



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Court File No.

17-71726 ep

[REDACTED] **FRANZE**

Plaintiff

- and -

**GUTHY-RENKER CANADA CORPORATION, GUTHY-RENKER LLC AND WEN BY
CHAZ DEAN, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: February 21, 2017

Issued by


Local Registrar

Address of
court office:

161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

TO: **Guthy-Renker Canada Corporation**
1959 Upper Water Street, Suite 900
Halifax, Nova Scotia
B3J 3N2

AND TO: **Guthy-Renker LLC**
100 N Sepulveda Boulevard, Suite 1600
El Segundo, California
90245-5654

Tel: (310) 581-6250
Fax: (310) 581-3232

AND TO: **WEN by Chaz Dean, Inc.**
6444 Fountain Avenue
Los Angeles, California
90028

Tel: (323) 467-6444

DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) **“WEN Hair Care Products”** and/or **“Hair Care Products”** means the hair care products branded under WEN® that were designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the **Defendants** and include, but are not limited to all fragrances and variations of: Cleansing Conditioner, Re-Moist Mask, Treatment Mist Duo, Treatment Oil, SIXTHIRTEEN Ultra Nourishing Cleansing Treatment, Re Moist Intensive Hair Treatment, Styling Crème, Anti-Frizz Styling Crème, Nourishing Mousse, Volumizing Treatment Spray, Replenishing Treatment Mist, Defining Paste, Straightening Smoothing Gloss, Smoothing Glossing Serum, Glossing Shine Serum, Finishing Treatment Crème, Volumizing Root Lift, Texturizing Spray, Detangling Treatment Spray, Men Control Texture, Men Hair and Body Oil, Bath, Body and Hair Oil, and Texture Balm sold through all outlets;
- (b) **“Product Defect”** means the serious, pervasive, and dangerous design and manufacturing defects that render the **WEN Hair Care Products** unmerchantable and unsuitable for use and which place persons at risk of serious injury, including the presence of harmful chemicals which cause *inter alia* major hair loss, stunted hair growth, hair breakage, brittle, limp and/or lifeless hair, dermatitis, eczema, blistering, rash, scabbing, peeling, reddening and swelling, sore, tender, and/or irritated scalp, itchiness, redness, and other severe medical injuries;

- (c) “**Class**”, “**Proposed Class**” or “**Class Members**” means all persons residing in Canada who purchased and/or used one or more of the **WEN Hair Care Products**;
- (d) “*Courts of Justice Act*” means the *Ontario Courts of Justice Act*, RSO 1990, c. C-43, as amended;
- (e) “*Class Proceedings Act*” means the *Class Proceedings Act*, SA 2003 c C-16.5, as amended;
- (f) “*Sale of Goods Act*” means the *Sale of Goods Act*, RSA 2000, c. S-2, as amended, including ss. 16;
- (g) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;
- (h) “**Consumer Protection Legislation**” means:
- (i) *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;
 - (ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;
 - (iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;
 - (iv) *The Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;
 - (v) *The Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219, 228, 253 & 272;

- (vi) The *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;
 - (vii) The *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;
 - (viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; and
 - (ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;
- (i) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;
- (j) “**Consumer Packaging and Labelling Act**” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38, as amended, including ss. 7, 9 & 20;
- (k) “**Food and Drugs Act**” means the *Food and Drugs Act*, R.S.C., 1985, c. F-27, as amended, including ss. 16 & 31;
- (l) “**Cosmetic Regulations**” means the *Cosmetic Regulations*, C.R.C., c. 869, as amended, including s. 22;
- (m) “**Defendants**” means Guthy-Renker Canada Corporation, Guthy-Renker LLC and WEN by Chaz Dean, Inc.;
- (n) “**Plaintiff**” means [REDACTED] Franze; and
- (o) “**Representation(s)**” means the **Defendants’** false, misleading or deceptive representations that their **WEN Hair Care Products** (a) have performance characteristics,

uses, benefits and/or qualities which they do not have, (b) are of a particular standard or quality which they are not; (c) are available for a reason that does not exist, and (d) their use of exaggeration, innuendo and ambiguity as to a material fact or (e) failing to state a material fact regarding the **Product Defect** as such use or failure deceives or tends to deceive.

THE CLAIM

2. The proposed Representative Plaintiff, [REDACTED] Franze, claims on her own behalf and on behalf of the members of the Class as defined in paragraph 5 below (the “Class”) as against Guthy-Renker Canada Corporation, Guthy-Renker LLC and WEN by Chaz Dean, Inc. (the “Defendants”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the Defendants are strictly liable to the Class Members;
- (c) A declaration that the Defendants are in breach of contract with Class Members;
- (d) A declaration that the Defendants breached their express warranty;
- (e) A declaration that the Defendants breached their implied warranties;
- (f) A declaration that the Defendants committed the tort of fraudulent concealment;

- (g) A declaration that the Defendants were negligent in the design, development, formulation, testing, manufacture, packaging, distribution, marketing, promotion, advertising, labelling, and/or sale of the WEN Hair Care Products;
- (h) A declaration that the Defendants breached their duty to test the WEN Hair Care Products prior to introducing them into the market as well as afterward;
- (i) A declaration that the Defendants breached their duty to warn the Plaintiff and Class Members of the dangerous and defective nature of the WEN Hair Care Products;
- (j) A declaration that the Defendants committed the tort of intentional and/or negligent misrepresentation;
- (k) A declaration that the Defendants breached the *Sale of Goods Act* when they breached the implied condition as to quality or fitness for a particular purpose;
- (l) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (m) A declaration that the Defendants breached the *Consumer Packaging and Labelling Act* in applying, labelling, selling, importing into Canada and/or advertising “false or misleading representations” onto the WEN Hair Care Products and in applying, labelling, selling, importing into Canada and/or advertising the WEN Hair Care

Products such that consumers might reasonably be misled with respect to the quality of the product;

- (n) A declaration that the Defendants breached the *Food and Drugs Act* in selling the WEN Hair Care Products containing chemicals that may cause injury to the health of the user when the WEN Hair Care Products are used as directed;
- (o) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on her own behalf and on behalf of “persons similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (p) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (q) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, personal injury, pain, suffering, disfigurement, loss of enjoyment of life, embarrassment, stress, trouble, and inconvenience as well as significant and/or major hair loss, stunted hair growth, hair breakage, brittle, limp and/or lifeless hair, dermatitis, eczema, blistering, rash, scabbing, peeling, reddening and swelling, sore, tender, and/or irritated scalp, itchiness, redness, and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage;

- (r) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, their medical expenses (including diagnostic tests and medical evaluations, surgeries and medical procedures, medications purchased (including both over-the-counter and prescriptions), aesthetic purchases (including wigs, extensions, and/or other products purchased to hide/camouflage their injuries), lost wages/earnings, and/or the purchase price of the WEN Hair Care Products (based *inter alia* on revocation of acceptance and rescission);
- (s) Punitive (exemplary) and aggravated damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (t) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (u) In the alternative, an order for an accounting of revenues received by the Defendants resulting from the sale of the WEN Hair Care Products;
- (v) A declaration that any funds received by the Defendants through the sale of the WEN Hair Care Products are held in trust for the benefit of the Plaintiff and Class Members;
- (w) Restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their WEN Hair Care Products to members of the Class on the basis of unjust enrichment;

- (x) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their WEN Hair Care Products to members of the Class on the basis of *quantum meruit*;
- (y) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the law, whether tortious, statutory, and/or equitable;
- (z) A mandatory order compelling the Defendants to recall their WEN Hair Care Products;
- (aa) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (bb) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (cc) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (dd) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;
- (ee) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and

- (ff) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, [REDACTED] Franze, is an individual residing in the city of Vaughn, in the province of Ontario.

4. The Plaintiff purchased three (3) WEN Hair Care Products on January 2, 2016, from As Seen On TV, specifically the Sweet Almond Mint Cleaning Conditioner, Sweet Almond Mint Nourishing Mousse, and Sweet Almond Mint Styling Creme products, which had been purchased for a special purchase price of \$45.14 including taxes (the purchase was for the Sweet Almond Mint Cleansing Conditioner – the other 2 WEN Hair Care Products had been included as a promotion in the order).

5. On February 3, 2016, the Plaintiff was automatically charged for a second bottle of the Sweet Almond Mint Cleaning Conditioner for a purchase price of \$61.08; said purchase was partially refunded in the amount of \$40.00.

The Class

6. The Plaintiff seeks to represent the following class of which she is a member (the “Proposed Class”):

All persons residing in Canada who purchased and/or used one or more of the WEN[®] Hair Care Products.

The Defendants

7. The Defendant, Guthy-Renker Canada Corporation (hereinafter “Guthy-Renker Canada”), is a Canadian corporation with its principal place of business in Nova Scotia. Defendant Guthy-Renker Canada is a subsidiary of Defendant Guthy-Renker LLC and is the owner of the website www.wenhaircare.ca.

8. The Defendant, Guthy-Renker LLC, is an American corporation with its principal place of business in El Segundo, California. It is one of the world’s largest direct response television companies with annual sales of approximately 1.8 billion US dollars. It is a leading producer of infomercials and products designed for direct response television sales. The WEN Hair Care Products are licensed by Defendant WEN by Chaz Dean to Guthy-Renker LLC who in turn manufactures, packages, distributes, markets, promotes, advertises, labels, and/or sells the WEN Hair Care Products in Canada in conjunction with its Canadian subsidiary, Defendant Guthy-Renker Canada.

9. The Defendant, WEN by Chaz Dean, Inc. (hereinafter “WEN”), is an American corporation with its principal place of business in Los Angeles, California. Defendant WEN designed, developed, formulated, tested, and licensed the WEN Hair Care Products to Defendant Guthy-Renker LLC.

10. The Canadian trade-marks, “WEN BY CHAZ DEAN” (TMA864401), “WEN CLEANSING CONDITIONER BY CHAZ DEAN” (TMA864418), and “WEN HAIR CARE BY CHAZ DEAN” (TMA866665), which were all filed on May 8, 2008, were registered and are

owned by Jeffrey Alan Deane, whose celebrity name is Chaz Dean. In addition, the trade-marks “WEN” (TMA750967), which was filed on January 23, 2008, “CHAZ DEAN” (TMA889944) which was filed on October 23, 2008, and “WEN HEALTHY HAIR CARE SYSTEM” (TMA788706), which was filed on November 4, 2009, were all registered and are owned by Jeffrey Alan Deane.

11. The Defendants design, develop, formulate, test, license, manufacture, package, distribute, market, promote, advertise, label, and/or sell the WEN Hair Care Products.

12. Given the close ties between the Defendants and considering the preceding, they are all jointly and severally liable for the acts and omissions of the other.

THE NATURE OF THE CLAIM

13. These class proceedings concern the Defendants’ false and misleading statements and failure to provide adequate warning regarding the serious risks and negative side effects associated with the use of their WEN Hair Care Products including, but not limited to, significant hair loss and/or major hair loss (i.e. between one quarter and one third of their hair, or more) and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage, rendering the WEN Hair Care Products unmerchantable, unsuitable, and unsafe for use.

14. Once the hair loss caused by the WEN Hair Care Products begins, it continues for weeks before abating, even in the unlikely event that the customer, on their own, realizes the source of the hair loss and ceases using the product(s).

15. The Defendants failed to disclose and/or actively concealed, despite longstanding knowledge, the reality that the WEN Hair Care Products are defective and unsafe in order to induce purchase and the Defendants engaged in and continue to engage in conduct likely to mislead consumers including the Plaintiff about the safety of their hair care products, including active concealment of customers' commentary concerning their hair loss, by blocking and/or erasing such comments from the WEN Facebook page.

16. In fact, not only did the Defendants fail to disclose and/or actively conceal the defective nature of the WEN Hair Care Products, but they actually made numerous active assertions about the gentle nature of their hair care products.

17. The Defendants knew or should have known that the WEN Hair Care Products created an increased serious risk of injury, but they nevertheless failed to disclose to consumers, including the Plaintiff, the risk of injury, the rates of adverse reaction, and other known problems.

18. The Defendants have known about the Design Defect since at least 2010 as a result of public complaints (if not before) and they knew or should have known about the serious hair loss issues as a result of pre-release formulation and testing. Notwithstanding this knowledge, the Defendants have failed and/or refused to provide an adequate remedy.

19. Despite notice and knowledge of the problems caused by their WEN Hair Care Products from *inter alia* the numerous consumer complaints it has received and information from third parties, including the United States Food and Drug Administration (the "USFDA"), the Defendants have neither recalled the WEN Hair Care Products, nor offered their customers proper compensation for their damages.

20. The Plaintiff and the Class Members have been damaged by the Defendants' concealment and non-disclosure of the defective nature of the WEN Hair Care Products and they were misled into purchasing and using these products of a quality and value different from what was promised.

21. The Plaintiff, on behalf of the Class Members, seeks an award of damages against the Defendants for their intentional, willful, and/or negligent failure to disclose and/or active concealment of the inherently defective and dangerous condition posed by the WEN Hair Care Products.

I. The WEN Hair Care Products

22. WEN is the brand name for a line of hair care products that are designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the Defendants as an "industry-changing product line that excludes ordinary shampoo" and as a lather-free alternative to regular hair products that would provide "fuller, stronger, healthier-looking hair".

23. Thus, the name brand name WEN, according to the Defendants, is a mixture of the words "Zen" and "New" (spelled backwards) ostensibly to indicate enlightenment, calm, and togetherness mixed with the idea that the Hair Care Products are innovative and new.

24. The Defendants sell the WEN Hair Care Products directly as well as through other outlets, including Sephora and Amazon and other retailers such as Seen on TV.

25. The Defendants advertise "3 Ways WEN Makes Your Hair Stronger" as:

“#1 – No lather that strips away hair's natural oils and elasticity

We've been taught that we need lather to get squeaky clean. Unfortunately, lather is the bane of our hair's existence. The harsh sulfates that create those satisfying suds can actually strip our hair of its natural oils, shine, color and elasticity. Every time we lather up, we gradually break down our hair shaft, causing it to be finer, weaker and more prone to breakage.

WEN® Cleansing Conditioner addresses that very problem by gently and thoroughly cleansing your hair *without lather*. Instead, it uses a perfect blend of ingredients, including natural botanicals, herbs and extracts—making your hair shinier, softer and fuller after just one use.

#2 – Nourishes and moisturizes to help prevent dry, brittle hair

WEN® Cleansing Conditioner nourishes and moisturizes hair with soothing herbs and botanicals to help you achieve a smoother, silkier-looking, more polished finish. Hair is conditioned so that it becomes less dry and brittle, and less vulnerable to breakage and fallout.

Plus, WEN® Re Moist Intensive Hair Treatment is designed to help boost your hair's resilience, softness and moisture. This makes it great for damaged, color-treated hair that can be weakened by styling processes and environmental stressors.

#3 – Boosts hair's manageability so you can give up your heat styling tools

WEN® helps your hair become more manageable, sparing it from the daily styling abuse you put it through in an attempt to tame frizz and flyaways. The Cleansing Conditioner combined with the WEN® Anti-Frizz Styling Creme helps you achieve more styling power so you can finally end your dependency on flat irons and curling irons, which can lead to more damage and breakage.

The Anti-Frizz Styling Creme has also been shown to:

- Support less breakage after just one use when product is left in the hair
- Help hair become stronger under heat and styling stress with the product in the hair
- Help provide up to 8 hours of frizz control plus more sheen and luster

And with WEN® Nourishing Mousse, you can achieve volume, body and flexible hold without the flaky, sticky residue of traditional styling products. It's also formulated without parabens and alcohol, which can dry out your hair.

WEN[®] is more than about helping you achieve the style you want. It provides nourishment and strength to your hair to help make every day a good hair day.”

26. The Defendants equally proclaim that the WEN Hair Care Products were “founded on the belief that beautiful hair can and should be achieved without sacrificing your hair's health. No harsh sulfates that lather—just fuller, stronger, healthier-looking hair” and in describing the so-called “discovery” of the WEN Hair Care Products, Chaz Dean supposedly “went into his garden and picked sage, rosemary, lavender, eucalyptus, apples, bananas and pears. He boiled the potpourri in water, took it to his shower and cleansed his hair with it. That’s when he had a light bulb moment. He knew he was onto something...”

27. Perhaps Chaz Dean did indeed have this “light bulb moment”; however, in looking at the ingredients on the WEN Hair Care Products, there appear to be little to no traces of so-called natural ingredients and certainly plenty of chemicals. Somewhere between these supposed fruits and herbs and the finished products, the Defendants switched to a mixture full of synthetic chemicals, including known allergens. See for example, the ingredient lists on the WEN Cleansing Conditioner Sampler consisting of the following variations: Sweet Almond Mint, Tea Tree, Fig, Cucumber Aloe, Lavender, and Pomegranate.

Ingredients / Ingrédients	
<p>Sweet Almond Mint / Menthe Amande Douce— Water (Aqua), Glycerin, Cetyl Alcohol, Cetearyl Alcohol, Stearamidopropyl Dimethylamine, Chamomilla Recutita (Matricaria) Flower Extract, Prunus Serotina (Wild Cherry) Bark Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Prunus Amygdalus Dulcis (Sweet Almond) Oil, Aloe Barbadensis Leaf Juice, Hydrolyzed Wheat Protein, Vegetable Oil (Olus Oil), Panthenol, Butylene Glycol, Behentrimonium Methosulfate, Polysorbate 60, PEG-60 Almond Glycerides, Amodimethicone, Citric Acid, Menthol, Phenoxyethanol, Ethylhexylglycerin, Fragrance (Parfum), Hexyl Cinnamal, Limonene, Linalool, Geraniol, Benzyl Benzoate, Hydroxycitronellal, Hydroxyisohexyl 3-Cyclohexene Carboxaldehyde.</p> <p>Tea Tree / Arbre à thé— Water (Aqua), Glycerin, Cetyl Alcohol, Cetearyl Alcohol, Stearamidopropyl Dimethylamine, Aloe Barbadensis Leaf Juice, Prunus Amygdalus Dulcis (Sweet Almond) Oil, Chamomilla Recutita (Matricaria) Flower Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Prunus Serotina (Wild Cherry) Bark Extract, Melaleuca Alternifolia (Tea Tree) Leaf Oil, Hydrolyzed Wheat Protein, Vegetable Oil (Olus Oil), Behentrimonium Methosulfate, Panthenol, Menthol, Butylene Glycol, Amodimethicone, Ethylhexylglycerin, Polysorbate 60, PEG-60 Almond Glycerides, Citric Acid, Phenoxyethanol, Limonene.</p>	<p>Fig / Figue— Water (Aqua), Glycerin, Cetyl Alcohol, Cetearyl Alcohol, Stearamidopropyl Dimethylamine, Aloe Barbadensis Leaf Juice, Calendula Officinalis Flower Extract, Chamomilla Recutita (Matricaria) Flower Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Prunus Serotina (Wild Cherry) Fruit Extract, Ficus Carica (Fig) Fruit Extract, Hydrolyzed Wheat Protein, Triticum Vulgare (Wheat) Starch, PEG-60 Almond Glycerides, Panthenol, Amodimethicone, Ethylhexylglycerin, Butylene Glycol, Behentrimonium Methosulfate, Polysorbate 60, Citric Acid, Menthol, Phenoxyethanol, Fragrance (Parfum), Benzyl Benzoate, Eugenol, Hexyl Cinnamal.</p> <p>Cucumber Aloe / Concombre Aloe— Water (Aqua), Glycerin, Cetyl Alcohol, Cetearyl Alcohol, Stearamidopropyl Dimethylamine, Aloe Barbadensis Leaf Juice, Chamomilla Recutita (Matricaria) Flower Extract, Cucumis Sativus (Cucumber) Fruit Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Prunus Amygdalus Dulcis (Sweet Almond) Oil, Persea Gratissima (Avocado) Oil, Hamamelis Virginiana (Witch Hazel) Water, Hydrolyzed Wheat Protein, Vegetable Oil (Olus Oil), PEG-60 Almond Glycerides, Panthenol, Amodimethicone, Butylene Glycol, Guar Hydroxypropyltrimonium Chloride, Dicytyldimonium Chloride, Behentrimonium Methosulfate, Polysorbate 60, Citric Acid, Menthol, Phenoxyethanol, Ethylhexylglycerin, Fragrance (Parfum), Citronellol, Butylphenyl Methylpropional, Linalool, Citral, Hydroxycitronellal, Limonene.</p> <p>Lavender / Lavande— Water (Aqua), Glycerin, Cetyl Alcohol, Cetearyl Alcohol, Stearamidopropyl Dimethylamine, Aloe Barbadensis Leaf Juice, Prunus Amygdalus Dulcis (Sweet Almond) Oil, Hamamelis Virginiana (Witch Hazel) Water, Persea Gratissima (Avocado) Oil, Chamomilla Recutita (Matricaria) Flower Extract, Calendula Officinalis Flower Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Cucumis Sativus (Cucumber) Fruit Extract, Lavandula Angustifolia (Lavender) Extract, Lavandula Angustifolia (Lavender) Oil, Hydrolyzed Wheat Protein, Vegetable Oil (Olus Oil), Guar Hydroxypropyltrimonium Chloride, Dicytyldimonium Chloride, Behentrimonium Methosulfate, Panthenol, Butylene Glycol, Menthol, Amodimethicone, Polysorbate 60, PEG-60 Almond Glycerides, Citric Acid, Phenoxyethanol, Ethylhexylglycerin, Geraniol, Limonene, Linalool.</p> <p>Pomegranate / Pomme Grenade— Water (Aqua), Cetearyl Alcohol, Behentrimonium Methosulfate, Cetyl Alcohol, Stearamidopropyl Dimethylamine, Aloe Barbadensis Leaf Juice, Calendula Officinalis Flower Extract, Chamomilla Recutita (Matricaria) Flower Extract, Rosmarinus Officinalis (Rosemary) Leaf Extract, Prunus Serotina (Wild Cherry) Fruit Extract, Punica Granatum Extract, Hydrolyzed Soy Protein, PEG-60 Almond Glycerides, Glycerin, Panthenol, Amodimethicone, Ethylhexylglycerin, Butylene Glycol, Polysorbate 60, Citric Acid, Menthol, Tetrasodium EDTA, Phenoxyethanol, Fragrance (Parfum), Hydroxyisohexyl 3-Cyclohexene Carboxaldehyde, Citronellol, Linalool.</p>

28. While the precise problematic chemical ingredient(s) at issue have not been conclusively determined, “fragrance” is a generic term for any combination of chemicals used to make a product smell good. These mixtures can contain ingredients linked to cancer, endocrine disruption and serious allergic reactions. By using the catch-all term “fragrance” on the labelling, companies such the Defendants can avoid revealing to consumers the whole truth about what’s actually inside the bottle.

29. Moreover, because in Europe more stringent labelling regulations apply to personal care products, the ingredient list on the WEN Hair Care Products list an additional seven (7) known allergens in its “fragrance”. Whether or not these listed additional ingredients are present in the formulations sold in Canada remains to be discovered.

30. The Defendants regularly distribute, package, market, promote, advertise, and sell the WEN Hair Care Products together as part of a “kit” and instruct consumers to use all WEN Hair Care Products in conjunction with one another as part of an overall hair care system. Depicted below are: (a) the WEN Healthy Hair Care Kit in the Sweet Almond Mint fragrance/variation, which includes the Sweet Almond Mint Cleansing Conditioner (480 ml), Replenishing Treatment Mist (60 ml) and Re Moist Intensive Hair Treatment (56 g) and (b) the WEN Strength & Hydration Kit in the Pomegranate fragrance/variety, which includes two Pomegranate Cleansing Conditioners (480 ml).





31. Other common combinations of WEN Hair Care Products that are sold in these “kits” include, but are not limited to all fragrances and variations of Cleansing Conditioner, Re-Moist Mask, Treatment Mist Duo, Treatment Oil, SIXTHIRTEEN Ultra Nourishing Cleansing Treatment, Re Moist Intensive Hair Treatment, Styling Crème, Anti-Frizz Styling Crème, Nourishing Mousse, Volumizing Treatment Spray, Replenishing Treatment Mist, Defining Paste, Straightening Smoothing Gloss, Smoothing Glossing Serum, Glossing Shine Serum, Finishing Treatment Crème, Volumizing Root Lift, Texturizing Spray, Detangling Treatment Spray, Men Control Texture, Men Hair and Body Oil, Bath, Body and Hair Oil, and Texture Balm.

32. As of these formulas are designed and developed by Defendant WEN and by self-professed celebrity hair stylist Chaz Dean (a.k.a. Jeffrey Alan Deane).

33. On their website, the Guthy-Renker Defendants who proclaim to have been in operation since 1988, have billed themselves as “direct marketing pioneers” and “one of the largest and most respected direct marketing companies in the world, with distribution in 68 countries.” The Guthy-

Renker Defendants sell their products predominantly through celebrity-driven infomercials and the vast majority of their sales occur by telephone. The Guthy-Renker Defendants are best known for their promotion and sale of “Proactiv Solution”¹, but they also sell a variety of other beauty-related products – including the WEN Hair Care Products.

34. For example, one celebrity that the Guthy-Renker Defendants have employed as a “celebrity ambassador” to promote the WEN Hair Care products is Brooke Shields who has stated:

“I knew for a long time that my hair was damaged but finding the products that took out all of the guesswork was difficult. When I met Chaz Dean and tried WEN Hair Care for the first time, I knew I had found something revolutionary,” shared Brooke. “I’ve been introduced to countless products throughout my career but WEN’s Cleansing Conditioner and Nourishing Mousse are my new must-haves. They make me feel as if I can turn back the clock on my hair! WEN has helped my hair become healthy again.”

Other “celebrity ambassadors” have included, but are not limited to: Angie Harmon, Lindsay Ellingson, Rochelle Aytes, Candice Accola and Ming Na-Wen.

35. On the Defendants’ website, there are a variety of false and/or misleading statements about WEN Cleansing Conditioner, including, but not limited to the following:

“Will WEN really get my hair clean? Won’t I need shampoo?”

WEN contains a perfect blend of ingredients, including natural botanicals, herbs and extracts to hydrate and cleanse your hair without the use of harsh sulfates. **The perfect mixture and blend of its ingredients leaves your hair healthy-looking, moisturized, and cleansed.** Once you start to use our products, you will never want to use ordinary shampoo ever again.

¹ Proactiv, also known as Proactiv Solution, is a brand of skin-care products that was launched in 1995 by Guthy-Renker.

What is the difference between shampoo and WEN® Cleansing Conditioners?

WEN® cleanses the hair without harsh sulfates that can be found in some ordinary shampoos. **WEN® will leave your hair clean and hydrated and healthy-looking.**

How do I use the WEN® Cleansing Conditioner?

Rinse hair thoroughly, apply WEN® into your palms and rub together. Use 10-16 pumps for short hair, 16-24 pumps 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.** Apply to scalp and hair, adding a splash of water to evenly distribute. WEN® has no harsh sulfates like sodium lauryl sulfate, so it won't lather. **Massage thoroughly into hair and leave on for the remainder of your shower.** Rinse thoroughly and completely, massaging scalp and running fingers through to the ends. After you have finished rinsing while your hair is still soaking wet, **apply a small amount of the Cleansing Conditioner to the ends of your hair as a leave-in conditioner...**

How many times a week should I use WEN®?

You can use it every day as it is designed to gently cleanse and hydrate your hair.

For a quick pick-me-up between cleansings, Chaz recommends his Replenishing Treatment Mist. This product was designed as an ultra-light weight, leave-in conditioner for those seeking more hydration throughout the day or to help with next day styling.

Is WEN® safe?

We take great pride in the quality of WEN® products and every bottle is produced to meet our high standards. We want all of you to have positive experiences with our products, and encourage anyone with questions to contact us. **We have great sympathy for anyone experiencing hair loss or scalp issues, but there is no scientific evidence that points to the WEN® brand as a cause.** Since 2008, we've shipped well over 10 million WEN® products and are delighted to hear from so many of you about the benefits and results you have experienced using WEN®."

[Emphasis Added]

36. The instructions for using WEN Cleansing Conditioner, which does not vary between fragrances are the following:

“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 sulfates like 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:

After you have finished rinsing, while your hair is still soaking wet, apply a small amount of the Cleansing Conditioner to the ends of your hair as a leave-in conditioner.

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.”

37. The Defendants’ marketing and representations are false and/or misleading, and through the instructions on the product, the Defendants expressly instruct consumers to use tremendous amounts of the product, reinforcing these statements with assertions that the product is gentle and you cannot possibly use too much. The Defendants also encourage consumers to leave the product in their hair for long periods of time, while failing to provide direct instructions concerning the duration of application. The Defendants even encourage consumers to leave the product in their hair as a “leave-in conditioner” and to not wash it out. In reality, the use of the WEN Hair Care Products can and does cause significant hair loss when used in accordance with the instructions provided.

38. As a result of the false and misleading statements on the Defendants' websites, on the WEN Hair Care Products and/or on their packaging, Class Members purchased the WEN Hair Care Products with no reason to know or to suspect the dangers caused by their indicated use and, in following the instructions, used tremendous amounts of the WEN Hair Care Products on their hair. It is not until hair loss would begin that a Class Member would have any reason to suspect that the WEN Hair Care Products were defective and even after the hair loss begins, consumers oftentimes did not immediately make the connection due to the Defendants' false statements concerning the safe and natural foundation of the Hair Care Products and the active concealment of the related defects.

39. On the Defendants' website, they further reinforce their false statements with the following summary of a patently misleading "user-perception study":

"In a 3-week user perception study of Sweet Almond Mint Cleansing Conditioner, up to:

- 100% said hair was more moisturized
- 97% noticed that WEN added more shine
- 95% reported that hair became more manageable†

And no matter your hair type and texture—or how bad the hair day—WEN is designed to work on everyone.

†Results not typical"

40. The statement that these results are "not typical" is quite suspect as if the results are not typical, what purpose could this "information" possibly serve other than to mislead potential consumers into purchasing the Defendants' Hair Care Products. Further, given that this supposed "user-perception study" yielded results of 95% or higher, what on earth does "results not typical mean"? Is there another study stating the opposite? In any case, it was and is clear to the

Defendants and to anyone reading the complaints that have been filed that the “typical” result is more often than not that of significant hair loss.

41. As an added punch, the Defendants sell the WEN Hair Care Products at a huge price premium. For example, the WEN Cleansing Conditioners regularly retail at approximately \$58.00, whereas other hair cleansers and conditioners that do not falsely represent their benefits can retail for as low as \$1.00. In addition, these cleansing products, that you can buy 58 of instead of the depilatory WEN Cleansing Conditioner, do not result in the injuries alleged herein, making them far more valuable and desirable.

II. The Copious Consumer Complaints

42. The internet is replete with examples of blogs and other websites where consumers have complained of the exact same issues with the WEN Hair Care Products. A small sample of the online complaints, which date back many years are produced below:

- ... I've noticed over the past few months that I was losing so much hair I was constantly having to clean my brush which was unusual for me. I had the Dr check my blood and thyroid and all was normal. I then noticed my hair parting in odd places which I thought was weird...
- ...I noticed after 2-3 months that I seemed to be losing more hair than normal. My hair would come out in what seemed like the fist full, but being that my hair was so long, I figured the shedding may be normal. After brushing, there would be countless hairs left in the bristles so I began to brush my hair less...



- ...Not only did my hair get brittle it was thinning and soon after the WEN product was empty I started looking for solutions to revive my thin brittle hair.

I have taken vitamins for hair skin and nails. I have bought extensions and wigs to compensate for my hair becoming so brittle and thin. It has definitely affected me emotionally in my personal daily life. I am very insecure to leave my home in my natural hair. Family and friends have made statements as to how brittle and thin my hair is and it is damaging to my confidence. I never thought to connect the two and now that this has come to light I am relieved to know the reason why my hair is this way and can now let my doctor know so I can get full treatment.

- ...I have been noticing an increase in hair fall out in the shower for several years but since some hair fall out is expected, and since I do not like to over react, I thought maybe it was a hormonal imbalance.

Over the course of the last year, my mother has lost almost all of her hair twice and I am drastically thinning. My mother is currently bald and wearing a wig, and I am struggling with the appearance of my limp, lifeless, and very thin hair. We have both been for testing and bloodwork. Our hair loss is not attributed to a pre-existing condition or hormonal imbalance. Shortly thereafter I received an email stating that there was a Class Action lawsuit against Wen by Chaz Dean due to other women, like me, who have had significant and possibly lasting damage due to the use of the product. This is when I discontinued the use of WEN products.



- I purchased WEN cleanser and conditioner for my daughter and my son. My son at that time was 10 years old and after months of using the WEN products he complained that when he touches his hair lots of hair fall on his homework and when he washes his hair, he sees hair falling out. My daughter had the same complaint and I did not realize it's the WEN product. Since they had thick and curly hair I continued buying the shampoo and the conditioner. I called the WEN company many times and they said their products are very good for thick and curly hair.

One day my daughter's friend told her that she saw online that many customers are complaining about WEN product. I checked online and realized it's the WEN products that making my children hair loss. I immediately stopped the WEN products. My son still has receding hairline and my daughter has very thin and small amount of hair. I feel so bad that I purchased these products for my children and I feel responsible for their hair loss.

- “Starting at the end of November my hair started falling out again - but in massive amounts. In the shower, if I brushed my hair the brush would be full twice, if the wind blew or if I touched my hair it had been falling out like pine needles on a dead Christmas tree. So in the last two-three weeks, my scalp had become raw and sore to the touch. Really bad. And the hair is still falling out in handfuls. I had very long very thick hair that I used no other products except WEN, let my hair air dry because I wash it in the evenings and dry overnight. My hair is so thin now I can barely make a ponytail. And my scalp hurts sooo bad it is painful. And I have never had a tender head/scalp before. If I run my fingers through my hair it is an all day multiples like 40-50 hairs each time are falling out. If I change my clothes I'm covered in dead hair.”
- “I started using WEN many years ago and suffered tremendously with hair loss and scalp irritation. Back then, WEN had infomercials on TV constantly with celebrities advertising and recommending their product. I was sold on the idea of only using one miracle product for my hair. I thought that if I continued to use the product, my hair too would look amazing like they advertised. I was so wrong and in complete denial at the time. My hair started falling out in clumps and my scalp was red, itchy and bumpy. After discontinuing WEN, I have only had slight improvement in my scalp but

the damage was done to my hair. It is extremely thin, brittle and very little short fine hair has grown out in places where I had experienced bald patches.

It is truly depressing as a woman to experience this as I don't feel as feminine. I am constantly purchasing hair extensions, wigs and hair products to mask the effects of the damage done to my hair.”

- “I've been using WEN for yrs now. I really liked it and my hair seem to look good, last January I went to have my haircut and they had to thin my hair. It was so thick. I'm not sure what they changed in WEN but my hair is falling out in fistfuls now. Everywhere I look there is my hair. It's awful. I now brush it over the trash bin so I don't have to vacuum so much hair up. I stopped using the WEN a few months ago but it is still falling out. I have bald spots underneath my hair. My once thick soft hair has become thin soft hair and it's all over the place. It drives me nuts, I wear a net to cook because I don't want hair in the food and I've been putting it in a ponytail to keep it from getting all over everything. I know this sounds dramatized but all of it is true. I could fill a bag up with my hair in a few days. It's that bad.”
- “I began using Wen and noticed that my hair was thinning. After a time I developed bald spots in areas that were itchy and blistering. I received a series of treatments from my dermatologist and hair regrowth was poor. Once Wen was stopped the hair regrew in one area but the other area remains elusive.”
- “I purchased the Wen product line directly from the website. After using it for just a few weeks my hair changed drastically from full and thick to alarmingly thin. My stylist urged me to stop using it the first time she saw how thin my hair had suddenly gotten and noticing scans on my scalp (I hadn't even noticed that). She gave me samples of Nixon to try to repair the damage but it took over two years for the volume to return to normal after stopping use. Then last week I ran out of shampoo for my dog who needed a bath. I had a partially full bottle of Wen left so I used that. What a dummy! The next day as I was petting him I noticed large bumps covering his back and his stomach. I can't confirm that it was caused by the Wen product but it seems an unlikely coincidence.”
- “I ordered the WEN care for myself and my sister. Instantly my scalp began to itch and within days my scalp was peeling. I'm not talking about flaking, like dandruff, that I have never had by the way. I'm talking huge chunks of skin peeling from my scalp. My husband, normally oblivious to things of that nature, even commented about the huge chunks of my scalp he found in his fingers when touching my hair.”
- “DON'T SIGN UP!! My thick hair is now thin... And to top it off, they won't cancel my order!! I just spent 25 minutes on the phone trying to get them to credit me for product they never even sent! I cancelled in JULY, then they charged me AGAIN in JULY, OCTOBER AND NOVEMBER!!! Crooked Company.”

III. The USFDA Investigation

43. On July 19, 2016, the USFDA announced that it was investigating claims of hair loss from the WEN Hair Care Products, with over 127 consumer complaints having been filed since February 18, 2011. According to the USFDA, this was the largest number of reports ever associated with any cosmetic hair cleansing product. Additionally, when inspecting the manufacturing there were more than 21,000 adverse events reported to the Defendants.

44. By November 15, 2016, there were 1,386 adverse events reported to the USFDA.

IV. The Defendants' Fault

45. Even if used as directed, the Defendants failed to adequately warn against the negative effects and risks associated with the WEN Hair Care Products including, but not necessarily limited to, long term usage and the cumulative effects of long term usage, all discussed elsewhere in this Statement of Claim.

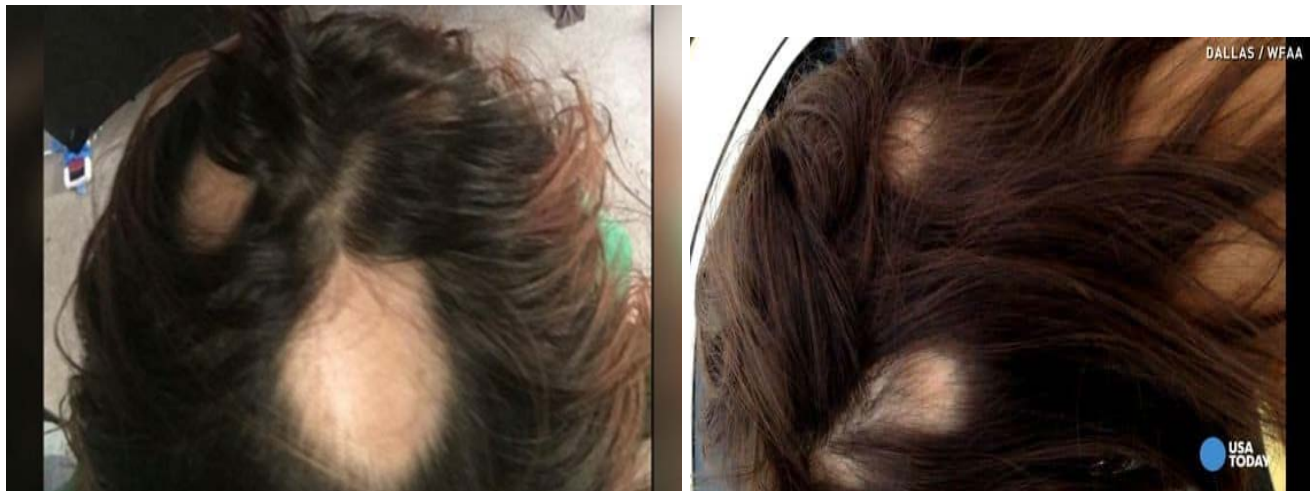
46. The Defendants do not warn about any of the above-listed conditions on the WEN Hair Care Products Product packaging, the product inserts, or in any of their marketing materials, including their websites www.wen.com, www.wenhaircare.ca, or www.guthy-renker.com.

47. In addition, the Defendants place no restrictions concerning cumulative or repeated uses of the WEN Hair Care Products despite the known increased risks associated with repeated exposure to them.

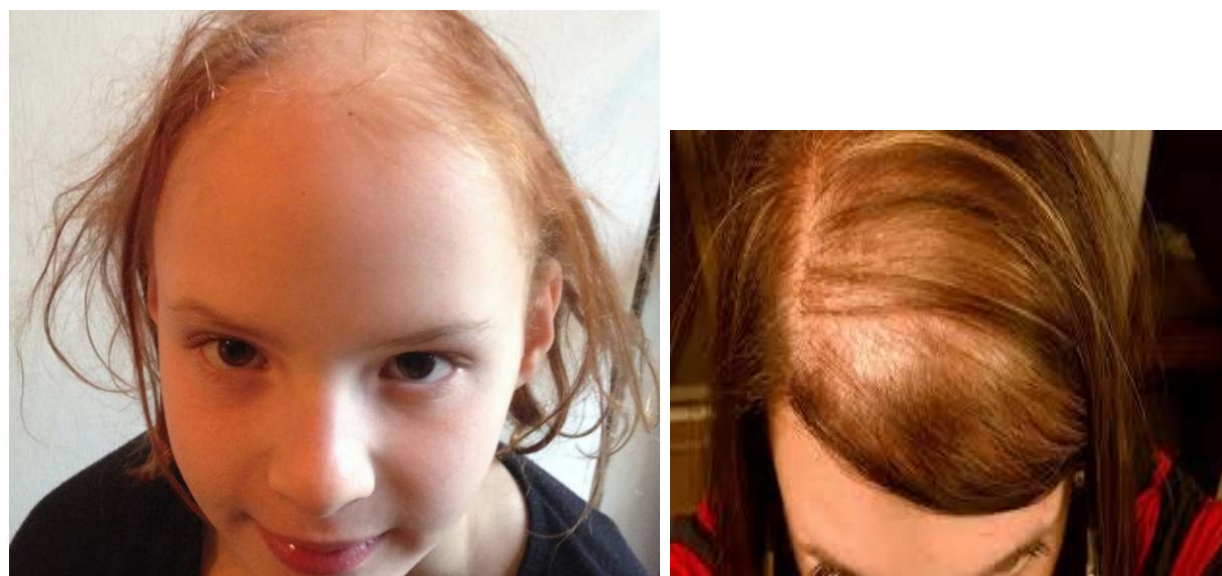
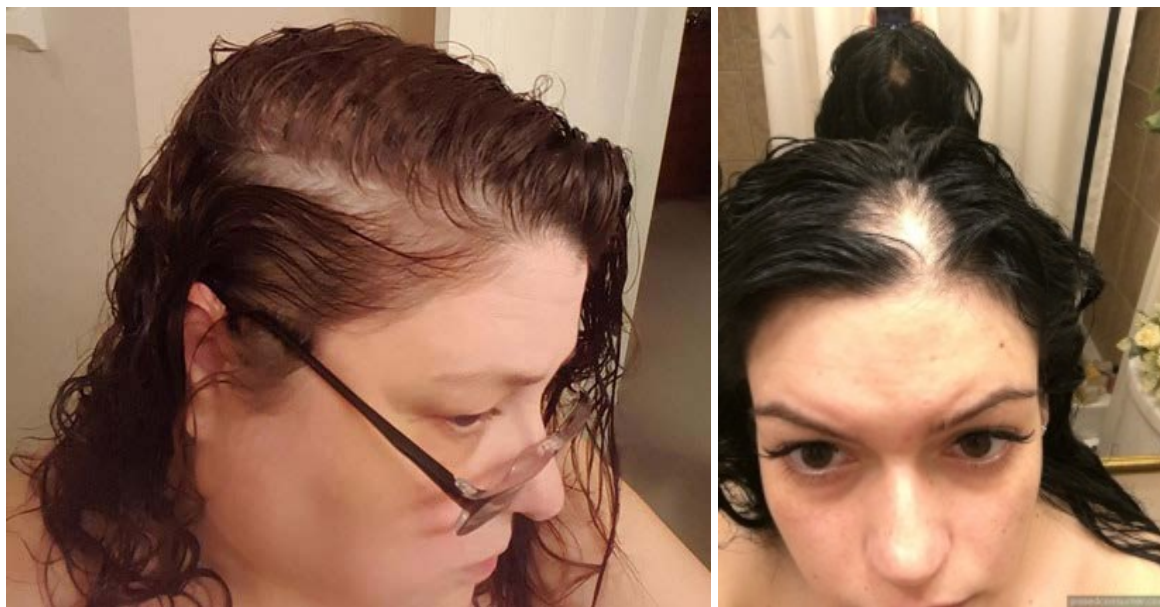
48. In omitting, concealing, and inadequately providing critical safety information regarding the use of WEN Hair Care Products in order to induce their purchase and use, the Defendants engaged in and continue to engage in conduct likely to mislead consumers, including the Plaintiff and Class Members.

49. The Defendants knew or should have known that WEN Hair Care Products created an increased risk of injury; however, they failed to disclose to consumers, including the Plaintiff and Class Members, the risk of injury, the rates of adverse reaction, and other known problems.

50. A simple search on the internet reveals hundreds and hundreds of people sharing their personal stories and warning others against using WEN Hair Care Products; however, the Defendants continue to fail in their obligation to properly warn consumers about the serious risk of injury.







51. The Defendants knew or should have known that a significant percentage of consumers would experience the above-mentioned negative side effects to their products, but nonetheless failed to advise consumers of the serious risks before purchase and use.

52. Further, the Defendants set up much of their sales on an automatic renewal membership program basis until it is cancelled, thereby ensuring repeated and prolonged usage of their Hair Care Products and increasing the likelihood of adverse reactions.

53. Consumers, including the Plaintiff and Class Members, detrimentally relied on the Defendants' representations, including their omissions, and instructions for use of the Hair Care Products.

54. The Defendants spend millions of dollars on advertising via television and internet, but do not warn about any adverse reactions anywhere (or the probability thereof), including on their website and on their advertisements and testimonials.

55. Instead of providing adequate warnings and disclosure, the Defendants represented that their Hair Care Products were safe when used as directed even though the Defendants knew or should have known that this was untrue.

56. The Defendants have a duty to monitor the safety of their products and it would have been reasonable for them to conduct multiple clinical trials and/or studies related to the safety of their WEN Hair Care Products; however, it does not appear that they have done so.

57. The Defendants knew or should have known of the high number of adverse reactions and injuries related to their WEN Hair Care Products from a multitude of sources, including, but not limited to their internal claims process, making their apparent failure to conduct any independent studies or clinical trials particularly abhorrent. The Defendants, who concealed their knowledge

of the nature and extent of the WEN Hair Care Products' danger from the public, have shown a blatant disregard for public welfare and safety.

V. Summative Remarks

58. The Defendants designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold their WEN Hair Care Products without providing critical safety information and adequate warning in Canada, including within the province of Ontario.

59. The Defendants failed to disclose and/or actively concealed, despite a wealth of longstanding knowledge, that the WEN Hair Care Products are defective and unsafe in order to induce purchase.

60. The Defendants gave inadequate warnings about the WEN Hair Care Products in its online and print advertisements as well as on the product packaging and insert.

61. The Defendants continue to design, develop, formulate, test, manufacture, package, distribute, market, promote, advertise, label, and/or sell the WEN Hair Care Products throughout Canada, including within the province of Ontario, with inadequate warnings as to the above-named health consequences which are described in more detail herein.

62. The Defendants, through their misleading marketing campaign, successfully created a robust market for their WEN Hair Care Products.

63. The Defendants placed WEN Hair Care Products into the stream of commerce in Ontario and elsewhere in Canada with the expectation that consumers, such as the Plaintiff and Class Members, would purchase and use them.

64. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendants' conduct.

65. The Plaintiff and Class Members would not have purchased the WEN Hair Care Products had they known that they were unsafe. When the Plaintiff and members of the Class purchased the WEN Hair Care Products, they relied on their reasonable expectation that they did not pose an unreasonable safety risk.

66. The Defendants concealed material information regarding the truth about the existence and nature of the Product Defect from the Plaintiff and Class Members at all times, even though they knew about the Product Defect and knew that information about the Product Defect would be important to a reasonable consumer.

THE REPRESENTATIVE PLAINTIFF

67. The Plaintiff purchased three (3) WEN Hair Care Products on January 2, 2016, from As Seen On TV, specifically the Sweet Almond Mint Cleaning Conditioner, Sweet Almond Mint Nourishing Mousse, and Sweet Almond Mint Styling Creme products, which had been purchased for a special purchase price of \$45.14 including taxes (the purchase was for the Sweet Almond Mint Cleansing Conditioner – the other 2 WEN Hair Care Products had been included as a promotion in the order).

68. The Plaintiff purchased the WEN Hair Care Products based on the Defendants' representations that they would reduce her hair frizz.

69. At the time of sale, the Plaintiff was under the impression that she was purchasing a safe Hair Care Products that were free of any Product Defect.

70. The Plaintiff used the WEN Hair Care Products approximately twice per week as directed and for about a month's time, during which time she was consistently losing large amounts of hair.

71. In addition, the Plaintiff noticed that the WEN Hair Care Products were not performing as advertised in that her hair frizz was not reduced.

72. On February 3, 2016, she was automatically charged for and soon thereafter received a second bottle of Sweet Almond Mint Cleaning Conditioner for a purchase price of \$61.08.

73. Shortly thereafter, the Plaintiff called Defendant WEN by Chaz Dean, Inc. to cancel her order; however, they offered a partial refund of \$40.00 on the second, unused bottle of cleansing conditioner.

74. The Plaintiff continued to use the WEN Hair Care Products despite her skepticism about their efficacy in hopes that they would perform as advertised and she continued to lose large amounts of hair – after a few more weeks, she made the connection between her hair loss and the WEN Hair Care Products.

75. Due to her suspicions that her substantial hair loss was caused by the use of the WEN Hair Care Products, she went online to search for her problem and found thousands of complaints from other people as well as a class action lawsuit in the United States (that was ultimately settled).

76. The Plaintiff again called WEN by Chaz Dean, Inc. to explain to them about the problems with their WEN Hair Care Products and they denied that there was any Product Defect.

77. The hair loss caused the Plaintiff a good amount of emotional grief, stress, and embarrassment.

78. The Plaintiff now has every reason to believe that the WEN Hair Care Products are plagued by a serious and pervasive Product Defect, that the Defendants have been engaging in widespread misrepresentations with regard thereto.

79. Had the Plaintiff known about the Product Defect, she would not have purchased the WEN Hair Care Products, nor would she have ever agreed to use it on her hair.

80. The problem with the WEN Hair Care Products is significant, dangerous, economically nontrivial and widespread.

81. The Plaintiff has suffered damages as a result of purchasing and using the WEN Hair Care Products. In addition to the damages as outlined above she has also endured pain, suffering, damage and inconvenience.

CAUSES OF ACTION

A. Strict Liability

82. The WEN Hair Care Products were defective when they left the hands of Defendant WEN by Chaz Dean in that their formulation was unreasonably dangerous to human health and safety and then continued to be defective down the supply chain to the Guthy-Renker Defendants (to whom the WEN Hair Care Products were licensed) who manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold products that were defective in design or formulation, with inadequate warnings both in their marketing and on the product packaging, and the products did not conform with the representations, posing a serious risk of injury, including substantial and/or major hair loss and other serious medical problems. Thus, the defect existed at the time that the WEN Hair Care Products left the possession of all Defendants and were introduced into the stream of commerce in Canada.

83. When the WEN Hair Care Products left the hands of the Defendants, the foreseeable risks of the products exceeded the benefits associated with their design or formulation and/or it was more dangerous than an ordinary consumer would reasonably expect when used in its intended or reasonably foreseeable manner (i.e. at the very least, according to the directions).

84. In addition, the Defendants are strictly liable for their business decision to use harmful chemicals in their WEN Hair Care Products despite the fact that they are clearly unreasonably dangerous and the fact that there are safer and effective alternative formulations which do not cause the injuries alleged herein.

85. The WEN Hair Care Products are also defectively designed and manufactured because:

- (a) They cause an unreasonably high rate of adverse medical reactions,
- (b) Their cautions and/or warnings are inadequate, as set forth in this Statement of Claim, for the following reasons, *inter alia*:
 - (i) WEN Hair Care Products fail to warn of the rates of adverse reaction,
 - (ii) The Defendants deny, minimize, and/or downplay those risks associated with WEN Hair Care Products that they choose to “disclose”, and
 - (iii) The WEN Hair Care Products fail to display and advise of the product’s risks, proper use, or of the need to test the product(s) for adverse reactions prior to engaging in a routine use on the entire scalp.

86. The WEN Hair Care Products which are designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the Defendants were defective due to inadequate post-marketing warning or instruction because, after the Defendants knew or should have known of the risk of serious bodily harm, as set forth herein, from the use of the WEN Hair Care Products, the Defendants failed to provide an adequate warning to consumers (to at the very least, identify the source of their medical problems), knowing the product could cause serious injury as set forth herein.

87. The WEN Hair Care Products designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the

Defendants were defective in that, when they left their possession, they did not conform to their representations and were unreasonably dangerous to human health.

88. These material misrepresentations are false as evidenced by the extreme number of adverse reactions to their WEN Hair Care Products by Class Members.

89. As a direct and proximate result of their use of the WEN Hair Care Products, Class Members suffered harm, damages, and economic loss and will continue to suffer if this situation is not remedied.

90. The Defendants are strictly liable to Class Members for the reasons that follow:

- (a) The Defendants designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold the WEN Hair Care Products,
- (b) The WEN Hair Care Products suffer from a serious Product Defect and are unsafe,
- (c) The WEN Hair Care Products could have been made without the Product Defect, but-for the Defendants' business decisions,
- (d) Class Members were entitled to expect that the WEN Hair Care Products were not plagued by serious, dangerous and pervasive defects,
- (e) The defects inherent in the design and manufacturing of the WEN Hair Care Products outweigh any possible benefits of their design and such defects were material contributing causes of the injuries and losses of Class Members, and

- (f) At the time of the injury and loss to Class Members, the WEN Hair Care Products were being used for the purpose and manner for which they were intended and Class Members were not aware of the Product Defect and could not, through the exercise of reasonable care and diligence, have discovered such defects.

B. Breach of Contract

91. Upon purchasing the WEN Hair Care Products, the Plaintiff and Class Members entered into a contract with the Defendants whereby a monetary benefit was conferred onto the Defendants in exchange for hair care products that were free from defects and in conformity with the representations.

92. The Defendants materially breached the contracts with the Plaintiff and with Class Members by selling them the WEN Hair Care Products that were defective and were not what had been bargained for.

93. Class Members were unable to receive a substantial benefit from the WEN Hair Care Products to their detriment in that, instead of improving their hair and its appearance, the Hair Care Products caused depilation and substantial baldness.

94. The Defendants' breach of contract has resulted in injury, economic losses and damages to the Plaintiff and Class Members.

95. The aforesaid loss suffered by the Plaintiff and the Class Members was caused by this contractual breach, particulars of which include, but are not limited to the fact that the Class

Members paid money for a product that harmed them and at least, did not perform as represented, the Defendants failed to adequately perform the object of the contract.

96. By virtue of the acts and omissions described above, the Plaintiff and Class Members are entitled to recover damages from the Defendants.

97. The loss, damage and injuries were foreseeable.

C. Breach of Express Warranty

98. The Defendants expressly warranted that the WEN Hair Care Products were safe and further to that, actually espoused how gentle and natural they were.

99. The Defendants expressly warrant that their products are safe and that the WEN Hair Care Products “are quality-tested to perfection”.

100. The WEN Hair Care Products designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the Defendants did not conform to these express representations as demonstrated by their having caused serious injury to the Plaintiff and Class Members when used as recommended and as directed.

101. As a direct and proximate result of the Defendants’ breach of warranty, the Plaintiff and Class Members have suffered harm, damages, and economic loss and will continue to suffer such harm, damages, and economic loss in the future.

D. Breach of Implied Warranties

102. At all times relevant hereto, applicable law imposed a duty that requires that the WEN Hair Care Products be of merchantable quality and fit for the ordinary purposes for which they are used.

103. The Defendants knew of the specific use, i.e. application to the human head and/or hair, for which the WEN Hair Care Products were purchased, and they impliedly warranted that the products were fit for such use, especially so as the Defendants marketed them for this particular purpose. This defect substantially impairs the use, value, safety of the WEN Hair Care Products.

104. The WEN Hair Care Products were defective at the time they left the Defendants' possession, as set forth hereinabove. At all times relevant hereto, the Defendants knew of this Product Defect at the time that these transactions occurred. Thus, the WEN Hair Care Products, when sold at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

105. The Defendants knew, or should have known, that their WEN Hair Care Products were inferior to and unsafe as compared to the other similar products sold by other manufacturers, particularly so due to their knowledge of the Product Defect.

106. The WEN Hair Care Products are unfit, unsafe, and inherently unsound for use, and the Defendants knew that they would not pass without objection in the trade; that they were not fit for the ordinary purpose for which they were used, and that they were unsafe and were unmerchantable.

107. Consequently, the Defendants breached the implied warranty of merchantability, to wit: they failed to sell safe Hair Care Products.

108. The Defendants have been put on notice of the defects inherent in the WEN Hair Care Products for many years now, but have failed to correct them. The Defendants have received thousands of complaints and other notices from customers advising of the Product Defect associated with the WEN Hair Care Products, including the present Statement of Claim and the U.S. legal proceedings referred to earlier.

109. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Class Members have suffered damages.

E. Fraudulent Concealment

110. The Defendants made material omissions as well as affirmative misrepresentations regarding the WEN Hair Care Products.

111. The Defendants knew that the representations were false at the time that they were made.

112. The Defendants fraudulently concealed and/or intentionally failed to disclose to the Plaintiff, the Class, and all others in the chain of distribution (e.g. concealments and omissions in the Defendants' communications with wholesalers, retailers, and others in the chain of distribution that were ultimately passed on to the Plaintiff and the Class) the true nature of the WEN Hair Care Products, i.e. that they suffer from a Product Defect.

113. The WEN Hair Care Products that were purchased by Class Members likewise suffered from the Product Defect.

114. The Defendants had a duty to disclose material facts regarding the true nature of the WEN Hair Care Products because the Defendants had exclusive knowledge of the true properties of the WEN Hair Care Products at the time of sale. The Product Defect is latent and not something that the Plaintiff or Class Members could, in the exercise of reasonable diligence, have discovered on their own prior to purchase.

115. The Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to the Defendants who have superior knowledge and access to the facts and the Defendants knew they were not known to or reasonably discoverable by the Class Members.

116. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Class Members to purchase and to use the WEN Hair Care Products and in the event that the injuries would occur, to not associate them with their products and to continue purchasing them in hopes of remedying the injuries, whilst exacerbating them.

117. The Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the WEN Hair Care Products Product Defect and such facts were not known to the public or to the Class Members.

118. The facts concealed and/or not disclosed by the Defendants to the Plaintiff and Class Members are material facts, in that a reasonable person would have most definitely considered them important in deciding whether to purchase the WEN Hair Care Products.

119. In addition, Class Members relied on the Defendants' Representation and they purchased WEN Hair Care Products. Said reliance was reasonable. The Class Members were without the ability to determine the truth on their own and could only rely on the Defendants' statements and representations.

120. As a result of the concealment and/or suppression of facts, the Class Members have sustained and will continue to sustain damages.

F. Civil Negligence

121. The Defendants had a positive legal duty to exercise reasonable care to perform their legal obligations to the Class Members, including, but not limited to designing, developing, formulating, testing, licensing, manufacturing, packaging, distributing, marketing, promoting, advertising, labelling, and/or selling a safe product, that did not pose a significantly increased risk of injury to the Plaintiff and to the Class Members.

122. The Defendants breached their duty of care to the Class Members by negligently designing, developing, formulating, testing, licensing, manufacturing, packaging, distributing, marketing, promoting, advertising, labelling, and/or selling the WEN Hair Care Products and by failing to ensure that they were of merchantable quality and fit for their intended purpose, free from the Product Defect.

123. The Defendants knew or should have known that hair care products that are marketed, promoted, and advertised to be used on a regular basis to improve cosmetic appearance that present a risk of severe injuries, including significant and/or major hair loss, stunted hair growth, hair breakage, brittle, limp and/or lifeless hair, dermatitis, eczema, blistering, rash, scabbing, peeling, reddening and swelling, sore, tender, and/or irritated scalp, itchiness, redness, and other severe medical injuries associated with use, and other permanent skin reactions therefore giving rise to pain and suffering, debilitation, and the need for medical treatment including possible surgery and further complications, are not safe for use by the Plaintiff and Class Members.

124. The aforesaid loss suffered by the Class Members was caused by this negligence, particulars of which include, but are not limited to, the following:

- a) The Defendants failed to properly design the WEN Hair Care Products such that, under conditions of normal use, they were unsafe;
- b) The Defendants failed to properly design, develop, formulate, test, and manufacture the WEN Hair Care Products such that, when used in an intended or reasonably foreseeable manner, they were unsafe;
- c) The Defendants failed to adequately test the WEN Hair Care Products to ensure a proper design to eliminate the foreseeable risks associated therewith;
- d) The Defendants failed to properly market the WEN Hair Care Products such that they did not warn Class Members about the deficiencies with the WEN Hair Care Products and the associated serious consequences;

- e) The Defendants failed to accurately, candidly, promptly and truthfully disclose the defective nature of the WEN Hair Care Products;
- f) The Defendants failed to conform with good manufacturing practices;
- g) The Defendants failed to disclose to and/or to warn Class Members that the WEN Hair Care Products were defective;
- h) The Defendants failed to recall said defective WEN Hair Care Products;
- i) The Defendants continued to sell the WEN Hair Care Products when they knew or should have known of their defective nature and other associated problems;
- j) The Defendants consciously accepted the risk of the Product Defect;
- k) The Defendants failed to change their design, development, formulation, testing, licensing, manufacturing, packaging, distribution, marketing, promotion, advertising, and/or labelling process with respect to the WEN Hair Care Products in a reasonable and timely manner; and
- l) The Defendants have not modified their practices and therefore continue to fail to fulfill their ongoing duties toward Class Members.

125. Despite the fact that the Defendants knew or should have known that WEN Hair Care Products could cause severe reactions in consumers and therefore give rise to pain and suffering, debilitation, and the need for medical treatment including possible surgery and further complications, the Defendants continued to market WEN Hair Care Products as a safe hair care product and failed to use ordinary care in warning Class Members of this risk.

126. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage and posed a real and substantial risk to the safety of the Class Members.

127. The loss, damages and injuries were foreseeable.

128. The Defendants' negligence proximately caused the loss, damage, injury and damages to the Class Members.

129. By reason of the foregoing, Class Members are entitled to recover damages and other relief from Defendants.

G. Failure to Test

130. The Defendants had a positive legal duty to perform adequate testing on the WEN Hair Care Products, which were defectively designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold to the Class.

131. Had adequate testing been performed on the WEN Hair Care Products, it would have revealed the serious deficiencies in the WEN Hair Care Products in that it would have revealed the prevalence of substantial and/or major hair loss, scalp irritation and other serious medical problems occasioned by use of the WEN Hair Care Products.

132. The Defendants had, and continue to have, a duty to exercise reasonable care to properly design, which includes the ongoing duty to test the WEN Hair Care Products both before introducing them into the stream of commerce and throughout.

133. The Defendants breached these duties by failing to exercise ordinary care in the design and testing of the WEN Hair Care Products because they knew or should have known that the WEN Hair Care Products could cause substantial hair loss and other medical injuries and then further, had actual knowledge.

134. The Defendants knew or should have known that Class Members such as the Plaintiff would suffer injuries and economic damages and/or be at an increased risk of suffering damages and injury, as a result of their failure to exercise ordinary care in the design and manufacture of the WEN Hair Care Products by failing to conduct appropriate testing

135. By reason of the foregoing, the Plaintiff and the Class experienced and/or are at risk of experiencing financial damage and injury.

H. Failure to Warn

136. The Defendants had a duty to warn consumers about the risks, dangers, and known problems associated with the use of the WEN Hair Care Products as designers, developers, formulators, testers, licensors, manufacturers, packagers, distributors, marketers, promoters, advertisers, labellers and/or sellers.

137. It is certainly reasonably foreseeable that Class Members would use the products as directed and that it so doing, be exposed to an increased serious risk of injury.

138. The Defendants failed to exercise reasonable care and to properly warn of the risks associated with the use of the WEN Hair Care Products.

139. At the very least, certainly after receiving thousands of complaints of hair loss from customers, a duty arose to provide a warning to consumers that use of the product could result in hair loss and/or scalp irritation.

140. The Plaintiff states that her damages and the damages of other Class Members were caused by the Defendants' failure to warn, which includes, but is not limited to, the following:

- (a) The Defendants failed to provide Class Members with proper, adequate, and/or fair warning of the serious risks associated with the use of their WEN Hair Care Products, including, but not limited to significant and/or major hair loss, stunted hair growth, hair breakage, brittle, limp and/or lifeless hair, dermatitis, eczema, blistering, rash, scabbing, peeling, reddening and swelling, sore, tender, and/or irritated scalp, itchiness, redness, and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage;
- (b) The Defendants failed to adequately monitor, evaluate and act upon reports of adverse reactions to the WEN Hair Care Products in Canada, the United States and elsewhere; and
- (c) The Defendants, after being notified of problems with the WEN Hair Care Products, failed to issue adequate warnings, timely recall of the product, publicize the problem, and otherwise act properly and in a timely manner to alert the public, including adequately warning persons using the WEN Hair Care Products and their physicians, dermatologists and other healthcare providers of the inherent dangers associated with the products.

I. Intentional Misrepresentation

141. The Defendants falsely and fraudulently represented to the Plaintiff, to Class Members, and the public in general, that WEN Hair Care Products, had been tested could be safely used.

142. The representations made by the Defendants were, in fact, false.

143. When said representations were made by the Defendants, they knew those representations to be false or, at a minimum, they willfully, wantonly and recklessly disregarded whether the representations were true.

144. These representations were made by the Defendants with the intent of deceiving Class Members and were made with the intent of inducing them to purchase the WEN Hair Care Products, which evinced a callous, reckless, willful, depraved indifference to the health, safety and welfare of Class Members.

145. At the time the aforesaid representations were made by the Defendants and, at the time the Plaintiff and Class Members used WEN Hair Care Products, they were reasonably unaware of the falsity of said representations and reasonably believed them to be true.

146. In reliance upon said representations, the Plaintiff and Class Members were induced to and did use the WEN Hair Care Products, thereby sustaining severe and sometimes permanent personal injuries, and/or being at an increased risk of sustaining severe and permanent personal injuries in the future.

147. The Defendants knew and were aware or should have been aware that the WEN Hair Care Products had not been sufficiently tested, were defective in nature, and/or that they lacked adequate and/or sufficient warnings.

148. The Defendants knew or should have known that the WEN Hair Care Products had a potential to, could, and would cause severe and grievous injury to the users of said product(s), and that it was inherently dangerous in a manner that exceeded any purported, inaccurate, and/or down-played warnings and misleading instructions.

149. The Defendants brought the WEN Hair Care Products to the market, and acted willfully, wantonly and maliciously to the detriment of the Plaintiff and to Class Members.

J. Negligent Misrepresentation

150. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to the Class;
- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation were reasonably relied upon by the Class; and
- (e) The Class has sustained damages as a result of their reliance.

151. The Defendants represented to the Class Members that the WEN Hair Care Products were safe when, in fact, the WEN Hair Care Products contained harmful chemicals, which compromised the WEN Hair Care Products' safety – this Representation was untrue as set forth herein.

152. These material misrepresentations made by the Defendants are false as evidenced by the extreme number of adverse reactions to their WEN Hair Care Products by Class Members and their materiality is evidenced by the fact that Class Members even purchased the products in the first place.

153. At the time that the Defendants made the misrepresentations herein alleged, they knew that they were false, they had no reasonable grounds to believe that they were true as there was ample evidence to the contrary as set forth in detail in this Statement of Claim, and the Defendants made the material representations recklessly.

154. The Defendants knew or were reckless in not knowing that their representations were untrue. The Defendants either had actual knowledge of the fact that the WEN Hair Care Products were unsafe or they were reckless or negligent in not knowing.

155. The Defendants made the Representation herein alleged with the intention of inducing the Class Members to act by purchasing their WEN Hair Care Products in reliance thereupon by appealing to the buyers' desire to improve their appearance.

156. The Class Members acted in justifiable and reasonable reliance on these material misrepresentations and purchased the WEN Hair Care Products specifically under the belief that they would provide the claimed cosmetic benefits if used in the manner directed by the labelling.

157. The Class Members were unaware of the fact that the WEN Hair Care Products suffered from the Product Defect.

158. The Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendants to this end.

159. The safety of the WEN Hair Care Products is a primary selling point to the Plaintiff and the Class Members. Had the Class Members known the true facts, they would not have purchased the WEN Hair Care Products and would have opted instead for a safer alternative.

160. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendants.

STATUTORY REMEDIES

161. The Defendants are in breach of the *Sale of Goods Act*, the *Consumer Protection Act*², the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act* and/or other similar/equivalent legislation.

² While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

162. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and the equivalent/similar legislation and common law in the other Canadian provinces and territories.

A. Breach of the *Sale of Goods Act*

163. At all times relevant to this Claim, the Class Members were “buyer[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

164. At all times relevant to this action, the Defendants were “seller[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

165. The WEN Hair Care Product were “goods” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

166. There were implied conditions as to merchantable quality or fitness pursuant to s. 16 of the *Sale of Goods Act* as well as an implied condition as regards defects as the Product Defect could not have been revealed upon examination.

167. The Defendants were aware that the customers purchased the WEN Hair Care Products based on their representations and based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will perform as presented.

168. The Defendants committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 16 of the *Sale*

of Goods Act, the Defendants are liable. The Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

B. Breach of the *Consumer Protection Act*

169. At all times relevant to this action, many of the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

170. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

171. The transactions by which many of the Class Members purchased the WEN Hair Care Products were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

172. The Defendants are resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

173. The Defendants have engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the WEN Hair Care Products have performance characteristics, uses, benefits and/or qualities, which they do not have;
- (b) Representing that the WEN Hair Care Products are of a particular standard or quality which they are not;

- (c) Representing that the WEN Hair Care Products are available for a reason that does not exist, namely, being a safe hair care product; and
- (d) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the Product Defect as such use or failure deceives or tends to deceive.

174. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are likely to rely, to their detriment, on Defendants' misleading statements as to the safety of the WEN Hair Care Products.

175. The Class Members relied on the Representation.

176. The reliance upon the Representation by the Class Members is established by his or her purchase of the WEN Hair Care Products. Had the Class Members known that the Representation was false and misleading they would not have purchased the WEN Hair Care Products.

177. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Class to purchase the WEN Hair Care Products as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

C. Breach of the *Competition Act*

178. At all times relevant to this action, the Defendants' design, development, formulation, testing, licensing, manufacturing, packaging, distribution, marketing, promotion, advertising,

labelling, and/or selling was a “business” and the WEN Hair Care Products were “product(s)” within the meaning of that term as defined in s. 2 of the *Competition Act*.

179. The Defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants;
- (b) Was made knowingly or recklessly;
- (c) Was made to the public;
- (d) Was false and misleading in a material respect; and
- (e) Stated a level of safety that was false and not based on adequate and proper testing.

180. The Class Members relied upon the Representation by buying the WEN Hair Care Products and suffered damages and loss.

181. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

182. Pursuant to s. 36 of the *Competition Act*, the Class Members are also entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

D. Breach of the *Consumer Packaging and Labelling Act*

183. At all times relevant to this action, the Defendants were “dealer[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

184. At all times relevant to this action, the WEN Hair Care Products were “prepackaged product[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

185. At all times relevant to this action, the Representation, including those relating to the safety of the WEN Hair Care Products that was made to the public on the Packaging, were “label[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

186. At all times relevant to this action, the Representation that was made to the public on the Defendants’ website and otherwise, were “advertise[ments]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

187. The Defendants packaged, marketed, promoted, advertised, labelled, and/or sold the labelled Products with “false or misleading representations” under s. 7 of the *Consumer Packaging and Labelling Act* in that they used (i) expressions, words, figures, depictions or symbols that implied or may reasonably be regarded as implying that the WEN Hair Care Products are not dangerous when used as directed, and (ii) descriptions and/or illustrations of the type, quality, performance, and/or function that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

188. In addition, the Defendants sold and/or advertised the WEN Hair Care Products which were packaged and/or labelled in such a manner that the Plaintiff and Class Members likely would be, and were, reasonably misled with respect to the quality of the product.

189. As such, the Defendants breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages as a result under s. 20.

E. Breach of the *Food and Drugs Act*

190. At all times relevant to this action, the WEN Hair Care Products were “cosmetic[s]” within the meaning of that terms as defined in s. 2 of the *Food and Drugs Act*.

191. The Defendants sold the WEN Hair Care Products which contained harmful chemicals, that may cause injury to the health of the user when the cosmetic is used:

- (i) According to the directions, or
- (ii) For such purposes and by such methods of use as are customary or usual therefor.

192. As such, the Defendants breached s. 16 of the *Food and Drugs Act* and are liable to pay damages pursuant to s. 31.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

193. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants’ conduct, including the alleged breaches of any of the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, *Consumer Packaging and Labelling Act* or the *Food and*

Drugs Act constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

194. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants or a percent of the sale of the WEN Hair Care Products as a result of the Defendants' unfair practices and false representations which resulted in revenues and profit for the Defendants.

195. Further, the Defendants have been unjustly enriched as a result of the revenues generated from the sale of the WEN Hair Care Products and as such, *inter alia*, that:

(a) The Defendants have obtained an enrichment through:

- i. Revenues and profits from the sale of the WEN Hair Care Products;
- ii. The saving of costs of recalling the WEN Hair Care Products; and
- iii. The saving of costs of replacing the WEN Hair Care Products with properly designed and manufactured WEN Hair Care Products.

(b) The Plaintiff and other Class Members have suffered a corresponding deprivation;
and

(c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the

Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants' retaining any portion of such money paid.

196. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by receipt of the monies paid for the WEN Hair Care Products;
- (b) The Class Members suffered a corresponding deprivation by purchasing the WEN Hair Care Products;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

197. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

CAUSATION

198. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

199. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

200. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include, but are not limited to, the following general, special, and punitive damages:

A. General Damages (Non-Pecuniary Damages)

201. The general damages being claimed in this Statement of Claim include:

- a. Personal injury,
- b. Pain,
- c. Suffering,
- d. Disfigurement,
- e. Loss of enjoyment of life,
- f. Embarrassment,
- g. Stress,
- h. Trouble,

- i. Inconvenience,
- j. Significant and/or major hair loss,
- k. Stunted hair growth,
- l. Hair breakage,
- m. Brittle, limp and/or lifeless hair,
- n. Dermatitis,
- o. Eczema,
- p. Blistering,
- q. Rash,
- r. Scabbing,
- s. Peeling,
- t. Reddening and swelling, sore, tender, and/or irritated scalp,
- u. Itchiness,
- v. Redness, and
- w. Other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage.

B. Special Damages (Pecuniary Damages)

202. The special damages being claimed in this Statement of Claim include:

- a. Medical expenses (including diagnostic tests and medical evaluations, as well as surgeries and/or medical procedures);
- b. Ongoing/future medical expenses;

- c. Medications purchased (including both over-the-counter and prescriptions);
- d. Aesthetic purchases (including wigs, extensions and/or other products purchased to hide/camouflage their injuries);
- e. Lost wages/earnings;
- f. The purchase price of the WEN Hair Care Products;
- g. Pain and suffering, stress, trouble and inconvenience; and
- h. Other damages as described herein.

C. Punitive (Exemplary) and Aggravated Damages

203. The Defendants have taken a cavalier and arbitrary attitude to their legal and moral duties to the Class Members and have knowingly been selling the WEN Hair Care Products that are inherently dangerous while actively misrepresenting facts concerning their safety and efficacy.

204. Notwithstanding the foregoing, the Defendants continue to aggressively market the WEN Hair Care Products to consumers without disclosing the aforesaid problems and injuries, which deprived Class Members of the necessary information to enable Class Members to weigh the true risk of using the products against the benefits.

205. In addition, it should be noted that it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement

to other businesses to deceive their customers as well. Punitive and aggravated damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

206. At all material times, the conduct of the Defendants as set forth was deliberate and oppressive towards their customers and the Defendants conducted themselves in a wilful, wanton and reckless manner.

COMMON ISSUES

207. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Do the WEN Hair Care Products designed, developed, formulated, tested, licensed, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the Defendants suffer from a Product Defect?
- (b) Are the WEN Hair Care Products defective, non-merchantable, and/or unsafe in the course of their normal use?
- (c) Did the Defendants know or should they have known about the WEN Hair Care Products Product Defect, and, if yes, how long have the Defendants known of the defect(s)?
- (d) Did the Defendants negligently perform their duties to properly design, develop, formulate, test, license, manufacture, package, distribute, market, promote, advertise, label, and/or sell the WEN Hair Care Products?

- (e) Did the Defendants misrepresent the WEN Hair Care Products as safe or fail to adequately disclose to consumers the true defective nature of the WEN Hair Care Products?
- (f) Did the Defendants engage in marketing and promotional activities which were likely to deceive consumers by omitting, suppressing, and/or concealing the true efficacy and safety of the WEN Hair Care Products?
- (g) Did the Defendants omit, suppress, and/or conceal material facts concerning the WEN Hair Care Products from consumers?
- (h) What is the fair market value of ongoing and future diagnostic testing to determine whether the injuries sustained may be remedied?
- (i) Are the Defendants strictly liable for the damages suffered by Class Members?
- (j) Did the Defendants breach their contracts with Class Members?
- (k) Did the Defendants breach their express and/or implied warranties by not providing a safe hair care product and instead one that was unfit, unsafe, and inherently unsound for use?
- (l) Did the Defendants commit the tort of fraudulent concealment when they concealed and/or suppressed material facts concerning the WEN Hair Care Products?
- (m) Did the Defendants misrepresent or fail to adequately disclose to customers the true defective nature of the WEN Hair Care Products?

- (n) Do the Defendants owe the Class Members as duty to exercise reasonable care?
- (o) Did the Defendants act negligently in failing to exercise reasonable care to perform their legal obligations?
- (p) Did the Defendants intend or foresee that the Plaintiff or other Class Members would purchase the WEN Hair Care Products based on their representations?
- (q) Did the Defendants proximately cause loss or injury and damages?
- (r) Did the Defendants engage in unfair, false, misleading, and/or deceptive acts or practices in their design, development, formulation, testing, licensing, manufacture, packaging, distribution, marketing, promotion, advertising, labelling, and/or sale of the WEN Hair Care Products?
- (s) Did the Defendants' acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act* and/or other similar/equivalent legislation?
- (t) Have Class Members been damaged by the Defendants' conduct and, if so, what is the proper measure of such damages?
- (u) Are the Defendants responsible for all related non-pecuniary damages, including, but not limited to personal injury, pain, suffering, disfigurement, loss of enjoyment of life, embarrassment, stress, trouble, and inconvenience as well as significant and/or major hair loss, stunted hair growth, hair breakage, brittle, limp and/or lifeless hair,

dermatitis, eczema, blistering, rash, scabbing, peeling, reddening and swelling, sore, tender, and/or irritated scalp, itchiness, redness, and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage;?

- (v) Are the Defendants responsible for all related pecuniary damages, including, but not limited to, medical expenses (including diagnostic tests and medical evaluations, as well as surgeries and/or medical procedures), ongoing/future medical expenses, medications purchased (including both over-the-counter and prescriptions), aesthetic purchases (including wigs, extensions, and/or other products purchased to hide/camouflage their injuries), lost wages/earnings, and/or the purchase price of the WEN Hair Care Products, and pain and suffering, stress, trouble and inconvenience to Class Members as a result of the problems associated with the WEN Hair Care Products?
- (w) Are the Defendants responsible to pay punitive (exemplary) and aggravated damages to Class Members and in what amount?
- (x) Were the Defendants unjustly enriched?
- (y) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair practices?

EFFICACY OF CLASS PROCEEDINGS

208. The members of the proposed Class potentially number in the thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

209. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

210. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

211. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice.

212. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to her counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

213. The Plaintiff pleads and relies on the *Courts of Justice Act*, the *Class Proceedings Act*, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act*, and other Consumer Protection Legislation.

THE DEFENDANTS' JOINT AND SEVERAL LIABILITY

214. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to herself and to Class Members and that each Defendant is responsible for the acts and omissions of the other Defendant for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other;
- (c) Each company entered into a common advertising and business plan to design, develop, formulate, test, license, manufacture, package, distribute, market, promote, advertise, label, and/or sell the WEN Hair Care Products;
- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to design, develop, formulate, test, license, manufacture, package, distribute, market, promote, advertise, label, and/or sell the WEN Hair Care Products; and

- (e) The Defendants intended that their businesses be run as one global business organization.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

215. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendants engage in business with residents of Ontario;
- (b) The Defendants derive substantial revenue from carrying on business in Ontario;
- and
- (c) The damages of several Class Members were sustained in Ontario.

216. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

SERVICE OUTSIDE ONTARIO

217. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));

- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute, the *Sale of Goods Act*, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and
- (f) Against a person carrying on business in Ontario (rule 17. 02(p)).

Date: February 21, 2017

**CONSUMER LAW GROUP
PROFESSIONAL CORPORATION**

251 Laurier Ave. West
Suite 900
Ottawa, Ontario
K1P 5J6

Jeff Orenstein
LSUC# 59631G
jorenstein@clg.org

Andrea Grass
LSUC# 65051R
agrass@clg.org

Tel: (613) 627-4894
Fax: (613) 627-4893

Lawyers for the Plaintiff

17-71726 CA

Court File No.

FRANZE
Plaintiff

GUTHY-RENKER CANADA CORPORATION et alii.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED IN OTTAWA

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

**CONSUMER LAW GROUP
PROFESSIONAL CORPORATION**
251 Laurier Ave. West, Suite 900
Ottawa, Ontario, K1P 5J6

Jeff Orenstein
LSUC# 59631G
jorenstein@clg.org

Andrea Grass
LSUC# 65051R
agrass@clg.org

Tel: (613) 627-4894
Fax: (613) 627-4893

Lawyers for the Plaintiff