (poorer in quality by adding another substance) if the methods used in, or the facilities or controls  
 used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in  
 conformity with CGMP; *see also* Food and Drug Administration, *Facts About the Current Good Manufacturing Practices*  
 (CGMP); <https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmp>  
 (last visited Feb. 11, 2024).

27 <sup>25</sup> 21 CFR 211.166.

28 <sup>26</sup> Food and Drug Administration, *Facts About the Current Good Manufacturing Practices (CGMP)*;  
<https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmp> (last  
 visited Feb. 11, 2024).

1 when exposed to heat. Defendants knew that, because of the chemical nature of the  
 2 active and inactive ingredients, including BPO, the BPO Products were not stable and  
 3 would degrade when exposed to heat from normal distributor and consumer use,  
 4 handling, and storage conditions.

5 37. It is well known that BPO degrades to benzene when exposed to heat over  
 6 time. This process was first reported in the scientific literature as early as 1936.<sup>27</sup> BPO  
 7 degrades into benzene according to the mechanism below.<sup>28</sup>



15 38. The degradation of BPO to benzene was known or should have been  
 16 known to the Defendants, who promote themselves as dedicated to science and  
 17 research. Defendants market themselves as world class acne drug researchers,  
 18 developers, and sellers. Defendants employed high-level scientists, chemists, and  
 19 researchers to formulate their drug products for public use. Defendants with these  
 20 resources and expertise were aware of the well-known chemical processes that degrade  
 21 their BPO Products into benzene when exposed to common use temperatures and  
 22 conditions.

23 39. Defendants further knew or should have known that specific ingredients  
 24

25

26 <sup>27</sup> H. Erlenmeyer and W. Schoenauer, *Über die thermische Zersetzung von Di-acyl-peroxyden*, HELV. CHIM. ACTA, 19, 338 (1936), <https://onlinelibrary.wiley.com/doi/10.1002/hlca.19360190153> (last visited Feb. 5, 2024).

27 <sup>28</sup> Benzoyl peroxide is known to thermally decompose to form two molecules of benzoyloxy radicals that can further decompose to benzoic acid or phenyl radicals with liberation of carbon dioxide. The phenyl radicals can then produce benzene. See Shang-Hao Liu et al., *Thermal hazard evaluation of the autocatalytic reaction of benzoyl peroxide using DSC and TAM III*, THERMOCHIMICA ACTA, Volume 605, (2015), Pages 68-76, ISSN 0040-6031, <https://www.sciencedirect.com/science/article/pii/S004060311500057X> (last visited Feb. 5, 2024).

1 derived from hydrocarbons increased the risk the BPO Products would yield benzene.<sup>29</sup>  
2 At-risk ingredients include carbomers, mineral spirits, and other petroleum derived  
3 substances. These ingredients are red flags for risk of benzene contamination. The FDA  
4 published guidance in 2022 urging the industry to reformulate drug products at risk of  
5 benzene contamination.<sup>30</sup> The FDA’s alert highlighted ingredients made from  
6 hydrocarbons, including carbomers (thickening agents), urging drug manufacturers to  
7 test products containing them for benzene contamination.<sup>31</sup> Many of the Defendants’  
8 Products contain hydrocarbons and carbomers but none have been recalled due to  
9 benzene contamination.

10 40. Defendants knew or should have known through their own research,  
11 development, formulation, manufacturing, and testing whether the BPO Products were  
12 chemically and physically stable. Defendants were required not only to adequately test  
13 the BPO Products for safety and stability before selling them to the public, but also to  
14 monitor their internal practices, processes, and specifications to make sure they kept  
15 pace with science and emerging methodologies. Defendants knew or should have  
16 known from expiration and stability studies examining the “shelf life” of the BPO  
17 Products, the chemical changes took place because of normal and expected  
18 environmental, use, and storage conditions.

19 41. Defendants knew or should have known the BPO Products would be  
20 handled, used, and stored by distributors, sellers, and consumers under various  
21 temperatures that affect chemical stability. Defendants knew or should have known the  
22 BPO Products would travel by commercial carriers and distributors in varying storage  
23 conditions and would be stored by consumers in handbags, backpacks, bathrooms,  
24 showers, lockers, and in vehicles during warm months where the BPO Products would  
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26 <sup>29</sup> Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in*  
27 *Certain Drugs*.

28 <sup>30</sup> Food and Drug Administration. *Reformulating Drug Products That Contain Carbomers*  
*Manufactured With Benzene* (December 27, 2023), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/reformulating-drug-products-contain-carbomers-manufactured-benzene>.

<sup>31</sup> *Id.*; see also December 22, 2022 FDA Alert at 1.



1 be exposed to heat. Defendant knew or should have known consumers would apply the  
2 benzene contaminated BPO Products to their faces and bodies and would also use the  
3 BPO Products in heated showers as scrubs and washes. Defendants knew or should  
4 have known the BPO Products would be used and applied to the skin at normal body  
5 temperatures, and elevated temperatures following showers or baths, after physical  
6 activity, and after the BPO Products sat in warm temperatures or hot vehicles.

7 42. These storage, use, and handling conditions were known or should have  
8 been known to Defendants before the BPO Products were marketed and sold to  
9 Plaintiffs, the Class, and Subclass members. Defendants knew or should have known  
10 the BPO Products degrade to benzene under these conditions exposing consumers to  
11 benzene. Defendants further knew or should have known that, because of the known  
12 degradation of BPO to benzene, their BPO Products were contaminated with benzene  
13 by the time they reached consumers, but they sold them to Plaintiffs, the Class, the  
14 Subclasses, and the public anyway, without warning of the risk of exposure. Moreover,  
15 the 2–3-year shelf life printed on the BPO Products told consumers they were safe for  
16 use for years, when they were not.

17 **D. DEFENDANTS KNEW OR SHOULD HAVE KNOWN BENZENE**  
18 **WAS FOUND IN OTHER CONSUMER PRODUCTS BUT DID NOT**  
19 **TEST THE BPO PRODUCTS**

20 43. Defendants was aware or should have been aware of benzene  
21 contamination in other on-market drug and healthcare products when they marketed  
22 and sold the BPO Products to Plaintiffs, the Class, the Subclasses and the public but did  
23 not test the BPO Products for benzene contamination. In 2020, the FDA started  
24 working with companies to identify benzene in products, which resulted in product  
25 recalls of hand sanitizers, sunscreens, and deodorants. In 2021, an independent  
26 chemical analysis by Valisure of hundreds of sunscreens and after-sun care products  
27 from 69 brands found 27 percent of the batches had significant levels of benzene above  
28

1 the FDA 2 ppm limit.<sup>32</sup>

2 **E. DEFENDANTS IGNORED FDA’S BENZENE ALERT TO TEST**  
3 **THEIR PRODUCTS**

4 44. In 2022, the FDA issued a safety alert warning drug manufacturers of the  
5 risk of benzene contamination in certain drug products and drug components. The FDA  
6 reiterated the risk benzene exposure poses to public health and the drug manufacturers’  
7 obligations to test drug products under the U.S. Code of Federal Regulations, Title 21:

8 FDA reminds manufacturers they are required to establish  
9 scientifically sound and appropriate specifications and test  
10 procedures to assure drug components (active and inactive  
11 ingredients) and finished drug products conform to appropriate  
12 quality specifications (21 C.F.R. 211.84, 21 C.F.R. 211.160).  
13 This includes testing of raw materials and finished batches (21  
14 C.F.R. 211.165) prior to release to ensure they meet appropriate  
15 specifications for identity, strength, quality, and purity.<sup>33</sup>

16 45. The FDA warned drug manufacturers that any drug products or  
17 components at risk of benzene contamination should be tested, and any batches with  
18 benzene above 2 ppm should not be released to the public.<sup>34</sup> The FDA further warned  
19 that, if any drug or drug component was subject to deterioration, drug manufacturers  
20 must have re-testing procedures in place to ensure continued purity and stability. The  
21 FDA recommended risk assessments to evaluate the possibility of benzene  
22 contamination in the drug products or components.<sup>35</sup> If any drug product in circulation  
23 was found to have benzene over 2ppm, the FDA directed that drug manufacturers  
24 contact the FDA to discuss a voluntarily recall.<sup>36</sup>

25 46. To date, none of the Defendants’ BPO Products have been recalled due to  
26 benzene contamination.

27 <sup>32</sup> Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care Products, May 24, 2021.

28 <sup>33</sup> Federal Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in Certain Drugs*, 1.

<sup>34</sup> *Id.*, 3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, 2.

1           **F.     TESTING FOUND COMMON BPO PRODUCTS CONTAIN**  
 2           **DANGEROUS LEVELS OF BENZENE IN EXCESS OF**  
 3           **REGULATORY LIMITS**

4           47.    Testing by Valisure in 2023 found common acne treatment products  
 5 formulated with BPO are not only contaminated with benzene but have levels  
 6 dangerous to public health. Valisure is an accredited independent laboratory who has  
 7 developed validated analytical methods<sup>37</sup> to test drugs and consumer products to  
 8 address rising concerns about public safety. Valisure has tested a wide variety of drugs  
 9 and products for benzene including sunscreens, antiperspirants, hand sanitizers, and dry  
 10 shampoos. Their work has led to widely publicized product recalls protecting the public  
 11 from dangerous and carcinogenic consumer products.<sup>38</sup>

12           48.    In 2023, Valisure tested 175 finished acne treatment products to determine  
 13 whether any had benzene. Of the 175 products tested, 99 were formulated with BPO,  
 14 58 had active ingredients (either individually or in combination) of salicylic acid,  
 15 sulfur, adapalene, azelaic acid, niacinamide and zinc, and 18 had no drug ingredients.<sup>39</sup>  
 16 83 of the BPO Products were purchased over the counter from major retailers and 16  
 17 were prescription products purchased from licensed wholesalers.<sup>40</sup> The BPO Products  
 18 included popular Products: Proactiv 2.5% BPO Cream, Target Up & Up 2.5% BPO

19           <sup>37</sup> Valisure’s test methods largely mirror those utilized by FDA’s own “Drug Quality Sampling and Testing”  
 20 (“DQST”) Program. Valisure FDA Citizen’s Petition at 4.

21           <sup>38</sup> See Valisure May 24, 2021 Citizen Petition on Benzene in Sunscreen and After-sun Care Products,  
 22 <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>); Valisure’s Citizen Petition on Hand  
 23 Sanitizer Products Containing Benzene Contamination (filed March 24, 2021),  
 24 <https://www.regulations.gov/document/FDA-2021-P-0338-0001>), Valisure’s Citizen Petition on Benzene in Sunscreen and  
 25 After-sun Care Products (filed May 24, 2021), <https://www.regulations.gov/document/FDA-2021-P-0497-0001>),  
 26 Valisure’s Citizen Petition on Benzene in Body Spray Products (filed November 3, 2021),  
 27 <https://www.regulations.gov/document/FDA-2021-P-1193-0001>), Valisure’s Citizen Petition on Benzene in Dry Shampoo  
 28 Products (filed October 31, 2022), <https://www.regulations.gov/document/FDA-2022-P-2707-0001>) see also CNET, Dry  
 Shampoo Recall: What Is Benzene and Which Brands Are Affected [https://www.cnet.com/health/personal-care/dry-  
 shampoo-recall-what-is-benzene-and-which-brands-are-affected/](https://www.cnet.com/health/personal-care/dry-shampoo-recall-what-is-benzene-and-which-brands-are-affected/) (identifying 19 types of dry shampoo have been recalled  
 due to benzene content); Ryan Basen, Medpage Today, After Valisure Petition, Ol’ Dirty Benzene Forces Another Recall  
 (November 30, 2021), <https://www.medpagetoday.com/special-reports/exclusives/95929> (“After Valisure Petition, Ol’  
 Dirty Benzene Forces Another Recall”); Bruce Y. Lee, Forbes, FDA: P&G Recalls Antiperspirant Sprays Due To Cancer  
 Risk Of Benzene (Nov. 24, 2021), [https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-  
 sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32](https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32); see also Sandee LaMotte, CNN, Antiperspirant recall: What the  
 finding of a cancer-causing chemical means for you (Dec. 1, 2021), [https://www.cnn.com/2021/12/01/health/deodorants-  
 antiperspirants-recall-benzene-explainer-wellness/index.html](https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html).

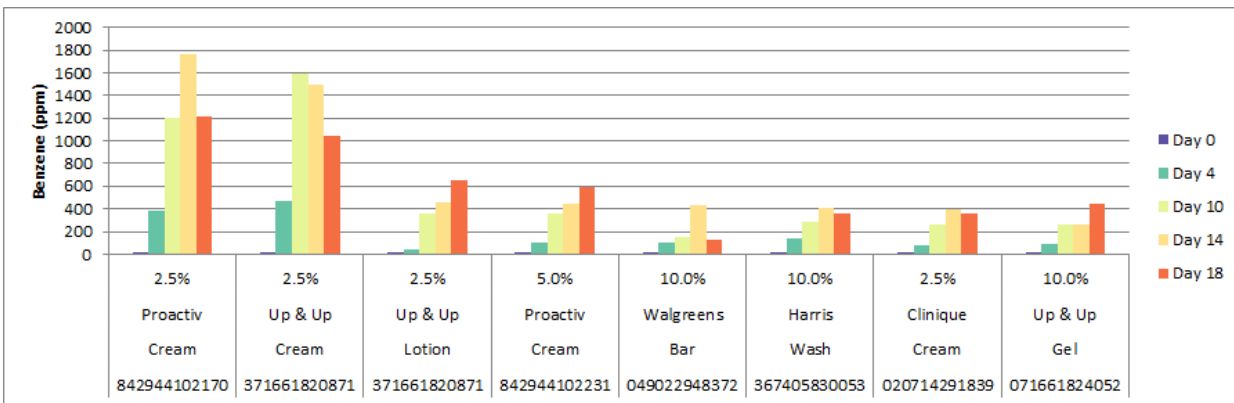
<sup>39</sup> See Valisure Citizen’s Petition on Benzoyl Peroxide (March 5, 2024).

<sup>40</sup> *Id.*

1 Cream, Equate Beauty 10% BPO Cream, Equate BPO Cleanser, Neutrogena 10% BPO  
 2 Cleanser, Clearasil 10% BPO Cream, CVS Health 10% BPO Face Wash, Walgreens  
 3 10% BPO Cream, La Roche Posay BPO Cream, and Clean & Clear 10% BPO Lotion.

4 49. Valisure used three incubation temperatures to evaluate the effects of  
 5 common distributor and consumer use, handling, and storage conditions on benzene  
 6 formation. 37°C/98.6°F was used for human body temperature, 50°C/122°F was used  
 7 to evaluate shelf-life performance as an accelerated stability testing temperature used  
 8 by the pharmaceutical industry,<sup>41</sup> and 70°C/158°F to model storage in a hot vehicle.<sup>42</sup>  
 9 The BPO Products were incubated at 37°C for four weeks and 50°C for three weeks  
 10 and benzene concentration was measured at certain time intervals using GC-MS.  
 11 Benzene findings were plotted in real time and reported in parts per million (“ppm”).  
 12 The results below were submitted to the FDA in Valisure’s March 5, 2024 Citizen’s  
 13 Petition on Benzoyl Peroxide.<sup>43</sup>

14 **4A**



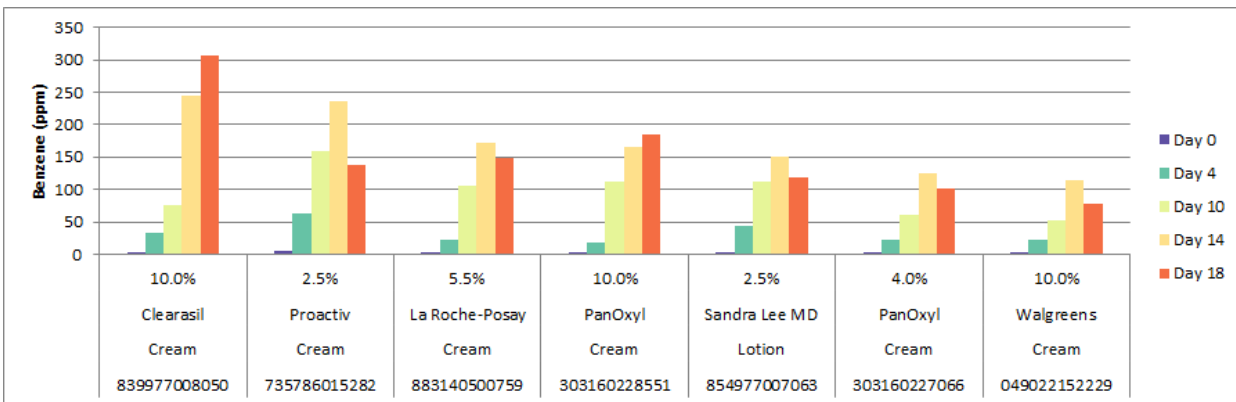
25 <sup>41</sup> Ghimire, Prakash et al., *Guidelines on Stability Studies of Pharmaceutical Products and Shelf-Life Estimation*.  
 INTERNATIONAL JOURNAL OF ADVANCES IN PHARMACY AND BIOTECHNOLOGY, (2020). 06. 15-23.  
 26 10.38111/ijapb.20200601004.

27 <sup>42</sup> Grundstein A, Meentemeyer V, Dowd J. *Maximum vehicle cabin temperatures under different meteorological*  
*conditions*. Int J Biometeorol. 2009 May;53(3):255-61. doi: 10.1007/s00484-009-0211-x. Epub 2009 Feb 21. PMID:  
 28 19234721.

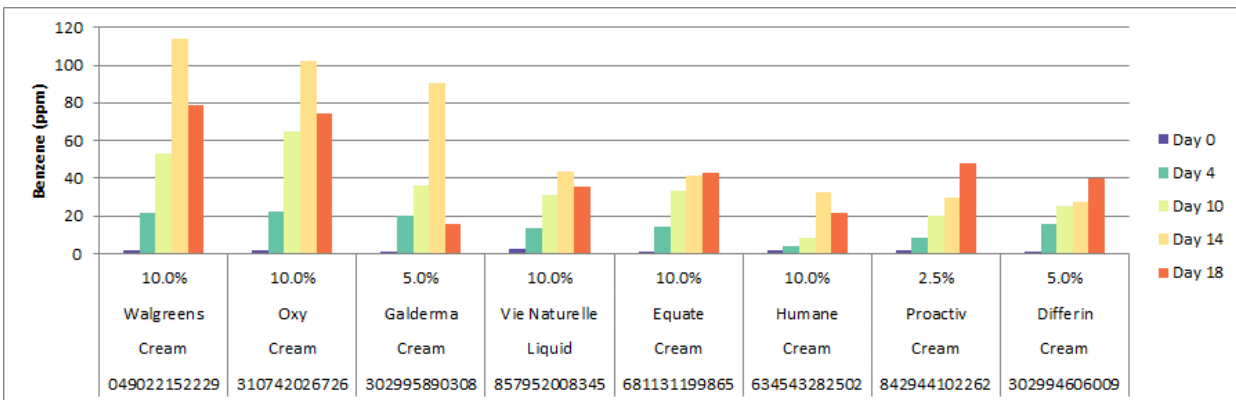
<sup>43</sup> Valisure, LLC, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide>,  
 link from their website (last accessed March 6, 2024).

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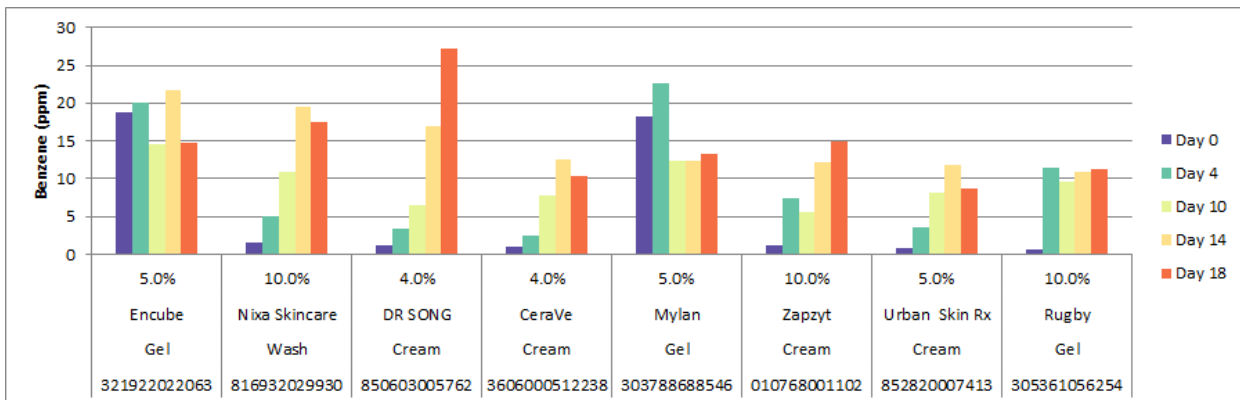
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**4C**

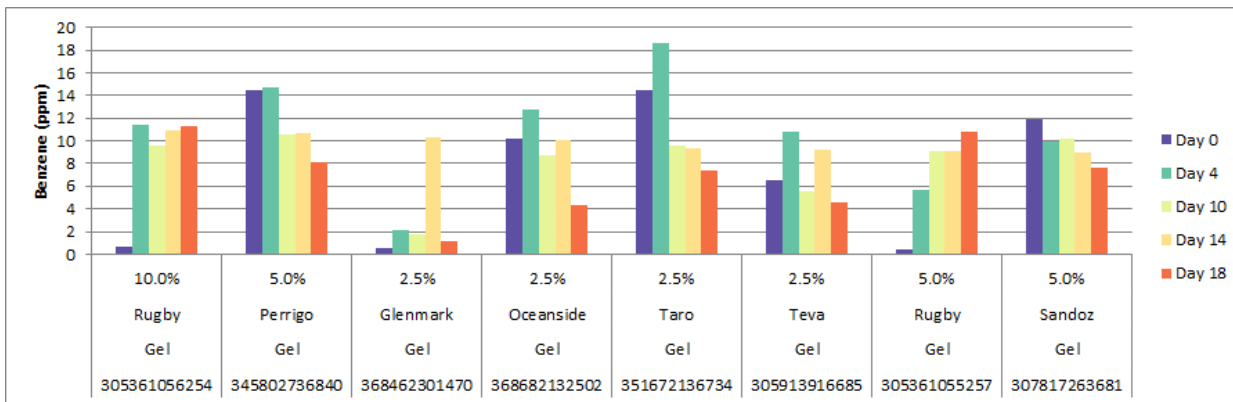


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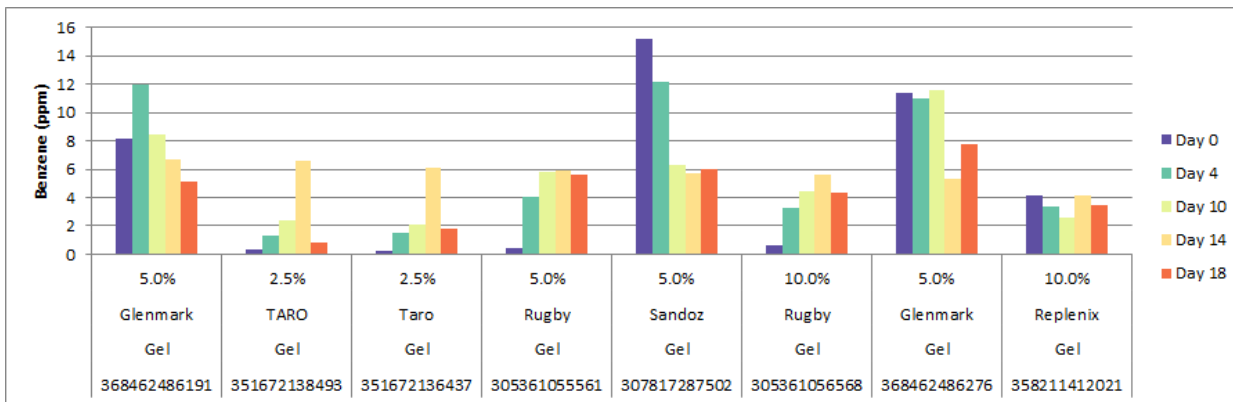


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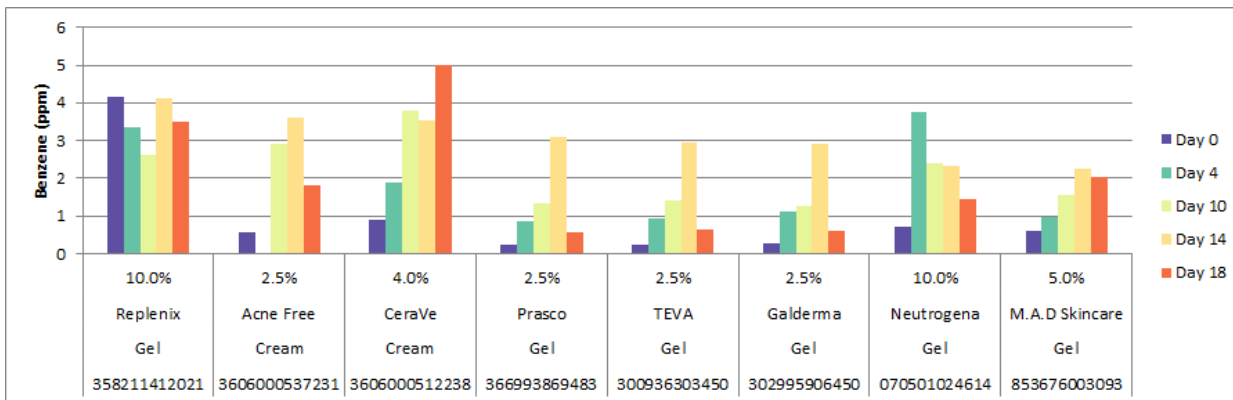
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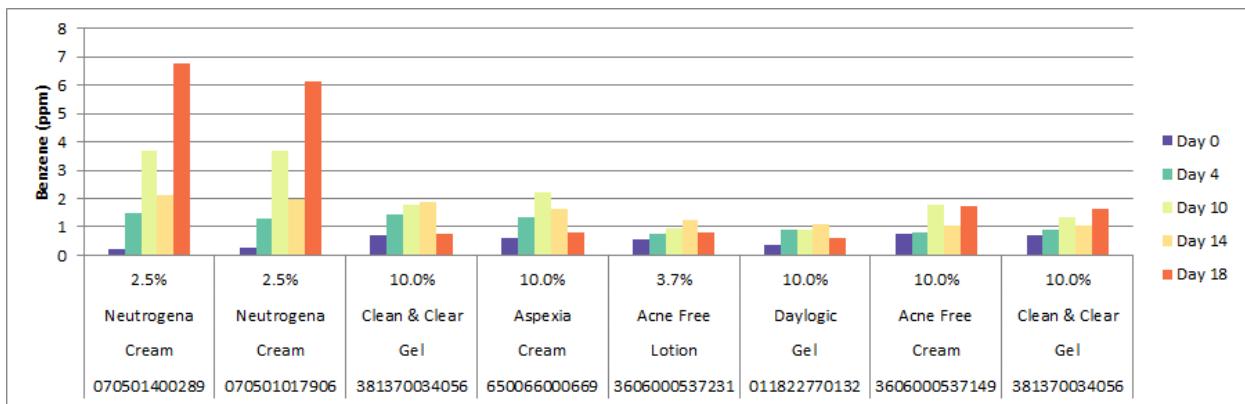


**4G**



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**4H**



50. Valisure found the BPO formulated products were not chemically stable and yielded benzene at levels well over 2 ppm, the maximum amount allowed in any U.S. regulated drug. Some of the benzene levels were many times higher than 2 ppm reaching as high as 1700 ppm for Proactiv’s 2.5% BPO Cream and over 400 ppm for Proactiv’s 5.0% BPO Cream.<sup>44</sup> Proactiv’s BPO Products consistently topped the charts for benzene levels above than 2 ppm allowed in acne drug products.

51. The concentration of BPO in the Products did not influence the benzene levels. Unexpectedly, Valisure found that benzene vapors leaked from some of the Products’ packaging contaminating the surrounding air even when the packaging was closed raising concern for additional inhalation exposures.<sup>45</sup>

52. Valisure concluded that all on-market BPO acne formulations seem to be fundamentally unstable and form unacceptably high levels of benzene under normal use, handling, and storage temperatures, but no such evidence was observed for acne treatment products not formulated with BPO.<sup>46</sup> The finding that additional benzene leaked into the surrounding air from the products’ containers means the total consumer benzene exposure would be even more dangerous than the levels reported.

53. Valisure filed a Citizen’s Petition on Benzoyl Peroxide on March 5, 2024<sup>47</sup>

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> As of the date of filing this Class Action, Valisure’s FDA Petition was pending.

1 with the FDA requesting the FDA Commissioner to immediately demand a recall of all  
 2 Products formulated with BPO and further to require that drug manufacturers do  
 3 independent chemical verification.<sup>48</sup>

4 **G. DEFENDANTS EXPOSED PLAINTIFFS, THE CLASS, AND THE**  
 5 **PUBLIC TO BENZENE, A KNOWN HUMAN CARCINOGEN,**  
 6 **WITHOUT THEIR KNOWLEDGE**

7 54. Although benzene has been found in the BPO Products and released into  
 8 the surrounding air from the packaging, Defendants did not list benzene among the  
 9 Products' ingredients, on the Products' label or container, or anywhere in their  
 10 advertising or on their websites. Defendants did not (and still do not) warn that the  
 11 Products contain benzene, are at risk of benzene contamination, or that the product  
 12 could cause consumers to be exposed to benzene even when sealed.

13 55. Benzene is a carcinogen that has been among the most studied toxins over  
 14 the last 100 years due to its wide use during the industrial revolution, extreme danger,  
 15 and known ability to cause cancer and death in humans and animals. The medical  
 16 literature linking benzene to blood cancers is vast dating to the 1930s.<sup>49</sup> Benzene is the  
 17 foundation component for many chemicals used to make plastics, resins, synthetic  
 18 fibers, paints, dyes, detergents, drugs, and pesticides. In the past, benzene was widely  
 19 used as a solvent in industrial paints, paint removers, adhesives, degreasing agents,  
 20 denatured alcohol, and rubber cements. Benzene use has declined due to the  
 21 proliferation of worker studies and an ever-growing body of evidence confirming  
 22 benzene's contribution to blood cancers.

23  
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 25 <sup>48</sup> Valisure, LLC, (March 6, 2024), *Valisure Discovers Benzoyl Acne Treatment Products are Unstable and Form Benzene*, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March 6, 2024).

26 <sup>49</sup> See Hamilton A., *Benzene (benzol) poisoning*, ARCH PATHOL, (1931):434-54, 601-37; Hunter FT, *Chronic exposure to benzene (benzol). Part 2: The clinical effects*. J. IND. HYG TOXICOL, (1939):21 (8) 331-54; Mallory TB, et al., *Chronic exposure to benzene (benzol).Part 3:The pathological results*. J. IND. HYG TOXICOL,(1939):21 (8) 355-93; Erf LA, Rhoads CP., *The hematological effects of benzene (benzol) poisoning*. J. IND. HYG TOXICOL, (1939):21 421-35; American Petroleum Institute, *API Toxicological Review: Benzene*, NEW YORK, (1948); Infante PF, Rinsky RA, Wagoner JK, et al., *Leukemia in benzene workers*,LANCET, (1977);2 (8028): 76-78.



1 56. Benzene has no known safe level of exposure.<sup>50</sup> Benzene causes central  
2 nervous system depression and destroys bone marrow, leading to injury in the  
3 hematopoietic system.<sup>51</sup> The International Agency for Research on Cancer (“IARC”)  
4 classifies benzene as a “Group 1 Carcinogen” that causes cancer in humans, including  
5 acute myelogenous leukemia (“AML”).<sup>52</sup> AML is the signature disease for benzene  
6 exposure with rates of AML particularly high in studies of workers exposed to  
7 benzene.<sup>53</sup>

8 57. Benzene exposure is cumulative and additive. There is no safe level of  
9 exposure to benzene, and all exposures constitute some risk in a linear, if not  
10 supralinear, and additive fashion.”<sup>54</sup>

11 58. The Agency for Toxic Substances and Disease Registry’s (“ATSDR”)  
12 “Tox Facts” for benzene warns that people can be exposed to benzene vapors from  
13 benzene-containing products and that benzene harms the blood marrow, causing  
14 leukemia and anemia, and affects the immune system leaving victims vulnerable to  
15 infection.<sup>55</sup>

16 59. According to the FDA, benzene in small amounts over long periods of time  
17 can decrease the formation of blood cells and long-term exposure through inhalation,  
18 oral intake, and skin absorption may result in cancers such as leukemia and other blood  
19 disorders.<sup>56</sup>

20 60. Benzene is a major industrial chemical made from coal and oil that is  
21 heavily regulated by the EPA as an important environmental pollutant that negatively

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22 <sup>50</sup> Harrison R, Saborit, J., *WHO Guidelines for Indoor Air Quality – Selected Pollutants*, (2010); see also Smith,  
23 Martyn T. (2010). Advances in Understanding Benzene Health Effects and Susceptibility. *Annual Review of Public  
Health.*, (2010) Vol. 31:133-148.

24 <sup>51</sup> FDA Toxicological Data for Class 1 Solvents, Appendix 4, *Benzene*,  
<https://www.fda.gov/media/71738/download>.

25 <sup>52</sup> International Agency for Research on Cancer. *Benzene, IARC Monographs on the Evaluation of Carcinogenic  
Risks to Humans, Volume 120*, LYON, France: World Health Organization, (2018).

26 <sup>53</sup> American Cancer Association, *Benzene and Cancer Risk*, [https://www.cancer.org/cancer/risk-  
prevention/chemicals/benzene.html](https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html) (last visited October 20, 2023).

27 <sup>54</sup> Smith, Martyn T., *Annual Review of Public Health*, ADVANCES IN UNDERSTANDING BENZENE  
HEALTH EFFECTS AND SUSCEPTIBILITY (2010) Vol. 31:133-148.

28 <sup>55</sup> Agency for Toxic Substances and Disease Registry, *Benzene – Tox Facts*, CAS # 71-43-2.

<sup>56</sup> Federal Drug Administration. (June 9, 2022). *Frequently Asked Questions*: [https://www.fda.gov/drugs/drug-  
safety-and-availability/frequently-asked-questions-benzene-contamination-drugs](https://www.fda.gov/drugs/drug-safety-and-availability/frequently-asked-questions-benzene-contamination-drugs).

1 affects the soil, air, and groundwater. Waste and air emissions containing benzene are  
2 considered hazardous waste. The coal, oil, paint, and chemical industries are heavily  
3 regulated due to the emission of carcinogens including benzene from refining and other  
4 industries processes involving benzene and benzene byproducts, which can end up in  
5 the air, water, and food supply.

6 61. Benzene is heavily regulated to protect public health and should not be in  
7 drug products, especially ones such as acne treatment that are used daily by children  
8 and teenagers for many years. The FDA drug guidelines specify that benzene must not  
9 be used to make drugs products because of the unacceptable toxicity and deleterious  
10 environmental effects.<sup>57</sup> The FDA allows one limited exception – where the use of  
11 benzene in a drug product is unavoidable to produce a drug product with a significant  
12 therapeutic advance. In that instance, benzene must be restricted to two parts per  
13 million (ppm).<sup>58</sup> Defendants’ BPO Products do not meet this rare exception.

14 62. Benzene is heavily regulated in the workplace. The U.S. Occupational  
15 Safety and Health Administration (“OSHA”) set an eight-hour exposure standard of 1  
16 ppm.<sup>59</sup> The National Institute for Occupational Safety and Health (“NIOSH”)  
17 established a recommended exposure level (REL) of 0.1 ppm (15-minute ceiling limit).  
18 Subsequent exposure studies known as the “China studies” confirmed cancer at levels  
19 below 1 ppm.<sup>60</sup> The benzene levels created from Defendantss’ BPO Products are many  
20 times higher than the levels reported in these worker studies and the acceptable limits  
21 set by regulators.

22 63. Benzene can also pass from the mother’s blood to a developing fetus  
23 causing the baby to be exposed to benzene.<sup>61</sup> Animal studies have shown low birth  
24

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25 <sup>57</sup> Food and Drug Administration, *Q3C – Tables and Lists Guidance for Industry*,  
<https://www.fda.gov/media/71737/download> (last visited September 26, 2023).

26 <sup>58</sup> *Id.*

<sup>59</sup> OSHA. Occupational exposure to benzene: Final rule. Fed. Reg. 1987;52-34460-578.

27 <sup>60</sup> See Lan Q, Zhang L et al., *Hematotoxicity in Workers Exposed to Low Levels of Benzene*, SCIENCE, (December  
28 3, 2004); Costa-Amaral I, V. B. L., *Environmental Assessment and Evaluation of Oxidative Stress and Genotoxicity  
Biomarkers Related to Chronic Occupational Exposure to Benzene*, INT J ENVIRON RES PUBLIC HEALTH, (2019)  
Jun; 16(12): 2240.

<sup>61</sup> *Id.*

1 weights, delayed bone formation, and damage to the bone marrow of developing  
2 offspring when pregnant animals breathed benzene.<sup>62</sup>

3 64. Plaintiffs and the Class were exposed to benzene from the BPO Products  
4 by inhalation and dermal absorption. Benzene can be absorbed into the body via  
5 inhalation, skin absorption, ingestion, and/or eye contact.<sup>63</sup> Plaintiffs and the Class  
6 applied the BPO Products to areas of the skin including the face, neck, chest, and back  
7 one to three times per day and used the BPO Products as washes or scrubs in heated  
8 showers. Plaintiffs and the Class were also exposed to benzene leaked from  
9 contaminated BPO Products.

10 **H. DEFENDANTS MARKETED THEMSELVES AS EXPERTS BUT**  
11 **CONCEALED FROM CONSUMERS THEIR FAILURE TO TEST**  
12 **THE BPO PRODUCTS FOR SAFETY**

13 65. Defendants' BPO Products degrade to benzene, during normal and  
14 expected handling, use, or storage but Defendants did not warn about benzene  
15 contamination or the health risks of exposure. Instead, Defendants made broad  
16 sweeping claims that the BPO Products were safe, researched, tested, validated, backed  
17 by science, and approved by dermatologists.

18 66. Defendants told Plaintiffs, the Class, and the Subclasses it is a leader in the  
19 industry, committed to continuous innovation, and have pioneered science-based  
20 solutions helping to maintain, treat, correct and restore healthy skin.<sup>64</sup> Defendants  
21 promised it only seeks eco-certified ingredients and only use FDA compliant  
22 ingredients for over-the-counter use.<sup>65</sup> Defendants side stepped the lack of safety of its  
23 BPO Drug Products and told consumers both BPO and salicylic acid have advantages  
24 for acne treatment and complement each other.<sup>66</sup>

25 \_\_\_\_\_  
26 <sup>62</sup> *Id.*

<sup>63</sup> Centers for Disease Control and Prevention, *The National Institute for Occupational Safety and Health Pocket Guide to Chemical Hazards, Benzene Exposure Limits*, <https://www.cdc.gov/niosh/npg/npgd0049.html>.

27 <sup>64</sup> Alchemee, *Innovation*, <https://www.alchemee.com/innovation> (visited November 6, 2023).

28 <sup>65</sup> *Id.*

<sup>66</sup> Alchemee LLC, *Is Salicylic Acid or Benzoyl Peroxide Better?* <https://www.proactiv.com/blog/acne-skin-care-ingredients/salicylic-acid> (visited October 25, 2023).

1 67. Proactiv’s benzene concentration levels in the Valisure testing were many  
2 multiple times higher than any level permitted by regulators. The researchers wrote:

3 “Incubation of a Proactiv® product at the temperature of a hot  
4 car (70°C), a temperature the Products are expected to be  
5 exposed to through normal consumer and distributor handling,  
6 resulted in the detection of benzene in a compact car’s volume  
7 of air at ~1,270 times the Environmental Protection Agency’s  
8 (“EPA”) calculated threshold for increased cancer risk by long-  
9 term inhalation exposure to benzene.”<sup>67</sup>

10 68. Defendants’ misrepresentations and omissions misled Plaintiffs, the Class,  
11 the Subclasses, and the public regarding the safety, stability, and quality of the BPO  
12 Products. Defendants’ broad claims of safety in their marketing, social media, and on  
13 websites gave consumers a false sense of safety leading them to believe the BPO  
14 Products were safe. Defendants made these statements uniformly to Plaintiffs, the  
15 Class, the Subclasses, and the public, while shirking their responsibility to do adequate  
16 and meaningful testing before selling them to the public. Defendants’ statements and  
17 affirmations were false, misleading, unsubstantiated, and blatantly deceptive.

18 **I. DEFENDANTS DID NOT WARN CONSUMERS THE BPO  
19 PRODUCTS WERE AT RISK OF BENZENE CONTAMINATION**

20 69. Defendants represented to the Plaintiffs, the Class, the Subclasses, and the  
21 public, that each of their Products had only the ingredients listed on the label and  
22 package, but none of them identified benzene anywhere on the Products’ label,  
23 container, or packaging.

24 70. Defendants told consumers BPO is a “tried and true” ingredient that has  
25 been the “gold standard for acne treatment for 50 years.”<sup>68</sup> And BPO was safe to use  
26 “for an extended period of time.”<sup>69</sup> None of the Proactiv Products list benzene on the

27 <sup>67</sup> *Id.*

28 <sup>68</sup> Alchemee LLC, *What Is Benzoyl Peroxide?* [s://www.Proactiv.Com/Blog/Acne-Skin-Care-Ingredients/Benzoyl-Peroxide](https://www.Proactiv.Com/Blog/Acne-Skin-Care-Ingredients/Benzoyl-Peroxide) (last visited October 25, 2023).

<sup>69</sup> *Id.*

1 label, container, or anywhere on Defendants’ website.<sup>70</sup> Defendants assured consumers  
2 that any side effects from use of Proactiv were “usually mild such as drying and  
3 irritation.”<sup>71</sup>

4 104. Defendants’ statements about the BPO Products’ ingredients were false,  
5 deceptive, and misleading. Defendants’ statements were meant to convey to Plaintiffs,  
6 the Class, the Subclasses, and the public the Products were safe and did not contain  
7 carcinogens such as benzene. Defendants made these statements and omitted benzene  
8 from all advertising, labeling, and packaging when they knew or should have known  
9 the statements were false, misleading, and deceptive. Reasonable consumers, relying on  
10 Defendants’ statements reasonably believed the BPO Products were safe and did not  
11 contain benzene.

12 **J. DEFENDANTS DIRECTLY MARKETED BPO PRODUCTS AT**  
13 **RISK OF BENZENE CONTAMINATION TO CHILDREN AND**  
14 **TEENAGERS**

15 71. Defendants’ BPO Products are widely used by children and teenagers as a  
16 standalone treatment or in combination with other BPO Products. Defendants knew that  
17 adolescents are the largest users with users as young as 7-10 years old. Defendants  
18 recommended that consumers, including children, use the BPO Products one to three  
19 times a day, over many months or longer for persistent acne. Defendants knew that  
20 some consumers would use the BPO Products for many years starting in their teens.  
21 There is no cure for acne. Defendants knew that consumers with chronic acne would  
22 use their BPO Products several times a day throughout their lifetime.

23 72. Defendants aggressively marketed the BPO Products directly to children  
24 and teenagers knowing, or they should have known, the BPO Products degrade to  
25 benzene under normal use and storage conditions. Many of Defendants’ online and  
26 print advertisements featured children, teenagers, eye-catching props, music, and colors

27 \_\_\_\_\_  
<sup>70</sup> See e.g., Proactive Repairing Treatment Package, 2 Fl Oz [60 MI].

28 <sup>71</sup> Alchemee LLC, *Does Proactive Have Any Side Effects?* <https://www.Proactiv.Com/Faqs>, (last visited October 25, 2023).

1 meant to attract teens and pre-teens, and appeal to their preferences, activities, and  
2 interests.

3 73. Defendants encouraged parents to start treating teenage acne early with  
4 benzoyl peroxide drug products.<sup>72</sup> Defendants promised the Products were “safe and  
5 effective for teens” and “penetrate deeply into the pores to kill acne.”<sup>73</sup>

6 74. Defendants’ marketing of BPO Products without mentioning benzene, the  
7 risk of benzene exposure, or lack of testing for benzene was misleading, fraudulent,  
8 deceptive, and dangerous.

9 **V. PUNITIVE DAMAGES ALLEGATIONS**

10 75. Defendants’ conduct was done with malice and reckless disregard for  
11 human life. Defendants knew the BPO Products degraded to benzene when exposed to  
12 heat under normal consumer use, handling, and storage conditions. Defendants further  
13 knew that benzene is a known human carcinogen that is not supposed to be in the BPO  
14 Products due to the grave risk of harm to consumers. Defendants disregarded this  
15 information and the known risks of benzene exposure and deliberately omitted benzene  
16 from the list of ingredients, the BPO Products’ labels, and their social media and  
17 websites where information about the BPO Products is found. Defendants consciously  
18 and deliberately crafted the BPO Products’ marketing, labels, packaging, containers,  
19 and warnings intending to mislead Plaintiffs, the Class, and the public, and lead them to  
20 believe the BPO Products were safe and carcinogen-free.

21 76. Defendants marketed themselves as expert drug formulators, researchers,  
22 and merchandisers skilled in developing safe and reliable products while withholding  
23 material health and safety information Defendants knew were essential to informed  
24 consumer decision making. Defendants knew that, by their conduct, they were robbing  
25 consumers of their right to choose safe products.

26 77. Defendants were on notice of benzene findings in consumer and drug  
27

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28 <sup>72</sup> Proactiv, *Proactiv Blog, 5 Reasons to Treat Acne Early*, [https://www.proactiv.com /blog/treating-face-acne/reasons-to-treat-bad-teenage-acne-early](https://www.proactiv.com/blog/treating-face-acne/reasons-to-treat-bad-teenage-acne-early) (last visited October 7, 2023).

<sup>73</sup> *Id.*

1 products leading to widely publicized recalls. Defendants were on notice of the FDA's  
2 concerns of benzene contamination in drug and consumer products and received the  
3 FDA's 2022 directive to test Products for benzene contamination. Defendants  
4 disregarded these notices and continued to market and sell the BPO Products without  
5 testing them for benzene.

6 78. Defendants knew their decisions and chosen course of conduct was risky  
7 and would cause consumers to be exposed to benzene. Defendant's' conduct was not by  
8 accident, but was deliberate, calculated, and informed. Defendant knew they could sell  
9 more BPO Products and earn more money by concealing material human health and  
10 safety information. Defendants further knew that testing the BPO Products for benzene  
11 would yield findings of benzene requiring recalls and/or a shutdown of production  
12 causing significant losses of income. Defendants' goals were met not only because of  
13 their false and deceptive advertising, labeling, and packaging, but through a  
14 comprehensive scheme of aggressive marketing and image branding leading consumers  
15 to believe they were acne treatment experts dedicated to drug research, development,  
16 and safety and using only the safest ingredients and formulations that would remain  
17 pure and stable until the designated end. Defendants' conduct and concealment of  
18 material health information was done to further their own monetary gain and with  
19 conscious disregard of the Plaintiffs, the Class, the Subclasses, and the public's right to  
20 choose safe products. Defendants' conduct was intentional, calculated, blatantly  
21 deceptive, unscrupulous, and offensive to consumer health and public policy. To  
22 redress the harms caused by Defendants' conduct, Plaintiffs, on behalf of the Class, and  
23 Subclasses, seek punitive damages against the Defendants.

## 24 VI. PLAINTIFF SPECIFIC ALLEGATIONS

25 79. Plaintiff Diane Howard is an Illinois resident who places a high priority on  
26 health and safety, and on the adverse health consequences of exposure to carcinogens  
27 such as benzene. In shopping for drug products for her skin and face, Plaintiff Diane  
28 Howard was particularly concerned about deep cleaning and preventing pimples on her

1 skin and face. Plaintiff read the front labeling of the product which encouraged her to  
2 purchase the product by Defendants. Based on the statements made by Defendants,  
3 their widely recognized name, and lack of information that the Products contained  
4 carcinogens such as benzene, Plaintiff believed the Products were safe to put on her  
5 skin. Defendants' representations and omissions of human health and safety  
6 information were material to Plaintiff.

7 80. Plaintiff Howard bought Proactiv+ Skin Smoothing Exfoliator, Proactiv  
8 Cleanse-Renewing Cleanser, Proactiv Emergency Blemish Relief, and Proactiv  
9 Repairing Treatment and used it daily from October 2018 to August 2023 for pimples  
10 on her skin and face. Plaintiff was unaware when she bought the Products that it was  
11 contaminated with benzene or that it could degrade to benzene. Had Defendants been  
12 truthful and told Plaintiff she would be exposed to benzene and/or be at increased risk  
13 of cancer, she would not have purchased Proactiv+ Skin Smoothing Exfoliator,  
14 Proactiv Cleanse-Renewing Cleanser, Proactiv Emergency Blemish Relief, and  
15 Proactiv Repairing Treatment.

16 81. Plaintiff Howard suffered an ascertainable economic loss because of  
17 Defendants' statements and misrepresentations in that she bought the Product she  
18 would not have bought but for Defendants' statements and misrepresentations.

19 82. Plaintiff Chatham Mullins is a Massachusetts resident who places a high  
20 priority on health and safety, and on the adverse health consequences of exposure to  
21 carcinogens such as benzene. In shopping for drug products for her skin and face,  
22 Plaintiff Chatham Mullins was particularly concerned about the ingredients, being  
23 cruelty-free, and products that are approved and sold in the European Union (EU).  
24 Based on the statements made by Defendants, their widely recognized name, and lack  
25 of information that the Products contained carcinogens such as benzene, Plaintiff  
26 believed the Products were safe to put on her skin. defendants' representations and  
27 omissions of human health and safety information were material to Plaintiff.

28 83. Plaintiff Mullins bought Proactiv+ Skin Smoothing Exfoliator, Proactiv



1 Solution® Renewing Cleanser, and Proactiv+ Pore Targeting Treatment, and used them  
2 from 2005 to 2023 for resolving skin inflammation such as redness, cleansing and acne  
3 blemishes. Plaintiff was unaware when she bought the Product that it was contaminated  
4 with benzene or that it could degrade to benzene. Had Defendants been truthful and  
5 told Plaintiff she would be exposed to benzene and/or be at increased risk of cancer, she  
6 would not have purchased Proactiv+ Skin Smoothing Exfoliator, Proactiv Solution®  
7 Renewing Cleanser, Proactiv+ Pore Targeting Treatment.

8 84. Plaintiff Mullins suffered an ascertainable economic loss because of  
9 Defendants' statements and misrepresentations in that she bought the Products she  
10 would not have bought but for Defendants' statements and misrepresentations.

11 85. Plaintiff William Eisman is a Missouri resident who places a high priority  
12 on health and safety, and on the adverse health consequences of exposure to  
13 carcinogens such as benzene. In shopping for drug products for his skin and face,  
14 Plaintiff Eisman was particularly concerned about approval from dermatologists named  
15 Dr. Rodan and Dr. Fields. Based on the statements made by Defendants, their widely  
16 recognized name, and lack of information that the Products contained carcinogens such  
17 as benzene, Plaintiff believed the Products were safe to put on his skin. Defendants'  
18 representations and omissions of human health and safety information were material to  
19 Plaintiff.

20 86. Plaintiff Eisman bought Proactiv+ Skin Smoothing Exfoliator, Proactiv  
21 Solution® Renewing Cleanser, Proactiv+ Pore Targeting Treatment, and Proactiv  
22 Emergency Blemish Relief and used them from 2013 to 2024 for clearing up acne on  
23 his face. Plaintiff was unaware when he bought the Product that it was contaminated  
24 with benzene or that it could degrade to benzene. Had Defendants been truthful and  
25 told Plaintiff he would be exposed to benzene and/or be at increased risk of cancer, he  
26 would not have purchased Proactiv+ Skin Smoothing Exfoliator, Proactiv Solution®  
27 Renewing Cleanser, Proactiv+ Pore Targeting Treatment, Proactiv Emergency Blemish  
28 Relief.

1 87. Plaintiff Eisman suffered an ascertainable economic loss because of  
2 Defendants' statements and misrepresentations in that he bought the Products he would  
3 not have bought but for Defendant's' statements and misrepresentations.

4 88. Plaintiff Christian M. Rainey is a Washington resident who places a high  
5 priority on health and safety, and on the adverse health consequences of exposure to  
6 carcinogens such as benzene. In shopping for drug products for his skin and face,  
7 Plaintiff Christian Rainey was particularly concerned about the effectiveness to control  
8 the blemishes and pores on his face. Plaintiff read the front labeling of the product  
9 which encouraged him to purchase the product by Defendant. Based on the statements  
10 made by Defendants, their widely recognized name, and lack of information that the  
11 Products contained carcinogens such as benzene, Plaintiff believed the Products were  
12 safe to put on his skin. defendants' representations and omissions of human health and  
13 safety information were material to Plaintiff.

14 89. Plaintiff Rainey bought Proactiv Emergency Blemish Relief, Proactiv+  
15 Pore Targeting Treatment, Proactiv+ Skin Smoothing Exfoliator and Proactiv Solution  
16 Renewing Cleanser and used it daily from 2008 to February 2024 for clearing  
17 blemishes and pores on his skin and face. Plaintiff was unaware when he bought the  
18 Products that it was contaminated with benzene or that it could degrade to benzene.  
19 Had defendants been truthful and told Plaintiff he would be exposed to benzene and/or  
20 be at increased risk of cancer, he would not have purchased Proactiv Emergency  
21 Blemish Relief, Proactiv+ Pore Targeting Treatment, Proactiv+ Skin Smoothing  
22 Exfoliator and Proactiv Solution Renewing Cleanser.

23 90. Plaintiff Rainey suffered an ascertainable economic loss because of  
24 Defendants' statements and misrepresentations in that he bought the Product he would  
25 not have bought but for Defendant's' statements and misrepresentations.

26 91. Plaintiff Tracey Cuomo is a Connecticut resident who places a high priority  
27 on health and safety, and on the adverse health consequences of exposure to  
28 carcinogens such as benzene. In shopping for drug products for her skin and face.

1 Plaintiff Tracey Cuomo was particularly concerned about the cost and effectiveness to  
2 maintain clean skin and prevent blemishes on her face. Plaintiff read the front labeling  
3 of the product which encouraged her to purchase the product by Defendants. Based on  
4 the statements made by Defendants, their widely recognized name, and lack of  
5 information that the Products contained carcinogens such as benzene, Plaintiff believed  
6 the Products were safe to put on her skin. Defendants' representations and omissions of  
7 human health and safety information were material to Plaintiff.

8 92. Plaintiff Cuomo bought Proactiv Solution Renewing Cleanser and Proactiv  
9 Emergency Blemish Relief and used it daily from March 2022 to July 2023 for  
10 blemishes on her face. Plaintiff was unaware when she bought the Products that it was  
11 contaminated with benzene or that it could degrade to benzene. Had Defendants been  
12 truthful and told Plaintiff she would be exposed to benzene and/or be at increased risk  
13 of cancer, she would not have purchased Proactiv Solution Renewing Cleanser and  
14 Proactiv Emergency Blemish Relief.

15 93. Plaintiff Cuomo suffered an ascertainable economic loss because of  
16 Defendants' statements and misrepresentations in that she bought the Product she  
17 would not have bought but for Defendants' statements and misrepresentations.

## 18 **VII. CLASS ACTION ALLEGATIONS**

19 94. Plaintiffs bring this case on behalf of themselves, and all others similarly  
20 situated as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.  
21 Plaintiffs seek to represent a nationwide Class and Subclasses of consumers who  
22 bought Defendant's BPO Products. Excluded from this Class and Subclasses is  
23 Defendants, their employees, co-conspirators, officers, directors, legal representatives,  
24 heirs, successors, and affiliated companies; Class counsel and their employees; and  
25 judicial officers and their immediate families as court staff assigned to the case.

26 95. The Class does not seek damages for physical injuries, although each  
27 Plaintiff was physically harmed by being exposed to benzene.

28 96. The Class will include a Nationwide Class and State Subclasses.

1 a. **Nationwide Class.** All persons who bought, for use and not resale,  
2 the BPO Products within the United States.

3 b. **State Subclasses.** All persons in each of the following states who  
4 bought for use, and not resale, the Products within: Connecticut,  
5 Hawaii, Illinois, Maryland, Massachusetts, Missouri, New York,  
6 Pennsylvania, Ohio, Rhode Island, Nevada, and Washington.

7 97. This action has been brought and may be properly maintained as a Class  
8 Action under Rule 23 of the Federal Rules of Civil Procedure because there is a well-  
9 defined community of interest and the proposed Class meets the class action  
10 requirements under Rule 23 of numerosity, commonality, typicality, and adequacy of  
11 representation.

12 98. Defendants engaged in a common course of conduct giving rise to the legal  
13 rights sought to be enforced by Plaintiffs, on behalf of themselves, and the other Class  
14 members. Similar or identical statutory and common law violations, business practices,  
15 and injuries are involved.

16 99. **Numerosity.** Plaintiffs believe there are millions of Class members  
17 throughout the United States, and there are tens of thousands of Subclass members in  
18 each of the listed states, making the Class and state Subclasses so numerous and  
19 geographically dispersed that joinder of all members is inconvenient and impracticable.

20 100. **Commonality.** There are questions of law and fact common to all Class  
21 and Subclass members that predominate over questions which affect only individual  
22 Class members. All Class and Subclass members were deceived and misled by  
23 Defendants through the same advertising, online representations, labeling, and  
24 packaging, which do not mention benzene and misrepresent the characteristics,  
25 ingredients, and safety of the BPO Products. All Class and Subclass members bought  
26 Defendants' BPO Products and have suffered an economic loss because of Defendants'  
27 deceptions and omissions. Thus, there is a well-defined community of interest in the  
28 questions of law and facts common to all Class and Subclass members. Other common

1 questions of law and fact in this dispute include, without limitation:

- 2 a. Whether Defendants' BPO Products degrade to benzene under common  
3 distributor and consumer handling, use, and storage conditions.
- 4 b. Whether Defendants tested the BPO Products for benzene before selling  
5 them to Plaintiffs, the Class, and the public.
- 6 c. When Defendants knew or should have known the BPO Products degraded  
7 to benzene.
- 8 d. When Defendants knew or should have known the BPO Products contain  
9 benzene.
- 10 e. Whether Defendants' advertising omitting benzene was deceptive,  
11 fraudulent, or unfair.
- 12 f. Whether Defendants' advertising omitting benzene was likely to deceive  
13 reasonable consumers.
- 14 g. Whether Defendants' conduct violated Connecticut consumer protection  
15 laws.
- 16 h. Whether Defendants' conduct violated Hawaii consumer protection laws.
- 17 i. Whether Defendants' conduct violated Illinois consumer protection laws.
- 18 j. Whether Defendants' conduct violated Massachusetts consumer protection  
19 laws including Mass. Gen. Laws Ann. Ch. 93A, § 1 *et seq.*
- 20 k. Whether Defendants' conduct violated Maryland consumer protection laws.
- 21 l. Whether Defendants' conduct violated Missouri consumer protection laws  
22 including Mo. Rev. Stat. § 407, *et seq.*
- 23 m. Whether Defendants' conduct violated Nevada consumer protection laws  
24 including Deceptive Trade Practice Act, NEV. REV. STATUTES, Title 52,  
25 Chapter 598 *et seq.*
- 26 n. Whether Defendants' conduct violated New York consumer protection laws  
27 including New York Deceptive Trade Practices Law, NY Gen. Bus. §349(a)  
28 and NY Gen. Bus. §§ 350 *et seq.*

- 1 o. Whether Defendants' conduct violated Pennsylvania consumer protection
- 2 laws.
- 3 p. Whether Defendants' conduct violated Ohio consumer protection laws.
- 4 q. Whether Defendants' conduct violated Rhode Island consumer protection
- 5 laws.
- 6 r. Whether Defendants' conduct violated Washington's consumer protection
- 7 laws.
- 8 s. Whether Defendants breached the express and implied warranties made
- 9 about the BPO Products.
- 10 t. Whether Defendants were unjustly enriched by the Plaintiffs, the proposed
- 11 Class, and Subclasses members' purchase of the BPO Products.
- 12 u. Whether the Plaintiffs, the proposed Class, and Subclasses have been
- 13 injured and if so, what is the proper measure of damages.
- 14 v. Whether the Plaintiffs, the proposed Class, and Subclasses have the right to
- 15 economic damages including compensatory, exemplary, and statutory
- 16 remedies for Defendants' misconduct.
- 17 w. Whether the Plaintiffs, the proposed Class, and Subclasses have the right to
- 18 injunctive, declaratory, or other equitable relief and attorneys' fees.

19 **101. Typicality.** Plaintiffs' claims are typical of the claims of the Class and  
20 Subclasses because the claims arise from the same course of misconduct by  
21 Defendants, *i.e.*, Defendants' false and misleading advertising and their failure to  
22 disclosure benzene in the Products. The Plaintiffs, and all Class and Subclass members  
23 were all exposed to the same uniform and consistent advertising, labeling, and  
24 packaging statements Defendants made about the Products. Because of the Defendants'  
25 misconduct, Plaintiffs, like all Class and Subclass members, were damaged and have  
26 incurred economic loss because of buying the Products believed to be safe. The claims  
27 of the Plaintiffs are typical of Class and Subclasses.

28 **102. Adequacy.** The Plaintiffs will fairly and adequately represent and protect

1 the interests of all Class and Subclass members. Plaintiffs have no interests antagonistic  
2 to the Class or Subclass members. Plaintiffs hired attorneys experienced in the  
3 prosecution of consumer Class Actions and Plaintiffs intend to prosecute this action  
4 vigorously. Plaintiffs anticipate no difficulty in the management of this litigation as a  
5 Class Action.

6 103. Finally, this Class Action is proper under Rule 23(b) because, under these  
7 facts, a Class Action is superior to other methods and is the most efficient method for  
8 the fair and efficient adjudication of the dispute. The Class and Subclass members have  
9 all suffered economic damages because of Defendants' deceptive trade practices, false  
10 advertising, and omissions of material health and safety information. Because of the  
11 nature of the individual Class and Subclass members' claims and the cost of the  
12 Products, few, if any individuals, would seek legal redress against Defendants because  
13 the costs of litigation would far exceed any potential economic recovery. Absent a  
14 Class Action, individuals will continue to suffer economic losses for which they would  
15 have no remedy, and Defendants will unjustly continue their misconduct with no  
16 accountability while retaining the profits of their ill-gotten gains. Even if separate cases  
17 could be brought by individuals, the resulting multiplicity of lawsuits would cause  
18 undue hardship, burden, and expense for the Court and the litigants, as well as create a  
19 risk of inconsistent rulings across the country, which might be dispositive of the  
20 interests of individuals who are not parties. A Class Action furthers the important  
21 public interest of containing legal expenses, efficiently resolving many claims with  
22 common facts in a single forum simultaneously, and without unnecessary duplication of  
23 effort and drain on critical judicial resources. The Class Action method presents far  
24 fewer management difficulties than individual cases filed nationwide and provides the  
25 benefit of comprehensive supervision by a single court.

26 ///

27 ///

28 ///

1 **VIII. CAUSES OF ACTION**

2 **A. DEFENDANTS ENGAGED IN FALSE ADVERTISING IN**  
3 **VIOLATION OF VARIOUS STATE STATUTES, on *Behalf of the***  
4 ***Hawaii and New York Subclasses***

5 104. Plaintiffs reallege and incorporate all other paragraphs in this Complaint  
6 and further allege:

7 105. Plaintiffs bring this cause of action on behalf of themselves, and all  
8 members of the Hawaii and New York Subclasses, all of whom are similarly situated  
9 consumers.

10 106. Defendants developed, researched, manufactured, tested, marketed, and  
11 sold the Products throughout the United States. Defendants knew or should have known  
12 through the Products' development, formulation, and testing, the Products were not  
13 chemically stable when exposed to certain expected and normal environmental and  
14 storage conditions and form benzene, as a toxic byproduct. Despite this knowledge,  
15 Defendants did not mention benzene in the Products' advertising, ingredient lists,  
16 labels, containers, or on websites or social media advertisements. Defendants did not  
17 tell consumers they would be exposed to benzene, a human carcinogen, during normal  
18 and expected handling, use and storage of the Products, even with the Products'  
19 containers closed.

20 107. Benzene, a human carcinogen, is a widely marketed and available  
21 consumer drug product, is material health and safety information Defendants knew  
22 Plaintiffs, the Class and Subclass members, and the public would want to know.  
23 Defendants not only omitted this material human health and safety information from  
24 advertising, online representations, blogs, labeling, packaging, and warnings, but  
25 aggressively marketed themselves as drug experts, innovators, researchers, market  
26 leaders, influencers, and companies committed to consumer safety who devote  
27 substantial resources to drug research and development. Defendants' affirmations of  
28 safety and responsibility misled Plaintiffs, and the Class and Subclass members,



1 leading them to believe the Products were tested, verified, and safe. Defendants further  
2 marketed the Products touting the approval of dermatologists, who were not aware of  
3 the presence of benzene in the Products and of Defendants refusal to conduct adequate  
4 and meaningful testing before marketing and selling the Products to the public and  
5 following the FDA's 2022 alert to specifically look for benzene.

6 108. Defendants' acts and omissions constitute false advertising. Defendants  
7 advertised the Products with the intent not to sell them as advertised. Reasonable  
8 consumers, including Plaintiffs and the Class and Subclass members, exposed to  
9 Defendant' advertising would believe the Products were safe, verified, and free of  
10 benzene.

11 109. Defendants' false and misleading advertising violated Hawaii's False  
12 Advertising Law, HI REV. STAT. § 708-871. Defendant knowingly or recklessly made  
13 false and misleading statements in the Products' advertising to the public.<sup>74</sup> Defendants  
14 further advertised the Products with the intent not to sell them as advertised and  
15 misrepresented the ingredients, quality, purity, safety, and character of the Products.  
16 Defendants knew or should have known the Products formed benzene under normal,  
17 handling, use, and storage conditions but did not disclose this to consumers or the  
18 public. Defendants knew through the Products' development, formulation, research,  
19 and testing, the Products were not chemically stable when exposed to certain normal  
20 and expected environmental conditions. Defendants knew consumers would be exposed  
21 to benzene in the Products, even with the Products' original packaging closed.

22 110. Defendants' false and misleading advertising violated New York's General  
23 Business Law § 350 *et seq.* ("GBL § 350"), which prohibits "[f]ales advertising in the  
24 misconduct of any business, trade or commerce or in the furnishing of any service" in  
25

---

26 <sup>74</sup> HI REV STAT § 708-871, False Advertising: (1) A person commits the offense of false advertising if, in  
27 connection with the promotion of the sale of property or services, the person knowingly or recklessly makes or causes to  
28 be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.  
(2) "Misleading statement" includes an offer to sell property or services if the offeror does not intend to sell or provide the  
advertised property or services: (a) At the price equal to or lower than the price offered; or (b) In a quantity sufficient to  
meet the reasonably- expected public demand unless quantity is specifically stated in the advertisement; or (c) At all.

1 New York. Under GBL § 350, “false advertising” includes “advertising, including  
2 labeling, of a commodity . . . if such advertising is misleading in a material respect.”  
3 Defendant violated GBL § 350 by advertising and selling the Products without  
4 disclosing material health and safety information, *e.g.*, benzene and the consumers risk  
5 of cancer from benzene. Defendant’ false and misleading advertising was directed at  
6 consumers, the New York Subclass members, and the public, and caused consumer  
7 injury and harm to the public interest.

8 111. Had Defendants been truthful in their advertising, online representations,  
9 labeling, and packaging about benzene, Plaintiffs, the Class, and Subclass members  
10 would not have bought the Products.

11 112. Plaintiffs, on behalf of themselves, Hawaii and New York Subclass  
12 members suffered ascertainable economic losses because of Defendant’s’ misconduct  
13 because they bought the Products, they otherwise would not have but for Defendant’  
14 material misrepresentations.

15 113. Because of Defendant’s’ misconduct, Plaintiffs, on behalf of themselves,  
16 the Class and Subclass members, seek recovery of their economic damages, attorneys’  
17 fees, punitive damages, restitution, and all other relief allowable by law, including an  
18 injunction to enjoin Defendant from continuing their fraudulent business practices. The  
19 damages sought are ascertainable, uniform to the Class and can be measured and  
20 returned to the Class members.

21 **B. DEFENDANTS ENGAGED IN DECEPTIVE TRADE PRACTICES**  
22 **IN VIOLATION OF VARIOUS STATE STATUTES, *on Behalf of***  
23 ***Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New***  
24 ***York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington***  
***Subclasses***

25 114. Plaintiffs reallege and incorporate all other paragraphs in this Complaint  
26 and further allege:

27 115. Plaintiffs bring this cause of action on behalf of themselves, and all  
28 members of the Nationwide Class and the Connecticut, Hawaii, Illinois, Maryland,

1 Massachusetts, Missouri, New York, Pennsylvania, Ohio, Rhode Island, Nevada, and  
2 Washington Subclasses, all of whom are similarly situated consumers.

3 116. Defendants' acts and omissions constitute deceptive business practices in  
4 violation of Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New  
5 York, Pennsylvania, Ohio, Rhode Island, Nevada, and Washington deceptive trade  
6 practices laws.

7 117. Defendants represented the Products had characteristics, uses, and benefits,  
8 they did not, *e.g.*, Defendants represented the Products were pure, of good quality, safe,  
9 and only contained the ingredients disclosed.

10 118. Defendants represented the Products were not deteriorated or altered, when  
11 they knew, or should have known, the Products degraded to benzene under normal and  
12 expected use, handling, and storage conditions.

13 119. Defendants represented the Products contained only the ingredients listed  
14 on Defendants' websites, advertising, labels, and containers. Defendants did not  
15 disclose to Plaintiffs, the Subclass members, and the public the Products were at risk of  
16 benzene contamination.

17 120. Defendants advertised the Products with the intent not to sell them as  
18 advertised.

19 121. Defendants' acts and omissions violated Connecticut Unfair Trade  
20 Practices Act, CONN. GEN STAT. ANN., § 42- 110, *et seq.*, which broadly prohibits  
21 Defendants from engaging in unfair methods of competition and unfair or deceptive  
22 acts or practices in the conduct of any trade or commerce such as those committed by  
23 Defendants and alleged in this Class Action.

24 122. Defendants' acts and omissions violated Hawaii's Uniform Deceptive  
25 Trade Practice Act, HAW. REV. STAT. §481-A3 because Defendants: (1) caused the  
26 likelihood of confusion or of misunderstanding as to the source, sponsorship, approval,  
27 or certification of the Products; (2) represented the Products had characteristics,  
28 ingredients, or benefits, they did not; (3) represented the Products were not deteriorated

1 or altered, when they were; (4) represented the Products were of a particular standard  
2 or quality when they were not; and (5) advertised the Products with the intent not to sell  
3 them as advertised.

4 123. Defendants' acts and omissions violated Illinois' Consumer Fraud and  
5 Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* Defendants' used deception,  
6 fraud, false pretense, false promises, and omitted material health and safety information  
7 about the Products' degradation to benzene, and/or contamination with benzene, which  
8 Defendants intended the Illinois Subclass members to rely upon.

9 124. Defendants' acts and omissions violated Maryland's Unfair or Deceptive  
10 Trade Practices Act, MD. COM. CODE, Title 13, Subtitle 3, §13-301 because  
11 Defendants: (1) represented the Products had characteristics, ingredients, uses, and  
12 benefits, they did not; (2) represented the Products were not deteriorated or altered,  
13 when they were; (3) represented the Products were of a particular standard or quality,  
14 when they were not. Defendants' representations about the Products' ingredients, and  
15 omission of benzene were misleading, deceptive, incomplete, and not truthful in  
16 violation of Maryland's Unfair or Deceptive Trade Practices Act.

17 125. Defendants' acts and omissions violated Massachusetts consumer  
18 protection law, MASS. GEN. LAWS ANN. Ch. 93A, § 1 *et seq.*, which broadly prohibits  
19 unfair and deceptive trade practices such as those committed by Defendants and alleged  
20 in this Class Action.

21 126. Defendants' acts and omissions violated the Missouri Merchandising  
22 Practices Act, MO. REV. STAT. § 407, *et seq.*, which prohibits the use of deception,  
23 fraud, misrepresentations, or unfair practices by a business, *e.g.*, marketing Products as  
24 safe, approved, tested, and only containing the listed ingredients. Missouri's law further  
25 prohibits the suppression or omission of material facts such as the Products'  
26 degradation to benzene.

27 127. Defendant's acts and omissions violated N.Y. GEN. BUS. LAW § 349, which  
28 prohibits Defendants from engaging in deceptive, unfair, and misleading acts and

1 practices such as those committed by Defendants and alleged in this Class Action.  
2 Defendants' misrepresentations and omissions caused consumer injury and harm to the  
3 public interests of protecting public health and the public's right to know about any  
4 harmful constituents in the Products.

5 128. Defendants' acts and omissions violate Nevada Deceptive Trade Practice  
6 Act, NEV. REV. STATUTES, Title 52, Chapter 598 *et seq.* which prohibits Defendants  
7 from making false statements about their Products and advertising the Products without  
8 the intent to sell them as advertised.

9 129. Defendants' acts and omissions violated Ohio's Consumer Sales Practices  
10 Act, OHIO REV. CODE ANN. § 1345.01, *et seq.* which prohibits sales practices that are  
11 deceptive, unfair, or unconscionable, and Ohio's Deceptive Trade Practices Act, OHIO  
12 REV. CODE ANN. § 4165 *et seq.*

13 130. Defendants' acts and omissions violated Pennsylvania's Unfair Trade  
14 Practices and Consumer Protection Law, 73 P.S. §§201-1 *et seq.* because Defendants:  
15 (1) caused the likelihood of confusion or of misunderstanding as to the source,  
16 sponsorship, approval, or certification of the Products; (2) used deceptive  
17 representations about the Products; (3) represented the Products had characteristics,  
18 ingredients, or benefits, they did not; (3) represented the Products were not deteriorated  
19 or altered, when they were; (4) represented the Products were particular standard or  
20 quality when they are not; and (5) advertised the Products with the intent not to sell  
21 them as advertised.

22 131. Defendants' acts and omissions violated Rhode Island's Deceptive Trade  
23 Practices Act, R.I. GEN. LAWS § 6- 13.1- 5.2(B), *et seq.* because Defendants: (1) caused  
24 likelihood of confusion or of misunderstanding as to the source, sponsorship, approval,  
25 or certification of the Products; (2) used deceptive representations in connection with  
26 the Products; (3) represented the Products had sponsorship, approval, characteristics,  
27 ingredients, uses, benefits, they did not; (4) represented the Products were not  
28 deteriorated or altered, when they were; (5) represented the Products were of a

1 particular standard, quality, or grade, when they were not; and (6) advertised the  
2 Products with the intent not to sell them as advertised.

3 132. Defendants' acts and omissions violated Washington's Consumer  
4 Protection Act, WASH. REV. CODE § 19.86.010, *et seq.*, which broadly prohibits  
5 Defendants from engaging in unfair methods of competition and unfair or deceptive  
6 acts or practices in the conduct of any trade or commerce.<sup>75</sup> Defendants' concealment  
7 of material health and safety information about the Products, which they knew or  
8 should have known, was injurious to the public interests of protecting public health and  
9 the public's right to know about any harmful constituents in the Products. Defendants'  
10 conduct caused harm to the Plaintiffs, the Washington subclass members, and members  
11 of the public who bought the Products without knowing they degraded to benzene.  
12 Defendants' conduct has the capacity to cause harm to other persons who buy the  
13 Products.

14 133. Had Defendants been truthful in their advertising, labeling, and packaging  
15 of the Products and not omitted material health and safety information about benzene in  
16 and formed from the Products, Plaintiffs, the Class, and Subclass members would not  
17 have bought the Products.

18 134. Defendants' acts and omissions and violations of Connecticut, Hawaii,  
19 Illinois, Maryland, Massachusetts, Missouri, New York, Pennsylvania, Ohio, Rhode  
20 Island, Nevada, and Washington consumer protection statutes are ongoing and  
21 continuing to cause harm.

22 135. Plaintiffs, on behalf of themselves, Hawaii, Illinois, Maryland,  
23 Massachusetts, Missouri, New York, Nevada, Pennsylvania, Rhode Island, and  
24 Washington State Subclasses suffered an ascertainable economic loss because of  
25 Defendants' misconduct because they bought the Products, they would not have bought  
26 but for Defendants' misrepresentations.

27 \_\_\_\_\_  
28 <sup>75</sup> Under § 19.86.090, Washington consumers harmed by such practices may recover actual damages, the costs of the suit, including reasonable attorney's fees, and the court may, in its discretion, increase the award of damages to an amount up to three times the actual damages sustained.

1 136. Because of Defendants' misconduct, Plaintiffs, on behalf of themselves, the  
2 Class and Subclass members, seek recovery of their economic damages, attorneys' fees,  
3 punitive damages, and all other relief allowable under the law. The damages sought are  
4 ascertainable, uniform to the Class and Subclasses and can be measured and returned.

5 **C. BREACH OF EXPRESS WARRANTY, *on Behalf of the Nationwide***  
6 ***Class and all State Subclasses***

7 137. Plaintiffs reallege and incorporate all other paragraphs in this Complaint  
8 and further allege:

9 138. Plaintiffs bring this cause of action on behalf of themselves, and all  
10 members of the Nationwide Class and the Connecticut, Hawaii, Illinois, Maryland,  
11 Massachusetts, Missouri, New York, Pennsylvania, Ohio, Rhode Island, Nevada, and  
12 Washington Subclasses, all of whom are similarly situated consumers.

13 139. The Uniform Commercial Code § 2-313 provides that an affirmation of  
14 fact or promise made by the seller to the buyer which relates to the goods and becomes  
15 part of the basis of the bargain creates an express warranty that the goods shall conform  
16 to the promise. Defendants advertised and sold the Products as safe, pure, of good  
17 quality, and only containing the listed ingredients. Defendants' advertising, labels,  
18 containers, packaging, advertising, and online statements did not mention benzene,  
19 leading consumers to believe the Products were safe for their ordinary use. Defendants'  
20 affirmations were uniformly made to Plaintiffs and the Subclass members by  
21 Defendants in the Products' advertising, labeling, packaging, and online statements and  
22 were part of the basis of the bargain between Defendants, the Plaintiffs, and the Class  
23 and Subclass members.

24 140. Defendants' affirmations and promises are unlawful. When Defendants  
25 marketed, distributed, and sold the Products, Defendants knew, or should have known,  
26 the Products degraded to benzene under normal and expected use, handling, and storage  
27 conditions. Defendants knew, or should have known, the Products formed benzene and  
28 therefore did not conform to Defendants' express representations and warranties to

1 consumers. Plaintiffs, the Class, and Subclass members purchased the Products in  
2 reasonable reliance on Defendants' statements.

3 141. Because of Defendants' misconduct, Plaintiffs, on behalf of themselves and  
4 the Class, and Subclass members, seek recovery of their economic damages, attorneys'  
5 fees, punitive damages, restitution, and all other relief allowable by law, including an  
6 injunction to enjoin Defendants from continuing their fraudulent business practices.  
7 The damages sought are ascertainable, uniform to the Class and can be measured and  
8 returned to the Class members.

9 **D. BREACH OF IMPLIED WARRANTY, *on Behalf of the Nationwide***  
10 ***Class and all State Subclasses***

11 142. Plaintiffs reallege and incorporate all other paragraphs in this Complaint  
12 and further allege:

13 143. Plaintiffs bring this cause of action on behalf of themselves, and all  
14 members of the Nationwide Class and the Connecticut, Hawaii, Illinois, Maryland,  
15 Massachusetts, Missouri, New York, Pennsylvania, Ohio, Rhode Island, Nevada, and  
16 Washington Subclasses, all of whom are similarly situated consumers.

17 144. Defendants, as sellers of the Products, also made implied warranties  
18 including warranting the Products were of the same quality and purity represented on  
19 the labels, in advertising, and on Defendants' websites and in advertising. Defendants  
20 represented the Products were fit for the ordinary purpose and conformed to the  
21 promises made on the containers, labels, advertising, and websites that all ingredients  
22 were listed, and all warnings given.

23 145. Defendants advertised their Products as safe, when they knew, or should  
24 have known, the Products degraded to benzene. Defendants did not list benzene as an  
25 ingredient or contaminant anywhere on the Products or advertising. The Products are  
26 not of the quality and purity represented by Defendants because the Products degrade to  
27 benzene under normal use, handling, and storage conditions.

28 146. Defendants did not tell Plaintiffs, the Class, or Subclass members the



1 Products were not fit for their ordinary use because the Products, as advertised and sold  
2 by Defendants, degraded to benzene under normal and expected handling, use, and  
3 storage.

4 147. Defendants' affirmations that the Products were safe for use were  
5 uniformly made to the Plaintiffs, the Class, and Subclass members in the Products'  
6 advertising, labeling, and packaging, and on Defendants' websites, which were part of  
7 the basis of the bargain.

8 148. Plaintiffs, the Class, and Subclass members purchased the Products in  
9 reasonable reliance on Defendants' statements, affirmations, and omissions of material  
10 health and safety information.

11 149. Defendants' acts and omissions are ongoing and continuing to cause harm.

12 150. Because of Defendants' misconduct, Plaintiffs, on behalf of themselves, the  
13 Class, and Subclass members, seek recovery of their actual damages, injunctive relief,  
14 attorneys' fees, punitive damages, and all other relief allowable under the law. The  
15 damages sought are uniform to the Class and Subclasses and the actual damages can be  
16 measured and returned to consumers who bought Defendants' Products.

17 **E. UNJUST ENRICHMENT, *on Behalf of the Nationwide Class and all***  
18 ***State Subclasses***

19 151. Plaintiffs reallege and incorporate all other paragraphs in this Complaint  
20 and further allege:

21 152. Plaintiffs bring this cause of action on behalf of themselves, and all  
22 members of the Nationwide Class and the Connecticut, Hawaii, Illinois, Maryland,  
23 Massachusetts, Missouri, New York, Pennsylvania, Ohio, Rhode Island, Nevada, and  
24 Washington Subclasses, all of whom are similarly situated consumers.

25 153. Defendants have unjustly profited from their deceptive business practices  
26 and kept the profits from Plaintiffs and the Class and Subclass members who purchased  
27 the Products.

28 154. Defendants requested and received a measurable economic benefit at the

1 expense of Plaintiffs, the Class and Subclass members as payment for the Products.  
2 Defendants accepted the economic benefits knowing the economic benefit received was  
3 based on deception and omission of material human health and safety information.

4 155. There is no utility in Defendants' misconduct and Defendants' enrichment  
5 from the misconduct is unjust, inequitable, unconscionable, and against the strong  
6 public policy to protect consumers against fraud.

7 156. Because of Defendants' misconduct, Plaintiffs, on behalf of themselves, the  
8 Class, and Subclasses, and the public seek recovery of their actual damages,  
9 disgorgement of profits, injunctive relief, attorneys' fees, punitive damages, and all  
10 other relief allowable under the law. The damages sought are uniform to the Class and  
11 Subclasses and the actual damages can be measured and returned to consumers who  
12 bought Defendants' Products.

13 **IX. PRAYER FOR RELIEF**

14 157. WHEREFORE, Plaintiff pray for judgment against Defendants:

15 158. That the Court determine this action may be maintained as a Class Action  
16 under Rule 23(a) and (b)(1), (2) and (3) of the Federal Rules of Civil Procedure:

- 17 a. That Defendants' misconduct be adjudged to have violated the state  
18 consumer protection laws identified herein;
- 19 b. That injunctive and declaratory relief be awarded against Defendants,  
20 including but not limited to an order prohibiting Defendants from engaging  
21 in the alleged misconduct;
- 22 c. That Defendants be ordered to disgorge profits and revenues derived from  
23 their course of misconduct and that such unjust enrichment be restored to  
24 the class and or distributed cy pres as the Court shall deem just and  
25 equitable;
- 26 d. That Plaintiff recover all compensatory damages and other damages  
27 sustained by Plaintiff;
- 28 e. That Plaintiff recover punitive damages as allowed by law;

- 1 f. That Plaintiff recover all statutory damages as allowed by law;  
2 g. That Plaintiff recover their attorneys' fees and all costs of suit;  
3 h. That Plaintiff recover all Statutory pre-judgment and post-judgment interest  
4 on any amounts; and  
5 i. That all further relief as this Court may deem just and proper be granted.

6 **X. DEMAND FOR JURY TRIAL**

7 159. Demand is made for a jury trial.  
8

9 Dated: March 6, 2024

**WISNER BAUM LLP**

10 By: /s/ R. Brent Wisner  
11 R. Brent Wisner, Esq, (SBN: 276023)  
12 [rbwisner@wisnerbaum.com](mailto:rbwisner@wisnerbaum.com)  
13 11111 Santa Monica Blvd, Suite 1750  
14 Los Angeles, CA 90025  
15 Telephone: (310) 207-3233  
16 Facsimile: (310) 820-7444

*Attorney for Plaintiff*

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input type="checkbox"/> )  DIANE HOWARD, CHATHAM MULLINS, WILLIAM EISMAN, and CHRISTIAN M. RAINEY, on behalf of themselves, and all others similarly situated, and the public	<b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> )  ALCHEMEE, LLC, TARO PHARMACEUTICAL USA, INC., and DOES 1 to 50, Inclusive
(b) County of Residence of First Listed Plaintiff <u>Sangamon</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Los Angeles</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.  R. Brent Wisner WISNER BAUM, LLP, 11111 Santa Monica Blvd., Suite 1750, Los Angeles, CA 90025 Telephone: (310) 207-3233, Email: rbwisner@wisnerbaum.com	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:5%;">PTF</td> <td style="width:5%;">DEF</td> <td style="width:40%;">Incorporated or Principal Place of Business in this State</td> <td style="width:5%;">PTF</td> <td style="width:5%;">DEF</td> </tr> <tr> <td></td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td></td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input checked="" type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
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Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multidistrict Litigation - Transfer	<input type="checkbox"/> 8. Multidistrict Litigation - Direct File
--	--	---	--	---	---	--

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.Cv.P. 23:**  Yes  No      **MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 28 U.S. Code § 1332(a) - Diversity of citizenship

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 530 General	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	<b>TORTS</b>	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<b>PERSONAL INJURY</b>	<input checked="" type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 485 Telephone Consumer Protection Act	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 895 Freedom of Info. Act		<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 896 Arbitration		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 444 Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes			<input type="checkbox"/> 446 American with Disabilities-Other		
			<input type="checkbox"/> 448 Education		

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>QUESTION A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Southern Eastern
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<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1.</b> Do 50% or more of the defendants who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question B.2.
<b>B.2.</b> Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1.</b> Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question C.2.
<b>C.2.</b> Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

<b>QUESTION D: Location of plaintiffs and defendants?</b>	<b>A.</b> Orange County	<b>B.</b> Riverside or San Bernardino County	<b>C.</b> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b>D.1. Is there at least one answer in Column A?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the SOUTHERN DIVISION.  Enter "Southern" in response to Question E, below, and continue from there.  If "no," go to question D2 to the right. →	<b>D.2. Is there at least one answer in Column B?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the EASTERN DIVISION.  Enter "Eastern" in response to Question E, below.  If "no," your case will be assigned to the WESTERN DIVISION.  Enter "Western" in response to Question E, below. ↓
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<b>QUESTION E: Initial Division?</b>	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	WESTERN

<b>QUESTION F: Northern Counties?</b>
Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**IX(a). IDENTICAL CASES:** Has this action been previously filed **in this court**?  NO  YES

If yes, list case number(s): \_\_\_\_\_

**IX(b). RELATED CASES:** Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?  NO  YES

If yes, list case number(s): \_\_\_\_\_

**Civil cases** are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**A civil forfeiture case and a criminal case** are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

**X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):** /s/ R. Brent Wisner DATE: 3/6/2024

**Notice to Counsel/Parties:** The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))