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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 GRACE NAVARRO and CHATHAM
14 MULLINS, on behalf of themselves, and all
15 others similarly situated, and the general public,

16 Plaintiffs,

17 v.

18 WALMART, INC. and DOES 1 to 50, Inclusive,

19 Defendants.

Civil Action No.

CLASS ACTION COMPLAINT

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

DEMAND FOR JURY TRIAL

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I. PRAYER FOR RELIEF 40

II. DEMAND FOR JURY TRIAL 41

1 Plaintiffs, GRACE NAVARRO and CHATHAM MULLINS, on behalf of themselves, the
2 proposed Class and Subclasses (defined below), and the public, brings this Class Action Complaint
3 (“Class Action”) against Defendant, alleging the following upon Plaintiffs’ personal knowledge, or
4 where Plaintiffs lack personal knowledge, upon information and belief, including the investigation of
5 counsel.

6 **I. INTRODUCTION**

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

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

17 3. BPO Products should not have benzene, nor degrade into benzene, except under
18 extraordinary circumstances.¹ A drug is “adulterated” if it consists in whole or in part of any filthy,
19 putrid, or decomposed substance, is impure, or mixed with another substance.² Under the Federal
20 Food, Drug and Cosmetic Act, it is a crime to introduce or deliver “into interstate commerce any food,
21 drug, device, tobacco product, or cosmetic that is adulterated or misbranded.”³ If benzene is found in
22 any on-market or post-market Product, the drug is adulterated, unlawful and the drug manufacturer
23 must contact the Food and Drug Administration (“FDA”) initiate a voluntary recall.⁴

25 ¹ Food and Drug Administration, *Q3C – Tables and List Guidance for Industry* (2017),

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

27 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).

28 ³ 21 U.S.C. § 331(a)(2011).

⁴ Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in
Certain Drugs*, [https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-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).

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

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

10 6. In 2023, Valisure, LLC,⁵ an independent, accredited laboratory that has developed
11 analytical methods to test drugs and consumer products for public safety, tested a representative
12 sample of BPO and non-BPO products and found the BPO Products had dangerous levels of benzene,
13 many multiple times higher than allowed in any regulated drug.⁶ Using industry standard gas
14 chromatography and detection by mass spectrometry (“GC-MS”) instrumentation, with selected ion
15 flow tube mass spectrometry (“SIFT-MS”) for detection of benzene released into the air around
16 certain BPO Products, the Products were incubated to temperatures common during consumer use,
17 handling, and storage and sampled for benzene.⁷ Levels as high as 1600 parts per million (ppm) were
18 found in Defendant’s Product, 2.5% Cream.⁸ Unexpectedly, researchers found that benzene was
19 released into the surrounding air outside the Products’ containers even when the packaging and
20 containers were closed raising concern for even more inhalation exposures—a particularly pernicious

21 ⁵ Valisure is an independent third-party analytical laboratory that is accredited to International Organization for
22 Standardization (“ISO/IEC”) 17025:2017 standards for chemical testing (PJLA Accreditation Number 94238). In
23 response to rising concerns about drug shortages, generics, and overseas manufacturing, Valisure developed and validated
24 methods to test medications and consumer products distributed in the United States. Valisure has tested a variety of drug
25 and consumer healthcare products for benzene including sunscreens, antiperspirants, body sprays, hand sanitizers, and dry
26 shampoos for benzene. Valisure’s testing results submitted to the FDA in its Citizen’s Petitions, were widely publicized in
27 the media leading to numerous recalls of contaminated consumer products. *See* Valisure Citizen’s Petition on Benzoyl
28 Peroxide (March 4, 2024), pp. 6-7, *see also* Valisure Detects Benzene in Sunscreen, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>; Bruce Y. Lee, Forbes, FDA: P&G Recalls Antiperspirant Sprays Due To Cancer Risk Of Benzene (Nov. 24, 2021), <https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32>; *see also* Sandee LaMotte, CNN, Antiperspirant recall: What the finding of a cancer-causing chemical means for you (Dec. 1, 2021), <https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html>.

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

⁷ *Id.*

⁸ *Id.* at 17.

1 form of exposure to benzene.⁹ For the non-BPO products tested, benzene was not present, or at trace
2 levels below 2 ppm.¹⁰ Valisure filed a FDA Citizen’s Petition on March 5, 2024 demanding an
3 immediate recall of all BPO Products.¹¹ The Petition is pending.¹²

4 7. The high levels of benzene found led Valisure to conduct a stability study on a diverse
5 market sweep of BPO Products and formulations. Valisure’s results show that on-market BPO
6 Products can form over 800 times the conditionally restricted FDA concentration limit of 2 ppm for
7 benzene, and the evidence suggests this problem applies broadly to BPO Products currently on the
8 market.¹³ Valisure concluded that on-market BPO Products appear to be fundamentally unstable and
9 form unacceptably high levels of benzene when handled or stored at temperatures the Products will be
10 exposed to during expected use and handling by consumers.¹⁴

11 8. Although the BPO Products have been found to have benzene, Defendant never listed
12 benzene among the its Products’ ingredients, or anywhere on the Products’ labels, containers,
13 advertising or on Defendant’s websites. Defendant never warned anyone the Products had benzene or
14 were at risk of benzene contamination.

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

19
20
21 ⁹ *Id.* at 23.

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

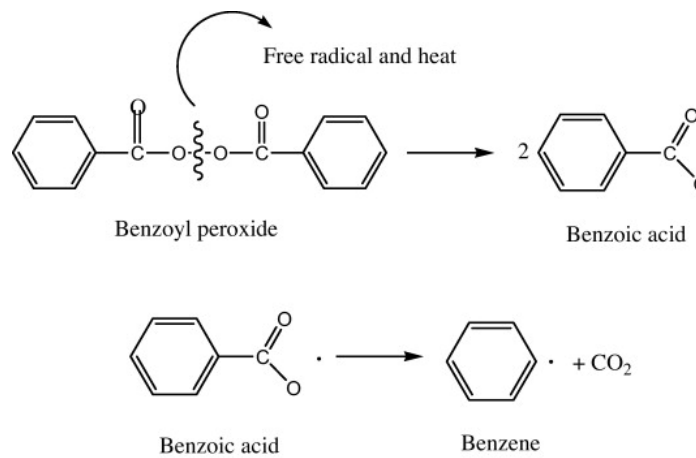
26 ¹¹ Valisure’s Citizen Petition on Benzene in Benzoyl Peroxide Products (March 5, 2024), *available at*:
27 <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March 7, 2024).

28 ¹² Valisure’s Citizen’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).

¹⁴ *Id.*

¹⁵ The disposition of benzoyl peroxide to form benzene. Benzoyl peroxide is known to thermally decompose to
form two molecules of benzoyloxy radicals that can further decompose to benzoic acid or phenyl radicals with liberation of
carbon dioxide. The phenyl radicals can then produce benzene. *See* Shang-Hao Liu, et al, *Thermal hazard evaluation of
the autocatalytic reaction of benzoyl peroxide using DSC and TAM III*, THERMOCHIMICA ACTA, Volume 605, Pages 68-76, ,
(2015), ISSN 0040-603, <https://www.sciencedirect.com/science/article/pii/S004060311500057X>.



10. Defendant misled the Plaintiffs, the putative Classes, and the public by representing its BPO Products only had the ingredients listed on the labels, packaging, containers, and on its website. Defendant misled the Plaintiffs, the putative Classes, and the public by representing the BPO Products were safe while concealing material health and safety information known to them, *e.g.*, that the BPO Products degraded to benzene, or were contaminated with benzene. Defendant misled Plaintiffs, the putative Classes, and the public by giving the BPO Products long expiration dates of 2-3 years, leading consumers to believe the Products were safe for use for years when Defendant knew or should have known the Products degraded into benzene much sooner and were likely already contaminated by the time the Products were first used by the consumer.

11. Defendant's statements and omissions of material health and safety information are prohibited deceptive trade practices and false and deceptive advertising. Defendant's statements about the Products were false, misleading, unsubstantiated, untruthful, and blatantly deceptive. Even more egregious was Defendant unreasonably placed Plaintiffs, the California Class, and the public at risk of exposure to benzene, and at increased risk of cancer, without their knowledge and consent.

12. Because of the Defendant's misconduct and consumer deception, the Plaintiffs and the putative Classes were economically harmed, as they bought Products they otherwise would have never bought. They were also physically harmed by being exposed to a known human carcinogen.

13. This Class Action is necessary to redress the economic harms caused to the Plaintiffs and Class members who bought the Products believing them to be safe. This Class Action is further necessary to expose Defendant's ongoing consumer fraud and to enjoin Defendant from continuing

1 their misconduct to protect consumers and the public.

2 14. Plaintiffs bring this Class Action individually, and on behalf of those similarly situated,
3 and seek to represent a California Class of consumers who bought the Products. Plaintiffs seek
4 damages, reasonable attorneys' fees and costs, interest, restitution, and all other equitable relief,
5 including an injunction and disgorgement of all benefits and profits Defendant received from their
6 misconduct.

7 **II. THE PARTIES**

8 15. Plaintiff Grace Navarro is a California resident, located in Fresno County, who bought
9 BPO Products including Equate Beauty Acne Facial Cleansing Wash for her pores and breakouts and
10 used it from 2013 to November 2023. Plaintiff has suffered economic damages and a result of
11 Defendant's violations of the state laws alleged herein. Plaintiff would never have purchased
12 Defendant's BPO Products had Defendant warned about the presence of benzene or that the Products
13 could degrade into benzene.

14 16. Plaintiff Chatham Mullins is a Massachusetts resident, located in Suffolk County, who
15 bought BPO Products including Walmart's Equate Beauty 10% Benzoyl Peroxide Acne Treatment
16 Gel for her acne blemishes and used it from 2005 to 2023. Plaintiff has suffered economic damages
17 and a result of Defendant's violations of the state laws alleged herein. Plaintiff would never have
18 purchased Defendant's BPO Products had Defendant warned about the presence of benzene or that the
19 Products could degrade into benzene.

20 17. Defendant Walmart Inc. ("Walmart," hereinafter "Defendant") is a citizen of Delaware
21 with its principal place of business at 702 S.W. 8th St. Bentonville, Arkansas 72716. Walmart sells
22 BPO Products under the brand name Equate Beauty. Walmart's Products include: (1) Equate Beauty
23 10% Benzoyl Peroxide Acne Treatment Gel, (2) Equate Beauty Acne Facial Cleansing Wash, and (3)
24 Equate Beauty Daily Acne Control Cleansing Cream. At all relevant times, Walmart conducted
25 business and derived substantial revenue from its manufacturing, advertising, marketing, distributing,
26 and selling of the Products within the State of California and this District.

27 18. Defendant and its agents promoted, marketed, and sold the Products in California and in
28 this District. The unfair, unlawful, deceptive, and misleading advertising and labeling of the Products

1 were prepared and/or approved by Defendant and its agents and were disseminated by Defendant and
2 its agents through statements, labeling, and advertising containing the misrepresentations alleged and
3 disseminated uniformly to Plaintiffs, the Class and the Subclass members through Defendant's
4 advertising, packaging, containers, and through its websites and social media.

5 **III. JURISDICTION AND VENUE**

6 19. This Court has jurisdiction over this matter because the amount in controversy exceeds
7 \$5 million satisfying 28 U.S.C. § 1332(d)(2) for subject matter jurisdiction. This Court has
8 supplemental jurisdiction over any state law claims under 28 U.S.C. § 1367.

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

11 21. This Court has personal jurisdiction over the Defendant because Defendant transacts
12 business in California, including in this District, has substantial aggregate contacts with the State of
13 California and in this District, engaged in misconduct that has and had a direct, substantial, reasonably
14 foreseeable, and intended effect of injuring people in California and in this District, and Defendant
15 purposely availed itself of the benefits of doing business in California, and in this District. Moreover,
16 Plaintiffs' claim arises out of and relates to the Defendant's actions and contacts with the State of
17 California.

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

21 **IV. GENERAL ALLEGATIONS**

22 23. Fifty million Americans suffer from acne annually.¹⁶ Acne is the most common skin
23 condition in the United States with a prevalence among adolescents of almost 95 percent.¹⁷ Acne can
24 begin as early as age seven and, for some, can persist through adulthood and into ages 50s and 60s.¹⁸
25 Millions of acne sufferers seek treatment every year making it a billion-dollar industry and a key
26 business segment for Defendant Walmart, who sells BPO Products under its private label.

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

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

¹⁸ *Id.*

1 24. Defendant Walmart is one of the largest companies in the world. It has ranked first on
2 the Global Fortune 500 list for the last ten years raking in \$611.3 billion in revenues during fiscal year
3 2023.¹⁹ Walmart is a global company that sells products online and through its retail outlets located
4 in every state and in foreign countries, including Mexico, Africa, India, Chile, China, Canada, and
5 countries in Central and South America. Walmart has several private brands, including “Equate
6 Beauty,” the label it uses for its BPO Products.

7 25. Defendant Walmart’s BPO Products are widely marketed, available, sold, and used by
8 children, teenagers, and adults throughout the U.S. and abroad. Walmart’s BPO “Equate” Products are
9 similar in formulation to its competitors but significantly cheaper. Walmart’s BPO Products include:
10 (1) Equate Beauty 10% Benzoyl Peroxide Acne Treatment Gel, (2) Equate Beauty Acne Facial
11 Cleansing Wash, and (3) Equate Beauty Daily Acne Control Cleansing Cream.

12 **A. WALMART DID NOT COMPLY WITH FDA’S TESTING REQUIREMENTS**
13 **BEFORE SELLING THE BPO PRODUCTS TO THE PUBLIC**

14 26. Despite its public affirmations of concern for the health and safety of its consumers,
15 Defendant did not adequately test its BPO Products before selling them. Defendant’s BPO Products
16 are “drugs” regulated by the FDA. As with any regulated drug, Defendant must follow current good
17 manufacturing practices (“CGMPs”), have scientifically sound specifications, and must have test
18 procedures and processes to ensure the drug’s components (active and inactive ingredients), and
19 finished products are safe. Both raw ingredient materials and finished batches must be tested before
20 released to the public to confirm they meet specifications for identity, strength, quality, and purity.²⁰
21 If testing results of the raw materials or finished product do not conform with the specifications, the
22 product cannot be sold to the public. Defendant must also re-test any Products subject to
23 deterioration.²¹ Any Products not made in conformity with the CMGPs is considered “adulterated”
24 under 501(a)(2)(B) of the Food, Drug, and Cosmetic Act.²²

25 ¹⁹ Wal-Mart Inc. (Jan. 312023). *Form 10-K 2023*. Retrieved from SEC EDGAR website
<http://www.sec.gov/edgar.shtm>.

26 ²⁰ 21 C.F.R. § 211.84 (1978); *see also* 21 C.F.R. § 211.160 (1978).

27 ²¹ 21 C.F.R. § 211.160(b)(1)(1978).

28 ²² 21 C.F.R. § 225.1 (1976). Under 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act a drug is
considered “adulterated” (poorer in quality by adding another substance) if the methods used in, or the facilities or controls
used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in
conformity with CGMP; *see also* Food and Drug Administration, *Facts About the Current Good Manufacturing Practices*

1 27. Defendant must also do stability testing to understand the “shelf life” of the Products
2 and to assign an expiration date. It is well known that certain chemical ingredients can degrade or
3 change because of environmental, and storage conditions such as light, moisture, temperature, and
4 humidity, or because of the passage of time. The stability testing should cover all expected distributor
5 and consumer storage, handling, and use conditions and must be done using “reliable, meaningful, and
6 specific test methods.”²³ If stability testing finds a drug product is not stable under expected storage or
7 use conditions, degrades, or create toxic byproducts, the product cannot be sold to the public.

8 28. The CGMPs and stability test requirements are there to ensure drug products are safe
9 for public use. These are the minimum requirements. Because the drug manufacturers are largely self-
10 regulated, the FDA must rely on drug manufacturers, the public, and concerned citizens to report
11 unsafe drugs. The FDA cannot force a drug manufacturer to recall a contaminated drug.²⁴

12 **B. WALMART KNEW OR SHOULD HAVE KNOWN THE BPO PRODUCTS**
13 **DEGRADED TO BENZENE UNDER NORMAL USE, HANDLING, AND**
14 **STORAGE**

15 29. Defendant knew or should have known the BPO Products degrade to benzene when
16 exposed to heat. Defendant knew that, because of the chemical nature of the active and inactive
17 ingredients, including BPO, the BPO Products were not stable and would degrade when exposed
18 normal and expected use, handling, and storage conditions.

19 30. It is well known that BPO degrades to benzene when exposed to heat over time. This
20 process was first reported in the scientific literature as early as 1936.²⁵ BPO degrades into benzene
21 according to the mechanism below.²⁶

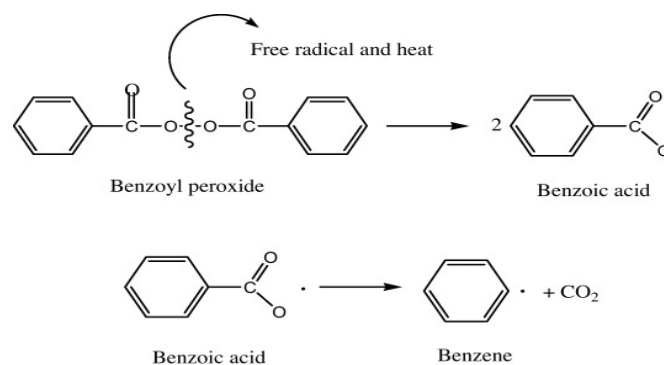
22
23 (CGMP); <https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmp> (last visited Feb. 11, 2024).

24 ²³ 21 CFR 211.166.

25 ²⁴ 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).

26 ²⁵ H. Erlenmeyer and W. Schoenauer, *Über die thermische Zersetzung von Di-acyl-peroxyden*, HELV. CHIM. ACTA,
19, 338 (1936), <https://onlinelibrary.wiley.com/doi/10.1002/hlca.19360190153> (last visited Feb. 5, 2024).

27 ²⁶ Benzoyl peroxide is known to thermally decompose to form two molecules of benzoyloxy radicals that can
28 further decompose to benzoic acid or phenyl radicals with liberation of carbon dioxide. The phenyl radicals can then
produce benzene. See Shang-Hao Liu et al., *Thermal hazard evaluation of the autocatalytic reaction of benzoyl peroxide*
using DSC and TAM III, THERMOCHIMICA ACTA, Volume 605, (2015), Pages 68-76, ISSN 0040-6031,
<https://www.sciencedirect.com/science/article/pii/S004060311500057X> (last visited Feb. 5, 2024).



8 31. The degradation of BPO to benzene was known or should have been known to the
 9 Defendant, who promote themselves as expending substantial sums of money and resources to science
 10 and research. Defendant marketed themselves as mass merchandisers of quality drug and healthcare
 11 products. Defendant employed high-level scientists, chemists, and researchers to formulate and/or
 12 decide which drug products it will privately label and sell for public use. Defendant with these
 13 resources and expertise were aware of the well-known chemical processes that degrade their BPO
 14 Products into benzene when exposed to common use temperatures and conditions.

15 32. Defendant further knew or should have known that specific ingredients derived from
 16 hydrocarbons increased the risk the BPO Products would yield benzene.²⁷ At-risk ingredients include
 17 carbomers, mineral spirits, and other petroleum derived substances. These ingredients are red flags for
 18 risk of benzene contamination. The FDA published guidance in 2022 urging the industry to
 19 reformulate drug products at risk of benzene contamination.²⁸ The FDA's alert highlighted
 20 ingredients made from hydrocarbons, including carbomers (thickening agents), urging drug
 21 manufacturers to test products containing them for benzene contamination.²⁹ Many BPO Products
 22 have hydrocarbons and carbomers, but none have been recalled due to benzene contamination.

23 33. Defendant knew or should have known through their own research, development,
 24 formulation, evaluation, selection, and testing of BPO Products whether they were chemically and
 25

26 ²⁷ Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in*
 27 *Certain Drugs*.

28 ²⁸ 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>.

²⁹ *Id.*; see also December 22, 2022 FDA Alert at 1.

1 physically stable. Defendant was required not only to adequately test the BPO Products for safety and
2 stability before selling them to the public, but also to monitor their internal practices, processes, and
3 specifications to make sure they kept pace with science and emerging methodologies. Defendant
4 knew or should have known from expiration and stability studies examining the “shelf life” of the
5 BPO Products, the chemical changes took place because of normal and expected environmental, use,
6 and storage conditions.

7 34. Defendant knew or should have known the BPO Products would be handled, used, and
8 stored by distributors, sellers, and consumers under various temperatures that affect chemical stability.
9 Defendant knew or should have known the BPO Products would travel by commercial carriers and
10 distributors in varying storage conditions and would be stored by consumers in handbags, backpacks,
11 bathrooms, showers, lockers, and in vehicles during warm months where the BPO Products would be
12 exposed to heat. Defendant knew or should have known consumers would apply the benzene
13 contaminated BPO Products to their faces and bodies and would also use the BPO Products in heated
14 showers as scrubs and washes. Defendant knew or should have known the BPO Products would be
15 used and applied to the skin at normal body temperatures, and elevated temperatures following
16 showers or baths, after physical activity, and after the BPO Products sat in warm temperatures or hot
17 vehicles.

18 35. These storage, use, and handling conditions were known or should have been known to
19 Defendant before the BPO Products were marketed and sold to Plaintiffs, the Class, and Subclass
20 members. Defendant knew or should have known the BPO Products degrade to benzene under these
21 conditions exposing consumers to benzene. Defendant further knew or should have known that,
22 because of the known degradation of BPO to benzene, their BPO Products were contaminated with
23 benzene by the time they reached consumers, but they sold them to Plaintiffs, the Class, the Subclass,
24 and the public anyway, without warning of the risk of exposure. Moreover, the 2–3-year shelf life
25 printed on the BPO Products told consumers they were safe for use for years, when they were not.

26 **C. WALMART KNEW OR SHOULD HAVE KNOWN BENZENE WAS FOUND IN**
27 **OTHER CONSUMER PRODUCTS BUT DID NOT TEST ITS BPO PRODUCTS**

28 36. Defendant was aware or should have been aware of benzene contamination in other on-
market drug and healthcare products when they marketed and sold the BPO Products to Plaintiffs, the

1 Class, the Subclass, and the public but did not test the BPO Products for benzene contamination.

2 37. In 2020, the FDA started working with companies to identify benzene in products,
3 which resulted in product recalls of hand sanitizers, sunscreens, and deodorants. In 2021, an
4 independent chemical analysis by Valisure of hundreds of sunscreens and after-sun care products from
5 69 brands found 27 percent of the batches had significant levels of benzene above the FDA 2 ppm
6 limit.³⁰ Johnson and Johnson's Aveeno and Neutrogena sunscreen lines sold by Target were among
7 the most benzene contaminated products and were recalled.³¹ CVS's private brand after-sun care
8 products were also highly contaminated with benzene. By 2021, Defendant was well aware of
9 benzene contamination issues in its competitor's products but ignored the reports and continued to
10 advertise and sell the BPO Products without testing them for benzene.

11 **D. WALMART IGNORED FDA'S BENZENE ALERT TO TEST BPO PRODUCTS**

12 38. In 2022, the FDA issued a safety alert warning drug manufacturers of the risk of
13 benzene contamination in certain drug products and drug components. The FDA reiterated the risk
14 benzene exposure poses to public health and the drug manufacturers' obligations to test drug products
15 under the U.S. Code of Federal Regulations, Title 21:

16
17 FDA reminds manufacturers they are required to establish scientifically
18 sound and appropriate specifications and test procedures to assure drug
19 components (active and inactive ingredients) and finished drug products
20 conform to appropriate quality specifications (21 C.F.R. 211.84, 21 C.F.R.
21 211.160). This includes testing of raw materials and finished batches (21
22 C.F.R. 211.165) prior to release to ensure they meet appropriate
23 specifications for identity, strength, quality, and purity.³²

24 39. The FDA warned drug manufacturers that any drug products or components at risk of
25 benzene contamination should be tested, and any batches with benzene above 2 ppm should not be
26 released to the public.³³ The FDA further warned that, if any drug or drug component was subject to
27 deterioration, drug manufacturers must have re-testing procedures in place to ensure continued purity

28 ³⁰ Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care Products, May 24, 2021.

³¹ 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.*

³² Federal Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in Certain Drugs*, 1.

³³ *Id.*, 3.

1 and stability. The FDA recommended risk assessments to evaluate the possibility of benzene
2 contamination in the drug products or components.³⁴ If any drug product in circulation was found to
3 have benzene over 2ppm, the FDA directed that drug manufacturers contact the FDA to discuss a
4 voluntarily recall.³⁵

5 40. To date, none of the Defendant's Products have been recalled due to benzene
6 contamination.

7 **E. RECENT TESTING FOUND COMMON BPO PRODUCTS, INCLUDING**
8 **WALMART PRODUCTS, CONTAIN DANGEROUS LEVELS OF BENZENE IN**
9 **EXCESS OF REGULATORY LIMITS**

10 41. Testing by Valisure in 2023 found common acne treatment products formulated with
11 BPO are not only contaminated with benzene but have levels dangerous to public health. Valisure is
12 an accredited independent laboratory who has developed validated analytical methods³⁶ to test drugs
13 and consumer products to address rising concerns about public safety. Valisure has tested a wide
14 variety of drugs and products for benzene including sunscreens, antiperspirants, hand sanitizers, and
15 dry shampoos. Their work has led to widely publicized product recalls protecting the public from
16 dangerous and carcinogenic consumer products.³⁷

17 42. In 2023, Valisure tested 175 finished acne treatment products to determine whether any
18 had benzene. Of the 175 products tested, 99 were formulated with BPO, 58 had active ingredients

19 ³⁴ *Id.*

20 ³⁵ *Id.*, 2.

21 ³⁶ Valisure's test methods largely mirror those utilized by FDA's own "Drug Quality Sampling and Testing"
22 ("DQST") Program. Valisure FDA Citizen's Petition at 4.

23 ³⁷ See Valisure May 24, 2021 Citizen Petition on Benzene in Sunscreen and After-sun Care Products,
24 <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>); Valisure's Citizen Petition on Hand
25 Sanitizer Products Containing Benzene Contamination (filed March 24, 2021),
26 <https://www.regulations.gov/document/FDA-2021-P-0338-0001>), Valisure's Citizen Petition on Benzene in Sunscreen and
27 After-sun Care Products (filed May 24, 2021), <https://www.regulations.gov/document/FDA-2021-P-0497-0001>),
28 Valisure's Citizen Petition on Benzene in Body Spray Products (filed November 3, 2021),
<https://www.regulations.gov/document/FDA-2021-P-1193-0001>), Valisure's Citizen Petition on Benzene in Dry Shampoo
Products (filed October 31, 2022), <https://www.regulations.gov/document/FDA-2022-P-2707-0001>) see also CNET, Dry
Shampoo Recall: What Is Benzene and Which Brands Are Affected [https://www.cnet.com/health/personal-care/dry-
shampoo-recall-what-is-benzene-and-which-brands-are-affected/](https://www.cnet.com/health/personal-care/dry-shampoo-recall-what-is-benzene-and-which-brands-are-affected/) (identifying 19 types of dry shampoo have been recalled
due to benzene content); Ryan Basen, Medpage Today, After Valisure Petition, Ol' Dirty Benzene Forces Another Recall
(November 30, 2021), <https://www.medpagetoday.com/special-reports/exclusives/95929> ("After Valisure Petition, Ol'
Dirty Benzene Forces Another Recall"); Bruce Y. Lee, Forbes, FDA: P&G Recalls Antiperspirant Sprays Due To Cancer
Risk Of Benzene (Nov. 24, 2021), [https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-
sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32](https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32); see also Sandee LaMotte, CNN, Antiperspirant recall: What the
finding of a cancer-causing chemical means for you (Dec. 1, 2021), [https://www.cnn.com/2021/12/01/health/deodorants-
antiperspirants-recall-benzene-explainer-wellness/index.html](https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html).

1 (either individually or in combination) of salicylic acid, sulfur, adapalene, azelaic acid, niacinamide
2 and zinc, and 18 had no drug ingredients.³⁸ 83 of the BPO Products were purchased over the counter
3 from major retailers and 16 were prescription products purchased from licensed wholesalers.³⁹ The
4 BPO Products 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 Cleanser,
6 Clearasil 10% BPO Cream, CVS Health 10% BPO Face Wash, Walgreens 10% BPO Cream, La
7 Roche Posay BPO Cream, and Clean & Clear 10% BPO Lotion.

8 43. Valisure used three incubation temperatures to evaluate the effects of common
9 distributor and consumer use, handling, and storage conditions on benzene formation. 37°C/98.6°F
10 was used for human body temperature, 50°C/122°F was used to evaluate shelf-life performance as an
11 accelerated stability testing temperature used by the pharmaceutical industry,⁴⁰ and 70°C/158°F to
12 model storage in a hot vehicle.⁴¹ The BPO Products were incubated at 37°C for four weeks and 50°C
13 for three weeks and benzene concentration was measured at certain time intervals using GC-MS.
14 Benzene findings were plotted in real time and reported in parts per million (“ppm”). The results
15 below were submitted to the FDA in Valisure’s March 5, 2024 Citizen’s Petition on Benzoyl
16 Peroxide.⁴²

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25 ³⁸ See Valisure Citizen’s Petition on Benzoyl Peroxide (March 4, 2024).

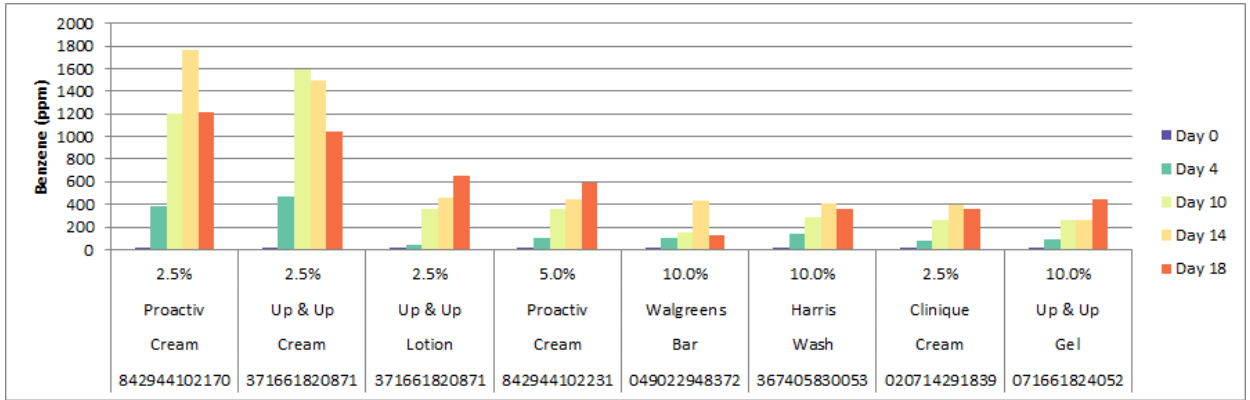
³⁹ *Id.*

26 ⁴⁰ Ghimire, Prakash et al., *Guidelines on Stability Studies of Pharmaceutical Products and Shelf Life Estimation*.
INTERNATIONAL JOURNAL OF ADVANCES IN PHARMACY AND BIOTECHNOLOGY, (2020). 06. 15-23. 10.38111/ijapb.20200601004.

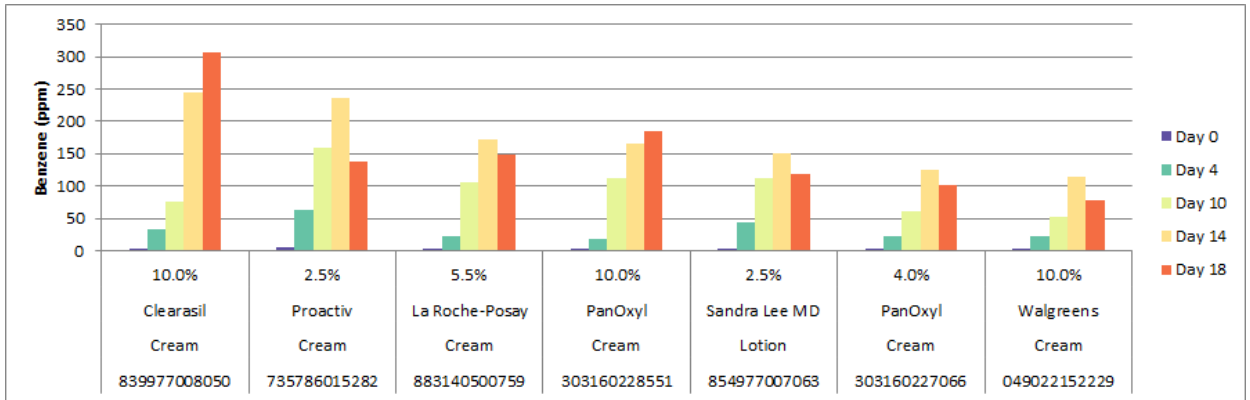
27 ⁴¹ Grundstein A, Meentemeyer V, Dowd J. *Maximum vehicle cabin temperatures under different meteorological*
conditions. Int J Biometeorol. 2009 May;53(3):255-61. doi: 10.1007/s00484-009-0211-x. Epub 2009 Feb 21. PMID:
28 19234721.

⁴² Valisure FDA Citizen’s Petition on Benzoyl Peroxide (March 6, 2024), 16, available at:
<https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March 6, 2024).

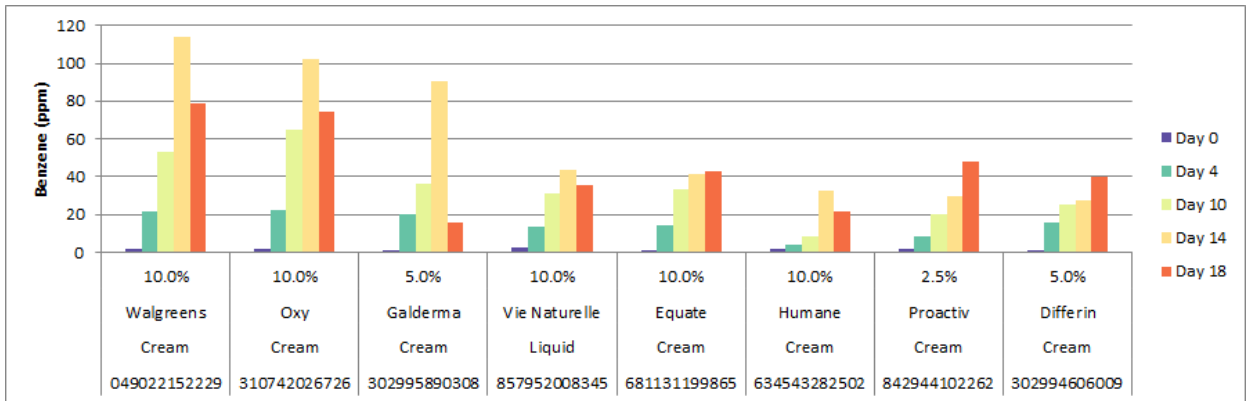
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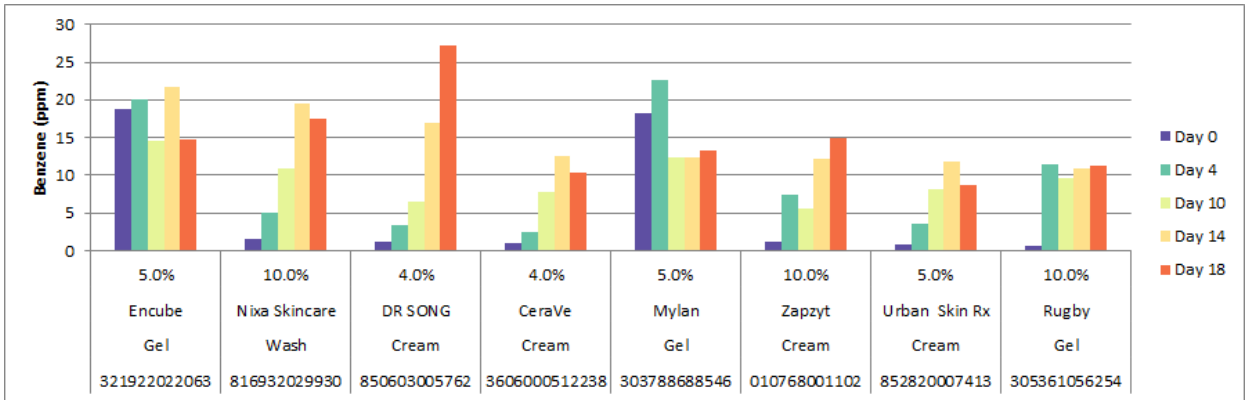
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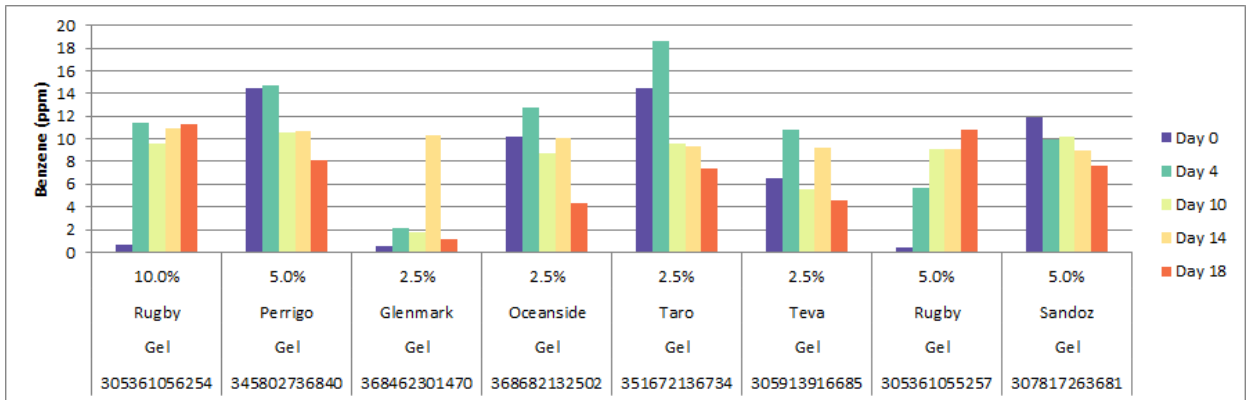
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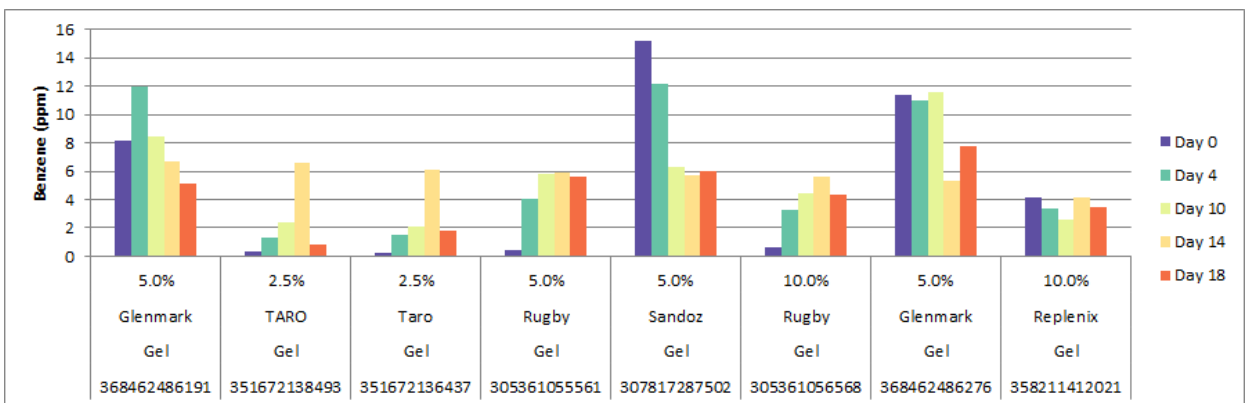
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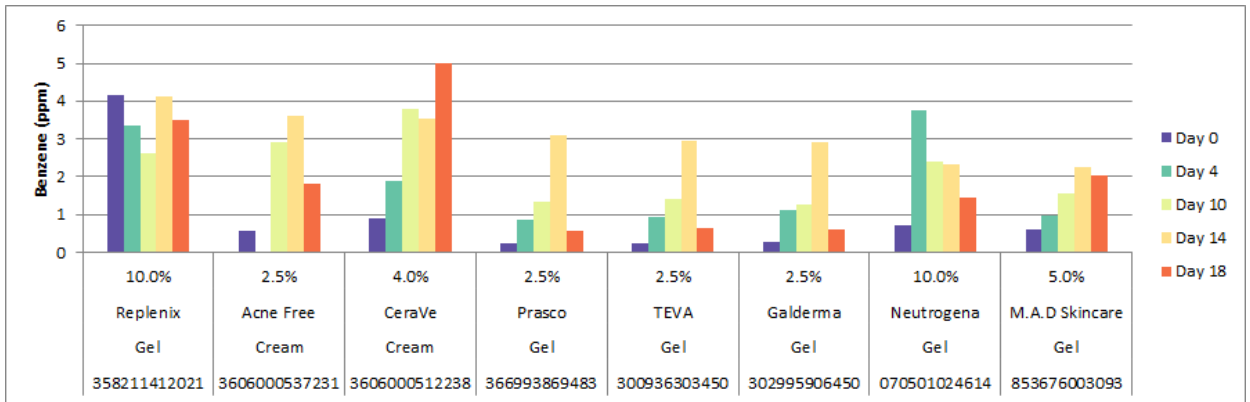


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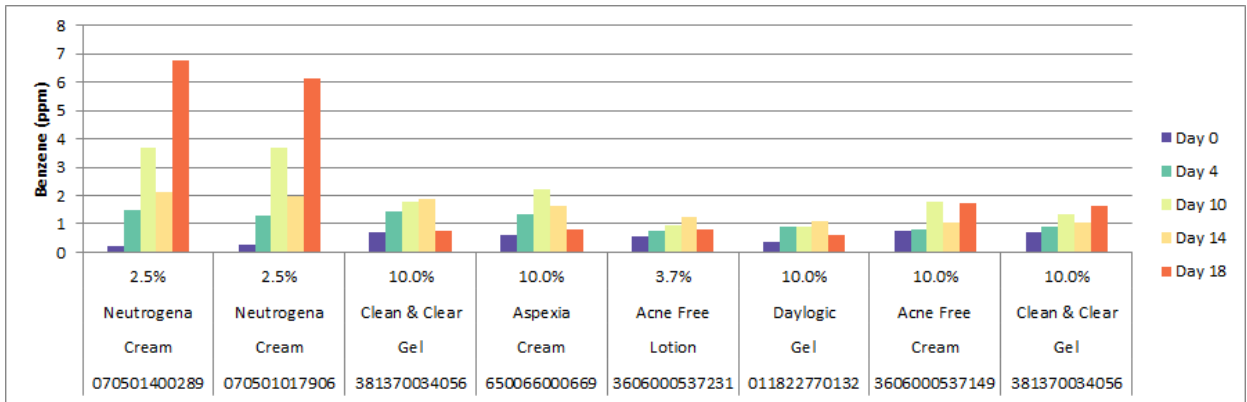


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44. Valisure found the BPO formulated products were not chemically stable and yielded benzene at levels well over 2 ppm, the maximum amount allowed in any U.S. regulated drug. Some of the benzene levels were 800 times higher than 2 ppm reaching as high as 1700 ppm for Proactiv’s Product.⁴³ The concentration of BPO in the Products did not influence the benzene levels, *e.g.*, Walmart’s Equate 10% BPO Cream had 40 ppm of benzene at day 10 and Target’s Up & Up 2.5% BPO Cream had 1500 ppm.⁴⁴ 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.

45. Valisure concluded that all on-market BPO acne formulations are fundamentally unstable and form unacceptably high levels of benzene under normal use, handling, and storage temperatures, but no such evidence was observed for acne treatment products not formulated with

⁴³ *Id.*
⁴⁴ *Id.*

1 BPO.⁴⁵ The finding that additional benzene leaked into the surrounding air from the products’
2 containers means the total consumer benzene exposure would be even more dangerous than the levels
3 reported.

4 46. Valisure filed a Citizen’s Petition on Benzoyl Peroxide on March 5, 2024⁴⁶ with the
5 FDA requesting the FDA Commissioner to immediately demand a recall of all BPO Products
6 formulated with BPO and further to require that drug manufacturers do independent chemical
7 verification. The Petition is pending.

8 **F. WALMART EXPOSED CONSUMERS TO BENZENE, A KNOWN HUMAN**
9 **CARCINOGEN, WITHOUT THEIR KNOWLEDGE**

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

15 48. Benzene is a carcinogen that has been among the most studied toxins over the last 100
16 years due to its wide use during the industrial revolution, extreme danger, and known ability to cause
17 cancer and death in humans and animals. The medical literature linking benzene to blood cancers is
18 vast dating to the 1930s.⁴⁷ Benzene is the foundation component for many chemicals used to make
19 plastics, resins, synthetic fibers, paints, dyes, detergents, drugs, and pesticides. In the past, benzene
20 was widely used as a solvent in industrial paints, paint removers, adhesives, degreasing agents,
21 denatured alcohol, and rubber cements. Benzene use has declined due to the proliferation of worker
22 studies and an ever-growing body of evidence confirming benzene’s contribution to blood cancers.

23 49. Benzene has no known safe level of exposure.⁴⁸ Benzene causes central nervous system

24 ⁴⁵ *Id.*

⁴⁶ As of the date of filing this Class Action, Valisure’s FDA Petition is still pending.

25 ⁴⁷ See Hamilton A., *Benzene (benzol) poisoning*, ARCH PATHOL, (1931):434-54, 601-37; Hunter FT, *Chronic*
26 *exposure to benzene (benzol). Part 2: The clinical effects*. J. IND. HYG TOXICOL, (1939):21 (8) 331-54; Mallory TB, et
27 *al., Chronic exposure to benzene (benzol). Part 3: The pathological results*. J. IND. HYG TOXICOL, (1939):21 (8) 355-93; Erf LA,
28 Rhoads CP., *The hematological effects of benzene (benzol) poisoning*. J. IND. HYG TOXICOL, (1939):21 421-35; American
Petroleum Institute, *API Toxicological Review: Benzene*, NEW YORK, (1948); Infante PF, Rinsky RA, Wagoner JK, et al.,
Leukemia in benzene workers, LANCET, (1977);2 (8028): 76-78.

⁴⁸ Harrison R, Saborit, J., *WHO Guidelines for Indoor Air Quality – Selected Pollutants*, (2010); see also Smith,
Martyn T. (2010). Advances in Understanding Benzene Health Effects and Susceptibility. *Annual Review of Public*
Health, (2010) Vol. 31:133-148.

1 depression and destroys bone marrow, leading to injury in the hematopoietic system.⁴⁹ The
2 International Agency for Research on Cancer (“IARC”) classifies benzene as a “Group 1 Carcinogen”
3 that causes cancer in humans, including acute myelogenous leukemia (“AML”).⁵⁰ AML is the
4 signature disease for benzene exposure with rates of AML particularly high in studies of workers
5 exposed to benzene.⁵¹

6 50. Benzene exposure is cumulative and additive. There is no safe level of exposure to
7 benzene, and all exposures constitute some risk in a linear, if not supralinear, and additive fashion.”⁵²

8 51. The Agency for Toxic Substances and Disease Registry’s (“ATSDR”) “Tox Facts” for
9 benzene warns that people can be exposed to benzene vapors from benzene-containing products and
10 that benzene harms the blood marrow, causing leukemia and anemia, and affects the immune system
11 leaving victims vulnerable to infection.⁵³

12 52. According to the FDA, benzene in small amounts over long periods of time can
13 decrease the formation of blood cells and long-term exposure through inhalation, oral intake, and skin
14 absorption may result in cancers such as leukemia and other blood disorders.⁵⁴

15 53. Benzene is a major industrial chemical made from coal and oil that is heavily regulated
16 by the EPA as an important environmental pollutant that negatively affects the soil, air, and
17 groundwater. Waste and air emissions containing benzene are considered hazardous waste. The coal,
18 oil, paint, and chemical industries are heavily regulated due to the emission of carcinogens including
19 benzene from refining and other industries processes involving benzene and benzene byproducts,
20 which can end up in the air, water, and food supply.

21 54. Benzene is heavily regulated to protect public health and should not be in drug
22 products, especially ones such as acne treatment that are used daily by children and teenagers for
23

24 ⁴⁹ FDA Toxicological Data for Class 1 Solvents, Appendix 4, *Benzene*,
<https://www.fda.gov/media/71738/download>.

25 ⁵⁰ International Agency for Research on Cancer. *Benzene, IARC Monographs on the Evaluation of Carcinogenic
Risks to Humans, Volume 120*, LYON, France: World Health Organization, (2018).

26 ⁵¹ American Cancer Association, *Benzene and Cancer Risk*, [https://www.cancer.org/cancer/risk-
prevention/chemicals/benzene.html](https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html) (last visited October 20, 2023).

27 ⁵² Smith, Martyn T., *Annual Review of Public Health*, ADVANCES IN UNDERSTANDING BENZENE HEALTH EFFECTS AND
SUSCEPTIBILITY (2010) Vol. 31:133-148.

28 ⁵³ Agency for Toxic Substances and Disease Registry, *Benzene – Tox Facts*, CAS # 71-43-2.

⁵⁴ Federal Drug Administration. (June 9, 2022). *Frequently Asked Questions*: [https://www.fda.gov/drugs/drug-
safety-and-availability/frequently-asked-questions-benzene-contamination-drugs](https://www.fda.gov/drugs/drug-safety-and-availability/frequently-asked-questions-benzene-contamination-drugs).

1 many years. The FDA drug guidelines specify that benzene must not be used to make drugs products
2 because of the unacceptable toxicity and deleterious environmental effects.⁵⁵ The FDA allows one
3 limited exception – where the use of benzene in a drug product is unavoidable to produce a drug
4 product with a significant therapeutic advance. In that instance, benzene must be restricted to two
5 parts per million (ppm).⁵⁶ Defendant’s BPO Products do not meet this rare exception.

6 55. Benzene is heavily regulated in the workplace. The U.S. Occupational Safety and
7 Health Administration (“OSHA”) set an eight-hour exposure standard of 1 ppm.⁵⁷ The National
8 Institute for Occupational Safety and Health (“NIOSH”) established a recommended exposure level
9 (REL) of 0.1 ppm (15-minute ceiling limit). Subsequent exposure studies known as the “China
10 studies” confirmed cancer at levels below 1 ppm.⁵⁸ The benzene levels created from Defendant’s
11 BPO Products are many times higher than the levels reported in these worker studies and the
12 acceptable limits set by regulators.

13 56. Benzene can also pass from the mother’s blood to a developing fetus causing the baby
14 to be exposed to benzene.⁵⁹ Animal studies have shown low birth weights, delayed bone formation,
15 and damage to the bone marrow of developing offspring when pregnant animals breathed benzene.⁶⁰

16 57. Plaintiffs and the Class were exposed to benzene from the BPO Products by inhalation
17 and dermal absorption. Benzene can be absorbed into the body via inhalation, skin absorption,
18 ingestion, and/or eye contact.⁶¹ Plaintiffs and the Class applied the BPO Products to areas of the skin
19 including the face, neck, chest, and back one to three times per day and used the BPO Products as
20 washes or scrubs in heated showers. Plaintiffs and the Class were also exposed to benzene leaked
21 from contaminated BPO Products.

22
23
24 ⁵⁵ Food and Drug Administration, *Q3C – Tables and Lists Guidance for Industry*,
<https://www.fda.gov/media/71737/download> (last visited September 26, 2023).

25 ⁵⁶ *Id.*

26 ⁵⁷ OSHA. Occupational exposure to benzene: Final rule. Fed. Reg. 1987;52-34460-578.

27 ⁵⁸ See Lan Q, Zhang L et al., *Hematotoxicity in Workers Exposed to Low Levels of Benzene*, *SCIENCE*, (December 3,
2004); Costa-Amaral I, V. B. L., *Environmental Assessment and Evaluation of Oxidative Stress and Genotoxicity
28 Biomarkers Related to Chronic Occupational Exposure to Benzene*, *INT J ENVIRON RES PUBLIC HEALTH*, (2019) Jun; 16(12):
2240.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ 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 **G. WALMART DID NOT TELL CONSUMERS ITS BPO PRODUCTS WERE AT**
2 **RISK OF BENZENE CONTAMINATION**

3 58. Defendant's BPO Products degrade to benzene under normal and expected handling,
4 use, or storage but it did not warn the public about the risk of benzene contamination or the health
5 risks of exposure. Defendant represented to the Plaintiffs, the Class, the Subclass, and the public, that
6 its BPO Products had only the ingredients listed on the Products' label, container, advertising, and
7 packaging. Defendant never identified benzene anywhere on the Products, or labels, containers, or
8 packaging. Defendant never disclosed benzene, or that the Product was at risk of degradation to
9 benzene on any of its websites or Product containers.

10 59. Defendant's statements about the BPO Products' ingredients were false, deceptive, and
11 misleading. Defendant's statements were meant to convey to Plaintiffs, the Class, the Subclasses, and
12 the public the Products were safe and did not contain carcinogens such as benzene. Defendant made
13 these statements uniformly to consumers and specifically omitted benzene from all advertising,
14 labeling, and packaging when they knew or should have known the statements were false, misleading,
15 and deceptive. Reasonable consumers, relying on Defendant's statements reasonably believed the
16 BPO Products were safe and did not contain benzene.

17 **H. WALMART MARKETED AND SOLD BPO PRODUCTS AT RISK OF**
18 **BENZENE CONTAMINATION TO CHILDREN AND TEENAGERS**

19 60. Defendant's BPO Products are widely used by children and teenagers as a standalone
20 treatment or in combination with other BPO Products. Defendant knew that adolescents are the largest
21 users with users as young as 7-10 years old. Defendant knew that young consumers would use the
22 BPO Products for many years starting in their teens. There is no cure for acne. Defendant knew that
23 consumers with chronic acne would use their BPO Products several times a day throughout their
24 lifetime.

25 61. Defendant aggressively marketed the BPO Products directly to children and teenagers
26 when they knew, or should have known, the BPO Products degraded to benzene under normal use and
27 storage conditions. Defendant's marketing of BPO Products to children and teenagers without
28 mentioning benzene, the risk of benzene exposure, or testing for benzene was misleading, fraudulent,

1 deceptive, and dangerous to young consumers who are more susceptible to the adverse effects of
2 exposure to carcinogens.

3 **V. PUNITIVE DAMAGES ALLEGATIONS**

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

14 63. Defendant is the largest company in the world earning more than 600 billion a year off
15 consumers they deceive by withholding material health and safety information essential to informed
16 consumer decision making. Defendant knew that, by their conduct, they were robbing Plaintiffs, the
17 Class, the Subclasses, and the public of their right to choose safe products.

18 64. Defendant was on notice of benzene findings in consumer products, which lead to
19 widely publicized product recalls. Defendant was on notice of the FDA's concerns of benzene
20 contamination in drug and consumer products and received the FDA's 2022 directive to test Products
21 for benzene contamination. Defendant disregarded these notices and continued to market and sell the
22 BPO Products to the public without testing them for benzene.

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

1 deceptive advertising, labeling, and packaging, but through a comprehensive scheme of aggressive
2 marketing and image branding leading consumers to believe they were consumer conscious retailers
3 dedicated to safety. Defendant's conduct and concealment of material health and safety information
4 was done to further their own monetary gain and with conscious disregard of the Plaintiffs, the Class,
5 the Subclasses, and the public's right to choose safe products. Defendant's conduct was intentional,
6 calculated, blatantly deceptive, unscrupulous, and offensive to consumer health and public policy. To
7 redress the harm caused by Defendant's conduct, Plaintiffs, on behalf themselves, the Class, and
8 Subclasses, seek punitive damages against the Defendant.

9 **VI. PLAINTIFFS' SPECIFIC ALLEGATIONS**

10 66. Plaintiff Grace Navarro is a California resident who places a high priority on health and
11 safety, and on the adverse health consequences of exposure to carcinogens such as benzene. In
12 shopping for drug products for her skin and face, Plaintiff Grace Navarro was particularly concerned
13 about the effectiveness of cleaning out her pores and avoiding breakouts on her face. Plaintiff read the
14 front labeling of the product which encouraged her to purchase the product. Based on the statements
15 made by Defendant, their widely recognized name, and lack of information that the BPO Products
16 contained carcinogens such as benzene, Plaintiff believed the BPO Product was safe to put on her
17 skin. Defendant's representations and omissions of human health and safety information were material
18 to Plaintiff.

19 67. Plaintiff Navarro bought Equate Beauty Acne Facial Cleaning Wash and used it from
20 2013 to November 2023 for breakouts on her face. Plaintiff was unaware when she bought the BPO
21 Product that it was contaminated with benzene or that it could degrade to benzene. Had Defendant
22 been truthful and told Plaintiff she would be exposed to benzene and/or be at increased risk of cancer,
23 she would not have purchased the Product.

24 68. Plaintiff Navarro suffered an ascertainable economic loss because of Defendant's
25 statements and misrepresentations in that she bought the Product she would not have bought but for
26 Defendant's statements and misrepresentations.

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

1 benzene. In shopping for drug products for her skin and face, Plaintiff Chatham Mullins was
2 particularly concerned about the effectiveness to resolve skin inflammation such as redness, cleansing
3 and acne blemishes on her skin and face. Plaintiff read the front labeling of Defendant's Equate BPO
4 Product which encouraged her to purchase the Product. Based on the statements made by Defendant
5 on the Product, their widely recognized name, and lack of information that the Product contained
6 carcinogens such as benzene, Plaintiff believed the Product was safe to put on her skin. Defendant's
7 representations and omissions of human health and safety information were material to Plaintiff.

8 70. Plaintiff Mullins bought Equate Beauty's 10% BPO Cream and used it from 2005 to
9 2013 for breakouts on her face. Plaintiff was unaware when she bought the BPO Product that it was
10 contaminated with benzene or that it could degrade to benzene. Had Defendant been truthful and told
11 her she would be exposed to benzene and/or be at increased risk of cancer, she would not have
12 purchased the Product.

13 71. Plaintiff Mullins suffered an ascertainable economic loss because of Defendant's
14 statements and misrepresentations in that he bought the BPO Product she would not have bought but
15 for Defendant's statements and misrepresentations.

16 **VII. CLASS ACTION ALLEGATIONS**

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

23 73. The Class does not seek damages for physical injuries, although Plaintiffs were
24 physically harmed by being exposed to benzene.

25 74. The Class will include a National Class to include all persons who bought for use, and
26 not resale, the Products within the United States.

27 75. The State Subclasses will include all persons who bought for use, and not resale, the
28 Products within California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New

1 York, Nevada, Ohio, Pennsylvania, Rhode Island, and Washington.

2 76. This action has been brought and may be properly maintained as a Class Action under
3 Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest
4 and the proposed Class meets the class action requirements under Rule 23 of numerosity,
5 commonality, typicality, and adequacy of representation.

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

9 78. **Numerosity.** Plaintiffs believe there are millions of Class members throughout the
10 United States, and there are tens of thousands of Subclass members in each of the listed states, making
11 the Class and state Subclasses so numerous and geographically dispersed that joinder of all members
12 is inconvenient and impracticable.

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

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

- 1 f. Whether Defendant's advertising omitting benzene was likely to deceive reasonable
- 2 consumers.
- 3 g. Whether Defendant's conduct violated California's Unfair Competition Law, Bus. &
- 4 Prof. Code § 17200 *et seq.*
- 5 h. Whether Defendant's conduct violated California consumer protection laws.
- 6 i. Whether Defendant's conduct violated Connecticut consumer protection laws.
- 7 j. Whether Defendant's conduct violated Hawaii consumer protection laws.
- 8 k. Whether Defendant's conduct violated Illinois consumer protection laws.
- 9 l. Whether Defendant's conduct violated Massachusetts consumer protection laws
- 10 including Mass. Gen. Laws Ann. Ch. 93A, § 1 *et seq.*
- 11 m. Whether Defendant's conduct violated Maryland consumer protection laws.
- 12 n. Whether Defendant's conduct violated Missouri consumer protection laws including Mo.
- 13 Rev. Stat. § 407, *et seq.*
- 14 o. Whether Defendant's conduct violated Nevada consumer protection laws including
- 15 Deceptive Trade Practice Act, NEV. REV. STATUTES, Title 52, Chapter 598 *et seq.*
- 16 p. Whether Defendant's conduct violated New York consumer protection laws including
- 17 New York Deceptive Trade Practices Law, NY Gen. Bus. §349(a) and NY Gen. Bus. §§
- 18 350 *et seq.*
- 19 q. Whether Defendant's conduct violated Pennsylvania consumer protection laws.
- 20 r. Whether Defendant's conduct violated Rhode Island consumer protection laws.
- 21 s. Whether Defendant's conduct violated Washington's consumer protection laws.
- 22 t. Whether Defendant breached the express and implied warranties they made about the
- 23 BPO Products.
- 24 u. Whether Defendant was unjustly enriched by the Plaintiffs, the proposed Class, and
- 25 Subclasses members' purchase of the BPO Products.
- 26 v. Whether the Plaintiffs, the proposed Class, and Subclasses have been injured and if so,
- 27 what is the proper measure of damages.
- 28 w. Whether the Plaintiffs, the proposed Class, and Subclasses have the right to economic

1 damages including compensatory, exemplary, and statutory remedies for Defendant's
2 misconduct.

- 3 x. Whether the Plaintiffs, the proposed Class, and Subclasses have the right to injunctive,
4 declaratory, or other equitable relief and attorneys' fees.

5 80. **Typicality.** Plaintiffs' claims are typical of the claims of the Class and Subclasses
6 because the claims arise from the same course of misconduct by Defendant, *i.e.*, Defendant's false and
7 misleading advertising and their failure to disclose benzene in the Products. The Plaintiffs, and all
8 Class and Subclass members were all exposed to the same uniform and consistent advertising,
9 labeling, and packaging statements Defendant made about the Products. Because of the Defendant's
10 misconduct, Plaintiffs, like all Class members, were damaged and have incurred economic loss
11 because of buying the Products believed to be safe. The claims of the Plaintiffs are typical of Class
12 members.

13 81. **Adequacy.** The Plaintiffs will fairly and adequately represent and protect the interests
14 of all Class and Subclass members. Plaintiffs have no interests antagonistic to the Class or Subclass
15 members. Plaintiffs hired attorneys experienced in the prosecution of consumer Class Actions and
16 Plaintiffs intend to prosecute this action vigorously. Plaintiffs anticipate no difficulty in the
17 management of this litigation as a Class Action.

18 82. Finally, this Class Action is proper under Rule 23(b) because, under these facts, a Class
19 Action is superior to other methods and is the most efficient method for the fair and efficient
20 adjudication of the dispute. The Class and Subclass members have all suffered economic damages
21 because of Defendant's deceptive trade practices, false advertising, and omissions of material health
22 and safety information. Because of the nature of the individual Class and Subclass members' claims
23 and the cost of the Products, few, if any individuals, would seek legal redress against Defendant
24 because the costs of litigation would far exceed any potential economic recovery. Absent a Class
25 Action, individuals will continue to suffer economic losses for which they would have no remedy, and
26 Defendant will unjustly continue their misconduct with no accountability while retaining the profits of
27 their ill-gotten gains. Even if separate cases could be brought by individuals, the resulting multiplicity
28 of lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well

1 as create a risk of inconsistent rulings across the country, which might be dispositive of the interests
2 of individuals who are not parties. A Class Action furthers the important public interest of containing
3 legal expenses, efficiently resolving many claims with common facts in a single forum
4 simultaneously, and without unnecessary duplication of effort and drain on critical judicial resources.
5 The Class Action method presents far fewer management difficulties than individual cases filed
6 nationwide and provides the benefit of comprehensive supervision by a single court.

7 **VIII. CAUSES OF ACTION**

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

10 83. Plaintiffs reallege and incorporates all other paragraphs in this Class Action Complaint
11 and further allege:

12 84. Plaintiffs bring this cause of action on behalf of themselves, and all members of the
13 California Subclass, all of whom are similarly situated consumers.

14 85. California’s Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.*,
15 prohibits “unlawful, unfair, or fraudulent business act or practices” and “unfair, deceptive, untrue or
16 misleading advertising.” Defendant regularly transacts business in California, including in this
17 District, and has engaged in misconduct that has had a direct, substantial, foreseeable, and intended
18 effect of injuring people in California, and in this District.

19 86. Defendant misrepresented their Products in advertising, labels, and containers and
20 misled Plaintiffs, the Subclass, and the public about the ingredients, characteristics, purity, quality,
21 approval, and safety of the Products. Defendant led Plaintiffs, the Subclass, and the public to believe
22 the Products were safe.

23 87. Defendant’s advertising, online representations, labeling, and packaging of the Products
24 were misleading, fraudulent, and deceptive. Defendant knew through the Products’ development,
25 formulation, research, and pre-sale safety and stability testing, the Products were not chemically and
26 physically stable when exposed to common temperature conditions. Defendant knew or should have
27 known the Products formulated benzene under normal and expected consumer use, handling, and
28 storage conditions, and that consumers would be exposed to benzene. Defendant were specifically

1 reminded by the FDA of their obligation to ensure the safety and quality of their Products, including
2 testing them for benzene before selling them to the public, but shirked their duties and continued to
3 market and sell the Products without substantiating their safety, or warning Plaintiffs, the Class, and
4 the public about benzene.

5 88. Defendant omitted material health and safety information, *e.g.*, benzene, from the
6 Products' advertising, label, container, and warnings. Defendant did not tell Plaintiffs and the Class
7 members they would be exposed to benzene, a human carcinogen, during normal and expected
8 handling, use and storage of the Products, even with the Products' container closed.

9 89. Defendant's acts and omissions were likely to deceive reasonable consumers and the
10 public. Reasonable consumers expect to be told about all ingredients in Products. Reasonable
11 consumers further expect that carcinogens in the Products be disclosed. Reasonable consumers further
12 expect that on market drugs to be free of carcinogens, unless told otherwise. Benzene in a widely
13 marketed drug product used by children, teens, and the public is material health information
14 reasonable consumers expect to be told.

15 90. Had Defendant been truthful in their advertising, labeling, packaging, and online
16 statements about benzene in the Products, or the risk of contamination, and the risk of cancer,
17 Plaintiffs and the Class members would not have bought the Products.

18 91. Defendant's acts, omissions, and concealment of material health and safety information
19 are ongoing and continuing to cause harm. Defendant continued to market, advertise, and sell the
20 Products to the public without telling the public about benzene in the Products, or the risk of
21 contamination, and the risk of cancer. Defendant continued to market themselves as responsible drug
22 manufacturers and sellers who sell safe products when they have not tested the Products for benzene
23 or quantified the levels of benzene formed in the Products during normal and expected storage
24 conditions.

25 92. Defendant engaged in these deceptive practices for significant financial gain, which is
26 unfair, unreasonably dangerous to Plaintiffs and the California Subclass members, and not outweighed
27 by any benefit. Omitting and concealing material human health and safety information such as
28 benzene in the Product and the consumers' risk of cancer from the Products is unethical,

1 unscrupulous, and offensive.

2 93. Plaintiffs suffered ascertainable economic losses because of Defendant's misconduct
3 because he bought the Products, he otherwise would not have bought but for Defendant's
4 misrepresentations and affirmations of safety.

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

11 **B. VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**
12 **CAL. CIV. CODE § 1750, *et seq.*, on Behalf of the California Subclass**

13 95. Plaintiffs reallege and incorporates all other paragraphs in this Complaint and further
14 allege:

15 96. Plaintiffs bring this cause of action on behalf of themselves, and the California Subclass
16 members, all of whom are similarly situated consumers within the meaning of CAL. CIV. CODE §
17 1781.

18 97. Defendant's acts and omissions violated California's Consumer Legal Remedies Act,
19 CAL. CIV. CODE § 1750, *et seq.*, enacted to protect consumers from being victimized and deceived by
20 advertisers, distributors, and sellers like the Defendant. Defendant regularly transacts business in
21 California, including in this District, and has engaged in misconduct that has had a direct, substantial,
22 foreseeable, and intended effect of injuring people in California, and in this District.

23 98. California's Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq. prohibits*
24 unfair methods of competition and unfair or deceptive acts or practices in connection with the sale of
25 consumer goods. Defendant violated several prohibitions of CIV. CODE § 1750(a).

26 99. Defendant violated CAL. CIV. CODE § 1750(a)(2) by representing the source,
27 sponsorship, and approval, of the Products, *e.g.*, the Products were backed by sound scientific
28 principles, that Defendant met its obligations to conduct adequate and meaningful quality and safety

1 testing before selling the Products to the public, and represented the Products only contained the
2 ingredients listed, and were free of carcinogens.

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

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

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

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

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

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

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

1 107. Defendant's acts, omissions, and concealment of material health and safety information
2 are ongoing and continuing to cause harm. Defendant continued to market, advertise, and sell the
3 Products to the public without telling the public about benzene in the Products and the risk of cancer.
4 Defendant continues to market themselves as responsible drug manufacturers and sellers who sell safe
5 products when they have not quantified the levels of benzene in and created in the Products during
6 normal and expected storage conditions.

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

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

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

18 C. **FALSE ADVERTISING UNDER VARIOUS STATE STATUTES, Individually**
19 **and on behalf of the California, Hawaii and New York Subclasses**

20 111. Plaintiffs reallege and incorporates all other paragraphs in this Complaint and further
21 allege:

22 112. Plaintiffs bring this cause of action on behalf of themselves, and all members of the
23 California, Hawaii, and New York Subclasses, all of whom are similarly situated consumers.

24 113. Defendant develops, tests, selects, markets and/or sells the BPO Products throughout
25 the United States in its stores and through eCommerce websites. Defendant knew through the
26 Products' development, formulation, and selection, the Products were not chemically stable when
27 exposed to certain expected and normal environmental and storage conditions and formed benzene, as
28 a toxic byproduct. Despite this knowledge, Defendant did not mention benzene in the Products'

1 advertising, ingredient lists, labels, containers, or warnings. Defendant did not tell Plaintiffs, and the
2 Subclass members they would be exposed to benzene, a human carcinogen, during normal and
3 expected handling, use and storage of the Products, even with the Products' containers closed.

4 114. Benzene, a human carcinogen, in a widely marketed and available consumer drug
5 product, is material health and safety information Defendant knew Plaintiffs, and the Subclass
6 members would want to know. Defendant not only omitted this material human health and safety
7 information from advertising, online representations, blogs, labeling, packaging, and warnings, but
8 aggressively marketed itself as consumer conscious, a market leader, and company committed to
9 consumer safety. Defendant's brand notoriety, market share, and affirmations of safety misled
10 Plaintiffs, and the Subclass members, leading them to believe the Products were tested, verified, and
11 safe. Defendant further marketed the Products touting the approval of dermatologists, who were not
12 aware of the presence of benzene in the Products and of Defendant's refusal to conduct adequate and
13 meaningful testing before marketing and selling the Products to the public and following the FDA's
14 2022 alert to specifically look for benzene.

15 115. Defendant's acts and omissions constitute false advertising. Defendant advertised the
16 Products with the intent not to sell them as advertised. Reasonable consumers, including Plaintiffs and
17 the Subclass members, exposed to Defendant advertising would believe the Products were safe,
18 verified, and free of benzene.

19 116. Defendant's false and misleading advertising violated California's False Advertising
20 Law, Bus. & Prof. Code § 17500 *et seq.*, which prohibits Defendant from disseminating statements
21 "which are untrue or misleading, and which are known, or which by the exercise of reasonable care
22 should be known, to be untrue or misleading." Defendant knew or should have known the Products
23 formed benzene under normal, handling, use, and storage conditions but did not disclose this to
24 Plaintiffs and the Class and Subclass members. Defendant knew or should have known the Products
25 were not chemically stable when exposed to certain normal and expected environmental conditions.

26 117. Defendant's false and misleading advertising violated Hawaii's False Advertising Law,
27 HI REV. STAT. § 708-871. Defendant knowingly or recklessly made false and misleading statements in
28

1 the Products' advertising to the public.⁶² Defendant further advertised the Products with the intent not
2 to sell them as advertised and misrepresented the ingredients, quality, purity, safety, and character of
3 the Products.

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

13 119. Had Defendant been truthful in their advertising, online representations, labeling, and
14 packaging about benzene, Plaintiffs, and the Subclass members would not have bought the Products.

15 120. Plaintiffs, on behalf of themselves, and the California, Hawaii, and New York Subclass
16 members suffered ascertainable economic losses because of Defendant's misconduct because they
17 bought the Products, they otherwise would not have but for Defendant's material misrepresentations.

18 121. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves, and the
19 California, Hawaii, and New York Subclass members, seek recovery of their economic damages,
20 attorneys' fees, punitive damages, restitution, and all other relief allowable by law, including an
21 injunction to enjoin Defendant from continuing their fraudulent business practices. The damages
22 sought are ascertainable, uniform, and can be measured and returned.

23 ///

24 ///

25
26 ⁶² HI REV STAT § 708-871, False Advertising: (1) A person commits the offense of false advertising if, in
27 connection with the promotion of the sale of property or services, the person knowingly or recklessly makes or causes to
28 be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.
(2) "Misleading statement" includes an offer to sell property or services if the offeror does not intend to sell or provide the
advertised property or services: (a) At the price equal to or lower than the price offered; or (b) In a quantity sufficient to
meet the reasonably- expected public demand unless quantity is specifically stated in the advertisement; or (c) At all.

1 **D. DECEPTIVE TRADE PRACTICES UNDER VARIOUS STATE STATUTES,**
2 *Individually and on Behalf of the California, Connecticut, Hawaii, Illinois,*
3 *Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode*
4 *Island, and Washington Subclasses*

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

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

10 124. Defendant's acts and omissions constitute deceptive business practices in violation of
11 state deceptive trade practices laws.

12 125. Defendant represented the BPO Products had characteristics, uses, and benefits, they
13 did not, *e.g.*, Defendant represented the BPO Products were pure, of good quality, safe, and only
14 contained the ingredients disclosed.

15 126. Defendant represented the BPO Products were not deteriorated or altered, when they
16 knew, or should have known, the BPO Products degraded to benzene under normal and expected use,
17 handling, and storage conditions.

18 127. Defendant represented the BPO Products contained only the ingredients listed on
19 Defendant's websites, advertising, labels, and containers. Defendant did not disclose to Plaintiffs, the
20 Class and Subclass members, and the public the BPO Products were at risk of benzene contamination.

21 128. Defendant advertised the BPO Products with the intent not to sell them as advertised.

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

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

 131. Defendant's acts and omissions violated Hawaii's Uniform Deceptive Trade Practice

1 Act, HAW. REV. STAT. §481-A3 because Defendant: (1) caused the likelihood of confusion or of
2 misunderstanding as to the source, sponsorship, approval, or certification of the Products; (2)
3 represented the Products had characteristics, ingredients, or benefits, they did not; (3) represented the
4 Products were not deteriorated or altered, when they were; (4) represented the Products were of a
5 particular standard or quality when they were not; and (5) advertised the Products with the intent not
6 to sell them as advertised.

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

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

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

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

27 136. Defendant's acts and omissions violated N.Y. GEN. BUS. LAW § 349, which prohibits
28 Defendant from engaging in deceptive, unfair, and misleading acts and practices such as those

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

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

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

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

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

26 141. Defendant's acts and omissions violated Washington's Consumer Protection Act,
27 WASH. REV. CODE § 19.86.010, *et seq.*, which broadly prohibits Defendant from engaging in unfair
28 methods of competition and unfair or deceptive acts or practices in the conduct of any trade

1 or commerce.⁶³ Defendant's concealment of material health and safety information about the
2 Products, which they knew or should have known, was injurious to the public interests of protecting
3 public health and the public's right to know about any harmful constituents in the Products.
4 Defendant's 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. Defendant's
6 conduct has the capacity to cause harm to other people who buy the Products.

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

10 143. Defendant's acts and omissions and violations of the state consumer protection statutes
11 are ongoing and continuing to cause harm.

12 144. Plaintiffs, on behalf of themselves, and the Subclasses suffered an ascertainable
13 economic loss because of Defendant's misconduct because they bought the Products, they would not
14 have bought but for Defendant's misrepresentations.

15 145. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves, and the
16 Subclasses seek recovery of their economic damages, attorneys' fees, punitive damages, and all other
17 relief allowable under the law. The damages sought are ascertainable, uniform and can be measured
18 and returned.

19 **E. BREACH OF EXPRESS WARRANTY, *Individually and on Behalf of the***
20 ***Nationwide Class and on Behalf of the California, Connecticut, Hawaii, Illinois,***
21 ***Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode***
Island, and Washington State Subclasses

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

24 147. Plaintiffs bring this cause of action on behalf of themselves, and all members of the
25 National Class and the California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri,
26 New York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington Subclasses, all of whom are

27
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⁶³ Under § 19.86.090, Washington consumers harmed by such practices may recover actual damages, the costs of the suit, including reasonable attorney's fees, and the court may, in its discretion, increase the award of damages to an amount up to three times the actual damages sustained.

1 similarly situated consumers.

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

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

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

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

25 151. Plaintiffs reallege and incorporates all other paragraphs in this Complaint and further
26 allege:

27 152. Plaintiffs bring this cause of action on behalf of themselves, and all members of the
28 National Class and the California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri,

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

3 153. Defendant, as sellers of the Products, also made implied warranties including
4 warranting the Products were of the same quality and purity represented on the labels, in advertising,
5 and on Defendant's websites, were fit for the ordinary purpose of the Products and conformed to the
6 promises made on the containers, labels, advertising, and websites that all ingredients were listed, and
7 all warnings given.

8 154. Defendant advertised their Products as safe, when they knew, or should have known,
9 the Products degraded to benzene. Defendant did not list benzene as an ingredient or contaminant
10 anywhere on the Products or advertising. The Products are not of the quality and purity represented by
11 Defendant because the Products degrade to benzene under normal use, handling, and storage
12 conditions.

13 155. Defendant did not tell Plaintiffs or the Class or Subclass members the Products were not
14 fit for their ordinary use because the Products, as advertised and sold by Defendant, degraded to
15 benzene under normal and expected handling, use, and storage.

16 156. Defendant's affirmations that the Products were safe for use were uniformly made to
17 the Plaintiffs and the Class members in the Products' advertising, labeling, and packaging, and on
18 Defendant's websites, which were part of the basis of the bargain.

19 157. Plaintiffs, the Class, and Subclass members purchased the Products in reasonable
20 reliance on Defendant's statements, affirmations, and omissions of material health and safety
21 information.

22 158. Defendant's acts and omissions are ongoing and continuing to cause harm.

23 159. Because of Defendant's misconduct, Plaintiffs, on behalf of themselves, the Class and
24 Subclass members, seek recovery of their actual damages, injunctive relief, attorneys' fees, punitive
25 damages, and all other relief allowable under the law. The damages sought are uniform to the Class
26 and Subclasses and the actual damages can be measured and returned to consumers who bought
27 Defendant's Products.

28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GRACE NAVARRO and CHATHAM MULLINS, on behalf of themselves, and all others similarly situated, and the general public

(b) County of Residence of First Listed Plaintiff Fresno (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) R. Brent Wisner (rbwisner@wisnerbaum.com) WISNER BAUM, LLP, 11111 Santa Monica Blvd., #1750, Los Angeles, CA 90025 (310) 207-3233

DEFENDANTS

WALMART, INC. and DOES 1 to 50, Inclusive

County of Residence of First Listed Defendant Lake (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S. Code § 1332(a) Brief description of cause: Diversity of citizenship

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Mar 8, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ R. Brent Wisner

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:24-cv-00288-JL T-BAM Document 1-1 Filed 03/08/24 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.