

1 Michael F. Ram, Esq. (SBN 104805)
2 **MORGAN & MORGAN**
3 **COMPLEX LITIGATION GROUP**
4 711 Van Ness Avenue, Suite 500
5 San Francisco, CA 94102
6 Telephone: (415) 358-6913
7 Facsimile: (415) 358-6923
8 mram@forthepeople.com

9 Attorney for Plaintiff

10 [Additional Counsel on Signature Page]

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 Case No.:

14 Kristi Hazard, as Parent and
15 Legal Guardian of P.H., a minor,

16 Plaintiff,

17 v.

18 Johnson & Johnson Consumer,
19 Inc., a New Jersey Corporation,

20 Defendant.

21 **COMPLAINT FOR DAMAGES:**

- 22 (1) **STRICT LIABILITY DESIGN DEFECT**
- 23 (2) **STRICT LIABILITY FAILURE TO WARN**
- 24 (3) **STRICT LIABILITY: MANUFACTURING DEFECT**
- 25 (4) **NEGLIGENCE**
- 26 (5) **BREACH OF IMPLIED WARRANTIES**
- 27 (6) **BREACH OF EXPRESS WARRANTIES**

28 **DEMAND FOR JURY TRIAL**

[DAMAGES SOUGHT EXCEED \$75,000]

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1 COMES NOW, Plaintiff, Kristi Hazard, as Parent and Legal Guardian of
2 P.H., a minor, (“hereinafter referred to as “Plaintiff/P.H”) by and through the
3 undersigned and her individual counsel and brings this Complaint to set forth
4 potential claims against Defendant, Johnson & Johnson Consumer, Inc.,
5 (hereinafter referred to as “JJCI”). Plaintiff alleges as follows:

6 **THE PARTIES, JURISDICTION & VENUE**

7 1. Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a minor
8 resides in Palmdale, California, and at all times relevant hereto has been, a resident
9 of the County of Los Angeles.

10 2. Defendant Johnson & Johnson Consumer, Inc., (“JJCI”) is a New
11 Jersey corporation with its headquarters and principal place of business at
12 Grandview Road, Skillman, New Jersey, 08558. Johnson & Johnson Consumer,
13 Inc., is the manufacturer and/or distributor of the adulterated sunscreens, and is the
14 parent company of Neutrogena Corporation.

15 3. This court has Subject Matter Jurisdiction via Diversity Jurisdiction since
16 this is an
17 action for damages that exceeds the sum of Seventy-Five Thousand Dollars
18 (\$75,000.00), exclusive of costs, interest, and attorneys’ fees (the estimated value
19 of Plaintiff’s claim is in excess of the minimum jurisdictional threshold required by
20 this Court) and there is complete diversity of citizenship between the parties.

21 4. This Court is authorized to exercise personal jurisdiction over
22 Defendant JJCI pursuant to Federal Rule Civil Procedure Rule 4 because (i) the
23 causes of action stated herein arise out of or relate to Defendant JJCI’s purposeful
24 contacts with Plaintiff and the State of California, (ii) Defendant JJCI’s contacts
25 with California are substantial and not isolated, (iii) Defendant JJCI markets,
26 manufactures, conducts and does business in California, an (iv) the exercise of
27 personal jurisdiction over Defendant, JJCI comports with due process.

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1 5. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because
2 the Central District of California is the district where Representative Plaintiff,
3 purchased Defendant's defective products and thus where a substantial part of the
4 events giving rise to these claims occurred, and under 18 U.S.C. §1965(a) by
5 where the Defendant transacts business. The wrongful acts that are the subject of
6 this Complaint and that give to the causes of action asserted herein occurred in the
7 County of Los Angeles, State of California.

8 **FACTUAL ALLEGATIONS**

9 6. Plaintiff brings this cause of action for a serious and life-altering
10 physical disease sustained by 13-year-old P.H. while using certain JJCI,
11 Neutrogena sunscreen products containing benzene and using them as intended
12 and, in a manner, reasonably foreseeable to JJCI in and around Palmdale,
13 California. As a result, Plaintiff, P.H., was diagnosed and received treatment for
14 Acute Myeloid Leukemia (AML) on or about July 30, 2020, in the Palmdale/Los
15 Angeles, California area.

16 7. Plaintiff, P.H., was born in Lancaster, California in 2009. Growing up
17 in California, her parents regularly purchased and used various JJCI, Neutrogena
18 Sunscreen Products including, but not limited to, Neutrogena Beach Defense
19 Aerosol Sunscreen, and Neutrogena Ultra Sheer Aerosol Sunscreen. They used
20 these products regularly and typically on a weekly basis near their home, the
21 beach, camping, playing soccer, and in daily outside activities living in California
22 from approximately June of 2010 until approximately July of 2021.

23 8. Plaintiff, P.H., was diagnosed with Acute Myeloid Leukemia (AML),
24 at Kaiser Sunset Hospital in Los Angeles, CA when she was only 11 years old. She
25 suffered multiple chemotherapy treatments and their side effects. Doctors have
26 advised that due to the treatments, it is very unlikely she will be able to conceive
27 children. Plaintiff, P.H., received a stem cell transplant on December 9, 2020, at
28 City of Hope in Duarte, CA. She continues to receive follow-up care.

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1 9. Plaintiff, P.H., was exposed to a known carcinogen, benzene,
2 contained in JJCI's, Neutrogena Sunscreen Products. The case arises due to the
3 negligence of JJCI in the development, manufacturing, packaging, labeling,
4 distributing, and marketing of certain Sunscreen Products specified below. Several
5 of JJCI's, Neutrogena sunscreen products (identified below), have been
6 independently tested and shown to be adulterated with benzene, a known human
7 carcinogen. The presence of benzene in JJCI's Neutrogena sunscreen products was
8 not disclosed on the product labeling.

9 10. JJCI designed, manufactured, marketed, distributed, and sold
10 Neutrogena Sunscreen.

11 11. As a direct and proximate result of the conduct of Defendant as set
12 forth in her Complaint, Plaintiff sustained injuries and damages including, but not
13 limited to undergoing chemotherapy treatments; past and future pain and anguish,
14 both in mind and in body; permanent diminishment of her ability to participate in
15 and enjoy the affairs of life; medical bills associated with the replacement
16 procedure and recovery therefrom; future medical expenses; loss of enjoyment of
17 life; disfigurement; physical impairment, and other injuries not fully known at this
18 time.

19 12. Plaintiff's injuries suffered were both factually and proximately
20 caused by the Defendant's defective and unreasonably dangerous sunscreen.

21 13. Plaintiff is entitled to recover for all economic and special damages
22 incurred, including but not limited to damages for subsequent surgeries,
23 rehabilitative services, follow up doctor visits and all expenditures incurred as a
24 result of the additional operations and follow-up procedures.

25 14. Plaintiff further shows that she is entitled to recover for all
26 noneconomic and compensatory damages allowed by law, including, but not
27 limited to, pain and suffering for all pain and suffering that he has incurred as a
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1 result of the defective product, the follow-up treatments, rehabilitation, and
2 constant pain that occurs as a result of the failure of the product.

3 15. Plaintiff purchased the JJCI's, Neutrogena sunscreen products from
4 Costco, Sam's Club, and Target, as well as other local retailers in and around the
5 Quartz Hill and Palmdale, California area.

6 **BENZENE IN SUNSCREEN**

7 16. Benzene is used primarily as a solvent in the chemical and
8 pharmaceutical industries, as a starting material and intermediate in the synthesis
9 of numerous chemicals, and in gasoline. The major United States source of
10 benzene is petroleum. The health hazards of benzene have been recognized for
11 over one hundred years. According to the National Toxicology Program ("NTP"),
12 benzene is "known to be a human carcinogen based on sufficient evidence of
13 carcinogenicity from studies in humans." The National Toxicology Program (NTP)
14 is formed from parts of several different US government agencies, including the
15 National Institutes of Health (NIH), the Centers for Disease Control and
16 Prevention (CDC), and the Food and Drug Administration (FDA).

17 17. Exposure to benzene is a known cause of Acute Myeloid Leukemia
18 (AML). The International Agency for Research on Cancer (IARC) is part of the
19 World Health Organization (WHO). One of its goals is to identify the causes of
20 cancer. IARC classifies benzene as "carcinogenic to humans," based on sufficient
21 evidence that benzene causes AML.

22 18. The U.S. Environmental Protection Agency (EPA) maintains the
23 Integrated Risk Information System (IRIS), an electronic database that contains
24 information on human health effects from exposure to various substances in the
25 environment. The EPA classifies benzene as a known human carcinogen.

26 19. In 2020, Valisure LLC and ValisureRX LLC ("Valisure"), an
27 analytical pharmacy, performed tests on a variety of JJCI's, Neutrogena Sunscreen
28 Products. Specifically, Valisure tested numerous lots of JJCI's, Neutrogena spray

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1 and lotion Sunscreen Products. As a result of this testing, Valisure discovered that
2 certain Sunscreen Products contain benzene, with values ranging from less than 0.1
3 parts per million (“ppm”), 0.10 ppm to 2 ppm, and more than 2 ppm, and even
4 above 6 ppm. Benzene is not listed as an active or inactive ingredient on any of the
5 labels of Neutrogena’s and JJCI’s Sunscreen Products. Moreover, all of the
6 Sunscreen Products are marketed and advertised in an identical manner — as
7 “Sunscreen.”

8 20. The National Institute for Occupational Safety and Health (“NIOSH”)
9 recommends protective equipment be worn by workers expecting to be exposed to
10 benzene at concentrations of 0.1 ppm and defines “skin absorption” as an exposure
11 route.

12 21. On May 24, 2021, Valisure filed a citizen petition with the Food and
13 Drug Administration (“FDA”) requesting that the agency to recall all batches of
14 JJCI’s, Neutrogena sunscreen products tested which (as tested) contained 0.1 ppm
15 or more of benzene, on the basis that they are adulterated under Section 501 of the
16 FDCA (21 U.S.C. § 351) and misbranded under Section 502 of the FDCA (21
17 U.S.C. § 352). Neutrogena Beach Defense Aerosol Sunscreen, Neutrogena Cool
18 Dry Sport Aerosol Sunscreen, Neutrogena Invisible Daily Defense Aerosol
19 Sunscreen, and Neutrogena Ultra Sheer Aerosol Sunscreen, among others all tested
20 positive for containing benzene.

21 22. On July 14, 2021, JJCI recalled the following products: Neutrogena
22 Beach Defense Aerosol Sunscreen, Neutrogena Cool Dry Sport Aerosol Sunscreen,
23 Neutrogena Invisible Daily Defense Aerosol Sunscreen, Neutrogena Ultra Sheer
24 Aerosol Sunscreen.

25 23. Benzene, a known human carcinogen, is not on the FDA’s list of
26 acceptable active or inactive ingredients for Sunscreen Products. Nor is benzene
27 identified as an active or inactive ingredient on any of the JJCI’s, Neutrogena
28 Sunscreen Products. Nevertheless, JJCI proclaim in their advertising that

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1 “Neutrogena maintains that the sunscreen ingredients we use are safe and effective
2 . . . ,” which is a false and misleading statement.

3 24. JJCI’s, Neutrogena sunscreens were designed, manufactured,
4 assembled, produced, and distributed in a defective, unmerchantable, and
5 unsuitable condition, by JJCI which caused Plaintiff injuries.

6 25. Errors and negligence in the manufacturing, packaging, shipping, and
7 delivery processes led directly to the presence of benzene in the sunscreen, thereby
8 rendering the JJCI’s, Neutrogena Sunscreens defective and unreasonably
9 dangerous.

10 26. Plaintiff’s injuries were actually and proximately caused by JJCI’s,
11 Neutrogena sunscreens’ defective and unreasonably dangerous condition.

12 27. Specifically, JJCI’s, Neutrogena sunscreens suffered from several
13 design defects and were made using substandard and inferior-quality materials and
14 processes.

15 **FIRST CAUSE OF ACTION**

16 **Strict Liability based on Design Defect**

17 28. Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a minor
18 re-alleges and incorporates paragraphs 1 through 26 of this Complaint as if fully
19 stated herein.

20 29. JJCI is responsible for testing, developing, designing, manufacturing,
21 marketing, selling, distributing, and promoting the Subject sunscreen products.

22 30. JJCI placed the Subject sunscreen products into the stream of
23 commerce. The Subject sunscreen products were expected to and did reach
24 Plaintiff without substantial change in their condition.

25 31. The Subject sunscreen products that Plaintiff used, and that caused her
26 injuries, did not perform as safely as an ordinary consumer would have expected
27 them to perform when used or misused in an intended or reasonably foreseeable
28 way.

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1 32. At the time the Subject sunscreen products left JJCI’s control, they
2 were in a condition not contemplated by Plaintiff and were unreasonably
3 dangerous and defective.

4 33. The Subject sunscreen products were in a defective and unreasonably
5 dangerous condition when they left JJCI’s final possession, custody, and control.

6 34. The risks associated with using the Subject sunscreen products
7 outweigh any claimed or perceived benefits. There are practicable, feasible and
8 safer alternatives to manufacture sunscreen that do not present the severe health
9 risks that accompany the Subject sunscreen products.

10 35. The Subject sunscreen products failed to perform as safely as
11 expected by Plaintiff, P.H., when used in the intended or reasonably foreseeable
12 manner.

13 36. The Subject sunscreen products’ defective and unreasonably
14 dangerous condition actually and proximately caused injury and damage to
15 Plaintiff, P.H.

16 **SECOND CAUSE OF ACTION**

17 **Strict Liability Based on Failure to Warn**

18 37. Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a minor
19 re-alleges and incorporates paragraphs 1 through 26 of this Complaint as if fully
20 stated herein.

21 38. JJCI is responsible for testing, developing, designing, manufacturing,
22 marketing, selling, distributing, and promoting the Subject sunscreen products.

23 39. JJCI placed the Subject sunscreen products into the stream of
24 commerce. The Subject sunscreen products were expected to and did reach
25 Plaintiff, without substantial change in their condition.

26 40. The Subject sunscreen products had potential risks and side effects
27 that were known or knowable to JJCI by use of scientific knowledge available at
28 and after the time of design, manufacture, marketing, distribution, and/or sale of

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1 the Subject sunscreen products used by Plaintiff. JJCI knew or should have known
2 of the defective condition, characteristics, and risks associated with the Subject
3 sunscreen products, as previously set forth herein.

4 41. The potential risks and side effects associated with the Subject
5 sunscreen products presented a substantial danger when the sunscreen products are
6 used or misused in an intended or reasonably foreseeable way.

7 42. Ordinary consumers would not have recognized the potential risks and
8 side effects associated with using the Subject sunscreen products.

9 43. When placing the Subject sunscreen products into the stream of
10 commerce, JJCI failed to provide adequate warnings as to the risks associated with
11 the product. JJCI failed to warn consumers of the true risks and dangers—and of
12 the symptoms, scope, and severity of the potential side effects of the Subject
13 sunscreen products.

14 44. The lack of sufficient instructions or warnings was a substantial factor
15 in causing Plaintiff’s injuries.

16 45. As a direct and proximate result of JJCI ’s failure to provide adequate
17 warnings in connection with its design, manufacture, marketing, distribution,
18 and/or sale of the Subject sunscreen products, Plaintiff, P.H., suffered injuries
19 herein described.

20 **THIRD CAUSE OF ACTION**

21 **Strict Liability Based on Manufacturing Defect**

22 46. Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a
23 minor, re-alleges and incorporates paragraphs 1 through 26 of this Complaint as if
24 fully stated herein.

25 47. JJCI is responsible for testing, developing, designing, manufacturing,
26 marketing, selling, distributing, and promoting the Subject sunscreen products.

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1 48. JJCI placed the Subject sunscreen products into the stream of
2 commerce. The Subject sunscreen products were expected to and did reach
3 Plaintiff, without substantial change in their condition.

4 49. The Subject sunscreen products that Plaintiff, P.H., used, and that
5 caused her injuries, did not perform as safely as an ordinary consumer would have
6 expected them to perform when used or misused in an intended or reasonably
7 foreseeable way.

8 50. The Subject sunscreen products are defective in their manufacture
9 because their products contained benzene when they left JJCI's final possession,
10 custody, and control.

11 51. The risks associated with using the Subject sunscreen products
12 outweigh any claimed or perceived benefits. There are practicable, feasible and
13 safer alternatives to manufacture sunscreen that do not present the severe health
14 risks that accompany the Subject sunscreen products.

15 52. The Subject sunscreen products failed to perform as safely as
16 expected by Plaintiff, P.H., when used in the intended or reasonably foreseeable
17 manner.

18 53. The Subject sunscreen products' defective and unreasonably
19 dangerous condition actually and proximately caused injury and damage to
20 Plaintiff, P.H.

21 **FOURTH CAUSE OF ACTION**

22 **Negligence**

23 54. Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a
24 minor, re-alleges and incorporates paragraphs 1 through 26 of this Complaint as if
25 fully stated herein.

26 55. JJCI is responsible for testing, designing, manufacturing, marketing,
27 selling, distributing, and promoting the Subject sunscreen products.

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1 65. The Subject sunscreen was neither safe for its intended use nor of
2 merchantable quality, as warranted by JJCI when put to its intended use, and it
3 caused severe injuries to Plaintiff, P.H.

4 66. The average consumer, like Plaintiff, would not reasonably anticipate
5 the dangerous and harmful condition of the Subject sunscreen, or the physical
6 disease caused by reasonable and foreseeable use.

7 67. Plaintiff reasonably relied on the skill, judgment, and implied
8 warranty of JJCI in using the Subject sunscreen.

9 68. JJCI breached this warranty by, *inter alia*:

- 10 a. Knowingly concealing the material fact of the benzene
11 contamination in the products, the use of which would increase the
12 consumers' carcinogenic exposure and risk of cancer; and
13 b. Making the material misrepresentation of the fact that the five
14 defective products were safe to use, knowing that when applied as
15 direct, use thereof would increase the consumers' carcinogenic
16 exposure and risk of cancer.

17 69. Defendant knew of this defect and were put on explicit notice of the
18 defects by Valisure following its testing and the May 24, 2021, Petition to the
19 FDA, but continued manufacturing, distributing, marketing, and retailing these five
20 benzene-contaminate sunscreen products to consumers.

21 70. JJCI breached the implied warranty of merchantability and the
22 implied warranty of fitness, causing Plaintiff, P.H., to suffer severe pain and
23 emotional distress, be subjected to ongoing side effects as a result of the cancer
24 treatments, and incur expenses for doctors, hospitals, nurses, pharmaceuticals, and
25 other reasonably required and medically necessary supplies and services.

26 71. As a result of the aforementioned breaches of implied warranties by
27 JJCI, Plaintiff, P.H, suffered injuries and damages as alleged herein.
28

SIXTH CAUSE OF ACTION

Breach Of Express Warranties

72. Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a minor, re-alleges and incorporates paragraphs 1 through 26 of this Complaint as if fully stated herein.

73. At all times herein mentioned, JJCI expressly warranted to Plaintiff, P.H., by and through statements made by JJCI or its authorized agents or sales representatives, orally and in publications, package inserts, and other written materials intended for the general public, that the Subject sunscreen was safe, effective, fit, and proper for its intended use.

74. In utilizing the Subject sunscreen, Plaintiff, P.H., reasonably relied on the skill, judgment, representations, and foregoing express warranties of JJCI.

75. Said warranties were false in that the aforementioned Subject sunscreens were not safe and were unfit for the users for which it was intended.

76. By selling, delivering and/or distributing the defective product to Plaintiff, P.H., JJCI breached their express warranties.

77. As a direct and proximate result of JJCI's breach of their express warranties, Plaintiff, P.H., P.H. suffered the injuries and damages alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a minor, prays for judgment against Defendant Johnson & Johnson Consumer, Inc., and each of them, on all causes of action, as follows:

1. Awarding compensatory damages;
2. Awarding pre-judgment and post-judgment interest to Plaintiff;
3. Awarding all statutory damages and relief;
4. Awarding the costs and the expenses of this litigation to Plaintiff;
5. Awarding reasonable attorneys' fees and costs to Plaintiff as provided by

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- law;
- 6. Awarding punitive damages, where appropriate, to the Plaintiff;
- 7. Granting Plaintiff equitable relief in the nature of disgorgement;
- 8. Restitution to remedy JJCI’s unjust enrichment; and
- 9. Granting all such other relief as the Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiff, Kristi Hazard, as Parent and Legal Guardian of P.H., a minor, hereby demands a jury trial on all issues so triable.

Dated: September 13, 2023

Respectfully submitted,

By: /s/ Michael F. Ram
Michael F. Ram

Michael F. Ram (SBN 104805)
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
mram@forthepeople.com
711 Van Ness Avenue, Suite 500
San Francisco, CA 94102
Telephone: (415) 358-6913
Facsimile: (415) 358-6293

T. Michael Morgan (Pro Hac Vice Pending)
Joshua D. Moore (Pro Hac Vice Pending)
MORGAN & MORGAN, P.A.
20 North Orange Avenue, Suite 1600
Orlando, FL 32801
Telephone: (407) 420-1414
Facsimile: (407) 245-3389
mmorgan@forthepeople.com
joshmoore@forthepeople.com

Attorneys for Plaintiff