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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 EILEEN AVILES, SHELBY COOPER,  
16 TANYA COOPER, JACOB COOPER,  
17 AND PATRICIA DONADIO  
individually and on behalf of all others  
similarly situated,

18 Plaintiffs,

19 v.

20 THE PROCTER & GAMBLE  
21 COMPANY,

22 Defendant.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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**CLASS ACTION COMPLAINT**

Plaintiffs Eileen Aviles, Shelby Cooper, Tanya Cooper, Jacob Cooper, and Patricia Donadio (“Plaintiffs”) bring this Class Action Complaint against The Procter & Gamble Co. (“P&G” or “Defendant”), individually and on behalf of all others similarly situated, and complains and alleges upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

**NATURE OF THE ACTION**

1. This is a civil class action brought by Plaintiffs on behalf of all consumers who purchased Secret Powder Fresh or Secret Cool Light & Airy Smooth Feel antiperspirants (“Secret Antiperspirants”), and Old Spice Pure Sport antiperspirant, Old Spice Below Deck Powder Spray deodorant, or Old Spice Sweat Defense, Stronger Swagger antiperspirant (“Old Spice Deodorants”) (collectively, the “Products”) from Defendant for normal, household use. The Products are defective because they each contain the chemical benzene, a known carcinogen that offers no therapeutic deodorant or antiperspirant benefit.

2. Over the course of several decades, Defendant gained the trust of consumers, who reasonably believe that Defendant’s products, including the defective Products at issue, are made with quality materials, and can be used safely, as intended.

3. Defendant formulates, designs, manufactures, markets, advertises, distributes, and sells the Products to consumers throughout the United States, including in the State of California.

4. Defendant distributes and sells the Products through various authorized retailers in store and online.

5. Defendant represents that the Products are safe for its intended use. In reality, the Products contain significant concentrations of benzene, a harmful carcinogen.

1 6. Benzene is a carcinogen known to cause cancer in humans. Long-term exposure  
2 additionally causes harmful effects on the bone marrow, a decrease in red blood cells leading to  
3 anemia, and excessive bleeding that can affect the immune system, leading to an increased chance  
4 of infection. According to FDA guidance, there is no safe level of benzene, and thus it “should not  
5 be employed in the manufacture of drug substances, excipients, and drug products because of [its]  
6 unacceptable toxicity.” FDA, Q3C – 2017 Tables and List Guidance for Industry,  
7 <https://www.fda.gov/media/71737/download>.  
8

9 7. FDA guidance provides that “if [benzene’s] use is unavoidable in order to produce  
10 a drug product with a significant therapeutic advance, then [its] levels should be restricted” to 2  
11 parts per million (“ppm”). *Id.*

12 8. The use of benzene in P&G’s Products is demonstrably avoidable. Feasible  
13 alternative formulations, designs, and materials were available to Defendant at the time the  
14 Products were formulated, designed, and manufactured. Critically, such alternative formulations  
15 and designs were and are used by other manufacturers to produce and sell non-defective spray  
16 deodorants and antiperspirants. In any event, benzene concentration in the Products was found to  
17 be above the FDA concentration limit of 2 ppm.  
18

19 9. The Products’ benzene contamination was not disclosed to the consumer on the  
20 product label, the ingredients list, or otherwise.

21 10. Plaintiffs seek damages and equitable remedies for themselves, and for the  
22 proposed Classes.  
23

#### 24 **JURISDICTION AND VENUE**

25 11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §  
26 1332 of the Class Action Fairness Act of 2005 because: (1) there are 100 or more putative Class  
27 Members, (ii) the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest  
28 and costs, and (iii) there is minimal diversity because Plaintiffs and Defendant are citizens of

1 different states. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant  
2 to 28 U.S.C. § 1367.

3 12. This Court has personal jurisdiction over Defendant because they have substantial  
4 aggregate contacts with this District, including engaging in conduct in this District that has a direct,  
5 substantial, reasonably foreseeable, and intended effect of causing injury to persons throughout  
6 the United States, and because they purposely availed themselves of the laws of the United States  
7 and the State of California.

8 13. In accordance with 28 U.S.C. § 1391, venue is proper in this District because a  
9 substantial part of the conduct giving rise to Plaintiffs' claims occurred in this District, Defendant  
10 transacts business in this District, and Defendant has intentionally availed themselves of the laws  
11 and markets within this District.

12  
13 **PARTIES**

14 **A. Plaintiffs**

15 14. Plaintiff Eileen Aviles is a resident and citizen of Suisun City, California who  
16 purchased and used Old Spice Sweat Defense Stronger Swagger antiperspirant within the relevant  
17 time period.

18 15. Plaintiff Shelby Cooper is a resident and citizen of Riverside, California who  
19 purchased and used Secret Powder Fresh 24-Hour Aerosol antiperspirant within the relevant time  
20 period.

21 16. Plaintiff Tanya Cooper is a resident and citizen of Hawthorne, California who  
22 purchased and used Secret Powder Fresh 24-Hour Aerosol antiperspirant within the relevant time  
23 period.

24 17. Plaintiff Jacob Cooper is a resident and citizen of Hanford, California who  
25 purchased and used Old Spice Sweat Defense Stronger Swagger antiperspirant within the relevant  
26 time period.  
27  
28

1 18. Plaintiff Patricia Donadio is a resident and citizen of Farmington, New York who  
2 purchased and used Secret Cool Light & Airy Smooth Feel Dry Spray Rose antiperspirant within  
3 the relevant time period.

4 **B. Defendant**

5 19. Defendant Procter & Gamble Co. is a multinational consumer goods corporation  
6 incorporated in Ohio with its principal place of business located at 1 Procter & Gamble Plaza,  
7 Cincinnati, OH 45202.

8 **FACTUAL ALLEGATIONS**

9 **A. P&G's History in the Industry**

10  
11 20. P&G is a large multinational consumer goods company known for its wide range  
12 of personal care and hygiene products, including the deodorant and antiperspirant Products at issue  
13 here.

14 21. P&G's products, including its Secret and Old Spice brands are manufactured,  
15 distributed, and sold in the State of California and throughout the United States.

16  
17 22. Due to its reputation and consumers' trust in the quality of its brands like Secret  
18 and Old Spice, P&G enjoys more than \$100 billion each year in revenue. Indeed, P&G touts on  
19 its website that "[o]ur brands are trusted in millions of living rooms, kitchens, laundry rooms, and  
20 bathrooms."<sup>1</sup>

21 23. P&G's website emphasizes that "[w]e make superior quality products,"<sup>2</sup> and  
22 advertise their brands, including Secret and Old Spice as "[i]conic brands you can trust in your  
23 home."<sup>3</sup>  
24  
25  
26

27 <sup>1</sup> <https://us.pg.com/who-we-are/> (last visited Nov. 9, 2021).

28 <sup>2</sup> *Id.*

<sup>3</sup> <https://us.pg.com/brands/> (last visited Nov. 9, 2021).

**B. The Products**

1  
2 24. Deodorant is a product applied to the body to prevent or mask the odor of  
3 perspiration. Antiperspirants, a subclass of deodorants, prevent sweat glands from producing  
4 sweat. The Products are deodorants and antiperspirants all applied to the body as a spray.

5 25. The U.S. Food and Drug Administration (“FDA”) classifies and regulates most  
6 deodorants, including each of the Products, as cosmetics. In addition, the FDA classifies and  
7 regulates antiperspirants, including the Secret Antiperspirants and Old Spice Pure Sport, as drugs.  
8

9 26. On November 3, 2021, Valisure, an analytical pharmacy and consumer protection  
10 organization, petitioned the FDA to address the dangerous levels of benzene in the Products and  
11 other deodorants and antiperspirants based upon rigorous testing the organization had conducted  
12 for a number of spray deodorant and antiperspirant products.<sup>4</sup> The next day, Valisure released the  
13 results of these tests.<sup>5</sup>

14 27. In testing, Valisure found average concentrations of benzene above the FDA  
15 concentration limit of 2 ppm in 16 spray deodorants. Nearly one third of those sprays were the  
16 Products, 6 deodorant and antiperspirant sprays manufactured and sold by P&G under its Secret  
17 and Old Spice brands.  
18

19 28. P&G’s Products were among the highest benzene concentrations found in  
20 Valisure’s testing. Valisure found benzene concentration of 16.2 ppm in P&G’s Secret Powder  
21 Fresh antiperspirant spray with Product Code 037000711087, more than 8 times the FDA  
22 concentration limit and a higher benzene concentration than any other deodorant or antiperspirant  
23 tested, and it found benzene concentration of 12.45 ppm in Secret Powder Fresh with Product Code  
24 037000711094. Testing further found benzene concentrations of 12.8 ppm in P&G’s Old Spice  
25 Pure Sport antiperspirant, 12.45 ppm in P&G’s Secret Powder Fresh antiperspirant, 5.22 ppm in  
26

27  
28 <sup>4</sup> <https://www.valisure.com/wp-content/uploads/Valisure-FDA-Citizen-Petition-on-Body-Spray-v4.0-3.pdf> (last visited Nov. 9, 2021).

<sup>5</sup> <https://www.valisure.com/blog/valisure-news/valisure-detects-benzene-in-body-spray-products-3/> (last visited Nov. 8, 2021).

1 P&G’s Old Spice Below Deck deodorant, 4.54 ppm in P&G’s Old Spice Sweat Defense  
2 antiperspirant, and 3.72 ppm in P&G’s Secret Cool Light & Airy Smooth Feel antiperspirant.

3 **C. Danger Posed by the Product**

4 29. The carcinogenic properties of benzene are well documented, as noted by the  
5 Centers for Disease Control and Prevention (“CDC”). See CDC, Facts About Benzene (2018),  
6 <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>.

7 30. The U.S. Department of Health and Human Services (DHHS) has determined that  
8 benzene causes cancer in humans. Long-term exposure to high levels of benzene can cause  
9 leukemia, cancer of the blood-forming organs.

10 31. Long-term exposure to benzene additionally causes harmful effects on the bone  
11 marrow and can cause a decrease in red blood cells, leading to anemia. It can also cause excessive  
12 bleeding and can affect the immune system, increasing the chance for infection.

13 32. Due to these significant health risks, the World Health Organization and the  
14 International Agency for Research on Cancer classify benzene as a Group 1 compound that is  
15 “carcinogenic to humans.”<sup>6</sup>

16 33. The FDA classifies Benzene as a Class 1 compound.<sup>7</sup> According to FDA guidance:  
17 “Solvents in Class 1 should not be employed in the manufacture of drug substances, excipients,  
18 and drug products, because of their unacceptable toxicity or their deleterious environmental  
19 effect.”<sup>8</sup> The FDA concentration limit for benzene is 2 ppm, a small fraction of the benzene  
20 concentration found in many of the Products.<sup>9</sup>

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27 <sup>6</sup> [https://www.who.int/water\\_sanitation\\_health/dwg/chemicals/benzenesum.pdf](https://www.who.int/water_sanitation_health/dwg/chemicals/benzenesum.pdf) (last visited Nov. 7, 2021).

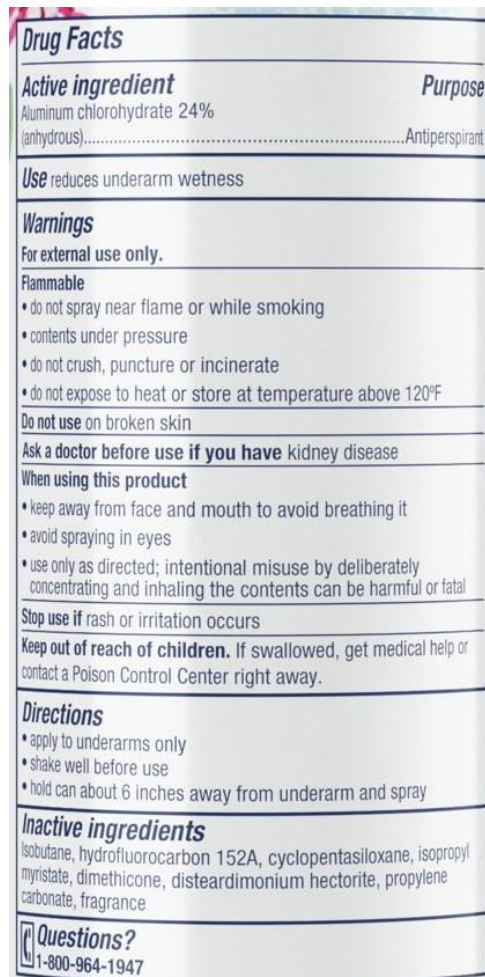
28 <sup>7</sup> <https://www.fda.gov/media/71737/download> (last visited Nov. 7, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

**D. Defendants’ Representations**

34. Defendant makes a significant number of representations regarding the safety of the Products on their website. Referring to its Secret Powder Fresh antiperspirant, P&G assures consumers that “[i]t’s the original, the one you have known and trusted for years . . . . Be confident with Secret Original.”<sup>10</sup> Although Secret Powder Fresh was found to contain benzene concentration 8 times greater than the FDA limit, P&G does not list benzene among the active or inactive ingredients for Secret Powder Fresh aerosol antiperspirant anywhere on its website,<sup>11</sup> and nothing on the Product label otherwise insinuates, states, or warns that the Product contains benzene:



12

<sup>10</sup> <https://secret.com/en-us/shop/original-aerosol> (last visited Nov. 10, 2021)

<sup>11</sup> <https://smartlabel.pg.com/00037000711087.html> (last visited Nov. 10, 2021)

<sup>12</sup> <https://www.walmart.com/ip/Secret-Aerosol-Antiperspirant-and-Deodorant-Powder-Fresh-6-Oz/10312167> (last visited Nov. 10, 2021)



35. P&G leans on its reputation and consumer trust in marketing its Secret Dry Spray Antiperspirant, stating on its website that the Product is “[b]rought to you by America’s #1 women’s deodorant brand.”<sup>13</sup> Despite the fact that the Valisure testing found benzene concentration of 3.72 ppm in Secret Dry Spray, P&G does not list benzene among the active or inactive ingredients for Secret Dry Spray aerosol antiperspirant anywhere on its website,<sup>14</sup> and nothing on the Product label otherwise insinuates, states, or warns that the Product contains benzene:



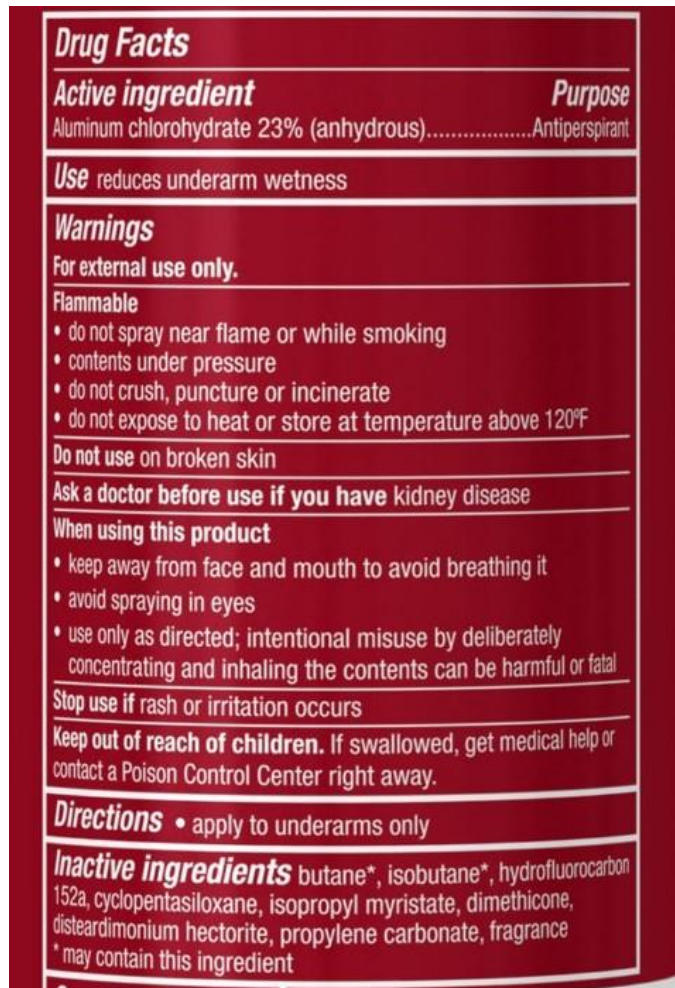
15

<sup>13</sup> <https://secret.com/en-us/shop/secret-fresh-dry-spray> (last visited Nov. 10, 2021).

<sup>14</sup> <https://smartlabel.pg.com/00037000798842.html> (last visited Nov. 10, 2021)

<sup>15</sup> <https://www.walmart.com/ip/Secret-Dry-Spray-Antiperspirant-Deodorant-Rose-Invisible-Spray-3-8-oz/756378262> (last visited Nov. 10, 2021).

36. Also listed under P&G’s “Iconic brands you can trust in your home” is Old Spice.<sup>16</sup> Old Spice is a brand of male grooming products first introduced over 80 years ago. P&G maintains modern brand awareness with iconic, snappy advertising, such as Old Spice Pure Sport aerosol’s product description that promises it will “drop kick[] odor and smack[] wetness with a folding chair.”<sup>17</sup> P&G fails to mention, however, that Old Spice Pure Sport has a benzene concentration level of 12.8, six times greater than the FDA limit.<sup>18</sup> Such a dangerously high level of a known carcinogen represents a smack to consumers with a folding chair. Nor does the Product label otherwise insinuate, state, or warn that the Product contains benzene:



<sup>16</sup> <https://us.pg.com/brands/> (last visited Nov. 10, 2021).

<sup>17</sup> <https://www.walmart.com/ip/Old-Spice-Pure-Sport-Aerosol-Antiperspirant-and-Deodorant-6-Oz/23750273> (last visited Nov. 10, 2021).

<sup>18</sup> <https://smartlabel.pg.com/00037000729747.html> (last visited Nov. 10, 2021).

<sup>19</sup> <https://www.walmart.com/ip/Old-Spice-Pure-Sport-Aerosol-Antiperspirant-and-Deodorant-6-Oz/23750273> (last visited Nov. 10, 2021).

1 37. While P&G continues to capitalize on Old Spice’s reputation and brand loyalty, a  
2 full *three* of its Old Spice products contain concentration levels of benzene higher than the FDA  
3 limit. P&G touts that “the freshness you know and trust from Old Spice now extends below the  
4 deck,”<sup>20</sup> promising that Old Spice Below Deck Powder Spray Fresh Air keeps you “free of things  
5 you don’t want on your underbits, like talc and aluminum,”<sup>21</sup> but fails to mention consumers of  
6 Below Deck aerosol are subjecting their “underbits” to a benzene concentration level of 5.22 ppm,  
7 more than twice the FDA limit:  
8



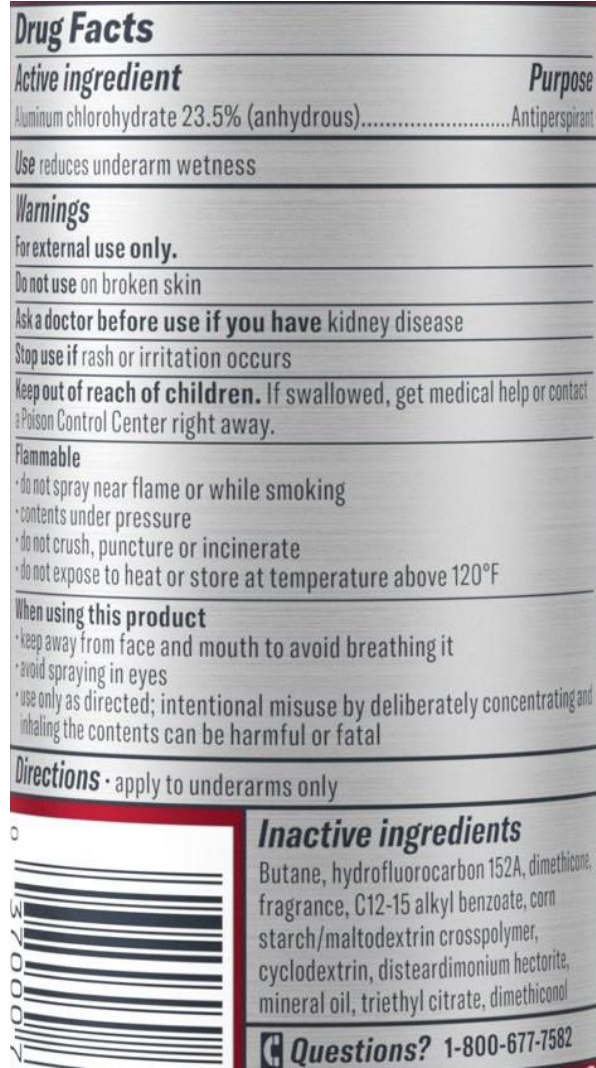
24 38. Finally, regarding its Old Spice Sweat Defense Stronger Swagger spray, P&G  
25 encourages consumers by stating “[d]on’t sweat over your grooming products, grab Old Spice  
26

27 <sup>20</sup> <https://www.walmart.com/ip/Old-Spice-Below-Deck-Powder-Spray-Fresh-Air-4-9-Oz/988057692> (last visited Nov. 10, 2021).

28 <sup>21</sup> <https://oldspice.com/below-deck-powder-spray-fresh-air/> (last visited Nov. 10, 2021)

<sup>22</sup> <https://www.walmart.com/ip/Old-Spice-Below-Deck-Powder-Spray-Fresh-Air-4-9-Oz/988057692> (last visited Nov. 10, 2021).

1 today, because anything less than Old Spice isn't Old Spice.”<sup>23</sup> Consumers have a lot to sweat  
2 over, however, as Valisure’s testing found a benzene concentration level of 4.54 ppm in Old Spice  
3 Sweat Defense. While P&G reassures consumers in the bravado the Old Spice brand is known  
4 for, nothing on the Product label insinuates, states, or warns that the Product contains more than  
5 twice the FDA concentration limit of benzene:



23 <https://www.walmart.com/ip/Old-Spice-Sweat-Defense-Dry-Spray-Antiperspirant-Deodorant-Stronger-Swagger-3-8-FI-Oz/668249487> (last visited Nov. 10, 2021).

24 *Id.*



**E. Defendant's Products are Adulterated and Illegal to Sell**

1  
2 39. Defendant's antiperspirant Products, including the Secret Antiperspirants, Old  
3 Spice Pure Sport, and Old Spice Sweat Defense, are drugs which are adulterated under 21 U.S.C.  
4 § 351(a)(1) based upon the presence of benzene.

5 40. The Federal Food, Drug, and Cosmetic Act (FD&C Act) prohibits "The  
6 introduction or delivery for introduction into interstate commerce of any food, drug, or cosmetic  
7 that is adulterated or misbranded." 21 U.S.C. § 331(a).

8 41. California's Sherman Law has expressly adopted the federal labeling requirements  
9 as its own. The definition of "adulterated" is exactly the same as the FD&C Act under CA Health  
10 & Safety Code Sections 111250, 111255, 111260, and 111265.

11 42. Defendant's deodorant Product, Old Spice Below Deck, is a cosmetic which is  
12 adulterated under 21 U.S.C. § 361(a-b) based upon the presence of benzene.

13 43. The Federal Food, Drug, and Cosmetic Act (FD&C Act) prohibits "The  
14 introduction or delivery for introduction into interstate commerce of any food, drug, or cosmetic  
15 that is adulterated or misbranded." 21 U.S.C. § 331(a).

16 44. California's Sherman Law has expressly adopted the federal cosmetic labeling  
17 requirements as its own. The definition of "adulterated" is exactly the same as the FD&C Act  
18 under CA Health & Safety Code Sections 111670 and 111680.

19 45. As alleged herein, Defendant has violated the FDCA, the Sherman Law, and  
20 consumer protection statutes.

21 46. Plaintiffs and the Classes have suffered injury in fact and have lost money as a  
22 result of Defendant's unlawful sale of the Products. Indeed, no reasonable consumer, including  
23 Plaintiffs, would have purchased the Products had they known they were adulterated and/or  
24 misbranded.  
25  
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1 47. Defendant engaged in fraudulent, unfair, deceptive, misleading, and/or unlawful  
2 conduct stemming from its omissions surrounding benzene contamination affecting the Products.

3 48. Plaintiffs and the Classes have suffered injury in fact and have lost money as a  
4 result of Defendant's unlawful sale of the Products. Indeed, no reasonable consumer, including  
5 Plaintiffs, would have purchased the Products had they known of the material omissions of  
6 material facts regarding the presence of Benzene. Accordingly, Plaintiffs and the Classes suffered  
7 injury in fact and lost money as a result of Defendant's misleading representations and omissions  
8 and did not receive the benefit-of-the- bargain.  
9

10 49. Plaintiffs and the Classes' injury is underscored by the fact that numerous other  
11 products offering the same therapeutic benefit at comparable prices exist that are not prone to  
12 benzene contamination.

13 50. Plaintiffs and the Classes may be harmed again in the future because they want to  
14 purchase the Products in the future; however, without injunctive relief Plaintiffs would not be able  
15 to know or trust that Defendant will truthfully and legally label the Products and would be likely to  
16 be misled again.  
17

18 **PLAINTIFFS' FACTUAL ALLEGATIONS**

19 **PLAINTIFF EILEEN AVILES**

20 51. Plaintiff Eileen Aviles purchased Old Spice Sweat Defense Stronger Swagger Dry  
21 Spray antiperspirant numerous times throughout the relevant period at Target in Fairfield,  
22 California and Walmart in Suisun, California. One such instance Where Plaintiff Eileen purchased  
23 the Product occurred on or around February 7, 2021.  
24

25 52. Nowhere on the packaging did Defendant disclose that the Product contains  
26 benzene at the time of purchase.

27 53. If Plaintiff Aviles had been aware of the existence of benzene in the Product, she  
28 would not have purchased the Product or would have paid significantly less.

1 54. As a result of Defendant's actions, Plaintiff Aviles has incurred damages, including  
2 economic damages.

3 **PLAINTIFF SHELBY COOPER**

4 55. Plaintiff Shelby Cooper has purchased Secret Powder Fresh 24-Hour Aerosol  
5 antiperspirant monthly for approximately the past year. Plaintiff Cooper typically purchases the  
6 Product at the Walmart in Riverside but most recently purchased 4 cans of the Product on or around  
7 October 5, 2021, at Walmart in Colton, California.

8  
9 56. Nowhere on the packaging did Defendant disclose that the Product contains  
10 benzene at the time of purchase.

11 57. If Plaintiff Cooper had been aware of the existence of benzene in the Product, she  
12 would not have purchased the Product or would have paid significantly less.

13 58. As a result of Defendant's actions, Plaintiff Cooper has incurred damages,  
14 including economic damages.

15 **PLAINTIFF TANYA COOPER**

16  
17 59. Plaintiff Tanya Cooper has been purchasing Secret Powder Fresh 24-Hour Aerosol  
18 antiperspirant regularly since 2019. Plaintiff Cooper typically buys 4 cans of the Product at a time  
19 at Target in Inglewood, California and most recently purchased cans of the Product in September  
20 or October 2021.

21 60. Nowhere on the packaging did Defendant disclose that the Product contains  
22 benzene at the time of purchase.

23  
24 61. If Plaintiff Cooper had been aware of the existence of benzene in the Product, she  
25 would not have purchased the Product or would have paid significantly less.

26 62. As a result of Defendant's actions, Plaintiff Cooper has incurred damages,  
27 including economic damages.

28 **PLAINTIFF JACOB COOPER**

1 63. Plaintiff Jacob Cooper has purchased Old Spice Sweat Defense Stronger Swagger  
2 Dry Spray antiperspirant regularly for approximately the last year, typically at Walmart in  
3 Hanford, California or Food Co in Hanford, California. Plaintiff Cooper purchased the Product  
4 most recently in or around the beginning of October, 2021.

5 64. Nowhere on the packaging did Defendant disclose that the Product contains  
6 benzene at the time of purchase.

7 65. If Plaintiff Cooper had been aware of the existence of benzene in the Product, he  
8 would not have purchased the Product or would have paid significantly less.

9 66. As a result of Defendant's actions, Plaintiff Cooper has incurred damages,  
10 including economic damages.

11  
12 **PLAINTIFF PATRICIA DONADIO**

13 67. Plaintiff Patricia Donadio purchased Secret Cool Light & Airy Smooth Feel Dry  
14 Spray antiperspirant on or around March 10, 2021 at Walmart in Victor, New York.

15 68. Nowhere on the packaging did Defendant disclose that the Product contains  
16 benzene at the time of purchase.

17 69. If Plaintiff Donadio had been aware of the existence of benzene in the Product, she  
18 would not have purchased the Product or would have paid significantly less.

19 70. As a result of Defendant's actions, Plaintiff Donadio has incurred damages,  
20 including economic damages.

21  
22 **CLASS ACTION ALLEGATIONS**

23 71. Plaintiffs bring this action individually and as representatives of all those similarly  
24 situated pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the below-  
25 defined Classes:  
26

27 72. **National Class:** All persons in the United States who purchased any of the  
28 Products.



1           **California Subclass:** All persons in the State of California who purchased any of  
2 the Products.

3           **New York Subclass:** All persons in the State of New York who purchased any of  
4 the Products.

5           73.     Members of the classes described are referred to as “Class Members” or members  
6 of the “Classes.”

7           74.     The following are excluded from the Classes: (1) any Judge presiding over this  
8 action and members of his or her family; (2) Defendant, Defendant’s subsidiaries, parents,  
9 successors, predecessors, and any entity in which Defendant or its parent has a controlling interest  
10 (as well as current or former employees, officers, and directors); (3) persons who properly execute  
11 and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have  
12 been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and  
13 Defendant’s counsel; and (6) the legal representatives, successors, and assigns of any such  
14 excluded persons.  
15

16           75.     Certification of Plaintiffs’ claims for class-wide treatment is appropriate because  
17 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as  
18 would be used to prove those elements in individual actions alleging the same claims.  
19

20           76.     **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the  
21 Classes are so numerous that individual joinder of all Class Members is impracticable. On  
22 information and belief, Class Members number in the thousands to millions. The precise number  
23 or identification of members of the Classes are presently unknown to Plaintiffs but may be  
24 ascertained from Defendant’s books and records. Class Members may be notified of the pendency  
25 of this action by recognized, Court-approved notice dissemination methods, which may include  
26 U.S. mail, electronic mail, Internet postings, and/or published notice.  
27  
28

1           77.     **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**  
2 **and 23(b)(3).** Common questions of law and fact exist as to all members of the Classes, which  
3 predominate over any questions affecting individual members of the Classes. These common  
4 questions of law or fact include, but are not limited to, the following:

- 5           a) Whether the Products contain benzene at the time of purchase;
- 6           b) Whether Defendant omitted or failed to disclose material information to  
7 Plaintiffs and Class Members regarding the Products;
- 8           c) Whether the Products are defectively designed, formulated, and/or  
9 manufactured;
- 10          d) Whether Defendant knew or reasonably should have known about the harmful  
11 level of benzene in the Products prior to distributing and selling them to  
12 Plaintiffs and Class Members;
- 13          e) Whether the marketing, advertising, packaging, labeling, and other promotional  
14 materials for the Products is deceptive;
- 15          f) Whether Defendant’s actions violate the consumer protection statutes invoked  
16 herein;
- 17          g) Whether Defendant breached the implied warranty of merchantability relating  
18 to the Products;
- 19          h) Whether Defendant breached an express warranty to Plaintiffs and Class  
20 Members;
- 21          i) Whether Defendant was unjustly enriched at the expense of the Plaintiffs and  
22 Class Members;
- 23          j) Whether Plaintiffs and Class Members are entitled to damages, including  
24 compensatory, exemplary, and statutory damages, and the amount of such  
25 damages;
- 26          k) Whether Plaintiffs and the other Class Members have been injured and the  
27 proper measure of their losses as a result of those injuries; and
- 28          l) Whether Plaintiffs and the Class Members are entitled to injunctive,  
declaratory, or other equitable relief.

78. Defendant engaged in a common course of conduct giving rise to the legal rights  
sought to be enforced by Plaintiffs, on behalf of themselves and the other Class Members. Similar  
or identical statutory and common law violations, business practices, and injuries are involved.

1 Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous  
2 common questions that dominate this action.

3 79. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’ claims are  
4 typical of the claims of the other Class Members because, among other things, all such claims  
5 arise out of the same wrongful course of conduct engaged in by Defendant in violation of law as  
6 complained of herein. Further, the damages of each Class Member were caused directly by  
7 Defendant’s wrongful conduct in violation of the law as alleged herein.  
8

9 80. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**  
10 Plaintiffs are adequate representatives of the Classes because they are members of the Classes and  
11 their interests do not conflict with the interests of the Class Members they seek to represent.  
12 Plaintiffs have also retained counsel competent and experienced in complex commercial and class  
13 action litigation. Plaintiffs and their counsel intend to prosecute this action vigorously for the  
14 benefit of all Class Members. Accordingly, the interests of the Class Members will be fairly and  
15 adequately protected by Plaintiffs and their counsel.  
16

17 81. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior  
18 to any other available means for the fair and efficient adjudication of this controversy, and no  
19 unusual difficulties are likely to be encountered in the management of this class action. The  
20 damages or other financial detriment suffered by Plaintiffs and the Class Members are relatively  
21 small compared to the burden and expense that would be required to individually litigate their  
22 claims against Defendant, so it would be impracticable for Class Members to individually seek  
23 redress for Defendant’s wrongful conduct. Even if Class Members could afford individual  
24 litigation, the court system could not. Individualized litigation creates a potential for inconsistent  
25 or contradictory judgments and increases the delay and expense to all parties and the court system.  
26 By contrast, the class action device presents far fewer management difficulties, and provides the  
27  
28

1 benefits of single adjudication, economy of scale, and comprehensive supervision by a single  
2 court.

3 **COUNT I**  
4 **Breach of Express Warranty**  
5 **(On Behalf of the National Class and,**  
6 **alternatively, the California and New York Subclasses)**

7 82. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

8 83. Plaintiffs, and each member of the National Class, formed a contract with  
9 Defendants at the time Plaintiffs and each member of the National Class purchased the Products.

10 84. The terms of the contract include the promises and affirmations of fact made by  
11 Defendants on the Products' packaging and through marketing and advertising, as described  
12 above.

13 85. This labeling, marketing, and advertising constitute express warranties and became  
14 part of the basis of the bargain and are part of the standardized contract between Plaintiffs and the  
15 members of the National Class and Defendants.

16 86. As set forth above, Defendants purport through its advertising, labeling, marketing,  
17 and packaging, to create an express warranty that the Product is safe for its intended use.

18 87. Plaintiffs and the members of the National Class performed all conditions precedent  
19 to Defendants' liability under this contract when they purchased the Products.

20 88. Defendants breached express warranties about the Products and their qualities  
21 because Defendants' Product contained the harmful chemical benzene at the time of purchase and  
22 the Products do not conform to Defendants' affirmations and promises described above.

23 89. Plaintiffs and each of the members of the National Class would not have purchased  
24 the Products had they known the true nature of the harmful chemicals in the Product.  
25  
26  
27  
28

1 90. As a result of Defendant’s breach of warranty, Plaintiffs and each Class Member  
2 suffered and continue to suffer financial damage and injury, and are entitled to all damages, in  
3 addition to costs, interest and fees, including attorneys’ fees, as allowed by law.

4 **COUNT II**  
5 **Breach of Implied Warranty**  
6 **(On Behalf of the National Class and,**  
7 **alternatively, the California and New York Subclasses)**

7 91. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

8 92. P&G is a merchant and was at all relevant times involved in the manufacturing,  
9 distributing, warranting, and/or selling of the Products.

10 93. The Products are “goods” under the relevant laws and P&G knew or had reason to  
11 know of the specific use for which the Products, as goods, were purchased.

12 94. P&G entered into agreements with retailers to sell its Products to be used by  
13 Plaintiffs and Class Members for personal use.

14 95. The implied warranty of merchantability included with the sale of each Product  
15 means that P&G guaranteed that the Products would be fit for the ordinary purposes for which  
16 deodorants and antiperspirants are used and sold, and were not otherwise injurious to consumers.  
17 The implied warranty of merchantability is part of the basis for the benefit of the bargain between  
18 P&G, and Plaintiffs and the Class Members.  
19

20 96. P&G breached the implied warranty of merchantability because the Products are  
21 not fit for their ordinary purpose of providing reasonably reliable and safe use for preventing or  
22 masking body odor because the Products contain benzene, a known and dangerous carcinogen.  
23 Therefore, the Products are not fit for their particular purpose of safely preventing or masking body  
24 odor.  
25

26 97. P&G’s warranty expressly applies to the purchaser of the Products, creating privity  
27 between P&G and Plaintiffs and Class Members.  
28

1 98. Privity is nonetheless not required because Plaintiffs and Class Members are the  
2 intended beneficiaries of P&G’s warranties and its sale through retailers. P&G’s retailers were  
3 not intended to be the ultimate consumers of the Products and have no rights under the warranty  
4 agreements. P&G’s warranties were designed for and intended to benefit the consumer only,  
5 including Plaintiffs and Class Members.

6 99. P&G has been provided sufficient notice of its breaches of implied warranties  
7 associated with the Products. P&G was put on constructive notice of its breach through its review  
8 of consumer complaints and other reports, including the Valisure testing report described herein,  
9 and upon information and belief through product testing.

10 100. Had Plaintiffs, Class Members, and the consuming public known that the Products  
11 were contaminated with benzene, they would not have purchased the Products or would have paid  
12 less for them.

13 101. As a direct and proximate result of the foregoing, Plaintiffs and Class Members  
14 suffered and continue to suffer financial damage and injury, and are entitled to all damages, in  
15 addition to costs, interest and fees, including attorneys’ fees, as allowed by law.  
16  
17

18 **COUNT III**  
19 **California’s Consumer Legal Remedies Act (“CLRA”)**  
20 **Cal. Civ. Code §§ 1750, *et seq.***  
21 **(On Behalf of Plaintiff Aviles, Plaintiff Shelby Cooper, Plaintiff Tanya Cooper, Plaintiff**  
22 **Jacob Cooper, and the California Subclass)**

23 102. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

24 103. Defendant’s conduct constitutes violations under California’s Consumer Legal  
25 Remedies Act, Cal. Civ. Code § 1750, *et seq.*. The CLRA proscribes “unfair methods of  
26 competition and unfair or deceptive acts or practices undertaken by any person in a transaction  
27 intended to result or which results in the sale or lease of goods or services to any consumer.”

28 104. Defendant’s conduct falls within the meaning of this statute because they caused  
transactions to occur resulting in the sale or lease of goods or services to consumers – namely, the

1 sale of the Products to Plaintiffs and the Class. Deodorant and antiperspirant sprays are considered  
2 goods within the meaning of the statute under Civil Code § 1761(a) and Defendant's sale of the  
3 Products is considered a service under Civil Code § 1761(b).

4 105. Plaintiffs and Class Members are consumers pursuant to the CLRA.

5 106. Defendant violated the CLRA by way of the following provisions:

- 6
- 7 • In violation of Civil Code § 1770(a)(5), Defendant represents (and continue to  
8 represent) that their goods have characteristics which they do not have – that, in  
9 exchange for each payment, Plaintiffs and the members of the Class receive  
10 deodorant or antiperspirant which is functioning as intended and which is not  
11 contaminated with benzene;
  - 12 • In violation of Civil Code § 1770(a)(14), Defendant represents (and continue to  
13 represent) that a consumer has rights, remedies and/or obligations which they did  
14 not have – that Plaintiffs and members of the Class receive deodorant or  
15 antiperspirant which is functioning as intended and which is not contaminated with  
16 benzene, and that Defendant is capable of correcting defects when it is not;

17

18 107. Defendant also engaged in unfair competition or unfair or deceptive acts or  
19 practices in violation of Civil Code § 1770(a)(5) and (a)(7) when it represented through its  
20 advertising, warranties, and other express representations that the Products have benefits or  
21 characteristics that they did not actually have, namely that the Products were safe to use and failing  
22 to disclose that the Products were contaminated with the carcinogen benzene.

23

24 108. Defendant is aware that their representations are false and misleading – specifically,  
25 the Defendant continued to sell the Products into the stream of commerce even after they had  
26 knowledge that the Products were contaminated with benzene.

1 109. Plaintiffs and Class have suffered injury-in-fact and actual damages resulting from  
2 Defendant’s omissions and misrepresentations because Defendant knew that the Products were  
3 contaminated with benzene.

4 110. On November 10, 2021, prior to the filing of this Complaint, Plaintiffs and Class  
5 Members put P&G on written notice of their claims arising from violations of numerous provisions  
6 of California law, including the California Consumers Legal Remedies Act (“CLRA”), California  
7 Civil Code § 1770, et seq., as well as other causes of action. Plaintiffs will amend their Complaint  
8 to add claims for monetary damages if P&G fails to take the corrective actions.  
9

10 111. In accordance with Civil Code § 1780(a), Plaintiffs and the other California  
11 Subclass Members seek injunctive and equitable relief for P&G’s violations of the CLRA,  
12 including an injunction to enjoin P&G from continuing its deceptive advertising and sales  
13 practices.

14 112. Pursuant to California Civil Code § 1780(a)(1)-(5) and § 1780(e), Plaintiffs seeks  
15 an order enjoining P&G from the unlawful practices described above, a declaration that P&G’s  
16 conduct violates the Consumers Legal Remedies Act, reasonable attorneys’ fees and litigation  
17 costs, and any other relief the Court deems proper under the CLRA.  
18

19 113. Plaintiffs and the Class members’ injuries were proximately caused by Defendant’s  
20 fraudulent business practices.

21 114. Therefore, Plaintiffs and Class members are entitled to relief under the CLRA.  
22

23 **COUNT IV**  
24 **California’s False Advertising Law (the “FAL”)**  
25 **Cal. Bus. & Prof. Code §§ 17500, et seq.**  
26 **(On Behalf of Plaintiff Aviles, Plaintiff Shelby Cooper, Plaintiff Tanya Cooper, Plaintiff**  
27 **Jacob Cooper, and the California Subclass)**

28 115. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

116. California’s False Advertising Law (the “FAL”), Cal. Bus. & Prof. Code §§ 17500,  
et seq., makes it “unlawful for any person to make or disseminate or cause to be made or



1 disseminated before the public in this state, . . . in any advertising device . . . or in any other manner  
2 or means whatever, including over the Internet, any statement, concerning . . . personal property  
3 or services, professional or otherwise, or performance or disposition thereof, which is untrue or  
4 misleading and which is known, or which by the exercise of reasonable care should be known, to  
5 be untrue or misleading.”

6 117. Defendants advertised and promoted the Products by relying on the trust and brand  
7 loyalty customers had for its Secret and Old Spice brands and representing that the Products were  
8 safe for personal use, when in reality the Products were contaminated with benzene. Defendants’  
9 advertisements and inducements were made in and originated from California and fall within the  
10 definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that P&G’s  
11 representations were intended to induce consumers to purchase the Products. Defendants knew  
12 that those statements were false and misleading as it knew or should have known through the  
13 exercise of reasonable care that the Products were contaminated with benzene.  
14

15 118. Plaintiffs and the California Subclass lost money or property as a result of  
16 Defendants’ FAL violations because (a) they would not have purchased P&G’s Products absent  
17 Defendants’ representations that the Products were safe and effective; (b) they would not have  
18 purchased the Products for the same price absent Defendants’ misrepresentations; and (c)  
19 Defendants’ Products did not have the characteristics, benefits, or quantities as promised.  
20

21 **COUNT V**  
22 **California’s Unfair Competition Law (“UCL”)**  
23 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
24 **(On Behalf of Plaintiff Aviles, Plaintiff Shelby Cooper, Plaintiff Tanya Cooper, Plaintiff**  
25 **Jacob Cooper, and the California Subclass)**

26 119. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

27 120. Defendant engaged in unlawful, fraudulent, and unfair business practices.

28 121. Defendant’s conduct was unlawful because it violates the CLRA, the FAL, tort law,  
and contract law.

1 122. Defendant’s conduct is fraudulent because they continued to represent that their  
2 goods were fit for their intended use when they knew that the Products were contaminated with  
3 benzene in an attempt to get consumers to continue to buy the Products; and, Defendant’s conduct  
4 is fraudulent because they did not disclose to the buyers that the Products were contaminated with  
5 benzene and continue to conceal the fact of this contamination in an attempt to keep consumers  
6 from seeking refunds or seeking other redress, so they would not bear the costs of the defect and  
7 any damage it may have caused.

8  
9 123. Defendant’s conduct constitutes an unfair business practice – under the UCL, a  
10 business practice is considered to be “unfair” if the conduct alleged is immoral, unethical,  
11 oppressive, or substantially injurious to consumers; as well as if the conduct causing alleged injury  
12 which is not outweighed by benefits to other consumers or to competition, and that the injury is of  
13 a type which the consumer could not have avoided.

14 124. Defendant’s behavior is immoral, unethical, oppressive and injurious to consumers  
15 because they are profiting from concealing the presence of benzene in the Products, which are still  
16 being sold to this day.

17  
18 125. Defendant’s retention of profits from the aforementioned conduct does not  
19 outweigh the economic harm that said retention imposes on consumers. The lone party that benefits  
20 is the Defendant – their conduct also harms competition, who would otherwise be the recipient of  
21 the business that Defendant acquired using omissions and misrepresentations.

22 126. Plaintiffs and the Class members had no way of knowing that Defendants were  
23 selling defective products.

24  
25 127. Therefore, Plaintiffs and the Class members are entitled to relief under the UCL.

26 **COUNT VI**  
27 **New York Gen. Bus. Law §§ 349, et seq.**  
28 **(On Behalf of Plaintiff Donadio and the New York Subclass)**

128. Plaintiff Donadio repeats and re-alleges the allegations above as if set forth herein.

1 129. By the acts and conduct alleged herein, Defendant committed unfair or deceptive  
2 acts and practices by making false representations on the label of the Products.

3 130. The foregoing deceptive acts and practices were directed at consumers.

4 131. The foregoing deceptive acts and practices are misleading in a material way  
5 because they fundamentally misrepresent the health and safety of the Products.

6 132. On behalf of herself and other members of the New York Subclass, Plaintiff seeks  
7 to enjoin the unlawful acts and practices described herein, to recover their actual damages or fifty  
8 dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.  
9

10 **COUNT VII**

11 **New York Gen. Bus. Law §§ 350, *et seq.***

12 **(On Behalf of Plaintiff Donadio and the New York Subclass)**

13 133. Plaintiff Donadio repeats and re-alleges the allegations above as if set forth herein.

14 134. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that  
15 is deceptive or misleading in a material way which constitutes false advertising in violation of  
16 Section 350 of the New York General Business Law by misrepresenting on the labeling of the  
17 Products that they were free of benzene contamination, when in fact the Products were  
18 contaminated with high concentrations of benzene.

19 135. The foregoing advertising was directed at consumers and was likely to mislead a  
20 reasonable consumer acting reasonably under the circumstances.

21 136. This misrepresentation has resulted in consumer injury or harm to the public  
22 interest.

23 137. As a result of this misrepresentation, Plaintiffs and other members of the New York  
24 Subclass have suffered economic injury because (a) they would not have purchased the Products  
25 if they had known they were contaminated with benzene, and (b) they overpaid for the Products  
26 on account of P&G's misrepresentations and omissions because the company did not inform  
27 consumers that the Products contained benzene.  
28

1 138. On behalf of herself and other members of the New York Subclass, Plaintiff seeks  
2 to enjoin the unlawful acts and practices described herein, to recover their actual damages or five  
3 hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

4 **COUNT VIII**  
5 **Unjust Enrichment**  
6 **(In The Alternative And On Behalf of the National Class and, alternatively, the California**  
7 **and New York Subclasses)**

7 139. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

8 140. Plaintiffs and the other members of the National Class conferred benefits on  
9 Defendant by purchasing the Products.

10 141. Defendant has been unjustly enriched in retaining the revenues derived from the  
11 purchase of the Product by Plaintiffs and the other members of the National Class.

12 142. Retention of those monies under these circumstances is unjust and inequitable  
13 because Defendant's labeling of the Products was misleading to consumers, which caused injuries  
14 to Plaintiffs and the other members of the National Class because they would have not purchased  
15 the Product if Defendant's had disclosed that the Product contained harmful chemicals.

16 143. Because Defendants' retention of the non-gratuitous benefits conferred on them by  
17 Plaintiffs and the other members of the National Class is unjust and inequitable, Defendants must  
18 pay restitution to Plaintiffs and the other members of the National Class for their unjust enrichment,  
19 as ordered by the Court.  
20

21 **REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiffs, individually and on behalf of the Class Members, pray for  
23 judgment and relief against Defendants as follows:  
24

- 25 a) For an order declaring: (i) this is a class action pursuant to Rule 23 of the Federal  
26 Rules of Civil Procedure on behalf of the proposed Classes described herein; and (ii)  
27 appointing Plaintiffs to serve as representatives for the Classes and Plaintiffs' counsel  
28 to serve as Class Counsel;

- 1 b) For an order enjoining Defendants from continuing to engage in the unlawful conduct  
set forth herein;
- 2 c) For an order awarding restitution of the monies Defendants wrongfully acquired by  
3 its illegal and deceptive conduct;
- 4 d) For an order requiring disgorgement of the monies Defendants wrongfully acquired  
5 by its illegal and deceptive conduct;
- 6 e) For compensatory and punitive damages, including actual and statutory damages,  
arising from Defendants' wrongful conduct and illegal conduct;
- 7 f) For an award of reasonable attorneys' fees and costs and expenses incurred in the  
8 course of prosecuting this action; and
- 9 g) For such other and further relief as the Court deems just and proper.

10  
11 **JURY DEMAND**

12 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all  
13 claims in this Complaint so triable.

14  
15  
16  
17  
18 Dated: November 12, 2021

Respectfully submitted,

19 By:

20 **MILBERG COLEMAN BRYSON**  
21 **PHILLIPS GROSSMAN PLLC**

22 /s/

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*Attorneys for Plaintiffs and Putative Classes  
Other Counsel on Signature Page*

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

EILEEN AVILES, SHELBY COOPER,  
TANYA COOPER, JACOB COOPER,  
AND PATRICIA DONADIO  
individually and on behalf of all others  
similarly situated,

CASE NO. \_\_\_\_\_

Plaintiff,

v.

THE PROCTER & GAMBLE  
COMPANY,

Defendant.

**DECLARATION OF EILEEN AVILES**

I, Eileen Aviles, declare as follows:

1. I am a named plaintiff in the above-captioned litigation.
2. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.



