

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MARCY LOKIETZ, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

JOHNSON & JOHNSON CONSUMER,
INC., JOHNSON & JOHNSON and
NEUTROGENA CORPORATION

Defendants.

CASE NO.:

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Marcy Lokietz, on behalf of herself and all others similarly situated, brings this class action against Defendants, Johnson & Johnson Consumer, Inc., Johnson & Johnson, and Neutrogena Corporation (collectively, “J&J” or “Defendants”), and alleges on personal knowledge, investigation of her counsel, and on information and belief as follows:

INTRODUCTION

1. This is a nationwide class action brought by Plaintiff on behalf of herself and other similarly situated consumers (hereinafter “Class Members”) who purchased certain sunscreen products manufactured, marketed, distributed, and sold by Defendants under the brand names “Aveeno” and “Neutrogena” including, but not limited to, the following products (hereinafter collectively the “Products”):

- Neutrogena Beach Defense Oil-Free Body Sunscreen Spray – SPF 30;
- Neutrogena Beach Defense Oil-Free Body Sunscreen Spray – SPF 50;

- Neutrogena Beach Defense Oil-Free Body Sunscreen Spray – SPF 70;
- Neutrogena Beach Defense Oil-Free Body Sunscreen Spray – SPF 100;
- Neutrogena Beach Defense Water + Sun Protect – SPF 30;
- Neutrogena Beach Defense Water + Sun Protect – SPF 50;
- Neutrogena Beach Defense Water + Sun Protect – SPF 60;
- Neutrogena Beach Defense Water + Sun Protect – SPF 70;
- Neutrogena Cool Dry Sport Water-Resistant Sunscreen Spray – SPF 30;
- Neutrogena Cool Dry Sport Water-Resistant Sunscreen Spray – SPF 50;
- Neutrogena Cool Dry Sport Water-Resistant Sunscreen Spray – SPF 70;
- Neutrogena Cool Dry Sport Water-Resistant Sunscreen Spray – SPF 100;
- Neutrogena Invisible Daily Defense Sunscreen – SPF 50;
- Neutrogena Invisible Daily Defense Sunscreen – SPF 60;
- Neutrogena Ultra Sheer Sunscreen Spray – SPF 30;
- Neutrogena Ultra Sheer Sunscreen Spray – SPF 45;
- Neutrogena Ultra Sheer Sunscreen Spray – SPF 70;
- Neutrogena Ultra Sheer Sunscreen Spray – SPF 100;
- Neutrogena Sheer Zinc Dry-Touch Face Sunscreen Lotion – SPF 50;
- Aveeno Protect + Refresh Sunscreen – SPF 60; and
- Aveeno Baby Continuous Protection Sensitive Sunscreen Lotion, Broad Spectrum-SPF 50.

2. Defendants manufacture, sell, market, and distribute several over-the-counter Sunscreen Products under the brand name "Neutrogena." Several of Defendants' Neutrogena sunscreen products (identified above) have been independently tested and shown to be

adulterated with Benzene, a known human carcinogen. The presence of Benzene in Defendants' Neutrogena Sunscreen Products was not disclosed in the products' label, in violation of state and federal law.

3. Defendants' advertising and marketing campaign, however, is false, fraudulent, deceptive, and misleading. Unbeknownst to Plaintiff and members of the Classes at the time of their purchase, and contrary to the express representations on the Products' labels, these Products contain dangerously high levels of Benzene, a carcinogenic impurity that has been linked to leukemia and other cancers.

4. As a result of Defendants' unlawful and highly deceptive conduct, Plaintiff and members of the Classes have been and continue to be harmed by purchasing a product under false pretenses. Furthermore, Plaintiff and members of the Classes paid a premium for the Products based on the misrepresentation made by Defendants that the Products were safe and effective and were not adulterated with Benzene. Accordingly, Plaintiff and members of the Classes paid more for the Products than they otherwise would have, if at all, and suffered an injury in the amount of the premium paid.

5. Plaintiff and the Classes bring claims for consumer fraud, fraudulent concealment, and unjust enrichment and seek damages, injunctive and declaratory relief, interest, costs, and reasonable attorneys' fees.

PARTIES

6. Plaintiff Marcy Lokietz is and was at all times relevant to this matter a resident of the state of Florida in Palm Beach County. Ms. Lokietz purchased Defendants' Neutrogena Beach Defense Water + Sun Protection Spray Body Sunscreen SPF 70 during the relevant class period. Ms. Lokietz made this purchase in-store at a brick-and-mortar such as Target,

Walgreens, Rite Aid, or CVS. Upon information and belief, Ms. Lokietz' most recent purchase was of a bottle of the Product that was part of a batch found by Valisure to contain Benzene in excess of the FDA limit. When purchasing the Product, Ms. Lokietz reviewed the accompanying labels and disclosures, and understood them as representations and warranties by the manufacturer, distributor, and pharmacy that the Product was properly manufactured, free from defects, and safe for its intended use. During that time, based on the false and misleading claims by Defendants, Ms. Lokietz was unaware that Defendants' Product may be adulterated with Benzene. Ms. Lokietz purchased Defendants' Product on the assumption that the labeling of Defendants' Product was accurate, and that the product was unadulterated, safe, and effective. Ms. Lokietz relied on these representations and warranties in deciding to purchase the Product manufactured by Defendants, and these representations and warranties were part of the basis of the bargain, in that she would not have purchased the Product from Defendants if she had known that it was not, in fact, properly manufactured and free from defects, and that there was a risk the product may contain Benzene, a known human carcinogen. As a result, Plaintiff suffered injury in fact when she spent money to purchase a product, she would not otherwise have purchased absent Defendants' misconduct, as alleged.

7. Defendant Johnson & Johnson Consumer, Inc. is a Delaware corporation with its principal place of business in New Jersey. At all times material to this action, Johnson & Johnson Consumer, Inc. has been engaged in the manufacture, sale, marketing, and/or distribution of adulterated and/or misbranded Sunscreen Products in the United States, including but not limited to Florida and New Jersey.

8. Defendant Johnson & Johnson is a New Jersey Corporation with its principal place of business in New Jersey. Defendant Johnson & Johnson is the parent corporation of

Johnson & Johnson Consumer, Inc. and through its subsidiary has been engaged in the manufacture, sale, marketing, and/or distribution of adulterated and/or misbranded Sunscreen Products in the United States, including but not limited to Florida and New Jersey.

9. Upon information and belief, Neutrogena Corporation is a wholly owned subsidiary of Defendant Johnson & Johnson Consumer, Inc. and has its principal place of business in California.

10. Johnson & Johnson Consumer, Inc., Johnson & Johnson, and Neutrogena Corp., are collectively referred to throughout this complaint as “J&J” and “Defendants”.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more putative Class Members, (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one Plaintiff and Defendants are citizens of different states. This Court has supplemental jurisdiction over Plaintiff’ state law claims pursuant to 28 U.S.C. § 1367.

12. This Court has personal jurisdiction over this action because Defendant J&J is headquartered in this District, regularly conducts business in this District, and/or under the streamof commerce doctrine by causing its products to be disseminated in this District; and therefore, is subject to general jurisdiction in the state of New Jersey.

13. Pursuant to 28 U.S.C. § 1391(a), venue is proper because a substantial part of the events giving rise to the claims asserted occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant J&J is headquartered in this District and conducts substantial business in this District.

FACTUAL ALLEGATIONS

14. In 2020, Valisure LLC and ValisureRX LLC ("Valisure"), an analytical pharmacy, ran tests on a variety of Defendants' Sunscreen Products listed above using a sophisticated gas chromatography flame ionization test modified to follow FDA guidance for impurities detection. Specifically, Valisure tested numerous lots of Defendants' spray and lotion Sunscreen Products. Through its testing, Valisure discovered that certain of the Sunscreen Products contain Benzene, with values ranging from less than 0.1 parts per million ("ppm"), 0.10 ppm to 2 ppm, and more than 2 ppm. For reference, the National Institute for Occupational Safety and Health ("NIOSH") recommends protective equipment be worn by workers expecting to be exposed to Benzene at concentrations of 0.1 ppm and defines "skin absorption" as an exposure route. Notably, Benzene is not listed as an active or inactive ingredient on any of the labels of Neutrogena's Sunscreen Products. Moreover, all of the Sunscreen Products are marketed and advertised in an identical manner - as "Sunscreen."

15. On May 25, 2021, Valisure filed a citizen's petition with the FDA after finding that the Products tested well above the EPA limit for Benzene. Valisure's petition sought a recall of the Products.¹

16. All of Defendant's listed products were found to contain quantities of Benzene in excess of the "FDA concentration limit of 2 parts per million (ppm)."²

¹ Valisure, Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care products, May 24, 2021, <https://www.valisure.com/blog/valisure-news/valisure-detects-Benzene-in-sunscreen/>.

² *Id.* at 12.

Brand Name	Type	Description	SPF	UPC	Lot	Exp.	Active Pharmaceutical Ingredient(s)	Benzene Avg ppm	% St Dev
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	100+	086800100416	04820E04	2022-01	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	6.26 6.77*	7%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	70	086800100409	07020E01	2023-02	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 4%, Oxybenzone 6%	5.96	7%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	70	086800100409	06920E01	2023-02	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 4%, Oxybenzone 6%	5.76	5%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	70	086800100409	02320E01	2022-12	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 4%, Oxybenzone 6%	5.30	2%
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	100	086800101444	04721E02	2023-01	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	5.20 5.59*	5%
Neutrogena	Spray	Invisible Daily Defense Body Sunscreen Broad Spectrum SPF 60+	60+	086800111542	04921E01	2024-01	Avobenzone 3%, Homosalate 10%, Octisalate 5%, Octocrylene 10%	4.65 5.27*	4%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	100+	086800100416	03120E02	2021-12	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	4.11 6.00**	15%
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	100	086800101444	28020E01	2022-09	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	4.01 4.00*	4%
Neutrogena	Spray	Beach Defense Spray Body Sunscreen SPF 50	50	086800112549	25520E01	2023-08	Avobenzone 3%, Homosalate 10%, Octisalate 5%, Octocrylene 10%	3.52 3.71*	3%
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	100	086800101444	31420E04	2022-10	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	3.08 2.64*	2%

17. Valisure's petition also indicated that the presence of Benzene in the Sunscreen Products appeared to be the result of contamination, or a defect in the manufacturing process, which rendered the Sunscreen Products "unacceptable."³

18. Nevertheless, Benzene is not one of the listed ingredients on the Products' labels. For example, the labels for Defendants' Neutrogena Beach Defense Oil-Free Body Sunscreen Spray - SPF 100 does not indicate to consumers that the Products may contain Benzene as an ingredient:

³National Cancer Institute, Cancer-Causing Substances, Benzene. <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/Benzene> (last accessed August 24,2021).



19. This recent independent scientific testing revealing that the Products contain dangerous and unacceptable levels of Benzene, was confirmed by J&J through its nationwide recall.

20. Benzene is classified as a human carcinogen, a substance that could potentially cause cancer depending on the level and extent of exposure. Benzene can be absorbed, to varying degrees, by inhalation, through the skin, and orally. The Department of Health and Human Services has determined that Benzene causes cancer in humans. Likewise, the Food and Drug Administration (“FDA”) lists Benzene as a “Class 1 solvent” that “should not be employed in the manufacture of drug substances, excipients, and drug products because of [its] unacceptable toxicity.” Benzene is associated with blood cancers such as leukemia.⁴

21. Plaintiff purchased one of the Products because of J&J’s uniform false representation that the Products can be used safely used. Undisclosed by Defendants to Plaintiff and Class Members and therefore unknown to Plaintiff and Class Members, the Products contain Benzene and as such, the Products are rendered dangerous and unsafe for sale as over-the-counter sunscreen products.

22. Defendants failed to properly warn consumers of the risks and dangers attendant to the use of Benzene in their sunscreen products – even well after Defendants knew or should have known of the Products’ hazards. Defendants continued to conceal the dangers of the Products until they issued a full recall of the Products.

23. Defendants’ uniform acts and omissions in connection with the development, marketing, sale, and delivery of the Products violate the consumer protection laws of the states

⁴ National Cancer Institute, Cancer-Causing Substances, Benzene. <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/Benzene>.

of residence of Plaintiff and other members of the Class, and unjust enrichment by the Defendants.

24. Nowhere on the Products' package labeling or on Defendants' websites or other marketing materials did Defendants disclose to Plaintiff and members of the Class that the Products contained Benzene. Accordingly, Defendants misled and deceived the public, and placed their customers in harm's way, all for the sake of increased profits.

25. U.S. consumers reasonably expect that their sunscreen products will not contain harmful substances like Benzene.

26. Further, consumers reasonably expect that if Defendants, the company primarily responsible for developing, manufacturing, marketing, and distributing the Products, knew that the Products would or could cause cancer, Defendants would make a disclosure to consumers.

27. Defendants' manufacture, advertise, market, distribute and sell the Products throughout the United States, and in Florida.

28. However, Defendants knew, but failed to disclose to Plaintiff and the Class the danger of the Products.

29. Defendants failed to properly warn consumers of the risks and dangers attendant to the use of such a strong human toxicant on their body – even well after Defendants knew or should have known of its hazards.

30. As a result of Defendants' misconduct and misrepresentations, Plaintiff and putative Class Members have suffered injury in fact, including economic damages.

31. Plaintiff brings this suit to halt the unlawful sales and marketing of the Products

by Defendants and for damages sustained as a result. Given the massive quantities of the Products sold all over the country, this class action is the proper vehicle for addressing Defendants' misconduct and for attaining needed relief for those affected.

Defendants' Marketing and Sale of the Products Violates Federal Law

32. Section 5(a) of the Federal Trade Commission ("FTC") Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

33. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

34. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the Products are either "foods" or "drugs" as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c). Under these provisions, companies must have a reasonable basis for making objective product claims.

35. As alleged herein, Defendants have represented that the ingredients in its sunscreen Products are safe and effective and are not adulterated with Benzene. However, these representations are false, deceptive, and misleading as the Products contain dangerous levels of Benzene. The making of such misrepresentations by Defendants constitute a deceptive act or practice and the making of false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action on behalf of herself and the following Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3). Specifically, the Classes are defined as:

National Class: All persons in the United States who purchased the Products.

Florida Class: All persons in the State of Florida who purchased the Products.

37. Excluded from the Classes are (a) any person who purchased the Products for resale and not for personal or household use, (b) any person who signed a release of any Defendants in exchange for consideration, (c) any officers, directors or employees, or immediate family members of the officers, directors or employees, of any Defendants or any entity in which a Defendant has a controlling interest, (d) any legal counsel or employee of legal counsel for any Defendants, and (e) the presiding Judge in this lawsuit, as well as the Judge's staff and their immediate family members.

38. Plaintiff reserves the right to amend the definition of the Classes if discovery or further investigation reveals that the Classes should be expanded or otherwise modified.

39. Numerosity – Federal Rule of Civil Procedure 23(a)(1). Class Members are so numerous and geographically dispersed that joinder of all Class Members is impracticable. While the exact number of Class Members remains unknown at this time, upon information and belief, there are thousands, if not hundreds of thousands, of putative Class Members. Moreover, the number of members of the Classes may be ascertained from Defendants' books and records.

Class Members may be notified of the pendency of this action by mail and/or electronic mail, which can be supplemented if deemed necessary or appropriate by the Court with published notice.

40. Predominance of Common Questions of Law and Fact – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3). Common questions of law and fact exist as to all Class Members and predominate over any questions affecting only individual Class Members. These common legal and factual questions include, but are limited to, the following:

- a. whether the Sunscreen Products manufactured by Defendants contain dangerously high levels of Benzene, thereby breaching the express and implied warranties made by Defendants and making the Sunscreen Products unfit for human use and therefore unfit for its intended purpose;
- b. whether Defendants knew or should have known the Sunscreen Products contained elevated levels of Benzene prior to selling them, thereby constituting fraud and/or fraudulent concealment;
- c. Whether Defendants failed to appropriately warn Class Members of the damage that could result from use of the Products;
- d. Whether Defendants had actual or imputed knowledge of the defect but did not disclose it to Plaintiff and the Classes;
- e. Whether Defendants promoted the Products with false and misleading statements of fact and material omissions;
- f. Whether Defendants' marketing, advertising, packaging, labeling, and/or other promotional materials for the Products are deceptive, unfair or misleading;
- g. Whether Defendants' actions violate the State consumer fraud statutes invoked below;
- h. Whether Defendants' acts, omissions or misrepresentations of material facts constitute fraud;
- i. Whether Defendants' acts, omissions or misrepresentations of material facts constitute a breach of contract or common law warranty;

- j. Whether Plaintiff and putative members of the Classes have suffered an ascertainable loss of monies or property or other value as a result of Defendants' acts, omissions or misrepresentations of material facts;
- k. Whether Defendants were unjustly enriched at the expense of Plaintiff and members of the putative Classes in connection with the Products;
- l. Whether Plaintiff and members of the putative Classes are entitled to monetary damages and, if so, the nature of such relief; and
- m. Whether Plaintiff and members of the putative Classes are entitled to equitable, declaratory, or injunctive relief and, if so, the nature of such relief.

41. Pursuant to Rule 23(b)(2), Defendants have acted or refused to act on grounds generally applicable to the putative Classes, thereby making final injunctive or corresponding declaratory relief appropriate with respect to the putative Classes as a whole. In particular, Defendants have manufactured, marketed, advertised, distributed and sold Products that are deceptively misrepresented as not containing Benzene.

42. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of those of the absent Class Members in that Plaintiff and the Class Members each purchased and used the Products and each sustained damages arising from Defendants' wrongful conduct, as alleged more fully herein. Plaintiff shares the aforementioned facts and legal claims or questions with putative members of the Classes, and Plaintiff and all members of the putative Classes have been similarly affected by Defendants' common course of conduct alleged herein. Plaintiff and all members of the putative Classes sustained monetary and economic injuries including, but not limited to, ascertainable loss arising out of Defendants' deceptive misrepresentations regarding the safety and ingredients of the Products, as alleged herein.

43. **Adequacy – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff will fairly and adequately represent and protect the interests of the members of the putative Classes. Plaintiff has retained counsel with substantial experience in handling complex class action litigation, including complex questions that arise in this type of consumer protection litigation. Further, Plaintiff and her counsel are committed to the vigorous prosecution of this action. Plaintiff does not have any conflicts of interest or interests adverse to those of putative Classes.

44. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a class action, Plaintiff and members of the Classes will continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated consumers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendants. Accordingly, the proposed Classes satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

45. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendants have acted or refused to act on grounds generally applicable to Plaintiff and all Members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes as a whole.

46. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available methods for the fair and efficient adjudication of the present controversy for at least the following reasons:

- a. The damages suffered by each individual members of the putative Classes do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct;
 - b. Even if individual members of the Classes had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;
 - c. The claims presented in this case predominate over any questions of law or fact affecting individual members of the Classes;
 - d. Individual joinder of all members of the Classes is impracticable;
 - e. Absent a Class, Plaintiff and members of the putative Classes will continue to suffer harm as a result of Defendants' unlawful conduct; and
 - f. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the putative Classes can seek redress for the harm caused by Defendants.
47. In the alternative, the Classes may be certified for the following reasons:
- a. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudication with respect to individual members of the Classes, which would establish incompatible standards of conduct for Defendants;
 - b. Adjudications of claims of the individual members of the Classes against Defendants would, as a practical matter, be dispositive of the interests of other members of the putative Classes who are not parties to the adjudication and may substantially impair or impede the ability of other putative Class Members to protect their interests; and
 - c. Defendants have acted or refused to act on grounds generally applicable to the members of the putative Classes, thereby making appropriate final and injunctive relief with respect to the putative Classes as a whole.

CLAIMS FOR RELIEF

COUNT I

Fraudulent Concealment

(On Behalf of the Nationwide and the Florida Subclass)

48. Plaintiff, individually and on behalf of the members of the Class, incorporates by reference all of the foregoing paragraphs of this Complaint, as if fully alleged herein.

49. Plaintiff brings this cause of action on behalf of herself, the Nationwide Class, and the Florida Subclass against Defendants.

50. Defendants had a duty to disclose material facts to Plaintiff and the Classes given their relationship as contracting parties and intended users of the sunscreen Products. Defendants also had a duty to disclose material facts to Plaintiff and the Classes, namely that it was in fact manufacturing, distributing, and selling harmful sunscreen Products unfit for human use, because Defendants had superior knowledge such that the transactions without the disclosure were rendered inherently unfair.

51. Defendants possessed knowledge of these material facts. Since at least mid-2020, numerous recalls put Defendants on notice that adulterated and misbranded sunscreen Products were being investigated for contamination with carcinogens, including Benzene. Further, Benzene is not unavoidable in the manufacture of sunscreens.

52. During this time, Plaintiff and members of the Classes were using the sunscreen Products without knowing they contained dangerous levels of Benzene.

53. Defendants failed to discharge its duty to disclose these materials facts.

54. In so failing to disclose these material facts to Plaintiff and the Classes, Defendants intended to hide from Plaintiff and the Classes that they were purchasing and consuming the sunscreen Products with harmful defects that were unfit for human use, and thus acted with scienter and/or an intent to defraud.

55. Plaintiff and the Classes reasonably relied on Defendants' failure to disclose insofar as they would not have purchased the defective sunscreen Products manufactured and sold by Defendants had they known they contained unsafe levels of Benzene.

56. As a direct and proximate cause of Defendants' fraudulent concealment, Plaintiff and the Classes suffered damages in the amount of monies paid for the defective sunscreen Products.

57. As a result of Defendants' willful and malicious conduct, punitive damages are warranted.

COUNT II
Violation of Florida Deceptive and Unfair Trade Practices Act ("FDUTPA")
Fla. Stat. §§ 501.201 *et seq.*
(On Behalf of Plaintiff Lokietz and the Florida Subclass)

58. Plaintiff, individually and on behalf of the members of the Class, incorporates by reference all of the foregoing paragraphs of this Complaint, as if fully alleged herein.

59. Plaintiff Lokietz and the Florida Subclass are "consumers," as defined by Fla. Stat. §501.203(7).

60. The transactions at issue constitute "trade or commerce" as defined by Fla. Stat. §501.203(8).

61. The FDUTPA, Fla. Stat. §501.204, provides that "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

62. For the reasons discussed herein, Defendants violated and continue to violate the

FDUTPA by engaging in the herein described unconscionable, deceptive, and unfair acts or practices proscribed by Fla. Stat. §501.201, et seq.

63. Defendants' acts and practices, including their material omissions, described herein, were likely to, and did in fact, deceive, and mislead members of the public, including Plaintiff Lokietz and the Florida Subclass and other consumers acting reasonably under the circumstances, to their detriment.

64. At all times mentioned herein, Defendants engaged in trade or commerce in Florida, as defined by Fla. Stat. §501.203(8), in that they advertised, offered or sale, sold or distributed goods or services in Florida and/or engaged in trade or commerce directly or indirectly affecting the people of Florida.

65. Defendant, through its advertisements and labeling, used unconscionable commercial practices, deception, fraud, concealment, false promises, and misrepresentations, in violation of FDUPTA, in connection with the marketing and sale of the Products.

66. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers and to induce them to purchase the Products without knowing that they contained Benzene.

67. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff Lokietz and the Florida Subclass suffered damages by purchasing the Products that they would not have had they known the truth, that they contained Benzene.

68. Defendants' deceptive trade practices caused Plaintiff Lokietz and the Florida Subclass to suffer injury in fact and actual damages in the form of the loss or diminishment of

value of the Products they purchased, which allowed Defendants to profit at the expense of Plaintiff Lokietz and the Florida Subclass. The injuries Plaintiff Lokietz and the Florida Subclass suffered were to legally protected interests. The gravity of the harm of Defendants' actions is significant and there is no corresponding benefit to consumers of such conduct.

69. Plaintiff Lokietz and the Florida Subclass seek relief for injuries they have suffered as a result of Defendants' unfair and deceptive acts and practices, as provided by the FDUTPA and applicable law.

COUNT III
Violations of New Jersey Consumer Fraud Act ("CFA")
N.J.S.A. § 56:8-1, et seq.
(On Behalf of the Nationwide Class)

70. Plaintiff, individually and on behalf of the members of the Class, incorporates by reference all of the foregoing paragraphs of this Complaint, as if fully alleged herein.

71. The New Jersey CFA was enacted and designed to protect consumers against unfair, deceptive, and fraudulent business practices. N.J. Stat. Ann. §56:8-1, et seq.

72. N.J. Stat. Ann. §56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice . . . [.]

73. Plaintiff, members of the Class, and Defendant are "persons" within the meaning of the CFA. N.J. Stat. Ann. §56:8-1(d).

74. The mislabeled Product sold by Defendants are "merchandise" within the meaning of the CFA, and Plaintiff and other members of the Class are "consumers" within the meaning of the CFA and, thus, are entitled to the statutory remedies made available in the CFA. Id. § 56:8-1(c).

75. Defendants, through their advertisements and labeling, used unconscionable commercial practices, deception, fraud, concealment, false promises, and misrepresentations, in violation of the CFA, in connection with the marketing and sale of the Products.

76. Further, Defendants knowingly concealed and omitted material facts to the Plaintiff and Members of the Class regarding the ingredients in the Products. These deceptive acts and omissions caused Plaintiff and members of the Class to sustain damages in an amount to be proven at trial.

COUNT IV
Unjust Enrichment
(On Behalf of the Nationwide Class and the Florida
Subclass)

77. Plaintiff, individually and on behalf of the members of the Class, incorporates by reference all of the foregoing paragraphs of this Complaint, as if fully alleged herein.

78. Plaintiff brings this cause of action on behalf of herself, and the putative Classes against Defendants.

79. Plaintiff and putative Class Members conferred a benefit on Defendants when they purchased the Products, of which Defendants had knowledge. By their wrongful acts and omissions described herein, including selling the Products, which contain a defect that caused hair loss upon proper application and did not otherwise perform as represented and for the

particular purpose for which they were intended, Defendants were unjustly enriched at the expense of Plaintiff and putative Class Members.

80. Plaintiff's detriment and Defendants' enrichment were related to and flowed from the wrongful conduct challenged in this Complaint.

81. Defendants have profited from their unlawful, unfair, misleading, and deceptive practices at the expense of Plaintiff and putative Class Members under circumstances in which it would be unjust for Defendants to be permitted to retain the benefit. It would be inequitable for Defendants to retain the profits, benefits, and other compensation obtained from their wrongful conduct as described herein in connection with selling the Products.

82. Defendants have been unjustly enriched in retaining the revenues derived from Class Members' purchases of the Products, which retention of such revenues under these circumstances is unjust and inequitable because Defendants manufactured defective Products, and misrepresented the nature of the Products, misrepresented their ingredients, and knowingly marketed and promoted dangerous and defective Products, which caused injuries to Plaintiff and the Class because they would not have purchased the Products based on the same representations if the true facts concerning the Products had been known.

83. Plaintiff and putative Class Members have been damaged as a direct and proximate result of Defendants' unjust enrichment because they would not have purchased the Products on the same terms or for the same price had they known the true nature of the Products and the misstatements regarding what the Products were and what they contained.

84. Defendants either knew or should have known that payments rendered by Plaintiff and putative Class Members were given and received with the expectation that the

Products were able to safely use as a sunscreen and did not contain Benzene as represented by Defendants in advertising, on Defendants' websites, and on the Products' labels and packaging. It is inequitable for Defendants to retain the benefit of payments under these circumstances.

85. Plaintiff and putative Class Members are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants.

86. When required, Plaintiff and Class Members are in privity with Defendants because Defendants' sale of the Products was either direct or through authorized sellers. Purchase through authorized sellers is sufficient to create such privity because such authorized sellers are Defendants' agents for the purpose of the sale of the Products.

87. As a direct and proximate result of Defendants' wrongful conduct and unjust enrichment, Plaintiff and putative Class Members are entitled to restitution of, disgorgement of, and/or imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendants for their inequitable and unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated members of the Classes, prays for relief and judgment, including entry of an order:

- a. For an order certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as the representative for the Classes and Plaintiff's attorneys as Class Counsel;
- b. For an order declaring the Defendants' conduct violates the causes of action referenced herein;
- c. For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in

- amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
 - f. For an order of restitution and all other forms of equitable monetary relief;
 - g. For injunctive relief as pleaded or as the Court may deem proper; and
 - h. For an order awarding Plaintiff and the Classes their reasonable attorneys' fees and expenses and costs of suit.

JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: September 20, 2021

Respectfully submitted,

/s/ Gary S. Graifman _____

Gary S. Graifman

Melissa R. Emert*

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**pro hac vice* application forthcoming

*Attorneys for Plaintiff and Putative
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