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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GLORIA QUINONES, individually,
and on behalf of all others similarly
situated,

Plaintiff,
vs.

THE PROCTER & GAMBLE
COMPANY, an Ohio Corporation,
Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE § 1750, ET SEQ.**
2. **UNJUST ENRICHMENT**
3. **BREACH OF IMPLIED WARRANTY**
4. **BREACH OF EXPRESS WARRANTY**

JURY TRIAL DEMANDED

1 Plaintiff, Gloria Quinones (“Plaintiff”), individually and on behalf of all others
2 similarly situated, files this Complaint against The Procter & Gamble Company,
3 (“Defendant”), and in support states the following.

4 **NATURE OF THE ACTION**

5 1. This is a class action lawsuit by Plaintiff, and all others similarly situated,
6 who purchased certain aerosol antiperspirant sprays manufactured, sold and
7 distributed by Defendant. Defendant distributes, markets and sells several over-the-
8 counter aerosol antiperspirant products sold under the brand names “Old Spice” and
9 “Secret” (the “Aerosol Antiperspirant Products”). Several of Defendant’s Aerosol
10 Antiperspirant Products sold under these brand names have been independently tested
11 and shown to be adulterated with benzene, a known human carcinogen. The presence
12 of benzene in Defendant’s Aerosol Antiperspirant Products was not disclosed in the
13 products’ label, in violation of state and federal law. Plaintiff and the putative class
14 suffered economic damages due to Defendant’s misconduct (as set forth below) and
15 they seek injunctive relief and restitution for the full purchase price of the Aerosol
16 Antiperspirant Products they purchased. Plaintiff alleges the following based upon
17 personal knowledge as well as investigation by counsel, and as to all other matters,
18 upon information and belief. Plaintiff further believes that substantial evidentiary
19 support will exist for the allegations set forth herein after a reasonable opportunity for
20 discovery.

21 **JURISDICTION AND VENUE**

22 2. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
23 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
24 of \$5,000,000 and is a class action in which there are in excess of 100 class members
25 and Plaintiff is a citizen of a state different from Defendant.

26 3. This Court has jurisdiction over Defendant because, upon information
27 and belief, Defendant is authorized to conduct and do business in California.
28 Defendant has marketed, promoted, distributed, and sold the Aerosol Antiperspirant

1 Products in California and Defendant has sufficient minimum contacts with this State
2 and/or sufficiently avails itself of the markets in this State through promotion, sales,
3 distribution and marketing within this State to render the exercise of jurisdiction by
4 this Court permissible.

5 4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) and (b)
6 because a substantial part of the events or omissions giving rise to Plaintiff's claims
7 occurred while she resided in this judicial district. Venue is also proper under 18
8 U.S.C. §1965(a) because Defendant transacts substantial business in this District.

9 **PARTIES**

10 5. Plaintiff Gloria Quinones resides in Burbank, California, , and at all times
11 relevant hereto has been a resident of Burbank, California. On multiple occasions
12 throughout the last several years, Quinones purchased Secret
13 Antiperspirant/Deodorant Powder Fresh Aerosol Spray from various retailers in
14 California. She paid several dollars each for the Aerosol Antiperspirant Products.
15 During that time, based on the false and misleading claims by Defendant, Quinones
16 was unaware that Defendant's Aerosol Antiperspirant Products may be adulterated
17 with benzene. Quinones purchased the Defendant's Aerosol Antiperspirant Products
18 on the assumption that the labeling of Defendant's Aerosol Antiperspirant Products
19 was accurate and that the products were unadulterated, safe and effective. Quinones
20 would not have purchased Defendant's Aerosol Antiperspirant Products had she
21 known there was a risk the products may contain benzene, a known human
22 carcinogen. As a result, Plaintiff suffered injury in fact when she spent money to
23 purchase products she would not otherwise have purchased absent Defendant's
24 misconduct, as alleged herein.

25 6. Defendant The Procter & Gamble Company is an Ohio corporation with
26 its principal place of business at 1 P&G Plaza, Cincinnati, OH 45202. As one of the
27 world's leading brands of skin care, hair care and cosmetics, Defendant distributes its
28 products, including the Aerosol Antiperspirant Products, throughout the United

1 States. Defendant’s line of Aerosol Antiperspirant Products, including the adulterated
2 antiperspirant purchased by Plaintiff and members of the putative class, are available
3 at retail stores throughout California and the United States.

4 **FACTUAL ALLEGATIONS**

5 7. Defendant manufactures, markets, advertises, labels, distributes, and sells
6 a variety of Aerosol Antiperspirant Products, including aerosol antiperspirants sold
7 under the brand names Old Spice and Secret.

8 8. In 2021, Valisure LLC and (“Valisure”), an analytical pharmacy, ran tests
9 on a variety of Defendant’s Aerosol Antiperspirant Products. Specifically, Valisure
10 tested numerous lots of Defendant’s Old Spice and Secret Aerosol Antiperspirant
11 Products. Through its testing, Valisure discovered that all the tested Aerosol
12 Antiperspirant Products sold under the name brand Secret contain benzene, with
13 values ranging from 0.10 ppm to 2 ppm, and more than 2 ppm up to 16.2 ppm.
14 Through its testing, Valisure also discovered that many of the tested Aerosol
15 Antiperspirant Products sold under the name brand Old Spice contain benzene, with
16 values ranging from less than .1 ppm, 0.10 ppm to 2 ppm, and more than 2 ppm up to
17 17.7 ppm. For reference, the National Institute for Occupational Safety and Health
18 (“NIOSH”) recommends protective equipment be worn by workers expecting to be
19 exposed to benzene at concentrations of 0.1 ppm and defines “skin absorption” as an
20 exposure route.¹ Notably, benzene is not listed as an active or inactive ingredient on
21 any of the labels of the Defendant’s Aerosol Antiperspirant Products. Moreover, all
22 the Aerosol Antiperspirant Products are marketed and advertised in an identical
23 manner—as “Antiperspirant.”

24 9. On November 4, 2021, Valisure filed a citizen petition with the Food and
25 Drug Administration (“FDA”) asking the agency to recall all batches of Defendant’s

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27 ¹ Centers for Disease Control and Prevention. *The National Institute for Occupational*
28 *Safety and Health (NIOSH), Benzene*
(<https://www.cdc.gov/niosh/npg/npgd0049.html>).

1 Aerosol Antiperspirant Products tested that (as tested) contained 0.1 ppm or more of
2 benzene, on the basis that they are adulterated under Section 501 of the FDCA (21
3 U.S.C. § 351) and misbranded under Section 502 of the FDCA (21 U.S.C. § 352).
4 As of this filing, the FDA has not responded to Valisure’s citizen petition and
5 Defendant has not taken any action to remove the Aerosol Antiperspirant Products
6 from the market.

7 10. Benzene is used primarily as a solvent in the chemical and pharmaceutical
8 industries, as a starting material and intermediate in the synthesis of numerous
9 chemicals, and in gasoline. The major United States source of benzene is petroleum.
10 The health hazards of benzene have been recognized for over one hundred years.
11 According to the National Toxicology Program (“NTP”), benzene is “*known to be a*
12 *human carcinogen* based on sufficient evidence of carcinogenicity from studies in
13 humans.”² Benzene has also been “found to be carcinogenic to humans” by the
14 International Agency for Research on Cancer (“IARC”). Benzene was “[f]irst
15 evaluated by IARC in 1974 . . . and was found to be carcinogenic to humans (Group
16 1), a finding that has stood since that time.”³ As noted by the IARC:

17 In the current evaluation, the Working Group again confirmed the carcinogenicity of
18 benzene based on *sufficient evidence* of carcinogenicity in humans, *sufficient evidence*
19 of carcinogenicity in experimental animals, and *strong* mechanistic evidence The
20 Working Group affirmed the strong evidence that benzene is genotoxic, and found that
21 it also exhibits many other key characteristics of carcinogens, including in exposed
22 humans. In particular, benzene is metabolically activated to electrophilic metabolites;
23 induces oxidative stress and associated oxidative damage to DNA; is genotoxic; alters
24 DNA repair or causes genomic instability; is immunosuppressive; alters cell
25 proliferation, cell death, or nutrient supply; and modulates receptor-mediated effects.⁴

26 Likewise, the Food and Drug Administration (“FDA”) recognizes that
27 “[b]enzene is a carcinogen that can cause cancer in humans”⁵ and classifies benzene

28 ² <http://ntp.niehs.nih.gov/go/roc/content/profiles/benzene.pdf> (emphasis added).

³ Benzene / IARC Working Group on the Evaluation of Carcinogenic Risks to Humans (2017:Lyon, France), at p. 33.

⁴ *Id.* at 34.

⁵ <https://www.fda.gov/food/chemicals/questions-and-answers-occurrence-benzene-soft-drinks-and-other-beverages#q1>.

1 as a “Class 1” solvent that should be “avoided.”⁶ FDA’s Guidance for Industry states
2 that “Solvents in Class 1 . . . should not be employed in the manufacture of drug
3 substances, excipients, and drug products because of their unacceptable toxicities or
4 deleterious environmental effect.”⁷

5 11. The FDA regulates antiperspirants to ensure they meet safety and
6 effectiveness standards.⁹ The FDA regulates antiperspirants, including the Aerosol
7 Antiperspirant Products at issue here, as over-the-counter (“OTC”) drugs rather than
8 as cosmetics. The FDA defines Antiperspirant as a “drug product applied topically
9 that reduces the production of perspiration (sweat) at that site.”⁸ As an FDA-regulated
10 product, antiperspirants must pass certain tests before they are sold.

11 12. Per the FDA regulations governing Defendant’s Aerosol Antiperspirant
12 Products, titled “Antiperspirant Drug Products for Over-the-Counter Human Use,”
13 there are certain acceptable active ingredients in products that are labeled as
14 Antiperspirant.⁹ Benzene, a known human carcinogen, is not on the FDA’s list of
15 acceptable active or inactive ingredients for Aerosol Antiperspirant Products. Nor is
16 benzene identified as an active or inactive ingredient on any of the Defendant’s
17 Aerosol Antiperspirant Products. Nevertheless, Defendant proclaims in its advertising
18 that benzene is one of the materials “we do not use as ingredients in any of our
19 formulated products,”¹⁰ which is a false and misleading statement.

20 13. The governing regulations provide: “An over-the-counter antiperspirant
21 drug product in a form suitable for topical administration is generally recognized as
22 safe and effective and is not misbranded if it meets each condition in this part and
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25 ⁶ <https://www.fda.gov/media/71737/download>.

26 ⁷ FDA Guidance for Industry, Q3C Impurities: Residual Solvents (6/30/2017),
available at <https://www.fda.gov/media/71736/download>.

27 ⁸ 21 C.F.R. § 350.3.

28 ⁹ 21 C.F.R. § 350.10.

¹⁰ <https://us.pg.com/ingredients/>

1 each general condition established in § 330.1 of this chapter.”¹¹ Defendant failed to
2 meet this standard as further described herein.

3 14. The manufacture of any misbranded or adulterated drug is prohibited
4 under federal law¹² and California state law.

5 15. The introduction into commerce of any misbranded or adulterated drug is
6 similarly prohibited.¹³

7 16. The receipt in interstate commerce of any adulterated or misbranded drug
8 is also unlawful.¹⁴

9 17. Among the ways a drug may be adulterated are:

10 If it consists in whole or in part of any filthy, putrid, or decomposed
11 substance; or . . . whereby it may have been rendered injurious to
12 health;¹⁵

13 18. A drug is misbranded:

14 (a) “If its labeling is false or misleading in any particular.”¹⁶

15 (b) If the labeling does not contain, among other things, “the proportion
16 of each active ingredient[.]”¹⁷

17 (c) “If it is dangerous to health when used in the dosage or manner, or
18 with the frequency or duration prescribed, recommended, or suggested
19 in the labeling thereof.”¹⁸

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¹¹ 21 C.F.R. § 350.1.

24 ¹² 21 U.S.C § 331(g).

25 ¹³ 21 U.S.C. §331(a).

26 ¹⁴ 21 U.S.C. §331(c).

27 ¹⁵ 21 U.S.C. §351(a)(2)(B).

28 ¹⁶ 21 U.S.C. §352(a)(1).

¹⁷ 21 U.S.C. §352(e)(1)(A)(ii).

¹⁸ 21 U.S.C. §352(j).

1 19. If a manufacturer labels a drug but omits ingredients, that renders the drug
2 misbranded.¹⁹

3 20. Defendant did not disclose that benzene, a known human carcinogen, may
4 be present in the Aerosol Antiperspirant Products purchased by Plaintiff and the
5 putative class members. As a result, its Aerosol Antiperspirant Products are
6 adulterated and misbranded. There is “no safe level of benzene” exposure, so it is
7 unsuitable for human application as an ingredient in any antiperspirant.²⁰

8 21. Defendant wrongfully advertised and sold the Aerosol Antiperspirant
9 Products without any labeling to indicate to consumers that these products may
10 contain benzene. The following image shows an example:

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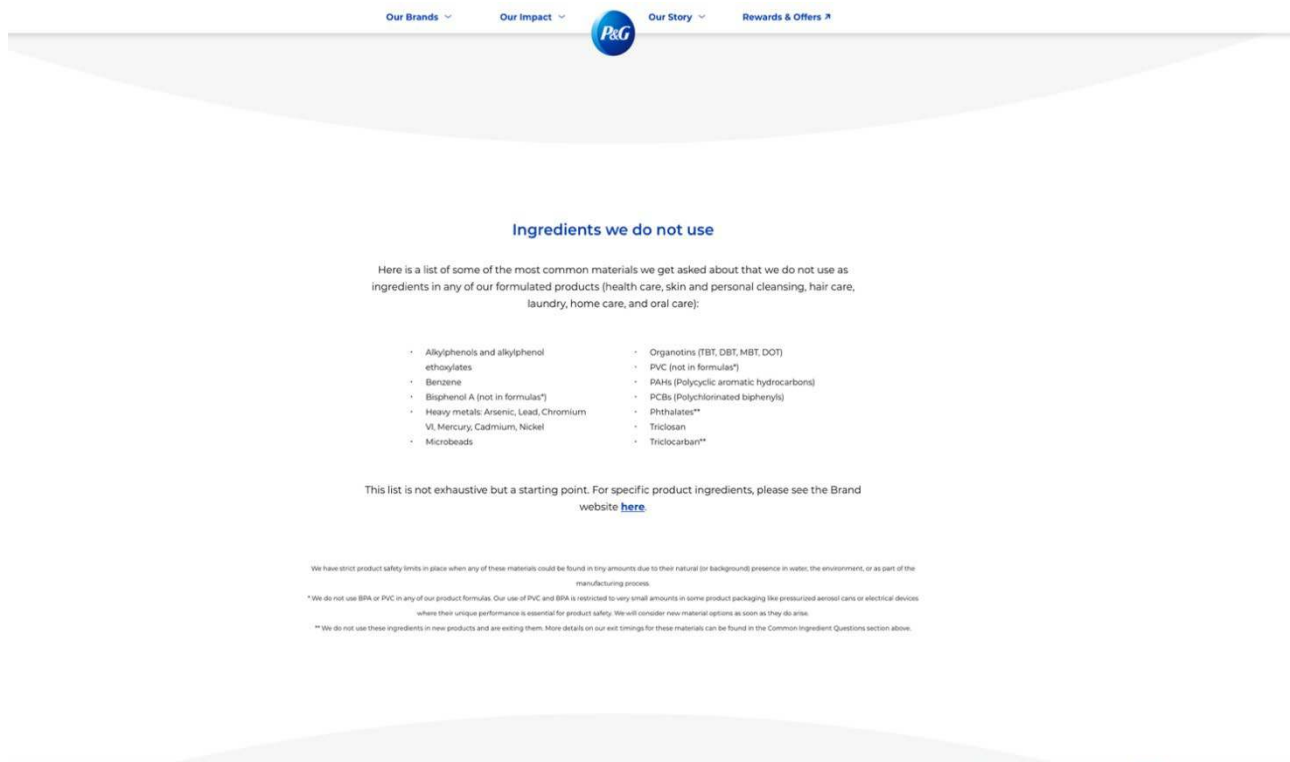
¹⁹ 21 C.F.R. §201.6. “The labeling of a drug may be misleading by reason (among other reasons) of: ... (2) Failure to reveal the proportion of, or other fact with respect to, an ingredient present in such drug, when such proportion or other fact is material in the light of the representation that such ingredient is present in such drug.” 21 C.F.R. §201.10(2).

²⁰ <https://www.who.int/ipcs/features/benzene.pdf>.

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1 22. In addition, Defendant maintains a “smartlabel.pg.com” webpage
2 identifying the active and inactive ingredients in its products, and benzene is not listed
3 as an ingredient in any of its Aerosol Antiperspirant Products.²¹ In fact, Defendant
4 specifically promises to consumers that benzene is one of the materials “we do not
5 use as ingredients in any of our formulated products.”²²



18 23. Plaintiff has standing to represent members of the putative class because
19 there is sufficient similarity between the specific Aerosol Antiperspirant Products
20 purchased by the Plaintiff and the other Aerosol Antiperspirant Products not
21 purchased by Plaintiff. Specifically, each and every one of Defendant’s Aerosol
22 Antiperspirant Products (i) are marketed in substantially the same way – as
23 “Antiperspirant”— and (ii) fail to include labeling indicating to consumers that the
24 Aerosol Antiperspirant Products may contain benzene as an active or inactive

27 ²¹<https://smartlabel.pg.com/00037000730347.html>;<https://smartlabel.pg.com/00037000711087.html>

28 ²² <https://us.pg.com/ingredients/>.

1 ingredient. Accordingly, the misleading effect of all the Aerosol Antiperspirant
2 Products is substantially the same.

3 24. Plaintiff references federal law in this Complaint not in any attempt to
4 enforce it, but to demonstrate that their state-law tort claims do not impose any
5 additional obligations on Defendant, beyond what was already required of them under
6 federal law.

7 **CLASS ACTION ALLEGATIONS**

8 25. Plaintiff brings this action on behalf of herself and all other similarly
9 situated class members (the “Class”) pursuant to Rule 23(a), (b)(2) and (b)(3) of the
10 Federal Rules of Civil Procedure and seeks certification of the following class against
11 Defendant for violations of California state laws and/or similar laws in other states:

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13 **Nationwide Class Action**

14 All consumers who purchased any Aerosol Antiperspirant
15 Product sold under the name brand Secret and/or Old Spice in
16 the United States of America and its territories from
17 December 10, 2017 to the present for personal use or
consumption.

18 Excluded from the Class are individuals who allege personal
19 bodily injury resulting from the use of Defendant’s Aerosol
20 Antiperspirant Products. Also excluded from this Class are
21 Defendant, any parent companies, subsidiaries, and/or
22 affiliates, officers, directors, legal representatives,
23 employees, co-conspirators, all governmental entities, and
any judge, justice or judicial officer presiding over this
matter.

24 26. In the alternative, Plaintiff brings this action on behalf of herself and all
25 other similarly situated California consumers pursuant to Rule 23(a), (b)(2) and (b)(3)
26 of the Federal Rules of Civil Procedure and seeks certification of the following class:

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California-Only Class Action

All consumers who purchased any Aerosol Antiperspirant Product sold under the name brand Secret and/or Old Spice in the State of California from November 4, 2017 to the present for personal use or consumption.

Excluded from the Class are individuals who allege personal bodily injury resulting from the use of Defendant’s Aerosol Antiperspirant Products. Also excluded from this Class are Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice or judicial officer presiding over this matter.

27. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of Defendant’s Aerosol Antiperspirant Products who have been damaged by Defendant’s conduct as alleged herein. The precise number of Class members is unknown to Plaintiff at this time.

28. Plaintiff’s claims are typical to those of all Class members because members of the Class are similarly injured through Defendant’s uniform misconduct described above and were subject to Defendant’s deceptive claims that accompanied Defendant’s Aerosol Antiperspirant Products sold under the name brands Secret and Old Spice. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

29. Plaintiff’s claims raise questions of law and fact common to all members of the Class, and they predominate over any questions affecting only individual Class members. The claims of Plaintiff and all prospective Class members involve the same alleged defect. These common legal and factual questions include the following:

- (a) whether Defendant’s Aerosol Antiperspirant Products contained benzene;

- 1 (b)whether Defendant’s omissions are true, or are misleading, or
- 2 objectively likely to deceive a reasonable consumer;
- 3 (c)whether the alleged conduct constitutes violations of the laws
- 4 asserted;
- 5 (d)whether Defendant’s alleged conduct violates public policy;
- 6 (e)whether Defendant engaged in false or misleading advertising;
- 7 (f) whether Defendant was unjustly enriched as a result of its labeling,
- 8 marketing, advertising and/or selling of the Aerosol Antiperspirant
- 9 Products;
- 10 (g)whether Plaintiff and the Class members are entitled to damages
- 11 and/or restitution and the proper measure of that loss; and
- 12 (h)whether an injunction is necessary to prevent Defendant from
- 13 continuing to market and sell defective and adulterated Aerosol
- 14 Antiperspirant Products that contain benzene, a known human
- 15 carcinogen.

16 30. Plaintiff and her counsel will fairly and adequately protect and represent
17 the interests of each member of the class. Plaintiff has retained counsel experienced
18 in complex litigation and class actions. Plaintiff’s counsel has successfully litigated
19 other class action cases similar to that here and have the resources and abilities to
20 fully litigate and protect the interests of the Class. Plaintiff intends to prosecute this
21 claim vigorously. Plaintiff has no adverse or antagonistic interests to those of the
22 Class, nor is Plaintiff subject to any unique defenses.

23 31. A class action is superior to the other available methods for a fair and
24 efficient adjudication of this controversy. The damages or other financial detriment
25 suffered by the Plaintiff and individual Class members is relatively small compared
26 to the burden and expense that would be entailed by individual litigation of their
27 claims against Defendant. It would thus be virtually impossible for Plaintiff and Class
28 members, on an individual basis, to obtain effective redress for the wrongs done to

1 them. Further, it is desirable to concentrate the litigation of the Class members’
2 claims in one forum, as it will conserve party and judicial resources and facilitate the
3 consistency of adjudications. Plaintiff knows of no difficulty that would be
4 encountered in the management of this case that would preclude its maintenance as a
5 class action.

6 32. The Class also may be certified because Defendant has acted or refused
7 to act on grounds applicable to the Class, thereby making appropriate final declaratory
8 and/or injunctive relief with respect to the members of the Class as a whole.

9 33. Plaintiff seeks preliminary and permanent injunctive and equitable relief
10 on behalf of the entire Class, on grounds generally applicable to the entire Class, to
11 enjoin and prevent Defendant from engaging in the acts described above, such as
12 continuing to market and sell Aerosol Antiperspirant Products that may be adulterated
13 with benzene, and requiring Defendant to provide a full refund of the purchase price
14 of the Aerosol Antiperspirant Products to Plaintiff and Class members.

15 34. Unless a Class is certified, Defendant will retain monies received as a
16 result of its conduct that were taken from Plaintiff and the Class members. Unless a
17 Class-wide injunction is issued, Defendant will continue to commit the violations
18 alleged and the members of the Class and the general public will continue to be
19 misled.

20 **COUNT I**

21 **Violation of California’s Consumers Legal Remedies Act,**
22 **Cal. Civ. Code §§ 1750, set seq.**
23 **(On Behalf of the California Subclass)**

24 35. Plaintiff incorporates by reference and re-alleges each and every
25 allegation contained above, as though fully set forth herein.

26 36. This Count is brought by Plaintiff and other class members who are from
27 the State of California.

28 37. California’s Consumers Legal Remedies Act (“CLRA”), Cal Civ. Code

1 §1750, *et seq.*, prohibits “unfair methods of competition and unfair or deceptive acts
2 or practices undertaken by any person in a transaction intended to result or which
3 results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code §
4 1770(a).

5 38. Plaintiff and members of the California Subclass are “consumers” within
6 the meaning of Cal. Civ. Code § 1761(d) because they bought Aerosol Antiperspirant
7 Products for personal, family, or household purposes.

8 39. Defendant is a “person” within the meaning of California Civil Code
9 sections 1761(c) and 1770 and provided “goods” within the meaning of sections
10 1761(a) and 1770.

11 40. Plaintiff, the other members of the California Subclass, and Defendant
12 have engaged in “transactions,” as that term is defined by California Civil Code §
13 1761(e).

14 41. Defendant’s acts and practices, as alleged in this complaint, violate the
15 CLRA because they include unfair and deceptive acts and practices in connection
16 with transactions (the sale of Aerosol Antiperspirant Products).

17 42. As alleged more fully above, Defendant violated the CLRA by falsely
18 representing to Plaintiffs and the other members of the California Subclass that
19 Aerosol Antiperspirant Products (i) would not contain elevated levels of benzene and
20 (ii) are generally recognized as safe for human consumption. In fact, the Aerosol
21 Antiperspirant Products contained elevated levels of benzene and were not safe for
22 human consumption.

23 43. These misrepresentations constitute “unfair or deceptive acts or
24 practices” that are prohibited by the CLRA, Cal. Civ. Code §§ 1770(a)(5); 1770
25 (a)(7); 1770(a)(9); and 1770(a)(16).

26 44. Further, Defendant concealed from and failed to disclose to Plaintiff and
27 the California Subclass that its Aerosol Antiperspirant Products did not conform to
28 the product’s labels, packaging, advertising, and statements in that it contained

1 elevated levels of benzene and was not safe for human consumption.

2 45. Defendant had a duty to disclose to Plaintiff and members of the
3 California Subclass the true quality, characteristics, ingredients, nutrient levels, and
4 suitability of the Aerosol Antiperspirant Products because Defendant was in a
5 superior position to know the true nature of its products and Defendant knew that
6 Plaintiff and members of the California Subclass could not reasonably have been
7 expected to learn or discover that the Aerosol Antiperspirant Products were
8 misrepresented in the packaging, labels, advertising, and website prior to purchasing
9 the Aerosol Antiperspirant Products.

10 46. The facts misrepresented, concealed or not disclosed by Defendant to
11 Plaintiff and members of the California Subclass were material in that a reasonable
12 consumer would have considered them important when deciding whether to purchase
13 the Aerosol Antiperspirant Products.

14 47. Plaintiff and California Subclass members' reliance on these
15 misrepresentations and omissions was reasonable given Defendant's advertising,
16 representations, warranties, and general promotions of Aerosol Antiperspirant
17 Products. Plaintiff and members of the California Subclass did not know that
18 Defendant was misrepresenting, concealing or otherwise omitting material facts.

19 48. Plaintiffs are concurrently filing the declaration of venue required by
20 Defendant's actions as described herein were done with conscious disregard of
21 Plaintiff's rights and the rights of Class members, and Defendant has acted wantonly
22 and maliciously in their concealment of the same.

23 49. As a direct and proximate result of Defendant's violations, Plaintiff and
24 the California Subclass are entitled to injunctive relief ensuring Defendant complies
25 with all proper quality and safety standards going forward.

26 50. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff currently seeks restitution
27 and an order enjoining Defendant from engaging in the methods, acts and practices
28 alleged herein, and any other relief deemed proper by the Court.

1 without justification, from the false and deceptive labeling and marketing of the
2 Aerosol Antiperspirant Products to Plaintiff and members of the Class.

3 58. Defendant’s retention of such funds under circumstances making it
4 inequitable to do so constitutes unjust enrichment.

5 59. The financial benefits derived by Defendant rightfully belong to Plaintiff
6 and members of the Class.

7 60. Defendant should be compelled to disgorge in a common fund for the
8 benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds
9 received by them.

10 61. Finally, Plaintiff and members of the Class may assert an unjust
11 enrichment claim even though a remedy at law may otherwise exist.

12

13 **COUNT III**

14 **Breach of Implied Warranty**

15 **(On Behalf of the Nationwide Class and California Subclass)**

16 62. Plaintiff incorporates by reference and re-alleges each and every
17 allegation contained above, as though fully set forth herein.

18 63. Defendant was at all relevant times the manufacturer, distributor,
19 warrantor and/or seller of the Aerosol Antiperspirant Products. Defendant knew or
20 had reason to know of the specific use for which its Aerosol Antiperspirant Products
21 were purchased.

22 64. At the time Defendant marketed and otherwise placed its Aerosol
23 Antiperspirant Products into the stream of commerce, it knew of the particular
24 purpose for which Plaintiff and the Class members purchased the Aerosol
25 Antiperspirant Products—to have a safe and effective antiperspirant, which did not
26 contain any dangerous carcinogens. Defendant also knew that consumers, including
27 Plaintiff and members of the Class, would have no ability or opportunity to determine
28 the ingredients in the Aerosol Antiperspirant Products, but instead would rely on
Defendant’s representations that the Aerosol Antiperspirant Products were suitable

1 for their particular purpose and free of dangerous carcinogens (*i.e.*, benzene).

2 65. At all times, Plaintiff and the Class members used the Aerosol
3 Antiperspirant Products in the manner that was intended for use.

4 66. Defendant provided Plaintiff and the Class members with an implied
5 warranty that its Aerosol Antiperspirant Products were merchantable and fit for the
6 ordinary purposes for which they sold and not dangerous or hazardous to the user's
7 health.

8 67. Further, as the intended consumers and ultimate users of the Aerosol
9 Antiperspirant Products, Plaintiff and the Class members are intended third-party
10 beneficiaries of any contracts between Defendant and any retailers from whom
11 Plaintiffs obtained Aerosol Antiperspirant Products, which contain the implied
12 warranty of merchantability and to be fit for ordinary purposes, safe and not
13 hazardous to one's health. Plaintiff and the Class members, not any retailers, are the
14 parties intended to benefit by any such contract because they are the people using the
15 Aerosol Antiperspirant Products in the manner intended.

16 68. At all times relevant all fifty States and the District of Columbia and
17 Puerto Rico have codified and adopted the provisions of the Uniform Commercial
18 Code governing the implied warranty of merchantability and fitness for ordinary
19 purpose: Ala. Code § 7-2-314; Alaska Stat. § 45.02.314; Ariz. Rev. Stat. Ann. § 47-
20 2314; Ark. Code. Ann. § 4-2-314; Cal. Com. Code § 2314; Colo. Rev. Stat. § 4-2-
21 314; Conn. Gen. Stat. Ann. § 42a-2-314; 6 Del. Code. § 2-314; D.C. Code. § 28:2-
22 314; Fla. Stat. Ann. § 672.314; Ga. Code. Ann. § 11-2-314; Haw. Rev. Stat. § 490:2-
23 314; Idaho Code § 28-2-314; 810 Ill. Comp. Stat. Ann. 5/2-314; Kan. Stat. Ann. § 84-
24 2-314; Ky. Rev. Stat. Ann. § 355.2-314; La. Civ. Code Ann. Art. § 2520; 11 Me. Rev.
25 Stat. Ann. § 2-314; Md. Code. Ann. § 2-314; Mass. Gen. Law Ch. 106 § 2-314; Mich.
26 Comp. Laws Ann. § 440.2314; Minn. Stat. Ann. § 336.2-314; Miss. Code Ann. § 75-
27 2-314; Mo. Rev. Stat. § 400.2-314; Mont. Code Ann. § 30-2-314; Nev. Rev. Stat.
28 U.C.C. § 104.2314; N.H. Rev. Ann. § 382-A:2-314; N.J. Stat. Ann. § 12A:2-314;

1 N.M. Stat. Ann. § 55-2-314; N.Y. U.C.C. Law § 2-314; N.C. Gen. Stat. Ann. § 25-2-
2 314; N.D. Stat. § 41-02-314; Ohio Rev. Code Ann. § 1302.27; Okla. Stat. tit. 12A §
3 2-314; Or. Rev. Stat. § 72.3140; 13 Pa. C.S. § 2314; P.R. Laws. Ann. Tit. 31, § 3841,
4 et seq.; R.I. Gen. Laws § 6A-2-314; S.C. Code Ann. § 36-2-314; S.D. Stat. § 57A-2-
5 314; Tenn. Code Ann. § 47-2-314; Tex. Bus. & Com. Code Ann. § 2-314; Utah Code
6 Ann. § 70A-2-314; Va. Code § 8.2-314; Vt. Stat. Ann. 9A § 2-314; W. Va. Code §
7 46-2-314; Wash. Rev. Code § 62A 2-314; Wis. Stat. Ann. § 402.314; and Wyo. Stat.
8 § 34.1-2-314.

9 69. In breach of the implied warranty of merchantability, the Aerosol
10 Antiperspirant Products that Defendant provided to Plaintiff and the Class members
11 are not fit and suitable for their ordinary purpose because, inter alia, they contain
12 dangerous carcinogens with the potential of causing serious injury and/or death.
13 Defendant's Aerosol Antiperspirant Products supplied to Plaintiff and the Class
14 members did not possess the basic degree of fitness for ordinary use due to the defects
15 described herein. The defects are so basic that they render the Aerosol Antiperspirant
16 Products unfit for their ordinary purposes. As such, they are not merchantable.

17 70. As a direct and proximate result of Defendant's breach, Plaintiff and the
18 Class members have suffered, and will continue to suffer, significant damages, loss
19 and injury in an amount that will be established at trial.

20 71. Plaintiff and the Class members are entitled to legal and equitable relief
21 against Defendant, including consequential damages, rescission, attorneys' fees, costs
22 of suit, and other relief as appropriate.

23 **COUNT IV**

24 **Breach of Express Warranty**

25 **(On Behalf of the Nationwide Class and California-Only Class)**

26 72. Plaintiff incorporates by reference and re-alleges each and every
27 allegation contained above, as though fully set forth herein.

28 73. Plaintiff and each Class member formed a contract with Defendant at the

1 time Plaintiff and the other Class members purchased the Defendant's Aerosol
2 Antiperspirant Products. The terms of the contract include the promises and
3 affirmations of fact made by Defendant on its Aerosol Antiperspirant Products
4 packaging and through marketing and advertising, including the promise that benzene
5 is one of the materials "we do not use as ingredients in any of our formulated
6 products."²³ This labeling, marketing, and advertising constitute express warranties
7 and became part of the basis of the bargain, and are part of the standardized contract
8 that Defendant entered into with Plaintiff and each Class member.

9 74. Defendant expressly warranted that its Aerosol Antiperspirant Products
10 were fit for their ordinary use, *i.e.*, as a safe and FDA-compliant product suitable for
11 human application "that reduces the production of perspiration (sweat) at that site." It
12 also expressly warranted that its Aerosol Antiperspirant Products were not adulterated
13 or misbranded.

14 75. Defendant's Aerosol Antiperspirant Products did not conform to
15 Defendant's express representations and warranties because they were not
16 manufactured in compliance with FDA standards, were not suitable for human
17 application, and were adulterated and misbranded.

18 76. At all times relevant all the following States and Territories have codified
19 and adopted the provisions of the Uniform Commercial Code: Ala. Code § 7-2-313;
20 Alaska Stat. § 45.02.313; Ariz. Rev. Stat. Ann. § 47-2313; Ark. Code. Ann. § 4-2-
21 313; Cal. Com. Code § 2313; Colo. Rev. Stat. § 4-2-313; Conn. Gen. Stat. Ann. §
22 42a-2-313; 6 Del. Code. § 2-313; D.C. Code. § 28:2-313; Fla. Stat. Ann. § 672.313;
23 Ga. Code. Ann. § 11-2-313; Haw. Rev. Stat. § 490:2-313; Idaho Code § 28-2-313;
24 810 Ill. Comp. Stat. Ann. 5/2-313; Ind. Code Ann. § 26-1-2-313; Kan. Stat. Ann. §
25 84-2-313; Ky. Rev. Stat. Ann. § 355.2-313; 11 Me. Rev. Stat. Ann. § 2-313; Md.
26 Code. Ann. § 2-313; Mass. Gen. Law Ch. 106 § 2-313; Mich. Comp. Laws Ann. §

27
28 ²³ <https://us.pg.com/ingredients/>.

1 440.2313; Minn. Stat. Ann. § 336.2-313; Miss. Code Ann. § 75-2-313; Mo. Rev.
2 Stat. § 400.2-313; Mont. Code Ann. § 30-2-313; Nev. Rev. Stat. U.C.C. § 104.2313;
3 N.H. Rev. Ann. § 382-A:2-313; N.J. Stat. Ann. § 12A:2-313; N.M. Stat. Ann. § 55-
4 2-313; N.Y. U.C.C. Law § 2-313; N.C. Gen. Stat. Ann. § 25-2-313; N.D. Stat. § 41-
5 02-313; Ohio Rev. Code Ann. § 1302.26; Okla. Stat. tit. 12A § 2-313; Or. Rev. Stat.
6 § 72.3130; 13 Pa. C.S. § 2313; P.R. Laws. Ann. Tit. 31, § 3841, et seq.; R.I. Gen.
7 Laws § 6A-2-313; S.C. Code Ann. § 36-2-313; S.D. Stat. § 57A-2-313; Tenn. Code
8 Ann. § 47-2-313; Tex. Bus. & Com. Code Ann. § 2-313; Utah Code Ann. § 70A-2-
9 313; Va. Code § 8.2-313; Vt. Stat. Ann. 9A § 2-313; W. Va. Code § 46-2-313;
10 Wash. Rev. Code § 62A 2-313; Wis. Stat. Ann. § 402.313 and Wyo. Stat. § 34.1-2-
11 13.

12 77. At the time that Defendant marketed and sold its Aerosol Antiperspirant
13 Products, it recognized the purposes for which the products would be used, and
14 expressly warranted the products were suitable for human application, FDA
15 compliant and not adulterated or misbranded. These affirmative representations
16 became part of the basis of the bargain in every purchase by Plaintiff and each Class
17 member, including but not limited to the express representation Defendant made that
18 benzene is not an ingredient used in any of its products.

19 78. Plaintiff and each Class member are natural persons who are reasonably
20 expected to use, consume, or be affected by the adulterated and/or misbranded
21 Aerosol Antiperspirant Products manufactured and sold by Defendant.

22 79. Defendant breached its express warranties with respect to its Aerosol
23 Antiperspirant Products because the products were not suitable for human application,
24 did not comply with FDA standards, and were adulterated and misbranded.

25 80. Plaintiffs and each Class member would not have purchased the Aerosol
26 Antiperspirant Products had they known the products contained benzene, were not
27 suitable for human application, did not comply with FDA standards, and/or were
28 adulterated and misbranded.

1 unlawful, unfair, or fraudulent business act or practice, untrue or misleading
2 advertising in violation of the FDUTPA, plus pre- and post-judgment interest thereon;

3 G. An order requiring Defendant to disgorge any ill-gotten benefits received
4 from Plaintiff and members of the Class as a result of any wrongful or unlawful act
5 or practice;

6 H. An order requiring Defendant to pay appropriate damages for breach of
7 implied warranties;

8 I. An order requiring Defendant to pay appropriate damages for breach of
9 express warranties;

10 J. An order requiring Defendant to pay all actual and statutory damages
11 permitted under the counts alleged herein; and

12 K. An order awarding attorneys' fees and costs to Plaintiff and the Class; and

13 L. An order providing for all other such equitable relief as may be just and
14 proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff demands a trial by jury on all issues so triable.

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December 10, 2021

Respectfully submitted,



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