

1 Neville L. Johnson (SBN 66329)
 njohnson@jllplaw.com
 2 Douglas L. Johnson (SBN 209216)
 djohnson@jllplaw.com
 3 Jordanna G. Thigpen (SBN 232642)
 jthigpen@jllplaw.com
 4 **JOHNSON & JOHNSON, LLP**
 439 North Canon Drive, Suite 200
 5 Beverly Hills, California 90210
 Telephone: (310) 975-1080
 6 Facsimile: (310) 975-1095

7 [Additional Counsel on Signature Page]

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

10 **AMY FRIEDMAN, JUDI MILLER,**
 11 **KRYSTAL HENRY-McARTHUR,**
 12 **and LISA ROGERS, on behalf of**
 13 **themselves and all others similarly**
 14 **situated,**

15 **Plaintiffs,**

16 **v.**

17 **GUTHY-RENKER LLC, and WEN**
 18 **BY CHAZ DEAN INC.,**

19 **Defendants.**

20 **Case No.: 2:14-cv-06009**

21 **THIRD AMENDED CLASS**
22 **ACTION COMPLAINT FOR:**

- 23 **1. BREACH OF WARRANTY**
- 24 **2. VIOLATION OF CALIFORNIA**
UNFAIR COMPETITION LAW,
Business & Professions Code
§17200 et seq.
- 25 **3. VIOLATION OF CALIFORNIA**
FALSE ADVERTISING LAW,
Business & Professions Code
§17500 et seq.
- 26 **4. BREACH OF CONTRACT**
- 27 **5. NEGLIGENCE—FAILURE TO**
WARN;
- 28 **6. NEGLIGENCE—FAILURE TO**
TEST; and
- 7. STRICT PRODUCTS LIABILITY.**

DEMAND FOR JURY TRIAL

1 **NATURE OF THE ACTION**

2 Plaintiffs Amy Friedman, Judi Miller, Krystal Henry-McArthur, and Lisa
3 Rogers (collectively “Plaintiffs”), on behalf of themselves and all others similarly
4 situated, by their undersigned attorneys, allege as follows:

5 1. This is a class action brought by Plaintiffs, on behalf of themselves
6 and other similarly situated persons, against Guthy-Renker LLC (“Guthy-Renker”)
7 and WEN By Chaz Dean Inc. (“WEN”) (collectively “Defendants”). Plaintiffs
8 seek damages and equitable remedies for themselves and the Class (defined in ¶
9 42, below), which includes consumers who have purchased WEN Hair Care
10 Products. (“WEN Hair Care Products”).

11 2. Chaz Dean is a famous celebrity hair stylist, who through his
12 company WEN, created and developed WEN Hair Care Products which are all
13 centered around and to be used in conjunction with its central product, WEN
14 Cleansing Conditioner, which is marketed as “a revolutionary way to cleanse and
15 hydrate the hair” and is designed to replace traditional shampoo and conditioner.
16 WEN licenses the Products to Guthy-Renker, which manufactures, markets, sells
17 and distributes WEN Cleansing Conditioner along with other related WEN
18 products throughout the United States.

19 3. WEN Hair Care Products are also sold through other retailers such as
20 Amazon, QVC, and Sephora, but all WEN Hair Care Products are manufactured by
21 either Guthy-Renker LLC or WEN by Chaz Dean, Inc.

22 4. As described below, an inherent design and/or manufacturing defect
23 in Defendants’ WEN Cleansing Conditioner and/or related Products sold with the
24 Cleansing Conditioner cause significant hair loss. Defendants provide no warning
25 about this consequence and, in fact, make numerous assertions about the gentle
26 nature of the products. For example, Guthy-Renker’s website makes statements
27 such as, “WEN® is gentle enough to use every day” and “WEN® isn't like an
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1 ordinary shampoo so you want to use more of it, not less. You can never use too
2 much! The more you use, the better the results.” These statements and others,
3 which related uniformly to all the Products, were and are false and have harmed
4 Plaintiffs and the Class. In fact, WEN products use numerous harsh chemicals and
5 known human allergens. As a result of the defective nature of the Products, they
6 were and are unfit for their intended use and purpose.

7 5. During the Class Period, Defendants also represented that WEN
8 Cleansing Conditioners are sulfate-free. However, WEN Cleansing Conditioners
9 actually do contain sulfates, such as Behentrimonium Methosulfate, rendering
10 these statements demonstrably false.

11 6. Once the hair loss caused by WEN Hair Care Products begins, it can
12 often continue for weeks before abating, if ever, even if the consumer immediately
13 discontinues use of the product. The hair loss is not *de minimus*—consumers who
14 suffer hair loss often lose one quarter to one third of their hair, or more. Plaintiffs
15 have suffered injury in fact and loss of money or property as the result of their use
16 of WEN Hair Care Products.

17 7. This action arises from Defendants’ failure, despite their longstanding
18 knowledge of a material design defect, to disclose and/or warn Plaintiffs and other
19 consumers that WEN Hair Care Products can and do cause substantial hair loss
20 and/or scalp irritation. Indeed, not only did Defendants fail to warn consumers,
21 they actively concealed customers’ comments concerning hair loss, by blocking
22 and/or erasing such comments from the internet.

23 8. Further, based on inherent defects in the formula and/or manufacture
24 of the WEN Hair Care Products, Defendants knew or should have known that its
25 warranties were being breached by the hair loss and scalp damage caused by the
26 Products. Defendants knew or should have known that Plaintiffs and Class
27 members would suffer damages as the result of the hair loss caused by WEN Hair
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1 Care Products. Defendants concealed these facts from Class members, including
2 Plaintiffs. Defendants' failure to disclose this defect about which they knew or
3 should have known constitutes both an actionable misrepresentation or omission,
4 and an unfair, unlawful, fraudulent, and deceptive business practice.

5 9. Plaintiffs and other Class members have been damaged by
6 Defendants' concealment and non-disclosure of the defective nature of the
7 Products, because they were misled into purchasing WEN Hair Care Products
8 which were represented as having qualities and values different than they were
9 promised. Guthy-Renker and WEN have known about this issue for at least four
10 years as the result of public complaints and thousands of complaints directed only
11 to Defendants. They also knew or should have known about the hair loss issues
12 caused by WEN Hair Care Products as the result of pre-release formulation and
13 testing. Notwithstanding these complaints, Defendants have failed and/or refused
14 to provide an adequate remedy.

15 10. Perhaps most striking about this situation is Defendants' clear and
16 unambiguous knowledge of the hair loss caused by WEN Cleansing Conditioner.
17 For example, Guthy-Renker alone has received more than 17,000 complaints of
18 hair loss caused by WEN Hair Care Products. Moreover, after complaining about
19 hair loss to the United States Food and Drug Administration, Plaintiff Friedman
20 received electronic communications from Guthy-Renker's consumer affairs
21 department. One of these emails included more than two-dozen comprehensive
22 questions concerning Plaintiff Friedman's use of WEN Hair Care Products.
23 Discovery in this litigation will undoubtedly demonstrate that Guthy-Renker
24 formulated these questions long ago and has repeatedly used them with
25 complaining consumers. Plaintiff Friedman subsequently received communications
26 from Guthy-Renker's apparent insurer, Chubb. Rather than address this systemic
27 problem, Guthy-Renker is apparently attempting to pay off consumers on the
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1 cheap, sweep this problem under the rug and continue its lucrative business selling
2 its defective WEN Hair Care Products.

3 11. Despite notice and knowledge of the problems caused by WEN Hair
4 Care Products from the numerous consumer complaints it has received,
5 information from third parties (including the United States Food and Drug
6 Administration), Guthy-Renker and WEN have not recalled any WEN Hair Care
7 Products, or offered their customers proper compensation for their damages.

8 12. Had Plaintiffs and other Class members known that WEN Hair Care
9 Products could cause hair loss or scalp irritation, they would not have purchased
10 the products.

11 13. As a result of Defendants' practices, Plaintiffs and the other Class
12 members have suffered injury in fact, including economic damages.

13 14. Plaintiffs therefore bring this action on behalf of themselves and a
14 proposed Class of similarly situated purchasers of WEN Hair Care Products.

15 **JURISDICTION AND VENUE**

16 15. This Court has subject matter jurisdiction of this action pursuant to 28
17 U.S.C. §1332 of the Class Action Fairness Act of 2005 because: (i) there are 100
18 or more class members, (ii) there is an aggregate amount in controversy exceeding
19 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity
20 because at least one plaintiff and defendant are citizens of different states. This
21 Court has supplemental jurisdiction over any state law claims pursuant to 28
22 U.S.C. § 1367.

23 16. Venue is proper in this District pursuant to 28 U.S.C. §1391 inasmuch
24 as the unlawful practices are alleged to have been directed from this District.
25 Specifically, Defendants Guthy-Renker and WEN have their principal places of
26 business in this District, and Defendants regularly conduct and direct their
27 businesses in and from this District.

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1 17. According to Defendant Guthy-Renker’s website Purchase
2 Agreement : “This Agreement and the resolution of any dispute related to this
3 Agreement, the Website, or items you purchased through the Website shall be
4 governed by and construed in accordance with the laws of California.”

5 **PARTIES**

6 18. During all times relevant to this suit, Plaintiff, Amy Friedman
7 (“Friedman” or “Plaintiff Friedman”), has been a resident of the State of Florida,
8 and currently resides in St. Petersburg, Florida.

9 19. During all times relevant to this suit, Plaintiff, Judi Miller (“Miller” or
10 “Plaintiff Miller”), has been a resident of the State of Maryland, and currently
11 resides in Glenwood, Maryland.

12 20. During all times relevant to this suit, Plaintiff, Krystal Henry-
13 McArthur (“Henry-McArthur” or “Plaintiff Henry-McArthur”), has been a resident
14 of the State of Florida, and currently resides in Tampa, Florida.

15 21. During all times relevant to this suit, Plaintiff, Lisa Rogers, (“Rogers”
16 or “Plaintiff Rogers”), has been a resident of the State of Florida, and currently
17 resides in Rockledge, Florida.

18 22. Defendant Guthy-Renker is an American corporation whose principal
19 place of business is located at 3340 Ocean Park Blvd, Santa Monica, California.
20 At all times relevant to this complaint, Guthy-Renker has transacted business in
21 this judicial district and has directed its international operations from this district
22 throughout the United States and the world.

23 23. Defendant WEN By Chaz Dean, Inc. is an American corporation
24 whose principal place of business is located at 6444 Fountain Avenue, Los
25 Angeles, California. At all times relevant to this complaint, WEN has transacted
26 business in this judicial district and has directed its operations from this district
27 throughout the United States and the world.

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1 24. According to Defendants, any and all claims regarding their WEN
2 Hair Care Products are governed by the laws of the state of California.

3 **COMMON FACTS**

4 25. At all relevant times herein, Defendant WEN created and developed
5 the formula for WEN Cleansing Conditioner, which is marketed as “a
6 revolutionary way to cleanse and hydrate the hair.”

7 26. Defendants regularly sell WEN Cleansing Conditioner as part of a
8 “kit” along with other WEN products and instruct the customer to use all WEN
9 products in conjunction with one another as part of an overall hair system.
10 Because the Products are to be used together, the related products used in
11 conjunction with WEN Cleansing Conditioner can cause the hair loss or
12 substantially contribute to the hair loss suffered by Plaintiffs and the Class.

13 27. The following products are regularly sold along with WEN Cleansing
14 Conditioner and constitute the “WEN Hair Care Products” at issue in this case: All
15 fragrances and variations of Cleansing Conditioner, Re-Moist Mask, Treatment
16 Mist Duo, Treatment Oil, SIXTHIRTEEN Ultra Nourishing Cleansing Treatment,
17 Re Moist Intensive Hair Treatment, Styling Crème, Anti-Frizz Styling Crème,
18 Nourishing Mousse, Volumizing Treatment Spray, Replenishing Treatment Mist,
19 Defining Paste, Straightening Smoothing Gloss, Smoothing Glossing Serum,
20 Glossing Shine Serum, Finishing Treatment Crème, Volumizing Root Lift,
21 Texturizing Spray, Detangling Treatment Spray, Men Control Texture, Men Hair
22 and Body Oil, Bath, Body and Hair Oil, and Texture Balm.

23 28. Defendant WEN licenses the ability to manufacture WEN Hair Care
24 Productsto Defendant Guthy-Renker, who in turn manufactures the products
25 according to the formulas designed and developed by WEN and celebrity hair
26 stylist Chaz Dean.

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1 29. At all relevant times herein, Defendant Guthy-Renker has,
2 manufactured, marketed, sold and distributed WEN Cleansing Conditioner
3 throughout the United States.

4 30. On its website (www.guthy-renker.com) Guthy-Renker bills itself as
5 “direct marketing pioneers” and “one of the largest and most respected direct
6 marketing companies in the world, with distribution in 68 countries.” Guthy-
7 Renker’s website also indicates it has been in operation since 1988. Guthy-Renker
8 sells its products predominantly through celebrity-driven infomercials. The strong
9 majority of Guthy-Renker’s sales occur by phone. Guthy-Renker is best known for
10 its promotion and sale of Proactive Solution, but it sells six other beauty-related
11 products—including WEN Hair Care Products.

12 31. In its marketing materials and on its website for WEN Hair Care
13 Products (www.wen.com), Guthy-Renker makes a variety of false and/or
14 misleading statements about WEN Cleansing Conditioner, including, but not
15 limited to, the following:

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17 It seems like I'm using a lot of product. Can I use too much?
18 WEN® isn't like an ordinary shampoo so you want to use more of it, not
19 less. **You can never use too much! The more you use, the better the results.**

20 (emphasis added).

21 Should I use the Cleansing Conditioner every day?
22 That's up to you. Some people like to wash their hair daily. Others will go a
23 day or two between washings. Although **WEN® is gentle enough to use every day**, if you don't, you can combine 4-6 pumps of Cleansing
24 Conditioner with a quarter-size amount of Styling Creme in a spray bottle
25 with water. Shake vigorously to mix completely. Spritz it on 12-18 inches
26 above hair to provide a light mist. Shake out and restyle or fluff up your
27 hair!

28 (emphasis added).

Rinse hair thoroughly. Apply WEN® into your palms and rub together. Use
10-16 pumps for short hair, 16-24 for medium length hair and **24-32 pumps for long hair. If your hair is longer/thicker you may need to increase the amount of pumps.**

(emphasis added).

Apply to scalp and hair, adding a splash of water to evenly distribute. WEN® has no harsh detergents or sodium lauryl sulfate, so it won't lather. **Massage thoroughly into hair and leave on for the remainder of your shower.**

(emphasis added).

“WEN® Cleansing Conditioner is a revolutionary new concept in hair care. A 5-in-1 formula, this one product takes the place of your shampoo, conditioner, deep conditioner, detangler and leave-in conditioner. **It cleanses hair thoroughly without lathering or harsh ingredients. It's designed not to strip your hair and scalp of natural oils, leaving your hair with more strength, moisture, manageability and better color retention.**

(emphasis added).

32. The instructions for using WEN Cleansing Conditioner does not vary between scents, and states:

CLEANSING YOUR HAIR IN 3 EASY STEPS:

Step 1:

Rinse hair thoroughly. Apply WEN® into your palms and rub together. Use 10-16 pumps for short hair, 16-24 for medium length hair and 24-32 pumps for long hair. If your hair is longer/thicker you may need to increase the amount of pumps.

Step 2:

Apply to scalp and hair, adding a splash of water to evenly distribute. WEN® has no harsh detergents or sodium lauryl sulfate, so it won't lather. Massage thoroughly into hair and leave on for the remainder of your shower.

Step 3:

Rinse thoroughly and completely, massaging scalp and running fingers through to the ends.

ADDITIONAL USAGE TIPS:

Apply 1/2 to 1 pump depending on hair length and texture as a leave-in conditioner to soaking wet hair. For best results, we highly suggest you cleanse, rinse and repeat, using half the recommended pumps for the first cleanse, and the remaining half for the second cleanse. Unlike many ordinary shampoos, you may find you don't need to cleanse as often.

1 33. The emphasized statements are false and/or misleading, and through
2 the instructions on the product, Guthy-Renker expressly instructs consumers to use
3 tremendous amounts of the product, reinforcing these statements with assertions
4 that the product is gentle and you cannot possibly use too much. Guthy-Renker
5 encourages consumers to leave the product in their hair for long periods, but fails
6 to provide direct instructions concerning the duration of application. Indeed,
7 Guthy-Renker also encourages consumers to leave small amounts of the product in
8 their hair as a “leave-in conditioner” and not wash it out. In reality, use of WEN
9 Hair Care Products can and does cause significant hair loss when used in
10 accordance with the instructions provided with the products.

11 34. Due to the false and misleading statements on the product or its
12 packaging, Class members purchased WEN Hair Care Products with no reason to
13 suspect or know the dangers occasioned by use of the Products, and used
14 tremendous amounts of the Products on their hair as instructed. Not until hair loss
15 began could a Class member have any reason to suspect that WEN Hair Care
16 Products are defective. Even after hair loss begins, consumers might not
17 immediately make the connection due to Defendants’ false statements concerning
18 the safe and natural foundation of the Products and the active concealment of the
19 Products’ defects.

20 35. Rather than acknowledging the dangers of using WEN Hair Care
21 Products, Defendants further reinforce their false statements with summary of a
22 patently misleading “study”. Guthy-Renker’s “Features” study states:

23 In a 3-week study of users of WEN® Cleansing Conditioner, up to:
24 100% said hair was more moisturized!
25 97% noticed that WEN® added more shine!
26 95% reported that hair became more manageable

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1 However, Guthy-Renker goes on to state (in much smaller print) that these results
2 are “not typical.” If the results are not typical, what purpose does this information
3 serve, other than to mislead potential consumers into purchasing Defendants’
4 defective product?

5 36. Guthy-Renker sells its WEN Cleansing Conditioner in a variety of
6 different scents. The “study” quoted above applies to all scents. In addition, the
7 “Key Ingredients” listed for all scents do not differ:

8 **KEY INGREDIENTS**

9 Glycerin: A humectant that provides moisturizing benefits to the hair.

10 Chamomile Extract: Used for its soothing and calming properties.

11 Wild Cherry Bark: Formulated to help condition the hair.

12 Rosemary Extract: Designed to soothe hair.

13 Panthenol: Designed to help strengthen hair and restore resilience.

14 As a result, there is no discernable difference between the various scents other than
15 the smell.

16 37. As the direct and proximate result of Defendants’ false and misleading
17 statements, Plaintiffs and Class members have suffered injury in fact and a loss of
18 money or property through the out-of-pocket costs expended to purchase the WEN
19 Cleansing Conditioner, as well as the costs of mitigating the hair loss occasioned
20 by Defendants’ products.

21 38. By marketing, selling and distributing WEN Hair Care Products to
22 purchasers throughout the United States, Defendants made actionable statements
23 that WEN Hair Care Products were free of defects in design and/or manufacture,
24 and that they were safe and fit for their ordinary intended use and purpose.

25 39. By marketing, advertising, selling and distributing WEN Cleansing
26 Conditioner from California to purchasers throughout the United States,
27 Defendants made actionable statements that the ordinary use of the WEN
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1 Cleansing Conditioner and related Products would not involve undisclosed safety
2 risks. Further, Defendants concealed what they knew or should have known about
3 the safety risks resulting from the material defects in design and/or manufacture.

4 40. Defendants engaged in the above-described actionable statements,
5 omissions and concealments with knowledge that the representations were false
6 and/or misleading, and with the intent that consumers rely upon such concealment,
7 suppression and omissions. Alternatively, Defendants were reckless in not
8 knowing that these representations were false and misleading at the time they were
9 made. Defendants have exclusive access to data and research conducted prior to
10 and during the design and manufacture phase of the development of WEN Hair
11 Care Products that Plaintiffs and Class members could not and did not review.

12 **PLAINTIFF FRIEDMAN'S EXPERIENCE**

13 41. After viewing advertisements for WEN Cleansing Conditioner
14 espousing its safe, innovative and gentle qualities, on or about January 29, 2014,
15 Plaintiff, Amy Friedman, purchased the Sweet Almond Mint basic kit directly from
16 Guthy-Renker for a price of \$29.95. Plaintiff Friedman had previously used
17 organic shampoos and conditioners, which never caused abnormal hair loss. At no
18 time did Guthy-Renker provide Plaintiff Friedman any warnings concerning the
19 potential dangers of using WEN Cleansing Conditioner.

20 42. Within two weeks of beginning use of her WEN Cleansing
21 Conditioner, Plaintiff Friedman began losing substantial and abnormal amounts of
22 hair. Plaintiff Friedman discontinued use, but the hair loss continued for
23 approximately three more weeks. Ultimately, Plaintiff Friedman lost one quarter
24 to one third of the hair on her head. As a result, Plaintiff Friedman, a nurse
25 practitioner by profession, was forced to expend substantial sums on vitamins and
26 supplements to attempt to regrow her very long hair. Additionally, Plaintiff

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1 Friedman was forced to undertake expensive cosmetic solutions, such as hair
2 extensions, to mask the hair loss.

3 **PLAINTIFF MILLER’S EXPERIENCE**

4 43. Plaintiff Miller first purchased WEN Cleansing Conditioners (Sweet
5 Almond Mint and Pomegranate) in June 2011. She purchased the WEN Cleansing
6 Conditioners by telephone after viewing Guthy-Renker’s advertisements regarding
7 the safe, innovative and gentle qualities of its WEN Cleansing Conditioners. After
8 initial purchases, Plaintiff Miller received automatic shipments of WEN Cleansing
9 Conditioners every few months, until January 21, 2014, when she called and
10 cancelled direct shipments. Plaintiff Miller used the WEN products consistent
11 with the instructions, in some instances using the product as a so-called “spa
12 treatment” and leaving it in her hair for extended periods of time.

13 44. Beginning in January 2013, Plaintiff Miller noticed that she was
14 losing abnormal amounts of hair. Not suspecting the WEN Cleansing Conditioner
15 was the culprit, Plaintiff Miller only stopped using the products in June 2014, when
16 she finally realized that she was losing substantial amounts of hair only in the areas
17 in which she applied WEN Cleansing Conditioner, among other places, on the
18 crown of her head.

19 45. As a result of the hair loss caused by the WEN Cleansing
20 Conditioners, Plaintiff Miller was forced to expend substantial sums on vitamins,
21 supplements, and doctor visits to treat and attempt to regrow her hair and treat
22 other serious health issues caused by use of the products. Like Plaintiff Friedman,
23 Plaintiff Miller also contacted the FDA concerning her negative experience with
24 WEN Hair Care products.

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1 **PLAINTIFF HENRY-McARTHUR'S EXPERIENCE**

2 46. Plaintiff Henry-McArthur is active duty military, and purchased WEN
3 Hair Care Products from Guthy-Renker in June 2014 after seeing infomercials for
4 the products.

5 47. A few weeks after she started using WEN Hair Care Products,
6 Plaintiff Henry-McArthur began noticing substantial hair loss and ceased using the
7 product.

8 48. Plaintiff Henry-McArthur's hair loss is further accentuated as a result
9 of the limited hairstyles available due to her military service.

10 **PLAINTIFF ROGERS' EXPERIENCE**

11 49. Plaintiff Roger first purchased WEN Hair Care Products in September
12 2013. She purchased the WEN Hair Care Products from QVC after viewing
13 QVC's advertisements regarding the safe, innovative and gentle qualities of its
14 WEN Cleansing Conditioner and other WEN products.

15 50. After initial purchases, Plaintiff Rogers received automatic shipments
16 of WEN Hair Care Products from QVC every few months, until early 2016, when
17 she called and cancelled direct shipments after being told by her hair stylist that
18 she was losing hair.

19 51. Plaintiff Rogers used the WEN products consistent with the
20 instructions approximately three times per week for a period of approximately
21 three years.

22 52. As a result of the hair loss caused by the WEN Hair Care Products,
23 Plaintiff Rogers was forced to expend substantial sums on scalp injections, doctor
24 visits to treat and attempt to regrow her hair. Plaintiff Rogers was also forced to
25 wear a full scalp wig for approximately two years.

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1 **ADDITIONAL COMMON FACTS**

2 53. Plaintiffs' experiences are by no means isolated or outlying
3 occurrences. Indeed, the internet is replete with examples of blogs and other
4 websites where consumers have complained of the exact same issues with WEN
5 Products. A very small sample¹ of the numerous online complaints—dating back
6 several years—appears below:

- 7 • **[http://community.qvc.com/forums/wen/topic/305237/hair-loss-after-](http://community.qvc.com/forums/wen/topic/305237/hair-loss-after-using-wen-products.aspx)**
8 **[using-wen-products.aspx](http://community.qvc.com/forums/wen/topic/305237/hair-loss-after-using-wen-products.aspx)**

9 **Hair Loss After Using Wen Products**

10 Started 07/08/2012 at 10:26 AM in WEN | Last reply 11/15/2013 at 4:03
11 AM by racern

12 I'm posting this note after losing massive amounts of hair in patches mostly
13 at the crown of my head, with smaller bald patches all over my scalp. Early
14 this year (2012) I purchased the Wen introductory package (cleanser, deep
15 conditioner, styling creme, styling balm [stick] and a comb) with the auto
16 30-day refill. Almost immediately after using the product I noticed huge
17 amounts of hair caught in the drain (the water in my shower built up to my
18 ankles so I checked the drain and found a handful of hair -- much more than
19 I've EVER lost at one time). I didn't make the connection between the
20 natural Wen product and my hair loss and honestly didn't think anything of it
21 until I went to get my long, curly hair cut/shaped and was told by the stylist
22 that I had 'alopecia.' I've never had any problem with hair loss and only the
23 regular 'shedding.' This loss of hair was way behind the regular shedding.
24 The stylist showed me a 2" patch at the crown of my head with smaller
25 patches in the area. I located an additional 5 patches around my scalp. After
26 a tugging feeling that the Wen could be the root of my problem, I checked
27 the internet for 'hair loss after using wen' and found many reports of hair loss
28 similar to mine. And the majority of them sound like my experience. For the
record, I haven't had any medical issues, dietary changes, lifestyle changes
since the onset of hair loss and the only behavioral change I've made is
adding Wen to my hair care routine.

A word of warning to those of you about to purchase WEN Cleansing
Conditioner: Wen is a dangerous product.

- 22 • **[http://womenshair.about.com/u/reviews/products/Wen-Haircare-](http://womenshair.about.com/u/reviews/products/Wen-Haircare-Products/DO-NOT-BUY-WEN-Made-My-Hair-Fall-Out-With-One-Use.htm)**
23 **[Products/DO-NOT-BUY-WEN-Made-My-Hair-Fall-Out-With-One-](http://womenshair.about.com/u/reviews/products/Wen-Haircare-Products/DO-NOT-BUY-WEN-Made-My-Hair-Fall-Out-With-One-Use.htm)**
24 **[Use.htm](http://womenshair.about.com/u/reviews/products/Wen-Haircare-Products/DO-NOT-BUY-WEN-Made-My-Hair-Fall-Out-With-One-Use.htm)**

24 **My Review**

26 ¹ Typographical and grammatical errors in the excerpted complaints have not been
27 corrected and remain as originally written.

1 My husband bought this as a birthday gift for me after he overheard me
2 talking to about a friend about it. I only used it once, but that was enough for
3 me. In my first use I lost 100x's the amount of hair than I do in an average
4 shower. I was literally pulling clumps of hair out of my head and I had hair
5 balls running down my legs into the shower drain.

6 I look online and found horror stories about people losing so much hair that
7 they were balding and lawsuits of people trying to recup costs from
8 dermatology appointments to try and get there hair back.

9 I called the mall kiosk where I bought it and the cashier said, "I've got to tell
10 you, this isn't the first time someone's returned the product and complained
11 that their hair was falling out.

12 I would NEVER recommend this product and I wonder how these people
13 can sleep at night with so many people complaining about this problem.

- 14 • <http://womenshair.about.com/u/reviews/products/Wen-Haircare-Products/Very-Angry-About-Hairloss-from-WEN.htm>

15 My Review

16 I used Wen hair care for the first time and it was good till the next week. I
17 washed my hair and it was coming out. Wen hair thinned my hair and made
18 it frizzy. I noticed it right away. I'm so upset! I am African American with
19 long hair, untill I used this mess and thinned my hair!

- 20 • <http://womenshair.about.com/u/reviews/products/Wen-Haircare-Products/My-Hair-is-Lifeless-and-Thinning-After-Using-WEN.htm>

21 My Review

22 At first I really liked this product. Then I noticed my hair was feeling greasy
23 and heavy. Now my hair is falling out in gobs daily. I would not recommend
24 this product. My hair is now thinning so bad you can see my scalp. It is
25 lifeless and lusterless.

- 26 • <http://womenshair.about.com/u/reviews/products/Wen-Haircare-Products/WEN-Caused-Immeidate-Hair-Loss-for-Me.htm>

27 My Review

28 Note: I have very delicate hair!

The first wash was amazing! Then the next 3 times (without using any other
products) there was massive hair loss. I would put in the conditioner and
when I ran my fingers through it to distribute it took me a full minute to get
all the hair that had fallen out off my fingers. Then I would see random
FULL LENGTH hair floating around my car, my desk, and in my eyes.
I stopped using it after the 4th day. Today I received an email asking how I
like the product.

After reading other reviews I will be on the phone with them first thing in
the morning for a FULL refund. And if they dare try to charge me for the
membership....don't get me started.

- https://getsatisfaction.com/wenbychazdean/topics/wen_causes_hair_to_fall_out_that_cant_be_true

o mish 1 year ago
Craig,

1 YOU can contact me about my hair loss after using WEN! I have suffered
2 hair loss and breakage! I have been using WEN for about 8 months. Thought
3 I was using a safe & healthy product! Saw my Drs. and all tests are normal,
4 nothing in my recent blood work or physical that would point to hair loss!
5 Never made the connection to WEN until I MADE my POOR husband use it
6 , thinking I was doing a good thing! THEN, he suffered hair loss!!!!!! So
7 TODAY, I googled WEN & Hair loss! I was floored when I saw the MANY
8 complaints of Hair Loss and WEN! Many were told by dermatologists that
9 WEN causes blocked hair follicles. What is most alarming is that people
10 have reported that their hair still has not returned to normal even after
11 stopping the use of WEN! I find that disturbing! They also said that reported
12 that to the FDA

13 o **snucif@aol.com** 1 year ago

14 Started using Wen cleansing Conditioner about 6 or 7 months ago, I bought
15 a package deal on QVC now my thin hair is even thinner and my son says
16 you can see a bald spot in the back! I am going to stop using it.

- 17 • <http://wen-haircare.pissedconsumer.com/beware-using-wen-shampoo-hair-loss-20120818340078.html>

18 sunshine2daI've seen the commercials and thought why not try it because it
19 seems to have a nice effect on hair and felt that my hair could even look
20 better.I was shocked to see after the first wash SO MUCH HAIR IN
21 THE SHOWER.

22 I have never experienced that in my life. I immediately called company and
23 gal I spoke with advised to keep using with the conditioner as she had lost
24 hair too the first time as it was just kicking out old stuff. I wanted to believe
25 and used again with the conditioner and gobs of hair falling out. I stopped
26 and it has been a month and shedding,shedding, shedding.

27 I hate to wash my hair as there is so much fall out and now I'm stressed
28 which doesn't help.I only wish I would have read all the other people that are
losing their hair with this horrible product.

29 **HumbleOpinion Jun 02**

30 I have very thick, healthy, never-colored hair. My overall health is excellent
31 and I am not on any medications. I can confirm that Wen causes hair loss!
32 Just Friday, after a limited trial of Wen, I had hair falling out in the shower. I
33 have never experienced anything like this in my life. I have not washed my
34 hair since Friday and am frankly fearful of showering! Wen is an awful
35 product - do not tell someone with handfuls of lost hair how much you love
36 Wen!!!

37 **Thinning Jan 09**

38 Loved the product at first, but after 8 months, I have lost hair in two spots as
well as at the front hairline. I am sad, my hair has always been thick and
pretty. I can only pray that after discontinuing usage, maybe it will grow
back. Be aware, not a good thing to use.

hate deception Oct 20, 2013 Winston Salem, North Carolina

1
2 I used wen on the advice of a family member. I started getting sores on my
3 scalp and my hair came out. There is something in it that causes an infection
4 of the hair follicles, thus the hair falls out. stop using and see a
dermatologist.

- 5 • <http://www.consumeraffairs.com/cosmetics/wen.html>

6 Sherry of Sumter, SC on July 5, 2014

7 I have tried two different types (mint, fig) and the first couple of days my
8 hair was soft, and after a week, my hair was falling out in clumps. My
husband always would ask me "are you okay, I keep finding your hair in the
bathroom" ..

9 I promise you as I was washing my hair, clumps would come out in my
10 hands. I called and cancelled and even told them I didn't want a refund
(didn't want to go through the hassle of refunds with them after reading
11 reviews). I still had to pay for the next shipment and called American
express and they had any new payments after my initial shipment stopped. I
12 am the type of person that I don't believe everything I read without proof and
I am telling you the reader this is the honest truth. This was my experience
13 with Wen and the last. I hope this will help somebody even if it's just one.
Thank You for your attention...

- 14 • <http://www.consumeraffairs.com/cosmetics/wen.html>

15 Nancy of Dunsford, ON

16 I started using the WEN Sweet Almond Cleansing Conditioner about 6
17 weeks ago. I have naturally curly hair that is very fine, just past my
shoulders. I used the conditioner as directed 3-4 times a week. Soon after I
18 noticed considerable hair loss. I comb my hair when wet in shower which
was filled with hair. My drain full. I thought maybe it was a nutritional
19 imbalance. However, I supplement with Biotin for hair growth and never
had a problem with hair loss in past. I spoke to a friend who mentioned she
20 heard that Wen users were complaining of the same. Coincidence? I think
not.

- 21 • <http://www.consumeraffairs.com/cosmetics/wen.html>

22 cheryl of Youngstown, OH

23 I order 5 bottles of wen cleansing conditioners because my aunt got me one
for Christmas and at first it worked great so I got more. Then my hair started
24 just falling out. I mean bad. I'm bald in spots. I stopped using it and hair still
not quite right. There's got to be something done. My hair was so nice and
25 long now it looks like **. I'm going to talk to a lawyer because I don't even
want to leave the house anymore. Thanks to wen by Chaz Dean.

- 26 • <http://www.complaintsboard.com/complaints/wen-hair-care-c523263.html>

27 I purchased this product and after 2 weeks my hair started falling out, let me
28 first say I have no medical issues and this is not normal hair shedding, I

1 didn't connect the hair loss to the wen at first, until a friend said do you think
2 it's the wen, so I googled wen hair loss and there are many women that have
3 had the same reaction, and before some of you wen lovers comment, some
4 women after several months are now having the same results (hair loss), I
5 have contacted the fda and you need to call this number to report it 1-800-
6 332-1088, I went to the wen facebook page and women posting they have
7 hair loss was removed and blocked from commenting, if I would of seen
8 some of these comments my hair would be on my head and not in the trash,
9 it was healthy now it's like straw and brittle, I have stopped using wen over a
10 week now, the hair loss is not as bad, but the damage is done and over half
11 my hair is gone ...please report to the fda and the BBB, don't let them keep
12 selling this to others, save someone from this, wish I had found web sites
13 before I started using it!!!

8 • <http://katieelizabethchicago.blogspot.com/2013/12/back-wen.html>

9 Until... my hair started falling out. At first, I had no idea what it was
10 from. It wasn't alarmingly falling out so I just figured I was just "shedding"
11 more than normal. When it continued for quite a while, I decided it had to
12 be something I was using. I'm always trying new products so I cut out every
13 single styling product that I was using to see if that made a
14 difference. When it didn't and all I was using was the Wen, I decided to do
15 some research. All you have to do is Google Wen and you'll find tons of
16 articles on Wen + hair loss. And sadly, it's true for me. As soon as I
17 stopped using my beloved Wen, the hair stopped coming out in handfuls.

14 So this is my warning to women - it's NOT worth it!! I know not everyone
15 has this problem when they use Wen, but why risk it? There are so many
16 other great options out there that WON'T possibly make your hair fall
17 out!! Check out these articles on Wen hair loss if you're considering trying
18 it:

16 Wen Shampoo Causes Hair Loss. Do Not Use!
17 QVC Community on Wen Hair Loss
18 Wen Products Caused Hair Loss and Damage

18 • <http://forum.purseblog.com/the-beauty-bar/wen-hair-care-thoughts-466693.html>

19 I used it for a while, and it did make my hair feel soft. However, I SWEAR
20 it felt like I was losing hair. I know we all lose a certain amount through out
21 the day, but this felt like a lot. I was in the shower rinsing (keep in mind
22 you have to do a TON of rinsing with this stuff) and I felt something hit my
23 thigh. I looked down, and I kid you not, it was a HUGE wad of my hair!!! I
24 FREAKED after that, and have not touched it since!

23 • <http://forum.purseblog.com/the-beauty-bar/wen-hair-care-thoughts-466693.html>

24 OK - SAME for me. I was using the fig. At first it was great. My hair was
25 softer, color held longer (I have fairly thick red color-treated past shoulder
26 length hair). Then I noticed tons of hair by the drain, clumps of it on my
27 skin, just like the quote above. My hair was definitely thinner around my
28 bangs - I freaked out. I wrote to WEN, they answered me with some bs
quote - you lose up to 100 hairs a day, medication use (I don't), ageing (I'm
not that old). I told them I wasn't looking for compensation, just giving them

1 information and they should quite defending themselves. I was using the Fig
2 because I really like that smell. I am back to my Pureology and am hoping
3 my hair will be restored to its original awesomeness before the Wen.

4 • **<http://forum.purseblog.com/the-beauty-bar/wen-hair-care-thoughts-466693-2.html>**

5 I've been scouring my life and focusing on staying calm while I try to figure
6 out why I, someone with thick hair who has to get it thinned (and my mother
7 still does at the age of 67!), have lost 50% of my hair in the past two weeks!
8 I'm a bit baffled as I am, in general, feeling pretty good.

9 Out of my research, it says to consider what medication and actions one has
10 done in the past four months. Well, one thing is I started using this all
11 "Natural" WEN Cleansing Conditioner almost exactly four months ago! I
12 come here and see that some others are also describing the same kinds of
13 sudden, significant and scary amounts of hair falling out.

14 Two weeks ago, I was using the stuff, combing it through my hair in the
15 shower and was shocked to see how much hair I saw in the drain and in the
16 comb and for the past two weeks have been trying to figure out this
17 miserable corundum.

18 Unfortunately I had just ordered a new supply, but I will never use the stuff
19 again! This has been an unnecessary and very stressful experience. And I'm
20 going to submit this to the FDA as this is a very rough side effect for
21 women.

22 • **<http://forum.purseblog.com/the-beauty-bar/wen-hair-care-thoughts-466693-3.html>**

23 I started using Wen a few months ago and started noticing my hair falling
24 out out in handfuls. I also started noticing a significant amount of hair
25 breakage. I have a lot of hair normally and the amount of hair loss is quite
26 noticeable. I stopped using the product when I suspected that it was what
27 might be causing the thinning hair and hair loss. As soon as I stopped the
28 Wen the hair stopped falling. I am waiting to see when hair will start
growing back.

It also happened to my daughter, and when she stopped using it it started
growing back.

• **<http://forum.purseblog.com/the-beauty-bar/wen-hair-care-thoughts-466693-3.html>**

I tried it also and at first loved it, but then my hair started falling out as well.
I didnt realize until the second time that, that was what was making my hair
fall out. Stopped using it and my hair has stopped falling out. I am glad I
googled my hunch and found this forum, because I thought something was
wrong with me! I also had a painful to the touch lump on my head.

1 54. In addition to blog complaints, YouTube features numerous videos
2 also documenting hair loss caused by WEN Hair Care Products. The problems
3 experienced by Plaintiffs are neither isolated, nor unique.

4 **CLASS ALLEGATIONS**

5 55. Plaintiffs bring this action on their own behalf, and on behalf of the
6 following Class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3).
7 Specifically, the Class is defined as:

8 All purchasers or users of WEN Hair Care Products in
9 the United States or its territories between November 1,
10 2007 and August 1, 2016, excluding (a) any such person
11 who purchased for resale and not for personal or
12 household use, (b) any such person who signed a release
13 of any Defendant in exchange for consideration, (c) any
14 officers, directors or employees, or immediate family
15 members of the officers, directors or employees, of any
16 Defendant or any entity in which a Defendant has a
17 controlling interest, (d) any legal counsel or employee of
18 legal counsel for any Defendant, and (e) the presiding
19 Judge in the Lawsuit, as well as the Judge's staff and
20 their immediate family members.
21

22 56. Plaintiffs reserve the right to amend or modify the Class definitions in
23 connection with a motion for class certification or as warranted by discovery.

24 57. This action has been brought and may properly be maintained on
25 behalf of the Class proposed herein under the criteria set forth in Federal Rule of
26 Civil Procedure 23.

1 58. **Numerosity:** Plaintiffs do not know the exact size or identities of the
2 proposed Class, however, the Class encompasses millions of individuals who are
3 dispersed geographically throughout the United States. Therefore, the proposed
4 Class is so numerous that joinder of all members is impracticable. Class members
5 may be notified of the pendency of this action by mail and/or electronic mail,
6 supplemented if deemed necessary or appropriate by the Court by published notice.

7 59. **Existence and Predominance of Common Questions of Fact and**
8 **Law:** There are questions of law and fact that are common to the Class, and
9 predominate over any questions affecting only individual members of the Class.
10 The damages sustained by Plaintiffs and the other members of the Class flow from
11 the common nucleus of operative facts surrounding Defendants' misconduct. The
12 common questions include, but are not limited to the following:

- 13 a. Whether Defendants failed to comply with their warranties;
- 14 b. Whether WEN Hair Care Products cause hair loss;
- 15 c. Whether WEN Cleansing Conditioner or other WEN Hair Care
16 Products contains design defects;
- 17 d. Whether and when Defendants had exclusive knowledge that
18 WEN Hair Care Products caused hair loss but failed to disclose
19 this defect to the public ;
- 20 e. Whether Defendants' conduct violated the California Unfair
21 Competition Law;
- 22 f. Whether Defendants' conduct violated the California False
23 Advertising Law;
- 24 g. Whether Defendants' conduct constituted a breach of applicable
25 warranties;
- 26 h. Whether Defendants' conduct constitutes a breach of contract;

- 1 i. Whether Defendants’ acts and omissions make them liable to
2 Plaintiffs and the Class for negligence and strict products
3 liability;
- 4 j. Whether, as a result of Defendants’ omissions and/or
5 misrepresentations of material facts, Plaintiffs and members of
6 the Class have suffered an ascertainable loss of monies and/or
7 property and/or value; and
- 8 k. Whether Plaintiffs and Class members are entitled to monetary
9 damages and/or other remedies and, if so, the nature of any
10 such relief.

11 60. **Typicality**: All of Plaintiffs’ claims are typical of the claims of the
12 Class since each Class member was subject to the same common inherent defect in
13 the Products. Furthermore, Plaintiffs and all members of the Class sustained
14 monetary and economic injuries including, but not limited to, ascertainable loss
15 arising out of Defendants’ breach of warranties and other wrongful conduct as
16 alleged herein. Plaintiffs are advancing the same claims and legal theories on
17 behalf of themselves and all absent Class members.

18 61. **Adequacy**: Plaintiffs will fairly and adequately represent the
19 interests of the Class. They are committed to the vigorous prosecution of the
20 Class’ claims and have retained attorneys who are qualified to pursue this litigation
21 and are experienced in class action litigation.

22 62. **Superiority**: A class action is superior to other methods for the fair
23 and efficient adjudication of this controversy. While substantial, the damages
24 suffered by each individual Class member do not justify the burden and expense of
25 individual prosecution of the complex and extensive litigation necessitated by
26 Defendants’ conduct. Further, it would be virtually impossible for the members of
27 the Class to individually and effectively redress the wrongs done to them. A class
28

1 action regarding the issues in this case does not create any problems of
2 manageability. The class action device presents far fewer management difficulties
3 than alternative methods of adjudication, and provides the benefits of single
4 adjudication, economy of scale, and comprehensive supervision by a single court.

5 63. In the alternative, the Class may be certified because:

- 6 a. the prosecution of separate actions by the individual members
7 of the Class would create a risk of inconsistent or varying
8 adjudication with respect to individual Class members which
9 would establish incompatible standards of conduct for
10 Defendants;
- 11 b. The prosecution of separate actions by individual Class
12 members would create a risk of adjudications with respect to
13 them which would, as a practical matter, be dispositive of the
14 interests of the other Class members not parties to the
15 adjudications, or substantially impair or impede the ability to
16 protect their interests; and
- 17 c. Defendants have acted or refused to act on grounds generally
18 applicable to the Class, thereby making appropriate final and
19 injunctive relief with respect to the members of the Class as a
20 whole.

21 **VIOLATIONS ALLEGED**

22 **COUNT I**

23 **BREACH OF WARRANTY**
24 **(Class Claim Against Both Defendants)**

25 64. Named Plaintiffs repeat and re-allege every allegation in paragraphs
26 1-63, as if set forth herein in full.

27 65. Defendants sold WEN Hair Care Products including WEN Cleansing
28

1 Conditioner as part of their regular course of business. Plaintiffs and Class
2 members purchased WEN Hair Care Products either directly from Defendants or
3 though other retailers such as QVC, Amazon and Sephora, among others.

4 66. According to Guthy-Renker’s website, California law applies to any
5 and all claims made in connection with the purchase of its products.

6 67. WEN By Chaz Dean also does business throughout the United States
7 from its corporate headquarters in California.

8 68. The Products are “consumer products” within the meaning of the
9 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1), and California law. WEN
10 Cleansing Conditioner costs more than five dollars, as do the other WEN Hair Care
11 Products.

12 69. Plaintiffs and Class members are “consumers” and “buyers” within
13 the meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(3) and California law.

14 70. Defendants both fall within the definition of “supplier” and
15 “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §
16 2301(4) – (5). Defendants are also both considered a “manufacturer” and “seller”
17 under California law.

18 71. Defendants made promises and representations in an express warranty
19 provided to all consumers, which became the basis of the bargain between
20 Plaintiffs, Class members and Defendants.

21 72. Defendants’ written affirmations of fact, promises and/or descriptions
22 as alleged are each a “written warranty”. The affirmations of fact, promises and/or
23 descriptions constitute a “written warranty” within the meaning of the Magnuson-
24 Moss Act, 15 U.S.C. §2301(6).

25 73. By placing such products into the stream of commerce, by operation
26 of law including Section 2314 of the California Commercial Code, and the
27 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et. seq.*, Defendants also
28

1 impliedly warranted to Plaintiffs and Class members that WEN Hair Care Products
2 were of merchantable quality (*i.e.*, a product of a high enough quality to make it fit
3 for sale, usable for the purpose it was made, of average worth in the marketplace,
4 or not broken, unworkable, contaminated or flawed or containing a defect affecting
5 the safety of the product), would pass without objection in the trade or business,
6 and were free from material defects, and reasonably fit for the use for which they
7 were intended.

8 74. Defendants breached all applicable warranties because WEN Hair
9 Care Products, including but not limited to WEN Cleansing Conditioner, suffer
10 from latent and/or inherent defects that cause substantial hair loss and scalp
11 irritation, rendering WEN Hair Care Products unfit for their intended use and
12 purpose. This defect substantially impairs the use, value and safety of WEN Hair
13 Care Products, including but not limited to, WEN Cleansing Conditioner.

14 75. The latent and/or inherent defects at issue herein existed when the
15 WEN Hair Care Products left Defendants' possession or control and were sold to
16 Plaintiffs and Class members. The defect was undiscoverable by Plaintiffs and the
17 Class members at the time of purchase.

18 76. All conditions precedent to seeking liability under this claim for
19 breach of express and implied warranty have been performed by or on behalf of
20 Plaintiffs and others in terms of paying for the goods at issue. Defendants were
21 placed on reasonable notice of the defect in the Products and breach of the
22 warranties, and have had an opportunity for years to cure the defect for Plaintiffs
23 and all Class members, but have failed to do so.

24 77. Defendants were on notice of the problems with the WEN Hair Care
25 Products based on the more than 17,000 complaints received directly from
26 Plaintiffs and other Class members.

27 78. Defendants breached their express and implied warranties, as WEN
28

1 Hair Care Products did not contain the properties that they were represented to
2 possess.

3 79. Defendants' breaches of warranty have caused Plaintiffs and Class
4 members to suffer injuries, paying for defective products, and entering into
5 transactions they would not have entered into for the consideration paid. As a
6 direct and proximate result of Defendants' breaches of warranty, Plaintiffs and
7 Class members have suffered damages and continue to suffer damages, including
8 economic damages in terms of the cost of WEN Hair Care Products and the cost of
9 efforts to mitigate the damages caused by same.

10 80. As a result of the breach of these warranties, Plaintiffs and Class
11 members are entitled to legal and equitable relief including damages, costs,
12 attorneys' fees, rescission, and/or other relief as deemed appropriate, for an amount
13 to compensate them for not receiving the benefit of their bargain.

14 **COUNT II**

15 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**
16 **BUSINESS AND PROFESSIONS CODE § 17200, *et seq.***

17 **(Class Claim Against Both Defendants)**

18 81. Named Plaintiffs repeat and re-allege every allegation in paragraphs
19 1-80 as though fully set forth at length herein.

20 82. According to Guthy-Renker's Website, California law applies to all
21 claims.

22 83. Defendant WEN by Chaz Dean Inc. also does business throughout the
23 United States from its corporate headquarters in California.

24 84. Business & Professions Code § 17200, *et seq.* prohibits acts of "unfair
25 competition", which is defined by Business & Professions Code § 17200 as
26 including any "any unlawful, unfair or fraudulent business act or practice"

27 85. Defendants have engaged in unfair competition and unfair, unlawful
28

1 or fraudulent business practices by the conduct, statements, and omissions
2 described above, and by concealing from Plaintiffs and Class members the material
3 fact that WEN Hair Care Products can cause substantial hair loss. Defendants
4 should have disclosed this information because they were in a superior position to
5 know the true facts related to this defect, and Plaintiffs and Class members could
6 not reasonably be expected to learn or discover the true facts related to the defect
7 prior to their purchases.

8 86. Separate and distinct from the unfair and fraudulent practices
9 involving the hair loss, Defendants have engaged in an unfair and fraudulent
10 practice of intentionally instructing consumers to use amounts of the product far in
11 excess of the amount reasonably necessary to Condition the hair for the purpose of
12 supporting its automatic re-purchase agreement. By instructing its customers to:
13 “Use 10-16 pumps for short hair, 16-24 for medium length hair and 24-32 pumps
14 for long hair,” Defendants caused consumers to use substantially more product
15 than reasonably necessary without any additional benefit to the hair. This unfair
16 and deceptive practice caused consumers to use excessive amounts of WEN
17 Cleansing Conditioner which, in turn, required them to purchase more of the
18 product at regular intervals through Guthy-Renker’s automatic repurchase plan or
19 the automatic purchase plans offered by other retailers such as QVC The regular
20 repurchases would not have been necessary but for Defendants’ specific
21 instructions to use excessive amounts of the product thereby necessitating the
22 additional purchases.

23 87. These acts and practices have also deceived Plaintiffs and are likely to
24 deceive reasonable consumers targeted by such statements and omissions. In
25 failing to disclose this material defect and suppressing other material facts from
26 Plaintiffs and Class members, Defendants breached their duties to disclose these
27 facts, violated the UCL, and caused injuries to Plaintiffs and Class members. The
28

1 omissions and acts of concealment by Defendants pertained to information
2 material to Plaintiffs and Class members in that it would have been likely to
3 deceive them based on reasonable consumer's expectations and assumptions.

4 88. The injuries suffered by Plaintiffs and Class members are also greatly
5 outweighed by any potential countervailing benefit to consumers or to competition.
6 Nor are they injuries that Plaintiffs and Class members should or could have
7 reasonably avoided.

8 89. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts
9 or practices by Defendants, to obtain restitutionary disgorgement of all monies and
10 revenues generated as a result of such practices, and all other relief allowed under
11 Cal. Bus. & Prof. Code § 17200.

12 **COUNT III**

13 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,**
14 **BUSINESS AND PROFESSIONS CODE § 17500, *et seq.***

15 **(Class Claim Against Both Defendants)**

16 90. Named Plaintiffs repeat and re-allege every allegation in paragraphs
17 1-89 as though fully set forth at length herein.

18 91. According to Guthy-Renker's website, California law applies to all
19 claims.

20 92. WEN by Chaz Dean Inc. also does business throughout the United
21 States from its corporate headquarters in California.

22 93. In violation of California Business & Professions Code § 17500, *et*
23 *seq.*, Defendants have disseminated or caused to be disseminated deceptive
24 advertising misrepresentations, omissions and practices, including the statements
25 referenced, *inter alia*, in paragraph 25, *supra*. These statements are actionable
26 violations of § 17500 in that Defendants expressly state that WEN Cleansing
27
28

1 Conditioner and/or other WEN Hair Care Products have attributes, which they do
2 not possess.

3 94. Defendants' advertising misrepresentations, omissions, and practices
4 made in connection with the sale of WEN Cleansing Conditioner are unfair,
5 deceptive and/or misleading within the meaning of California Business &
6 Professions Code § 17500, *et seq.* These representations are likely to deceive
7 reasonable consumers.

8 95. In making and disseminating the statements alleged herein,
9 Defendants knew or should have known that the statements were and are
10 misleading or likely to mislead for the reasons set forth above.

11 96. As detailed above, Plaintiffs suffered injuries in fact and losses of
12 money or property as a result of Defendants' unfair and deceptive acts and
13 practices, which violate § 17500, *et seq.*

14 97. Pursuant to California Business & Professions Code § 17535,
15 Plaintiffs and members of the Class seek, and are entitled to:

- 16 a. an order enjoining Defendants from continuing to make false
17 and misleading statements concerning WEN Cleansing
18 Conditioner;
- 19 b. restitution and disgorgement of any and all excessive amounts
20 paid to Defendants or their agents;
- 21 c. equitable relief pursuant to Cal. Code of Civil Procedure § 384;
- 22 d. pre- and post-judgment interest at the highest rate allowable by
23 law; and
- 24 e. payment of attorney's fees and costs pursuant to, *inter alia*, Cal.
25 Code of Civ. Proc. § 1021.5, the common fund and private
26 attorney general doctrines.

27

28

1 98. As a result of Defendants' numerous violations of the false advertising
2 statute, Plaintiffs and Class members are entitled to equitable relief as the Court
3 deems appropriate.

4 **COUNT IV**

5 **BREACH OF CONTRACT**

6 **(Class Claim Against Both Defendants)**

7 99. Named Plaintiffs repeat and re-allege every allegation in paragraphs
8 1-98 as though fully set forth at length herein.

9 100. Plaintiffs, Friedman, Miller and Henry-McArthur entered into a
10 contract with Defendant WEN and Guthy-Renker when they purchased WEN Hair
11 Care Products from WEN's retail agent, Guthy-Renker.

12 101. Plaintiff Rogers entered into a contract with Defendant WEN when
13 she purchased WEN Hair Care Products through WEN's retail agent, QVC.

14 102. Other class members entered into the same contractual relationship
15 with WEN by purchasing WEN Hair Care Products through other WEN retail
16 agents such as Amazon and Sephora.

17 103. According to Guthy-Renker's website, California law applies to all
18 claims. In addition, WEN By Chaz Dean Inc. does business throughout the United
19 States from its corporate headquarters in California.

20 104. Plaintiffs and the Class paid money and conferred a benefit upon
21 Defendants by purchasing WEN Hair Care Products from Defendants or through
22 WEN's other retail agents. .

23 105. Plaintiffs and the Class have performed all conditions and promises
24 required on their part to be performed in accordance with the agreement to
25 purchase the Products.

26 106. Defendants materially breached the contracts with Plaintiffs and the
27 Class by selling Plaintiffs and the Class Products that were defective and were not
28

1 what the Plaintiffs and the Class had bargained for.

2 107. As a result of Defendants' breach, Plaintiffs and the Class have
3 suffered harm in the form of damages as they did not receive the benefit of their
4 bargain.

5 **COUNT V**

6 **NEGLIGENCE – FAILURE TO WARN**

7 **(Class Claims Against Both Defendants)**

8 108. Named Plaintiffs repeat and re-allege every allegation in paragraphs
9 1-107 as though fully set forth at length herein.

10 109. At all times referenced herein, Defendants were responsible for
11 designing, formulating, testing, manufacturing, inspecting, distributing, marketing,
12 supplying and/or selling WEN Hair Care Products to Plaintiffs and the Class.

13 110. According to Guthy-Renker's website, California law applies to all
14 claims. WEN by Chaz Dean, Inc. does business throughout the United States from
15 its corporate headquarters in California.

16 111. At all times material hereto, the use of WEN Hair Care Products, in a
17 manner that was intended and/or reasonably foreseeable by Defendants, involved
18 substantial risk of hair loss and scalp irritation.

19 112. At all times the risk of substantial hair loss and/or scalp irritation was
20 known or knowable by Defendants, in light of the generally recognized and
21 prevailing knowledge available at the time of manufacture and design, as described
22 herein.

23 113. Defendants, as the developers, manufacturers, distributors and/or
24 sellers of WEN Hair Care Products, had a duty to warn Plaintiffs and the Class of
25 all dangers associated with the intended use of these Products.

26 114. Certainly, after receiving thousands of complaints of hair loss from
27 WEN customers, a duty arose to provide a warning to consumers that use of the
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1 product could result in hair loss and/or scalp irritation.

2 115. Defendants were negligent and breached their duty of care by
3 negligently failing to give adequate warnings to purchasers and users of WEN Hair
4 Care Products, including Plaintiffs and the Class, about the risks, potential dangers
5 and defective condition of the Products.

6 116. Defendants knew, or by the exercise of reasonable care, should have
7 known of the inherent design defects and resulting dangers associated with using
8 WEN Hair Care Products as described herein, and knew that Plaintiffs and Class
9 members could not reasonably be aware of those risks. Defendants failed to
10 exercise reasonable care in providing the Class with adequate warnings.

11 117. As a direct and proximate result of Defendants' failure to adequately
12 warn consumers that use of WEN Hair Care Products could cause hair loss or scalp
13 irritation, Plaintiffs and the Class have suffered damages as set forth herein.

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COUNT VI

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NEGLIGENCE – FAILURE TO TEST

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(Class Claims Against Both Defendants)

18 118. Named Plaintiffs repeat and re-allege every allegation in paragraphs
19 1-117 as though fully set forth at length herein.

20 119. According to Guthy-Renker's website, California law applies to all
21 claims. In addition, WEN by Chaz Dean, Inc. does business throughout the
22 United States from its corporate headquarters in California.

23 120. Defendants did not perform adequate testing on WEN Cleansing
24 Conditioner or other WEN Hair Care Products used in conjunction therewith,
25 which were defectively designed, formulated, tested, manufactured, inspected,
26 distributed, marketed, supplied and/or sold to Plaintiffs and the Class.

27 121. Adequate testing would have revealed the serious deficiencies in the
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1 WEN Hair Care Products in that it would have revealed the substantial hair loss
2 and scalp irritation occasioned by use of the Products.

3 122. Defendants had, and continue to have, a duty to exercise reasonable
4 care to properly design—including the duty to test—WEN Hair Care Products
5 before introducing them into the stream of commerce.

6 123. Defendants breached these duties by failing to exercise ordinary care
7 in the design and testing of WEN Hair Care Products, which they introduced into
8 the stream of commerce, because Defendants knew or should have known that
9 WEN Hair Care Products could cause substantial hair loss and scalp irritation.

10 124. Defendants knew or reasonably should have known that Class
11 members such as Plaintiffs would suffer economic damages or injury and/or be at
12 an increased risk of suffering damage and injury, as a result of its failure to
13 exercise ordinary care in the design of WEN Hair Care Products by failing to
14 conduct appropriate testing.

15 125. By reason of the foregoing, Plaintiffs and the Class experienced
16 and/or are at risk of experiencing financial damage and injury.

17 126. As a direct and proximate result of Defendants' failure to test WEN
18 Hair Care Products designed, formulated, manufactured, inspected, distributed,
19 marketed, warranted, advertised, supplied and/or sold by the Defendants,
20 Plaintiffs and the Class have suffered damages.

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COUNT VII
STRICT PRODUCTS LIABILITY
(Class Claim Against Both Defendants)

127. Named Plaintiffs repeat and re-allege every allegation in paragraphs 1-126 as though fully set forth at length herein.

128. According to Guthy-Renker’s website, California law applies to all claims. Additionally, Defendant WEN By Chaz Dean, Inc. also does business throughout the United States from its corporate headquarters in California.

129. Defendant WEN was the creator and developer of WEN Hair Care Products.

130. Defendant WEN licenses the formula for its Cleansing Conditioner to Defendant Guthy-Renker.

131. Defendant Guthy-Renker was the manufacturer or supplier of WEN Hair Care Products that it sells to customers.

132. Defendant WEN sells WEN Hair Care Products through other retailers including but not limited to QVC, Amazon and Sephora.

133. The only two manufacturers of WEN Hair Care Products are WEN and Guthy-Renker.

134. As described herein, the Products possessed a defect in manufacturing in that the formula can cause substantial hair loss.

135. The defect in the Products existed at the time the Products left Defendants’ possession and were introduced into the stream of commerce.

136. The Products caused harm and injury to Plaintiffs and the proposed Class in that, *inter alia*, it caused and/or causes hair loss and/or scalp irritation.

1 137. Plaintiffs' use of the Cleansing Conditioner occurred in a manner that
2 was reasonably foreseeable to Defendants.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Named Plaintiffs respectfully requests the following relief:

- 5 a. Determine that the claims alleged herein may be maintained as a
6 class action under Rule 23 of the Federal Rules of Civil Procedure,
7 and issue an order certifying one or more Classes as defined above;
- 8 b. Appoint Plaintiffs as the representatives of the Class and their
9 counsel as Class counsel;
- 10 c. Award all actual, general, special, incidental, statutory, and
11 consequential damages to which Plaintiffs and Class members are
12 entitled;
- 13 d. Award pre-judgment and post-judgment interest on such monetary
14 relief;
- 15 e. Grant appropriate injunctive and/or declaratory relief, including,
16 without limitation, an order that requires Defendants to replace the
17 WEN Hair Care Products with non-defective products, and/or repay
18 Plaintiffs and Class members, or, at a minimum, to provide Plaintiffs
19 and Class members with appropriate curative notice regarding the
20 existence and cause of the defect;
- 21 f. Award reasonable attorneys' fees and costs; and
- 22 g. Grant such further relief that this Court deems appropriate.

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1 **JURY TRIAL DEMANDED**

2 Named Plaintiffs demand a trial by jury on all issues so triable.

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4 Dated: October 31, 2016.

5 /s/ Neville L. Johnson

6 Neville L. Johnson (SBN 66329)

7 njohnson@jillplaw.com

8 Douglas L. Johnson (SBN 209216)

9 djohnson@jillplaw.com

10 Jordanna G. Thigpen (SBN 232642)

11 jthigpen@jillplaw.com

12 **JOHNSON & JOHNSON, LLP**

13 439 North Canon Drive, Suite 200

14 Beverly Hills, California 90210

15 Telephone: (310) 975-1080

16 Facsimile: (310) 975-1095

17 William Anderson, (*Pro Hac Vice*)

18 wanderson@cuneolaw.com

19 Charles J. LaDuca, (*Pro Hac Vice*)

20 charles@cuneolaw.com

21 Michael J. Flannery (SBN 196266)

22 mflannery@cuneolaw.com

23 **CUNEO GILBERT & LADUCA, LLP**

24 507 C Street, NE

25 Washington, DC 20002

26 Telephone: (202) 789-3960

27 Facsimile: (202) 789-1813

28 Brian W. Warwick, (*Pro Hac Vice*)

bwarwick@varnellandwarwick.com

Janet R. Varnell, (*Pro Hac Vice*)

jvarnell@varnellandwarwick.com

VARNELL & WARWICK, P.A.

P.O. Box 1870

Lady Lake, FL 32158

Telephone: (352) 753-8600

Facsimile: (352) 504-3301

Attorneys for Plaintiffs and the Proposed Class