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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 SHARON MANIER and JUDITH
18 RODRIGUEZ
19 Plaintiffs,
20 v.
21 JUICE BEAUTY, INC. d/b/a JUICE
22 ORGANICS
23 Defendant.

24 Case No.:
25 **CLASS ACTION COMPLAINT**
26 **JURY TRIAL DEMANDED**

27 Plaintiffs SHARON MANIER and JUDITH RODRIGUEZ (herein “Plaintiffs”),
28 individually and on behalf of themselves and others similarly situated, by their undersigned
attorneys, pursuant to this Class Action Complaint against JUICE BEAUTY, INC. d/b/a
JUICE ORGANICS (“Juice Organics” or “Defendant”), allege the following:

NATURE OF THE ACTION

1
2
3 1. This is a consumer protection class action arising out of Defendant’s deceptive
4 practices in the marketing, advertising, and promotion of its “Repairing” line of shampoo,
5 conditioner, and hair mask products. These include:

- 6 a. Repairing Shampoo
7 b. Repairing Conditioner
8 c. Repairing Shampoo and Conditioner Bundle
9 d. Repairing Hair Mask
10 e. Deluxe Repairing Shampoo and Conditioner Travel Size Bundle
11 f. Deluxe Repairing Shampoo Travel Size
12 g. Deluxe Repairing Conditioner Travel Size
13 h. Any other Juice Organics hair care product with “Repairing” claims on the
14 label (collectively, the “Products”)¹

15 2. Through an extensive, widespread, comprehensive, and uniform nationwide
16 marketing campaign, Defendant represents to consumers that the Products are
17 “repairing”—that is, that they can repair damaged hair. Below are some representative
18 images of the Products:



28 ¹ <https://juiceorganics.com/collections/repairing>



3. The Products do not actually repair damaged hair because there are no ingredients in the Products that could do so. Hair is primarily composed of a family of proteins called keratin. Because keratin is inorganic, “dead” matter, it cannot be repaired once damaged through heat treatments, daily brushing, and other quotidian acts. While the Products might

1 create the temporary illusion that the user's hair has been repaired, this is indeed an illusion
2 because nothing in the Product can mend damaged keratin proteins.

3 4. As a result of Defendant's misconduct, Defendant was able to sell the Product to
4 thousands of consumers throughout California, New York, and the rest of the United States
5 and realize enormous profits it would not otherwise have earned.

6 5. Defendant violated statutes enacted in each of the fifty states and the District of
7 Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and
8 unconscionable trade and business practices and false advertising. These statutes are:

- 9
- 10 a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. § 8-19-1, *et seq.*;
 - 11 b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code
§ 45.50.471, *et seq.*;
 - 12 c. Arizona Consumer Fraud Act, Arizona Revised Statutes, § 44-1521, *et seq.*;
 - 13 d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
 - 14 e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*,
and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et*
15 *seq.*;
 - 16 f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
 - 17 g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
 - 18 h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
 - 19 i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28
3901, *et seq.*;
 - 20 j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201,
et seq.;
 - 21 k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
 - 22 l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1,
et seq., and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised
23 Statutes § 481A-1, *et seq.*;
 - 24 m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
 - 25 n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS
§ 505/1, *et seq.*;
 - 26 o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. § 24-5-0.5-0.1, *et*
seq.;
 - 27 p. Iowa Consumer Fraud Act, Iowa Code § 714.16, *et seq.*;
 - 28 q. Kansas Consumer Protection Act, Kan. Stat. Ann § 50 626, *et seq.*;

- 1 r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*,
2 and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020,
3 *et seq.*;
- 4 s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev.
5 Stat. Ann. § 51:1401, *et seq.*;
- 6 t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and
7 Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10,
8 § 1211, *et seq.*;
- 9 u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- 10 v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch.
11 93A;
- 12 w. Michigan Consumer Protection Act, § 445.901, *et seq.*;
- 13 x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, *et seq.*,
14 and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat.
15 § 325D.43, *et seq.*;
- 16 y. Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- 17 z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- 18 aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code
19 § 30-14-101, *et seq.*;
- 20 bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and
21 the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-
22 301, *et seq.*;
- 23 cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § 598.0903, *et*
24 *seq.*;
- 25 dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et*
26 *seq.*;
- 27 ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 1, *et seq.*;
- 28 ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57 12 1, *et seq.*;
- gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, *et*
seq.;
- hh. North Dakota Consumer Fraud Act, N.D. Cent. Code § 51 15 01, *et seq.*;
- ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina
General Statutes § 75-1, *et seq.*;
- jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. § 4165.01. *et*
seq.;
- kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law,
73 Penn. Stat. Ann. § 201-1, *et seq.*;
- nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen.
Laws § 6-13.1-1, *et seq.*;

1 8. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submits to
2 the Court's jurisdiction. This Court has personal jurisdiction over Defendant because
3 Defendant's principal place of business is in California.

4 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (b), because
5 a substantial part of the events giving rise to Plaintiff MANIER's claims occurred in this
6 District and Defendant is subject to personal jurisdiction in this District.

7 8 PARTIES

9 *California Plaintiff*

10 10. Plaintiff SHARON MANIER is, and at all relevant times hereto has been, a
11 citizen of California and a resident of Riverside County. On February 6, 2018, Plaintiff
12 MANIER purchased Defendant's 10 fl. oz. Juice Organics Repairing Shampoo from
13 Amazon.com after viewing Defendant's hair repair misrepresentations on the product label
14 and Defendant's website. The purchase price was \$10.86.

15 *New York Plaintiff*

16 11. Plaintiff JUDITH RODRIGUEZ is, and at all relevant times hereto has been,
17 a citizen of the State of New York and a resident of Queens County. On March 22, 2017,
18 Plaintiff RODRIGUEZ purchased Defendant's 6.75 fl. oz. Juice Organics Repairing Hair
19 Mask, *see* ¶ 2, from Amazon.com after viewing Defendant's hair repair misrepresentations
20 on the product label and Defendant's website. The purchase price was \$8.24.

21 12. Relying on Defendant's "Repairing" misrepresentation, Plaintiffs purchased
22 the Products believing they would provide the advertised hair repair benefits, listed on the
23 labeling and wherever they are sold. However, the Product did not deliver these benefits
24 after being used it in a standard way. As a result of their purchase, Plaintiffs suffered injury
25 in fact and lost money. Had Plaintiffs known the truth about Defendant's
26 misrepresentations, they would not have purchased the Products, or would only have been
27 willing to pay much less for it. Should Plaintiffs encounter the Products in the future, they
28 could not rely on the truthfulness of their packaging, absent corrective changes to it.

1 However, Plaintiffs would be willing to purchase Defendant's products again if they are
2 assured of the truthfulness of their representations.
3

4 ***Defendant***

5 13. Defendant JUICE BEAUTY, INC. d/b/a JUICE ORGANICS is a corporation
6 organized under the laws of the state of Delaware. Its headquarters are located at 1500
7 Cader Ln., #205, Petaluma, CA 94954. Its address for service of process is c/o Marcus
8 Kevin Canestra, 709 5th Avenue, San Rafael, CA 94901.

9 14. Defendant develops, manufactures, distributes, markets, and sells personal
10 care, health and beauty products, including its Repairing line of hair care products,
11 throughout the fifty states and the District of Columbia. The labeling, packaging and
12 advertising for the Product, relied upon by Plaintiff, were prepared and/or approved by
13 Defendant and its agents, and were disseminated by Defendant and its agents through
14 advertising containing the misrepresentations alleged herein.

15 **FACTUAL ALLEGATIONS**

16 **Defendant's "Repairing" Claims Are False Because Hair Cannot Be Repaired**

17 15. While Defendant uniformly communicates to consumers that the Products can
18 repair damaged hair, building this claim into the very name of its product line
19 ("Repairing"), the truth is that damaged hair cannot be repaired. Hairmomentum.com, a
20 website dedicated to providing science-based hair care information, explains why:

21 Hair, unlike skin, does not have any cells to regenerate and repair. Hair grows
22 from hair follicles on the scalp. These hair follicles behave like small organs,
23 composed of tissues, blood cells, and glands among other essential
24 components (see image). Because these hair follicles are alive, they keep
25 producing new hair, pushing out old hair through the shedding process
26 (Telogen phase). But hair on the other hand is mainly Keratin, Protein fibers.
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1 Once the fibers are broken, they cannot fix themselves, and there is no
2 ‘ointment’ available like for skin to help them recover.²

3 Many of these products have been specially formulated with polymers (many
4 of are protein based) such as hydrolyzed wheat protein, designed to fill the
5 gaps in the hair temporarily. Imagine a cracked surface and putting in some
6 putty just to fill those gaps. The end result: a smooth surface, that feels
7 repaired and that looks nicer than it was before.³

8 16. The Products are among these protein-based formulations (soy protein).
9 Accordingly, they can do no more than “fill the gaps in hair temporarily.”

10 17. This is also the opinion of nationally respected hair care professionals. Citing
11 Eugene Toyce, senior stylist at Rita Hazan Salon in New York, *WebMD* notes that “[d]ry hair
12 worsens with time because of accumulated abuse,” and that the “only real way to get rid of the
13 damage is to cut off damaged hair.”⁴ Marc Debolt, Marie Robinson Salon colorist and Wella
14 Professionals Ambassador, explained to the Huffington post: “These masks act like a Band-
15 Aid to smooth and mend frayed ends. The only true remedy for split ends is a haircut
16 appointment.”⁵ Joanna Vargas of Joanna Vargas Salons in New York and Los Angeles
17 explains:

18 One of the most common misconceptions about hair is that you can repair it,
19 and bring back that shine and strength.

20 Hair treatments only appear to repair the damage as they coat the hair shaft,
21 usually with a conditioning agent, making it smooth and shiny.

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25 ² <http://hairmomentum.com/repair-breakage-and-split-ends-hair-truth-myth/>

26 ³ <http://hairmomentum.com/repair-breakage-and-split-ends-hair-truth-myth/>

27 ⁴ <http://www.webmd.com/beauty/features/dry-hair#2>

28 ⁵ http://www.huffingtonpost.com/2015/01/27/hair-mask-split-ends_n_6531902.html

1 However, damaged hair cannot be repaired with any kind of hair mask or
2 treatment but only create the appearance of restoration. The reason is that hair
3 is dead once it is outside the hair follicle.⁶

4 18. Unlike Defendant, some hair care products manufacturers readily acknowledge
5 that their products cannot repair hair. Manufacturer Rempure debunks the popular myth that
6 this is possible: “**Myth:** You can mend split ends with the right product. **Truth:** Once they
7 are split, they are split. Products containing silicone or beeswax can be used to seal ends
8 together, but it is a temporary fix. Keeping your hair properly moisturized will help prevent
9 split ends but once you get them, cutting them off is the only way to get rid of them.”⁷
10 Melissa Baker, spokesperson for Renee Furterer hair care products acknowledges that
11 “[t]here is nothing you can really do to repair damaged hair -- it's all about masking the
12 damage.”⁸ And Josh Rosebrook of Josh Rosebrook Skin and Hair Care advises:

13 I know what you might be thinking- but there are so many products that promise
14 to repair damaged hair! And yes, there are lots of conditioners, serums, and
15 shampoos that promise permanent reversal for dry hair in need of restoration. It's
16 marketing! Think about this- hair is technically dead and has no nervous system,
17 blood, or cell regeneration. Because hair is not a living tissue with regenerative
18 ability, it cannot heal. You can use oils, conditioners, or hydrolyzed proteins to
19 disguise the issues temporarily but it's akin to using make-up, products improve
20 the appearance but they will wash out and you are back to the original problem.
21 We need to become educated on the true science of hair and skin so we are not
22 susceptible to and educated by marketing lies, twisted truths and false promises.⁹

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19. This consensus is also confirmed by persons with scientific or medical
22 credentials. *The Natural Haven*, a blog maintained by a Ph.D. in materials science, states

25 ⁶ <https://joannavargas.com/can-you-repair-damaged-hair/>

26 ⁷ <https://www.rempure.com/fact-or-fiction-the-myths-and-truths-about-hair/>

27 ⁸ <http://www.webmd.com/beauty/features/the-abcs-of-summer-hair-repair#4>

28 ⁹ <https://joshrosebrook.com/blogs/news/91363463-you-cant-really-repair-or-heal-damaged-hair>

1 that “[t]he only remedy for damaged hair is to cut off the damage and let the hair regrow.”¹⁰
2 Dr. Zoe D. Draelos, M.D. explains: “One of the most common misconceptions about hair is
3 that it is alive, when in fact hair is nonliving and does not heal itself once it is injured. So once
4 the hair is damaged it cannot heal itself except through new hair growth at the scalp.”¹¹
5 Researcher J. Jachowicz summarizes the scientific research on the subject in a peer-reviewed
6 journal: “Efforts to restore the original properties of hair after mild degradation or to protect
7 undamaged hair against structural weakening have been numerous but largely unsuccessful.”¹²

8 20. This scientific consensus aside, the simple fact is that if Defendant’s repairing
9 claims were true, the Product could only be lawfully marketed as an FDA-approved drug.
10 The FDCA defines cosmetics as articles “intended to be rubbed, poured, sprinkled, or
11 sprayed on, introduced into, or otherwise applied to the human body or any part thereof for
12 cleansing, beautifying, promoting attractiveness, or altering the appearance.” 21 U.S.C. §
13 321(i). The FDCA defines substances as “drugs” if they are “articles (other than food)
14 intended to affect the structure or any function of the body of man ...” 21 U.S.C. § 321(g).
15 Cosmetics that alter the structure of the skin or other parts of the body are drugs even if
16 they are also cosmetics: “A product intended to be applied to the human body for cleansing,
17 beautifying, promoting attractiveness, or altering the appearance is a cosmetic. If this
18 product claims to accomplish these deeds through physiological activity or by changing
19 the structure of the skin, it is also a drug.”¹³

20 21. Defendant’s hair repair claims go well beyond the FDCA definition of a
21 cosmetic and promise to “affect the structure or any function of the body of man,” because
22 this would be the only way to actually repair hair. Thus, Defendant cannot argue that the
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26 ¹⁰ <http://www.thenaturalhavenbloom.com/2009/09/can-you-really-repair-damaged-hair.html>

27 ¹¹ <http://www.webmd.com/beauty/news/20110207/expert-q-and-a-how-to-prevent-hair-damage#2>

28 ¹² J. Jachowicz, *Hair damage and attempts to its repair*, J. Soc. Cosmet. Chem., 38, 263-286 (July/August 1987),
pg. 283.

¹³ Food and Drug Administration Cosmetic Labeling Guide,
<http://www.fda.gov/Cosmetics/LabeingiRegulations/ucm126444.htm#clga>.

1 Product can repair hair without also arguing that it is unlawfully marketing a drug as a non-
2 drug cosmetic.

3
4 **Defendant’s Deception Would Mislead, Be Material To, And Be Relied Upon By, A**
5 **Reasonable Consumer**

6 22. Defendant’s hair repair misrepresentation would be material to a reasonable
7 consumer because users of hair care products are concerned to remedy damaged hair and
8 will therefore be attracted to any product that promises to actually repair it. GNPD Mintel
9 reports that nearly 30% of hair care products in 2014 made claims concerning damaged hair.
10 Launches of products claiming to treat damaged hair increased by 24% between 2010 and
11 2015, by contrast with only a 13% increase in hair care launches overall.¹⁴ Nielson reports
12 that 25% of product offerings for the top 10 brands of shampoo and conditioner claim hair
13 repair as a primary or secondary benefit.¹⁵

14 23. Plaintiffs relied on, and a reasonable consumer would rely on, Defendant’s
15 deceptive misrepresentation. Consumer product companies intend for consumers to rely
16 upon their representations, and reasonable consumers do in fact so rely on them. These
17 representations are the only source of information consumers can use to make decisions
18 concerning whether to buy and use such products. Consumers lack the ability to test or
19 independently ascertain the efficacy and genuineness of product claims of normal everyday
20 consumer products, especially at the point of sale. Reasonable customers must and do rely
21 on the company to honestly report the nature of a product.

22 24. A reasonable consumer would be deceived by Defendant’s “Repairing”
23 misrepresentation because the misconception that hair can be repaired is already
24 widespread misconception. Accordingly, reasonable consumers are likely to believe a
25 company claiming that its products can repair hair.

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http://crodaincmktg.com/2015/F15_Eseminars/HairDamage/TheScienceBehindHairDamageRepair.pdf

¹⁵

http://crodaincmktg.com/2015/F15_Eseminars/HairDamage/TheScienceBehindHairDamageRepair.pdf

1 25. This is confirmed by professionals who are intimately acquainted with
2 ordinary consumer expectations regarding what hair care products can and cannot do.
3 Thus, salon owner Johanna Vargas observes above that “[o]ne of the most common
4 misconceptions about hair is that you can repair it.” ¶ 17.

5 26. Likewise, former stylist and hair products company founder Josh Rosebrook
6 recognizes that most consumers do not know that hair cannot be repaired when he writes:
7 “I know what you might be thinking- but there are so many products that promise to repair
8 damaged hair!” ¶ 18. And Dr. Zoe D. Draelos notes that “[o]ne of the most common
9 misconceptions about hair is that it is alive.” ¶ 19. Given that Defendant’s hair repair
10 misrepresentation reinforce a popular myth that many people already have, there is every
11 reason to believe that it is likely to deceive a reasonable consumer.

12 27. Defendant might argue that a reasonable consumer does not interpret “Repairing”
13 as literally as does Plaintiff. It might argue that the term is not intended to suggest that the
14 Product will actually restore hair to its original undamaged state and is rather intended to
15 advertise some lesser, more modest benefit, like strengthening hair, improving its appearance,
16 or preventing future damage. This defense is implausible for several reasons, however.

17 28. First, Plaintiffs’ understanding of “Repairing” is fully in line with ordinary usage.
18 The Miriam-Webster Dictionary defines “repair” as “putting together what is torn or broken”
19 or “to restore to a sound or healthy state.”¹⁶ Defendant’s “Repairing” misrepresentation is
20 deceptive by this definition, since the Products do not restore hair to the condition it was in
21 prior to being damaged. Nor do the Products “put[] together what is torn or broken,” because
22 split-ends remain split even after the application of the Products. One would not say that a
23 piece of paper that was torn in two and then taped back together has been “repaired,” and the
24 Product delivers nothing more than this when it comes to hair.

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27 ¹⁶ <https://www.merriam-webster.com/dictionary/repair>

1 29. Second, Plaintiffs’ understanding of “Repairing” is fully in line with the usage of
 2 hair care professionals as quoted above. These professionals would not be going out of their
 3 way to correct the misconception that hair can be repaired if most hair care product users
 4 understood “repair” as referring to some amorphous improvement in the look or feel of hair
 5 rather than the specific promise that hair will be restored to its original undamaged state.

6 30. Third, Defendant itself undermines this defense when it claims that its
 7 “Repairing” line of hair care products “repairs, strengthens, and nourishes” hair. This claim
 8 is made on the labels of Repairing shampoos and conditioners, as well as on the webpage that
 9 introduces all of the Repairing Products (including the hair mask purchased by Plaintiff
 10 RODRIGUEZ):

11 Repairing



21 <https://juiceorganics.com/collections/repairing>

22 31. The claim that the Products “repair, strengthen, & nourish” undercuts any
 23 suggestion that “repair” really means something like “strengthen” or “nourish,” because
 24 Defendant’s inclusion of these promised benefits on its labeling and advertising would then
 25 be redundant. Their inclusion therefore establishes that “repair” means something stronger
 26 than “strengthen” or “nourish.” This is confirmed by the third bullet point above, where it is
 27 claimed that the Product will “restore” hair, which Miriam-Webster defines as “to bring back
 28

1 to or put back into a former or original state.”¹⁷ This is precisely how Plaintiffs and the
2 reasonable consumer understood Defendant’s “Repairing” claims. Defendant cannot argue
3 that Plaintiffs’ interpretation is unreasonable or idiosyncratic when it endorses the same
4 interpretation on its website and labeling.

5 32. The small print elsewhere on the Product label soft pedals the Product’s promised
6 “Repairing” benefit. The small print on the Products promises “Achieve **stronger, hydrated**
7 hair that is **less prone to breakage** with this repairing blend of strengthening coconut oil and
8 soy protein...” (emphasis added) This confirms that Defendant’s “repairing” claims do not
9 really mean what reasonable consumers understand them to mean. To repair is to restore to a
10 previously undamaged state, and this is something completely different from strengthening
11 hair, hydrating hair, or reducing the likelihood of future damage.

12 33. Moreover, Defendant’s small print description of the Products’ capabilities does
13 nothing to correct the impression created by the very name of its Product line—“Repairing”—
14 which is placed prominently on the front of the labels. Given that the listed benefits have
15 nothing to do with repairing as ordinarily understood by the reasonable consumer, Defendant’s
16 statements here can at best sow consumer confusion. *See Stoltz v. Fage Dairy Processing*
17 *Indus., S.A.*, No. 14-CV-3826 (MKB), 2015 U.S. Dist. LEXIS 126880, at *49 (E.D.N.Y.
18 Sep. 22, 2015) (“the mere inclusion of an accurate disclaimer does not necessarily cure
19 other potentially misleading statements or representations set forth in a label or
20 advertisement.”); *Delgado v. Ocwen Loan Servicing, LLC*, No. 13-CV-4427 (NGG)
21 (RML), 2014 U.S. Dist. LEXIS 135758, at *24 (E.D.N.Y. Sep. 23, 2014) (“[a] solicitation
22 may be likely to mislead by virtue of the net impression it creates even though the
23 solicitation also contains truthful disclosures.”) (quoting *F.T.C. v. Cyberspace.com LLC*,
24 453 F.3d 1196, 1200 (9th Cir. 2006)); *Hughes v. Ester C Co.*, 930 F. Supp. 2d 439, 464
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27 ¹⁷ <https://www.merriam-webster.com/dictionary/restore> (last viewed 8/25/17)
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1 (E.D.N.Y. 2013) (a disclaimer stating the product is not intended to treat any disease does
2 not eliminate “the possibility of a reasonable consumer being misled.”).

3
4 **Plaintiffs and the Class Were Injured As A Result of Defendant’s Deceptive Conduct**

5
6 34. Plaintiffs and the Class suffered economic injury in that Plaintiffs and Class
7 Members did not receive the benefit of their bargain as purchasers of the Product, which
8 were represented as capable of repairing hair but could not deliver the benefits advertised
9 by Defendant.

10 35. Defendant’s choice of product line name—“Repairing”—along with the
11 increasing prevalence of repairing claims by hair products generally establishes that a
12 product that is capable of repairing hair has greater value than a product that is incapable
13 of doing so. This is also attested to by the statements of hair care professionals, which
14 reveal the premium value that consumers attach to the ability to repair hair. These
15 professionals recognize that consumers see hair repair as a way to avoid haircut
16 appointments they would prefer not to make.

17 36. Given that the value of the Product as it actually functions is less than the value
18 of the Product as warranted by Defendant, Plaintiffs and the Class have been injured in an
19 amount equal to the difference between the two—either the entire purchase price or some
20 other sum, to be determined by expert analysis at trial.

21 37. *See Singleton v. Fifth Generation, Inc.*, No. 15-CV-474, 2016 U.S. Dist.
22 LEXIS 14000, at *10 (N.D.N.Y. Jan. 12, 2016) (finding that the plaintiff stated a claim
23 under § 349 where he alleged that, had he “known ‘the truth,’ he “would not have bought
24 the vodka, or would have paid less for it.”); *Koenig v. Boulder Brands, Inc.*, 995 F. Supp.
25 2d 274, 288-89 (S.D.N.Y. 2014) (“Plaintiffs claim that they paid price premiums
26 specifically “based on Defendants’ misrepresentations,” and allege that they deserve
27 damages in the amount of either the purchase prices, or the price premiums, that they paid
28 for Smart Balance. *Id.* ¶ 81. Accordingly, the Court finds that Plaintiffs have adequately

1 alleged injury under GBL § 349, and thus also DENIES Defendants' motion to dismiss for
2 that reason.”).

3 38. Additionally, Plaintiffs and the Class paid a price premium for the Product
4 because Defendant’s deceptive misrepresentation allowed it to charge a higher price than
5 would have been possible had its representations been truthful. This is confirmed by
6 comparing the Amazon.com price of the Product with the prices of other hair masks also
7 available through Amazon.com that do not make false and deceptive “Repairing”
8 representations:

9 PRODUCT	PRICE	FL. OZ.	PRICE/FL. OZ.
10 Juice Organics 11 Repairing Hair Mask ¹⁸	\$10.99	6.75	\$1.63
12 Eva NYC Therapy 13 Sessions Hair Mask ¹⁹	\$14.24	16.9	\$0.84
14 Garnier Whole 15 Blends Hair Mask 16 with Avocado Oil & Shea Butter 17 Extracts ²⁰	\$5.47	10.1	\$0.54

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19 39. *See Kacocha v. Nestle Purina Petcare Co.*, No. 15-CV-5489 (KMK), 2016
20 U.S. Dist. LEXIS 107097, at *51-52 (S.D.N.Y. Aug. 11, 2016) (“Plaintiff seeks monetary
21 damages on the grounds that he ‘would not have paid the premium price he paid’ to buy
22 the Products had he ‘known the truth.’ (Compl. ¶ 9.) Case law makes clear that this is
23

24 ¹⁸ https://www.amazon.com/s/ref=nb_sb_noss?url=search-alias%3Daps&field-keywords=Juice+Organics+Repairing+Hair+Mask

25 ¹⁹ https://www.amazon.com/s/ref=nb_sb_noss?url=search-alias%3Daps&field-keywords=Eva+NYC+Therapy+Sessions+Hair+Mask&rh=i%3Aaps%2Ck%3AEva+NYC+Therapy+Sessions+Hair+Mask

26 ²⁰ https://www.amazon.com/Garnier-Blends-Avocado-Butter-Extracts/dp/B01AUJ1N1A/ref=sr_1_1_a_it?ie=UTF8&qid=1529958827&sr=8-1&keywords=Garnier+Whole+Blends+Hair+Mask+with+Avocado+Oil+%26+Shea+Butter+Extracts

1 sufficient at the motion-to-dismiss phase for a § 349 claim to survive.”); *Rodriguez v. It’s*
2 *Just Lunch, Int’l*, 2010 U.S. Dist. LEXIS 16622, 2010 WL 685009, at *9 (S.D.N.Y. Feb.
3 23, 2010) (“[C]onsumers who buy a product that they would not have purchased, absent a
4 manufacturer's deceptive commercial practices, have not suffered an injury cognizable
5 under NYGBL § 349,” but allegations that the plaintiff paid a price premium based upon
6 deceptive practices are sufficient to state an injury).

7
8 **Defendant Knew That Its Misrepresentations Were False and Intended that Plaintiffs**
9 **and the Class Rely on Them**

10 40. While much of the general public mistakenly believes that hair is alive and can
11 be repaired, anyone involved in the hair care industry is familiar with what hair is and how
12 it works. They therefore know that hair cannot be repaired. Since Defendant understood
13 this but nevertheless disseminated its “Repairing” misrepresentation, this
14 misrepresentation was knowing and intentional.

15 41. Given that Defendant’s “Repairing” misrepresentation is built into the very
16 name of the product line, Defendant intended that consumers rely upon it, as it would not
17 otherwise have been so centrally placed.

18
19 **CLASS ACTION ALLEGATIONS**

20 42. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal
21 Rules of Civil Procedure on behalf of the following class:

22 All persons or entities in the United States who made retail purchases of
23 Products during the applicable limitations period, and/or such subclasses as
24 the Court may deem appropriate. (the “Nationwide Class”)

25
26 43. In the alternative, Plaintiff MANIER seeks to represent a class consisting of:
27
28

1 All persons in California who made retail purchases of Products during the
2 applicable limitations period, and/or such subclasses as the Court may deem
3 appropriate. (the “California Class”)

4 44. Also in the alternative, Plaintiff RODRIGUEZ seeks to represent a class
5 consisting of the following:

6
7 All persons in New York who made retail purchases of Products during the
8 applicable limitations period, and/or such subclasses as the Court may deem
9 appropriate. (the “New York Class”)

10 45. Plaintiffs reserve the right to revise the Class definitions based on facts learned
11 in the course of litigating this matter.

12 46. *Numerosity*. While the exact number and identities of purchasers of the Product
13 are unknown to Plaintiff at this time, Plaintiff is informed and believes that the Class
14 contains thousands of purchasers who are so numerous that individual joinder of all Class
15 members is impracticable.

16 47. *Existence and Predominance of Common Questions of Law and Fact*.
17 Questions of law and fact arise from Defendant’s conduct described herein. Such questions
18 are common to all Class members and predominate over any questions affecting only
19 individual Class members. They questions include:

- 20 a. Whether Defendant’s “Repairing” representations are false and misleading
21 and likely to deceive a reasonable consumer;
- 22 b. Whether Defendant’s marketing and advertising of the Products is false,
23 fraudulent, deceptive, unlawful or misleading;
- 24 c. Whether Defendant has breached warranties made to the consuming public
25 about its Product;
- 26 d. Whether Defendant’s marketing, promotion, advertising and sale of the
27 Product is and was a deceptive act or practice in the conduct of business
28 directed at consumers, giving rise to consumer law violations in all relevant
jurisdictions;

- e. Whether Plaintiffs and Class members sustained monetary loss and the proper measure of loss;
- f. Whether equity calls for disgorgement of unjustly obtained or retained funds, restitution to, or other remedies for the benefit of the Class;
- g. Whether Plaintiffs and Class members are entitled to other appropriate remedies, including corrective advertising and injunctive relief; and
- h. Whether Defendant's conduct rises to the level of reprehensibility under applicable law such that the imposition of punitive damages is necessary and appropriate to fulfill the societal interest in punishment and deterrence, and the amount of such damages and/or its ratio to the actual or potential harm to the Class.

48. **Typicality.** Plaintiffs' claims are typical of those of the Class members because, *inter alia*, Plaintiffs and the other Class members were all injured by the same uniform conduct, as detailed herein, and were subject to Defendant's hair repair claims that accompanied each and every Product that Defendant sold. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all Class members.

49. **Adequacy of Representation.** Plaintiffs will fairly and adequately represent and protect the interests of the Class and have retained competent counsel experienced in prosecuting nationwide consumer class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class.

50. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by any individual Class member is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. Thus, it would not be economically feasible for an individual class member to prosecute a separate action on an individual basis, and it is desirable for judicial efficiency to

1 concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this
2 controversy through a class action will prevent the potentially inconsistent and conflicting
3 adjudications of the claims asserted herein. There will be no difficulty in the management
4 of this action as a class action.

5 51. The prerequisites to maintaining a class action for equitable relief pursuant to
6 Rule 23(b)(2) are also met, as Defendant has acted or refused to act on grounds generally
7 applicable to the Class, thereby making appropriate final equitable relief with respect to
8 the Class as a whole.

9 52. Plaintiffs seek preliminary and permanent equitable relief on behalf of the
10 entire Class, on grounds generally applicable to the entire Class, to prevent Defendant from
11 engaging in the acts described, and requiring Defendant to provide full restitution to
12 Plaintiffs and Class members.

13 53. Unless a Class is certified, Defendant will retain monies received as a result of
14 its conduct that were taken from Plaintiffs and Class members.

15
16 **CAUSES OF ACTION**

17 **COUNT I.**

18 **VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**

19 **(Cal. Civ. Code § 1750, et seq.)**

20
21 **(brought individually and on behalf of the Nationwide Class in conjunction with**
22 **substantively similar consumer protection laws of other states and the District of**
23 **Columbia to the extent California law does not reach the claims of out-of-state Class**
24 **members or, alternatively, on behalf of the California Class)**

25 54. Plaintiff MANIER realleges and incorporates herein by reference the
26 allegations contained in all preceding paragraphs, and further alleges as follows:

27 55. Plaintiff MANIER and Class members are consumers who purchased the
28 Products for personal, family or household purposes. Plaintiff MANIER and Class

1 members are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).
2 Plaintiff MANIER and Class members are not sophisticated experts with independent
3 knowledge of corporate branding, labeling and packaging practices.

4 56. Products that Plaintiff MANIER and other Class members purchased from
5 Defendants were “goods” within the meaning of Cal. Civ. Code § 1761(a).

6 57. Defendant’s actions, representations, and conduct have violated, and continue
7 to violate the CLRA, because they extend to transactions that intended to result, or which
8 have resulted in, the sale of goods to consumers.

9 58. Defendant violated the laws of California, the other 49 states, and the District
10 of Columbia because the Products mislead consumers by falsely claiming that they are
11 capable of repairing damaged hair.

12 59. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
13 prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics,
14 ingredients, uses, benefits, or quantities which they do not have or that a person has a
15 sponsorship, approval, status, affiliation, or connection which he or she does not have.” By
16 engaging in the conduct set forth herein, Defendants violated and continue to violate
17 Section 1770(a)(5) of the CLRA, because Defendant’s conduct constitutes unfair methods
18 of competition and unfair or fraudulent acts or practices, in that it misrepresents that the
19 Products have qualities which they do not have.

20 60. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or services
21 with intent not to sell them as advertised.” By engaging in the conduct set forth herein,
22 Defendant violated and continue to violate Section 1770(a)(9), because Defendant’s
23 conduct constitutes unfair methods of competition and unfair or fraudulent acts or
24 practices, in that it advertises goods with the intent not to sell the goods as advertised.

25 61. Plaintiff MANIER and Class members are not sophisticated experts about the
26 corporate branding, labeling and packaging practices. Plaintiff MANIER and the Class
27 acted reasonably when they purchased the Products based on their belief that Defendant’s
28 representations were true and lawful.

1 67. Defendant violated California law because the Products mislead consumers
2 by falsely claiming that they are able to repair damaged hair.

3 68. Defendant's business practices, described herein, violated the "unlawful"
4 prong of the UCL by violating Section 403(r) of the Federal Food, Drug, and Cosmetic
5 Act, 21 U.S.C. 343(d), California Health & Safety Code § 110690, the CLRA, and other
6 applicable law as described herein.

7 69. Defendant's business practices, described herein, violated the "unfair" prong of
8 the UCL in that its conduct is substantially injurious to consumers, offends public policy,
9 and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct
10 outweighs any alleged benefits. Defendant's actions impact the public interest because
11 Plaintiff and Class members were injured in exactly the same way as thousands of others
12 purchasing Defendant's Product.

13 70. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiff
14 MANIER and the Class to believe that the Products were capable of repairing damaged
15 hair.

16 71. Plaintiff MANIER and Class members are not sophisticated experts about the
17 corporate branding, labeling, and packaging practices of the Products. Plaintiff CAIRO and
18 the Class acted reasonably when they purchased the Products based on their belief that
19 Defendant's representations were true and lawful.

20 72. Plaintiff MANIER and the Class lost money or property as a result of
21 Defendants' UCL violations because (a) they would not have purchased the Products on
22 the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts
23 were known concerning Defendant's representations; (b) they paid a price premium for the
24 Products due to Defendant's misrepresentations; and (c) the Products did not have the
25 qualities promised.

COUNT III.

**VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,
(California Business & Professions Code §§ 17500, et seq.)**

(brought individually and on behalf of the Nationwide Class in conjunction with substantively similar consumer protection laws of other states and the District of Columbia to the extent California law does not reach the claims of out-of-state Class members or, alternatively, on behalf of the California Class)

73. Plaintiff MANIER realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

74. Under the FAL, the State of California makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

75. Defendant engaged in a scheme of offering misbranded Products for sale to Plaintiff MANIER and Class members by claiming that the Products repaired damaged hair. Such practice misrepresented the content of the misbranded Products. Defendants’ advertisements and inducements were initiated in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the product packaging was intended as inducements to purchase Defendant’s Products. Defendants knew that these statements were unauthorized, inaccurate, and misleading.

76. Defendant violated the laws of California, the other 49 states, and the District of Columbia by misleading Plaintiff MANIER and the Class to believe that Products were capable of repairing damaged hair.

1 plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit Co.*, 18
2 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

3 83. Any person who has been injured by reason of any violation of the NY GBL §
4 349 may bring an action in their own name to enjoin the unlawful act or practice, an action
5 to recover their actual damages or fifty dollars, whichever is greater, or both such actions.
6 The court may, in its discretion, increase the award of damages to an amount not to exceed
7 three times the actual damages up to one thousand dollars, if the court finds the Defendant
8 willfully or knowingly violated this section. The court may award reasonable attorney's
9 fees to a prevailing plaintiff.

10 84. The practices employed by Defendant, whereby Defendant labeled and
11 marketed the Products as capable of repairing hair were unfair, deceptive, and misleading
12 to Plaintiff RODRIGUEZ and other Class members and in violation of NY GBL § 349.

13 85. The foregoing deceptive acts and practices were directed at consumers.

14 86. Defendant’s actions impact the public interest because Plaintiff RODRIGUEZ
15 and Class members were injured in exactly the same way as thousands of others purchasing
16 Defendant’s Product.

17 87. Plaintiff RODRIGUEZ and other Class members seek to enjoin such unlawful,
18 deceptive acts and practices as described above. Each of the Class members will be
19 irreparably harmed unless the unlawful, deceptive actions of Defendant are enjoined,
20 because Defendant will continue to falsely and misleadingly promote the Products as
21 capable of repairing hair. Plaintiff RODRIGUEZ and Class members seek declaratory
22 relief and injunctive relief in the form of an Order compelling Defendant to cease marketing
23 the Products as “Repairing.”

COUNT V.

**DAMAGES FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

(brought individually and on behalf of the New York Class)

88. Plaintiff RODRIGUEZ realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

89. Plaintiff RODRIGUEZ brings this claim individually and on behalf of the New York Class for violations of NY GBL § 349.

90. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in her own name to enjoin such unlawful act or practice, an action to recover her actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

91. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by promoting the Products as capable of repairing hair, thereby violating NY GBL § 349 and depriving Plaintiff RODRIGUEZ and the Class of the benefit of their bargain and charging a price premium.

92. The foregoing deceptive acts and practices were directed at consumers.

93. Under the circumstances, Defendant's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

94. Plaintiff RODRIGUEZ and the other Class members were injured in fact and lost money as a result of Defendant's deceptive and unfair trade practices. In order for Plaintiff RODRIGUEZ and Class members to be made whole, they must receive either (1)

1 the price premium they paid, (2) a refund of the purchase price, or (3) the difference
2 between the purchase price and the actual value of the Product, to be determined by expert
3 analysis at trial, as well as punitive damages, restitution and disgorgement of all monies
4 obtained by means of Defendant’s unlawful conduct, interest, and attorneys’ fees and costs,
5 and other relief allowable under NY GBL § 349.

6
7 **COUNT VI.**

8
9 **DAMAGES FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**
10 **(FALSE ADVERTISING LAW)**

11 **(brought individually and on behalf of the New York Class)**

12 95. Plaintiff RODRIGUEZ realleges and incorporates by reference the allegations
13 contained in all preceding paragraphs and further alleges as follows:

14 96. Plaintiff RODRIGUEZ brings this claim individually, as well as on behalf of
15 members of the New York class, for violations of NY GBL § 350.

16 97. Defendant has been and/or are engaged in the “conduct of ... business, trade or
17 commerce” within the meaning of N.Y. Gen. Bus. Law § 350.

18 98. New York Gen. Bus. Law § 350 makes unlawful “[f]alse advertising in the
19 conduct of any business, trade or commerce.” False advertising includes “advertising,
20 including labeling, of a commodity ... if such advertising is misleading in a material
21 respect,” taking into account “the extent to which the advertising fails to reveal facts
22 material in light of ... representations [made] with respect to the commodity ...” N.Y. Gen.
23 Bus. Law § 350-a(1).

24 99. Defendant caused to be made or disseminated throughout New York, through
25 advertising, marketing and other publications, statements that were untrue or misleading.
26
27
28

1 100. Defendant’s affirmative misrepresentations as alleged herein were material and
2 substantially uniform in content, presentation, and impact upon consumers at large.
3 Consumers were, and continue to be, exposed to Defendant’s material misrepresentations.

4 101. Defendant has violated N.Y. Gen. Bus. Law § 350 because its “Repairing”
5 misrepresentation was material to and likely to deceive a reasonable consumer.

6 102. Plaintiff RODRIGUEZ and Class members have suffered an injury, including
7 the loss of money or property, as a result of Defendant’s false and misleading advertising.
8 In purchasing the Products, Plaintiff and Class members relied on the misrepresentation
9 that the Products repaired hair. This misrepresentations were false and/or misleading
10 because hair cannot be repaired.

11 103. Plaintiff RODRIGUEZ and Class members have suffered an injury, including
12 the loss of money or property, as a result of Defendant’s false and misleading advertising.

13 104. Pursuant to N.Y. Gen. Bus. Law § 350-e, Plaintiff RODRIGUEZ and members
14 of the Class seek monetary damages (including actual damages and minimum, punitive, or
15 treble and/or statutory damages pursuant to GBL § 350-a (1)), injunctive relief, restitution
16 and disgorgement of all monies obtained by means of Defendant’s unlawful conduct,
17 interest, and attorneys' fees and costs.

COUNT VII.

COMMON LAW FRAUD

(brought individually and on behalf of the Nationwide Class under California common law in conjunction with substantively similar common law of other states and the District of Columbia to the extent California common law does not reach the claims of out-of-state Class members or, alternatively, on behalf of the California and New York Class)

105. Plaintiffs reallege and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

106. Defendant intentionally made materially false and misleading representations regarding the Products' capabilities.

107. Plaintiffs and Class members reasonably relied on Defendant's false and misleading representations and did not know the truth that the Products cannot repair damaged hair. Defendants knew and intended that Plaintiffs and the Class would rely on its misrepresentations.

108. Plaintiffs and the Class have been injured as a result of Defendant's fraudulent conduct.

109. Defendant is liable to Plaintiff RODRIGUEZ and members of the Class for damages sustained as a result of its fraudulent conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Classes, seek judgment against Defendant, as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiffs as representatives of the Nationwide Class or, in the alternative, of the California and New York Classes;
- b. An Order appointing the undersigned attorneys as class counsel in this action;
- c. Restitution and disgorgement of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to Plaintiffs and the Class members;
- d. Declaratory relief as permitted by law or equity, including: directing Defendant to identify, with Court supervision, victims of its conduct and pay them all money they are required to pay;
- e. Injunctive relief barring Defendant from continuing to make deceptive hair repair representations;
- f. Statutory pre-judgment and post-judgment interest on any amounts;
- g. Awarding attorneys' fees and costs; and
- h. Such other relief as the Court may deem just and proper.

1
2
3 **DEMAND FOR TRIAL BY JURY**
4

5 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on
6 behalf of themselves and the Class, demand a trial by jury on all questions of fact raised
7 by the Complaint.
8

9
10 Dated: August [], 2018
11

12 **Respectfully submitted**

13 /s/ C.K. Lee
14 C.K. Lee, Esq.

15 /s/ Nadir O. Ahmed
16 Nadir O. Ahmed, Esq.

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18 *Attorneys for Plaintiffs and the Class*
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