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

EDEN AMADRIL and ARIANA
SKURAUSKIS, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.,

Defendant.

Case No.:

**PLAINTIFFS' CLASS ACTION
COMPLAINT FOR VIOLATIONS OF:**

- 1. VIOLATIONS OF STATE
CONSUMER FRAUD ACTS**
- 2. FALSE ADVERTISING LAW,
BUS. & PROF. CODE, § 17500**
- 3. UNFAIR COMPETITION LAW,
BUS. & PROF. CODE, § 17200**
- 4. CONSUMER LEGAL
REMEDIES ACT, CIV. CODE, §
1770**
- 5. UNJUST ENRICHMENT, in the
alternative**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Eden Amadril and Ariana Skurauskis (“Plaintiffs”), individually and on behalf
2 of all others similarly situated, by and through their attorneys, brings this class action complaint
3 against Defendant Church & Dwight Co., Inc. (“Defendant” or “Church & Dwight”) and alleges
4 the following upon information and belief, except for those allegations pertaining to Plaintiffs,
5 which are based on personal knowledge:

6 **NATURE OF THE ACTION**

7 1. This is a class action lawsuit regarding Defendant’s manufacturing, distribution,
8 advertising, marketing, and sale of Batiste® branded Dry Shampoo (the “Products” or the “Dry
9 Shampoo”)¹ that contain dangerously high levels of benzene, a carcinogenic impurity that has been
10 linked to leukemia and other cancers.

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

13 3. Prior to placing the Products into the stream of commerce and into the hands of
14 consumers to use on their hair and scalp, Defendant knew or should have known that the Products
15 contained benzene, but Defendant misrepresented, omitted, and concealed this fact to consumers,
16 including Plaintiffs and Class members, by not including benzene on the Products’ labels or
17 otherwise warning about its presence.

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

20 5. Plaintiffs and Class members purchased and used the Products and were therefore
21 exposed to, or risked being exposed to, the harmful presence of benzene in the Product.

22 6. The Products are worthless because they contain or risked containing benzene, a
23 known human carcinogen that is an avoidable ingredient in the Products and Defendant’s
24 manufacturing process. Indeed, the presence of benzene renders the Products adulterated,

25 ¹ The Products refer to the following Batiste Dry Shampoo varieties: Bare; Clean & Light Bare;
26 Plus Brilliant Blonde; Floral & Flirty Blush; Divine Dark; Hint of Colour for Dark Hair; Dark
27 Hair; Tropical Exotic Coconut; Classic Clean; Clean & Classic Original; Light & Breezy Fresh;
28 and Volumizing. However, as alleged herein, Defendant conceals the presence of benzene in the
Product, thus discovery will reveal the all of the substantially similar products included in this
action.

1 misbranded, and illegal to sell.

2 7. Defendant is therefore liable to Plaintiffs and Class members for selling the
3 Products without disclosing that the Products contain or risk containing benzene.

4 **PARTIES**

5 ***Plaintiff***

6 8. Plaintiff Eden Amadril is a resident and citizen of San Jose, California. Plaintiff
7 Amadril has purchased numerous varieties of the Products over a period of more than seven years.
8 The last time Plaintiff Amadril purchased one of the Product was approximately nine months ago,
9 when Plaintiff Amadril purchased the Batiste Hint of Divine Dark Dry Shampoo at a Marshall's
10 store located in San Jose, California.

11 9. When purchasing the Products, Plaintiff Amadril reviewed the accompanying
12 labels and disclosures and understood them as representations and warranties by Defendant that
13 the Products were properly manufactured, free from defects, and safe for its intended use. Plaintiff
14 Amadril relied on these representations and warranties when deciding to purchase the Products,
15 and these representations and warranties were part of the basis of the bargain. Had Defendant not
16 made the false, misleading, and deceptive representations and omissions regarding the Products
17 containing or risking containing benzene, Plaintiff Amadril would not have been willing to
18 purchase the Products. The Products Plaintiff Amadril purchased were worthless because they
19 either contained or risked containing the known carcinogen benzene. Accordingly, Plaintiff
20 Amadril was injured in fact and lost money as a result of Defendant's improper conduct.

21 10. Plaintiff Ariana Skurauskis is a resident and citizen of San Jose, California.
22 Plaintiff purchased numerous varieties of the Products over a period of more than one year. The
23 last time Plaintiff purchased the Products was approximately one month ago, when Plaintiff
24 purchased the Batiste Floral & Flirty Blush Dry Shampoo at a Bed Bath and Beyond store located
25 in San Jose, California.

26 11. When purchasing the Products, Plaintiff Skurauskis reviewed the accompanying
27 labels and disclosures and understood them as representations and warranties by Defendant that
28 the Products were properly manufactured, free from defects, and safe for its intended use. Plaintiff

1 Skurauskis relied on these representations and warranties when deciding to purchase the Products,
2 and these representations and warranties were part of the basis of the bargain. Had Defendant not
3 made the false, misleading, and deceptive representations and omissions regarding the Products
4 containing or risking containing benzene, Plaintiff Skurauskis would not have been willing to
5 purchase the Products. The Products Plaintiff Skurauskis purchased were worthless because they
6 either contained or risked containing the known carcinogen benzene. Accordingly, Plaintiff
7 Skurauskis was injured in fact and lost money as a result of Defendant's improper conduct.

8 ***Defendant***

9 12. Defendant Church & Dwight Co., Inc. is a corporation organized, existing, and
10 doing business under and by virtue of the laws of the state of New Jersey with its principal place
11 of business located at 500 Charles Ewing Blvd, Ewing, New Jersey. Defendant sells its Batiste-
12 branded haircare products, including the Products at issue, throughout the United States. The
13 Products, including those purchased by Plaintiffs and Class members, is available at various retail
14 stores throughout the United States. Defendant authorized the false, misleading, and deceptive
15 marketing, advertising, distribution, and sale of the Products.

16 **JURISDICTION AND VENUE**

17 13. This Court has subject-matter jurisdiction pursuant to the Class Action Fairness
18 Act, 28 U.S.C. § 1332(d) because (1) the matter in controversy exceeds the sum or value of
19 \$5,000,000, exclusive of interest and costs, (2) the action is a class action, (3) there are members
20 of the Class who are diverse from Defendant, and (4) there are more than 100 Class members. This
21 Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367 because
22 they form part of the same case or controversy as the claims within the Court's original jurisdiction.

23 14. This Court has personal jurisdiction over Defendant because the claims asserted in
24 this complaint arise out of Defendant's contacts with this district. Defendant has been afforded due
25 process because it has, at all times relevant to this matter, individually or through its agents,
26 subsidiaries, officers and/or representatives, operated, conducted, engaged in and carried on a
27 business venture in this state, and/or marketed, advertised, distributed and/or sold products,
28 committed a statutory violation within this state related to the allegations made herein, and caused

1 injuries to Plaintiff and putative Class Members, which arose out of the acts and omissions that
2 occurred in the state of New Jersey, during the relevant time period, at which time Defendant was
3 engaged in business activities in the state of California.

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

10 **DIVISIONAL ASSIGNMENT**

11 16. Pursuant to Civil Local Rule 3-2(c-d), a substantial part of the events giving rise to
12 the claims herein arose in Santa Clara County, California and this action should be assigned to the
13 San Jose Division.

14 **FACTUAL ALLEGATIONS**

15 **I. Defendant’s History in the Industry**

16 17. Defendant Church & Dwight Co., Inc. is a consumer product business which sells
17 household and personal care products under a variety of brand names.

18 18. Defendant has eleven “power brands” which make up 80% of its consumer sales.²
19 Batiste is one such brand.

20 19. Defendant acquired the Batiste Dry Shampoo brand in 2011, and as of 2021, Batiste
21 was the number one dry shampoo in the United States.³

22 20. The dry shampoo market has grown dramatically in recent years and is currently
23 valued at approximately \$4 billion dollars.⁴ As the undisputed leader in the market, Batiste Dry
24 Shampoo maintains a significant share of this highly lucrative segment of the haircare industry.

25 ² See *Church & Dwight Co. 2021 Annual Report*, available at
26 <https://investor.churchdwight.com/static-files/31a1f3d3-4cbb-471c-a3ed-27d3a60f531a> (Last
accessed November 7, 2022)

27 ³ *Id.*

28 ⁴ <https://www.factmr.com/report/4300/dry-shampoo-market> (Last accessed November 7,
2022)

1 21. Defendant’s products, including the Dry Shampoo, are manufactured, distributed,
2 and sold throughout the United States, including the State of California. The Products are sold at
3 in store and online at mass market retailers and specialty beauty stores such as Target, CVS, and
4 Ulta.

5 22. Defendant has gained the trust of consumers, who believe Defendant’s promises
6 that all of the ingredients in the Products “have been tested to ensure maximum safety.”⁵

7 23. The Products at issue are dry shampoos, which are a product designed to absorb the
8 dirt, oil, and grease of the scalp without washing it.⁶

9 24. Dry shampoos are typically administered from an aerosol can and made with a base
10 of alcohol or starch. When applied to the hair, the dry shampoo soaks up the oil and grease, making
11 it look cleaner. According to the Batiste website, the Products are applied by spraying into the
12 roots and then massaging the Products into the scalp.⁷

13 25. The U.S. Food and Drug Administration (“FDA”) classifies and regulates
14 shampoos, including dry shampoos like the Products, as cosmetics.

15 **II. Benzene Is a Known Human Carcinogen**

16 26. The World Health Organization and the International Agency for Research on
17 Cancer have classified benzene as a Group 1 compound thereby defining it as “carcinogenic to
18 humans.”⁸

19 27. The Department of Health and Human Services has determined that benzene causes
20 cancer in humans.⁹

21 28. “IARC classifies benzene as “carcinogenic to humans,” based on sufficient
22 evidence that benzene causes acute myeloid leukemia (AML). IARC also notes that benzene
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24 ⁵ <https://www.batistehair.com/faqs> (Last accessed November 7, 2022)

25 ⁶ <https://www.webmd.com/beauty/what-is-dry-shampoo> (Last Accessed November 3, 2022)

26 ⁷ <https://www.batistehair.com/faqs> (Last accessed November 7, 2022)

27 ⁸ *IARC Monographs on the Identification of Carcinogenic Hazards to Humans: List of*
Classifications, WHO, <https://monographs.iarc.who.int/list-of-classifications> (last updated July 1,
2022).

28 ⁹ *Facts About Benzene*, CDC (last updated Apr. 4, 2018)
<https://emergency.cdc.gov/agent/benzene/basics/facts.asp>.

1 exposure has been linked with acute lymphocytic leukemia (ALL), chronic lymphocytic leukemia
2 (CLL), multiple myeloma, and non-Hodgkin lymphoma.”¹⁰

3 29. Benzene exposure has been linked with acute lymphocytic leukemia, chronic
4 lymphocytic leukemia, multiple myeloma, and non-Hodgkin lymphoma.¹¹

5 30. The NIOSH and CDC identify “target organs” associated with human exposure to
6 benzene to include: “eyes, skin, respiratory system, blood, central nervous system, bone marrow.”¹²

7 31. The CDC warns that “[b]enzene works by causing cells not to work correctly. For
8 example, it can cause bone marrow not to produce enough red blood cells, which can lead to
9 anemia. Also, it can damage the immune system by changing blood levels of antibodies and
10 causing the loss of white blood cells.”¹³

11 **III. Benzene Is Primarily Used in Industrial Processes and Is Highly Regulated**

12 32. The CDC states that “[s]ome industries use benzene to make other chemicals that
13 are used to make plastics, resins, and nylon and synthetic fibers. Benzene is also used to make
14 some types of lubricants, rubbers, dyes, detergents, drugs, and pesticides.”¹⁴

15 33. Benzene is a component of crude oil, gasoline, and cigarette smoke, and is one of
16 the elementary petrochemicals.¹⁵

17 34. The FDA currently recognizes the danger of benzene and, as a result, has claimed
18 it should not be used in the manufacture of any component of a drug product due to its unacceptable
19 toxicity effect.¹⁶

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21 ¹⁰ *Benzene and Cancer Risk*, American Cancer Society (last updated Jan. 5, 2016)
<https://www.cancer.org/cancer/cancer-causes/benzene.html>.

22 ¹¹ *Id.*

23 ¹² *NIOSH Pocket Guide to Chemical Hazards: Benzene*, CDC,
<https://www.cdc.gov/niosh/npg/npgd0049.html> (last updated Oct. 30, 2019).

24 ¹³ *Facts About Benzene*, *supra*.

25 ¹⁴ *Id.*

26 ¹⁵ *Benzene*, National Cancer Institute, [https://www.cancer.gov/about-cancer/causes-](https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/benzene)
[prevention/risk/substances/benzene](https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/benzene) (last updated Jan. 14, 2019).

27 ¹⁶ David Light et al., *Valisure Citizen Petition on Benzene in Dry Shampoo Products* (October
31, 2022), [https://assets-global.website-](https://assets-global.website-files.com/6215052733f8bb8fea016220/6360f7f49903987d8f4f4309_Valisure%20FDA%20Citizen%20Petition%20on%20Benzene%20in%20Dry%20Shampoo%20Products_103122.pdf)
[files.com/6215052733f8bb8fea016220/6360f7f49903987d8f4f4309_Valisure%20FDA%20Citiz](https://assets-global.website-files.com/6215052733f8bb8fea016220/6360f7f49903987d8f4f4309_Valisure%20FDA%20Citizen%20Petition%20on%20Benzene%20in%20Dry%20Shampoo%20Products_103122.pdf)
28 [en%20Petition%20on%20Benzene%20in%20Dry%20Shampoo%20Products_103122.pdf](https://assets-global.website-files.com/6215052733f8bb8fea016220/6360f7f49903987d8f4f4309_Valisure%20FDA%20Citizen%20Petition%20on%20Benzene%20in%20Dry%20Shampoo%20Products_103122.pdf) (the
“*Valisure Citizen Petition*”).

1 35. Where the use of benzene or other Class 1 solvents is unavoidable, the FDA has
2 stated that the levels should be restricted, and benzene is restricted under such guidance to 2 parts
3 per million (“ppm”).¹⁷

4 **IV. Exposure to Benzene in any Amount Is Extremely Dangerous**

5 36. A 1939 study on benzene stated that “exposure over a long period of time to any
6 concentration of benzene greater than zero is not safe.”¹⁸

7 37. A 2010 study summarized the epidemiological studies of the carcinogenic effects
8 of benzene exposure and provided an overview of the hematotoxic effects of benzene.¹⁹ The study
9 concluded:

- 10 a. There is probably *no safe level* of exposure to benzene, and *all exposures* constitute
11 some risk in a linear, if not supralinear, and additive fashion.
- 12 b. Exposure to benzene can lead to multiple alterations that contribute to the
13 leukemogenic process, indicating a multimodal mechanism of action.
- 14 c. Benzene is a ubiquitous chemical in our environment that causes acute leukemia
15 and probably other hematological cancers.

16 38. The CDC has stated that ways in which people “could be exposed to benzene”
17 include²⁰:

- 18 a. Outdoor air contains low levels of benzene from tobacco smoke, gas stations, motor
19 vehicle exhaust, and industrial emissions.
- 20 b. Indoor air generally contains levels of benzene higher than those in outdoor air. The
21 benzene in indoor air comes from products that contain benzene such as glues,
22 paints, furniture wax, and detergents.
- 23 c. The air around hazardous waste sites or gas stations can contain higher levels of
24

25 ¹⁷ *Id.*

26 ¹⁸ F.T. Hunter, *Chronic Exposure to Benzene (Benzol): The Clinical Effects*, 21 J. Indus.
Hygiene & Toxicology 331 (1939), <https://www.cabdirect.org/cabdirect/abstract/19402700388>.

27 ¹⁹ Martyn T. Smith, *Advances in Understanding Benzene Health Effects and Susceptibility*, 31
ANN. REV. PUB. HEALTH 133 (2010), <https://www.annualreviews.org/doi/full/10.1146/annurev.publhealth.012809.103646>.

28 ²⁰ *Facts About Benzene, supra.*

1 benzene than in other areas.

2 d. Benzene leaks from underground storage tanks or from hazardous waste sites
3 containing benzene can contaminate well water.

4 e. People working in industries that make or use benzene may be exposed to the
5 highest levels of it.

6 f. A major source of benzene exposure is tobacco smoke.

7 39. The NIOSH and CDC identify “exposure routes” for benzene to include:
8 “inhalation, skin absorption, ingestion, skin and/or eye contact.”²¹

9 40. “Direct exposure [to benzene] of the eyes, skin, or lungs to benzene can cause tissue
10 injury and irritation.”²²

11 41. Benzene exposure from dry shampoo is especially troubling because the Product is
12 applied to the scalp and around the face, with the remnants flying through the air likely to be at
13 least partially inhaled by the user and absorbed into their lungs. Thus, even a relatively low
14 concentration limit can result in very high total benzene exposure.

15 42. In fact, inhaling benzene at levels of 0.4 parts per billion frequently over a lifetime
16 might cause an additional cancer per 100,000 people.²³

17 43. The FDA allows for up to 2 parts per million of benzene in products where the use
18 of benzene is “unavoidable” to produce a drug product with a significant therapeutic advance.
19 However, dry shampoos are not a drug and contains no active pharmaceutical ingredient for
20 therapeutic purpose; therefore, any significant detection of benzene in the Products could be
21 deemed unacceptable.²⁴

22 **V. Discovery of Benzene in the Products**

23 44. Due to the substantial harm to humans caused by exposure to chemicals such as
24 benzene, companies have been founded with the specific goal of preventing defective products

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26 ²¹ *NIOSH Pocket Guide, supra.*

27 ²² *Facts About Benzene, supra.*

28 ²³ <https://www.epa.gov/sites/default/files/2016-09/documents/benzene.pdf> (Last Accessed
November 7, 2022)

²⁴ *See Valisure Citizen Petition, supra.*

1 containing said harmful chemicals from reaching consumers. Valisure, an “independent
2 laboratory”²⁵, is a company with a core mission “to help ensure the safety, quality and consistency
3 of medications and supplements in the market.”²⁶

4 45. In terms of accreditation and registration, “Valisure operates an analytical
5 laboratory that is accredited under International Organization for Standardization (‘ISO/IEC’)
6 17025:2017 standards for chemical testing (PJLA Accreditation Number 94238),”²⁷ and it is
7 registered with the Drug Enforcement Administration (License # RV0484814) and FDA (FEI #:
8 3012063246).”²⁸

9 46. Valisure has tested for specific chemical qualities in numerous types of products,
10 such as N-Nitrosodimethylamine in ranitidine and metformin and benzene in hand sanitizers and
11 sun care products. Each time, Valisure’s detection of benzene and other carcinogens has been
12 independently confirmed by the industry and led to recalls by manufacturers over the subject
13 products.

14 47. On October 31, 2022, Valisure reported its testing results for benzene in various
15 types of dry shampoo utilizing gas chromatography and detection by mass spectrometry (“GC-
16 MS”) instrumentation that allows mass spectral separation.²⁹

17 48. GC-MS “is generally considered one of the most accurate analyses available.”³⁰
18 Indeed, the FDA used the same method to test for impurities like benzene in hand sanitizers.³¹

19 49. “The GC-MS method described in this petition utilized body temperature (37°C)
20 for oven incubation. 40°C has been previously used for benzene analysis from liquid
21 pharmaceuticals and beverages, and reduced false positive results compared with higher-
22

23 ²⁵ “About Us.” <https://www.valisure.com/about> (last visited November 4, 2022).

24 ²⁶ *Valisure Citizen Petition, supra*.

25 ²⁷ *Id.*

26 ²⁸ *Id.*

27 ²⁹ *Id.*

28 ³⁰ *GC/MS Analysis*, Element, <https://www.element.com/materials-testing-services/chemical-analysis-labs/gcms-analysis-laboratories> (last visited July 20, 2022).

³¹ *Direct Injection Gas Chromatography Mass Spectrometry (GC-MS) Method for the Detection of Listed Impurities in Hand Sanitizers*, FDA (Aug. 24, 2020), <https://www.fda.gov/media/141501/download>.

1 temperature incubation.”³²

2 50. Valisure analyzed 148 unique batches from 34 brands of dry shampoo.³³

3 51. Valisure identified ten brands of dry shampoo which contained levels of benzene
4 at 2 ppm or higher, including the Products at issue in this case.³⁴

5 52. Valisure’s testing results were confirmed by the voluntary recalls of several dry
6 shampoo products manufactured by Procter & Gamble and Unilever which were found to contain
7 benzene.³⁵

8 53. Valisure specifically measured benzene concentrations from 0.97 to 5.21 ppm in
9 the Products.³⁶

Product Description	UPC	Lot	Benzene Concentration (ppm)
Dry Shampoo Bare	5010724529836	RF1125	14.9
Dry Shampoo Bare	5010724529836	RF1155	2.61
Dry Shampoo Clean & Light Bare	5010724529836	RF0113	3.30
Dry Shampoo Plus Brilliant Blonde	5010724527467	RF1054	1.70
Dry Shampoo Floral & Flirty Blush	5010724527399	RF9077	1.47
Dry Shampoo Bare	5010724529836	RF1181	.73
Dry Shampoo Fresh Breezy Citrus	5010724527450	RF1120	1.94

25 ³² *Valisure Citizen Petition, supra.*

26 ³³ *Id.*

27 ³⁴ *Id.*

28 ³⁵ <https://www.cnn.com/2022/10/24/business/unilever-shampoo-recall> (Last Accessed November 4, 2022)

³⁶ *Valisure Citizen Petition, supra.*

1	Dry Shampoo Plus Divine Dark	5010724527443	RF1131	1.81
2				
3	Dry Shampoo Floral & Flirty Blush	5010724527375	RF0231	1.33
4				
5	Dry Shampoo Plus Divine Dark	5010724527443	RF9345	1.20
6				
7	Dry Shampoo & a Hint of Colour for Dark Hair	5010724537443	LR0083	1.11
8				
9				
10	Dry Shampoo Dark Hair	5010724533123	RF1167	1.09
11				
12	Dry Shampoo Tropical Exotic Coconut	5010724527511	RF1259	.83
13				
14	Dry Shampoo Original Classic Clean	5010724527481	RF1103	0.79
15				
16	Dry Shampoo Clean & Classic Original	5010724527481	RF0167	.70
17				
18				
19	Dry Shampoo Clean & Light Bar	5010724529836	RF0352	.64
20				
21	Dry Shampoo Plus Divine Dark	5010724528150	RF1200	.54
22				
23	Dry Shampoo Light & Breezy Fresh	5010724527450	LR9099	.51
24				
25				
26	Dry Shampoo Floral & Flirty Blush	5010724527399	RF7132	.46
27				
28				

1	Dry Shampoo Coconut & Exotic Tropical - 1.6 fl oz	5010724527535	RF8361	.43
2				
3	Dry Shampoo Floral & Flirty Blush	5010724527399	RF8253	.30
4				
5	Dry Shampoo Original Classic Fresh	5010724533048	RF1204	.20
6				
7	Dry Shampoo Tropical Exotic Coconut	5010724527535	RF1350	.20
8				
9	Volumizing Dry Shampoo	5010724532966	FG1183	.19
10				

11 54. In some of the lots tested, the detected levels of benzene in the Products are greater
12 than the 2 ppm concentration limit for “unavoidable” uses per FDA guidance.³⁷ However, because
13 benzene is not a requisite component of manufacturing or packaging dry shampoo, its presence in
14 the Products is not unavoidable and “any significant detection of benzene should be deemed
15 unacceptable.”³⁸

16 55. David Light, Founder and Chief Executive Officer of Valisure, stated that “[t]he
17 presence of this known human carcinogen in dry shampoo products that are regularly used indoors
18 and in large volumes makes this finding especially troubling.”³⁹

19 56. The Products are not designed to contain benzene, and no amount of benzene is
20 acceptable in dry shampoo such as the Products manufactured, distributed, and sold by Defendant.
21 Further, although Defendant lists the ingredients on the Products’ labels, Defendant failed to
22 disclose on the Products’ labeling or anywhere in Defendant’s marketing that the Product contains
23 benzene.⁴⁰

24
25 ³⁷ *Id.*

26 ³⁸ *Id.*

27 ³⁹ *Id.*

28 ⁴⁰ Picture available on authorized retailer Walmart’s website. See <https://www.walmart.com/ip/Batiste-Dry-Shampoo-Bare-Fragrance-4-23-OZ-Packaging-May-Vary/141628758?athbdg=L1100> (Last Accessed November 7, 2022)



57. Despite its knowledge that the Products contain benzene, Defendant has failed to issue a voluntary recall of the Products.

VI. Benzene Renders the Product Adulterated, Misbranded, and Illegal to Sell

58. “Dry shampoo products are considered cosmetics that are regulated by the U.S. Food and Drug Administration.”⁴¹

59. The FDA has several safety and effectiveness regulations in place that govern the manufacture and marketing of cosmetic products.⁴²

60. As cosmetic products regulated by the FDA, the Products are prohibited from being adulterated or misbranded. See FD&C Act, 21 U.S.C. §§ 361, 362.

61. A cosmetic is deemed “adulterated” if it “bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed

⁴¹ *Valisure Citizen Petition, supra.*

⁴² *FDA Authority Over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated*, FDA, <https://www.fda.gov/cosmetics/cosmetics-laws-regulations/fda-authority-over-cosmetics-how-cosmetics-are-not-fda-approved-are-fda-regulated> (last updated Mar. 2, 2022).

1 in the labeling thereof, or under such conditions of use as are customary or usual...” 21 U.S.C. §
2 361(a).

3 62. A cosmetic shall be deemed to be misbranded if its labeling is false or misleading
4 in any particular. 21 U.S.C. § 362 (a).

5 63. FDA guidance permits up to 2 ppm benzene in a product if its use in the
6 manufacturing process is “unavoidable.”⁴³

7 64. In cosmetic products, the FDA has announced recalls of various products
8 contaminated with benzene, including other dry shampoos.⁴⁴

9 65. Moreover, because dry shampoos are cosmetics and not drugs, they contain no
10 active pharmaceutical ingredient for therapeutic purpose which might create an exception to the
11 presence of benzene.

12 66. Regardless, Defendant’s Products contain levels of benzene above 2 ppm,
13 including, in some cases, more than 7 times that limit.⁴⁵

14 67. Defendant could have avoided any potential for benzene contamination in the
15 Products by changing the manufacturing process or raw ingredients, and the Products could have
16 been sold with absolutely no benzene in them.

17 68. The mere presence of benzene renders the Products both adulterated and
18 misbranded under the FDCA. The Products are adulterated because they “contains [a] poisonous
19 or deleterious substance which may render it injurious to users under the conditions of use
20 prescribed in the labeling thereof.” 21 U.S.C. § 361(a).

21 69. The Products are misbranded because their labeling is “false” and “misleading”
22 because it does not disclose the presence of benzene. 21 U.S.C. § 362(a).

23 70. A product that is “adulterated” or “misbranded” cannot legally be manufactured,
24 advertised, distributed, or sold. 21 U.S.C. § 331(a). Adulterated and misbranded products thus

25 ⁴³ *Valisure Citizen Petition, supra.*

26 ⁴⁴ Food and Drug Administration. *P&G Issues Voluntary Recall of Aerosol Dry Conditioner*
27 *Spray Products and Aerosol Dry Shampoo Spray Products* (December 17, 2021)
(<https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/pg-issues-voluntary-recall-aerosol-dry-conditioner-spray-products-and-aerosol-dry-shampoo-spray>)

28 ⁴⁵ *Valisure Citizen Petition, supra.*

1 have no economic value and are legally worthless.

2 71. California’s Sherman Food, Drug, and Cosmetic Law has expressly adopted the
3 federal labeling requirements as its own. The definition of “adulterated” as defined by Cal. Health
4 & Safety Code § 111670 mirrors the FDA definition, defining an adulterated cosmetic as one that
5 “bears or contains any poisonous or deleterious substance that may render it injurious to users
6 under the conditions of use prescribed in the labeling or advertisement of the cosmetic, or under
7 conditions of use as are customary or usual.” In fact, under the California law, cosmetics are
8 required to satisfy all of the labeling requirements of the Federal Food, Drug, and Cosmetic Act
9 (21 U.S.C. Sec. 301, et seq.), and the federal Fair Packaging and Labeling Act (15 U.S.C. Sec.
10 1451, et seq.). *See* Cal. Health & Safety Code § 110371.

11 72. It is unlawful in the state of California to distribute cosmetics if its packaging or
12 labeling does not conform to the provisions of California and/or Federal law. Cal. Health & Safety
13 Code § 110385.

14 73. Further, it is unlawful for any person to disseminate any false advertisement of any
15 food, drug, device, or cosmetic. An advertisement is false if it is false or misleading in any
16 particular. Cal. Health & Safety Code § 110390.

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

19 75. As alleged herein, Defendant has violated the FDCA; the Sherman Food, Drug, and
20 Cosmetic Law; California’s Unfair Competition Law (“UCL”), Consumer Legal Remedies Act
21 (“CLRA”), and False Advertising Law (“FAL”); and various state consumer protection statutes.
22 Defendant engaged in fraudulent, unfair, deceptive, misleading, and/or unlawful conduct
23 stemming from its misrepresentations and omissions surrounding benzene contamination affecting
24 the Products.

25 76. If Defendant had disclosed to Plaintiffs and putative Class Members that the
26 Products contained or risked containing benzene and thus risked benzene exposure during use of
27 the Products, Plaintiffs and putative Class Members would not have purchased the Products or
28 they would have paid less for the Products.

1 77. As a seller of a cosmetic, Defendant had and has a duty to ensure that its Products
2 did not and do not contain excessive (or any) level of benzene, including through regular testing,
3 especially before injecting the Products into the stream of commerce for consumers to use on their
4 hair and scalp. But based on Valisure’s testing results set forth above, Defendant made no
5 reasonable effort to test its Products for benzene, despite its claims that the Products’ ingredients
6 were tested for safety. Nor did it disclose to Plaintiffs in any advertising or marketing that its dry
7 shampoo contained benzene, let alone at levels that are many multiples of the emergency, interim
8 limit set by the FDA. To the contrary, Defendant represented and warranted, expressly and
9 impliedly, that the Products were of merchantable quality, complied with federal and state law,
10 and did not contain carcinogens or other impurities such as benzene.

11 **VII. Defendant’s Knowledge, Misrepresentations, Omissions, and Concealment of**
12 **Material Facts Deceived Plaintiff and Reasonable Consumers**

13 78. The Products contains butane, isobutane and propane as propellants.

14 79. Aerosols typically contain volatile hydrocarbons, like butane or isobutane, as
15 propellants. These propellants are derived from crude oil and manufactured in oil refineries where
16 a variety of other hydrocarbons, including benzene, are produced.

17 80. Because the chemicals are derived from the same sources in the same facilities,
18 there is high potential for benzene contamination in the processing of butane and isobutane.

19 81. Manufacturing companies that work with these volatile chemicals understand the
20 risks of benzene contamination.⁴⁶

21 82. Defendant, a large, sophisticated corporation in the business of manufacturing,
22 distributing, and selling products containing aerosol propellants such as butane and isobutane,
23 knew or should have known of the risks of benzene contamination.

24 83. Defendant’s use of butane and isobutane as a propellant therefore put them on
25 notice of the risk of benzene contamination in the Products.

26 ⁴⁶ See, e.g., *Butane Safety Data Sheet*, Whiting, [https://whiting.com/wp-](https://whiting.com/wp-content/uploads/Butane-SDS.pdf)
27 [content/uploads/Butane-SDS.pdf](https://whiting.com/wp-content/uploads/Butane-SDS.pdf) (last updated Oct. 30, 2013) (“MAY CONTAIN TRACE
28 AMOUNTS OF BENZENE WHICH CAN CAUSE CANCER OR BE TOXIC TO BLOOD-
FORMING ORGANS.”).

1 84. Defendant sold, and continue to sell, dry shampoo products containing butane and
2 isobutane during the class period despite Defendant’s knowledge of the risk of benzene
3 contamination.

4 85. Federal and state regulatory regimes require that cosmetics marketed on a retail
5 basis to consumers contain a list of ingredients.⁴⁷ Failure to comply with this requirement renders
6 a cosmetic misbranded under the FD&C Act and analogous state regulatory acts, including the
7 California Sherman Food, Drug, and Cosmetic Law.

8 86. Benzene is not listed on the Products’ labels as an ingredient, nor is there any
9 warning about the inclusion (or even potential inclusion) of benzene in the Products.

10 87. Defendant has engaged in deceptive, untrue, and misleading advertising by making
11 representations by failing to warn about the potential presence of benzene in the Products, and
12 nothing on the Products’ labels otherwise insinuate, state, or warn that the Products contain
13 benzene.

14 88. The presence of benzene in the Products renders the Products misbranded and
15 adulterated and therefore illegal and unfit for sale in trade or commerce. Plaintiffs would not have
16 purchased the Products had they been truthfully and accurately labeled.

17 89. Had Defendant adequately tested its Products for benzene and other carcinogens
18 and impurities, it would have discovered that its Products contained benzene – even at levels above
19 the FDA’s limit (to the extent even applicable), making the Products illegal to distribute, market,
20 and sell.

21 90. Defendant also knew or should have known about the carcinogenic potential of
22 benzene because it is classified as a Group 1 compound by the World Health Organization and the
23 International Agency for Research on Cancer, meaning that it is “carcinogenic to humans.”⁴⁸

24 91. Accordingly, Defendant knowingly, recklessly, or at least negligently, introduced
25 a contaminated, adulterated, and misbranded Products containing or risked containing dangerous
26 amounts of benzene into the U.S. market.

27 ⁴⁷ See 21 C.F.R. § 701.3

28 ⁴⁸ <https://monographs.iarc.who.int/list-of-classifications> (Last Accessed November 7, 2022)

1 92. By marketing and selling its body spray products in the stream of commerce with
2 the intent that its Products would be purchased by Plaintiffs and Class Members, Defendant
3 warrants that the Products are safe to use rather than adulterated body sprays containing a
4 dangerous, cancer-causing chemical.

5 93. Defendant did not disclose the actual or potential presence of benzene in its dry
6 shampoo products on the Products' labeling, advertising, marketing, or sale of the Products.

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

11 95. Defendant knows that if it had not omitted that the Products contained benzene,
12 then Plaintiffs and Class members would not have purchased the Products.

13 **VIII. Injuries to Plaintiff and Class Members**

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

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

24 98. Further, given Batiste's position as a leader in the hair care industry and the top
25 seller of dry shampoo in the United States, Plaintiffs and reasonable consumers trusted and relied
26 on Defendant's representations and omissions regarding the presence of benzene in the Products.

27 99. Yet, when consumers look at the Products' packaging, there is no mention of
28 benzene. It is not listed in the ingredients section, nor is there any warning about the inclusion (or

1 even potential inclusion) of benzene in the Products. This leads reasonable consumers to believe
2 the Products do not contain benzene. Indeed, these expectations are reasonable because if the
3 Products are manufactured properly, benzene will not be present in the Products.

4 100. No reasonable consumer would have paid any amount for products containing
5 benzene, a known carcinogen and reproductive toxin, much less above the limits set by the FDA
6 (which do not even apply to Defendant's Products).

7 101. Thus, if Plaintiffs and Class members had been informed that Defendant's Products
8 contained or may contain benzene, they would not have purchased or used the Products, or would
9 have paid significantly less for the Products, making such omitted facts material to them.

10 102. Defendant's false, misleading, omissions, and deceptive misrepresentations
11 regarding the presence of benzene in the Products are likely to continue to deceive and mislead
12 reasonable consumers and the public, as it has already deceived and misled Plaintiffs and the Class
13 Members.

14 103. Plaintiffs and Class members bargained for a dry shampoo product free of
15 contaminants and dangerous substances. Plaintiffs and Class members were injured by the full
16 purchase price of the Products because the Products are worthless, as they are adulterated and
17 contain harmful levels of benzene—or at risk of containing the same—and Defendant failed to
18 warn consumers of this fact. Such illegally sold products are worthless and have no value.

19 104. As alleged above, Plaintiffs and Class members' Products either contained benzene
20 or were at significant risk of containing the same.

21 105. Plaintiffs and Class members are further entitled to statutory and punitive damages,
22 attorneys' fees and costs, and any further relief this Court deems just and proper.

23 **CLASS ALLEGATIONS**

24 106. Plaintiffs individually and on behalf of all others, bring this class action pursuant
25 to Fed. R. Civ. P. 23.

26 107. Plaintiffs seek to represent a class defined as:

27 All persons who purchased the Products in the United States for
28 personal or household use within any applicable limitations period
("Nationwide Class").

1 108. Plaintiffs also seeks to represent a subclass defined as:

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

4 109. Plaintiff also seeks to represent a subclass defined as:

5 All persons who purchased one or more of Defendant’s Products in
6 the States of California, Florida, Illinois, Massachusetts, Michigan,
7 Minnesota, Missouri, New Jersey, New York, or Washington for
8 personal or household use within any applicable limitations period
9 (“Consumer Fraud Multi-State Subclass”).⁴⁹

8 110. Excluded from the Class and Subclasses are: (1) any Judge or Magistrate presiding
9 over this action and any members of their families; (2) Defendant, Defendant’s subsidiaries,
10 parents, successors, predecessors, and any entities in which Defendant or its parents and any
11 entities in which Defendant has a controlling interest and its current or former employees, officers,
12 and directors; and (3) individuals who allege personal bodily injury resulting from the use of the
13 Products.

14 111. Plaintiffs reserve the right to modify, change, or expand the definitions of the Class
15 based upon discovery and further investigation.

16 112. *Numerosity*: The Class is so numerous that joinder of all members is impracticable.
17 The Class likely contains thousands of members based on publicly available data. The Class is
18 ascertainable by records in Defendant’s possession.

19 113. *Commonality*: Questions of law or fact common to the Class include, without
20 limitation:

- 21 a. Whether the Products contain benzene;
22 b. Whether a reasonable consumer would consider the presence of benzene in the
23

24 ⁴⁹ While discovery may alter the following, the states in the Consumer Fraud Multi-State Class
25 are limited to those states with similar consumer fraud laws under the facts of this case: California
26 (Cal. Bus. & Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 Ill.
27 Comp. Stat. 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich.
28 Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev.
Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law
§§ 349 and 350); and Washington (Wash. Rev. Code
§ 19.86.010, *et seq.*).

1 Products to be material;

2 c. Whether Defendant knew or should have known that the Products contains
3 benzene;

4 d. Whether Defendant misrepresented whether the Products contains benzene;

5 e. Whether Defendant failed to disclose that the Products contain benzene;

6 f. Whether Defendant concealed that the Products contain benzene;

7 g. Whether Defendant engaged in unfair or deceptive trade practices;

8 h. Whether Defendant violated the state consumer protection statutes alleged herein;

9 i. Whether Defendant was unjustly enriched; and

10 j. Whether Plaintiffs and Class members are entitled to damages.

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

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

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

1 comprehensive supervision by a single court. Plaintiffs are unaware of any difficulties that are
2 likely to be encountered in the management of this action that would preclude its maintenance as
3 a class action.

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

6 **CAUSES OF ACTION**

7 **COUNT I**
8 **VIOLATIONS OF STATE CONSUMER FRAUD ACTS**
9 **(On behalf of Plaintiff and the Consumer Fraud Multi-State Subclass)**

10 118. Plaintiffs repeat and reallege each and every allegation contained in the foregoing
11 paragraphs as if fully set forth herein.

12 119. Plaintiffs bring this Count on behalf of themselves and the Consumer Fraud Multi-
13 State Subclass against Defendant.

14 120. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-State
15 Subclass prohibit the use of unfair or deceptive business practices in the conduct of trade or
16 commerce.

17 121. Plaintiffs and the other Members of the Consumer Fraud Multi-State Subclass have
18 standing to pursue a cause of action for violation of the Consumer Fraud Acts of the states in the
19 Consumer Fraud Multi-State Subclass because Plaintiffs and Members of the Consumer Fraud
20 Multi-State Subclass have suffered an injury in fact and lost money as a result of Defendant's
21 actions set forth herein.

22 122. Defendant engaged in unfair and/or deceptive conduct by making material
23 misrepresentations and omissions regarding the presence of benzene in the Products, as discussed
24 herein.

25 123. Defendant intended that Plaintiffs and each of the other Members of the Consumer
26 Fraud Multi-State Subclass would rely upon its unfair and deceptive conduct and a reasonable
27 person would in fact be misled by this deceptive conduct described above.

28 124. Given Defendant's position in the hair care market as an industry leader, Plaintiffs
and reasonable consumers, trusted and relied on Defendant's representations and omissions

1 regarding the presence of benzene in the Products.

2 125. As a result of Defendant’s use or employment of unfair or deceptive acts or business
3 practices, Plaintiffs and each of the other Members of the Consumer Fraud Multi-State Subclass
4 have sustained damages in an amount to be proven at trial.

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

7 **COUNT II**
8 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW, BUSINESS &**
9 **PROFESSIONS CODE SECTION 17500 (“FAL”)**
10 **(On behalf of Plaintiffs and the California Subclass)**

11 127. Plaintiffs re-allege and incorporate by reference all preceding factual allegations as
12 though set forth fully herein.

13 128. Plaintiffs brings this cause of action on behalf of themselves and the California
14 Subclass Members against Defendant.

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

20 130. It is also unlawful under the FAL to disseminate statements concerning property or
21 services that are “untrue or misleading, and which is known, or which by the exercise of reasonable
22 care should be known, to be untrue or misleading.” *Id.*

23 131. As alleged herein, the advertisements, labeling, policies, acts, and practices of
24 Defendant relating to the Products misled consumers acting reasonably as to the presence of
25 benzene in the Products or the risk thereof.

26 132. At the time of its misrepresentations, Defendant was either aware that the Products
27 contained benzene or was aware that it lacked the information and/or knowledge required to
28 truthfully represent that the Products would not expose Plaintiffs and consumers to the risk of
benzene exposure. Defendant concealed and omitted and failed to disclose this information to

1 Plaintiffs and Class Members.

2 133. Defendant's descriptions of the Products were false, misleading, and likely to
3 deceive Plaintiffs and other reasonable consumers.

4 134. Plaintiffs suffered injury in fact as a result of Defendant's actions as set forth herein
5 because they purchased the Products in reliance on Defendant's false and misleading labeling
6 claims and omissions that the Products, among other things, are safe for use on the hair and scalp.

7 135. Had Defendant disclosed the true nature of the Products, and the fact that it contains
8 a chemical that is a known carcinogen associated with serious health consequences, Plaintiffs and
9 California Subclass Members would either not purchased the Products or would have paid
10 substantially less for them.

11 136. Defendant's business practices as alleged herein constitute deceptive, untrue, and
12 misleading advertising pursuant to the FAL because Defendant have advertised the Products in a
13 manner that is untrue and misleading, which Defendant knew or reasonably should have known,
14 and omitted material information from its advertising.

15 137. Defendant profited from its sale of the falsely and deceptively advertised Products
16 to unsuspecting consumers.

17 138. As a result, Plaintiffs, California Subclass Members, and the general public are
18 entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the
19 funds by which Defendant was unjustly enriched. Plaintiffs seek such equitable relief, in the
20 alternatively, should their legal remedies prove unavailable.

21 139. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs, on behalf of themselves and
22 California Subclass Members, seek an order enjoining Defendant from continuing to engage in
23 deceptive business practices, false advertising, and any other act prohibited by law, including those
24 set forth in this Complaint. Injunctive relief is needed, as Defendant continues to misrepresent the
25 true nature of the Products and continues to mislead the public. Additionally, Plaintiffs have
26 purchased the Products, and would be willing to purchase these Products again, if the risk of
27 benzene exposure was eliminated.

COUNT III
FOR VIOLATION OF CALIFORNIA’S UNFAIR
COMPETITION LAW, BUS. & PROF. CODE SECTION 17200 et seq. (“UCL”)
(On behalf of Plaintiff and the California Subclass)

140. Plaintiffs re-allege and incorporate by reference all preceding factual allegations as though set forth fully herein.

141. Plaintiffs bring this cause of action on behalf of themselves and California Subclass Members against Defendant.

142. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

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

144. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 *et seq.*

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

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

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

1 157. The CLRA prohibits deceptive practices in connection with the conduct of a
2 business that provides goods, property, or services primarily for personal, family, or household
3 purposes.

4 158. Defendant's false and misleading labeling and other policies, acts, and practices
5 were designed to, and did, induce the purchase and use of the Products for personal, family, or
6 household purposes by Plaintiffs and Class Members, and violated and continue to violate the
7 following sections of the CLRA:

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

16 159. Defendant profited from the sale of the falsely, deceptively, and unlawfully
17 advertised Products to unsuspecting consumers.

18 160. Defendant's wrongful business practices constituted, and constitute, a continuing
19 course of conduct in violation of the CLRA.

20 161. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiffs provided written
21 notice to Defendant on November 8, 2022 via certified mail through the United States Postal
22 Service demanding corrective action pursuant to the CLRA. If Defendant does not thereafter
23 correct its business practices, Plaintiffs will amend (or seek leave to amend) the complaint to add
24 claims for monetary relief, including restitution and actual damages under the Consumers Legal
25 Remedies Act.

26 162. Venue is proper pursuant to Civil Code § 1780(d) because transactions giving rise
27 to this action occurred within this District. A Declaration of Plaintiff establishing that this Court
28 is the proper venue for this action is attached as Exhibit A.

- 1 a. Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure,
2 appointing Plaintiffs as representatives of the Class and Subclasses, and designating
3 Plaintiffs' counsel as Class Counsel;
- 4 b. Awarding Plaintiffs and Class members compensatory damages, in an amount to
5 be determined at trial;
- 6 c. Awarding Plaintiffs and Class members appropriate relief, including but not limited
7 to actual damages;
- 8 d. For restitution and disgorgement of profits;
- 9 e. Awarding Plaintiffs and Class members reasonable attorneys' fees and costs as
10 allowable by law;
- 11 f. Awarding pre-judgment and post-judgment interest;
- 12 g. For punitive damages; and
- 13 h. Granting any other relief as this Court may deem just and proper.

14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands a trial by jury of all claims so triable.

16 Dated: November 8, 2022

Respectfully submitted,

17 /s/ Trenton Kashima

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**Pro Hac Vice Application Forthcoming*

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