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10	IN THE SUPERIOR COURT OF CALIFORNIA			
11	FOR THE COUNTY OF LOS ANGELES			
12				
13	Jan Graham, Plaintiff, Case No: COMPLAINT			
14	j j			
15	VS.) (1) Violations of Proposition 65;		
16	Bausch Health Companies Inc.; Bausch Health U.S., LLC;) (2) Injunctive Relief		
	CVS Health Corporation; DEMAND FOR JURY TRIAL			
17	CVS Pharmacy, Inc.;) Dollar General Corporation;)			
18	Dolgen, LLC;) Dolgen California, LLC;)			
19	Johnson & Johnson; Johnson & Johnson Consumer, Inc.;			
20	Sanofi, S.A.;			
21	Sanofi US Services, Inc.;) Chattem, Inc.;			
22	Target Corporation;) Target Brands, Inc.;)			
23	Walgreen Co.;) Walmart Inc.;)			
24	Davion, Inc.; () Garcoa, Inc.; ()			
25	Personal Care Products, LLC;) Stone Arch Capital, LLC;)			
26	Premier Brands of America Inc.; Thornton Industries, Inc.; and)		
27	Does 1-50, inclusive.			
	Defendants.)		
28)		
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I.

INTRODUCTION

1. This case is brought against the major nationwide suppliers and distributors of talcum powder products in order to address an existing public health crisis arising from the sale of products that contain multiple carcinogens and reproductive toxins. The products at issue involve nationwide retail brands, such as Johnson's Baby, Gold Bond, and Shower to Shower. They also include private label brands distributed and sold at large nationwide retailers, including CVS, Dollar General, Target, Walgreens, and Walmart.

2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the State to cause cancer or reproductive harm.

3. Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects, or other reproductive harm. These chemicals can be in the products that Californians purchase, that are in their homes or workplaces, or that are released into the environment. By requiring that this information be provided, Proposition 65 enables Californians to make informed decisions about their exposures to these chemicals.

4. The named Defendants have willfully violated Proposition 65 by manufacturing, distributing, and selling products with excess levels of dangerous chemicals. Defendants have for decades manufactured, distributed, or sold talcum powder products that contain multiple chemicals at levels known to cause cancer or reproductive toxicity. The carcinogenic chemicals and reproductive toxins at issue include: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. The chemicals are listed Proposition 65 chemicals known to the State to cause cancer or reproductive toxicity and are referred to herein collectively as "Listed Chemicals."

5. As discussed in more detail herein, the talcum powder industry (the "Industry") has had actual knowledge of the contamination of talcum powder products with multiple carcinogens and reproductive toxins. The Industry has also known that the presence of carcinogens and reproductive toxins within talcum powder products made the products unsafe and unfit to use in personal care.

6. For many years, the Industry has taken concerted action to conceal and hide the presence of carcinogen and reproductive toxins in talcum powder products from consumers and the general public. Such actions date back to at least 1976 when the Cosmetic, Toiletry and Fragrance Association ("CTFA") issued so-called "purity standards" for talc used in cosmetic products. The CTFA is an Industry trade association that represents cosmetic and personal care products companies. Its work has included the promulgation of the Industry specification and definition for "talc." This definition has been utilized by the personal care product companies, including Defendants herein.

7. As discussed more fully below, in 1976, the Industry adopted talc purity standards that were designed to hide the presence of carcinogen and reproductive toxins in talcum powder products. The Industry *redefined* "talc" to consist of a minimum of 90% talc with the remainder "consisting of naturally associated minerals." The Industry specification further incorporates multiple carcinogens and reproductive toxins into the Industry definition of "talc." (Ex. A.) Unbeknownst to consumers, the Industry specification for "talc" expressly includes arsenic (up to 3 ppm) and lead (up to 20 ppm lead). (Ex. A.) Other "naturally associated minerals" found in talcum powder products commonly include hexavalent chromium.

8. By including these carcinogens and reproductive toxins in the specification for "talc," the Industry has misleadingly marketed talcum powder products as containing pure talc and has actively and knowingly taken steps to conceal the presence of Listed Chemicals from consumers. The Industry has done so with a profiteering motive, knowing that full disclosure would lead to significant loss in sales and, even more likely, the removal of talcum powder products from the market.

9. Individuals who purchase, handle, or use talcum products are unknowingly exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products. This exposure has and continues to contribute to increased risk of cancer and reproductive toxicity to unsuspecting consumers.

10. Tragically, there is a growing body of scientific evidence linking the use of talcum powder to ovarian cancer. In fact, the health risks related to the use of talcum powder and its contribution to an increased risk of ovarian cancer is now well documented and widely accepted within the scientific community. This evidence has been ignored by the Industry, including Defendants herein, who have exposed consumers in California and throughout the nation to toxic and carcinogenic products without first warning consumers of the presence of Listed Chemicals in talcum powder.

11. Defendants' conduct violates Proposition 65 and has caused substantial harm to California consumers and the general public. Plaintiff is entitled to relief, including injunctive relief, and civil penalties.

II.

JURISDICTION AND VENUE

A. Jurisdiction

12. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis for jurisdiction.

13. This Court has personal jurisdiction over Defendants because they do business in California and have purposefully availed themselves of the privilege of conducting business activities within the State. Defendants have intentionally availed themselves of the California market through the supply and distribution, sale, marketing, and use of talcum powder products in California and have sufficient minimum contacts with California so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

14. Plaintiff has complied with the procedural notice requirements of Proposition 65. This action is commenced more than 60 days from the date that Plaintiff gave notice of alleged violations of Section 25249.6 that are the subject of this private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violations are alleged to have occurred, and to Defendants. Plaintiff is informed and believes that neither the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violations at issue herein.

B. Venue

15. Venue is proper in this Court because the cause, or part thereof, arises inLos Angeles County because Defendants' products are sold and consumed in this county.Defendants have violated or threaten to violate California law in Los Angeles County.

III. <u>PARTIES</u>

A. Plaintiff Jan Graham

16. Plaintiff Jan Graham is a citizen of the State of California and a person within the meaning of Health & Safety Code section 25118. Ms. Graham brings this action in the public interest pursuant to California Health & Safety Code section 25249.7(d).

B.

Defendants

Direct Distributor and Retail Seller Defendants a. Bausch Health

17. Defendant Bausch Health Companies Inc. ("Bausch Health") is a multinational pharmaceutical company with its headquarters in Laval, Canada and United Sates headquarters in Bridgewater, New Jersey. Bausch Health develops, manufactures, and markets pharmaceutical products and over-the-counter personal care products.
Bausch Health's product line includes talcum powder products under the "Shower to Shower" brand. Bausch Health is a person doing business within the meaning of Health

and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Bausch Health is a business entity with ten or more employees in its business.

18. Defendant Bausch Health U.S., LLC ("Bausch U.S.") is a Delaware limited liability company with its principal place of business in Bridgewater, New Jersey. Bausch U.S. is a Bausch Health subsidiary. On information and belief, Bausch U.S. is responsible for the distribution of "Shower to Shower" branded talcum powder products in the United States. Bausch U.S. is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Bausch Health U.S. is a business entity with ten or more employees in its business.

19. On information and belief, Bausch Health and Bausch U.S. have authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "Shower to Shower" brand name that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "Shower to Shower" is a brand that is owned or controlled by Bausch Health, and the "Shower to Shower" trademark is owned by a Bausch Health affiliated entity.

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b. CVS Health

20. Defendant CVS Health Corporation ("CVS Health") is a Delaware corporation with its principal place of business in Woonsocket, Rhode Island. CVS Health is a health care company that owns and operates CVS Pharmacy, the largest retail pharmacy in the United States. As part of its business, CVS Health markets and sells private label talcum powder products under the "CVS Health" brand. CVS Health is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, CVS Health is a business entity with ten or more employees in its business.

25 21. Defendant CVS Pharmacy, Inc. ("CVS Pharmacy") is a Rhode Island
26 corporation with its principal place of business in Woonsocket, Rhode Island. CVS
27 Pharmacy is a subsidiary of CVS Health. On information and belief, CVS Pharmacy is
28 responsible for the distribution of "CVS Health" branded talcum powder products in the

United States. CVS Pharmacy is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, CVS Pharmacy is a business entity with ten or more employees in its business.

22. On information and belief, CVS Health and CVS Pharmacy have authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "CVS Health" brand name that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "CVS Health" is a brand that is owned or controlled by CVS Health or CVS Pharmacy, and the "CVS Health" trademark is owned by CVS Pharmacy.

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Dollar General

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23. Defendant Dollar General Corporation ("Dollar General") is a Tennessee corporation with its principal place of business in Goodlettsville, Tennessee. Dollar General owns and operates a chain of retail stores throughout the United States. As of February 1, 2019, Dollar General operated 15,370 stores in 44 states, including 216 stores in California. As part of its business, Dollar General sells private label talcum powder products under the "DG" and "Rexall" brands. Dollar General is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Dollar General is a business entity with ten or more employees in its business.

24. Defendant Dolgencorp, LLC ("Dolgencorp") is a Kentucky limited liability company with its principal place of business in Goodlettsville, Tennessee. Dolgencorp is a subsidiary of Dollar General. On information and belief, Dolgencorp is responsible for the distribution of "DG" and "Rexall" branded talcum powder products in the United States. Dolgencorp is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, Dolgencorp is a business entity with ten or more employees in its business.

25. Defendant Dolgen California, LLC ("Dolgen California") is a Tennessee limited liability company with its principal place of business in Goodlettsville, Tennessee. Dolgen California is a subsidiary of Dollar General. On information and belief, Dolgen California is responsible for the operation of Dollar General retail stores in California. Dolgen California is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, Dolgen California is a business entity with ten or more employees in its business.

26. On information and belief, Dollar General, Dolgencorp, and Dolgen California have authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "DG" and "Rexall" brand names that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "DG" is a brand that is owned or controlled by Dollar General, and the "DG" trademark is owned by a Dollar General affiliated entity. On information and belief, Dollar General holds an exclusive license to the "Rexall" brand through at least March 5, 2026. Dollar General is the exclusive retailer for "Rexall" branded products in the United States.

d. Johnson & Johnson

27. Defendant Johnson & Johnson ("J&J") is a New Jersey Corporation with its principal place of business in New Brunswick, New Jersey. J&J is a multinational corporation that develops, manufactures, and markets personal care products, medical devices, and pharmaceutical products. J&J's consumer product line includes talcum powder products under the "Johnson's Baby" brand. J&J is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, J&J is a business entity with ten or more employees in its business.

26 28. Defendant Johnson & Johnson Consumer, Inc. ("JJCI") is a New Jersey
27 Corporation with its principal place of business in Skillman, New Jersey. JJCI is a
28 subsidiary of J&J. On information and belief, JJCI is responsible for the distribution of

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"Johnson's Baby" branded talcum powder products in the United States. JJCI is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, JJCI is a business entity with ten or more employees in its business.

29. On information and belief, J&J and JJCI have authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "Johnson's Baby" brand names that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "Johnson's Baby" is a brand that is owned or controlled by J&J and JJCI, and the "Johnson's Baby" trademark is owned by J&J.

Sanofi

e.

30. Defendant Sanofi, S.A. ("Sanofi") is a French company with its principal place of business in Paris, France. Sanofi is a multinational pharmaceutical company that develops, manufactures, and markets pharmaceutical products, over-the-counter ("OTC") medication, and personal care products. Sanofi's consumer product line includes talcum powder products under the "Gold Bond" and "Gold Bond Ultimate" brand names. Sanofi is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Sanofi is a business entity with ten or more employees in its business.

31. Defendant Sanofi US Services, Inc. ("Sanofi US") is a Delaware corporation with its principal place of business in Bridgewater, New Jersey. Sanofi US is a subsidiary of Sanofi. Sanofi US is responsible for portions of Sanofi's business in the United States and is comprised of five business units. Sanofi US's OTC product responsibilities include the marketing of "Gold Bond" branded talcum powder products. Sanofi US is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Sanofi US is a business entity with ten or more employees in its business.

32. Defendant Chattem, Inc. ("Chattem") is a Tennessee corporation with its principal place of business in Chattanooga, Tennessee. Chattem is a subsidiary of Sanofi. Chattem is controlled by Sanofi and operates under the Sanofi corporate identity. At all relevant times, Chattem has been responsible for the distribution of "Gold Bond" and "Gold Bond Ultimate" branded talcum powder products in the United States. Chattem is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Chattem is a business entity with ten or more employees in its business.

33. On information and belief, Sanofi, Sanofi US, and Chattem have authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "Gold Bond" and "Gold Bond Ultimate" brand names that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "Gold Bond" and "Gold Bond Ultimate" are brand names that are owned or controlled by Sanofi or Sanofi US, and the "Gold Bond" and "Gold Bond Ultimate" trademarks are owned by Chattem.

f.

Target

34. Defendant Target Corporation ("Target") is a Minnesota corporation with its principal place of business in Minneapolis, Minnesota. Target is one of the largest retailers in the United States. Target operates 1,862 retail stores located in all 50 states and the District of Columbia. As part of its business, Target markets and sells private label talcum powder products under the "Up&Up" brand. Target is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Target is a business entity with ten or more employees in its business.

35. Defendant Target Brands, Inc. ("Target Brands") is a Minnesota
corporation with its principal place of business in Minneapolis, Minnesota. Target Brands
is a subsidiary of Target. On information and belief, Target Brands is responsible for the
distribution of "Up&Up" branded talcum powder products in the United States. Target

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Brands is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Target Brands is a business entity with ten or more employees in its business.

36. On information and belief, Target and Target Brands have authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "Up&Up" brand name that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "Up&Up" is a brand that is owned or controlled by Target, and the "Up&Up" trademark is owned by Target Brands.

Walgreens

g.

37. Defendant Walgreen Co. ("Walgreens") is an Illinois corporation with its principal place of business in Deerfield, Illinois. Walgreens operates as the second-largest pharmacy store chain in the United States. As part of its business, Walgreens markets and sells private label talcum powder products under the "Walgreens" and "Well Beginnings" brands. Walgreens is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Walgreens is a business entity with ten or more employees in its business.

38. On information and belief, and based on investigation of counsel,
Walgreens has authorized the manufacturing, distribution, or sale within the State of
California of talcum powder products under the "Walgreens" and "Well Beginnings"
brand names that contain multiple Listed Chemicals without first giving clear and
reasonable warning. On information and belief, "Walgreens" and "Well Beginnings" are
brands and trademarks that are owned or controlled by Walgreens.

h. Walmart

39. Defendant Walmart Inc. ("Walmart") is a Delaware corporation with its
principal place of business in Bentonville, Arkansas. Walmart operates the largest retail
store chain in the United States and the world by revenue. As of July 31, 2019, Walmart
operates 5,362 stores in the United States, including 310 stores in California. As part of

its business, Walmart markets and sells private label talcum powder products under the "Equate" brand. Walmart is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Walmart is a business entity with ten or more employees in its business.

40. On information and belief, Walmart has authorized the manufacturing, distribution, or sale within the State of California of talcum powder products under the "Equate" brand name that contain multiple Listed Chemicals without first giving clear and reasonable warning. On information and belief, "Equate" is a brand that is owned or controlled by Walmart, and the "Equate" trademark is owned by a Walmart affiliated entity.

2. Supplier Defendants

Davion

a.

41. Defendant Davion, Inc. ("Davion") is a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. Davion is one of the largest private label and contract manufacturers of personal care products in the United States. Davion develops, manufactures, or distributes numerous private label products, including talcum powder products, to its clients in both domestic and international markets. Davion's clients include CVS, Dollar General, and Walgreens.

42. Davion is a person doing business within the meaning of Health and SafetyCode section 25249.11. On information and belief, and based on investigation of counsel,Davion is a business entity with ten or more employees in its business.

b. Garcoa

43. Defendant Garcoa, Inc. ("Garcoa") is an Ohio corporation with its principal place of business in Calabasas, California. Garcoa is a private label, controlled label, and contract manufacturer of personal care products in the United States. Garcoa develops, manufactures, or distributes numerous private label products, including talcum powder products, to its clients. Davion's clients include Walgreens.

44. Garcoa is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Garcoa is a business entity with ten or more employees in its business.

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c. Personal Care Products and Stone Arch Capital

45. Defendant Personal Care Products, LLC ("Personal Care Products") is a Delaware limited liability company with its principal place of business in Troy, Michigan. Personal Care Products is a supplier of private label and branded products within the health and beauty and household products segments. Personal Care Products' clients include Walmart. At all relevant times, Personal Care Products has been a supplier of an "Equate" branded medicated body powder products to Walmart.

46. Personal Care Products is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, during relevant times Personal Care Products has been a business entity with ten or more employees in its business.

47. Defendant Stone Arch Capital, LLC ("Stone Arch") is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. Stone Arch is Minneapolis-based private equity firm that is the majority and controlling member of Personal Care Products. Since December 2010, Stone Arch has been actively involved in management and control of Personal Care Products. Stone Arch's founder and partner Charles Lannin, former senior advisor Andrew Herring, and former managing director Scott T. Loe have been actively and directly involved in the management and corporate control of Personal Care Products. In addition to managing Personal Care Products, Stone Arch has operated or assisted in the operation of phantom business entities for purposes of importing and distributing the talcum powder products at issue herein.

48. Stone Arch is a person doing business within the meaning of Health andSafety Code section 25249.11. On information and belief, and based on investigation of

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counsel, at all relevant times Stone Arch has been a business entity with ten or more employees in its business.

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d. Premier Brands

49. Defendant Premier Brands of America Inc. ("Premier Brands") is a New York corporation with its principal place of business in White Plains, New York. Premier Brands is a private label manufacturer and marketer of personal care products. Premier Brands develops, manufactures, or distributes numerous private label products, including talcum powder products, to its clients. Premier Brands' clients include Target and Walmart.

50. Premier Brands is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Premier Brands is a business entity with ten or more employees in its business.

e. Thornton Industries

51. Defendant Thornton Industries, Inc. ("Thornton") is an Illinois corporation with its principal place of business in Morris, Illinois. Thornton is a private label manufacturer of talcum powder products. Thornton's "powder division" specializes in the custom blending and filling of both talc and cornstarch-based baby powder products for over 130 different private label and national brands. Thornton's clients include Dollar General.

52. Thornton is a person doing business within the meaning of Health and Safety Code section 25249.11. On information and belief, and based on investigation of counsel, Thornton is a business entity with ten or more employees in its business.

3. Doe Defendants

25 53. Plaintiff is ignorant of the true names or capacities of Defendants sued
26 herein as Doe 1 through Doe 50, and therefore sues these Defendants by such fictitious
27 names. Plaintiff further alleges that each fictitious Doe Defendant is in some manner
28 responsible for the acts and occurrences set forth in the Complaint. Plaintiff will amend

this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious Defendant is responsible for the damages sustained by Plaintiff.

IV.

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A. About Talc

FACTUAL BACKGROUND

54. Talc is a clay mineral that is mined from underground deposits. Talc is composed of hydrated magnesium silicate with the chemical formula of Mg₃Si₄O₁₀(OH)₂. Talc is the softest mineral on earth. It is the main ingredient in consumer "talcum powder" products.

55. Because talc is mined from underground deposits, it is commonly contaminated with other chemicals found in talc powder deposits. Such chemicals include toxic heavy metals such as arsenic, hexavalent chromium, and lead. Contamination with arsenic, hexavalent chromium, and lead is nearly ubiquitous in talcum powder products. Indeed, the contamination is widely known within the Industry and acknowledged in the Industry's specification for "talc" and "cosmetic talc."

56. As a powder, talc absorbs moisture well and helps cut down on friction. It is touted and marketed by the Industry for keeping skin dry and helping to prevent rashes.Talc is widely used in cosmetic products such as baby powder, adult body powder, and foot powder.

57. For decades, for example, the talcum powder and cosmetic industries have marketed talcum powder to consumers for use as a feminine hygiene product and for use on babies for prevention or treatment of diaper rash. Images of smiling women and barebottomed babies have graced talcum powder advertisements for decades.

58. The Industry has marketed and sold talcum powder to unsuspecting
consumers despite the Industry having decades of knowledge regarding the presence
carcinogens and reproductive toxins (including Listed Chemicals) in talcum powder
products.

B. The Industry Has Had Knowledge of the Contamination of Talcum Powder Products with Multiple Carcinogens and Reproductive Toxins.

1. The Industry Has Knowingly and Intentionally Utilized a Deceptive and Misleading Definition of Talc that is Designed to Conceal the Presence of Listed Chemicals in Talcum Powder Products.

59. The Industry's knowledge regarding the presence of carcinogens in talcum powder products spans several decades, but the Industry has knowingly failed disclose the presence of carcinogens and reproductive toxins in talcum powder products to consumers and the general public.

60. The Industry's knowledge regarding the presence of carcinogens in talcum
powder dates back to at least 1976, when the Cosmetic, Toiletry, and Fragrance
Association ("CTFA") promulgated so-called "purity standards" for
"talc." The Industry purity standards and specifications for talc are knowingly and

intentionally designed to conceal the presence of carcinogens and reproductive toxins in talcum powder products.

61. In 1976, the Industry expressly *redefined* "talc" to consist of a minimum of 90% hydrated magnesium silicate, with the remainder consisting of *naturally associated minerals*. (Ex. A; emphasis added) Unbeknownst to consumers, the Industry specification for "talc" expressly includes arsenic (up to 3 ppm) and lead (up to 20 ppm lead). (Ex. A.)

62. The presence of Listed Chemicals and the necessity for Proposition 65 warnings has been well known within the industry since before the enactment of Proposition 65. In fact, the need for Proposition 65 warnings has been acknowledged within Material Safety Data Sheets utilized by talc suppliers. By way of example, a Material Safety Data Sheet utilized by Brenntag, a leading supplier of talc within the Industry, states as follows:

CALIFORNIA PROPOSITION 65: TALC MAY CONTAIN THE FOLLOWING PROPOSITION 65 REGULATED CHEMICALS IN THE FOLLOWING TYPICAL AMOUNTS:

ARSENIC2 PPMCADMIUM2 PPMCHROMIUM0.5 PPMMERCURY0.5 PPMLEAD5 PPMCRYSTALLINE SILICA1.0%. MAXIMUM

THESE CHEMICALS ARE PRESENT AS IMPURITIES AND OCCUR AS A RESULT OF THEIR NATURAL PRESENCE IN THE ORE FROM WHICH THE TALC IS PRODUCED.

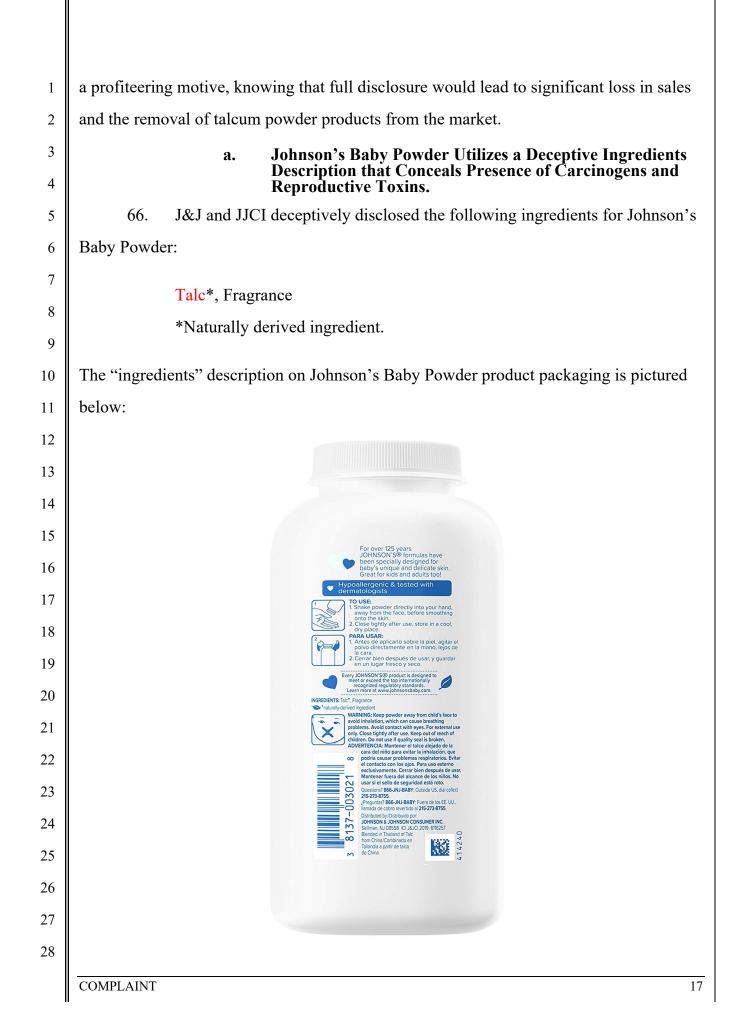
(Ex. B. at p. 5.)

63. Instead of warning consumer regarding the presence of Proposition 65 Listed Chemicals, CTFA and the Industry has utilized the term "cosmetic talc" and redefined "talc" used in cosmetic products to hide the presence of multiple carcinogens and reproductive toxins in talcum powder products. The Industry has done so in a patent effort to mislead consumers and the general public that the talc used in cosmetics was free of carcinogens or reproductive toxins. On information and belief, all Defendants herein have utilized a deceptive and misleading definition of "talc" in an effort to conceal the presence of multiple Listed Chemicals from end users and the general public.

2. All Defendants Have Knowingly Concealed the Presence of Carcinogens and Reproductive Toxins.

64. Plaintiff is informed and believes that the manufacturers and distributors of talcum powder products (including all Defendants herein) have adopted and knowingly benefited from the CTFA's specifications and so-called purity standards. All Defendants have benefited from the Industry specification for "talc," which intentionally conceals the presence of multiple reproductive toxins and carcinogens in the talcum powder products peddled by Defendants.

65. On information and belief, all Defendants have knowingly concealed the presence of multiple Listed Chemicals to consumers and the general public by adopting CTFA's specification and definition of "talc" or "cosmetic talc." They have done so with



1	67. By way of example, when the Industry's definition of "talc" is more fully
2	spelled out, the true ingredients for Johnson's Baby Powder are revealed as follows:
3	An essentially white, odorless, fine powder which is ground from naturally occurring rock ore. It consists of a minimum of 90% hydrated magnesium
4 5	silicate, with the remainder consisting of <i>naturally associated minerals</i> such as calcite, chlorite, dolomite, kaolin, and magnesite [and <i>arsenic (up</i>
6	<i>to 3 ppm) and lead (up to 20 ppm lead)</i>], and containing no detectable fibrous asbestos minerals*, Fragrance
7	*Naturally derived ingredient
8 9	Other "naturally associated minerals" found in Johnson Baby Powder products
10	commonly include hexavalent chromium.
10	68. On information and belief, J&J and JJCI have knowingly concealed the
12	presence of multiple Listed Chemicals to consumers and the general public by adopting
13	CTFA's specification and definition of "talc" or "cosmetic talc." They have done so with
14	a profiteering motive, knowing that full disclosure would lead to significant loss in sales
15	and the removal of talcum powder products from the market.
16 17	b. Shower to Shower Products Utilize a Deceptive Ingredients Description that Conceals Presence of Carcinogens and Reproductive Toxins.
18	69. Bausch Health and Bausch U.S. have deceptively disclosed the following
19	ingredients for Shower to Shower Products:
20	Zea Mays (corn) starch, Talc, Sodium Bicarbonate,
21	Tricalcium Phosphate, Fragrance, Maltodextrin.
22	All Shower to Shower Products at issue herein utilize the same "ingredient" description
23	and the ingredients list can be found on the products page available at:
24	 https://www.showertoshower.com/Products/Original-Fresh;
25	• https://www.showertoshower.com/Products/Morning-Fresh; and
26	• https://www.showertoshower.com/Products/Sport.
27	70. When the Industry's definition of "talc" is more fully spelled out, the true
28	ingredients for Shower to Shower products are revealed to include multiple carcinogens
	COMPLAINT 18
	•

and reproductive toxins, including arsenic (up to 3 ppm) and lead (up to 20 ppm lead). 1 Other "naturally associated minerals" found in Shower to Shower products commonly 2 3 include hexavalent chromium. 71. On information and belief, Bausch Health and Bausch U.S. have knowingly 4 concealed the presence of multiple Listed Chemicals from consumers and the general 5 public by adopting CTFA's specification and definition of "talc" or "cosmetic talc." They 6 have done so with a profiteering motive, knowing that full disclosure would lead to 7 8 significant loss in sales and the removal of talcum powder products from the market. 9 **Gold Bond Products Utilize a Deceptive Ingredients** c. Description that Conceals Presence of Carcinogens and 10 **Reproductive Toxins.** 72. Sanofi, Sanofi US, and Chattem have deceptively disclosed the following 11 ingredients for Gold Bond products at issue herein: 12 13 Gold Bond Medicated Original Strength Body Powder 14 Talc, zinc oxide, acacia senegal gum, eucalyptol, methyl salicylate, 15 salicylic acid, thymol, zinc stearate (309-004) 16 Gold Bond Medicated Extra Strength Body Powder 17 Talc, zinc oxide, acacia senegal gum, eucalyptol, methyl salicylate, 18 salicylic acid, thymol, zinc stearate (309-006) 19 20 Gold Bond Ultimate Men's Essential Body Powder 21 Talc, zinc oxide, fragrance, sodium bicarbonate, aloe barbadensis leaf 22 extract, tocopheryl acetate, acacia senegal gum, menthol, menthyl 23 lactate, zinc stearate (309-170) 24 Gold Bond Maximum Strength Foot Powder 25 Talc, sodium bicarbonate, acacia senegal gum, benzethonium chloride, 26 eucalyptus globulus leaf oil, mentha piperita (peppermint) oil (309-167) 27 28

73. When the Industry's definition of "talc" is more fully spelled out, the true 1 ingredients for Gold Bond products are revealed to include multiple carcinogens and 2 3 reproductive toxins, including arsenic (up to 3 ppm) and lead (up to 20 ppm lead). Other "naturally associated minerals" found in Gold Bond products commonly include 4 hexavalent chromium. 5 74. On information and belief, Sanofi, Sanofi US, and Chattem have knowingly 6 concealed the presence of multiple Listed Chemicals from consumers and the general 7 8 public by adopting CTFA's specification and definition of "talc" or "cosmetic talc." They 9 have done so with a profiteering motive, knowing that full disclosure would lead to significant loss in sales and the removal of talcum powder products from the market. 10 11 d. **CVS Health Branded Talcum Powder Products Utilize a Deceptive Ingredients Description that Conceals Presence** 12 of Carcinogens and Reproductive Toxins. CVS Health and CVS Pharmacy and their supplier, Davion, have 13 75. deceptively disclosed the following ingredients on the product packaging for CVS 14 Protective Powder Fresh Scent: 15 16 **Active Ingredients** Purpose 17 Talc 81% Skin Protectant 18 Zinc Oxide 15% Skin Protectant 19 20 Inactive Ingredients Calcium Stearate, Fragrance. 21 76. Notably, CVS's website now appears to intentionally *conceal* references to 22 23 talc on the product's ingredients description, and CVS's website discloses "Zinc Oxide 15%" as being the only active ingredient: 24 25 Ingredients 26 Active Ingredients: Zinc Oxide (15%). Inactive Ingredients: 27 Calcium Stearate, Fragrance. 28

COMPLAINT

See https://www.cvs.com/shop/cvs-health-protective-powder-fresh-scent-prodid-691934.

77. When the Industry's definition of "talc" is more fully spelled out on the ingredients listed on the product packaging, the true ingredients for CVS Health branded talcum powder product are revealed to include multiple carcinogens and reproductive toxins, including arsenic (up to 3 ppm) and lead (up to 20 ppm lead). Other "naturally associated minerals" found in CVS Health branded talcum powder products commonly include hexavalent chromium.

78. On information and belief, CVS Health and CVS Pharmacy and their supplier, Davion, have knowingly concealed the presence of multiple Listed Chemicals from consumers and the general public by adopting CTFA's specification and definition of "talc" or "cosmetic talc." They have done so with a profiteering motive, knowing that full disclosure would lead to significant loss in sales and the removal of talcum powder products from the market.

e. Dollar General and Rexall Branded Talcum Powder Products Utilize a Deceptive Ingredients Description that Conceals Presence of Carcinogens and Reproductive Toxins.

79. Dollar General, Dolgencorp, and Dolgen California and their supplier, Davion, deceptively disclosed the following ingredients for Dollar General and Rexall branded products at issue herein:

• DG Body Shower & Bath Body Powder

Talc, zea mays (corn) starch, sodium bicarbonate, tricalcium phosphate, fragrance, maltodextrin, aloe barbadensis leaf extract, anthemis, nobilis flower extract.

• DG Body Medicated Body Powder

Talc, zinc oxide, eucalyptus gum, methyl salicylate, salicylic acid, thymol, zinc stearate.

Rexall Foot Powder 1 Talc, Salicylic Acid, Methyl Salicylate 2 3 **Rexall Medicated Foot Powder** 4 Talc, sodium bicarbonate, acacia, benzethonium chloride, eucalyptus 5 oil, peppermint oil 6 80. 7 Dollar General and its supplier, Thornton, deceptively disclosed the 8 following ingredients for Dollar General branded DG Baby Powder issue herein: 9 Talc, fragrance 10 81. When the Industry's definition of "talc" is more fully spelled out on the 11 12 ingredients listed on the product packaging, the true ingredients for the DG and Rexall 13 branded talcum powder product are revealed to include multiple carcinogens and reproductive toxins, including arsenic (up to 3 ppm) and lead (up to 20 ppm lead). Other 14 "naturally associated minerals" found in DG and Rexall branded talcum powder products 15 commonly include hexavalent chromium. 16 82. On information and belief, Dollar General, Dolgencorp, and Dolgen 17 18 California and their suppliers, Davion and Thornton, have knowingly concealed the presence of multiple Listed Chemicals from consumers and the general public by 19 adopting CTFA's specification and definition of "talc" or "cosmetic talc." They have 20 done so with a profiteering motive, knowing that full disclosure would lead to significant 21 loss in sales and the removal of talcum powder products from the market. 22 23 f. Target Branded Up&Up Foot Powder Products Utilize a **Deceptive Ingredients Description that Conceals Presence** 24 of Carcinogens and Reproductive Toxins. 83. Target, Target Brands, and their supplier, Premier Brands, have deceptively 25 disclosed the following ingredients for Up&Up foot powder products: 26 27 28

Active Ingredients Purpose Menthol 1.0% External Analgesic

Inactive Ingredients

. . .

benezethonium chloride, eucalyptus oil, gum acacia, peppermint oil, sodium bicarbonate, talc

84. When the Industry's definition of "talc" is more fully spelled out, the true ingredients for Target-branded Up&Up foot powder products are revealed to include multiple carcinogens and reproductive toxins, including arsenic (up to 3 ppm) and lead (up to 20 ppm lead). Other "naturally associated minerals" found in Up&Up branded talcum powder products commonly include hexavalent chromium.

85. On information and belief, Target, Target Brands, and their supplier Premier Brand, have knowingly concealed the presence of multiple Listed Chemicals from consumers and the general public by adopting CTFA's specification and definition of "talc" or "cosmetic talc." They have done so with a profiteering motive, knowing that full disclosure would lead to significant loss in sales and the removal of talcum powder products from the market.

g. Walgreens Branded Talcum Powder Products Utilize a **Deceptive Ingredients Description that Conceals Presence** of Carcinogens and Reproductive Toxins.

86. Walgreens and its respective suppliers, Davion and Garcoa, deceptively disclosed the following ingredients for Walgreens branded foot powder products at issue herein:

- Walgreens Medicated Foot Powder
- **Active Ingredients** Purpose Menthol 1.0% External Analgesic . . .

Inactive Ingredients 1 Talc, Sodium Bicarbonate, Acacia, Benzethonium 2 3 Chloride, Eucalyptus Oil, Peppermint Oil. 4 Walgreens Medicated Odor Control Foot Powder 5 Talc, Salicylic Acid, Methyl Salicylate 6 87. 7 In addition, Walgreens deceptively disclosed the following ingredients for 8 Well Beginning Baby Powder products at issue herein: 9 Talc, fragrance 10 88. When the Industry's definition of "talc" is more fully spelled out, the true 11 ingredients for the Walgreens and Well Beginnings branded product are revealed to 12 13 include multiple carcinogens and reproductive toxins, including arsenic (up to 3 ppm) and lead (up to 20 ppm lead). Other "naturally associated minerals" found in Walgreens 14 and Well Beginnings branded talcum powder products commonly include hexavalent 15 chromium. 16 89. On information and belief, Walgreens and its suppliers, Davion and 17 18 Garcoa, have knowingly concealed the presence of multiple Listed Chemicals from consumers and the general public by adopting CTFA's specification and definition of 19 "talc" or "cosmetic talc." They have done so with a profiteering motive, knowing that full 20 disclosure would lead to significant loss in sales and the removal of talcum powder 21 products from the market. 22 23 h. Walmart Branded Talcum Powder Utilize a Deceptive **Ingredients Description that Conceals Presence of** 24 **Carcinogens and Reproductive Toxins.** 90. Walmart and its respective suppliers and importers, Personal Care Products 25 and Stone Arch, deceptively disclosed the following ingredients for the Equate Medicated 26 Body Powder products at issue herein: 27 28

	Active Ingredients	Purpose
	Menthol 0.15%	External Analgesic
	Zinc Oxide 1%	External Analgesic
	Inactive Ingredients	
	Talc, Acacia, Eucalyptus Oil, N	Iethyl Salicylate,
	Salicylic Acid, Thymol Zinc, S	tearate.
91.	Walmart and its supplier, Prem	ier Brands, deceptively disclosed the
following in	gredients for the Equate Soothin	g Foot Powder products at issue herein:
	Talc, Salicylic Acid, Methy	l Salicylate
92.	When the Industry's definition	of "talc" is more fully spelled out, the true
ingredients for the Equate branded body powder and foot powder products are revealed to		
include multiple carcinogens and reproductive toxins, including arsenic (up to 3 ppm)		
and lead (up	to 20 ppm lead). Other "naturall	y associated minerals" found in Equate
branded talc	um powder products commonly	include hexavalent chromium.
93.	On information and belief, Wa	mart and its suppliers and importers,
Personal Ca	re Products, Stone Arch, and Pre	mier Brands, have knowingly concealed the
presence of	multiple Listed Chemicals from	consumers and the general public by
adopting C7	FA's specification and definition	n of "talc" or "cosmetic talc." They have
done so with	n a profiteering motive, knowing	that full disclosure would lead to significant
loss in sales	and the removal of talcum powd	er products from the market.
C.	Defendants Have Had Actu Talcum Powder Products V Personal Care.	al and Constructive Knowledge that Vere Unsafe and Unfit for Use In
94.		eddled talcum powder products to
unsuspectin	g mothers to use on babies for pr	evention and treatment of diaper rash. They
have also m	arketed talcum powder to womer	as a feminine hygiene product for use on

their genitals and perineal area, either through direct application or by applying it to sanitary napkins. They have done so despite knowledge of the presence of multiple reproductive toxins and carcinogens in talc products. On information and belief, and based on investigation of counsel, the Industry was aware that talc products were unsafe and unfit for use in personal care and on infants with diaper rash.

95. The Industry was aware that talcum powder products were unfit for 6 application on skin when the outer surface of skin or epidermal barrier¹ is damaged, 7 8 missing, or significantly interrupted. The Industry has been similarly aware that talc-9 containing baby powder products were unsafe and unfit to use on babies with diaper rash. However, the Industry has marketed baby powder products for prevention of diaper rash. 10 The Industry was similarly aware that the presence of carcinogens and reproductive toxins rendered talcum products unsafe and unfit for use in personal care. Yet, the major 12 13 personal care companies, including Defendants herein, routinely procure talc that is contaminated with multiple carcinogens and reproductive toxins, and thus unfit for use in 14 personal care. Defendants then continued to manufacture, distribute, or sell talcum powder products that contain multiple carcinogens and reproductive toxins and unfit for 16 use for their intended purpose.

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J&J's Misconduct Is Particularly Egregious Because of its Socioeconomic and Racial Targeting of Underdeveloped Areas and Unsuspecting Minorities Communities.

One of the most egregious and insidious acts in this case involves J&J and 96. JJCI's response to growing public health concerns regarding the safety of talcum powder products. In 2006, the International Agency for Research on Cancer ("IARC"), an arm of the World Health Organization, began classifying cosmetic talc such as Baby Powder as possibly carcinogenic.

97. In response to growing scientific scrutiny, J&J failed to take action to warn 25 consumers about health dangers, including the presence of carcinogens and reproductive 26

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¹ The outer surface of the skin, the epidermis, along with its outermost layer, the stratum corneum, forms the epidermal barrier.

toxins in their products. Instead, in an effort to offset potential sale declines due to health concerns, J&J engaged in a concerted effort to expand its customer base by targeting underdeveloped areas and unsuspecting minority communities.

98. There is now documented and indisputable evidence regarding J&J's socioeconomic and racial targeting. J&J internal documents evidence that in response to public health concerns, J&J specifically target underdeveloped communities and minority groups.

99. Plaintiff is informed and believes that according to a 2006 internal J&J marketing presentation, J&J sought to target "high-propensity consumers." J&J determined that the "right place" was: "Under developed geographical areas with hot weather, and higher AA population." The term "AA" – as used in the J&J's internal presentation – referred to African-Americans. A publicly available excerpt of the marketing presentation is attached at Exhibit C.

100. Plaintiff is informed and believes that J&J concluded that "Powder is still considered a relevant product among AA consumers," and that "[t]his could be an opportunity." Plaintiff is further informed and believes that J&J and JJCI similarly targeted Hispanic communities.

101. Shockingly, in the ensuing year, J&J and JJCI turned their marketing strategy into action. Plaintiff is informed and believes that internal company documents reveal J&J and JJCI distributed Baby Powder samples through churches and beauty salons in African-American and Hispanic neighborhoods, ran digital and print promotions with weight-loss and wellness company Weight Watchers, and launched a \$300,000 radio advertising campaign in a half-dozen markets aiming to reach "curvy Southern women 18-49 skewing African American."

102. J&J's racial targeting has had an undue and tragic impact on unsuspecting
minority groups in California, including the African American and Hispanic communities
living in California.

103. In recent months there have been multiple media reports regarding J&J targeting minority groups and women of color in response to mounting health concerns about its talcum powder products. Two of these reports are attached as Exhibits D and E and can be found at https://www.reuters.com/investigates/special-

report/johnsonandjohnson-marketing/ and https://www.cbc.ca/news/business/johnsonjohnson-baby-powder-1.5092089.

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The Industry's Peddling of Talcum Powder Products Has Resulted in a Public Health Crisis in California and the Nation.

104. Talcum powder has been touted and promoted for decades by companies claiming that it helps eliminate friction, is gentle on the skin, and provides a clean, pleasant scent. It has commonly been marketed to unsuspecting mothers for prevention and reduction of babies' diaper rashes and for use by women as a feminine hygiene product.

105. Tragically, a growing body of evidence has now established that using talc in the genital area can contribute to or cause ovarian cancer. Medical researchers have raised concerns about the safety of talcum powder for many years, and the link between talcum powder and ovarian cancer is now well documented.

1. Early Pathology and Epidemiological Studies in the 1970s and 1980s Identified a Link Between Talcum Powder Use and Gynecological Cancers.

106. In the 1970s, early pathology studies identified talc particles in urogenital tumors. In 1971, for example, researchers published a study discovering particles of talc embedded in ovarian and cervical tumors. *See* Henderson WJ, Joslin CAF, Turnbull AC, Griffiths K. Talc and carcinoma of the ovary and cervix. *J Obstet Gynecol Br Commonw* 1971; 78:266–72.

107. In 1982, one of the first epidemiological studies on talcum powder and ovarian cancer was published. This study was conducted by Dr. Daniel Cramer and his colleagues at Harvard School of Public Health and Harvard Medical School. This study found a 92% increased risk in ovarian cancer with women who reported using talcum

powder. The study further found the greatest risk (an increased risk of 228%) occurred in women who regularly used talc on both the perineum and on sanitary napkins.

108. Since 1982, there have been over twenty additional epidemiologic studies providing data regarding the association of talc and ovarian cancer. Nearly all of these studies have reported an elevated risk for ovarian cancer associated with talc use in women.

2. Epidemiological Studies in the 1980s and 1990s Resulted in Public Health Professionals Calling for Warnings Regarding the Potential Risks of Regular Use of Talc.

109. Public health research in the 1980s and 1990s continued to document a causal connection between talcum powder usage and gynecological cancers. The research led public health professionals to call for warnings regarding the potential risks of regular use of talc in the genital area.

110. In 1988, for example, in a case control study of 188 women diagnosed with epithelial ovarian cancer and 539 control women, researchers at Stanford University School of Medicine found that 52% of the cancer patients habitually used talcum powder on the genital area before their cancer diagnosis. The study showed a 40% increase in risk of ovarian cancer in women that used talcum powder. *See* Whittemore AS, Wu ML, Paffenbarger RS Jr, Sarles DL, Kampert JB, Grosser S, et al. Personal and environmental characteristics related to epithelial ovarian cancer. II. Exposures to talcum powder, tobacco, alcohol, and coffee. *Am J Epidemiol* 1988; 128:1228–40.

111. In 1989, researchers at the London School of Hygiene and Tropical
Medicine studied 235 women diagnosed with epithelial ovarian cancer and 451 controls.
They reported a 100% increased risk in ovarian cancer with women who reported weekly
use of talc on the genital area. Booth M, Beral V, Smith P. Risk factors for ovarian
cancer: a case–control study. *Br J Cancer* 1989; 60:592–8.

In 1992, researchers at Harvard School of Public Health published results
from a case control study that found a statistically significant 50% increase in the risk of
ovarian cancer for women using talcum powder. Among women with perineal exposure

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to talc, the risk was significantly elevated in the subgroups of women who applied it: (1) directly as a body powder (70% increase); (2) on a daily basis (80% increased risk); and (3) for more than 10 years (60% increased risk). The greatest ovarian cancer risk associated with perineal talc use was observed in the subgroup of women estimated to have made more than 10,000 applications during years when they were ovulating and had an intact genital tract (180% increased risk). *See* Harlow BL, Cramer DW, Bell DA, Welch WR. Perineal exposure to talc and ovarian cancer risk. *Obstet Gynecol.* 1992; 80:19–26.

113. Also, in 1992, in a case-control study, researchers at the Johns Hopkins School of Public Health reported a statistically significant 70% increased risk from genital talc use and a 379% increased risk of ovarian cancer of women who used talc on sanitary napkins in their genital area. *See* Rosenblatt KA, Szklo M, Rosenshein NB. Mineral fiber exposure and the development of ovarian cancer. *Gynecol Oncol.* 1992;45:20–25.

114. In 1999, researchers at Harvard and Dartmouth-affiliated academic hospitals reported results from a case control study that found a 60% increased risk for ovarian cancer from genital exposure to talcum powder. The study concluded that there was a significant association between the use of talc in genital hygiene and the risk of ovarian cancer that warranted *formal public health warnings*:

> Balanced against what are primarily aesthetic reasons for using talc in genital hygiene, the risk benefit decision is not complex. *Appropriate warnings should be provided to women about the potential risks of regular use of talc in the genital area*.

See Cramer DW, Liberman RF, Titus-Ernstoff L, Welch WR, Greenberg ER, Baron JA, et al. Genital talc exposure and risk of ovarian cancer. *Int J Cancer* 1999;81:351–6 (emphasis added).

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3. There is Ever-growing Scientific Consensus Regarding the Carcinogenicity of Talcum Powder Usage.

115. Research in the 2000s and 2010s continued to document causal connection between talcum powder usage and gynecological cancer, and has resulted in a consensus regarding the carcinogenicity of talc.

116. In 2000, for example, researchers at University of Pennsylvania and University of Miami reported that talc use "on all areas of the body elevated ovarian cancer risk, even after adjustment for potentially important confounding factors." The study found that the risk for ovarian cancer was significantly elevated among women who applied talc on (1) feet (40% increased risk); (2) genital/rectal area (50% increased risk); (3) sanitary napkins (60% increased risk); and (4) underwear (70% increased risk). *See* Ness RB, Grisso JA, Cottreau C, Klapper J, Vergona R, Wheeler JE, et al. Factors related to inflammation of the ovarian epithelium and risk of ovarian cancer. *Epidemiology* 2000;11:111–7.

117. In 2004, researchers at the California Cancer Registry and University of California San Francisco reported a statistically significant 37% increase in risk of ovarian cancer for women who ever used talc in the genital area. Women who were frequent users of talc (4-7 times per week) had the highest increase in risk of ovarian cancer (74% increased risk). *See* Mills PK, Riordan DG, Cress RD, Young HA. Perineal talc exposure and epithelial ovarian cancer risk in the Central Valley of California. *Int J Cancer* 2004;112:458–64.

118. In 2008, researchers at the University of Southern California published results from a population-based case-control study in Los Angeles County on the role of talc use and the risk of ovarian cancer. The study reported that ovarian cancer increased significantly with increasing frequency and duration of talc use. Women with long duration (20+ years) and frequent (at least daily) talc exposure had a 108% increased risk for ovarian cancer. Women who were talc users and had a history of endometriosis showed a 212% increased risk for ovarian cancer. *See* Wu AH, Pearce CL, Tseng CC,

Templeman C, Pike MC. Markers of inflammation and risk of ovarian cancer in Los Angeles County. Int J Cancer 2009;124:1409–15.

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119. In 2011, researchers at Harvard School of Public Health published the results of a cohort study of 66,028 women on the association between talcum powder use and endometrial cancer in the Nurse's Health Study. The study found that perineal talcum powder use was associated with a statistically significant 13% increase in endometrial cancer risk among all women, and a statistically significant 21% increase in risk of endometrial cancer among postmenopausal women. See Karageorgi S, Gates MA, Hankinson SE, De Vivo I. Perineal use of talcum powder and endometrial cancer risk. Cancer Epidemiol Biomarkers Prev 2010;19:1269–1275.

In 2013, researchers across multiple academic institutions reported results 120. of a pooled study that analyzed the association between genital powder use and epithelial ovarian cancer risk in eight population-based case-control studies. The study reported that genital talcum powder use was associated with a 24% increased risk of epithelial 14 ovarian cancer relative to women who never used powder. Cancer risks were also elevated for (1) invasive serous tumors (20% increased risk); (2) endometrioid (22%) increased risk) and clear cell (24% increased risk) tumors; and (3) for borderline serous tumors (46% increased risk). See Terry KL, Karageorgi S, Shvetsov YB, et al; Australian Cancer Study (Ovarian Cancer); Australian Ovarian Cancer Study Group; Ovarian Cancer Association Consortium. Genital powder use and risk of ovarian cancer: a pooled analysis of 8525 cases and 9859 controls. Cancer Prev Res. 2013;6(8):811-821.

In 2016, researchers at Harvard School of Public Health and Harvard 121. Medical School reported results from a case-control study that found genital talc use was associated with a 33% increased risk of ovarian cancer. The published study confirmed scientific *consensus* regarding carcinogenicity of talc use:

> Multiple studies of ovarian cancer and genital talc use have led only to *consensus* about possible carcinogenicity.

See Cramer DW, Vitonis AF, Terry KL, Welch WR, Titus LJ. The association between talc use and ovarian cancer: a retrospective case-control study in two US states. Epidemiology. 2016;27(3):334-346 (emphasis added).

122. Most recently, on January 7, 2020, researchers at the National Institute of Environmental Health Sciences and multiple academic institutions reported results of a pooled study regarding the association of genital talcum powder use and ovarian cancer. The researchers calculated an 8% increase in the risk of ovarian cancer among talc users. Although this calculation did not reach statistical significance, the study reported a statistically significant 13% increase in risk of cancer among women with patent reproductive tracts (*i.e.*, having an intact uterus and no tubal ligation). For "frequent" use of powder in the genital area with patent reproductive tracts, the study reported a statistically significant 19% increase in the risk of ovarian cancer. See O'Brien KM, Tworoger SS, Harris HR, et al. Association of powder use in the genital area with risk of ovarian cancer. JAMA [published January 7, 2020].

123. Despite this scientific evidence, the Industry and Defendants herein 15 marketed talcum powder products as being safe, and they continue to conceal the health 16 risks associated with talc, including the presence of multiple carcinogens and 18 reproductive toxins in talcum powder products. Tragically, the Industry and, more specifically Defendants herein, continue to peddle their products to unsuspecting women (including pregnant women), infants, and children without providing warning that their products result in reproductive toxicity, cancer, and death.

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Following the Service of Plaintiff's Notices of Violation, Multiple Defendants Announced or Began the Process of Instituting F. Significant Business Practice Changes

Multiple Defendants have now either instituted or are actively in the 124. 24 process of instituting significant business practice changes, including removing offensive 25 products and reformulating talc-containing talcum powder products to a cornstarch 26 formula. Many of these business practice changes were announced or instituted following 27 28 service of Plaintiff's Notices of Violation and will contribute a significant public health

COMPLAINT

benefit to consumers in California and throughout the United States. The reformulation of talc-containing talcum powder products to a cornstarch formula demonstrates the feasibility of reformulation and injunctive relief.

1. Bausch Has Announced that It has Begun the Process of Reformulating "Shower to Shower" Branded Body Powder Products.

125. On November 6, 2019, approximately six months after Plaintiff served her NOV on Bausch, Bloomberg reported that Bausch had begun the process of reformulating "Shower to Shower" products to replace talc with cornstarch. The planned reformulation of "Shower to Shower" products confers a substantial public health benefit to consumers in California and throughout the country.

126. Despite Bausch beginning the process of instituting business practice changes, in the absence of an injunction issued by this Court, there is a substantial probability Proposition 65 violations will continue to occur. Notably, Bausch has sold and continues to sell offensive products even after the expiration of Plaintiff's NOV. Similarly, Bausch's website continued to advertise talc-containing "Shower to Shower" products and provided consumers links to online retailers selling talc-containing "Shower to Shower" products. There is a substantial probability that Bausch will continue the sale of talc-containing body powder products in absence of an injunction.

2. Dollar General Has Begun the Process of Reformulating its DG Branded Baby Powder Product and Instituting Business Practice Changes Related to DG Branded Body Powder Products.

127. Based on investigation of counsel, Plaintiff is informed and believes that Dollar General is in the process of implementing major business practice changes with respect to its private label talcum powder products. These changes involve its baby powder, body powder, and foot powder products identified in Plaintiff's NOV.

128. Specifically, Dollar General has initiated the process of reformulating its talc-containing DG Baby Powder by replacing talc with cornstarch. On information and belief, and based on investigation of counsel, Dollar General has pulled or is in the

process of removing "DG" branded body powder products from store shelves. These changes confer a significant benefit to consumers and, in particular, unsuspecting infants and women who otherwise have been placed at heightened risk for cancer and reproductive harm through the use body powder products.

Despite Dollar General beginning the process of instituting business 5 129. practice changes, in absence of an injunction issued by this Court, there is a substantial 6 7 probability Proposition 65 violations will continue to occur. Notably, Dollar General has 8 sold offensive products even after the expiration of Plaintiff's NOV and appears to 9 continue to sell "Rexall" branded foot products in California. Moreover, Davion, which supplies talc-containing products at issue to Dollar General, has failed to institute 10 business practice changes and continues to market talcum powder products in California through Dollar General, CVS, and Walgreens. There is substantial probability that 12 Davion and Dollar General will reinstitute the sale of all talcum powder products in the absence of an injunction. 14

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3. Sanofi, Chattem, and Walmart Concede that Gold Bond Products Contain Listed Chemicals Requiring a Proposition 65 Warning.

Based on investigation of counsel, certain "Gold Bond" branded body 130. products sold by Walmart on walmart.com now contain the following warning: **A** WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. www.p65warnings.ca.gov The above-warning is provided for Gold Bond Medicated Body Powder and can be found at https://www.walmart.com/ip/Gold-Bond-Body-Powder-Medicated-10-oz/893366. Based on investigation of counsel, the inclusion of the Proposition 65 131. Warning is limited to Gold Bond Medicated Body Powder products sold on walmart.com.

Sanofi, Sanofi US, and Chattem have yet to provide a warning for other Gold Bond

products and for products sold through retailers other than Walmart. The inclusion of a

Proposition 65 Warning for Gold Bond Medicated Body Powder products sold on 28

walmart.com further demonstrates Sanofi, Sanofi US, Chattem, and Walmart's
 knowledge regarding the presence of Proposition 65 chemicals in talcum powder
 products.

V.

TOLLING OF THE STATUTE OF LIMITATIONS

A. Continuing Violation Doctrine

132. Any applicable statute of limitation is suspended by the continuing violations doctrine. The doctrine's key issue is whether the conduct complained of constitutes a continuing pattern and course of conduct. If there is a pattern, then the suit is timely so long as the action is filed within the limitation period applicable to the most recent violation, and the entire course of conduct is at issue. *Komarova v. Nat'l Credit Acceptance, Inc.*, 175 CA4th 324, 344 (2009) (repeated telephone calls in violation of debt collection law was clearly a continuing course of conduct because the violation occurs only through repetition); *see also Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798, 823 (2001); *Jumaane v. City of L.A.*, 241 Cal.App.4th 1390, 1402 (2015).

133. The Defendants' conduct as alleged herein constitutes a continuing pattern and course of conduct that has occurred through repetition. Defendants engaged in an ongoing continuing pattern of conduct that includes repeated and continuous
(1) manufacturing, distributing, marketing, and selling of talcum powder products that contain Listed Chemicals; (2) utilizing the Industry definition and specification for talc; and (3) knowingly and intentionally failing to disclose the presence of Listed Chemicals to consumers and the general public.

B. Fraudulent Concealment

134. Defendants had a duty to warn consumers or disclose facts related to the
presence of Listed Chemicals in talcum powder products. For many years, however,
Defendants have concealed facts related to the presence of Listed Chemicals in talcum
powder products from the general public. As discussed herein, Defendants knowingly
and intentionally failed to warn consumers and to disclose certain facts that were known
only to them and that consumers and the general public could not have discovered.

135. Alternatively, Defendants disclosed some facts related to ingredients in their talcum powder products containing "talc," but intentionally failed to disclose to consumers and the general public facts related Defendants' definition of "talc" or the presence of Listed Chemicals, making the disclosure deceptive.

136. Consumers and the general public are unaware of the facts concealed by Defendants, and Defendants have intended to deceive consumers and the general public. The facts concealed by Defendants (*i.e.*, the presence of carcinogens and reproductive toxins) are of the type that would be relied upon and acted upon by consumers, the general public, and California regulators. Had the omitted information been disclosed, consumers and the general public would have reasonably behaved differently by not purchasing Defendants' talcum powder products. Similarly, California regulators would have behaved differently by taking steps to address the violations herein or requiring the removal of the products at issue from the market.

137. Defendants' conduct has caused substantial harm to consumers and the general public. Consumers and the general public have been harmed by virtue of purchasing countless talcum powder products that contain Listed Chemicals, and Defendants' conduct has caused a public health tragedy.

138. Defendants' failure to disclose has been with a profiteering motive, knowing the full disclosure would lead to significant loss in sales and the likely removal of talcum powder products from the market.

1. Defendants' Activities Were Inherently Self-Concealing.

139. Defendants concealed facts related to the presence of Listed Chemicals in talcum powder products from consumers and the general public. Such facts are not readily available to consumers and the general public. The Industry's and Defendants' conduct of hiding the presence of multiple carcinogens and reproductive toxins with the Industry definition of "talc" is the quintessential example of an activity that is inherently self-concealing.

140. Discovery of the concealed facts would require consumers and the general public to conduct significant scientific testing to determine the presence of several *undisclosed* and *unknown* carcinogens and reproductive toxins. Consumers and the general public would also be required to engage in substantial guess-work regarding the identity of the specific carcinogens and reproductive toxins at issue. The required scientific testing is cost-prohibitive and not generally available to consumers at or prior to the point of purchase.

141. As a result of the inherently self-concealing conduct of hiding the presence of multiple Listed Chemicals, consumers of ordinary ability or intelligence could not have discovered, or with reasonable diligence, could not have discovered Defendants' concealment.

2. In Addition to Engaging in Inherently Self-Concealing Conduct, Defendants Engaged in a Concerted Strategy of Providing Potentially Plausible (But Deceptive) Disclosures Regarding Ingredients in their Products.

142. As discussed more fully above, all Defendants herein disclosed the presence of "talc" as an ingredient in their talcum powder products. The disclosure of "talc" as in ingredient creates a potentially plausible (but in fact misleading) impression that the products at issue herein contain pure talc. Defendants, however, failed to disclose the term "talc" as used by the Industry is a highly manipulated and defined term that is designed to conceal the presence of multiple carcinogens and reproductive toxins in the products at issue herein.

143. Defendants failed to disclose multiple facts regarding the Industry definition of "talc" to consumers and the general public. Without limitation, such omitted facts include:

- that the term "talc" is merely defined to mean white, odorless, fine powder that is ground from naturally occurring rock ore that consists of a minimum of 90% hydrated magnesium silicate;
 - that the remaining 10% consists of "naturally associated minerals;"
- that multiple carcinogens and reproductive toxins are commonly found in talcum powder products;

that the Industry specification for talc expressly includes arsenic (up to 3) ppm) and lead (up to 20 ppm lead); and that other "naturally associated minerals" commonly found in talcum powder products commonly include hexavalent chromium. 144. Defendants intentionally failed to make a full disclosure of facts related to the Industry definition of "talc" and the presence of Listed Chemicals to consumers and the general public, making Defendants' ingredients disclosure misleading and deceptive. VI. **STATUTORY BACKGROUND** 145. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the people in November 1986. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides: No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10. An exposure to a chemical in a consumer product is "an exposure that 146. results from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer product, including consumption of a food." (27 CCR § 25600.1 (emphasis added)). 147. Proposition 65 establishes a procedure by which the State is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.) No warning need be given concerning a listed chemical until one

year after the chemical first appears on the list. (Health & Saf. Code, § 25249.10(b).)

148. Proposition 65's warning requirements apply to products that are marketed via the internet or catalogs (online or printed). (27 CCR §§ 25600.1(a), (b).) For items marketed on the internet, the website must include either the warning or a clearly-marked hyperlink using the word "WARNING" on the product display page, or by otherwise

prominently displaying the warning to the purchaser prior to completing the purchase. (27 CCR § 25600.1(a).) A warning is not prominently displayed if the purchaser must search for it in the general content of the website. *Id.* For catalogs, warnings must be clearly associated with corresponding products. (27 CCR § 25600.1(a).)

149. The California Office of Environmental Health Hazard Assessment ("OEHHA") has provided guidance on how internet retailers can comply with the internet or catalog regulations. OEHHA has clarified that online and catalog warnings must be provided even if the product is already labeled with a warning. Even out-of-state internet retailers are required to provide a separate internet warning in addition to any warning that is placed on a product.

150. To guide businesses in determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited, OEHHA has developed safe harbor levels. A business has "safe harbor" from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels. These safe harbor levels consist of No Significant Risk Levels ("NSRL") for chemicals listed as causing cancer and Maximum Allowable Dose Levels ("MADL") for chemicals listed as causing birth defects or other reproductive harm. The burden is on businesses to show that exposure levels are below NSRL and MADL levels. (Health & Saf. Code, § 25249.10(c).)

151. If there is no safe harbor level for a chemical, businesses that expose individuals to that chemical would be required to provide a Proposition 65 warning, unless the business can show that the anticipated exposure level will not pose a significant risk of cancer or reproductive harm. OEHHA has adopted regulations that provide guidance for calculating a level in the absence of a safe harbor level. The Regulations are available to businesses, including Defendants herein, at Article 7 and Article 8 of Title 27, California Code of Regulations.

27 152. Any person "violating or threatening to violate" the statute may be enjoined
28 in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To "threaten to

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violate" is defined to mean "to create a condition in which there is a substantial 1 probability that a violation will occur." (Health & Saf. Code § 25249.11(e).) In addition, 2 3 violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (Health & Saf. Code § 25249.7(b).) 4 Private parties are given authority to enforce Proposition 65 "in the public 5 153. interest" if the private party first provides written notice of a violation to the alleged 6 violator, the Attorney General, and every District Attorney in whose jurisdiction the 7 8 alleged violation occurs. If no public prosecutors commence enforcement within sixty 9 days, the private party may sue. (Health & Saf. Code, § 25249.7(d).) **DEFENDANTS' VIOLATION OF PROPOSITION 65** VII. 10 11 A. **Listed Chemicals in Talcum Powder Products** 12 1. Arsenic 13 154. Inorganic arsenic oxides are known to be reproductive toxins based on sufficient scientific evidence. See Evidence on Developmental and Reproductive Toxicity 14 of Arsenic (OEHHA, 1996), available at 15 https://oehha.ca.gov/media/downloads/proposition-65/chemicals/hid.pdf. In utero 16 exposure to inorganic arsenic has been linked to high levels and increases in mortality 17 from cancer, cardiovascular disease, and respiratory disease. See, e.g., Farzan SF, 18 19 Karagas MR, Chen Y. In utero and early life arsenic exposure in relation to long-term health and disease. Toxicol Appl Pharmacol. 2013;272:384–390, available at 20 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3783578/. 21 155. "Arsenic (inorganic oxides)" was placed on the Governor's list of 22 23 chemicals known to the State of California to cause reproductive toxicity on May 1, 1997. It is specifically identified under "developmental reproductive toxicity," which 24 means harm to the developing fetus. 25 26 2. **Hexavalent Chromium** 156. Chromium hexavalent compounds are known to be human carcinogens 27

28 based on sufficient evidence of carcinogenicity from studies in humans. Epidemiological

studies in various geographical locations have consistently reported increased risks of lung cancer associated with chromium hexavalent compounds. *See* National Toxicology Program, Chromium Hexavalent Compounds, Report on Carcinogens, Fourteenth Edition, available at

https://ntp.niehs.nih.gov/ntp/roc/content/profiles/chromiumhexavalentcompounds.pdf.

157. Chromium hexavalent compounds are *known to be reproductive toxins* based on sufficient scientific evidence. *See* Evidence on the Developmental and Reproductive Toxicity of Chromium (hexavalent compounds) (OEHHA, 2009). Infants exposed to chromium hexavalent compounds *in utero* have significantly higher risk for a group of chromosomal anomalies, elevated risk for genitourinary anomalies, endometriosis, menstrual irregularities, ovarian cysts, reproductive neoplasms, and cancers. *See*, e.g., Remy, L.L., Byers, V. & Clay, T. Reproductive outcomes after non-occupational exposure to hexavalent chromium, Willits California, 1983-2014. Environ Health 16, 18 (2017) doi:10.1186/s12940-017-0222-8, available at

https://ehjournal.biomedcentral.com/articles/10.1186/s12940-017-0222-8.

158. "Chromium (hexavalent compounds)" was placed on the Governor's list of chemicals known to the State of California to cause cancer on October 27, 1992. (Cal. Code Regs., tit. 27, § 27001(b).)

159. "Chromium (hexavalent compounds)" was placed on the Governor's list of chemicals known to the State of California to cause reproductive toxicity on December 19, 2008. It is specifically identified under three subcategories: (1) "developmental reproductive toxicity," which means harm to the developing fetus; (2) "female reproductive toxicity," which means harm to the female reproductive system, and (3) "male reproductive toxicity," which means harm to the male reproductive system. (Cal. Code Regs., tit. 27, § 27001 (c).)

3. Lead and Lead Compounds

160. Lead and lead compounds are similarly *known to be human carcinogens* based on sufficient evidence of carcinogenicity from studies in humans. Lead exposure has been associated with increased risk of lung, stomach, and urinary-bladder cancer in diverse human populations. *See* National Toxicology Program, Lead and Lead Compounds, Report on Carcinogens, Fourteenth Edition, available at https://ntp.niehs.nih.gov/ntp/roc/content/profiles/lead.pdf.

161. Lead and lead compounds are *known to be reproductive toxins* based on sufficient scientific evidence. Lead exposure is very dangerous to the female reproductive system. It can make women less fertile and can cause abnormal menstrual cycles and affect menopause. *In utero* effects in women include infertility, miscarriage, premature membrane rupture, pre-eclampsia, pregnancy hypertension, and premature delivery.

162. "Lead" was placed on the Governor's list of chemicals known to the State of California to cause reproductive toxicity on February 27, 1987. It is specifically identified under three subcategories: (1) "developmental reproductive toxicity," (2) "female reproductive toxicity," and (3), and "male reproductive toxicity." (Cal. Code Regs., tit. 27, § 12000(c).)

163. "Lead and lead compounds" were placed on the Governor's list of chemicals known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 27, § 27001(b).)

B. Defendants have Knowingly Exposed Individuals in California to Chemicals Known to the State of California to Cause Cancer or Reproductive Toxicity Without First Giving a Clear and Reasonable Warning.

164. As set forth more fully below, in the course of doing business, all Defendants have knowingly and intentionally exposed individuals in California to chemicals known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individuals within the meaning of Health and Safety Code section 25249.6.

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1. Bausch Health

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a. Bausch Health and Bausch U.S.'s Violations of Proposition 65

165. Bausch Health and Bausch U.S. are manufacturers, marketers, distributors, or sellers of talcum powder products under the "Shower to Shower" brand name. Without limitation, such "Shower to Shower" products include Shower to Shower Original Fresh, Shower to Shower Morning Fresh, Shower to Shower Sport products pictured below:



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166. Bausch Health and Bausch U.S. have authorized the distribution and sale of "Shower to Shower" products through internet and retail store outlets. "Shower to Shower" products are widely marketed and sold on both the internet and in retail stores throughout California and the United States.

167. Bausch Health operates² a website and online product catalog specifically dedicated to "Shower to Shower" products. *See*

https://www.showertoshower.com/Products. Bausch Health's "Shower to Shower" website also contains a "where to buy" page where consumers are provided with links to

² The terms and conditions page for the Shower to Shower website expressly indicate that the website is operated by Bausch Health Companies, Inc. *See* https://www.bauschhealth.com/terms ("Bausch Health Companies Inc. ... operates this website (the "Site") and may operate other websites").

purchase "Shower to Shower" products online. See

https://www.showertoshower.com/Where-to-Buy. Bausch also provides consumers with
links to the websites for various online and brick and mortar retailers (drugstore.com,
Walmart, Walgreens, Dollar General, and Kmart) where consumers may purchase
"Shower to Shower" products.

168. The "Shower to Shower" products contain Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use "Shower to Shower" products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

169. At all times material to this complaint, Bausch Health and Bausch U.S. have had knowledge that "Shower to Shower" products contain Listed Chemicals.

170. At all times material to this complaint, Bausch Health and Bausch U.S. have had knowledge that California residents purchase "Shower to Shower" products that contain Listed Chemicals.

171. At all times material to this complaint, Bausch Health and Bausch U.S. knew that the "Shower to Shower" products were sold throughout the United States and the State of California in large numbers, and they profited from such sales of such products to California consumers.

172. At all times material to this complaint, Bausch Health and Bausch U.S. have knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of Bausch Health and Bausch U.S.'s deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

173. Bausch Health and Bausch U.S. have failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Bausch Health and Bausch U.S. have failed to include clear and reasonable warnings on product labels or on their website and online product catalog.

b. Agency and Joint Operator Allegations

174. On information and belief, Bausch Health exercises control over Bausch U.S.'s marketing and sales of "Shower to Shower" talcum powder products such that Bausch U.S.'s violations set forth herein can be attributed to Bausch Health's management, personnel, policies, directives, and other controls.

175. At all relevant times, Bausch U.S. was an agent of Bausch Health and engaged in the acts alleged herein within the course and scope of such agency. On information and belief, Bausch Health ratified and/or authorized business decisions concerning the wrongful acts of Bausch U.S. related to marketing and sale of "Shower to Shower" talcum powder products.

176. Among other things, Bausch Health is the operator of the website and online product catalogs specifically dedicated to "Shower to Shower" products. The terms and conditions link on www.showertoshower.com links to the legal notice page operated by Bausch Health, which states: "Bausch Health Companies Inc. ("Bausch Health," "we," "us," or "our") operates this website (the "Site") and may operate other websites, mobile or desktop applications, and/or additional online services (together with the Site, the "Services") for your personal information and education." See www.bauschhealth.com/terms. Thus, Plaintiff is further informed and believes that Bausch Health has authorized the marketing and distributions of Shower to Shower" products.

2. **CVS Health**

177. CVS Health and CVS Pharmacy are marketers, distributors, or sellers of talcum powder products sold under the "CVS Health" brand name. Without limitation, such "CVS Health" branded talcum powder products include CVS Health Protective Powder pictured below:



178. CVS Health and CVS Pharmacy authorized the distribution and sale of "CVS Health" branded talcum powder products through internet and retail store outlets. "CVS Health" talcum powder products are widely marketed and sold on both the internet and in retail stores throughout California and the United States.

179. CVS Health and CVS Pharmacy operate a website and online product catalog specifically through which they sell "CVS Health" branded products, including CVS Health Protective Powder. See https://www.cvs.com/shop/cvs-health-protective-COMPLAINT

powder-fresh-scent-prodid-691934. CVS's website provides consumers the option to purchase CVS Health Protective Powder directly on the internet. *Id.* It also provides consumers the ability to check store availability at CVS Pharmacy retail locations throughout California and the United States. *Id.*

180. The CVS Health Protective Powder products contain Listed Chemicals:(1) chromium (hexavalent compounds); and (2) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

181. At all times material to this complaint, CVS Health and CVS Pharmacy have had knowledge that the CVS Health Protective Powder products contain Listed Chemicals.

182. At all times material to this complaint, CVS Health and CVS Pharmacy have had knowledge that California residents purchase CVS Health Protective Powder products that contain Listed Chemicals.

183. At all times material to this complaint, CVS Health and CVS Pharmacy knew that the CVS Health Protective Powder products were sold throughout the United States and the State of California in large numbers, and they profited from such sales of such products to California consumers.

184. At all times material to this complaint, CVS Health and CVS Pharmacy have knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of the CVS Health and CVS Pharmacy's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

27 185. CVS Health and CVS Pharmacy have failed to provide clear and reasonable
28 warnings that the use of the products in question in California results in exposure to

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chemicals known to the State of California to cause cancer, birth defects, and other
reproductive harm, and no such warning was provided to those individuals by any other
person. Among other things, CVS Health and CVS Pharmacy have failed to include clear
and reasonable warnings on product labels or on their website and online product catalog.

3. Dollar General

186. Dollar General, Dolgencorp, and Dolgen California are marketers, distributors, or sellers of talcum powder products sold under the "DG" and "Rexall" brand names. Without limitation, such "DG" and "Rexall" branded talcum powder products include DG Baby Powder, DG Body Shower & Bath Body Powder, DG Body Medicated Body Powder, Rexall Foot Powder, and Rexall Medicated Foot Powder. The Dollar General products are pictured below:





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187. Dollar General, Dolgencorp, and Dolgen California have authorized the distribution and sale of "DG" and "Rexall" branded talcum powder products through internet and retail store outlets. "DG" and "Rexall" branded talcum powder products are widely marketed and sold on both the internet and in retail stores throughout California and the United States.

188. Dollar General operates a website and online product catalog specifically through which it markets "DG" and "Rexall" branded talcum powder products. See, e.g., https://www.dollargeneral.com/rexall-foot-powder-medicated-10-oz.html. Dollar General provides consumers the ability to check store availability at Dollar General retail locations throughout California and the United States. Id.

189. "DG" and "Rexall" branded talcum powder products contain Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

At all times material to this complaint, Dollar General, Dolgencorp, and 190. Dolgen California have had knowledge that the "DG" and "Rexall" branded talcum powder products contain Listed Chemicals.

At all times material to this complaint, Dollar General, Dolgencorp, and 191. Dolgen California have had knowledge that California residents purchase "DG" and "Rexall" branded talcum powder products that contain Listed Chemicals.

192. At all times material to this complaint, Dollar General, Dolgencorp, and Dolgen California knew that the "DG" and "Rexall" branded talcum powder products were sold throughout the United States and the State of California in large numbers, and they profited from such sales of such products to California consumers.

193. At all times material to this complaint, Dollar General, Dolgencorp, and Dolgen California have knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is COMPLAINT

the result of the Dollar General, Dolgencorp, and Dolgen California's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

194. Dollar General, Dolgencorp, and Dolgen California have failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Dollar General, Dolgencorp, and Dolgen California have failed to include clear and reasonable warnings on product labels or on their website and online product catalog.

4. Johnson & Johnson

a. J&J and JJCI's Violations of Proposition 65

195. J&J and JJCI are manufacturers, marketers, distributors, or sellers of talccontaining Johnson's Baby Powder products pictured below:





196. J&J and JJCI have authorized the distribution and sale of Johnson's BabyPowder products through internet and retail store outlets. Johnson's Baby Powderproducts are widely marketed and sold on both the internet and in retail stores throughoutCalifornia and the United States.

197. J&J operates a website and online product catalog specifically dedicated to Johnson's Baby Powder *See* https://www.jnj.com/tag/johnsons-baby-powder. J&J uses this website to mislead consumers in California and throughout the United States by disseminating false and misleading propaganda regarding the purported safety of talc. Notably, J&J's CEO has ratified and has been personally involved in the dissemination of false and misleading propaganda, and he has included a personal video message regarding the purported safety of Johnson's Baby Powder. See https://www.jnj.com/latest-news/a-message-from-johnson-johnson-ceo-alex-gorsky-

198. JJCI also operates a website and online product catalog specifically dedicated to Johnson's Baby Powder products. *See* https://www.johnsonsbaby.com/babyproducts/johnsons-baby-powder?upcean=381370030010#find-in-store. The website also contains a "where to buy" button where consumers are directed to links to the websites for various online and brick and mortar retailers (Walmart, Target, Amazon, Walgreens, Rite Aid, CVS, and Jet) where consumers may purchase Johnson's Baby Powder products.

199. Johnson's Baby Powder products contain Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use Johnson's Baby Powder products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

200. At all times material to this complaint, J&J and JJCI have had knowledge that Johnson's Baby Powder products contain Listed Chemicals.

201. At all times material to this complaint, J&J and JJCI have had knowledge that California residents purchase Johnson's Baby Powder products that contain Listed Chemicals.

27 202. At all times material to this complaint, Johnson & Johnson and JJCI knew
28 that the Johnson's Baby Powder products were sold throughout the United States and the

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about-talc-safety.

State of California in large numbers, and they profited from such sales of such products to California consumers.

203. At all times material to this complaint, J&J and JJCI have knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of J&J and JJCI's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

204. J&J and JJCI have failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, J&J and JJCI have failed to include clear and reasonable warnings on product labels or on their website and online product catalog.

b. Agency and Joint Operator Allegations

205. On information and belief, J&J exercises control of JJCI's marketing and sales of "Johnson's Baby" talcum powder products, such that JJCI's violations set forth herein can be attributed to J&J's management, personnel, policies, directives, and other controls.

206. Additionally, JJCI is an agent of J&J and engaged in the acts alleged herein within the course and scope of such agency. On information and belief, J&J ratified and/or authorized business decisions concerning the wrongful acts of JJCI related to marketing and sale of "Johnson's Baby" talcum powder products.

207. Among other things, J&J has been a joint operator and has actively participated in the dissemination of misleading information to the general public. J&J has misleadingly represented that:

1 2	• "Talc, also known as talcum powder, is a naturally occurring mineral that is highly stable [and] chemically inert ;"
	• "grade of talc used in cosmetics is of high purity—comparable to that
3	used for pharmaceutical applications—and it's only mined from select deposits in certified locations before being milled into relatively large,
4	non-respirable-sized particles;"
5 6	• "talc is accepted as safe for use in cosmetic and personal care products."
7	See, e.g., https://www.jnj.com/our-products/5-important-facts-about-the-safety-of-talc.
8	208. Notably, J&J's Chief Executive Officer, Alex Gorsky, has been personally
9	involved in disseminating false and misleading statements certifying that "Johnson's
10	Baby" talcum powder products are safe and do not contain carcinogens:
11	• "For over one hundred years, Johnson & Johnson has known that the
12	talc in our baby powder is the purest, safest, pharmaceutical grade talc on earth;"
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14	• "Very importantly, if we believed our products were unsafe, they would be off the shelves and out of the market immediately;"
15	• "Now, as Chairman and CEO of this company, I take this personally
16 17	and very seriously Now, I want to repeat, reiterate, and reinforce. First, J&J's Baby Powder is safe and does not cause cancer."
17	See https://www.jnj.com/latest-news/a-message-from-johnson-johnson-ceo-alex-gorsky-
10	about-talc-safety.
20	209. On information and belief, and contrary to J&J's assertions, J&J and JJCI
20	have authorized the manufacturing, distribution, or sale within the State of California of
21	talcum powder products under the "Johnson's Baby" brand name that are unsafe and
22	contain multiple Listed Chemicals without first giving clear and reasonable warning.
23 24	5. Sanofi
25	a. Sanofi, Sanofi US, and Chattem's Violations of Proposition 65
26	210. Sanofi, Sanofi US, and Chattem are manufacturers, marketers, distributors,
27	or sellers of talcum powder products under the "Gold Bond" brand name. Without
28	limitation, such "Gold Bond" products include Gold Bond Medicated Original Strength
	COMPLAINT 57

Body Powder, Gold Bond Medicated Extra Strength Body Powder, Gold Bond Ultimate Men's Essential Body Powder, and Gold Bond Maximum Strength Foot Powder. The Gold Bond Products are pictured below:



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211. Sanofi, Sanofi US, and Chattem have authorized the distribution and sale of "Gold Bond" products through internet and retail store outlets. "Gold Bond" products are widely marketed and sold on both the internet and in retail stores throughout California and the United States.

212. Sanofi, Sanofi US, and Chattem operate a website and online product catalog specifically dedicated to "Gold Bond" products. *See*

https://www.goldbond.com/products/?type=powder. The product page for each individual "Gold Bond" product contains a "where to buy" button that directs consumers to a "where to buy" page that provides links to the websites for various online and brick and mortar retailers (Walmart, Walgreens, CVS, Target, drugstore.com, and Rite Aid) where consumers may purchase "Gold Bond" products. *See* https://www.goldbond.com/where-to-buy/.

213. The "Gold Bond" products contain Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds.Individuals who purchase, handle, or use "Gold Bond" products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

214. At all times material to this complaint Sanofi, Sanofi US, and Chattern have had knowledge that "Gold Bond" products contain Listed Chemicals.

215. At all times material to this complaint, Sanofi, Sanofi US, and Chattem have had knowledge that California residents purchase "Gold Bond" products that contain Listed Chemicals.

216. At all times material to this complaint, Sanofi, Sanofi US, and Chattem knew that the "Gold Bond" products were sold throughout the United States and the State of California in large numbers, and they profited from such sales of such products to California consumers.

217. At all times material to this complaint, Sanofi, Sanofi US, and Chattem
have knowingly and intentionally exposed individuals within the State of California to
Listed Chemicals. The exposure is knowing and intentional because it is the result of

Sanofi, Sanofi US, and Chattem's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

218. On information and belief, with the exception of "Gold Bond" branded talcum powder products sold on Walmart's website, Sanofi, Sanofi US, and Chattem have failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Sanofi, Sanofi US, and Chattem have failed to include clear and reasonable warnings on product labels or on their website and online product catalog.

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b. Agency and Joint Operator Allegations

219. Chattem is a subsidiary of Sanofi and has been fully owned and controlled by Sanofi since 2010. In 2010, Sanofi purchased Chattem in order to gain access to the OTC medication market in the United Sates. On information and belief, Sanofi has exerted control over some of the most important aspects of Chattem's operations, including naming of Chattem's chief executive officer and other human resources decisions.

220. Moreover, Chattem has operated under the Sanofi corporate identity since at least 2017. In fact, Sanofi appears to have renamed Chattem to Sanofi. As part of this process, Sanofi has literally ripped out the "Chattem" sign at the company's headquarters and replaced it with a new sign identifying the company as "Sanofi." Sanofi has similarly morphed its corporate identity into the Gold Bond brand by placing the "Sanofi" logo on Gold Bond's website. See https://www.goldbond.com/home/.

27 221. According to an August 2017 Chattanooga Free Press article, the head of
28 North America Consumer Health for Sanofi described unification of Chattem's and

Sanofi's corporate identities as follows: "One name. One corporate identity. That became
 the focus, and necessary." *See*

https://www.timesfreepress.com/news/business/diary/story/2017/aug/27/chattemchanges8230sanofi-new-name-align-loca/445415/.

6. Target

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222. Target and Target Brands are marketers, distributors, or sellers of talcum powder products sold under the "Up&Up" brand name. Without limitation, such "Up&Up" branded talcum powder products include Up&Up Maximum Strength Medicated Foot Powder pictured below:



223. Target and Target Brands authorized the distribution and sale of "Up&Up" branded talcum powder products through internet and retail store outlets. "Up&Up" talcum powder is widely marketed and sold on both the internet and in retail stores throughout California and the United States.

224. Target and Target Brands operate a website and online product catalog specifically through which they sell "Up&Up" branded products, including Up&Up Maximum Strength Medicated Foot Powder. *See* https://www.target.com/p/anti-itch-medicated-foot-powder-10oz-up-38-up-8482/-/A-14746105. Target's website provides consumers the option to purchase Up&Up Maximum Strength Medicated Foot Powder directly on the internet. *Id.* It also provides consumers the ability to check store availability at Target retail locations throughout California and the United States. *Id.*

225. Up&Up Maximum Strength Medicated Foot Powder products contain Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

226. At all times material to this complaint, Target and Target Brands have had knowledge that the Up&Up Maximum Strength Medicated Foot Powder contain Listed Chemicals.

227. At all times material to this complaint, Target and Target Brands have had knowledge that California residents purchase Up&Up Maximum Strength Medicated Foot Powder products that contain Listed Chemicals.

228. At all times material to this complaint, Target and Target Brands knew that the Up&Up Maximum Strength Medicated Foot Powder products were sold throughout the United States and the State of California in large numbers, and they profited from such sales of such products to California consumers.

27 229. At all times material to this complaint, Target and Target Brands have
28 knowingly and intentionally exposed individuals within the State of California to Listed

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Chemicals. The exposure is knowing and intentional because it is the result of Target and Target Brands' deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

230. Target and Target Brands have failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Target and Target Brands have failed to include clear and reasonable warnings on product labels or on their website and online product catalog.

7. Walgreens

231. Walgreens is a marketer, distributor, and seller of talcum powder products sold under the "Walgreens" and "Well Beginnings" brand names. Without limitation, such "Walgreens" and "Well Beginnings" branded talcum powder products include or have included, Walgreens Foot Powder Odor Control, Walgreens Medicated Foot Powder and Well Beginnings Baby Powder pictured below:



COMPLAINT

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232. Walgreens authorized the distribution and sale of "Walgreens" and "Well Beginnings" branded talcum powder products through internet and retail store outlets. "Walgreens" and "Well Beginnings" talcum powder products have been widely marketed and sold on both the internet and in retail stores throughout California and the United States.

233. Walgreens operates a website and online product catalog specifically through which it sells or has sold "Walgreens" and "Well Beginnings" branded products. *See* https://www.walgreens.com/store/c/walgreens-medicated-footpowder/ID=prod6067852-product. Walgreens' website, for example, previously provided consumers the option to purchase Walgreens Odor Control Foot Powder directly on the internet. Walgreens provides consumers the ability to check store availability of "Walgreens" and "Well Beginnings" products at retail locations throughout California and the United States. *See*, *e.g.*, https://www.walgreens.com/store/c/walgreensmedicated-foot-powder/ID=prod6067852-product.

234. "Walgreens" and "Well Beginnings" branded talcum powder products contain or have contained Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

235. At all times material to this complaint, Walgreens has had knowledge that "Walgreens" and "Well Beginnings" branded talcum powder products contain Listed Chemicals.

236. At all times material to this complaint, Walgreens has had knowledge that California residents purchase "Walgreens" and "Well Beginnings" branded talcum powder products that contain Listed Chemicals.

237. At all times material to this complaint, Walgreens knew that "Walgreens"and "Well Beginnings" branded talcum powder products were sold throughout the United

States and the State of California in large numbers, and it profited from such sales of such products to California consumers.

238. At all times material to this complaint, Walgreens has knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of Walgreens' deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

239. Walgreens has failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Walgreens has failed to include clear and reasonable warnings on product labels or on its website and online product catalog.

8. Walmart

240. Walmart is a marketer, distributor, and seller of talcum powder products sold under the "Equate" brand name. Without limitation, such "Equate" branded talcum powder products include or have included Equate Medicated Body Powder and Equate Soothing Foot Powder pictured below:

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241. Walmart authorized the distribution and sale of "Equate" branded talcum powder products through internet and retail store outlets. "Equate" branded talcum powder products have been widely marketed and sold on both the internet and in retail stores throughout California and the United States.

242. Walmart operates a website and online product catalog specifically through which it markets or sells "Equate" branded talcum powder products. *See*, *e.g.*, https://www.walmart.com/ip/Equate-Medicated-Body-Powder-10-oz/10532719. At all relevant times, Walmart's website provided consumers the option to purchase "Equate" branded talcum powder products directly on the internet. It also provided consumers the ability to check store availability at Walmart retail locations throughout California and the United States.

25 243. "Equate" branded talcum powder products contain or have contained Listed
26 Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and
27 (3) lead and lead compounds. Individuals who purchase, handle, or use the products are

exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

244. At all times material to this complaint, Walmart has had knowledge that "Equate" branded talcum powder products contain Listed Chemicals.

245. At all times material to this complaint, Walmart has had knowledge that California residents purchase "Equate" branded talcum powder products that contain Listed Chemicals.

246. At all times material to this complaint, Walmart knew that "Equate" branded talcum powder products were sold throughout the United States and the State of California in large numbers, and it profited from such sales of such products to California consumers.

247. At all times material to this complaint, Walmart has knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of Walmart's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

248. Walmart has failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Walmart has failed to include clear and reasonable warnings on product labels or on its website and online product catalog.

9. Davion

249. Davion is a manufacturer or supplier of private label talcum powder products to nationwide retail stores. Davion's clients include CVS, Dollar General, and

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Walgreens. Without limitation, the private talcum powder products manufactured or supplied by Davion have included:

CVS Health Protective Powder Fresh Scent;

DG Body Shower & Bath Body Powder; \cap DG Body Medicated Body Powder; Rexall Foot Powder; Rexall Medicated Foot Powder; and Walgreens Medicated Foot Powder. Ο The private label talcum powder products manufactured or supplied by 250. Davion have been widely marketed and sold on both the internet and in retail stores throughout California and the United States. 251. The private label talcum powder products manufactured or supplied by Davion contain or have contained Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products. At all times material to this complaint, Davion has had knowledge that its 252.

private label talcum powder products contain Listed Chemicals.

253. At all times material to this complaint, Davion has had knowledge that California residents purchase its private label talcum powder products that contain Listed Chemicals.

254. At all times material to this complaint, Davion knew that its private label talcum powder products were sold throughout the United States and the State of California in large numbers, and it profited from such sales of such products to California consumers.

26 255. At all times material to this complaint, Davion has knowingly and
27 intentionally exposed individuals within the State of California to Listed Chemicals. The
28 exposure is knowing and intentional because it is the result of Davion's deliberate act of

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authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

256. Davion has failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Davion has failed to include clear and reasonable warnings on the product labels of its private label talcum powder products.

10. Garcoa

257. Garcoa is a manufacturer or supplier of private label talcum powder products to nationwide retail stores. Garcoa's clients include Walgreens. Without limitation, the private talcum powder products manufactured or supplied by Garcoa have included:

• Walgreens Medicated Odor Control Foot Powder.

258. The private label talcum powder products manufactured or supplied by Garcoa have been widely marketed and sold on both the internet and in retail stores throughout California and the United States.

259. The private label talcum powder products manufactured or supplied by Garcoa contain or have contained Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

260. At all times material to this complaint, Garcoa has had knowledge that its private label talcum powder products contain Listed Chemicals.

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261. At all times material to this complaint, Garcoa has had knowledge that California residents purchase its private label talcum powder products that contain Listed Chemicals.

262. At all times material to this complaint, Garcoa knew that its private label talcum powder products were sold throughout the United States and the State of California in large numbers, and it profited from such sales of such products to California consumers.

263. At all times material to this complaint, Garcoa has knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of Garcoa's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

264. Garcoa has failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Garcoa has failed to include clear and reasonable warnings on the product labels of its private label talcum powder products.

11. Personal Care Products and Stone Arch

a. Personal Care Products and Stone Arch's Violations of Proposition 65

265. Personal Care Products is a manufacturer or supplier of private label talcum powder products to nationwide retail stores. At all relevant times, Personal Care Products has been a portfolio company of Stone Arch. Personal Care Products and related phantom business operations owned or controlled by Stone Arch import and supply talcum powder

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products to Walmart. Without limitation, the private label talcum powder products supplied by Personal Care Products have included:

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Equate Medicated Body Powder.

266. The private label talcum powder products imported or supplied by Personal Care Products and related phantom business operations owned or controlled by Stone Arch have been widely marketed or sold on both the internet and in retail stores throughout California and the United States.

267. The private label talcum powder products imported or supplied by Personal Care Products and the related phantom business operations controlled by Stone Arch contain or have contained Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

268. At all times material to this complaint, Personal Care Products and Stone Arch have had knowledge that their private label talcum powder products contain Listed Chemicals.

269. At all times material to this complaint, Personal Care Products and Stone Arch have had knowledge that California residents purchase their private label talcum powder products that contain Listed Chemicals.

270. At all times material to this complaint, Personal Care Products and Stone Arch knew that their private label talcum powder products were sold throughout the United States and the State of California in large numbers, and they profited from such sales of such products to California consumers.

24 271. At all times material to this complaint, Personal Care Products and Stone
25 Arch have knowingly and intentionally exposed individuals within the State of California
26 to Listed Chemicals. The exposure is knowing and intentional because it is the result of
27 Personal Care Products and Stone Arch's deliberate act of authorizing the import and
28 distribution of products known to contain Listed Chemicals in a manner whereby these

products would inevitably be, and were, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

272. Personal Care Products and Stone Arch have failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Personal Care Products and Stone Arch have failed to include clear and reasonable warnings on the product labels of their private label talcum powder products.

b. Agency, Joint Operator Allegations, and Alter Ego Allegations

(1) Personal Care Products' History of Failure to Comply with Corporate or Limited Liability Company Formalities

273. Personal Care Products' business dates back to 1983. Throughout its history, Personal Care Products and its predecessor companies have failed to comply with the most basic tenets of corporate formality. The current and prior controlling members of Personal Care Products have a history of operating shells or phantom companies and engaging in abusive transfers of assets and goodwill of the business to closely held and affiliated business entities.

274. Based on investigation of counsel, current and prior controlling members of Personal Care Products have engaged in a continuing pattern of abuse of corporate formalities. The abusive pattern has involved the (1) the registration of a shell business operation; (2) transferring assets and goodwill of the business to a new entity; and (3) shutting down prior operations.³

³ Based on investigation of counsel, such entities involved in the chain of business include: (1) American Household Products, Inc.; (2) Personal Care Products, Inc.; (3) Personal Care Products, LLC; (4) GL 360, LLC; and (5) Greenlite 360, LLC.

275. As discussed in more detail below, since late 2017, Stone Arch – the current majority and controlling member of Personal Care Products – has operated the company as a mere instrumentality, while conducting business through shell businesses identified as "GL 360, LLC" and "Greenlite 360, LLC." Based on investigation of counsel, "GL 360, LLC" and "Greenlite 360, LLC" were never formally registered as limited liability companies in any of the fifty states.

276. Most recently, following Plaintiff's service of her Notice of Violation ("NOV") on Walmart and Personal Care Products, the controlling member of Personal Care Products has continued to engage in a pattern of conduct that fails to comply with basic corporate formalities. This failure has manifested itself through an orchestrated shutdown of Personal Care Products.

277. On September 26, 2019, counsel for Personal Care Products sent an email to counsel for Walmart and counsel for Plaintiff indicating that his client would go out of business the next day and would no longer "participate" in the matter. The email provides in pertinent part:

I wish to inform you and all the other counsel that my client *Personal Care products will be closing their business tomorrow* and will no longer be involved in this matter for their company or to participate in this matter with Walmart. Please remove our firm from your circulation list.

278. Despite counsel's representation that Personal Care Products would go out of business on September 27, 2019, Personal Care Products has been unable to provide a certificate of cancellation or similar secretary of state filing that reflects that the company has been formally cancelled or dissolved. As of the filing of this Complaint, Personal Care Products and affiliated phantom entities continue to remain in business.

279. On information and belief, and based on investigation of counsel, the controlling owners have taken steps to or plan to conduct Personal Care Products' business through shell entities or phantom companies that have yet to be registered.

280. More disturbingly, Plaintiff is also informed and believes that Personal Care Products and Stone Arch have knowingly failed to institute a litigation hold and do not plan to retain documents.

> (2) Stone Arch's Control and Operation of Phantom Business Entities

281. Stone Arch is a joint operator of Personal Care Products and other related businesses. Since approximately December 2017, Stone Arch has operated or allowed the operation of phantom companies. Stone Arch has specifically operated or allowed the operation of phantom companies for importing talcum powder products and various "Equate" branded personal care products sold by Walmart.

282. Prior to December 2017, Stone Arch's website specifically identified "Personal Care Products, LLC" as a portfolio company and described the business as follows:

15	Personal Care Products, LLC
14	Personal Care Products, LLC ("PCP" or the "Company"),
15	headquartered in Bingham Farms, MI, is a leading supplier of
16	value branded and private label health, beauty and household care products. The Company provides a broad portfolio of
17	over 350 products across four categories: 1) health and beauty products, which include hand sanitizers, shampoos &
18	conditioners, shave & hair removal, lotions & creams, soaps
19	and deodorants sold under the "Personal Care Products" brand, 2) household cleaning products, which include air
20	fresheners, aerosol cleaners, liquid cleaners, and carpet care, dish care and toilet care products sold under the
21	"Powerhouse" brand, 3) cooking sprays sold under the
22	"Healthy Way" brand, and 4) select private label products. The Company sells its products to dollar store retailers,
23	discount chains, supermarkets, drug wholesalers, and convenience stores throughout North America.
24	For more complete information, please visit the Company's
25	website at www.personalcareproducts.org.
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1	283. In or about December 2017 or January 2018, Stone Arch suddenly and			
2	inexplicably removed references to "Personal Care Products, LLC" from its website and			
3	began identifying "Greenlite 360, LLC" as a portfolio company. Stone Arch's website			
4	described the "Greenlite 360, LLC" business as follows:			
5	Greenlite 360, LLC			
6	Greenlite 360, LLC ("GL360" or the "Company"),			
7	headquartered in Troy, Michigan and was founded in 1983.			
8	Greenlite 360 is a leading supplier of private label and branded solutions within the health & beauty and household			
9	products segments. The company strives to provide naturally inspired product solutions by blending a touch of nature in all			
10	that we do. Greenlite 360 offers a broad range of core			
11	consumer products including skin care, hand soap, body wash, hand sanitizers, air care, and household cleaning.			
12	Greenlite 360 maintains a strong commitment to providing high quality product experiences at affordable prices. Our			
13	focus on continuous development and the introduction of new			
14	products and programs ensures that Greenlite 360 offers the most comprehensive product line while helping our retail			
15	partners grow their sales and profits.			
16	For more complete information, please visit the Company's			
17	website at http://www.gl360.com/.			
18	284. Plaintiff is informed and believes that Stone Arch has used its "Greenlite			
19	360, LLC" portfolio company as a vehicle to import talcum powder and "Equate"			
20	branded personal care products.			
21	285. In addition to the foregoing, since approximately December 2017, Stone			
22	Arch has operated or allowed Personal Care Products to operate as "GL 360, LLC."			
23	Plaintiff is informed and believes that Stone Arch has also used or allowed the use of the			
24	"GL 360, LLC" business entity as a vehicle to import talcum powder and "Equate"			
25	branded personal care products.			
26	286. Both "Greenlite 360, LLC" and "GL 360, LLC" are phantom companies			
27	that do not exist. Based on investigation of counsel, neither "GL 360, LLC" nor "GL 360,			
28	LLC" has been registered as a limited liability company in any of the fifty states.			
	COMPLAINT 76			

1	287. Because Stone Arch has operated or allowed the operation of phantom			
2	companies to import talcum powder and "Equate" branded personal care products for			
3	Walmart, Stone Arch is directly liable in this action. Stone Arch is not entitled to the			
4	protections of corporate or limited liability company shields.			
5	(3) Stone Arch's Failure to Comply with Corporate or Limited Liability Company Formalities			
6	288. In addition to the foregoing, Stone Arch has failed to comply with			
7	corporate formalities. As set forth in more detail below, Stone Arch's failures in this			
8 9	regard include, but are not limited to:			
9 10	• Making a substantial investment in Personal Care Products and subsequently allowing its prior owner to convert Personal Care Products into a neuronal holding component.			
11	into a personal holding company;			
12 13	• Operating or permitting the operation of Personal Care Products as a mere instrumentality;			
14	 Permitting business operations through shell businesses identified as "GL 360, LLC" and "Greenlite 360, LLC." 			
15 16	• Holding out "Greenlite 360, LLC" as a portfolio company;			
17 18	 Importing or permitting the import of talcum powder and "Equate" branded personal care products through "Greenlite 360, LLC;" 			
19 20	 In the months prior to the threatened shutdown of Personal Care Products, allowing the import of a significant amount of talc through "GL 360, LLC," so as to allow for continued operations; 			
21	• Threatening to shut down Personal Care Products following Plaintiff's			
22	service of NOVs at issue herein; and			
23	• Taking steps or allowing the key employees of Personal Care Products			
24 25	to take steps for continued business operations following the shutdown of Personal Care Products.			
26	289. In addition, Plaintiff is informed and believes that Stone Arch has taken			
27	steps to or has allowed the key employees of Personal Care Products to take steps to			
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	COMPLAINT 77			

allow continued business operation as "Greenlite 360, LLC" or a future company to be determined by Stone Arch.

12. Premier Brands

290. Premier Brands is a manufacturer or supplier of private label talcum powder products to nationwide retail stores. Premier Brands' clients include Target and Walmart. Without limitation, the private talcum powder products manufactured or supplied by Premier Brands have included:

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• Equate Soothing Foot Powder; and

Up&Up Maximum Strength Medicated Foot Powder.

291. The private label talcum powder products manufactured or supplied by Premier Brands have been widely marketed and sold on both the internet and in retail stores throughout California and the United States.

292. The private label talcum powder products manufactured or supplied by Premier Brands contain or have contained Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

293. At all times material to this complaint, Premier Brands has had knowledge that its private label talcum powder products contain Listed Chemicals.

294. At all times material to this complaint, Premier Brands has had knowledge that California residents purchase its private label talcum powder products that contain Listed Chemicals.

295. At all times material to this complaint, Premier Brands knew that its private label talcum powder products were sold throughout the United States and the State of California in large numbers, and it profited from such sales of such products to California consumers.

27 296. At all times material to this complaint, Premier Brands has knowingly and
28 intentionally exposed individuals within the State of California to Listed Chemicals. The

exposure is knowing and intentional because it is the result of Premier Brands' deliberate
act of authorizing the distribution and sale of products known to contain Listed
Chemicals in a manner whereby these products were, and would inevitably be, sold to
California residents, and with the knowledge that the intended use of these products will
foreseeably result in California consumers being exposed to Listed Chemicals.

297. Premier Brands has failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, Premier Brands has failed to include clear and reasonable warnings on the product labels of its private label talcum powder products.

13. Thornton Industries

298. Thornton is a manufacturer or supplier of private label talcum powder products to nationwide retail stores. Thornton's clients include Dollar General. Without limitation, the private talcum powder products manufactured or supplied by Thornton have included:

o DG Baby Powder.

299. The private label talcum powder products manufactured or supplied by Thornton have been widely marketed and sold on both the internet and in retail stores throughout California and the United States.

300. The private label talcum powder products manufactured or supplied by Thornton contain or have contained Listed Chemicals: (1) arsenic (inorganic oxides); (2) chromium (hexavalent compounds); and (3) lead and lead compounds. Individuals who purchase, handle, or use the products are exposed to Listed Chemicals in the course of the intended and reasonably foreseeable use of the products.

301. At all times material to this complaint, Thornton has had knowledge that its private label talcum powder products contain Listed Chemicals.

At all times material to this complaint, Thornton has had knowledge that 302. California residents purchase its private label talcum powder products that contain Listed Chemicals.

303. At all times material to this complaint, Thornton knew that its private label talcum powder products were sold throughout the United States and the State of California in large numbers, and it profited from such sales of such products to California consumers.

304. At all times material to this complaint, Thornton has knowingly and intentionally exposed individuals within the State of California to Listed Chemicals. The exposure is knowing and intentional because it is the result of Thornton's deliberate act of authorizing the distribution and sale of products known to contain Listed Chemicals in a manner whereby these products were, and would inevitably be, sold to California residents, and with the knowledge that the intended use of these products will foreseeably result in California consumers being exposed to Listed Chemicals.

305. Thornton has failed to provide clear and reasonable warnings that the use of the products in question in California results in exposure to chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those individuals by any other person. Among other things, 18 Thornton has failed to include clear and reasonable warnings on the product labels of its private label talcum powder products.

VIII. CAUSES OF ACTION

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FIRST CAUSE OF ACTION

(Violation of Proposition 65)

(Against All Defendants)

306. Plaintiff incorporates the foregoing paragraphs by reference as though set forth fully herein.

By committing the acts alleged above, Defendants have, in the course of 307. 27 28 doing business, knowingly and intentionally exposed individuals in California to

chemicals known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warnings to such individuals within the meaning of Health and Safety Code section 25249.6.

308. Plaintiff has complied with the procedural pre-requisites of Health and Safety Code section 25249.7(d). This action is commenced more than 60 days from the date that Plaintiff gave notice of alleged violations of Section 25249.6 that are the subject of this private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violations are alleged to have occurred, and to Defendants.

309. On information and belief, neither the Attorney General, any district 10 attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violations at issue herein.

310. Defendants' violations render them liable to Plaintiff for civil penalties not to exceed \$2,500 per day for each violation, as well as other remedies.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION

(Injunctive Relief)

(Against All Defendants)

311. Plaintiff incorporates the foregoing paragraphs by reference as though set forth fully herein.

312. Defendants' business acts and practices have caused substantial ongoing harm to Plaintiff, California consumers, and the general public. All of the wrongful conduct alleged herein continues to occur in the context of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that will continue to be perpetuated unless enjoined by this Court.

313. By committing the acts alleged in this Complaint, Defendants have caused 26 or threaten to cause irreparable harm to California consumers and the general public for 27 28 which there is no plain, speedy, or adequate remedy at law. Defendants' wrongful

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conduct is part of a pattern or generalized course of conduct that will continue or threatens to continue unless enjoined by this Court.

314. In the absence of equitable relief, Defendants will continue to create a substantial risk of irreparable injury to California consumers and the general public by continuing to cause or threatening to cause consumers, women, and babies to be involuntarily and unwittingly exposed to the Listed Chemicals through the use and/or handling of the talcum powder products at issue.

315. Plaintiff seeks preliminary injunctions, permanent injunctions, or other orders mandating that Defendants reformulate their talcum powder products to replace talc with an ingredient that does not contain Listed Chemicals (*e.g.*, cornstarch) or to otherwise remove Listed Chemicals from their talcum powder products, as Plaintiff shall specify in further application to the Court.

316. In the alternative, Plaintiff seeks injunctive relief, including preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed Chemicals caused by the use of their products without providing clear and reasonable warnings, as Plaintiff shall specify in further application to the court.

WHEREFORE, Plaintiff prays for relief as set forth below.

IX.

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<u>PRAYER FOR REL</u>IEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

Civil penalties not to exceed \$2,500 per day for each violation;

2. Pursuant to Health and Safety Code section 25249.7, such temporary injunctions, preliminary injunctions, permanent injunctions, or other orders, as Plaintiffs shall specify in further application to the court;

- Costs of the proceedings herein;

4. Reasonable attorneys' fees as permitted by law, and pursuant to Code of
Civil Procedure section 1021.5 and Health and Safety Code section 25249.7; and

- All other and further relief as the Court deems just and proper.

1		Respectfully submitted,
2	Dated: January 29, 2020	ABTAHI LAW GROUP LLC
3		M: Att
4		ALI ABTAHI
5		Ali Abtahi (State Bar No. 224688)
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8		Tel: (312) 883-8800
9 10		Crystal Foley (State Bar No. 224627) cfoley@simmonsfirm.com SIMMONS HANLY CONROY LLC 100 N. Pacific Coast Highway Suite 1350
11		El Segundo, CA 90245 Tel: (310) 322-3555
12		Trent B. Miracle (pro hac pending)
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14 15		One Court Street Alton, IL 62002 Tel: (618) 259-2222
15		Mitchell M. Breit (pro hac pending)
17		mbreit@simmonsfirm.com SIMMONS HANLY CONROY LLC 112 Madison Avenue, 7th floor
18		New York, NY 10016-7416 Tel: (212) 213-5948
19		James L. Ward, Jr. (pro hac pending)
20		jward@mcgowanhood.com MCGOWAN, HOOD & FELDER, LLC 321 Wingo Way Suite 103
21		321 Wingo Way Suite 103 Mt. Pleasant, SC 29464 Tel: (843) 388-7202
22		Attorneys for Plaintiff
23		Jan Graham
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25 26		
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	COMPLAINT	

1	DEMAND FOR JURY TRIAL		
2	Plaintiff hereby demands	a trial by jury on all issues so triable.	
3		Respectfully submitted,	
4	Dated: January 29, 2020	ABTAHI LAW GROUP LLC	
5 6		di altati	
7			
, 8 9		Ali Abtahi (State Bar No. 224688) ali.abtahi@abtahilaw.com ABTAHI LAW GROUP LLC 200 W Madison St Suite 2100	
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15 16		SIMMONS HANLY CONROY LLC One Court Street Alton, IL 62002	
17		Tel: (618) 259-2222	
18 19		Mitchell M. Breit (<i>pro hac pending</i>) mbreit@simmonsfirm.com SIMMONS HANLY CONROY LLC	
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23 24		321 Wingo Way Suite 103 Mt. Pleasant, SC 29464 Tel: (843) 388-7202	
24 25		Attorneys for Plaintiff Jan Graham	
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	COMPLAINT		