

1 Plaintiffs, Johanna Dominguez and Sharron Meijer (“Plaintiffs”), individually and on
2 behalf of all others similarly situated, bring this action against Defendant Johnson & Johnson
3 Consumer Inc. (“JJCI”), and in support thereof state as follows:

4 **NATURE OF THE CASE**

5 1. This is a class action lawsuit brought by Plaintiffs and other similarly situated
6 purchasers of certain sunscreen products manufactured, marketed, distributed, and sold by JJCI
7 under the brand names “Aveeno” and “Neutrogena.”¹ Recent independent scientific testing,
8 confirmed by JJCI through a massive nationwide recall, has revealed that several of JJCI’s
9 Neutrogena and Aveeno sunscreen products contain dangerous and unacceptable levels of
10 benzene, a known human carcinogen (hereinafter the “Products”).

11 2. Each and every one of the Products has been marketed and sold as “sunscreen” by
12 JJCI through packaging and other advertising materials, as required by 21 C.F.R. § 201.327(b).

13 3. Each and every one of the Products fails to include labeling indicating that the
14 Product may contain benzene as an active or inactive ingredient.

15 4. The presence of benzene rendered the Products adulterated, misbranded, and
16 unlawful for sale. JJCI’s conduct with respect to the Products caused economic damages to
17 Plaintiffs and the putative Class. This suit is brought for injunctive relief and restitution of the
18 full purchase price of the Products.

19 5. Benzene is a simple hydrocarbon, C₆H₆, often found in crude oil and most easily
20 identified by the smell associated with gasoline. It is used in industrial settings to make plastics,
21 resins, synthetic fibers, and rubber lubricants, as well as dyes, detergents, drugs, and pesticides.

22 6. Benzene is classified as a human carcinogen by the United States Department of
23 Health and Health Services (“DHHS”). The World Health Organization (“WHO”) and the
24 International Agency for Research on Cancer (“IARC”) have concluded that benzene is a Group 1

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26 ¹ JJCI is the manufacturer and/or distributor of the Products, and as of 2015, has succeeded
27 to all the debts and liabilities of the Neutrogena brand and the Products. On information and belief,
28 JJCI has, and continues to, operate the Neutrogena brand from its offices in Los Angeles,
California. Likewise, on information and belief, JJCI is liable for all claims related to Aveeno
products.

1 compound, *i.e.* it is “carcinogenic to humans.”²

2 7. Scientific studies have established that exposure to benzene can cause leukemia,
3 other blood and bone marrow disorders (including anemia), and a weakened immune system. In
4 addition, benzene has been linked to multiple myeloma and non-Hodgkin’s lymphoma.

5 8. The Food and Drug Administration (“FDA”) classifies benzene as a Class 1
6 solvent, a group that encompasses materials that “should not be employed in the manufacture of
7 drug substances, excipients, and drug products because of their unacceptable toxicity or . . .
8 deleterious environmental effect.”³ In those limited cases where use of benzene is “unavoidable
9 in order to produce a drug product with a significant therapeutic advance,” the FDA has restricted
10 levels to 2 parts per million (“ppm”). In all other cases, no level of benzene is acceptable.

11 9. The FDA regulates sunscreens to ensure they meet safety and effectiveness
12 standards. All products that claim to provide Broad Spectrum Sun Protection Factor (“SPF”)
13 protection, including the Products, are regulated as over-the-counter drugs, rather than as
14 cosmetics. 21 C.F.R. § 352, et seq. The FDA requires sunscreen manufacturers to subject their
15 products to certain testing before they are made available to any consumer. The FDA has also
16 identified those materials that qualify as acceptable active ingredients for products labeled as
17 sunscreen. Benzene is not one of those acceptable ingredients.

18 10. The FDA’s regulations provide that an “over-the-counter sunscreen drug product
19 in a form suitable for topical administration is generally recognized as safe and effective and is
20 not misbranded if it meets” certain conditions. 21 C.F.R. § 352.1(a). Among other things, the
21 product must contain “only suitable inactive ingredients which are safe in the amounts
22 administered” and contains only listed active ingredients at levels “that do[] not exceed the
23 amount reasonably required to achieve [their] intended effect.” 21 C.F.R. § 330.1(h).

25 ² International Agency for Research on Cancer and World Health Organization, *IARC*
26 *Monographs on the Identification of Carcinogenic Hazards to Humans*
27 (<https://monographs.iarc.who.int/list-of-classifications>)

28 ³ Food and Drug Administration, *Q3C – Tables and List Guidance for Industry* (2017)
(<https://www.fda.gov/media/71737/download>)

1 11. Valisure is an independent pharmacy, registered with the FDA, whose scientists
2 analyze the safety of various consumer products. Recently, Valisure conducted a study on the
3 potential carcinogenicity of active ingredients in a variety of sunscreens and after sun products,
4 including numerous products manufactured, marketed, and sold by JJCI. These included:

- 5 • Ultra Sheer Weightless Sunscreen Spray, SPF 100+
- 6 • Ultra Sheer Weightless Sunscreen Spray, SPF 70
- 7 • Ultra Sheer Dry-Touch Water Resistant Sunscreen, SPF 70
- 8 • Ultra Sheer Body Mist Sunscreen Broad Spectrum, SPF 45
- 9 • Ultra Sheer Body Mist Sunscreen Broad Spectrum, SPF 30
- 10 • Invisible Daily Defense Body Sunscreen Broad Spectrum, SPF 60+
- 11 • CoolDry Sport Water-Resistant Sunscreen Spray, SPF 70
- 12 • CoolDry Sport Water-Resistant Sunscreen Spray, SPF 50
- 13 • Beach Defense Oil-Free Body Sunscreen Spray, SPF 100
- 14 • Beach Defense Spray Body Sunscreen, SPF 50

15 12. During its study, Valisure detected high levels of benzene in several JJCI product
16 batches. In particular, Valisure identified benzene levels over 2 ppm in ten Neutrogena sunscreen
17 batches from five separate products lines. (See table below.) It identified benzene levels of up to
18 2 ppm in thirteen Neutrogena sunscreen batches from ten different product lines.⁴

19 13. By way of reference, the National Institute for Occupational Safety and Health
20 (“NIOSH”) recommends protective equipment be worn by any worker expecting to be exposed to
21 benzene at concentrations of 0.1 ppm for over 10 hours or 1 ppm for 15 minutes.⁵ NIOSH lists
22
23

24 _____
25 ⁴ Should discovery reveal additional sunscreen products that are affected by this action and
26 Plaintiff reserve their right to include additional sunscreen products manufactured, sold, and
distributed by JJCI should discovery identify additional such products relevant to this action.

27 ⁵ Centers for Disease Control and Prevention. The National Institute for Occupational
28 Safety and Health, BENZENE: Systemic Agent (2011)
(https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750032.html)

1 “skin absorption” as one way a person could be exposed to dangerous levels of benzene.⁶

Brand Name	Type	Description	SPF	UPC	Lot	Exp.	Active Pharmaceutical Ingredient(s)	Benzene Avg ppm	% St Dev
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	100+	086800100416	04820E04	2022-01	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	6.26 6.77*	7%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	70	086800100409	07020E01	2023-02	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 4%, Oxybenzone 6%	5.96	7%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	70	086800100409	06920E01	2023-02	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 4%, Oxybenzone 6%	5.76	5%
Sun Bum	Gel	Cool Down Gel	N/A	871760002005	S0082C	--	N/A (Cosmetic Product)	5.33 5.49*	3%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 70	70	086800100409	02320E01	2022-12	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 4%, Oxybenzone 6%	5.30	2%
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	100	086800101444	04721E02	2023-01	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	5.20 5.59*	5%
CVS Health	Spray	After-sun Aloe Vera Soothing Spray	N/A	050428390832	8140449A	--	N/A (Cosmetic Product)	4.71 4.55*	1%
Neutrogena	Spray	Invisible Daily Defense Body Sunscreen Broad Spectrum SPF 60+	60+	086800111542	04921E01	2024-01	Avobenzone 3%, Homosalate 10%, Octisalate 5%, Octocrylene 10%	4.65 5.27*	4%
Neutrogena	Spray	Ultra Sheer Weightless Sunscreen Spray, SPF 100+	100+	086800100416	03120E02	2021-12	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	4.11 6.00**	15%
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	100	086800101444	28020E01	2022-09	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	4.01 4.00*	4%
CVS Health	Spray	After-sun Aloe Vera Soothing Spray	N/A	050428390832	4111849A	--	N/A (Cosmetic Product)	3.58 3.93*	4%
Neutrogena	Spray	Beach Defense Spray Body Sunscreen SPF 50	50	086800112549	25520E01	2023-08	Avobenzone 3%, Homosalate 10%, Octisalate 5%, Octocrylene 10%	3.52 3.71*	3%
Neutrogena	Spray	Beach Defense Oil-Free Body Sunscreen Spray - SPF 100	100	086800101444	31420E04	2022-10	Avobenzone 3%, Homosalate 15%, Octisalate 5%, Octocrylene 10%, Oxybenzone 6%	3.08 2.64*	2%
Fruit of the Earth	Gel	Aloe Vera Gel	N/A	071661001200	6612940A	--	N/A (Cosmetic Product)	2.78 2.94*	6%

14 14. Valisure determined that benzene is not unavoidably present in the sunscreen
15 products. Indeed, many of the sunscreens that Valisure tested contained no benzene. Nor is
16 benzene’s presence in the products related to any known, let alone significant, therapeutic
17 advance. Benzene is not a listed active or inactive ingredient on the label of any of the Products,
18 and JJCI has never otherwise warned consumers that the Products may contain benzene.

19 15. Products with avoidable levels of benzene do not “contain[] only suitable inactive
20 ingredients which are safe in the amounts administered” or contain only listed active ingredients
21 at levels “that do[] not exceed the amount reasonably required to achieve [their] intended effect.”
22 21 C.F.R. § 352.1(a); 21 C.F.R. § 330.1(e)(h).

23 16. Accordingly, per FDA guidelines, any significant detection of benzene in the
24 Products should be deemed unacceptable.

25 17. Valisure states that the presence of benzene in the Products may be the result of

27 ⁶ Centers for Disease Control and Prevention. The National Institute for Occupational
28 Safety and Health (NIOSH), Benzene (October 30, 2019)
(<https://www.cdc.gov/niosh/npg/npgd0049.html>)

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