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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ERIN DEL TORO and LOUISA ROMO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CROWN LABORATORIES, INC.,

Defendant.

Case No.: _____

PLAINTIFF’S CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

- 1. STATE CONSUMER FRAUD ACTS;**
- 2. FALSE ADVERTISING LAW, BUS. & PROF. CODE, § 17500;**
- 3. UNFAIR COMPETITION LAW, BUS. & PROF. CODE, § 17200;**
- 4. CONSUMER LEGAL REMEDIES ACT, CIV. CODE, § 1770;**
- 5. ARIZONA CONSUMER FRAUD ACT, ARIZ. REV. STAT. § 44-1522;**
- 6. UNJUST ENRICHMENT, in the alternative; and**
- 7. NEGLIGENT MISREPRESENTATION /OMISSION**

DEMAND FOR JURY TRIAL

Plaintiffs, Erin Del Toro and Louisa Romo, individually and on behalf of all others similarly situated, by and through their attorneys, bring this class action complaint against Defendant, Crown Laboratories, Inc. (“Defendant”), and allege the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on personal knowledge:

NATURE OF THE ACTION

1. This is a class action lawsuit regarding Defendant’s manufacturing,

1 distribution, advertising, marketing, and sale of PanOxyl branded benzoyl peroxide
2 (“BPO”) acne treatment products (the “BPO Products”¹) that contain dangerously
3 high levels of benzene, a carcinogenic impurity that has been linked to leukemia and
4 other cancers.

5 2. The presence of benzene in the BPO Products renders them adulterated,
6 misbranded, and illegal to sell under federal and state law.

7 3. Prior to placing the BPO Products into the stream of commerce and into
8 the hands of consumers to use on their skin, Defendant knew or should have known
9 that the BPO Products contained benzene, but misrepresented, omitted, and
10 concealed this fact to consumers, including Plaintiffs and Class members, by not
11 including benzene on the BPO Products’ labels or otherwise warning about its
12 presence.

13 4. Plaintiffs and Class members reasonably relied on Defendant’s
14 representations that the BPO Products were safe, unadulterated, and free of any
15 carcinogens that are not listed on the label.

16 5. Plaintiffs and Class members purchased the BPO Products, which
17 contain harmful levels of benzene.

18 6. The BPO Products are worthless because they contain benzene, a
19 known human carcinogen that is an avoidable ingredient in the BPO Products’
20 manufacturing process. Indeed, the presence of benzene renders the BPO Products
21 adulterated, misbranded, and illegal to sell.

22 7. Defendant is therefore liable to Plaintiffs and Class members for
23 misrepresenting and/or failing to disclose or warn that the BPO Products contain
24 benzene or degrade and form benzene over a short period of time.

25 **PARTIES**

26 8. Plaintiff Del Toro is a resident and citizen of Westminster, California.

27 ¹ The BPO Products refer to PanOxyl Acne Foaming Wash Benzoyl Peroxide 10%
28 Maximum Strength, PanOxyl Acne Creamy Wash Benzoyl Peroxide 4% Daily
Control, and PanOxyl Acne Treatment Bar, 10% Benzoyl Peroxide.

1 Plaintiff Del Toro has purchased Defendant's BPO Products over a period of
2 approximately one year. The last time Plaintiff Del Toro purchased one of the BPO
3 Products for personal or household use was in approximately January 29, 2024,
4 when Plaintiff Del Toro purchased PanOxyl Acne Foaming Wash Benzoyl Peroxide
5 10% Maximum Strength at a Target store located in Westminster, California for
6 \$9.79.

7 9. When purchasing the BPO Products, Plaintiff Del Toro reviewed the
8 accompanying labels and disclosures and understood them as representations by
9 Defendant that the BPO Products were properly manufactured, free from defects,
10 and safe for their intended use. Plaintiff Del Toro relied on these representations
11 when deciding to purchase the BPO Products, and these representations were part of
12 the basis of the bargain. Had Defendant not made the false, misleading, and
13 deceptive representations and omissions regarding the BPO Products containing
14 benzene or that the BPO Products would degrade into benzene in a short period of
15 time under reasonable conditions, Plaintiff Del Toro would not have purchased the
16 BPO Products. The BPO Products Plaintiff Del Toro purchased were worthless
17 because they contained the known carcinogen benzene. Accordingly, Plaintiff Del
18 Toro was injured in fact and lost money as a result of Defendant's improper conduct.

19 10. Plaintiff Romo is a resident and citizen of Hereford, Arizona. Plaintiff
20 Romo has purchased Defendant's BPO Products several times over a period of at
21 least two years from a Target store in Phoenix, Arizona, and on www.amazon.com.
22 Plaintiff Romo last purchased one of the BPO Products for personal or household in
23 approximately September, 2023, from Target, and she previously purchased
24 PanOxyl Acne Foaming Wash Benzoyl Peroxide 10% Maximum Strength
25 Antimicrobial from Amazon on www.amazon.com for \$9.48, on July 11, 2022.

26 11. When purchasing the BPO Products, Plaintiff Romo reviewed the
27 accompanying labels and disclosures and understood them as representations by
28 Defendant that the BPO Products were properly manufactured, free from defects,

1 and safe for their intended use. Plaintiff Romo relied on these representations when
2 deciding to purchase the BPO Products, and these representations were part of the
3 basis of the bargain. Had Defendant not made the false, misleading, and deceptive
4 representations and omissions regarding the BPO Products containing benzene or
5 that the BPO Products would degrade into benzene in a short period of time under
6 reasonable and foreseeable conditions, Plaintiff Romo would not have purchased the
7 BPO Products. The BPO Products Plaintiff Romo purchased were worthless because
8 they contained the known carcinogen benzene. Accordingly, Plaintiff Romo was
9 injured in fact and lost money as a result of Defendant's improper conduct.

10 ***Defendant***

11 12. Defendant is a corporation organized, existing, and doing business
12 under and by virtue of the laws of the state of Delaware with its principal place of
13 business in Johnson City, Tennessee. Defendant markets, sells, and distributes the
14 BPO Products at issue in California, Arizona, and throughout the United States. The
15 BPO Products, including those purchased by Plaintiffs and Class members, are
16 available for sale at Walmart, Target, Walgreens, CVS, and Rite-Aid stores through
17 the United States, and on www.amazon.com. Defendant authorized the false,
18 misleading, and deceptive marketing, advertising, distribution, and sale of the BPO
19 Products.

20 **JURISDICTION AND VENUE**

21 13. This Court has subject-matter jurisdiction pursuant to the Class Action
22 Fairness Act ("CAFA"), 28 U.S.C. § 1332(d) because (1) the matter in controversy
23 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, (2) the action
24 is a class action, (3) there are members of the Class who are diverse from Defendant,
25 and (4) there are more than 100 Class members. This Court has supplemental
26 jurisdiction over state law claims pursuant to 28 U.S.C. § 1367 because they form
27 part of the same case or controversy as the claims within the Court's original
28 jurisdiction.

1 14. This Court has personal jurisdiction over Defendant because the claims
2 asserted in this complaint arise out of Defendant's contacts with this District.
3 Defendant has been afforded due process because it has, at all times relevant to this
4 matter, individually or through its agents, subsidiaries, officers and/or
5 representatives, operated, conducted, engaged in and carried on a business venture
6 in this state, and/or marketed, advertised, distributed and/or sold products,
7 committed a statutory violation within this state related to the allegations made
8 herein, and caused injuries to Plaintiffs and putative Class members, which arose out
9 of the acts and omissions that occurred in the state of California during the relevant
10 time period, at which time Defendant was engaged in business activities in the state
11 of California.

12 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
13 because a substantial part of the events or omissions giving rise to the claims asserted
14 in this complaint occurred in this state. Venue is also proper pursuant to 28 U.S.C. §
15 1391(c) because Defendant conducts substantial business in this District, has
16 sufficient minimum contacts with this District, and otherwise purposely avails itself
17 of the markets in this District, through the promotion, sale, and marketing of the
18 BPO Products in this District.

19 FACTUAL ALLEGATIONS

20 **I. PanOxyl**

21 16. Defendant represents that "PanOxyl uses the power of benzoyl
22 peroxide to kill acne-causing bacteria fast" and explains on its website how benzoyl
23 peroxide works to treat and prevent breakouts.²

24 17. Indeed, benzoyl peroxide is an active ingredient in all the BPO
25 Products.

26 18. All of Defendant's BPO Products are manufactured in the same
27 manner.

28 ² <https://panoxyl.com/about-panoxyl/>.

1 19. All lots of Defendant’s BPO Products systematically degrade and form
2 benzene over a short period of time.

3 20. The rates of degradation and benzene impurities in the BPO products
4 occur at a predictable and systematic rate.

5 **II. Evidence of Benzene’s Danger**

6 21. Benzene is used primarily as a solvent in the chemical and
7 pharmaceutical industries, as a starting material and intermediate in the synthesis of
8 numerous chemicals, and in gasoline. The major United States source of benzene is
9 petroleum. The health hazards of benzene have been recognized for over one
10 hundred years.

11 22. “Human exposure to benzene has been associated with a range of acute
12 and long-term adverse health effects and diseases, including cancer and
13 haematological effects.”³

14 23. A toxicity assessment by the Centers for Disease Control and
15 Prevention has shown benzene can harm the central nervous system and may affect
16 reproductive organs.⁴

17 24. According to the World Health Organization, “Benzene is a genotoxic
18 carcinogen in humans and no safe level of exposure can be recommended.”⁵

19 25. According to the National Cancer Institute, “[e]xposure to benzene
20 increases the risk of developing leukemia and other blood disorders.”⁶

21 26. According to the National Toxicology Program, benzene is “known to
22 be a human carcinogen based on sufficient evidence of carcinogenicity from studies
23 in humans.”⁷

24 27. Benzene has also been “found to be carcinogenic to humans” by the
25

26 ³ <https://www.who.int/publications/i/item/WHO-CED-PHE-EPE-19.4.2>.

27 ⁴ <https://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>.

28 ⁵ WHO Guidelines for Indoor Air Quality: Selected Pollutants (2010).

⁶ <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/benzene>.

⁷ <http://ntp.niehs.nih.gov/go/roc/content/profiles/benzene.pdf> (emphasis in original).

1 International Agency for Research on Cancer (“IARC”). Benzene was “[f]irst
2 evaluated by IARC in 1974 . . . and was found to be carcinogenic to humans (Group
3 1), a finding that has stood since that time.”⁸ As noted by the IARC:

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

17
18 28. The U.S. Food and Drug Administration (“FDA”) also recognizes that
19 “[b]enzene is a carcinogen that can cause cancer in humans”¹⁰ and classifies benzene
20 as a “Class 1” solvent that should be “avoided” in drug manufacturing.¹¹ FDA
21 guidance provides: “Solvents in Class 1 [e.g. benzene] should not be employed in
22 the manufacture of drug substances, excipients, and drug products because of [its]
23 unacceptable toxicity.”¹²

24
25 29. “Even in trace amounts, benzene is known to pose a health risk from
26 exposure routes that include inhalation, ingestion, dermal absorption, and skin or eye
27 contact.”¹³

28
29 30. In July 2021, the FDA conducted a “Health Hazard Evaluation” on
30 “Multiple Aerosol Sunscreen Products” manufactured by Johnson & Johnson.¹⁴ The

31
32
33 ⁸ Benzene / IARC Working Group on the Evaluation of Carcinogenic Risks to
34 Humans (2017: Lyon, France), at p. 33.

35 ⁹ *Id.* at 34.

36 ¹⁰ <https://www.fda.gov/food/chemicals/questions-and-answers-occurrence-benzene-soft-drinks-and-other-beverages#q1>.

37 ¹¹ <https://www.fda.gov/media/71737/download>.

38 ¹² *Id.*

39 ¹³ Hudspeth, A., et al., Independent Sun Care Product Screening for Benzene
40 Contamination, Environmental Health Perspectives, 130:3, Online Publication 29
41 March 2022.

42 ¹⁴ https://article.images.consumerreports.org/prod/content/dam/CRO-Images-2021/Health/12Dec/FDA_Benzene_in_Sunscreen_Assessment.

1 evaluation was requested following testing which showed benzene levels ranging
2 “from 11.2 to 23.6 ppm” in Johnson & Johnson’s aerosol sunscreen products.
3 Specifically, the agency requested “an evaluation of the likelihood and risks
4 associated with using aerosol sunscreens that contain benzene 11.2 to 23.6 ppm,”
5 which “levels exceed the guideline value provided by ICH [Q3C]¹⁵ and USP¹⁶”
6 limits, states the report. The FDA report concluded that serious adverse effects,
7 including potential for “life-threatening” issues or “permanent impairment of a body
8 function” were “likely to occur” at exposure levels within that range. In addition, the
9 report stated that “individuals with altered skin absorption (i.e., infants, elderly,
10 broken skin) and individuals who are exposed to benzene from other sources (e.g.
11 smokers or occupational/environmental exposure) may be at greater risk.”

12 31. On December 27, 2023, in response to reports of benzene
13 contamination in various drug products, the FDA issued an “Alert,” advising
14 manufacturers that “If any drug products batches with benzene above 2 ppm are
15 already in distribution, the manufacturer should contact FDA to discuss the
16 voluntary initiation of a recall....”¹⁷

17 32. Direct benzene exposure through the skin is particularly concerning,
18 because “[d]irect exposure of the eyes, skin, or lungs to benzene can cause tissue
19 injury and irritation.”¹⁸ Accordingly, The National Institute for Occupational Safety
20 and Health (“NIOSH”) recommends protective equipment be worn by workers
21 exposed or expecting to be exposed to benzene at concentrations of 0.1 ppm and
22 defines “inhalation, skin absorption, ingestion, skin and/or eye contact” as exposure

23 ¹⁵ The term “ICH” refers to The International Conference on Harmonization (ICH)
24 Q3C Impurities: Residual Solvents guidance (December 1997), at
<https://www.fda.gov/media/71736/download?attachment>.

25 ¹⁶ The term “USP” refers to United States Pharmacopeia (USP) Residual Solvents,
26 at
[https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/generalChapter467
Current.pdf](https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/generalChapter467Current.pdf).

27 ¹⁷ [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).

28 ¹⁸ *Facts About Benzene*, CENTERS FOR DISEASE CONTROL AND
PREVENTION, <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>.

1 routes or paths.¹⁹

2 33. As with other topically applied products, such as sunscreen, the
3 application of acne products specifically increases the absorption rate of benzene
4 through the skin, thereby increasing the risk of harm.²⁰

5 **III. Discovery of Benzene in the BPO Products**

6 34. Due to the substantial harm to humans caused by exposure to chemicals
7 such as benzene, companies have been founded with the specific goal of preventing
8 defective products containing said harmful chemicals from reaching consumers.
9 Valisure “is a pioneering technology company at the forefront of addressing a critical
10 gap in the healthcare supply chain through independent quality assurance.²¹ Its
11 mission is “to help ensure the safety, quality, and consistency of medications and
12 supplements in the market.”²²

13 35. In terms of accreditation and registration, “Valisure operates an
14 analytical laboratory that is accredited under International Organization for
15 Standardization (‘ISO/IEC’) 17025:2017 standards for chemical testing (PJLA
16 Accreditation Number 94238),” and it “is registered with the Drug Enforcement
17 Administration (License # RV0484814).”²³

18 36. Valisure has tested for specific chemical qualities in numerous types of
19 products, such as N-Nitrosodimethylamine in ranitidine and metformin and benzene
20 in hand sanitizers and sun care products. Each time, Valisure’s detection of benzene
21

22 ¹⁹ *NIOSH Pocket Guide to Chemical Hazards - Benzene*, THE NATIONAL
INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH),
23 <https://www.cdc.gov/niosh/npg/npgd0049.html>.

24 ²⁰ *Valisure Detects Benzene in Sunscreen*, VALISURE BLOG (May 25, 2021),
<https://www.valisure.com/blog/valisure-news/valisure-detects-benzene-in-sunscreen/>.

25 ²¹ <https://www.valisure.com/about>.

26 ²² *Valisure Citizen Petition on Benzene in Benzoyl Peroxide Drug Products* (March
5, 2024), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets-
27 global.website-
files.com/6215052733f8bb8fea016220/65e8560962ed23f744902a7b_Valisure%20
Citizen%20Petition%20on%20Benzene%20in%20Benzoyl%20Peroxide%20Drug
28 %20Products.pdf (“*Valisure Citizen Petition*”) at 5.

²³ *Id.*

1 and other carcinogens has been independently confirmed by the industry and led to
2 recalls by manufacturers over the subject products.

3 37. On March 5, 2024, Valisure reported its testing results for benzene in
4 various types of BPO drug products, mostly utilizing gas chromatography and
5 detection by mass spectrometry (“GC-MS”) instrumentation that allows mass
6 spectral separation and utilizing selected ion chromatograms, along with Selected
7 Ion Flow Tube-Mass Spectrometry (“SIFT-MS”) for detection of benzene released
8 into the air around certain BPO products. Valisure also used other orthogonal
9 approaches for confirmation of a few select products.²⁴

10 38. GC-MS “is generally considered one of the most accurate analyses
11 available.”²⁵ Indeed, the FDA used the same method to test for impurities like
12 benzene in hand sanitizers.²⁶

13 39. “The GC-MS method described in [Valisure’s] petition utilized body
14 temperature (37°C) for oven incubation. 40°C has been previously used for benzene
15 analysis from liquid pharmaceuticals and beverages, and reduced false positive
16 results compared with higher-temperature incubation.”²⁷

17 40. Valisure analyzed 66 different BPO containing drug products incubated
18 at 50°C²⁸ for 18 days, including 2 of Defendant’s BPO Products, PanOxyl Acne
19 Foaming Wash and PanOxyl Acne Creamy Wash Daily Control Face & Body 4%
20 Benzoyl Peroxide, for the presence of benzene.²⁹

21 41. Defendant’s tested BPO Product contained high levels of benzene,

22 ²⁴ *Id.* at 10.

23 ²⁵ *GC/MS Analysis*, Element, <https://www.element.com/materials-testing-services/chemical-analysis-labs/gcms-analysis-laboratories>.

24 ²⁶ *Direct Injection Gas Chromatography Mass Spectrometry (GC-MS) Method for the Detection of Listed Impurities in Hand Sanitizers*, FDA (Aug. 24, 2020), <https://www.fda.gov/media/141501/download>.

25 ²⁷ *Valisure Citizen Petition* at 10-11 (citations omitted).

26 ²⁸ “50°C (122°F) is not only a reasonable temperature that ‘the product may be exposed to during distribution and handling by consumers’ but is an accepted incubation temperature used by the pharmaceutical industry for performing accelerated stability studies with a duration of at least 3 months.” *Id.* at 18-19 (citations omitted).

27 ²⁹ *Id.* at 15-16.

1 ranging from:

- 2 a. over 100 ppm after 10 days, over 150 ppm after 14 days, and almost
3 200 after 18 days for PanOxyl Acne Foaming Wash; and
4 b. over 50 ppm after 10 days, around 125 after 14 days, and 100 ppm after
5 18 days for PanOxyl Acne Creamy Wash Daily Control Face & Body
6 4% Benzoyl Peroxide.³⁰

7 42. “The current data on BPO degrading into high levels of benzene is
8 extremely concerning given its prominent use in skin care, and this study should
9 serve as another wake-up call for improved manufacturing and quality control of
10 consumer healthcare products.”³¹

11 43. The BPO Products are not designed to contain benzene, and no amount
12 of benzene is acceptable in acne treatment products such as the BPO Products
13 manufactured, distributed, and sold by Defendant. Further, although Defendant lists
14 the ingredients on the BPO Products’ labels, Defendant failed to disclose on the BPO
15 Products’ labeling or anywhere in Defendant’s marketing that the BPO Product
16 contains benzene.

17 44. Despite its knowledge that the BPO Products contain benzene,
18 Defendant has failed to issue a voluntary recall of the BPO Products.

19 **IV. Benzene Renders the BPO Product Adulterated, Misbranded, and Illegal**
20 **to Sell**

21 45. The BPO Products are “drugs” used to treat acne (i.e., *acne vulgaris*),
22 formulated with a chemical called benzoyl peroxide, along with other inactive
23 ingredients, to make acne treatment creams, washes, scrubs, and bars. Before being
24 sold to the public, the BPO Products must be made in conformity with current good
25 manufacturing practices and must conform to quality, safety, and purity
26 specifications.

27 ³⁰ *Id.* at 16.

28 ³¹ *Id.* at 29 (citing Email from Dr. Christopher Bunick, MD, PhD, Associate
Professor of Dermatology at Yale University, New Haven, CT.).

1 46. As drugs regulated by the FDA, the BPO Products are prohibited from
2 being adulterated or misbranded.

3 47. A drug is “adulterated” if it consists in whole or in part of any filthy,
4 putrid, or decomposed substance, is impure, or mixed with another substance.³²

5 48. A drug is deemed misbranded if its labeling is false or misleading in
6 any particular and/or if it is dangerous to health when used in the manner
7 recommended or suggested in the labeling thereof.³³

8 49. FDA guidance permits up to 2 ppm benzene in a product if its use in
9 the manufacturing process is “unavoidable.”³⁴

10 50. The FDA has announced recalls of various products contaminated with
11 benzene, including certain hand sanitizers and sunscreens.³⁵

12 51. As set forth above, Defendant’s BPO Products contain levels of
13 benzene above 2 ppm.

14 52. Defendant could have avoided any potential for benzene contamination
15 in the BPO Products by changing the manufacturing process or raw ingredients, and
16 the BPO Products could have been sold with absolutely no benzene in them.
17 Specifically, BPO as a raw material is known to be thermally stable at purities as
18 high as 75% up to temperatures of 98°C.³⁶ Valisure also evaluated pure BPO
19 reference powder in its GC-MS analytical system and found no evidence of the
20 instability and formation of benzene seen in formulated final products of BPO
21 containing acne treatments.³⁷ Thus, if BPO is inherently stable as a pure, crystalline
22 powder, a reformulated product that focuses on substantially reducing or entirely
23

24 ³² See 21 U.S.C. § 351(a); *see also* § 351(b)-(d) (noting that a lack of purity or
25 mixture with another substance also renders drug adulterated).

26 ³³ See 21 U.S.C. § 352(a)(1), (j).

27 ³⁴ *Valisure Citizen Petition* at 6 (citing Food and Drug Administration, Q3C –
28 *Tables and List Guidance for Industry* (2017) (<https://www.fda.gov/media/71737/download>)).

³⁵ See *Valisure Citizen Petition* at 7 (citations omitted).

³⁶ *Valisure Citizens Petition* at 25 (citation omitted).

³⁷ *Id.*

1 preventing the degradation of BPO into benzene could potentially be developed.³⁸

2 53. The mere presence of benzene renders the BPO Products both
3 adulterated and misbranded under the Federal Food, Drug, and Cosmetic Act
4 (“FDCA”).

5 54. A product that is “adulterated” or “misbranded” cannot legally be
6 manufactured, advertised, distributed, or sold.³⁹ Thus, adulterated and misbranded
7 products like the BPO Products have no economic value and are legally worthless.

8 55. California’s Sherman Food, Drug, and Cosmetic Law has expressly
9 adopted the federal labeling requirements as its own. The definition of “adulterated”
10 as defined by Cal. Health & Safety Code §§ 111250-111290 mirrors the FDA
11 definition. In fact, under the California law, drugs are required to satisfy all of the
12 labeling requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec.
13 301, *et seq.*), and the federal Fair Packaging and Labeling Act (15 U.S.C. Sec. 1451,
14 *et seq.*). *See* Cal. Health & Safety Code § 110371.

15 56. It is unlawful in the state of California to distribute drugs if its
16 packaging or labeling does not conform to the provisions of California and/or
17 Federal law. Cal. Health & Safety Code § 110385.

18 57. Further, it is unlawful for any person to disseminate any false
19 advertisement of any food, drug, device, or cosmetic. An advertisement is false if it
20 is false or misleading in any particular. Cal. Health & Safety Code § 110390.

21 58. It is unlawful for any person to advertise any food, drug, device, or
22 cosmetic that is adulterated or misbranded. Cal. Health & Safety Code § 110398.

23 59. It is also unlawful for any person to manufacture, sell, deliver, hold, or
24 offer for sale any drug that is adulterated. Cal. Health & Safety Code § 111295.

25 60. As alleged herein, Defendant has violated the FDCA; the Sherman
26 Food, Drug, and Cosmetic Law; California’s Unfair Competition Law (“UCL”),
27

28 ³⁸ *See id.* at 25-26.

³⁹ *See* 21 U.S.C. § 331(a).

1 Consumer Legal Remedies Act (“CLRA”), the False Advertising Law (“FAL”), and
2 Arizona’s Consumer Fraud Act. Defendant engaged in fraudulent, unfair, deceptive,
3 misleading, and/or unlawful conduct stemming from its misrepresentations and
4 omissions regarding benzene in the BPO Products.

5 61. If Defendant had disclosed to Plaintiffs and putative Class members
6 that the BPO Products contained or would degrade into benzene, and thus risked
7 benzene exposure during use of the BPO Products, Plaintiffs and putative Class
8 members would not have purchased the BPO Products.

9 62. As manufacturers, distributors, and sellers of acne treatment products,
10 Defendant had and has a duty to ensure that their BPO Products did not and do not
11 contain excessive (or any) level of benzene, including through regular testing,
12 especially before injecting the BPO Products into the stream of commerce for
13 consumers to use on their skin. But based on Valisure’s testing results set forth
14 above, Defendant made no reasonable effort to test its BPO Products for benzene.
15 Defendant also had a duty to disclosed to Plaintiffs in its advertising and marketing
16 that its BPO Products contained or would degrade into benzene; yet, Defendant
17 failed to disclose to Plaintiffs in any advertising or marketing that its BPO Products
18 contained or would degrade into benzene, let alone at levels that are many multiples
19 of the emergency, interim limit set by the FDA. To the contrary, Defendant
20 represented the BPO Products were of merchantable quality, complied with federal
21 and state law, and did not contain carcinogens or other impurities such as benzene.

22 **V. Defendant’s Knowledge, Misrepresentations, Omissions, and Concealment**
23 **of Material Facts Deceived Plaintiffs and Reasonable Consumers**

24 63. It is well known that BPO degrades to benzene when exposed to heat
25 over time. This process was first reported in scientific literature as early as 1936.⁴⁰

26 64. The issue of BPO decomposition into benzene has been previously

27 ⁴⁰ H. Erlenmeyer and W. Schoenauer, *Über die thermische Zersetzung von Di-acyl-*
28 *peroxyden*, HELV. CHIM. ACTA, 19, 338 (1936),
<https://onlinelibrary.wiley.com/doi/10.1002/hlca.19360190153>.

1 identified and acted upon in industries other than in the acne treatment product
2 industry.

3 65. For example, at least one patent application was filed by the chemical
4 company Akzo Nobel N.V. in 1997 which “relates to a method for reducing the rate
5 of free benzene and/or benzene derivative formation in BPO formulations based on
6 organic plasticizers, such as pastes, emulsions, suspensions, dispersions and the
7 like.”⁴¹

8 66. In the polymer manufacturing industry, BPO’s decomposition into
9 benzene has been studied and concern was raised specifically regarding the
10 carcinogenic implications of the presence of benzene. In 1994, a paper was
11 published⁴² by researchers at Denmark’s Department of Environmental Chemistry
12 titled “Formation of benzene by hardeners containing benzoyl peroxide and
13 phthalates” and stated:

14 Recently, during the investigation of benzene residues in chemical
15 products (Rastogi 1993a),⁴³ it was observed that the benzene content in
16 benzoyl peroxide containing hardeners of two component repair-sets
17 (fillers, elastomers) were >2 % (w/w) [20,000 ppm]. Benzene is
18 carcinogenic (IARC 1982), and its use in consumer and industrial
19 products is generally avoided.

20 67. The study continues with heating of various BPO-containing products
21 at 34°C, 50°C and 80°C finding substantial benzene formation at elevated
22 temperatures, even exceeding levels found in this Petition. Furthermore, similar to
23 Valisure’s results, Rastogi finds that only formulations of BPO are unstable, while
24 BPO alone is relatively stable:

25 Even heating of BPO-phthalate mixtures at 50°C produced significant
26 amounts of benzene (approximately 0.3% [3,000 ppm]), while no

27 ⁴¹ Borys F. SchafranBryce Milleville (1997). “Reduction of benzene formation in
28 dibenzoyl peroxide formulations.” Akzo Nobel N.V. Worldwide application,
WO1997032845A1. (<https://patents.google.com/patent/WO1997032845A1/en>)

⁴² Rastogi SC. Formation of benzene by hardeners containing benzoyl peroxide and
phthalates. *Bull Environ Contam Toxicol*. 1994 Nov;53(5):747-52. doi:
10.1007/BF00196949. PMID: 7833612.

⁴³ Rastogi, S.C. Residues of benzene in chemical products. *Bull. Environ. Contam.
Toxicol*. 50, 794-797 (1993). <https://doi.org/10.1007/BF00209940>.

1 benzene production was detected when benzoyl peroxide was heated
2 alone at this temperature (Table 2).⁴⁴

3 68. The referenced 1993 Rastogi article above, titled “Residues of Benzene
4 in Chemical Products,” has also been flagged by the US EPA as part of its Health &
5 Environmental Research Online (“HERO”) system.⁴⁵

6 69. Chemical evidence of carcinogenicity has been reported since at least
7 1981.⁴⁶ Multiple studies in the 1980s were conducted using animal models that
8 suggested carcinogenic potential of benzoyl peroxide, including the use of
9 commercial drug formulations of BPO like that of PanOxyl Gel.⁴⁷

10 70. In 1991, FDA posted an amendment to the monograph for OTC topical
11 acne drug products because, “the agency became aware of a 1981 study by Slage, et
12 al. ([FDA] Ref. 1) that raised a safety concern regarding benzoyl peroxide as a tumor
13 promoter in mice and a 1984 study by Kurokawa, et al. ([FDA] Ref. 2) that reported
14 benzoyl peroxide to have tumor initiation potential,” leading FDA to determine that
15 “further study is necessary to adequately assess the tumorigenic potential of benzoyl
16 peroxide.”⁴⁸

17 ⁴⁴ *Id.*

18 ⁴⁵ US Environmental Protection Agency. Health & Environmental Research Online
19 (HERO). “Residues of Benzene in Chemical Products.” HERO ID 2894703
(http://hero.epa.gov/hero/index.cfm/reference/details/reference_id/2894703).

20 ⁴⁶ Slaga TJ, Klein-Szanto AJ, Triplett LL, Yotti LP, Trosko KE. Skin tumor-
21 promoting activity of benzoyl peroxide, a widely used free radical-generating
22 compound. *Science*. 1981 Aug 28;213(4511):1023-5. doi:
23 10.1126/science.6791284. PMID: 6791284.

24 ⁴⁷ Kurokawa Y, Takamura N, Matsushima Y, Imazawa T, Hayashi Y. *Studies on*
25 *the promoting and complete carcinogenic activities of some oxidizing chemicals in*
26 *skin carcinogenesis*. *Cancer Lett*. 1984 Oct;24(3):299-304. doi: 10.1016/0304-
27 3835(84)90026-0. PMID: 6437666; Pelling JC, Fischer SM, Neades R,
28 Strawhecker J, Schweickert L. *Elevated expression and point mutation of the Ha-*
ras proto-oncogene in mouse skin tumors promoted by benzoyl peroxide and other
promoting agents. *Carcinogenesis*. 1987 Oct;8(10):1481-4. doi:
10.1093/carcin/8.10.1481. PMID: 3115617; 81 O'Connell JF, Klein-Szanto AJ,
DiGiovanni DM, Fries JW, Slaga TJ. *Enhanced malignant progression of mouse*
skin tumors by the free-radical generator benzoyl peroxide. *Cancer Res*. 1986
Jun;46(6):2863-5. PMID: 3084079; 82 Iversen OH. *Carcinogenesis studies with*
benzoyl peroxide (Panoxyl gel 5%). *J Invest Dermatol*. 1986 Apr;86(4):442-8. doi:
10.1111/1523-1747.ep12285787. PMID: 3091706.

⁴⁸ Food and Drug Administration. *Proposed Rule: Reclassifies benzoyl peroxide*
from GRASE to Category III. (August 7, 1991) Federal Register, 56FR37622. pp

1 71. By 2010, FDA published a final monograph on benzoyl peroxide along
2 with summarizing results from further studies on the potential carcinogenicity of
3 benzoyl peroxide and actions of the FDA Advisory Committee. This final
4 monograph stated, “The Committee recommended, by a four-to-three vote (with one
5 abstention), that the known safety data regarding the tumor promoting potential of
6 benzoyl peroxide should be communicated to consumers. Because this data was
7 inconclusive, the Committee unanimously agreed that the word, “cancer” should
8 not be included in the labeling of acne drug products containing benzoyl peroxide.
9 The Committee was concerned that the word “cancer” would cause consumers to
10 avoid using these products (even though the data were inconclusive).”⁴⁹

11 72. In 2020, the FDA started working with companies to identify benzene
12 in products, which resulted in product recalls of hand sanitizers, sunscreens, and
13 deodorants. In 2021, an independent chemical analysis by Valisure of hundreds of
14 sunscreens and after-sun care products from 69 brands found 27 percent of the
15 batches had significant levels of benzene above the FDA 2 ppm limit.⁵⁰

16 73. By 2021, Defendant was well aware of benzene contamination issues
17 in its BPO Products and in products of its competitors.

18 74. Further, Defendant, which markets itself as a merchandiser of quality
19 acne treatment products and employed high-level scientists, chemists, and
20 researchers to formulate and/or decide which drug products to label and sell for
21 public use, was aware of the well-known chemical processes that degrade their BPO
22 Products into benzene when exposed to common used temperatures and conditions.

23 75. Defendant, a large, sophisticated corporation in the business of
24 manufacturing, distributing, and selling products containing BPO, knew or should

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26 (<https://cdn.loc.gov/service/ll/fedreg/fr056/fr056152/fr056152.pdf#page=178>).

27 ⁴⁹ Food and Drug Administration. Final Monograph. (March 4, 2010) Federal
28 Register, 75FR9767. (<https://www.gpo.gov/fdsys/pkg/FR-2010-03-04/pdf/2010-4424.pdf>).

⁵⁰ Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care Products,
May 24, 2021.

1 have known the BPO Products were contaminated with excess levels of benzene and
2 that testing the BPO Products for benzene was necessary to protect Plaintiffs and
3 putative class members from harmful levels of benzene exposure.

4 76. Defendant's use of BPO put it on notice of the excessive levels of
5 benzene in the BPO Products.

6 77. Notwithstanding this knowledge, Defendant failed to appropriately and
7 adequately test its BPO Products for the presence of benzene to protect Plaintiffs and
8 Class members from dangerous levels of benzene exposure.

9 78. Defendant sold, and continues to sell, BPO Products during the class
10 period despite Defendant's knowledge of the risk of benzene contamination.

11 79. Benzene is not listed on the BPO Products' labels as an ingredient, nor
12 is there any warning about the inclusion (or even potential inclusion) of benzene in
13 the BPO Products.

14 80. Plaintiffs have standing to represent members of the putative Class
15 because there is sufficient similarity between the specific products purchased by
16 Plaintiffs and the other BPO Products not purchased by Plaintiffs. Specifically, each
17 and every one of the BPO Products (i) are marketed in substantially the same way—
18 as an acne treatment—and (ii) fail to include labeling indicating to consumers that
19 the BPO Products contain benzene or degrade into benzene. Accordingly, the
20 misleading effect of all the BPO Products' labels are substantially the same.

21 81. Defendant has engaged in deceptive, untrue, and misleading advertising
22 by making representations by failing to warn about the potential presence of benzene
23 in the BPO Products, and nothing on the BPO Products' labels otherwise insinuate,
24 state, or warn that the BPO Products contain or will degrade into benzene.

25 82. As alleged, the presence of benzene in the BPO Products renders the
26 BPO Products misbranded and adulterated and therefore illegal and unfit for sale in
27 trade or commerce. Plaintiffs would not have purchased the BPO Products had they
28 been truthfully and accurately labeled.

1 83. Had Defendant adequately tested its BPO Products for benzene and
2 other carcinogens and impurities, it would have discovered its BPO Products
3 contained benzene – even at levels above the FDA’s limit (to the extent even
4 applicable), making the BPO Products illegal to distribute, market, and sell.

5 84. Accordingly, Defendant knowingly, recklessly, or at least negligently,
6 introduced a contaminated, adulterated, and misbranded BPO Products containing
7 or that would degrade into dangerous amounts of benzene into the U.S. market.

8 85. Defendant’s concealment was material and intentional because people
9 are concerned with what is in the products that they are putting onto and into their
10 bodies. Consumers such as Plaintiffs and Class members make purchasing decisions
11 based on the representations made on the BPO Products’ labeling, including the
12 ingredients listed.

13 **VI. Injuries to Plaintiffs and Class Members**

14 86. When Plaintiffs purchased Defendant’s BPO Products, Plaintiffs did
15 not know, and had no reason to know, that Defendant’s BPO Products contained or
16 would degrade into the harmful carcinogen benzene. Not only would Plaintiffs not
17 have purchased Defendant’s BPO Products had she known the Products contained
18 or would degrade into benzene, but they would also not have been capable of
19 purchasing them if Defendant had done as the law required and tested the BPO
20 Products for benzene and other carcinogens and impurities.

21 87. Consumers lack the ability to test or independently ascertain or verify
22 whether a product contains unsafe substances, such as benzene, especially at the
23 point of sale, and therefore must rely on defendants to truthfully and honestly report
24 what the BPO Products contain on the BPO Products’ packaging or labels.

25 88. Further, given Defendant’s position as a leader in the pharmaceutical,
26 health, and beauty market, Plaintiffs and reasonable consumers trusted and relied on
27 Defendant’s representations and omissions regarding the presence of benzene in the
28 BPO Products.

1 89. Yet, when consumers look at the BPO Products' packaging, there is no
2 mention of benzene. It is not listed in the ingredients section, nor is there any warning
3 about the inclusion (or even potential inclusion) of benzene in the BPO Products.
4 This leads reasonable consumers to believe the BPO Products do not contain
5 benzene. Indeed, these expectations are reasonable because if the BPO Products are
6 manufactured and tested properly, benzene will not be present in the Products.

7 90. No reasonable consumer would have paid any amount for products that
8 contain or will degrade into benzene, a known carcinogen and reproductive toxin,
9 much less above the limits set by the FDA.

10 91. Thus, if Plaintiffs and Class members had been informed that
11 Defendant's BPO Products contained or would degrade into benzene, they would
12 not have purchased or used the BPO Products, making such omitted facts material
13 to them.

14 92. Defendant's false, misleading, omissions, and deceptive
15 misrepresentations regarding the presence of benzene in the BPO Products are likely
16 to continue to deceive and mislead reasonable consumers and the public, as it has
17 already deceived and misled Plaintiffs and the Class members.

18 93. Plaintiffs and Class members bargained for products free of
19 contaminants and dangerous substances. Plaintiffs and Class members were injured
20 by the full purchase price of the BPO Products because the BPO Products are
21 worthless, as they are adulterated and contain harmful levels of benzene and
22 Defendant failed to warn consumers of this fact. Such illegally sold products are
23 worthless and have no value.

24 94. As alleged above, Plaintiffs and Class members' BPO Products
25 contained benzene.

26 95. Plaintiffs and Class members are further entitled to statutory and
27 punitive damages, attorneys' fees and costs, and any further relief this Court deems
28 just and proper.

1 96. All conditions precedent to the prosecution of this action have occurred,
2 and/or have been performed, excused, or otherwise waived.

3 **CLASS ALLEGATIONS**

4 97. Plaintiffs, individually and on behalf of all others similarly situated,
5 bring this class action pursuant to Fed. R. Civ. P. 23.

6 98. Plaintiffs seek to represent a class defined as:

7 All persons who purchased the BPO Products in the
8 United States for personal or household use within any
applicable limitations period (“Nationwide Class”).

9 99. In the alternative, Plaintiff Del Toro also seeks to represent a subclass
10 defined as:

11 All persons who purchased the BPO Products in California
12 for personal or household use within any applicable
limitations period (“California Subclass”).

13 100. In the alternative, Plaintiff Romo also seeks to represent a subclass
14 defined as:

15 All persons who purchased the BPO Products in Arizona
16 for personal or household use within any applicable
limitations period (“Arizona Subclass”).

17 101. Plaintiff Del Toro also seeks to represent a subclass defined as:

18 All persons who purchased one or more of Defendant’s
19 BPO Products in the States of California, Florida, Illinois,
20 Massachusetts, Michigan, Minnesota, Missouri, New
21 Jersey, New York, or Washington for personal or
household use within any applicable limitations period
22 (“Consumer Fraud Multi-State Subclass”).⁵¹

23 102. Excluded from the Class and Subclasses are: (1) any Judge or
24 Magistrate presiding over this action and any members of their families; (2)

25 ⁵¹ While discovery may alter the following, the states in the Consumer Fraud Multi-
26 State Subclass are limited to those states with similar consumer fraud laws under the
27 facts of this case: California (Cal. Bus. & Prof. Code § 17200, *et seq.*); Florida (Fla.
28 Stat. § 501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 505/1, *et seq.*); Massachusetts
(Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et
seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. §
407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen.
Bus. Law §§ 349 and 350); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

1 Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any
2 entities in which Defendant or its parents and any entities in which Defendant has a
3 controlling interest and its current or former employees, officers, and directors; and
4 (3) individuals who allege personal bodily injury resulting from the use of the BPO
5 Products.

6 103. Plaintiffs reserve the right to modify, change, or expand the definitions
7 of the Class based upon discovery and further investigation.

8 104. *Numerosity*: The Class is so numerous that joinder of all members is
9 impracticable. The Class likely contains hundreds of thousands of members based
10 on publicly available data. The Class is ascertainable by records in Defendant's
11 possession.

12 105. *Commonality*: Questions of law or fact common to the Class include,
13 without limitation:

- 14 a. Whether the BPO Products contain benzene;
- 15 b. Whether a reasonable consumer would consider the presence of
16 benzene in the BPO Products to be material;
- 17 c. Whether Defendant had a duty to ensure that their BPO Products did
18 not and do not contain excessive (or any) level of benzene, including
19 through regular testing, especially before injecting the BPO Products
20 into the stream of commerce for consumers to use on their skin;
- 21 d. Whether Defendant had a duty to disclosed to Plaintiffs in its
22 advertising and marketing that its BPO Products contained or would
23 degrade into benzene;
- 24 e. Whether Defendant knew or should have known that the BPO Products
25 contain or will degrade into benzene;
- 26 f. Whether Defendant misrepresented the BPO Products contain or will
27 degrade into benzene;
- 28 g. Whether Defendant failed to disclose that the BPO Products contain or

1 will degrade into benzene;

2 h. Whether Defendant concealed that the BPO Products contain or will
3 degrade into benzene;

4 i. Whether Defendant engaged in unfair or deceptive trade practices;

5 j. Whether Defendant violated the state consumer protection statutes
6 alleged herein;

7 k. Whether Defendant was unjustly enriched;

8 l. Whether Defendant acted negligently; and

9 m. Whether Plaintiffs and Class members are entitled to damages.

10 106. *Typicality*: Plaintiffs' claims are typical of the claims of Class members.
11 Plaintiffs and Class members were injured and suffered damages in substantially the
12 same manner, have the same claims against Defendant relating to the same course
13 of conduct, and are entitled to relief under the same legal theories.

14 107. *Adequacy*: Plaintiffs will fairly and adequately protect the interests of
15 the Class and has no interests antagonistic to those of the Class. Plaintiffs have
16 retained counsel experienced in the prosecution of complex class actions, including
17 actions with issues, claims, and defenses similar to the present case. Counsel intends
18 to vigorously prosecute this action.

19 108. *Predominance and superiority*: Questions of law or fact common to
20 Class members predominate over any questions affecting individual members. A
21 class action is superior to other available methods for the fair and efficient
22 adjudication of this case because individual joinder of all Class members is
23 impracticable and the amount at issue for each Class member would not justify the
24 cost of litigating individual claims. Should individual Class members be required to
25 bring separate actions, this Court would be confronted with a multiplicity of lawsuits
26 burdening the court system while also creating the risk of inconsistent rulings and
27 contradictory judgments. In contrast to proceeding on a case-by-case basis, in which
28 inconsistent results will magnify the delay and expense to all parties and the court

1 system, this class action presents far fewer management difficulties while providing
2 unitary adjudication, economies of scale and comprehensive supervision by a single
3 court. Plaintiffs are unaware of any difficulties that are likely to be encountered in
4 the management of this action that would preclude its maintenance as a class action.

5 109. Accordingly, this class action may be maintained pursuant to Fed. R.
6 Civ. P. 23(b)(3).

7 CAUSES OF ACTION

8 **COUNT I** 9 **VIOLATION OF STATE CONSUMER FRAUD ACTS** 10 **(On behalf of Plaintiff Del Toro and the Consumer Fraud Multi-State** 11 **Subclass)**

12 110. Plaintiff Del Toro (“Plaintiff” for purposes of Count I) re-alleges and
13 incorporates by reference all preceding factual allegations as though set forth fully
14 herein.

15 111. Plaintiff brings this Count on behalf of herself and the Consumer Fraud
16 Multi-State Subclass against Defendant.

17 112. The Consumer Fraud Acts of the states in the Consumer Fraud Multi-
18 State Subclass prohibit the use of unfair or deceptive business practices in the
19 conduct of trade or commerce.

20 113. Plaintiff and the other Members of the Consumer Fraud Multi-State
21 Subclass have standing to pursue a cause of action for violation of the Consumer
22 Fraud Acts of the states in the Consumer Fraud Multi-State Subclass because
23 Plaintiff and Members of the Consumer Fraud Multi-State Subclass have suffered
24 an injury in fact and lost money as a result of Defendant’s actions set forth herein.

25 114. Defendant engaged in unfair and/or deceptive conduct by making
26 material misrepresentations and omissions regarding the presence of benzene in the
27 BPO Products, as discussed herein.

28 115. Defendant intended that Plaintiff and each of the other Members of the
Consumer Fraud Multi-State Subclass would rely upon its unfair and deceptive

1 conduct and a reasonable person would in fact be misled by this deceptive conduct
2 described above.

3 116. Given Defendant’s position in the acne treatment market as an industry
4 leader, Plaintiff and reasonable consumers trusted and relied on Defendant’s
5 representations and omissions regarding the presence of benzene in the BPO
6 Products.

7 117. As a result of Defendant’s use or employment of unfair or deceptive
8 acts or business practices, Plaintiff and each of the other Members of the Consumer
9 Fraud Multi-State Subclass have sustained damages in an amount to be proven at
10 trial.

11 118. In addition, Defendant’s conduct showed malice, motive, and the
12 reckless disregard of the truth such that an award of punitive damages is appropriate.

13
14 **COUNT II**
15 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,**
16 **BUSINESS & PROFESSIONS CODE SECTION 17500 (“FAL”)**
17 **(On behalf of Plaintiff Del Toro and the California Subclass)**

18 119. Plaintiff Del Toro (“Plaintiff” for purposes of Count II) re-alleges and
19 incorporates by reference all preceding factual allegations as though set forth fully
20 herein.

21 120. Plaintiff brings this cause of action on behalf of herself and the
22 California Subclass members against Defendant.

23 121. The FAL provides that “[i]t is unlawful for any person, firm,
24 corporation or association, or any employee thereof with intent directly or indirectly
25 to dispose of real or personal property or to perform services” to disseminate any
26 statement “which is untrue or misleading, and which is known, or which by the
27 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus.
28 & Prof. Code § 17500.

122. It is also unlawful under the FAL to disseminate statements concerning
property or services that are “untrue or misleading, and which is known, or which

1 by the exercise of reasonable care should be known, to be untrue or misleading.” *Id.*

2 123. As alleged herein, the advertisements, labeling, policies, acts, and
3 practices of Defendant relating to the BPO Products misled consumers acting
4 reasonably as to the presence of benzene in the BPO Products or the risk thereof.

5 124. At the time of its misrepresentations, Defendant was either aware that
6 the BPO Products contained or would degrade into benzene or was aware that it
7 lacked the information and/or knowledge required to truthfully represent that the
8 BPO Products would not expose Plaintiff and consumers to benzene exposure.
9 Defendant concealed and omitted and failed to disclose this information to Plaintiff
10 and Class members.

11 125. Defendant’s descriptions of the BPO Products were false, misleading,
12 and likely to deceive Plaintiff and other reasonable consumers.

13 126. Plaintiff suffered injury in fact as a result of Defendant’s actions as set
14 forth herein because they purchased the BPO Products in reliance on Defendant’s
15 false and misleading labeling claims and omissions that the BPO Products, among
16 other things, are safe for use on their skin.

17 127. Had Defendant disclosed the true nature of the BPO Products, and the
18 fact that it contains a chemical that is a known carcinogen associated with serious
19 health consequences, Plaintiff and California Subclass members would not
20 purchased the BPO Products.

21 128. Defendant’s business practices as alleged herein constitute deceptive,
22 untrue, and misleading advertising pursuant to the FAL because Defendant has
23 advertised the BPO Products in a manner that is untrue and misleading, which
24 Defendant knew or reasonably should have known, and omitted material information
25 from its advertising.

26 129. Defendant profited from its sale of the falsely and deceptively
27 advertised BPO Products to unsuspecting consumers.

28 130. As a result, Plaintiff, California Subclass members, and the general

1 public are entitled to injunctive and equitable relief, restitution, and an order for the
2 disgorgement of the funds by which Defendant was unjustly enriched. Plaintiff seeks
3 such equitable relief, in the alternatively, should her legal remedies prove
4 unavailable.

5 131. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of
6 herself and California Subclass members, seeks an order enjoining Defendant from
7 continuing to engage in deceptive business practices, false advertising, and any other
8 act prohibited by law, including those set forth in this Complaint. Injunctive relief is
9 needed, as Defendant continues to misrepresent the true nature of the Products and
10 continues to mislead the public. Additionally, Plaintiff has purchased the BPO
11 Products, and would be willing to purchase these BPO Products again, if the risk of
12 benzene exposure was eliminated.

13 **COUNT III**
14 **FOR VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW,**
15 **BUSINESS & PROFESSIONS CODE SECTION 17200 et seq. ("UCL")**
16 **(On behalf of Plaintiff Del Toro and the California Subclass)**

17 132. Plaintiff Del Toro ("Plaintiff" for purposes of Count III) re-alleges and
18 incorporates by reference all preceding factual allegations as though set forth fully
19 herein.

20 133. Plaintiff brings this cause of action on behalf of herself and California
21 Subclass members against Defendant.

22 134. The UCL prohibits any "unlawful, unfair or fraudulent business act or
23 practice." Cal. Bus. & Prof. Code § 17200.

24 135. The acts, omissions, misrepresentations, practices, and non-disclosures
25 of Defendant as alleged herein constitute business acts and practices.

26 136. The acts alleged herein are "unlawful" under the UCL in that they
27 violate at least the following laws:

- 28 a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et*

1 *seq.*;

2 c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et*
3 *seq.*; and

4 d. The California Sherman Food, Drug, and Cosmetic Law, Cal.
5 Health & Safety Code §§ 110100 *et seq.*

6 137. Defendant’s conduct with respect to the labeling, advertising, and sale
7 of the BPO Products was “unfair” because Defendant’s conduct was immoral,
8 unethical, unscrupulous, or substantially injurious to consumers and the utility of
9 their conduct, if any, does not outweigh the gravity of the harm to their victims.

10 138. Defendant’s conduct with respect to the labeling, advertising, and sale
11 of the BPO Products was and is also unfair because it violates public policy as
12 declared by specific constitutional, statutory or regulatory provisions, including but
13 not limited to the applicable sections of: the Consumers Legal Remedies Act, the
14 False Advertising Law, the Federal Food, Drug, and Cosmetic Act, and the
15 California Sherman Food, Drug, and Cosmetic Law.

16 139. Further, the consumer injury was substantial, not outweighed by
17 benefits to consumers or competition, and not one consumer themselves could
18 reasonably have avoided.

19 140. A statement or practice is “fraudulent” under the UCL if it is likely to
20 mislead or deceive the public, applying an objective reasonable consumer test.

21 141. As set forth herein, Defendant’s claims relating the representations and
22 omissions stated on the BPO Products’ labeling and marketing statements mislead
23 reasonable consumers regarding the presence of benzene in the BPO Products.

24 142. Defendant profited from its sale of the falsely, deceptively, and
25 unlawfully advertised the BPO Products to unsuspecting consumers.

26 143. Plaintiff and California Subclass members are likely to continue to be
27 damaged by Defendant’s deceptive trade practices, because Defendant continues to
28 disseminate misleading information on the BPO Products’ packaging. Additionally,

1 Plaintiff has purchased the BPO Products, and would be willing to purchase these
2 Products again, if the exposure to benzene was eliminated. Thus, injunctive relief
3 enjoining Defendant’s deceptive practices is proper.

4 144. Defendant’s conduct caused and continues to cause substantial injury
5 to Plaintiff and the other California Subclass members. Plaintiff has suffered injury
6 in fact as a result of Defendant’s unlawful conduct, including economic injury.

7 145. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
8 enjoining Defendant from continuing to conduct business through unlawful, unfair,
9 and/or fraudulent acts and practices, and to commence a corrective advertising
10 campaign.

11 146. Plaintiff and the Class also seek an order for and restitution of all
12 monies from the sale of the Products, which were unjustly acquired through acts of
13 unlawful competition. Plaintiff seeks such equitable relief, in the alternatively,
14 should their legal remedies prove unavailable.

15 **COUNT IV**
VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT,
CIVIL CODE SECTION 1770 (“CLRA”)
16 **(On behalf of Plaintiff Del Toro and the California Subclass)**

17 147. Plaintiff Del Toro (“Plaintiff” for purposes of Count IV) re-alleges and
18 incorporates by reference all preceding factual allegations as though set forth fully
19 herein.

20 148. Plaintiff brings this cause of action on behalf of herself and California
21 Subclass members against Defendant.

22 149. The CLRA prohibits deceptive practices in connection with the conduct
23 of a business that provides goods, property, or services primarily for personal,
24 family, or household purposes.

25 150. Defendant’s false and misleading labeling, omission of material facts,
26 and other policies, acts, and practices were designed to, and did, induce the purchase
27 and use of the Products for personal, family, or household purposes by Plaintiff and
28 Class members, and violated and continue to violate the following sections of the

1 CLRA:

- 2 a. § 1770(a)(5): representing that goods have characteristics, uses,
3 or benefits which they do not have;
- 4 b. § 1770(a)(7): representing that goods are of a particular standard,
5 quality, or grade if they are of another;
- 6 c. § 1770(a)(9): advertising goods with intent not to sell them as
7 advertised; and
- 8 d. § 1770(a)(16): representing the subject of a transaction has been
9 supplied in accordance with a previous representation when it has
10 not.

11 151. Plaintiff and Class members relied on Defendant's misrepresentations
12 and omissions in deciding to purchase Defendant's BPO Products.

13 152. Defendant's misrepresentations and omissions were an immediate
14 cause of and substantial factor in Plaintiff and Class members' decision to purchase
15 Defendant's BPO Products. Had the presence of benzene in Defendant's BPO
16 Products been disclosed, Plaintiffs and Class members would have been aware of
17 the attendant safety risks and would not have purchased or paid as much for
18 Defendant's BPO Products.

19 153. Defendant profited from the sale of the falsely, deceptively, and
20 unlawfully advertised BPO Products to unsuspecting consumers.

21 154. Defendant's wrongful business practices constituted, and constitute, a
22 continuing course of conduct in violation of the CLRA.

23 155. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiffs
24 provided written notice to Defendant on March 15, 2024 via certified mail through
25 the United States Postal Service demanding corrective action pursuant to the CLRA.
26 If Defendant does not thereafter correct its business practices, Plaintiffs will amend
27 (or seek leave to amend) the complaint to add claims for monetary relief, including
28 restitution and actual damages under the CLRA.

1 156. Venue is proper pursuant to Civil Code § 1780(d) because transactions
2 giving rise to this action occurred within this District. A Declaration of Plaintiff Del
3 Toro establishing that this Court is the proper venue for this action is attached as
4 *Exhibit A*.

5 157. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive
6 relief, reasonable attorney fees and costs, and any other relief that the Court deems
7 proper.

8 **COUNT V**
9 **VIOLATION OF ARIZONA'S CONSUMER FRAUD ACT,**
10 **ARIZ. REV. STAT. § 44-1522**
11 **(On behalf of Plaintiff Romo and the Arizona Subclass)**

12 158. Plaintiff Romo ("Plaintiff" for purposes of Count V) re-alleges and
13 incorporates by reference all preceding factual allegations as though set forth fully
14 herein.

15 159. At all relevant times, there was in full force and effect the Arizona
16 Consumer Fraud and Deceptive Business Practices Act, Ariz. Rev. Stat. § 44-1521
17 *et seq.*

18 160. The Act provides:

19 The act, use or employment by any person of any deception, deceptive
20 or unfair act or practice, fraud, false pretense, false promise,
21 misrepresentation, or concealment, suppression or omission of any
22 material fact with intent that others rely on such concealment,
23 suppression or omission, in connection with the sale or advertisement
24 of any merchandise whether or not any person has in fact been misled,
25 deceived or damaged thereby, is declared to be an unlawful practice.

26 Ariz. Rev. Stat. § 44-1522.

27 161. Defendants made misrepresentations and material omissions, and
28 concealed and suppressed their unlawful conduct, in connection with sale and
advertisement of the BPO Products to Plaintiff and members of the Class.

162. Defendant's conduct with respect to the labeling, advertising, and sale
of the BPO Products was "unfair" because Defendant's conduct was immoral,
unethical, unscrupulous, or substantially injurious to consumers and the utility of
their conduct, if any, does not outweigh the gravity of the harm to their victims.

1 163. Defendant's conduct with respect to the labeling, advertising, and sale
2 of the BPO Products was and is also unfair because it violates public policy as
3 declared by specific constitutional, statutory or regulatory provisions, including but
4 not limited to the applicable sections of the Federal Food, Drug, and Cosmetic Act.

5 164. As set forth herein, Defendant's claims relating the representations and
6 omissions stated on the BPO Products' labeling and marketing statements mislead
7 reasonable consumers regarding the presence of benzene in the Products and are,
8 therefore, deceptive.

9 165. Defendant intended that Plaintiff would rely on its misrepresentations
10 and omissions when purchasing the BPO Products.

11 166. Defendant's conduct caused and continues to cause substantial injury
12 to Plaintiff and the other Arizona Subclass members. Plaintiff has suffered injury in
13 fact as a result of Defendant's unlawful conduct, including economic injury.

14 **COUNT VI**
15 **UNJUST ENRICHMENT**
16 **(In the Alternative)**
17 **(On behalf of Plaintiffs and the Nationwide Class)**

18 167. Plaintiffs repeat and realleged each and every allegation contained in
19 the foregoing paragraphs as if fully set forth herein.

20 168. Plaintiffs bring this Count on behalf of themselves and the Nationwide
21 Class against Defendant.

22 169. This claim is brought under the laws of the state of California.

23 170. Defendant's conduct violated, *inter alia*, state and federal law by
24 manufacturing, advertising, marketing, and selling the Products while
25 misrepresenting and omitting material facts.

26 171. Defendant's unlawful conduct allowed Defendant to knowingly realize
27 substantial revenues from selling the Products at the expense of, and to the detriment
28 or impoverishment of Plaintiffs and Class members and to Defendant's benefit and
enrichment. Defendant has thereby violated fundamental principles of justice,
equity, and good conscience.

1 172. Plaintiffs and Class members conferred significant financial benefits
2 and paid substantial compensation to Defendant for the Products, which was not as
3 Defendant represented them to be.

4 173. Defendant knowingly received and enjoyed the benefits conferred on it
5 by Plaintiffs and Class members.

6 174. It is inequitable for Defendant to retain the benefits conferred by
7 Plaintiffs and Class members' overpayments.

8 175. Plaintiffs and Class members seek establishment of a constructive trust
9 from which Plaintiffs and Class members may seek restitution.

10 176. Plaintiffs seek reimbursement of their attorney fees and costs, and any
11 other relief that the Court deems proper.

12 **COUNT VII**
13 **NEGLIGENT MISREPRESENTATION/OMISSION**
14 **(On behalf of Plaintiffs and the Nationwide Class)**

15 177. Plaintiffs repeat and realleged each and every allegation contained in
16 the foregoing paragraphs as if fully set forth herein.

17 178. Through its labeling and advertising, Defendant made representations
18 to Plaintiffs and the Class members concerning the content of its BPO Products.

19 179. Defendant has a duty to provide accurate information to consumers
20 with respect to the contents of its BPO Products as detailed above.

21 180. Defendant failed to fulfill its duty to accurately disclose, through its
22 labeling, advertising or otherwise, that its BPO Products contain or will degrade into
23 benzene.

24 181. Additionally, Defendant has a duty to not make false representations
25 with respect to its BPO Products.

26 182. Defendant failed to fulfill this duty when it made false representations
27 regarding the quality and safety of the BPO Products as detailed above.

28 183. Such failures to disclose on the part of Defendant amount to negligent
omission and the representations regarding the quality and safety of the BPO

1 Products amount to negligent misrepresentation.

2 184. Defendant's conduct constitutes fraud in the inducement in that it
3 occurred in connection with misrepresentations, statements, or omissions that caused
4 Plaintiffs and putative Class members to enter into a transaction (i.e., to purchase
5 Defendant's BPO Products). As such, Defendant's fraudulent activities occurred
6 independent of the contract to purchase.

7 185. Plaintiffs and the other members of the Class reasonably relied upon
8 such representations and omissions to their detriment.

9 186. By reason thereof, Plaintiffs and the other Class members have suffered
10 damages in an amount to be proven at trial.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually on behalf of themselves and on behalf
13 of all others similarly situated, pray for relief and judgment against Defendant as
14 follows:

- 15 a. Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil
16 Procedure, appointing Plaintiffs as representative of the Class and
17 Subclasses, and designating Plaintiffs' counsel as Class Counsel;
- 18 b. Awarding Plaintiffs and Class members compensatory damages, in an
19 amount to be determined at trial;
- 20 c. Awarding Plaintiffs and Class members appropriate relief, including
21 but not limited to actual damages;
- 22 d. For restitution and disgorgement of profits;
- 23 e. Awarding Plaintiffs and Class members reasonable attorneys' fees and
24 costs as allowable by law;
- 25 f. Awarding pre-judgment and post-judgment interest;
- 26 g. For punitive damages; and
- 27 h. Granting any other relief as this Court may deem just and proper.
- 28

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all claims so triable.

Dated: March 19, 2024

Respectfully submitted,

/s/ Kristen Lake Cardoso
Kristen Lake Cardoso (State Bar No. 338762)
Jeff Ostrow (*pro hac vice* forthcoming)
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