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

14 ALAN MONTENEGRO, JAMES
 15 MAYFIELD, CHATHAM MULLINS,
 16 and MICHAEL MONTGOMERY on
 17 behalf of themselves, and all others
 18 similarly situated, and the general public,

19 Plaintiffs,

20 v.

21 RB Health (US) LLC and DOES 1 to 50,
 22 Inclusive,

23 Defendants.

Civil Action No. 2:24-cv-1878

CLASS ACTION COMPLAINT

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

DEMAND FOR JURY TRIAL

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1 Plaintiffs, ALAN MONTENEGRO, JAMES MAYFIELD, CHATHAM
2 MULLINS, and MICHAEL MONTGOMERY on behalf of themselves, the proposed
3 Class and Subclasses (defined below), and the public, brings this Class Action
4 Complaint (“Class Action”) against Defendant, alleging the following upon Plaintiffs’
5 personal knowledge, or where Plaintiffs lack 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 Defendant’s sale of benzoyl peroxide acne treatment drug products (“BPO
10 Products” or “Products”) without warning consumers the BPO Products contained
11 unsafe levels of the potent human carcinogen benzene, and that the BPO Products were
12 at risk of degrading further into benzene under normal use, handling, and storage
13 conditions.

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

20 3. BPO Products should not contain benzene, nor degrade into benzene,
21 except under extraordinary circumstances.¹ A drug is “adulterated” if it consists in
22 whole or in part of any filthy, putrid, or decomposed substance, is impure, or mixed
23 with another substance.² Under the FDA Act, it is a crime to introduce or deliver “into
24 interstate commerce any food, drug, device, tobacco product, or cosmetic that is
25
26

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

28 ² 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).

1 adulterated or misbranded.”³ If benzene is found in any on-market or post-market
2 Product, the drug is unlawful and the drug manufacturer must contact the FDA to
3 initiate a voluntary recall.⁴

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

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

15 6. In 2023, Valisure, LLC,⁵ an independent, accredited laboratory that has
16 developed analytical methods to test drugs and consumer products for public safety,

17 ³ 21 U.S.C. § 331(a)(2010).

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

21 ⁵ Valisure is an independent third-party analytical laboratory that is accredited to International
22 Organization for Standardization (“ISO/IEC”) 17025:2017 standards for chemical testing (PJLA
23 Accreditation Number 94238). In response to rising concerns about drug shortages, generics, and
24 overseas manufacturing, Valisure developed and validated methods to test medications and consumer
25 products distributed in the United States. Valisure has tested a variety of drug and consumer
26 healthcare products for benzene including sunscreens, antiperspirants, body sprays, hand sanitizers,
27 and dry shampoos for benzene. Valisure’s testing results submitted to the FDA in its Citizen’s
28 Petitions, were widely publicized in the media leading to numerous recalls of contaminated consumer
products. *See* Valisure Citizen’s Petition on Benzoyl Peroxide (March 4, 2024), pp. 6-7, *see also*
Valisure Detects Benzene in Sunscreen, [https://www.valisure.com/valisure-newsroom/valisure-](https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen)
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-](https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32)
pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32; *see also*
Santee 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-](https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html)
benzene-explainer-wellness/index.html.

1 tested a representative sample of BPO and non-BPO products and found the BPO
2 Products had dangerous levels of benzene, many multiple times higher than allowed in
3 any regulated drug.⁶ Using industry standard gas chromatography and detection by
4 mass spectrometry (“GC-MS”) instrumentation, with selected ion flow tube mass
5 spectrometry (“SIFT-MS”) for detection of benzene released into the air around certain
6 BPO Products, the Products were incubated to temperatures common during consumer
7 use, handling, and storage and sampled for benzene.⁷ Levels as high as 1600 parts per
8 million (ppm) were found in common BPO Products.⁸ Unexpectedly, researchers
9 found that benzene was released into the surrounding air even when the BPO Products’
10 packaging was closed raising concern for even more inhalation exposures—a
11 particularly pernicious form of exposure to benzene.⁹ For the non-BPO products tested,
12 benzene was not present, or at trace levels below 2 ppm.¹⁰ Valisure filed a FDA
13 Citizen’s Petition on March 5, 2024 demanding an immediate recall of all BPO
14 Products.¹¹ The Petition is pending.¹²

15 7. The high levels of benzene found led Valisure to conduct a stability study
16 on a diverse market sweep of BPO Products and formulations. Valisure’s results show
17 that on-market BPO Products can form over 800 times the conditionally restricted FDA
18 concentration limit of 2 ppm for benzene, and the evidence suggests this problem
19 applies broadly to BPO Products currently on the market.¹³ Valisure concluded that on-

21 ⁶ Valisure FDA Citizen’s Petition on Benzoyl Peroxide (March 6, 2024).

22 ⁷ *Id.*

23 ⁸ *Id.* at 17.

24 ⁹ *Id.* at 23.

25 ¹⁰ *Id.* at 15 (“76 non-BPO products had no detectable benzene or values below 0.1ppm. 6 non-
26 BPO products contained traces of benzene below 2 ppm, which could be due to various inactive
27 ingredients used in consumer products that have been theorized to contain trace benzene”); *see also*
28 Valisure, LLC, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March 6, 2024).

¹¹ Valisure BPO Citizen’s Petition (March 5, 2024).

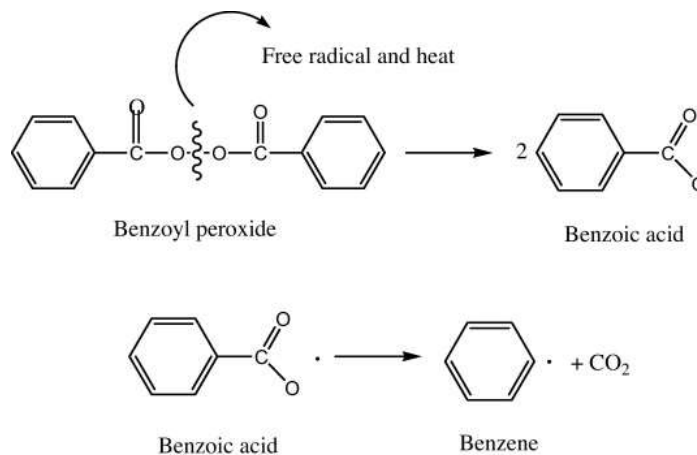
¹² Valisure’s Petition was still pending as of this Class Action’s filing.

¹³ 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).

1 market BPO Products appear to be fundamentally unstable and form unacceptably high
 2 levels of benzene when handled or stored at temperatures the Products will be be
 3 exposed to during expected use and handling by consumers.¹⁴

4 8. Although the BPO Products have been found to have benzene, Defendant
 5 never listed benzene among the ingredients, or anywhere on the Products' labels,
 6 containers, advertising or on Defendant's websites. Defendant warned no one the
 7 Products had benzene or were at risk of benzene contamination.

8 9. Defendant knew or should have known the BPO Products contain and/or
 9 degraded into benzene when exposed to expected consumer use, handling, and storage
 10 conditions. BPO is known, within the scientific community (but not among consumers)
 11 to degrade into benzene according to the mechanism below:¹⁵



20 10. Defendant misled Plaintiff, the Class, the Subclasses, and the public by
 21 representing the BPO Products only had the ingredients listed, and not benzene.
 22 Defendant misled Plaintiff, the Class, the Subclasses, and the public by representing the
 23 BPO Products were safe while concealing material health and safety information

24 ¹⁴ *Id.*

25 ¹⁵ The disposition of benzoyl peroxide to form benzene. Benzoyl peroxide is known to
 26 thermally decompose to form two molecules of benzoyloxy radicals that can further decompose to
 27 benzoic acid or phenyl radicals with liberation of carbon dioxide. The phenyl radicals can then
 28 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 known to them, *e.g.*, the BPO Products degraded to benzene, or were contaminated
2 with benzene. Defendant misled Plaintiff, the Class, the Subclasses, and the public by
3 giving the BPO Products long expiration dates of 2-3 years, affirming to consumers the
4 BPO Products were safe for use for years when Defendant knew or should have known
5 the BPO Products degraded much sooner to benzene.

6 11. Defendant's statements and omissions of material health and safety
7 information unreasonably placed Plaintiff, the Class, the Subclasses, and the public at
8 risk of exposure to benzene without their knowledge and consent. Defendant's
9 statements to Plaintiff, the Class, the Subclasses, and the public about the Products
10 were false, misleading, unsubstantiated, and blatantly deceptive.

11 12. As a result of the Defendant's misconduct and consumer deception, the
12 Plaintiff, the Class, the Subclasses, and the public were economically harmed, as they
13 purchased a product that they otherwise would have never purchased. They were also
14 physically harmed by being exposed to a known human carcinogen.

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

21 14. Plaintiff brings this Class Action individually, and on behalf of those
22 similarly situated, and seeks to represent a National Class of consumers and State
23 Subclasses of consumers from California, Connecticut, Hawaii, Illinois, Maryland,
24 Missouri, Massachusetts, Nevada, New York, Ohio, Pennsylvania, Rhode Island, and
25 Washington (defined *infra*). Plaintiff seeks damages, reasonable attorneys' fees and
26 costs, interest, restitution, other equitable relief, including an injunction and
27 disgorgement of all benefits and profits Defendant received from misconduct.

28 ///

1 **II. THE PARTIES**

2 15. Plaintiff Alan Montenegro is a California resident, located in Los Angeles
3 County who bought BPO Products including, but not limited to, Clearasil Stubborn
4 Acne Control 5 in 1 Spot Treatment Cream, CVS Health Acne Treatment Cream, and
5 CVS Health Acne Control Cleanser from 2017 to 2021. Plaintiff has suffered economic
6 damages and a result of Defendant’s violations of the state laws alleged herein. Plaintiff
7 would never have purchased Defendant’s BPO Products had Defendant warned about
8 the presence of benzene or that the Products could degrade into benzene.

9 16. Plaintiff James Mayfield is a California resident, located in Los Angeles
10 County who bought BPO Products including Clearasil Ultra Rapid Action Treatment
11 Cream from 1979 to 2022. Plaintiff has suffered economic damages and a result of
12 Defendant’s violations of the state laws alleged herein. Plaintiff would never have
13 purchased Defendant’s BPO Products had Defendant warned about the presence of
14 benzene or that the Products could degrade into benzene.

15 17. Plaintiff Chatham Mullins is a Massachusetts resident, located in Suffolk
16 County who bought BPO Products including Clearasil Stubborn Acne Control 5 in 1
17 Spot Treatment Cream from 2005 to 2023. Plaintiff has suffered economic damages
18 and a result of Defendant’s violations of the state laws alleged herein. Plaintiff would
19 never have purchased Defendant's BPO Products had Defendant warned about the
20 presence of benzene or that the Products could degrade into benzene.

21 18. Plaintiff Michael Montgomery is a Nevada resident, located in Clark
22 County who bought BPO Products including Clearasil Stubborn Acne Control 5 in 1
23 Spot Treatment Cream from 1981 to May 2023. Plaintiff has suffered economic
24 damages and a result of Defendant’s violations of the state laws alleged herein. Plaintiff
25 would never have purchased Defendant’s BPO Products had Defendant warned about
26 the presence of benzene or that the Products could degrade into benzene.

27 19. Defendant RB Health (US) LLC (“RB Health”) is a citizen of New Jersey
28 and Delaware, with its principal place of business in Parsippany, New Jersey. RB

1 Health is owned by Reckitt Benckiser Group PLC, a British publicly traded company.
2 RB Health sells BPO Products under the brand name Clearasil. RB Health's Products
3 include, inter alia: (1) Clearasil Rapid Rescue Spot Treatment Cream and (2) Clearasil
4 Stubborn Acne Control 5 in 1 Spot Treatment Cream. At all relevant times, RB Health
5 conducted business and derived substantial revenue from its manufacturing,
6 advertising, marketing, distributing, and selling of the Products within the State of
7 California.

8 20. Defendant and its agents promoted, marketed, and sold the Products in
9 California and in this District. The unfair, unlawful, deceptive, and misleading
10 advertising and labeling of the Products were prepared and/or approved by Defendant
11 and its agents and were disseminated by Defendant and its agents through statements,
12 labeling and advertising containing the misrepresentations alleged and disseminated
13 uniformly through advertising, packaging, containers, and via websites and social
14 media.

15 **III. JURISDICTION AND VENUE**

16 21. This Court has jurisdiction over this matter because the amount in
17 controversy exceeds \$5 million satisfying 28 U.S.C. § 1332(d)(2) for subject matter
18 jurisdiction. This Court has supplemental jurisdiction over any state law claims under
19 28 U.S.C. § 1367.

20 22. Venue is proper in the Central District of California under 28 U.S.C. §
21 1391(b) because a substantial part of the events or omissions giving rise to the claims
22 occurred in this District.

23 23. This Court has personal jurisdiction over the Defendant because Defendant
24 transacts business in California, including in this District, has substantial aggregate
25 contacts with the State of California, including in this District, engaged in misconduct
26 that has and had a direct, substantial, reasonably foreseeable, and intended effect of
27 injuring people in this District, and Defendant purposely availed itself of the benefits of
28 doing business in the State of California, and in this District.

1 24. To the extent applicable, the Court also has pendant personal jurisdiction
2 over claims alleged against Defendant that involve the same common nucleus of facts
3 and actions that give rise to Plaintiffs' claims that otherwise have proper personal
4 jurisdiction within this Court.

5 **IV. GENERAL ALLEGATIONS**

6 25. Fifty million Americans suffer from acne annually.¹⁶ Acne is the most
7 common skin condition in the United States with a prevalence among adolescents of
8 almost 95 percent.¹⁷ Acne can begin as early as age seven and, for some, can persist
9 through adulthood and into ages 50s and 60s.¹⁸ Millions of acne sufferers seek
10 treatment every year making it a billion-dollar industry and a key business segment for
11 Defendant, who are among America's most prominent companies.

12 26. Some of Defendant's most profitable acne treatment products contain BPO.
13 To make the finished BPO Products, BPO, a dry white powder, is mixed with other
14 ingredients to create topical drug creams, cleansers, scrubs, and washes for use on the
15 face and body. BPO is formulated into these Products at concentrations up to 10%.

16 **A. DEFENDANT'S CLEARASIL ACNE TREATMENT BRAND IS A**
17 **HOUSEHOLD NAME**

18 27. Defendant RB Health's Clearasil brand is one of the most widely
19 recognized acne treatment brands. It is a household name. Defendant's BPO Products
20 are widely marketed, available, sold, and used by children, teenagers, and adults
21 throughout the United States and the world. The acne treatment industry is a highly
22 competitive billion-dollar market. To remain relevant and top of mind, Defendant
23 spends millions of dollars every year promoting the Clearasil BPO Products directly to
24 consumers, including teenagers. Defendant makes promises to consumers to influence
25 their purchasing decisions such as affirming the Products are tested, backed by science,

26 _____
27 ¹⁶ American Association of Dermatology, <https://www.aad.org/media> (visited October 24, 2023).

28 ¹⁷ JL Burton et al., *The prevalence of acne vulgaris in adolescence*, BR J
DERMATOL,(1971);85(2):119–126.

¹⁸ *Id.*

1 and approved by dermatologists.

2 28. Defendant RB Health sells a variety of other well-known personal health
3 care products in addition to Clearasil. Such popular brands include KY personal
4 lubricants, Calgon bath products, Mucinex cold medications and many chemical
5 products including D-Con, Lime-Away, Mop & Glow, and Spray and Starch. RB
6 Health, together with its parent Reckitt, has a robust background in marketing and
7 selling chemical-based products dating to the 1800s with operations in 60 countries and
8 product sales in over 200 countries. Defendant is an expert in marketing as evidenced
9 by its worldwide reach and ownership of many popular household products including
10 the wildly popular Clearasil BPO Products.

11 **B. DEFENDANT DID NOT COMPLY WITH FDA’S TESTING**
12 **REQUIREMENTS BEFORE SELLING THE PRODUCTS TO THE**
13 **PUBLIC**

14 29. Despite Defendant’s Clearasil brand popularity and substantial share of the
15 acne treatment market, Defendant did not adequately test their BPO Products before
16 selling them to Plaintiffs, the Class, the Subclasses, and the public. Defendant’s BPO
17 Products are “drugs” regulated by the FDA. As with any regulated drug, Defendant
18 must follow current good manufacturing practices (“CGMPs”), have scientifically
19 sound specifications, and must have test procedures and processes to ensure the drug’s
20 components (active and inactive ingredients), and finished products are safe. Both raw
21 ingredient materials and finished batches must be tested before released to the public to
22 confirm they meet specifications for identity, strength, quality, and purity.¹⁹ If testing
23 results of the raw materials or finished product do not conform with the specifications,
24 the product cannot be sold to the public. Defendant must also re-test any Products
25 subject to deterioration.²⁰ Any Products not made in conformity with the CMGPs is
26
27

28 ¹⁹ 21 C.F.R. § 211.84 (1978); *see also* 21 C.F.R. § 211.160 (1978).

²⁰ 21 C.F.R. § 211.160(b)(1)(1978).

1 considered “adulterated” under 501(a)(2)(B) of the Food, Drug, and Cosmetic Act.²¹

2 30. Defendant must also do stability testing to understand the “shelf life” of the
3 Products and to assign an expiration date. It is well known that certain chemical
4 ingredients can degrade or change because of environmental, and storage conditions
5 such as light, moisture, temperature, and humidity, or because of the passage of time.
6 The stability testing should cover all expected distributor and consumer storage,
7 handling, and use conditions and must be done using “reliable, meaningful, and specific
8 test methods.”²² If stability testing finds a drug product is not stable under expected
9 storage or use conditions, degrades, or create toxic byproducts, the product cannot be
10 sold to the public.

11 31. The CGMPs and stability test requirements are there to ensure drug
12 products are safe for public use. These are the minimum requirements. Because the
13 drug manufacturers are largely self-regulated, the FDA must rely on drug
14 manufacturers, the public, and concerned citizens to report unsafe drugs. The FDA
15 cannot force a drug manufacturer to recall a contaminated drug.²³

16 **C. DEFENDANT KNEW OR SHOULD HAVE KNOWN THE BPO**
17 **PRODUCTS DEGRADED TO BENZENE WHEN EXPOSED TO**
18 **NORMAL USE, HANDLING, AND STORAGE CONDITIONS**

19 32. Defendant knew or should have known the BPO Products degraded to
20 benzene when exposed to heat. Defendant knew that, because of the chemical nature of
21 the active and inactive ingredients, including BPO, the BPO Products were not stable

22 _____
23 ²¹ 21 C.F.R. § 225.1 (1976). Under 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act a drug
24 is considered “adulterated” (poorer in quality by adding another substance) if the methods used in, or
25 the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to
26 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 ²² 21 CFR 211.166.

28 ²³ 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 and would degrade when exposed to heat from normal distributor and consumer use,
2 handling, and storage conditions.

3 33. It is well known that BPO degrades to benzene when exposed to heat over
4 time. This process was first reported in the scientific literature as early as 1936.²⁴

5 34. The degradation of BPO to benzene was known or should have been
6 known to the Defendant, who promoted themselves as devoting substantial money and
7 resources to science and research. Defendant marketed themselves as world class drug
8 and healthcare researchers, developers, and sellers. Defendant employed high-level
9 scientists, chemists, and researchers to formulate their drug products for public use.
10 Defendant had one of the most recognized acne brand Product and the financial gains
11 by such recognition. Defendant with these resources and expertise were aware of the
12 well-known chemical processes that degrade their BPO Products into benzene when
13 exposed to common use temperatures and conditions.

14 35. Defendant further knew or should have known that specific ingredients
15 derived from hydrocarbons increased the risk the BPO Products would yield benzene.²⁵
16 At-risk ingredients include carbomers, mineral spirits, and other petroleum derived
17 substances. These ingredients are red flags for risk of benzene contamination. The FDA
18 published guidance in 2022 urging the industry to reformulate drug products at risk of
19 benzene contamination.²⁶ The FDA's alert highlighted ingredients made from
20 hydrocarbons, including carbomers (thickening agents), urging drug manufacturers to
21 test products containing them for benzene contamination.²⁷ Many of the Defendant's
22

23 ²⁴ H. Erlenmeyer and W. Schoenauer, *Über die thermische Zersetzung von Di-acyl-peroxyden*, HELV.
24 CHIM. ACTA, 19, 338 (1936), <https://onlinelibrary.wiley.com/doi/10.1002/hlca.19360190153> (last
visited Feb. 5, 2024).

25 ²⁵ Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of
Benzene in Certain Drugs*.

26 ²⁶ 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](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/reformulating-drug-products-contain-carbomers-manufactured-benzene).

27 ²⁷ *Id.*; see also December 22, 2022 FDA Alert at 1.

1 Products contain hydrocarbons and carbomers but none have been recalled due to
2 benzene contamination.

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

12 37. Defendant knew or should have known the BPO Products would be
13 handled, used, and stored by distributors, sellers, and consumers under various
14 temperatures that affect chemical stability. Defendant knew or should have known the
15 BPO Products would travel by commercial carriers and distributors in varying storage
16 conditions and would be stored by consumers in handbags, backpacks, bathrooms,
17 showers, lockers, and in vehicles during warm months where the BPO Products would
18 be exposed to heat. Defendant knew or should have known consumers would apply the
19 benzene contaminated BPO Products to their faces and bodies and would also use the
20 BPO Products in heated showers as scrubs and washes. Defendant knew or should have
21 known the BPO Products would be used and applied to the skin at normal body
22 temperatures, and elevated temperatures following showers or baths, after physical
23 activity, and after the BPO Products sat in warm temperatures or hot vehicles. In a
24 Clearasil blog, RB Health wrote: “if you work out in the middle of the day, make sure
25 to wash off the sweat . . . grab some acne-fighting cleansing wipes to rapidly remove
26 dirt, oil and sweat.”²⁸

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28 ²⁸ RB Health LLC, *Clearasil Skin Blog, How to Get Rid of Stubborn Acne*, <https://www.clearasil.us/blogs/news/fight-stubborn-acne> (last visited October 25, 2023).

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

11 **D. DEFENDANT KNEW OR SHOULD HAVE KNOWN BENZENE**
12 **WAS FOUND IN OTHER CONSUMER PRODUCTS BUT DID NOT**
13 **TEST THE BPO PRODUCTS**

14 39. Defendant knew or should have known of benzene contamination in other
15 on-market drug and healthcare products when they marketed and sold the BPO
16 Products to Plaintiffs, the Class, the Subclass, and the public. In 2020, the FDA started
17 working with companies to identify benzene in products, which resulted in product
18 recalls of hand sanitizers, sunscreens, and deodorants. In 2021, an independent
19 chemical analysis by Valisure of hundreds of sunscreens and after-sun care products
20 from 69 brands found 27 percent of the batches had significant levels of benzene above
21 the FDA 2 ppm limit.²⁹ Johnson and Johnson’s Aveeno and Neutrogena sunscreen lines
22 were among the most benzene contaminated and were recalled.³⁰ CVS’s private brand
23 after-sun care products were also highly contaminated with benzene, but not recalled by
24 CVS. By 2021, Defendant was aware of benzene contamination issues in its
25 competitors’ other product lines but continued to advertise and sell the BPO Products

26 _____
27 ²⁹ Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care Products, May 24, 2021.

28 ³⁰ Press Release. (July 14, 2021), Johnson & Johnson Consumer Inc. Johnson & Johnson Consumer Inc. *Voluntarily Rec of Specific Neutrogena and Aveeno Aerosol Sunscreen Products Due to the Presence of Benzene.*

1 without testing them for benzene.

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

4 40. 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 41. The FDA reminded drug manufacturers they were required to establish
9 scientifically sound and appropriate specifications and test procedures to assure drug
10 components (active and inactive ingredients) and finished drug products conform to
11 appropriate quality specifications (21 C.F.R. 211.84, 21 C.F.R. 211.160). This included
12 testing of raw materials and finished batches (21 C.F.R. 211.165) prior to release to
13 ensure they met appropriate specifications for identity, strength, quality, and purity.³¹

14 42. The FDA warned drug manufacturers that any drug products or
15 components at risk of benzene contamination should be tested, and any batches with
16 benzene above 2 ppm should not be released to the public.³² The FDA further warned
17 that, if any drug or drug component was subject to deterioration, drug manufacturers
18 must have re-testing procedures in place to ensure continued purity and stability. If any
19 drug product in circulation was found to have benzene over 2ppm, the FDA directed
20 that drug manufacturers contact the FDA to discuss a voluntarily recall.³³

21 43. To date, none of the Defendant’s Products have been recalled due to
22 benzene contamination, and none have voluntarily notified consumers of contamination
23 or risk of contamination.

24 ///

25 ///

26 _____
27 ³¹ Federal Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of*
Benzene in Certain Drugs, 1.

28 ³² *Id.*, 3.

³³ *Id.*, 2.

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

4 44. 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 methods³⁴ 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.³⁵

12 45. 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 ³⁴ Valisure's test methods largely mirror those utilized by FDA's own "Drug Quality Sampling
 16 and Testing" ("DQST") Program. Valisure FDA Citizen's Petition at 4.

17 ³⁵ See Valisure May 24, 2021 Citizen Petition on Benzene in Sunscreen and After-sun Care
 18 Products, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>;
 19 Valisure's Citizen Petition on Hand Sanitizer Products Containing Benzene Contamination (filed
 20 March 24, 2021), <https://www.regulations.gov/document/FDA-2021-P-0338-0001>, Valisure's
 21 Citizen Petition on Benzene in Sunscreen and After-sun Care Products (filed May 24, 2021),
 22 <https://www.regulations.gov/document/FDA-2021-P-0497-0001>, Valisure's Citizen Petition on
 23 Benzene in Body Spray Products (filed November 3, 2021,
 24 <https://www.regulations.gov/document/FDA-2021-P-1193-0001>), Valisure's Citizen Petition on
 25 Benzene in Dry Shampoo Products (filed October 31, 2022),
 26 <https://www.regulations.gov/document/FDA-2022-P-2707-0001>) *see also* CNET, Dry Shampoo
 27 Recall: What Is Benzene and Which Brands Are Affected [https://www.cnet.com/health/personal-](https://www.cnet.com/health/personal-care/dry-shampoo-recall-what-is-benzene-and-which-brands-are-affected/)
 28 [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-](https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32)
[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-](https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html)
[wellness/index.html](https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html).

1 sulfur, adapalene, azelaic acid, niacinamide and zinc, and 18 had no drug ingredients.³⁶
2 83 of the BPO Products were purchased over the counter from major retailers and 16
3 were prescription products purchased from licensed wholesalers.³⁷ The BPO Products
4 included popular Products: Proactiv 2.5% BPO Cream, Target Up & Up 2.5% BPO
5 Cream, Equate Beauty 10% BPO Cream, Equate BPO Cleanser, Neutrogena 10% BPO
6 Cleanser, Clearasil 10% BPO Cream, CVS Health 10% BPO Face Wash, Walgreens
7 10% BPO Cream, La Roche Posay BPO Cream, and Clean & Clear 10% BPO Lotion.

8 46. Valisure used three incubation temperatures to evaluate the effects of
9 common distributor and consumer use, handling, and storage conditions on benzene
10 formation. 37°C/98.6°F was used for human body temperature, 50°C/122°F was used
11 to evaluate shelf-life performance as an accelerated stability testing temperature used
12 by the pharmaceutical industry,³⁸ and 70°C/158°F to model storage in a hot vehicle.³⁹
13 The BPO Products were incubated at 37°C for four weeks and 50°C for three weeks
14 and benzene concentration was measured at certain time intervals using GC-MS.
15 Benzene findings were plotted in real time and reported in parts per million (“ppm”).
16 The results below were submitted to the FDA in Valisure’s March 5, 2024 Citizen’s
17 Petition on Benzoyl Peroxide.⁴⁰

22 ³⁶ See Valisure Citizen’s Petition on Benzoyl Peroxide (March 4, 2024).

23 ³⁷ *Id.*

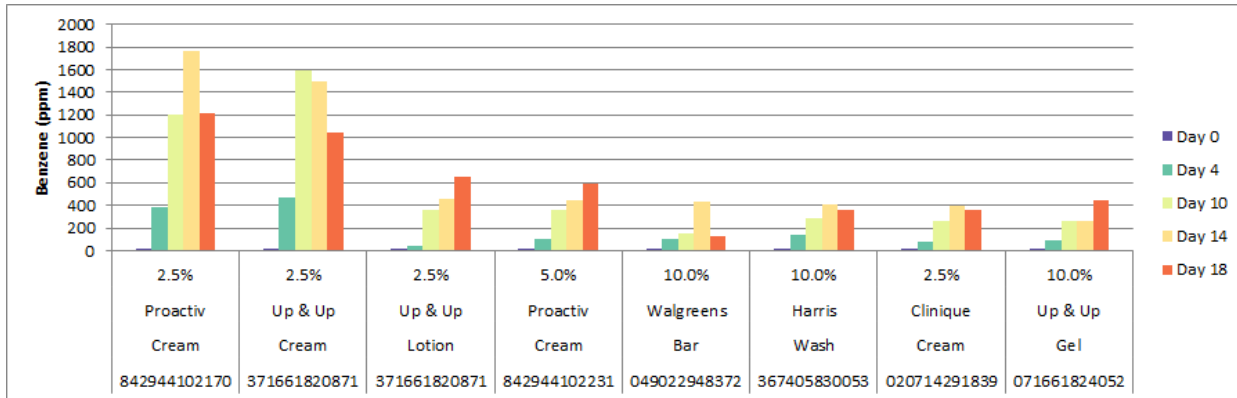
24 ³⁸ Ghimire, Prakash et al., *Guidelines on Stability Studies of Pharmaceutical Products and*
25 *Shelf Life Estimation*. INTERNATIONAL JOURNAL OF ADVANCES IN PHARMACY AND
BIOTECHNOLOGY, (2020). 06. 15-23. 10.38111/ijapb.20200601004.

26 ³⁹ Grundstein A, Meentemeyer V, Dowd J. *Maximum vehicle cabin temperatures under*
27 *different meteorological conditions*. Int J Biometeorol. 2009 May;53(3):255-61. doi: 10.1007/s00484-
009-0211-x. Epub 2009 Feb 21. PMID: 19234721.

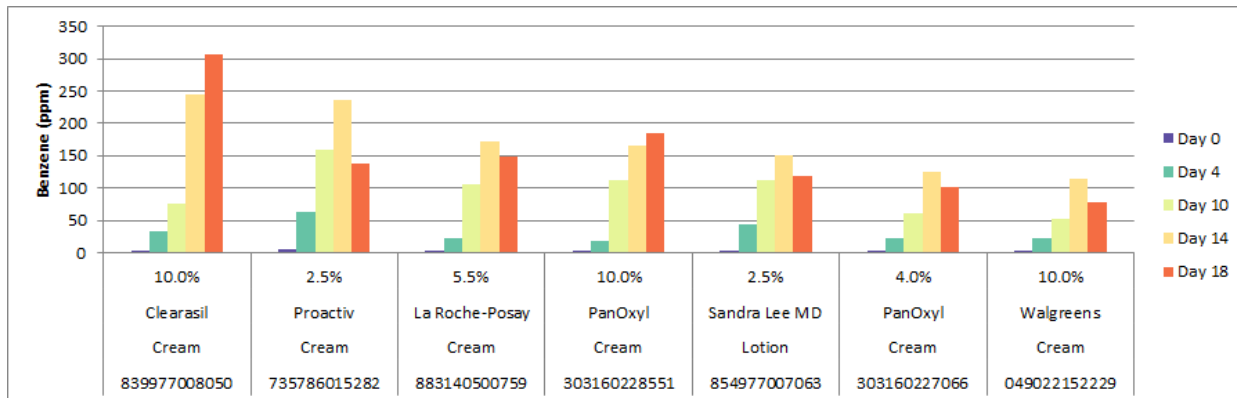
28 ⁴⁰ Valisure, LLC, (March 6, 2024), *Valisure Discovers Benzoyl Acne Treatment Products are*
Unstable and Form Benzene, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March 6, 2024).

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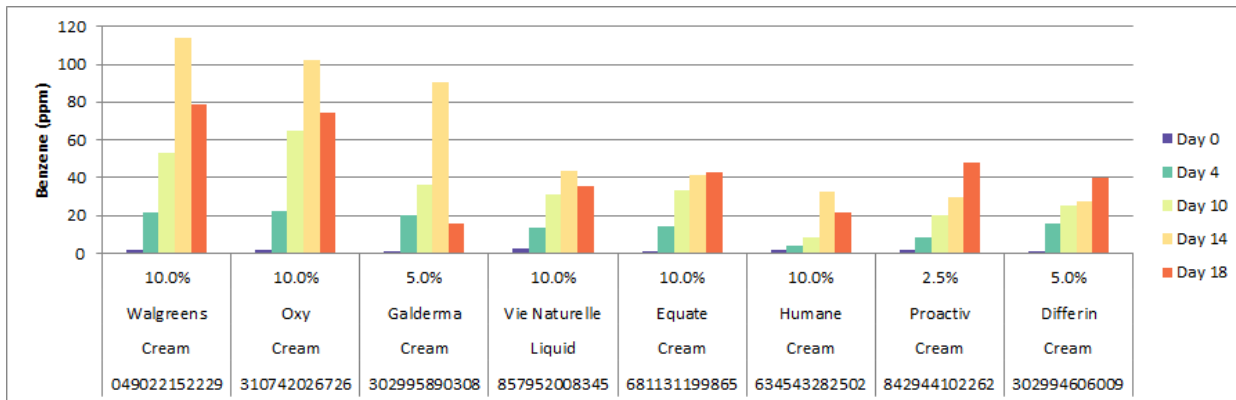
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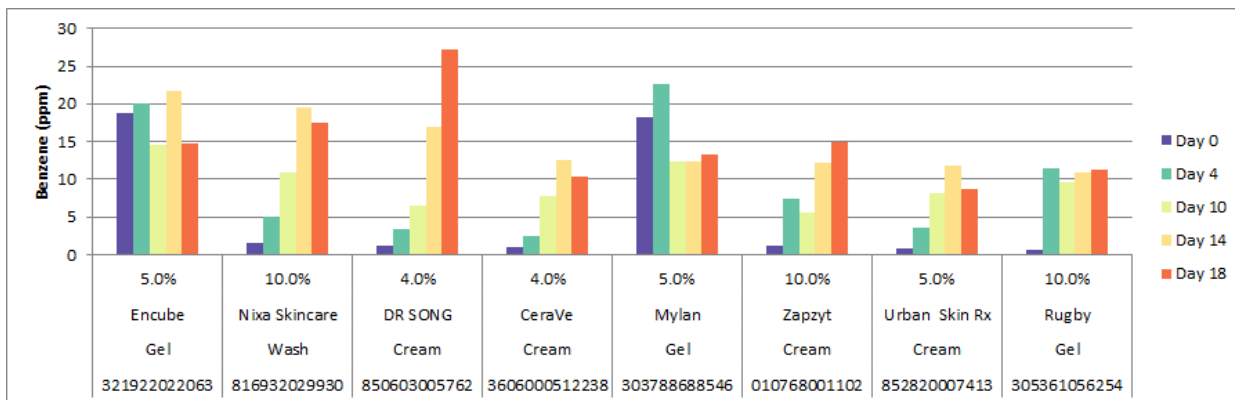


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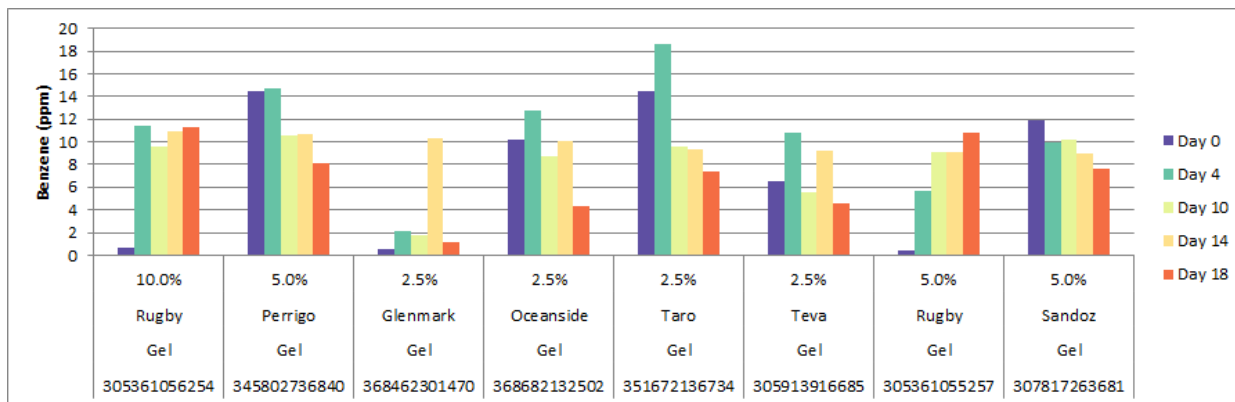


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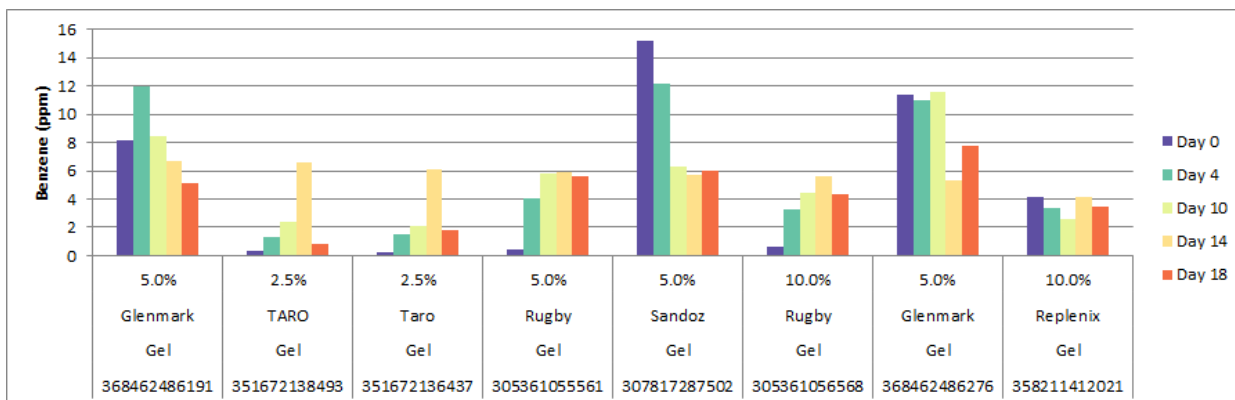
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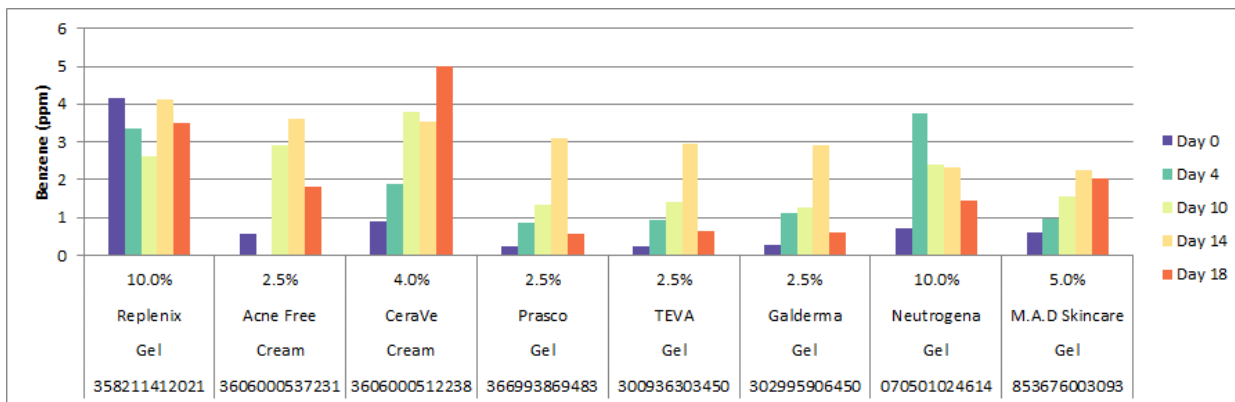


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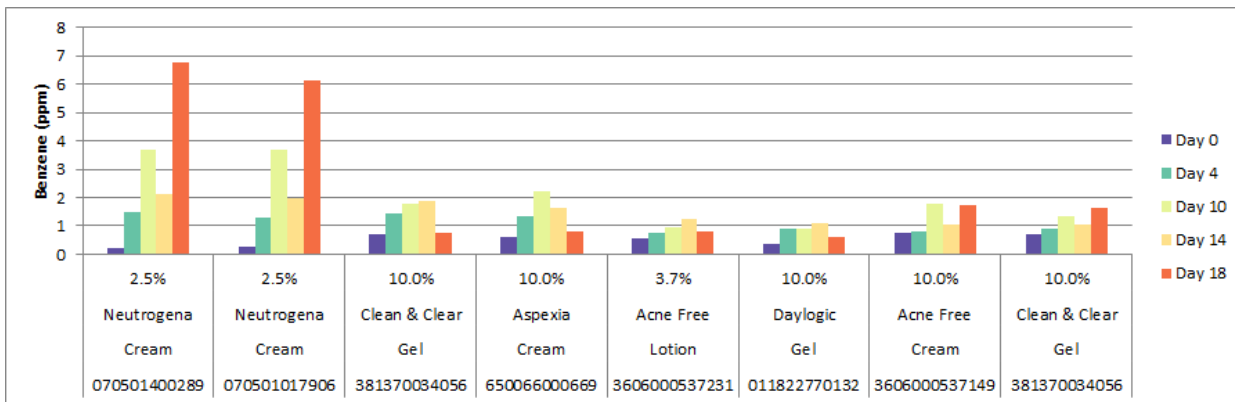


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47. Valisure found the BPO formulated products were not chemically stable and yielded benzene at levels well over 2 ppm, the maximum amount allowed in any U.S. regulated drug. Some of the benzene levels were 800 times higher than 2 ppm reaching as high as 1700 ppm.⁴¹ The concentration of BPO in the Products did not influence the benzene levels, e.g., Target’s Up & Up BPO Lotion and Proactiv’s 10% BPO Cream yielded similar benzene results in the range of 600 ppm. Unexpectedly, Valisure found that benzene vapors leaked from some of the tested Products’ packaging contaminating the surrounding air even when the packaging was closed raising concern for additional inhalation exposures.⁴²

⁴¹ *Id.*
⁴² *Id.*

1 48. Valisure concluded that all on-market BPO acne formulations are
 2 fundamentally unstable and form unacceptably high levels of benzene under normal
 3 use, handling, and storage temperatures, but no such evidence was observed for acne
 4 treatment products not formulated with BPO.⁴³ The finding that additional benzene
 5 leaked into the surrounding air from the products' containers means the total consumer
 6 benzene exposure would be even more dangerous than the levels reported.

7 49. Valisure filed a Citizen's Petition on Benzoyl Peroxide on March 5, 2024⁴⁴
 8 with the FDA requesting the FDA Commissioner to immediately demand a recall of all
 9 BPO Products formulated with BPO and further to require that drug manufacturers do
 10 independent chemical verification.

11 **G. DEFENDANT EXPOSED PLAINTIFFS, THE CLASS, AND THE**
 12 **PUBLIC TO BENZENE, A KNOWN HUMAN CARCINOGEN,**
 13 **WITHOUT THEIR KNOWLEDGE**

14 50. Although benzene has been found in the BPO Products and released into
 15 the surrounding air from the packaging, Defendant did not list benzene among the
 16 Products' ingredients, on the Products' label or container, or anywhere in their
 17 advertising or on their websites. Defendant did not (and still do not) warn that the
 18 Products contain benzene, are at risk of benzene contamination, or that the product
 19 could cause consumers to be exposed to benzene even when sealed.

20 51. Benzene is a carcinogen that has been among the most studied toxins over
 21 the last 100 years due to its wide use during the industrial revolution, extreme danger,
 22 and known ability to cause cancer and death in humans and animals. The medical
 23 literature linking benzene to blood cancers is vast dating to the 1930s.⁴⁵ Benzene is the

24 _____
⁴³ *Id.*

25 ⁴⁴ As of the date of filing this Class Action, Valisure's FDA Petition is still pending.

26 ⁴⁵ See Hamilton A., *Benzene (benzol) poisoning*, ARCH PATHOL, (1931):434-54, 601-37; Hunter
 27 FT, *Chronic exposure to benzene (benzol). Part 2: The clinical effects*. J. IND. HYG TOXICOL,
 28 (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;

1 foundation component for many chemicals used to make plastics, resins, synthetic
 2 fibers, paints, dyes, detergents, drugs, and pesticides. In the past, benzene was widely
 3 used as a solvent in industrial paints, paint removers, adhesives, degreasing agents,
 4 denatured alcohol, and rubber cements. Benzene use has declined due to the
 5 proliferation of worker studies and an ever-growing body of evidence confirming
 6 benzene's contribution to blood cancers.

7 52. Benzene has no known safe level of exposure.⁴⁶ Benzene causes central
 8 nervous system depression and destroys bone marrow, leading to injury in the
 9 hematopoietic system.⁴⁷ The International Agency for Research on Cancer (“IARC”)
 10 classifies benzene as a “Group 1 Carcinogen” that causes cancer in humans, including
 11 acute myelogenous leukemia (“AML”).⁴⁸ AML is the signature disease for benzene
 12 exposure with rates of AML particularly high in studies of workers exposed to
 13 benzene.⁴⁹

14 53. Benzene exposure is cumulative and additive. There is no safe level of
 15 exposure to benzene, and all exposures constitute some risk in a linear, if not
 16 supralinear, and additive fashion.”⁵⁰

17 54. The Agency for Toxic Substances and Disease Registry’s (“ATSDR”)
 18 “Tox Facts” for benzene warns that people can be exposed to benzene vapors from
 19 benzene-containing products and that benzene harms the blood marrow, causing
 20 leukemia and anemia, and affects the immune system leaving victims vulnerable to

21 American Petroleum Institute, *API Toxicological Review: Benzene*, NEW YORK, (1948); Infante PF,
 22 Rinsky RA, Wagoner JK, et al., *Leukemia in benzene workers*, LANCET, (1977); 2 (8028): 76-78.

23 ⁴⁶ Harrison R, Saborit, J., *WHO Guidelines for Indoor Air Quality – Selected Pollutants*, (2010); see
 24 also Smith, Martyn T. (2010). Advances in Understanding Benzene Health Effects and Susceptibility.
Annual Review of Public Health., (2010) Vol. 31:133-148.

25 ⁴⁷ FDA Toxicological Data for Class 1 Solvents, Appendix 4, *Benzene*,
<https://www.fda.gov/media/71738/download>.

26 ⁴⁸ 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).

27 ⁴⁹ American Cancer Association, *Benzene and Cancer Risk*, [https://www.cancer.org/cancer/risk-](https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html)
[prevention/chemicals/benzene.html](https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html) (last visited October 20, 2023).

28 ⁵⁰ Smith, Martyn T., *Annual Review of Public Health*, ADVANCES IN UNDERSTANDING
 BENZENE HEALTH EFFECTS AND SUSCEPTIBILITY (2010) Vol. 31:133-148.

1 infection.⁵¹

2 55. According to the FDA, benzene in small amounts over long periods of time
3 can decrease the formation of blood cells and long-term exposure through inhalation,
4 oral intake, and skin absorption may result in cancers such as leukemia and other blood
5 disorders.⁵²

6 56. Benzene is a major industrial chemical made from coal and oil that is
7 heavily regulated by the EPA as an important environmental pollutant that negatively
8 affects the soil, air, and groundwater. Waste and air emissions containing benzene are
9 considered hazardous waste. The coal, oil, paint, and chemical industries are heavily
10 regulated due to the emission of carcinogens including benzene from refining and other
11 industries processes involving benzene and benzene byproducts, which can end up in
12 the air, water, and food supply.

13 57. Benzene is heavily regulated to protect public health and should not be in
14 drug products, especially ones such as acne treatment that are used daily by children
15 and teenagers for many years. The FDA drug guidelines specify that benzene must not
16 be used to make drugs products because of the unacceptable toxicity and deleterious
17 environmental effects.⁵³ The FDA allows one limited exception – where the use of
18 benzene in a drug product is unavoidable to produce a drug product with a significant
19 therapeutic advance. In that instance, benzene must be restricted to two parts per
20 million (ppm).⁵⁴ Defendant’s BPO Products do not meet this rare exception.

21 58. Benzene is heavily regulated in the workplace. The U.S. Occupational
22 Safety and Health Administration (“OSHA”) set an eight-hour exposure standard of 1
23 ppm.⁵⁵ The National Institute for Occupational Safety and Health (“NIOSH”)

24 ⁵¹ Agency for Toxic Substances and Disease Registry, *Benzene – Tox Facts*, CAS # 71-43-2.

25 ⁵² Federal Drug Administration. (June 9, 2022). *Frequently Asked Questions*:
26 <https://www.fda.gov/drugs/drug-safety-and-availability/frequently-asked-questions-benzene-contamination-drugs>.

27 ⁵³ Food and Drug Administration, *Q3C – Tables and Lists Guidance for Industry*,
<https://www.fda.gov/media/71737/download> (last visited September 26, 2023).

28 ⁵⁴ *Id.*

⁵⁵ OSHA. Occupational exposure to benzene: Final rule. Fed. Reg. 1987;52-34460-578.

1 established a recommended exposure level (REL) of 0.1 ppm (15-minute ceiling limit).
2 Subsequent exposure studies known as the “China studies” confirmed cancer at levels
3 below 1 ppm.⁵⁶ The benzene levels created from Defendant’s BPO Products are many
4 times higher than the levels reported in these worker studies and the acceptable limits
5 set by regulators.

6 59. Benzene can also pass from the mother’s blood to a developing fetus
7 causing the baby to be exposed to benzene.⁵⁷ Animal studies have shown low birth
8 weights, delayed bone formation, and damage to the bone marrow of developing
9 offspring when pregnant animals breathed benzene.⁵⁸

10 60. Plaintiffs and the Class were exposed to benzene from the BPO Products
11 by inhalation and dermal absorption. Benzene can be absorbed into the body via
12 inhalation, skin absorption, ingestion, and/or eye contact.⁵⁹ Plaintiffs and the Class
13 applied the BPO Products to areas of the skin including the face, neck, chest, and back
14 one to three times per day and used the BPO Products as washes or scrubs in heated
15 showers. Plaintiffs and the Class were also exposed to benzene leaked from
16 contaminated BPO Products.

17 **H. DEFENDANT MARKETED THEMSELVES AS EXPERTS WHILE**
18 **CONCEALING THEIR FAILURE TO TEST THE BPO PRODUCTS**
19 **FOR SAFETY**

20 61. Defendant’s BPO Products degrade to benzene, during normal and
21 expected handling, use, or storage but Defendant did not warn Plaintiffs, the Class, the
22 Subclass, and the public about benzene contamination or the health risks of exposure.

23 _____
24 ⁵⁶ See Lan Q, Zhang L et al., *Hematotoxicity in Workers Exposed to Low Levels of Benzene*, SCIENCE,
25 (December 3, 2004); Costa-Amaral I, V. B. L., *Environmental Assessment and Evaluation of*
26 *Oxidative Stress and Genotoxicity Biomarkers Related to Chronic Occupational Exposure to Benzene*,
27 INT J ENVIRON RES PUBLIC HEALTH, (2019) Jun; 16(12): 2240.

28 ⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 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>.

1 Instead, Defendant made broad sweeping claims that the BPO Products were safe,
2 researched, tested, validated, backed by science, and approved by dermatologists.

3 62. Defendant marketed itself as “founders in the industry” and a “skincare
4 brand formulated to help teens in the fight against acne.”⁶⁰ Defendant proudly
5 proclaimed they are the “medicated acne experts” with “70 years of acne experience,”
6 and only offered medicated acne care that cares for the consumer.⁶¹ Defendant had an
7 opportunity to tell consumers on its skin blog that salicylic acid without BPO is safer
8 than BPO formulated products but it did not.⁶² To keep profits for both, Defendant said
9 “ultimately salicylic acid and benzoyl peroxide both fight acne and blemishes – it’s just
10 a matter of using them effectively!”⁶³

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

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

21 64. Defendant represented to the Plaintiffs, the Class, the Subclass, and the
22 public, that each of their BPO Products had only the ingredients listed on the label and
23 package, but none of them identified benzene anywhere on the Products’ label,
24 container, or packaging.

25 _____
26 ⁶⁰ RB Health, LLC, *About Us*, <https://www.clearasil.us/pages/about> (last visited October 25, 2023).

27 ⁶¹ *Id.*

28 ⁶² RB Health, LLC, *Skin Care Blog, What's The Difference Between Salicylic Acid Benzoyl Peroxide?*
[https://www.clearasil.us/blogs/news/what-s-the-difference-between-salicylic-acid-and-benzoyl-](https://www.clearasil.us/blogs/news/what-s-the-difference-between-salicylic-acid-and-benzoyl-peroxide)
peroxide (last visited October 25, 2023).

⁶³ *Id.*

1 65. Defendant marketed Clearasil BPO Products as “dermatologist tested” and
2 “scientifically formulated with maximum-strength medication to penetrate the
3 pores.”⁶⁴ Clearasil was recommended for use one to three times a day.⁶⁵ None of the
4 Clearasil BPO formulated Products list benzene on any labels, advertising, or packages,
5 and none warn of the risk of exposure to benzene.⁶⁶

6 66. 104. Defendant’s statements about the BPO Products were false, deceptive,
7 and misleading. Defendant’s statements were meant to convey the Products were safe
8 and did not contain carcinogens such as benzene. Defendant made these statements and
9 omitted benzene from all advertising, labeling, and packaging when they knew or
10 should have known the statements were false, misleading, and deceptive. Reasonable
11 consumers, relying on Defendant’s statements reasonably would believe the BPO
12 Products were safe and did not contain benzene.

13 **J. DEFENDANT DIRECTLY MARKETED THE BPO PRODUCTS TO**
14 **CHILDREN AND TEENAGERS**

15 67. Defendant’s BPO Products are widely used by children and teenagers as a
16

17 ⁶⁴ See e.g., Clearasil, *Clearasil Rapid Rescue Acne Treatment Cream*, [https://www.clearasil.us/](https://www.clearasil.us/products/clearasil-ultra-rapid-action-vanishing-acne-treatment-cream-1-ounce)
18 [products/clearasil-ultra-rapid-action-vanishing-acne-treatment-cream-1-ounce](https://www.clearasil.us/products/clearasil-ultra-rapid-action-vanishing-acne-treatment-cream-1-ounce) (last visited October 25,
19 2023)

20 ⁶⁵ *Id.*

21 ⁶⁶ See e.g., Clearasil, *Clearasil Rapid Rescue Acne Treatment Cream, Warnings*, “For external use
22 only. Do not use: if you have very sensitive skin or are sensitive to benzoyl peroxide. When using this
23 product: avoid unnecessary sun exposure and use a sunscreen; avoid contact with the eyes, lips and
24 mouth; avoid contact with hair or dyed fabrics, including carpet and clothing which may be bleached
25 by this product; with other topical acne medications, at the same time or immediately following use of
26 this product, increased dryness or irritation of the skin may occur (If this occurs, only one medication
27 should be used unless directed by a doctor); skin irritation may occur, characterized by redness,
28 burning, itching, peeling or possibly swelling (More frequent use or higher concentrations may
aggravate skin irritation. Mild irritation may be reduced by using the product less frequently or in a
lower concentration). Stop use and ask a doctor if: skin irritation becomes severe. Keep out of reach of
children. If swallowed, get medical help, or contact a Poison Control Center immediately.”
[https://www.clearasil.us/products/clearasil-ultra-rapid-action-vanishing-acne-treatment-cream-1-](https://www.clearasil.us/products/clearasil-ultra-rapid-action-vanishing-acne-treatment-cream-1-ounce)
[ounce](https://www.clearasil.us/products/clearasil-ultra-rapid-action-vanishing-acne-treatment-cream-1-ounce) (last visited October 25, 2023); see also Clearasil, *Clearasil Benzoyl Peroxide Stubborn Acne*
Spot Treatment, [https://www.clearasil.us/products/](https://www.clearasil.us/products/clearasil-daily-clear-vanishing-acne-treatment-cream)
[clearasil-daily-clear-vanishing-acne-treatment-](https://www.clearasil.us/products/clearasil-daily-clear-vanishing-acne-treatment-cream)
[cream](https://www.clearasil.us/products/clearasil-daily-clear-vanishing-acne-treatment-cream) (last visited October 25, 2023); see also Clearasil, *Clearasil Daily Clear Vanishing Acne*
Treatment Cream, [https://www.clearasil.us/](https://www.clearasil.us/products/clearasil-daily-clear-vanishing-acne-treatment-cream)
[products/clearasil-daily-clear-vanishing-acne-treatment-](https://www.clearasil.us/products/clearasil-daily-clear-vanishing-acne-treatment-cream)
[cream](https://www.clearasil.us/products/clearasil-daily-clear-vanishing-acne-treatment-cream) (last visited October 25, 2023).

1 standalone treatment or in combination with other BPO Products. Defendant knew that
2 adolescents are the largest users with users as young as 7-10 years old. Defendant
3 recommended that consumers, including children, use the BPO Products one to three
4 times a day, over many months or longer for persistent acne. Defendant knew that some
5 consumers would use the BPO Products for many years starting in their teens. There is
6 no cure for acne. Defendant knew that consumers with chronic acne would use their
7 BPO Products several times a day throughout their lifetime.

8 68. Defendant aggressively marketed the BPO Products directly to children
9 and teenagers knowing, or they should have known, the BPO Products degrade to
10 benzene under normal use and storage conditions. Many of Defendant's online and
11 print advertisements featured children, teenagers, eye-catching props, music, and colors
12 meant to attract teens and pre-teens, and appeal to their preferences, activities, and
13 interests.

14 69. Defendant's Clearasil skin blogs featured information and acne treatment
15 advice targeted to teens with no warnings to parents about exposure to benzene.⁶⁷
16 Defendant told teenagers to make its Products the "number one accessory on prom
17 night."⁶⁸

18 70. Defendant's marketing of BPO Products without mentioning benzene, the
19 risk of benzene exposure, or testing for benzene was misleading, fraudulent, deceptive,
20 and dangerous.

21 **V. PUNITIVE DAMAGES ALLEGATIONS**

22 71. Defendant's conduct was done with malice and reckless disregard for
23 human life. Defendant knew the BPO Products degraded to benzene when exposed to
24 normal consumer use, handling, and storage conditions. Defendant further knew that
25

26 ⁶⁷ RB Health, LLC, *Why Do We Get Hormonal and Teen Acne?* [https://www.clearasil.us/
27 blogs/news/get-prom-ready-skin-care-tips-from-our-beauty-blogger](https://www.clearasil.us/blogs/news/get-prom-ready-skin-care-tips-from-our-beauty-blogger) (last accessed October 7, 2023).

28 ⁶⁸ RB Health, LLC, *Get Prom Ready Skin Care Tips from Our Beauty Blogger*,
<https://www.clearasil.us/blogs/news/get-prom-ready-skin-care-tips-from-our-beauty-blogger> (last
visited October 25, 2023).

1 benzene is a known human carcinogen that is not supposed to be in the BPO Products
2 due to the grave risk of harm to consumers. Defendant disregarded this information and
3 the known risks of benzene exposure and deliberately omitted benzene from the list of
4 ingredients, the BPO Products' labels, and their social media and websites where
5 information about the BPO Products is found. Defendant consciously and deliberately
6 crafted the BPO Products' marketing, labels, packaging, containers, and warnings
7 intending to mislead Plaintiffs, the Class, the Subclasses, and the public, and lead them
8 to believe the BPO Products were safe and carcinogen-free.

9 72. Defendant marketed themselves as expert drug formulators, researchers,
10 and sellers skilled in developing safe and reliable products. Defendant withheld
11 material health and safety information Defendant knew was essential to informed
12 consumer decision making. Defendant knew that, by their conduct, they were robbing
13 Plaintiffs, the Class, the Subclasses, and the public of their right to choose safe
14 products.

15 73. Defendant was on notice of benzene findings in other consumer and drug
16 products leading to widely publicized recalls. Defendant was on notice of the FDA's
17 concerns of benzene contamination in drug and consumer products and received the
18 FDA's 2022 directive to test Products for benzene contamination. Defendant
19 disregarded these notices and continued to market and sell the BPO Products without
20 testing them for benzene.

21 74. Defendant knew its decisions and chosen course of conduct was risky and
22 would cause consumers to be exposed to benzene. Defendant's conduct was not by
23 accident, but was deliberate, calculated, and informed. Defendant knew they could sell
24 more BPO Products and earn more money by concealing material human health and
25 safety information. Defendant further knew that testing the BPO Products for benzene
26 would yield findings of benzene requiring recalls and/or a shutdown of production
27 causing significant losses of income. Defendant's goals were met not only because of
28 their false and deceptive advertising, labeling, and packaging, but through a

1 comprehensive scheme of aggressive marketing and image branding leading consumers
2 to believe they were acne treatment experts dedicated to drug research, development,
3 and safety and using only the safest ingredients and formulations that would remain
4 pure and stable until the designated end, *i.e.*, the expiration date. Defendant's conduct
5 and concealment of material health and safety information was done to further their
6 own monetary gain and with conscious disregard of the Plaintiffs, the Class, the
7 Subclasses, and the public's right to choose safe products. Defendant's conduct was
8 intentional, calculated, blatantly deceptive, unscrupulous, and offensive to consumer
9 health and public policy. To redress the harm caused by Defendant's conduct,
10 Plaintiffs, on behalf themselves, the Class, and Subclasses, seek punitive damages
11 against the Defendant.

12 **VI. PLAINTIFF'S SPECIFIC ALLEGATIONS**

13 75. Plaintiff Alan Montenegro is a California resident who places a high
14 priority on health and safety, and on the adverse health consequences of exposure to
15 carcinogens such as benzene. In shopping for drug products for his skin and face,
16 Plaintiff Alan Montenegro was particularly concerned about the product being cost
17 effective, that the BPO Product received positive reviews from verified buyers, and the
18 before and after images for use of the Product. Plaintiff recalls seeing online
19 advertisements by Defendant before purchasing them in the store. Based on the
20 statements made by Defendant, their widely recognized name, and lack of information
21 that the BPO Products contained carcinogens such as benzene, Plaintiff believed the
22 Products were safe to put on his skin. Defendant's representations and omissions of
23 human health and safety information were material to Plaintiff.

24 76. Plaintiff Montenegro bought Clearasil Stubborn Acne Control 5 in 1 Spot
25 Treatment Cream, CVS Health Acne Treatment Cream, and CVS Health Acne Control
26 Cleanser and used it from 2017 to 2021 in hopes of creating a daily skin routine and
27 getting rid of acne spots and blemishes. Plaintiff was unaware when he bought the BPO
28 Product that it was contaminated with benzene or that it could degrade to benzene. Had

1 Defendant been truthful and told Plaintiff he would be exposed to benzene and/or be at
2 increased risk of cancer, he would not have purchased Clearasil Stubborn Acne Control
3 5 in 1 Spot Treatment Cream, CVS Health Acne Treatment Cream, and CVS Health
4 Acne Control Cleanser.

5 77. Plaintiff Montenegro suffered an ascertainable economic loss because of
6 Defendant's statements and misrepresentations in that he bought the BPO Products he
7 would not have bought but for Defendant's statements and misrepresentations.

8 78. Plaintiff James Mayfield is a California resident who places a high priority
9 on health and safety, and on the adverse health consequences of exposure to
10 carcinogens such as benzene. In shopping for drug products for his skin and face,
11 Plaintiff Mayfield was particularly concerned about the acne in his head and shoulder
12 area. Plaintiff was influenced to purchase the BPO Product from numerous television
13 advertisements. Based on the statements made by Defendants, their widely recognized
14 name, and lack of information that the BPO Products contained carcinogens such as
15 benzene, Plaintiff believed the BPO Products were safe to put on his skin. Defendants'
16 representations and omissions of human health and safety information were material to
17 Plaintiff.

18 79. Plaintiff Mayfield bought Clearasil Ultra Rapid Action Treatment Cream
19 and used it from 1979 to 2022 for his acne problem in the head and shoulder area.
20 Plaintiff was unaware when he bought the BPO Product that it was contaminated with
21 benzene or that it could degrade to benzene. Had Defendants been truthful and told
22 Plaintiff he would be exposed to benzene and/or be at increased risk of cancer, he
23 would not have purchased Clearasil Ultra Rapid Action Treatment Cream.

24 80. Plaintiff Mayfield suffered an ascertainable economic loss because of
25 Defendant's statements and misrepresentations in that he bought the BPO Products he
26 would not have bought but for Defendant's statements and misrepresentations.

27 81. Plaintiff Chatham Mullins is a Massachusetts resident who places a high
28 priority on health and safety, and on the adverse health consequences of exposure to

1 carcinogens such as benzene. In shopping for drug products for her skin and face,
2 Plaintiff Chatham Mullins was particularly concerned about the ingredients, being
3 cruelty-free, and products that are approved and sold in the European Union (EU).
4 Based on the statements made by Defendants, their widely recognized name, and lack
5 of information that the BPO Products contained carcinogens such as benzene, Plaintiff
6 believed the BPO Products were safe to put on her skin. Defendants' representations
7 and omissions of human health and safety information were material to Plaintiff.\

8 82. Plaintiff Mullins bought Clearasil Stubborn Acne Control 5 in 1 Spot
9 Treatment Cream and used it from 2005 to 2023 for resolving skin inflammation such
10 as redness, cleansing and acne blemishes. Plaintiff was unaware when she bought the
11 BPO Product that it was contaminated with benzene or that it could degrade to benzene.
12 Had Defendants been truthful and told Plaintiff she would be exposed to benzene
13 and/or be at increased risk of cancer, she would not have purchased Clearasil Stubborn
14 Acne Control 5 in 1 Spot Treatment Cream.

15 83. Plaintiff Mullins suffered an ascertainable economic loss because of
16 Defendant's statements and misrepresentations in that he bought the BPO Products he
17 would not have bought but for Defendant's statements and misrepresentations.

18 84. Plaintiff Michael Montgomery is a Nevada resident who places a high
19 priority on health and safety, and on the adverse health consequences of exposure to
20 carcinogens such as benzene. In shopping for drug products for his skin and face,
21 Plaintiff Michael Montgomery was particularly concerned about efficiency. Based on
22 the statements made by Defendants, their widely recognized name, and lack of
23 information that the BPO Products contained carcinogens such as benzene, Plaintiff
24 believed the Products were safe to put on his skin. Defendants' representations and
25 omissions of human health and safety information were material to Plaintiff.

26 85. Plaintiff Montgomery bought Clearasil Stubborn Acne Control 5 in 1 Spot
27 Treatment Cream and used it from 1981 to May 2023 for clearing acne on his face.
28 Plaintiff was unaware when he bought the BPO Product that it was contaminated with

1 benzene or that it could degrade to benzene. Had Defendants been truthful and told
2 Plaintiff he would be exposed to benzene and/or be at increased risk of cancer, he
3 would not have purchased Clearasil Stubborn Acne Control 5 in 1 Spot Treatment
4 Cream.

5 86. Plaintiff Montgomery suffered an ascertainable economic loss because of
6 Defendant's statements and misrepresentations in that he bought the BPO Products he
7 would not have bought but for Defendant's statements and misrepresentations.

8 **VII. CLASS ACTION ALLEGATIONS**

9 87. Plaintiffs bring this case on behalf of themselves, and all others similarly
10 situated as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.
11 Plaintiffs seek to represent a National Class of consumers who bought the Products, and
12 State Subclasses of consumers from the states identified below. Excluded from this
13 Class are Defendant, their employees, co-conspirators, officers, directors, legal
14 representatives, heirs, successors, and affiliated companies; Class counsel and their
15 employees; and judicial officers and their immediate families as court staff assigned to
16 the case.

17 88. The Class does not seek damages for physical injuries, although Plaintiffs
18 were physically harmed by being exposed to benzene.

19 89. The Class will include a National Class to include all persons who bought
20 for use, and not resale, the Products within the United States.

21 90. The State Subclasses will include all persons who bought for use, and not
22 resale, the Products within California, Connecticut, Hawaii, Illinois, Maryland,
23 Massachusetts, Missouri, New York, Nevada, Ohio, Pennsylvania, Rhode Island, and
24 Washington.

25 91. This action has been brought and may be properly maintained as a Class
26 Action under Rule 23 of the Federal Rules of Civil Procedure because there is a well-
27 defined community of interest and the proposed Class meets the class action
28 requirements under Rule 23 of numerosity, commonality, typicality, and adequacy of

1 representation.

2 92. Defendant engaged in a common course of conduct giving rise to the legal
3 rights sought to be enforced by Plaintiffs, on behalf of themselves, and the other Class
4 members. Similar or identical statutory and common law violations, business practices,
5 and injuries are involved.

6 93. **Numerosity.** Plaintiffs believes there are millions of Class members
7 throughout the United States, and there are tens of thousands of Subclass members in
8 each of the listed states, making the Class and state Subclasses so numerous and
9 geographically dispersed that joinder of all members is inconvenient and impracticable.

10 94. **Commonality.** There are questions of law and fact common to all Class
11 and Subclass members that predominate over questions which affect only individual
12 Class members. All Class and Subclass members were deceived and misled by
13 Defendant through the same advertising, online representations, labeling, and
14 packaging, which did not mention benzene and which misrepresented the
15 characteristics, ingredients, and safety of the BPO Products. All Class and Subclass
16 members bought Defendant's BPO Products and have suffered an economic loss
17 because of Defendant's deceptions and omissions of material health and safety
18 information. Thus, there is a well-defined community of interest in the questions of law
19 and facts common to all Class and Subclass members. Other common questions of law
20 and fact in this dispute include, without limitation:

- 21 a. Whether Defendant's BPO Products degrade to benzene under common
22 distributor and consumer handling, use, and storage conditions.
- 23 b. Whether Defendant tested the BPO Products for benzene before selling
24 them to Plaintiffs, the Class, and the public.
- 25 c. When Defendant knew or should have known the BPO Products degraded
26 to benzene.
- 27 d. When Defendant knew or should have known the BPO Products contain
28 benzene.

- 1 e. Whether Defendant's advertising omitting benzene was deceptive,
2 fraudulent, or unfair.
- 3 f. Whether Defendant's advertising omitting benzene was likely to deceive
4 reasonable consumers.
- 5 g. Whether Defendant's conduct violated California's Unfair Competition
6 Law, Bus. & Prof. Code § 17200 *et seq.*
- 7 h. Whether Defendant's conduct violated California consumer protection laws.
- 8 i. Whether Defendant's conduct violated Connecticut consumer protection
9 laws.
- 10 j. Whether Defendant's conduct violated Hawaii consumer protection laws.
- 11 k. Whether Defendant's conduct violated Illinois consumer protection laws.
- 12 l. Whether Defendant's conduct violated Massachusetts consumer protection
13 laws including Mass. Gen. Laws Ann. Ch. 93A, § 1 *et seq.*
- 14 m. Whether Defendant's conduct violated Maryland consumer protection laws.
- 15 n. Whether Defendant's conduct violated Missouri consumer protection laws
16 including Mo. Rev. Stat. § 407, *et seq.*
- 17 o. Whether Defendant's conduct violated Nevada consumer protection laws
18 including Deceptive Trade Practice Act, NEV. REV. STATUTES, Title 52,
19 Chapter 598 *et seq.*
- 20 p. Whether Defendant's conduct violated New York consumer protection laws
21 including New York Deceptive Trade Practices Law, NY Gen. Bus. §349(a)
22 and NY Gen. Bus. §§ 350 *et seq.*
- 23 q. Whether Defendant's conduct violated Pennsylvania consumer protection
24 laws.
- 25 r. Whether Defendant's conduct violated Ohio consumer protection laws.
- 26 s. Whether Defendant's conduct violated Rhode Island consumer protection
27 laws.
- 28 t. Whether Defendant's conduct violated Washington's consumer protection

1 laws.

2 u. Whether Defendant breached the express and implied warranties they made
3 about the BPO Products.

4 v. Whether Defendant was unjustly enriched by the Plaintiffs, the proposed
5 Class, and Subclasses members' purchase of the BPO Products.

6 w. Whether the Plaintiffs, the proposed Class, and Subclasses have been
7 injured and if so, what is the proper measure of damages.

8 x. Whether the Plaintiffs, the proposed Class, and Subclasses have the right to
9 economic damages including compensatory, exemplary, and statutory
10 remedies for Defendant's misconduct.

11 y. Whether the Plaintiffs, the proposed Class, and Subclasses have the right to
12 injunctive, declaratory, or other equitable relief and attorneys' fees.

13 95. **Typicality.** Plaintiffs' claims are typical of the claims of the Class and
14 Subclasses because the claims arise from the same course of misconduct by Defendant,
15 *i.e.*, Defendant's false and misleading advertising and their failure to disclose
16 benzene in the Products. The Plaintiffs, and all Class and Subclass members were all
17 exposed to the same uniform and consistent advertising, labeling, and packaging
18 statements Defendant made about the Products. Because of the Defendant's
19 misconduct, Plaintiffs, like all Class members, were damaged and have incurred
20 economic losses because of they bought the Products believing they were safe. The
21 claims of the Plaintiffs are typical of Class and Subclass members.

22 96. **Adequacy.** The Plaintiffs will fairly and adequately represent and protect
23 the interests of all Class and Subclass members. Plaintiffs have no interests antagonistic
24 to the Class or Subclass members. Plaintiffs hired attorneys experienced in the
25 prosecution of consumer Class Actions and Plaintiffs intend to prosecute this action
26 vigorously. Plaintiffs anticipate no difficulty in the management of this litigation as a
27 Class Action.

28 97. Finally, this Class Action is proper under Rule 23(b) because, under these

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

20 **VIII. CAUSES OF ACTION**

21 **A. VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW** 22 **BUS. & PROF. CODE § 17200 *et seq.*, on Behalf of the California Subclass**

23 98. Plaintiffs reallege and incorporates all other paragraphs in this Class Action
24 Complaint and further allege:

25 99. Plaintiffs bring this cause of action on behalf of themselves, and all
26 members of the California Subclass, all of whom are similarly situated consumers.

27 100. California’s Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200,
28 *et seq.*, prohibits “unlawful, unfair, or fraudulent business act or practices” and “unfair,

1 deceptive, untrue or misleading advertising.” Defendant misrepresented their Products
2 in advertising, labels, and containers and misled Plaintiffs, the Subclass, and the public
3 about the ingredients, characteristics, purity, quality, approval, and safety of the
4 Products. Defendant led Plaintiffs, the Subclass, and the public to believe the Products
5 were safe.

6 101. Defendant’s advertising, online representations, labeling, and packaging of
7 the Products were misleading, fraudulent, and deceptive. Defendant knew through the
8 Products’ development, formulation, research, and pre-sale safety and stability testing,
9 the Products were not chemically and physically stable when exposed to common
10 temperature conditions. Defendant knew or should have known the Products
11 formulated benzene under normal and expected consumer use, handling, and storage
12 conditions, and that consumers would be exposed to benzene. Defendant were
13 specifically reminded by the FDA of their obligation to ensure the safety and quality of
14 their Products, including testing them for benzene before selling them to the public, but
15 shirked their duties and continued to market and sell the Products without
16 substantiating their safety, or warning Plaintiffs, the Subclass, and the public about
17 benzene.

18 102. Defendant omitted material health and safety information, *e.g.*, benzene,
19 from the Products’ advertising, label, container, and warnings. Defendant did not tell
20 Plaintiffs and the Subclass members they would be exposed to benzene, a human
21 carcinogen, during normal and expected handling, use and storage of the Products, even
22 with the Products’ container closed.

23 103. Defendant’s acts and omissions were likely to deceive reasonable
24 consumers and the public. Reasonable consumers expect to be told about all ingredients
25 in Products. Reasonable consumers further expect that carcinogens in the Products be
26 disclosed. Reasonable consumers further expect that on market drugs to be free of
27 carcinogens, unless told otherwise. Benzene in a widely marketed drug product used by
28 children, teens, and the public is material health information reasonable consumers

1 expect to be told.

2 104. Had Defendant been truthful in their advertising, labeling, packaging, and
3 online statements about benzene in the Products, or the risk of contamination, and the
4 risk of cancer, Plaintiffs and the Subclass members would not have bought the
5 Products.

6 105. Defendant's acts, omissions, and concealment of material health and safety
7 information are ongoing and continuing to cause harm. Defendant continued to market,
8 advertise, and sell the Products to the public without telling the public about benzene in
9 the Products, or the risk of contamination, and the risk of cancer. Defendant continued
10 to market themselves as responsible drug manufacturers and sellers who sell safe
11 products when they have not tested the Products for benzene or quantified the levels of
12 benzene formed in the Products during normal and expected storage conditions.

13 106. Defendant engaged in these deceptive practices for significant financial
14 gain, which is unfair, unreasonably dangerous to Plaintiffs, the Subclass and not
15 outweighed by any benefit. Omitting and concealing material human health and safety
16 information such as benzene in the Product and the consumers' risk of cancer from the
17 Products is unethical, unscrupulous, and offensive.

18 107. Plaintiffs suffered ascertainable economic losses because of Defendant's
19 misconduct because they bought the Products, they otherwise would not have bought
20 but for Defendant's misrepresentations and affirmations of safety.

21 108. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves,
22 and the California Subclass, seek recovery of their economic damages, attorneys' fees,
23 restitution, and all other relief allowable under CAL. BUS. & PROF. CODE § 17200, *et*
24 *seq.*, including an injunction to enjoin Defendant from continuing their fraudulent and
25 deceptive business practices. The damages sought are ascertainable, uniform to the
26 Class and can be measured and returned to the Plaintiffs and Subclass members.

27 ///

28 ///

1 **B. VIOLETION OF CALIFORNIA’S CONSUMER LEGAL**
2 **REMEDIES ACT, Cal. Civ. Code § 1750, et seq., on Behalf of the**
3 **California Subclass**

4 109. Plaintiffs reallege and incorporates all other paragraphs in this Complaint
5 and further allege:

6 110. Plaintiffs bring this cause of action on behalf of themselves, and all Class
7 California Subclass members, all of whom are similarly situated consumers within the
8 meaning of CAL. CIV. CODE § 1781.

9 111. Defendant’s acts and omissions violated California’s Consumer Legal
10 Remedies Act, CAL. CIV. CODE § 1750, *et seq.*, enacted to protect consumers from
11 being victimized and deceived by advertisers, distributors, and sellers like the
12 Defendant. Other Defendant regularly transact business in California, including in this
13 District, and have engaged in misconduct that has and had a direct, substantial,
14 foreseeable, and intended effect of injuring people in California, and in this District.

15 112. California’s Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, *et*
16 *seq. prohibits* unfair methods of competition and unfair or deceptive acts or practices in
17 connection with the sale of consumer goods. Defendant violated several prohibitions of
18 CIV. CODE § 1750(a).

19 113. Defendant violated CAL. CIV. CODE § 1750(a)(2) by representing the
20 source, sponsorship, and approval, of the Products, *e.g.*, the Products were backed by
21 sound scientific principles, that Defendant met its obligations to conduct adequate and
22 meaningful quality and safety testing before selling the Products to the public, and
23 represented the Products only contained the ingredients listed, and were free of
24 carcinogens.

25 114. Defendant violated CAL. CIV. CODE § 1750(a)(3) by representing the
26 affiliation, connection, or association with, or certification by, another *e.g.*, the Products
27 were approved by dermatologists and manufactured in conformity with current good
28 manufacturing practices.

1 115. Defendant violated CAL. CIV. CODE § 1750 (a)(4) by using deceptive
2 representations, *e.g.*, the Products were safe, validated, and supported by the latest
3 research, and free of carcinogens such as benzene.

4 116. Defendant violated CAL. CIV. CODE § 1750(a)(5) by representing the
5 Products have characteristics, ingredients, uses, or benefits, which they do not, *e.g.*,
6 misleading Plaintiffs and the Class members the Products only contained the listed
7 ingredients, did not contain benzene, and did not increase the risk of the consumers'
8 risk of cancer.

9 117. Defendant violated CAL. CIV. CODE § 1750(a)(6) by representing the
10 Products were not deteriorated unreasonably or altered *e.g.*, the Products were pure and
11 had not degraded or formed benzene.

12 118. Defendant violated CAL. CIV. CODE § 1750(a)(7) by representing the
13 Products were pure and of a particular standard or quality, when they are not.

14 119. Defendant violated CAL. CIV. CODE § 1750(a)(9) by advertising the
15 Products with the intent not to sell them as advertised, *e.g.*, the Products were of pure
16 quality, safe, made in conformity with current good manufacturing practices, and not
17 adulterated.

18 120. Had Defendant been truthful in their advertising, labeling, packaging,
19 warnings, and online statements about benzene in the Products and the risk of cancer,
20 Plaintiffs and the Class members would not have bought the Products. Benzene, a
21 human carcinogen, in a widely marketed and available consumer drug product, is
22 material health and safety information Defendant knew Plaintiffs, the Class members,
23 and the public would want to know. The Defendant's omission of this material
24 information was common to all Class and Subclass members and made to all Class and
25 Subclass members uniformly through common advertising, online representations,
26 labeling, and packaging.

27 121. Defendant's acts, omissions, and concealment of material health and safety
28 information are ongoing and continuing to cause harm. Defendant continued to market,

1 advertise, and sell the Products to the public without telling the public about benzene in
2 the Products and the risk of cancer. Defendant continued to market themselves as
3 responsible drug manufacturers and sellers who sell safe products when they have not
4 quantified the levels of benzene in and created in the Products during normal and
5 expected storage conditions.

6 122. Defendant engaged in these deceptive practices for significant financial
7 gain, which is unfair, unreasonably dangerous to Plaintiffs, and Subclass members, and
8 not outweighed by any benefit. Omitting and concealing material human health and
9 safety information such as the consumers' risk of cancer from exposure to the Products
10 is unethical, unscrupulous, and offensive.

11 123. Plaintiffs suffered ascertainable economic losses because of Defendant's
12 misconduct because he bought the Products, he otherwise would not have but for
13 Defendant's misrepresentations.

14 124. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves and
15 the Subclass members, seek recovery of their economic damages, attorneys' fees,
16 punitive damages, restitution, and all other relief allowable under CAL. CIV. CODE §
17 1750, *et seq.*, including an injunction to enjoin Defendant from continuing their
18 fraudulent business practices. The damages sought are ascertainable, uniform to the
19 Subclass and can be measured and returned to the Plaintiffs and Subclass members.

20 **C. FALSE ADVERTISING UNDER VARIOUS STATE STATUTES, on**
21 **Behalf of the California, Hawaii and New York Subclasses**

22 125. Plaintiffs reallege and incorporates all other paragraphs in this Complaint
23 and further allege:

24 126. Plaintiffs bring this cause of action on behalf of themselves, and all
25 members of the California, Hawaii, and New York Subclasses, all of whom are
26 similarly situated consumers.

27 127. Defendant develops, manufactures, tests, markets and sells the BPO
28 Products throughout the United States. Defendant knew through the Products'

1 development, formulation, and testing, the Products were not chemically stable when
2 exposed to certain expected and normal environmental and storage conditions and
3 could form benzene, as a toxic byproduct. Despite this knowledge, Defendant did not
4 mention benzene in the Products' advertising, ingredient list, label, container, or
5 warnings. Defendant did not tell Plaintiffs, and the Subclass members they would be
6 exposed to benzene, a human carcinogen, during normal and expected handling, use
7 and storage of the Products, even with the Products' containers closed.

8 128. Benzene, a human carcinogen, in a widely marketed and available
9 consumer drug product, is material health and safety information Defendant knew
10 Plaintiffs and the Subclass members would want to know. Defendant not only omitted
11 this material human health and safety information from advertising, online
12 representations, blogs, labeling, packaging, and warnings, but Defendant aggressively
13 marketed themselves as drug experts, innovators, researchers, market leaders, and
14 committed to consumer safety. Defendant's affirmations of safety and responsibility
15 misled Plaintiffs, and the Subclass members, leading them to believe the Products were
16 tested, verified, and safe. Defendant further marketed the Products touting the approval
17 of dermatologists, who were not aware of the presence of benzene in the Products and
18 of Defendant's refusal to conduct adequate and meaningful testing before marketing
19 and selling the Products to the public and following the FDA's 2022 alert to
20 specifically look for benzene.

21 129. Defendant's acts and omissions constitute false advertising. Defendant
22 advertised the Products with the intent not to sell them as advertised. Reasonable
23 consumers, including Plaintiffs and the Subclass members, exposed to Defendant
24 advertising would believe the Products were safe, verified, and free of benzene.

25 130. Defendant's false and misleading advertising violated California's False
26 Advertising Law, Bus. & Prof. Code § 17500 *et seq.*, which prohibits Defendant from
27 disseminating statements "which are untrue or misleading, and which are known, or
28 which by the exercise of reasonable care should be known, to be untrue or misleading."

1 Defendant knew or should have known the Products formed benzene under normal,
2 handling, use, and storage conditions but did not disclose this to Plaintiffs and the
3 Subclass members. Defendant knew Plaintiffs, the Class and Subclass members, and
4 consumers would be exposed to benzene in the Products, even with the Products'
5 original packaging closed.

6 131. Defendant's false and misleading advertising violated Hawaii's False
7 Advertising Law, HI REV. STAT. § 708-871. Defendant knowingly or recklessly made
8 false and misleading statements in the Products' advertising to the public.⁶⁹ Defendant
9 further advertised the Products with the intent not to sell them as advertised and
10 misrepresented the ingredients, quality, purity, safety, and character of the Products.

11 132. Defendant's false and misleading advertising violated New York's General
12 Business Law § 350 *et seq.* ("GBL § 350"), which prohibits "[f]alse advertising in the
13 misconduct of any business, trade or commerce or in the furnishing of any service" in
14 New York. Under GBL § 350, "false advertising" includes "advertising, including
15 labeling, of a commodity . . . if such advertising is misleading in a material respect."
16 Defendant violated GBL § 350 by advertising and selling the Products without
17 disclosing material health and safety information, *e.g.*, benzene and the consumers risk
18 of cancer from benzene. Defendant's false and misleading advertising was directed at
19 consumers, the New York Subclass members, and the public, and caused consumer
20 injury and harm to the public interest.

21 133. Had Defendant been truthful in their advertising, online representations,
22 labeling, and packaging about benzene, Plaintiffs and the Subclass members would not
23 have bought the Products.

24 ⁶⁹ HI REV STAT § 708-871, False Advertising: (1) A person commits the offense of false advertising if,
25 in connection with the promotion of the sale of property or services, the person knowingly or
26 recklessly makes or causes to be made a false or misleading statement in any advertisement addressed
27 to the public or to a substantial number of persons. (2) "Misleading statement" includes an offer to sell
28 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.

1 134. Plaintiffs, on behalf of themselves, and the California, Hawaii and New
2 York Subclasses suffered ascertainable economic losses because of Defendant's
3 misconduct because they bought the Products, they otherwise would not have but for
4 Defendant's material misrepresentations.

5 135. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves and
6 the California, Hawaii, and New York Subclass members, seek recovery of their
7 economic damages, attorneys' fees, punitive damages, restitution, and all other relief
8 allowable by law, including an injunction to enjoin Defendant from continuing their
9 fraudulent business practices. The damages sought are ascertainable, uniform to the
10 Subclasses and can be measured and returned to the Plaintiffs and Subclass members.

11 **D. DECEPTIVE TRADE PRACTICES UNDER VARIOUS STATE**
12 **STATUTES, on Behalf of California, Connecticut, Hawaii, Illinois,**
13 **Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania,**
14 **Ohio, Rhode Island, and Washington Subclasses**

15 136. Plaintiffs reallege and incorporates all other paragraphs in this Complaint
16 and further allege:

17 137. Plaintiffs bring this cause of action on behalf of themselves, and all
18 members of the California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts,
19 Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington
20 Subclass, all of whom are similarly situated consumers.

21 138. Defendant's acts and omissions constitute deceptive business practices in
22 violation of state deceptive trade practices laws.

23 139. Defendant represented the BPO Products had characteristics, uses, and
24 benefits, they did not, *e.g.*, Defendant represented the BPO Products were pure, of good
25 quality, safe, and only contained the ingredients disclosed.

26 140. Defendant represented the BPO Products were not deteriorated or altered,
27 when they knew, or should have known, the BPO Products degraded to benzene under
28 normal and expected use, handling, and storage conditions.

141. Defendant represented the BPO Products contained only the ingredients

1 listed on Defendant's websites, advertising, labels, and containers. Defendant did not
2 disclose to Plaintiffs, the Subclass members, and the public that the BPO Products were
3 at risk of benzene contamination.

4 142. Defendant advertised the BPO Products with the intent not to sell them as
5 advertised.

6 143. Defendant's acts and omissions violated California's Consumer Legal
7 Remedies Act, CAL. CIV. CODE § 1750, *et seq.*, enacted to protect consumers from
8 being victimized and deceived by advertisers, distributors, and sellers like the
9 Defendant.

10 144. Defendant's acts and omissions violated Connecticut Unfair Trade
11 Practices Act, CONN. GEN STAT. ANN., § 42- 110, *et seq.*, which broadly prohibits
12 Defendant from engaging in unfair methods of competition and unfair or deceptive acts
13 or practices in the conduct of any trade or commerce such as those committed by
14 Defendant and alleged in this Class Action.

15 145. Defendant's acts and omissions violated Hawaii's Uniform Deceptive
16 Trade Practice Act, HAW. REV. STAT. §481-A3 because Defendant: (1) caused the
17 likelihood of confusion or of misunderstanding as to the source, sponsorship, approval,
18 or certification of the Products; (2) represented the Products had characteristics,
19 ingredients, or benefits, they did not; (3) represented the Products were not deteriorated
20 or altered, when they were; (4) represented the Products were of a particular standard
21 or quality when they were not; and (5) advertised the Products with the intent not to sell
22 them as advertised.

23 146. Defendant's acts and omissions violated Illinois' Consumer Fraud and
24 Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* Defendant's used deception,
25 fraud, false pretense, false promises, and omitted material health and safety information
26 about the Products' degradation to benzene, and/or contamination with benzene, which
27 Defendant intended the Illinois Subclass members to rely upon.

28 147. Defendant's acts and omissions violated Maryland's Unfair or Deceptive

1 Trade Practices Act, MD. COM. CODE, Title 13, Subtitle 3, §13-301 because Defendant:
2 (1) represented the Products had characteristics, ingredients, uses, and benefits, they did
3 not; (2) represented the Products were not deteriorated or altered, when they were; (3)
4 represented the Products were of a particular standard or quality, when they were not.
5 Defendant's representations about the Products' ingredients, and omission of benzene
6 were misleading, deceptive, incomplete, and not truthful in violation of Maryland's
7 Unfair or Deceptive Trade Practices Act.

8 148. Defendant's acts and omissions violated Massachusetts consumer
9 protection law, MASS. GEN. LAWS ANN. Ch. 93A, § 1 *et seq.*, which broadly prohibits
10 unfair and deceptive trade practices such as those committed by Defendant and alleged
11 in this Class Action.

12 149. Defendant's acts and omissions violated the Missouri Merchandising
13 Practices Act, MO. REV. STAT. § 407, *et seq.*, which prohibits the use of deception,
14 fraud, misrepresentations, or unfair practices by a business, *e.g.*, marketing Products as
15 safe, approved, tested, and only containing the listed ingredients. Missouri's law further
16 prohibits the suppression or omission of material facts such as the Products'
17 degradation to benzene.

18 150. Defendant's acts and omissions violated N.Y. GEN. BUS. LAW § 349, which
19 prohibits Defendant from engaging in deceptive, unfair, and misleading acts and
20 practices such as those committed by Defendant and alleged in this Class Action.
21 Defendant's misrepresentations and omissions caused consumer injury and harm to the
22 public interests of protecting public health and the public's right to know about any
23 harmful constituents in the Products.

24 151. Defendant's acts and omissions violate Nevada Deceptive Trade Practice
25 Act, NEV. REV. STATUTES, Title 52, Chapter 598 *et seq.* which prohibits Defendant
26 from making false statements about their Products and advertising the Products without
27 the intent to sell them as advertised.

28 152. Defendant's acts and omissions acts and omissions violated Ohio's

1 Consumer Sales Practices Act, OHIO REV. CODE ANN. § 1345.01, *et seq.* which
2 prohibits sales practices that are deceptive, unfair, or unconscionable, and Ohio's
3 Deceptive Trade Practices Act, OHIO REV. CODE ANN. § 4165 *et seq.*

4 153. Defendant's acts and omissions violated Pennsylvania's Unfair Trade
5 Practices and Consumer Protection Law, 73 P.S. §§201-1 *et seq.* because Defendant:
6 (1) caused the likelihood of confusion or of misunderstanding as to the source,
7 sponsorship, approval, or certification of the Products; (2) used deceptive
8 representations about the Products; (3) represented the Products had characteristics,
9 ingredients, or benefits, they did not; (3) represented the Products were not deteriorated
10 or altered, when they were; (4) represented the Products were particular standard or
11 quality when they are not; and (5) advertised the Products with the intent not to sell
12 them as advertised.

13 154. Defendant's acts and omissions violated Rhode Island's Deceptive Trade
14 Practices Act, R.I. GEN. LAWS § 6- 13.1- 5.2(B), *et seq.* because Defendant: (1) caused
15 likelihood of confusion or of misunderstanding as to the source, sponsorship, approval,
16 or certification of the Products; (2) used deceptive representations in connection with
17 the Products; (3) represented the Products had sponsorship, approval, characteristics,
18 ingredients, uses, benefits, they did not; (4) represented the Products were not
19 deteriorated or altered, when they were; (5) represented the Products were of a
20 particular standard, quality, or grade, when they were not; and (6) advertised the
21 Products with the intent not to sell them as advertised.

22 155. Defendant's acts and omissions violated Washington's Consumer
23 Protection Act, WASH. REV. CODE § 19.86.010, *et seq.*, which broadly prohibits
24 Defendant from engaging in unfair methods of competition and unfair or deceptive acts
25 or practices in the conduct of any trade or commerce.⁷⁰ Defendant's concealment of
26

27 ⁷⁰ Under § 19.86.090, Washington consumers harmed by such practices may recover actual damages,
28 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 material health and safety information about the Products, which they knew or should
2 have known, was injurious to the public interests of protecting public health and the
3 public's right to know about any harmful constituents in the Products. Defendant's
4 conduct caused harm to the Plaintiffs, the Washington subclass members, and members
5 of the public who bought the Products without knowing they degraded to benzene.
6 Defendant's conduct has the capacity to cause harm to other people who buy the
7 Products.

8 156. Had Defendant been truthful in their advertising, labeling, and packaging
9 of the Products and not omitted material health and safety information about benzene in
10 and formed from the Products, Plaintiffs and the Subclass members would not have
11 bought the Products.

12 157. Defendant's acts and omissions and violations of the state consumer
13 protection statutes are ongoing and continuing to cause harm.

14 158. Plaintiffs, on behalf of themselves, and members of the California, Hawaii,
15 Illinois, Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio,
16 Rhode Island, and Washington Subclasses suffered an ascertainable economic loss
17 because of Defendant's misconduct because they bought the Products, they would not
18 have bought but for Defendant's misrepresentations.

19 159. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves,
20 and the Subclass members, seek recovery of their economic damages, attorneys' fees,
21 punitive damages, and all other relief allowable under the law. The damages sought are
22 ascertainable, uniform to the Subclasses and can be measured and returned.

23 **E. BREACH OF EXPRESS WARRANTY, on Behalf of the Nationwide**
24 **Class and on Behalf of the California, Connecticut, Hawaii, Illinois,**
25 **Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania,**
Ohio, Rhode Island, and Washington Subclasses

26 160. Plaintiffs reallege and incorporates all other paragraphs in this Complaint
27 and further allege:

28 161. Plaintiffs bring this cause of action on behalf of themselves, and all

1 members of the National Class and the California, Connecticut, Hawaii, Illinois,
2 Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode
3 Island, and Washington Subclass, all of whom are similarly situated consumers.

4 162. The Uniform Commercial Code § 2-313 provides that an affirmation of
5 fact or promise made by the seller to the buyer which relates to the goods and becomes
6 part of the basis of the bargain creates an express warranty that the goods shall conform
7 to the promise. Defendant advertised and sold the Products as safe, pure, of good
8 quality, and only containing the listed ingredients. Defendant's advertising, labels,
9 containers, packaging, advertising, and online statements did not mention benzene,
10 leading consumers to believe the Products were safe for their ordinary use. Defendant's
11 affirmations were uniformly made to Plaintiffs and the Class members by Defendant in
12 the Products' advertising, labeling, packaging, and online statements and were part of
13 the basis of the bargain between Defendant, the Plaintiffs, the Class, and Subclass
14 members.

15 163. Defendant's affirmations and promises are unlawful. When Defendant
16 marketed, distributed, and sold the Products, Defendant knew, or should have known,
17 the Products degraded to benzene under normal and expected use, handling, and storage
18 conditions. Defendant knew, or should have known, the Products formed benzene and
19 therefore did not conform to Defendant's express representations and warranties to
20 consumers. Plaintiffs, the Class, and Subclass members purchased the Products in
21 reasonable reliance on Defendant's statements.

22 164. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves, the
23 Class and Subclass members, seek recovery of their economic damages, attorneys' fees,
24 punitive damages, restitution, and all other relief allowable by law, including an
25 injunction to enjoin Defendant from continuing their fraudulent business practices. The
26 damages sought are ascertainable, uniform to the Class and Subclasses and can be
27 measured and returned to the Class and Subclass members.

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1 **F. BREACH OF IMPLIED WARRANTY, on Behalf of the Nationwide**
2 **Class and on Behalf of the California, Connecticut, Hawaii, Illinois,**
3 **Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania,**
4 **Ohio, Rhode Island, and Washington Subclasses**

5 165. Plaintiffs reallege and incorporates all other paragraphs in this Complaint
6 and further allege:

7 166. Plaintiffs bring this cause of action on behalf of themselves, and all
8 members of the National Class and the California, Connecticut, Hawaii, Illinois,
9 Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode
10 Island, and Washington Subclass, all of whom are similarly situated consumers.

11 167. Defendant, as sellers of the Products, also made implied warranties
12 including warranting the Products were of the same quality and purity represented on
13 the labels, in advertising, and on Defendant's websites, were fit for the ordinary
14 purpose of the Products and conformed to the promises made on the containers, labels,
15 advertising, and websites that all ingredients were listed, and all warnings given.

16 168. Defendant advertised their Products as safe, when they knew, or should
17 have known, the Products degraded to benzene. Defendant did not list benzene as an
18 ingredient or contaminant anywhere on the Products or advertising. The Products are
19 not of the quality and purity represented by Defendant because the Products degrade to
20 benzene under normal use, handling, and storage conditions.

21 169. Defendant did not tell Plaintiffs or the Class or Subclass members the
22 Products were not fit for their ordinary use because the Products, as advertised and sold
23 by Defendant, degraded to benzene under normal and expected handling, use, and
24 storage.

25 170. Defendant's affirmations that the Products were safe for use were
26 uniformly made to the Plaintiffs and the Class members in the Products' advertising,
27 labeling, and packaging, and on Defendant's websites, which were part of the basis of
28 the bargain.

 171. Plaintiffs, the Class, and Subclass members purchased the Products in

1 reasonable reliance on Defendant's statements, affirmations, and omissions of material
2 health and safety information.

3 172. Defendant's acts and omissions are ongoing and continuing to cause harm.

4 173. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves, the
5 Class and Subclass members, seek recovery of their actual damages, injunctive relief,
6 attorneys' fees, punitive damages, and all other relief allowable under the law. The
7 damages sought are uniform to the Class and Subclasses and the actual damages can be
8 measured and returned to consumers who bought Defendant's Products.

9 **G. UNJUST ENRICHMENT, on Behalf of the Nationwide Class and on**
10 **Behalf of the California, Connecticut, Hawaii, Illinois, Maryland,**
11 **Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode**
12 **Island, and Washington Subclasses**

13 174. Plaintiffs reallege and incorporates all other paragraphs in this Complaint
14 and further alleges:

15 175. Plaintiffs bring this cause of action on behalf of themselves, and all
16 members of the National Class and the California, Connecticut, Hawaii, Illinois,
17 Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode
18 Island, and Washington Subclass, all of whom are similarly situated consumers.

19 176. Defendant has unjustly profited from their deceptive business practices and
20 kept the profits from Plaintiffs and the Class and Subclass members who purchased the
21 Products.

22 177. Defendant requested and received a measurable economic benefit at the
23 expense of Plaintiffs, the Class, and Subclass members as payment for the Products.
24 Defendant accepted the economic benefits from Plaintiffs, the Class, and Subclass
25 members knowing the economic benefit received was based on deception and omission
26 of material human health and safety information.

27 178. There is no utility in Defendant's misconduct and Defendant's enrichment
28 from the misconduct is unjust, inequitable, unconscionable, and against the strong
public policy to protect consumers against fraud.

1 179. Because of Defendant’s misconduct, Plaintiffs, on behalf of themselves, the
2 Class and Subclass members, and the public seeks recovery of their actual damages,
3 disgorgement of profits, injunctive relief, attorneys’ fees, punitive damages, and all
4 other relief allowable under the law. The damages sought are uniform to the Class and
5 Subclasses and the actual damages can be measured and returned to consumers who
6 bought Defendant’s Products.

7 **IX. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment against Defendant:

9 180. That the Court determine this action may be maintained as a Class Action
10 under Rule 23(a) and (b)(1), (2) and (3) of the Federal Rules of Civil Procedure;

11 181. That Defendant’s misconduct be adjudged to have violated the state
12 consumer protection laws identified herein;

13 182. That injunctive and declaratory relief be awarded against Defendant,
14 including but not limited to an order prohibiting Defendant from engaging in the
15 alleged misconduct;

16 183. That Defendant be ordered to disgorge profits and revenues derived from
17 their course of misconduct and that such unjust enrichment be restored to the class and
18 or distributed cy pres as the Court shall deem just and equitable;

19 184. That Plaintiffs recover all compensatory damages and other damages
20 sustained by Plaintiffs;

21 185. That Plaintiffs recover punitive damages as allowed by law;

22 186. That Plaintiffs recover all statutory damages as allowed by law;

23 187. That Plaintiffs recover their attorneys’ fees and all costs of suit;

24 188. That Plaintiffs recover all Statutory pre-judgment and post-judgment
25 interest on any amounts; and

26 189. That all further relief as this Court may deem just and proper be granted.

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X. DEMAND FOR JURY TRIAL

190. Demand is made for a jury trial.

Dated: March 7, 2024

Respectfully submitted,

WISNER BAUM LLP

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