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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JOSEPHINE WELLS and CATHERINE
RENY, on Behalf of Themselves and All
11 Others Similarly Situated,

12 Plaintiffs,

13 vs.

14 UNILEVER UNITED STATES, INC., LEK
INC., and CONOPCO, INC. d/b/a UNILEVER
15 HOME & PERSONAL CARE USA,

16 Defendants.
17

) Case No.:

) CLASS ACTION

) COMPLAINT

) DEMAND FOR JURY TRIAL

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1 Plaintiffs Catherine Reny (“Reny”) and Josephine Wells (“Wells”), through their
2 undersigned counsel, for their Complaint against Defendants Unilever United States, Inc.
3 (“Unilever”), LEK Inc. (“LEK”), and Conopco, Inc. d/b/a Unilever Home & Personal Care USA
4 (“Conopco”) (collectively, “Defendants”) respectfully state as follows:

5 **NATURE OF THE ACTION**

6
7 1. Plaintiffs bring this class action to seek redress for themselves and all others
8 nationwide, other than residents of the states of Illinois, Alabama, Kentucky, Nevada or
9 Wisconsin who purchased the Suave® Professionals Keratin Infusion 30 Day Smoothing Kit (the
10 “Treatment” or “Product”) from the date in 2011 that the Treatment was made available to
11 consumers through the present. Plaintiffs purchased the Treatment because of Unilever’s uniform
12 false representation that it would smooth their hair and coat it with Keratin, a protein found
13 naturally in hair. Unilever knew, but failed to disclose to Plaintiffs and the class, that the
14 Treatment contains an ingredient or combination of ingredients that causes significant hair loss
15 upon proper application. The active ingredient in the Treatment, Thioglycolic Acid, including its
16 salts and esters, is the same active ingredient that is used in hair depilatories and some hair
17 perming solutions. Based on testing conducted by Plaintiffs, and as evidenced by damage caused
18 to Plaintiffs and the putative class members, the pH level and concentration of Thioglycolic Acid
19 in the Treatment rendered it dangerous and unsafe for sale as an over-the-counter hair
20 “smoothing” product.
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23 2. In addition, Defendants failed to properly warn consumers of the risks and
24 dangers attendant to the use of such a strong depilatory agent on their hair and scalp — even well
25 after Defendants knew or should have known of its hazards. Sometime in May 2012, Unilever
26 decided to “recall” the Treatment, misleadingly characterizing it as a decision to “discontinue”
27 selling the Product. Defendants’ uniform acts and omissions in connection with the development,
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1 marketing, sale and delivery of the Treatment, and its belated and incomplete “recall” of this
2 hazardous Product, violate the various consumer protection laws of the State of California and
3 multiple other states, breach express warranties to Plaintiffs and the class, violate product
4 liability laws and constitute negligence and unjust enrichment.

5
6 3. Unilever labeled, advertised, promoted and sold the Treatment targeting women
7 who wanted smooth, shiny, manageable hair with no frizz. Through an extensive marketing
8 campaign and via its website and packaging, Unilever made a number of express warranties: that
9 the Treatment was a Keratin-based smoothing treatment and not a toxic chemical relaxer; that its
10 effects would last no longer than 30 days; that it contained no Formaldehyde; and that it was
11 safe. These warranties and representations are false. A copy of the Treatment’s packaging,
12 demonstrating these false representations, is below:



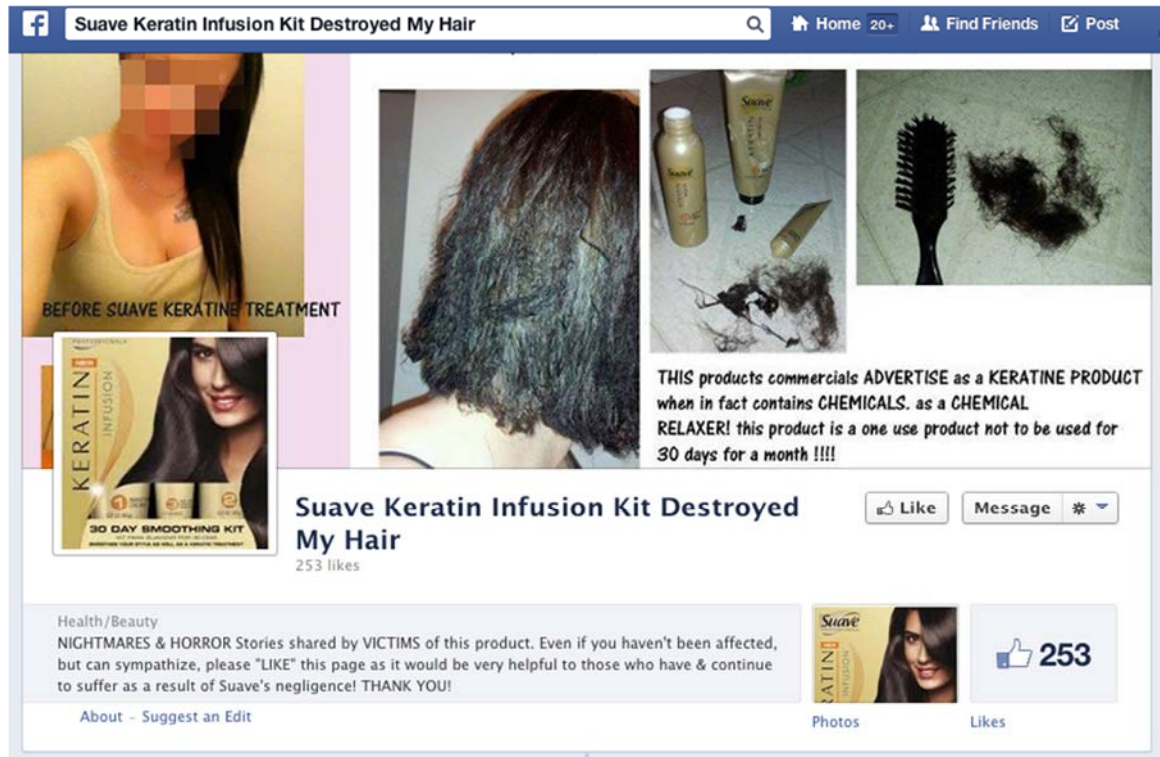
22 4. The Treatment was marketed as a Keratin product although Keratin, which is a
23 natural protein, is the last-listed ingredient in the Smoothing Cream and Cuticle Seal Cream. The
24 Treatment was sold among hair conditioning products, although it is not a conditioner but is
25 instead a chemical hair straightener.
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1 5. In addition, Unilever falsely claimed that the Treatment contained “No
2 Formaldehyde,” in all capital letters on the box cover, when in fact the Treatment contains a
3 chemical ingredient that is known to release Formaldehyde upon its use or application.

4 6. In order to create an impression of the Product as a gentle, natural Keratin-based
5 hair “smoothing” treatment, Unilever falsely promoted the Product’s effects as lasting no longer
6 than 30 days. Unlike chemical hair straighteners, whose effects are expected to last for many
7 months, the purportedly positive attributes to be provided by the Treatment were touted as short-
8 term.

9 7. Nowhere on the package labeling or on Unilever’s websites or other marketing
10 materials did Unilever warn Plaintiffs and members of the class that they were at risk of
11 significant hair loss and/or scalp burns upon proper application of the Treatment. Unilever
12 misled and deceived the public, and placed their customers in harm’s way, all for the sake of
13 increased profits.

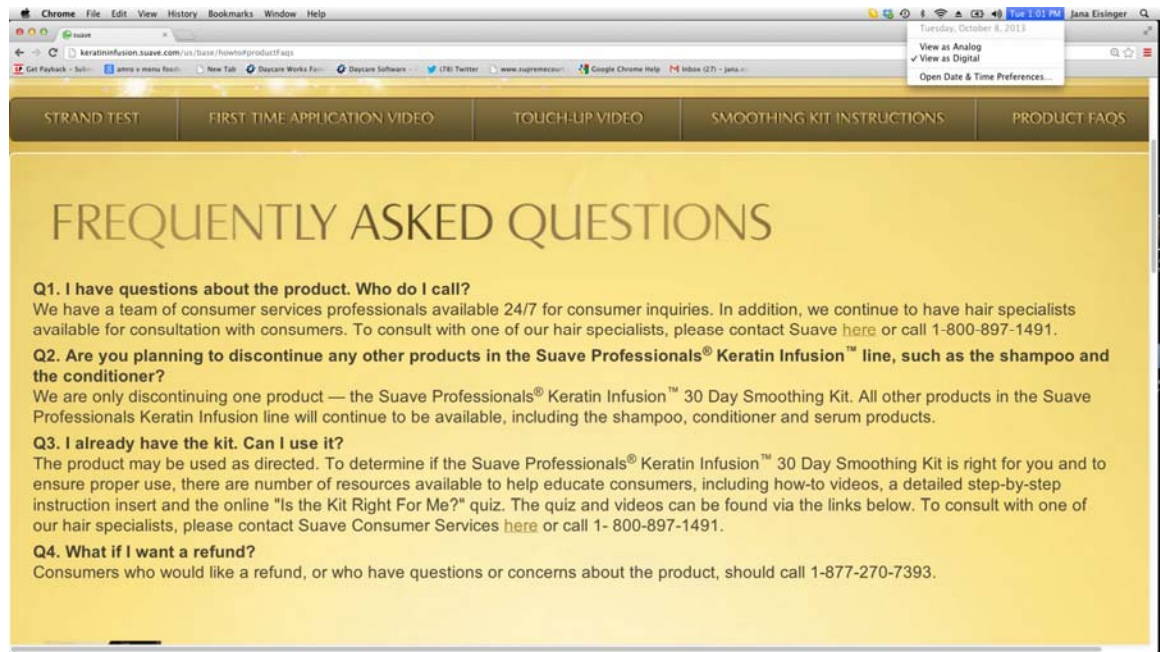
14 8. Unilever failed to warn Plaintiffs and members of the class of the risks, even
15 though it knew, before or almost immediately upon introduction of the Product in late 2011, that
16 consumers were complaining that the Treatment caused significant hair loss and scalp burns
17 (among other adverse effects, such as hair discoloration). Indeed, hundreds of consumers posted
18 on a Facebook page created to expose the devastating effects of this Product on the men and
19 women who used it. A copy of the Facebook page entitled “Suave-Keratin-Infusion-Kit-
20 Destroyed-my-Hair,” is posted below:
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9. Not only did Unilever fail to properly warn consumers before they purchased the Product, but when it finally chose to “recall” the Product in May 2012, it told consumers the Product was being “discontinued” and was still safe to use, while at the same time directing retailers to immediately remove the Product from the shelves and send it back to Unilever. Other than a cursory instruction, Unilever did not follow up with the retailers, nor did it ensure that the Product was completely off the shelves.

10. Up to the date of filing of this Complaint, Unilever has never fully and appropriately recalled the Product. Unilever continues to falsely claim to consumers that the Product is safe, and continues to fail to warn consumers of the dangers of application of the Treatment. Indeed, due to Unilever’s failure to properly and appropriately recall the Product, the Product is still available for sale on Amazon.com. Moreover, because of Unilever’s failure to advise consumers that the Product had been recalled because it was not safe to use — rather than a simple discontinuance — consumers continue to be at risk of buying and using the Product

1 while unaware of the significant safety risks Unilever continues to conceal. Unilever’s website,
 2 pictured below, states that the Product was “discontinued” (although the U.S. Food and Drug
 3 Administration (“FDA”) said it was recalled)¹ and falsely claims that it is still safe to use as
 4 directed.



16 11. In addition to the hundreds or thousands of consumers who have complained to
 17 Unilever directly in the months leading up to the so-called recall, the filing of class actions and
 18 individual personal injury actions has provided Unilever with ample actual notice of the unsafe
 19 and defective nature of the Product to permit it to act in a comprehensive manner to prevent
 20 harm to consumers. Unilever has had ample opportunity to advise consumers of the risks of use
 21 of the Product, or to ensure that the Product is no longer available to consumers. Instead, it has
 22 done nothing to prevent future harm and has only exacerbated the harm by continuing to claim
 23 the Product is safe, while providing no further information to the public.
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25 _____
 26 ¹ See <http://www.fda.gov/Safety/Recalls/EnforcementReports/ucm307229.htm>, where the FDA
 27 indicates that the Treatment was recalled by Unilever by letter dated May 8, 2012.

1 12. The following publicly-available photographs depict the type of damage caused
2 by the Product.



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22 Above two photos from my FOX Austin report “Dozens of women sue Unilever, claim hair product left bald
23 spots” available at [http://www.myfoxaustin.com/story/23283501/dozens](http://www.myfoxaustin.com/story/23283501/dozens-of-women-sue-Unilever-claim-hair-product-left-bald-sp)-of-women-sue-Unilever-claim-hair-
24 product-left-bald-sp.

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Above two photos from <https://www.facebook.com/pages/Suave-Keratin-Infusion-Kit-Destroyed-My-Hair/125404967583365>.

13. Unilever’s efforts to conceal and downplay the hundreds if not thousands of complaints of Class Members who have lost their hair as a result of using this Product is a pointed attack on consumers. Specifically, Unilever attempts to shift attention and blame from the defects in the Product and its own failure to warn consumers by falsely claiming that it is the consumers’ “misunderstanding” of the appropriate use and application of the Treatment that has resulted in the Product’s failure.

1 14. Consumers in the United States, and more particularly in California, reasonably
2 expect that their hair care products will not cause significant hair loss because of defective
3 design and manufacturing or because of inadequate research or due diligence. California and
4 United States consumers had no expectation that the Treatment would cause scalp burns and
5 cause their hair to fall out.

6 15. Further, consumers reasonably expect that if Unilever, the company primarily
7 responsible for developing, manufacturing, marketing and distributing the Product, knew that the
8 Treatment would or could cause hair loss (whether by proper application or by misapplication),
9 Unilever would make appropriate disclosures to consumers as soon as it determined there was a
10 widespread problem, rather than quietly discontinuing the Product and attempting to conceal the
11 problem. By downplaying, concealing and misrepresenting the Product and the safety and risks
12 of its use, Unilever failed in its duty to provide consumers with adequate information, and
13 continued even after the so-called “recall” — and to this day — to create and perpetuate a false
14 public perception that there is little or no risk of harm from the use of its Product.

15 16. In its continuing efforts to conceal the dangers and serious harm attendant to use
16 of the Product, Unilever has also engaged in a campaign designed to obtain unconscionable and
17 unenforceable releases from consumers injured by use of the Product. Upon information and
18 belief, Unilever has solicited and obtained numerous releases from California consumers and
19 others in the United States who were injured by use of the Product, without advising them of
20 their right to obtain legal counsel to review the form releases that Unilever propounded and
21 without fully explaining the terms or legal effect of the form releases, including that (a) the form
22 releases purport to release third party retailers for no extra consideration; (b) the form releases
23 purport to release personal injury claims for no extra consideration beyond the economic losses
24 incurred by the consumer; (c) the form releases require consumers to indemnify Unilever for all
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1 losses “from any and every claim or demand of every kind and character, including claims for
2 contribution;” (d) the form releases require the consumer to indemnify Unilever from any claims
3 for payment of medical expenses by Medicare/Medicaid; and (e) the form releases require the
4 consumer to hold Unilever harmless “from any and all adverse consequences in the event this
5 settlement results in the loss of right to Social Security and/or Medicare/Medicaid.” The release
6 forms that Unilever required its unrepresented consumers to sign — in order for them to get
7 meager reimbursement from Unilever for as little as \$50.00 for a haircut — contain terms that
8 are so outrageous that they should be set aside as unconscionable and unenforceable.

10 **THE PARTIES**

11 17. Plaintiff Wells resides in Hayward, Alameda County, California. She purchased
12 and used the Product in Santa Clara County.

13 18. At all times relevant to this Complaint, Plaintiff Reny resided in and currently
14 resides in Wilmington, California. Reny purchased and used the Product in Los Angeles County.

15 19. Defendant Unilever is a subsidiary of the dual-listed company consisting of
16 Unilever N.V. in Rotterdam, Netherlands and Unilever PLC in London, United Kingdom.
17 Unilever, which includes the Suave brand, is a Delaware corporation with its principal place of
18 business located at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Unilever
19 manufactured, marketed, designed, promoted and/or distributed the Treatment.
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21 20. Knowlton Development Corporation (“Knowlton”) is a foreign corporation with
22 its principal place of business in Knowlton, Quebec, Canada. Defendant LEK, also a foreign
23 corporation with its principal place of business in Knowlton, Quebec, Canada, is a subsidiary of
24 Knowlton. LEK, formerly known as Les Emballages Knowlton, Inc., manufactured the Product
25 for sale by Unilever in the United States, knowing that the Product would be sold in the United
26 States, including California and nationwide, and thereby causing injury to California residents
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1 and citizens and residents and citizens of other states as a direct result of the purchase and sale of
2 said Product.

3 21. Defendant Conopco is a New York corporation with its principal place of
4 business located at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Upon information
5 and belief, LEK obtained a contract from Conopco for the manufacture of the Product, with LEK
6 and/or Conopco being responsible for the distribution of the manufactured Product to retailers.
7
8 At all times relevant hereto, Conopco knew or should have known that the Product would be sold
9 in the United States.

10 **JURISDICTION AND VENUE**

11 22. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d),
12 because this is a class action lawsuit in which over \$5 million is at issue, there are more than 100
13 putative class members, and at least one class Member is a citizen of a state other than the state
14 of citizenship of at least one of the Defendants.

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16 23. Venue is proper pursuant to 28 U.S.C. §1391 because a substantial part of the
17 events giving rise to the claims asserted occurred in this District, because Defendants conduct
18 substantial business in this District, have sufficient minimum contacts with this District, and
19 otherwise purposely avail themselves of the markets in this District, through the promotion, sale,
20 and marketing of products in this District including the Product at issue in this case. Moreover,
21 Plaintiffs purchased and used the Product in California and Plaintiff Wells purchased and used
22 the Product in this District. Filed concurrently with this Complaint is the Declaration of Azra Z.
23 Mehdi Pursuant to California Civil Code Section 1780(c) of the Consumer Legal Remedies Act,
24 Cal. Civ. Code §1750, *et seq.*, which is incorporated by reference herein.
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1 **FACTUAL ALLEGATIONS**

2 **The Product and Product Warranties**

3 24. Unilever released Suave® Professionals Keratin Infusion 30-day Treatment on or
4 about December 9, 2011. The Treatment was sold by Unilever directly and through retail shops
5 to consumers nationwide, including specifically in California.

6 25. In promoting its new Treatment, for example on Walmart.com, Unilever stated:
7 “Suave Professionals Keratin Infusion 30 Day Smoothing Kit is a simple, at-home alternative to
8 expensive salon keratin treatments. This revolutionary system, formulated with keralock
9 technology, infuses hair with keratin protein and leaves it smooth, shiny, and manageable for up
10 to 30 days.” The description continues by pointing out that the Product contains “No
11 Formaldehyde.”
12

13 26. The Walmart ad describes how the Product works: “Step 1: Smoothing Cream
14 with keratin loosens, smoothens, And detangles curls And waves. Step 2: Cuticle Seal Cream
15 with Keralock Technology reforms keratin bonds inside the hair fiber And eliminates frizz for
16 long lasting smoothness And manageability. Step 3: Heat Defense Leave-In Conditioner
17 provides ultimate moisturization to protect hair while heat styling. Formulated for use with blow
18 dryers or flat irons for optimal shine and smoothness. Also, sold outside for continued use.” A
19 copy of the Walmart ad is attached as Exhibit A.
20

21 27. The Product states, on the front of the box, that the Treatment “Smooths Your
22 Style as Well as a Keratin Treatment.” Below that statement is printed in all caps: “NO
23 FORMALDEHYDE.” The package instructions state: “Your hair will continue to be smoother
24 and easier to style for up to 30 days!” The package instructions further advise: “To complete the
25 process, apply the Heat Defense Leave-In Conditioner and blow dry your hair into a smooth,
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1 straight style. Flat iron if desired.” A copy of the box labeling and instructions are attached as
2 Exhibit B.

3 28. Keratin is a protein found naturally in hair. By promoting the Treatment as a
4 treatment that “infuses hair with keratin protein” and that did not contain Formaldehyde,
5 Unilever warranted the Product as a safe, non-toxic hair smoothing solution that could be
6 purchased at a fraction of the price of a salon treatment.
7

8 29. However, despite the express representation that the Treatment contains no
9 Formaldehyde, the Treatment does contain DMDM Hydantoin, a chemical that is known as a
10 “Formaldehyde-releaser.” *See* <http://www.safecosmetics.org/article.php?id=599>. Formaldehyde
11 releasers are sometimes used in cosmetics in place of Formaldehyde and release amounts of
12 Formaldehyde over time. Formaldehyde is a known human carcinogen.
13

14 30. An investigation by the non-profit Environmental Working Group reported that
15 some cosmetic companies disguise the Formaldehyde in their products by using, among other
16 things, Formaldehyde releasers instead of Formaldehyde. *See* [http://www.ewg.org/hair-](http://www.ewg.org/hair-straighteners/our-report/hair-straighteners-that-hide-formaldehyde)
17 [straighteners/our-report/hair-straighteners-that-hide-formaldehyde](http://www.ewg.org/hair-straighteners/our-report/hair-straighteners-that-hide-formaldehyde).

18 31. An average consumer reviewing the Unilever representation that the Treatment
19 contains “No Formaldehyde” would not expect that it would contain a chemical known to release
20 Formaldehyde upon use or application.
21

22 32. Plaintiffs and the Class did not and would not expect that application of the
23 Treatment would cause hair loss and scalp burns upon proper application.

24 33. Plaintiffs and the Class reasonably expected a warning regarding any potential
25 hazard to consumers, especially because the Food, Drug and Cosmetic Act regulations provide
26 that cosmetics that may be hazardous to consumers must bear appropriate warnings. *See*
27 <http://www.fda.gov/Cosmetics/CosmeticLabelingLabelClaims>.
28

1 34. Contrary to the Food, Drug and Cosmetic Act regulations, the Product also failed
2 to provide adequate directions for safe use, although Defendants knew or should have known the
3 Product would be unsafe if used incorrectly. In fact, Unilever’s website affirmatively represents
4 that it complies with all applicable labeling laws. *See* Unilever’s Code of Business Principles,
5 attached as Exhibit C.
6

7 35. Unilever’s representations that the Product is safe, contains “No Formaldehyde,”
8 and would smooth hair for no longer than 30 days, was plainly false.

9 36. In response to the damage customers have suffered after using this Product,
10 consumers created a Facebook page entitle “Suave-Keratin-Infusion-Kit-Destroyed-my-Hair.”

11 The page describes:

12 NIGHTMARES & HORROR Stories shared by VICTIMS of this product. Even if
13 you haven’t been affected, but can sympathize, please “LIKE” this page as it
14 would be very helpful to those who have & continue to suffer as a result of
Suave’s negligence! THANK YOU!

15 **Mission**

16 The intent of this group is to, first and foremost WARN others about the potential
17 damage and danger (yes, danger), but also in hopes to get the attention of
Unilever (Suave)!

18 PLEASE feel free to tell your stories in as much detail as you can. Pictures and
19 videos will also be very helpful in garnering attention!

20 Many, including myself, strongly believe that this product is falsely advertised,
21 misleading, devoid of proper warnings, not safe for over-the-counter sales, should
be reviewed by the FDA, and pulled from the market immediately.

22 ****ENDGAME:****

23 GETTING THIS DANGEROUS PRODUCT DISCONTINUED OR
24 RECALLED, AND *RECOMPENSE* FOR ALL THOSE WHO HAVE
25 SUFFERED INJURIES, TRAUMA, AND THE LOSS OF THOUSANDS OF
26 DOLLARS SPENT ON REPAIRS — A DIRECT RESULT OF BEING
27 INTENTIONALLY MISLEAD BY UNILEVER, AND THEIR NEGLIGENCE.
28

1 **Description**

2 This group was created for people who have had horrible experiences with the
3 “Suave Professionals Keratin Infusion 30 Day Smoothing Kit,” and who need a
4 place to tell their stories, vent, cry, scream, or receive support and empathy from
5 others who have been likewise traumatized.

6 37. There are hundreds of posts highlighting the “horror stories” of women who used
7 the Treatment. These stories are strikingly similar to Plaintiffs’ experiences. These consumers
8 describe how they were misled by Unilever’s representations about the Product, expecting a
9 Keratin-based smoothing Treatment whose effects would last no longer than 30 days, but instead
10 received a toxic hair straightener that caused hair loss and other adverse effects.

11 38. Upon information and belief, as early as December 2011 Unilever became aware
12 of the serious adverse effects resulting from use of the Treatment, such as hair loss and chemical
13 burns. However, despite that knowledge, Unilever remained silent, knowingly failed to warn
14 distributors or the public of the problems caused by the Treatment and continued selling the
15 Treatment with the same express warranties and without appropriate warnings.

16 39. On the day the Product was “recalled,” Unilever explained on a website listing
17 numerous recalled products that the Treatment was taken off the market “because of potential
18 consumer misunderstanding of the product’s suitability for certain hair conditions.” Unilever
19 admitted that consumers “misunderstood” the Treatment, which misunderstanding was caused by
20 Unilever’s false marketing of the Treatment as, among other things, a temporary hair smoothing
21 product, not a long-lasting toxic chemical relaxer that could cause hair loss and other damage.

22 40. The Food and Drug Administration (FDA), on its website at
23 <http://www.fda.gov/Safety/Recalls/EnforcementReports/ucm307229.htm>, indicates that the
24 Treatment was recalled by Unilever by letter dated May 8, 2012. The FDA website notes that
25 there were 381,288 kits in commerce nationwide that were recalled. The FDA website further
26 27

1 notes that the Treatment was manufactured by Les Emballages Knowlton, Inc., now known as
2 LEK, a subsidiary of Knowlton.

3 41. Retailers were advised by Unilever to immediately cease distribution of the
4 Product and were advised to send the Product back to Unilever. Upon information and belief,
5 some retailers continued to sell the Product after the recall and to this day, more than a year after
6 the so-called recall, it is still available for sale.
7

8 42. In recalling the Product, Unilever did not make any public announcement and did
9 not publicly respond to the numerous complaints of adverse incidents associated with its use.
10 Instead, Unilever posted a simple notice on its website indicating that the Treatment had been
11 “discontinued” and requesting that customers call for additional information.
12

13 43. Defendant LEK did nothing in connection with the recall despite the reference to
14 LEK as the “manufacturer” in connection with the FDA’s notice of recall.

15 44. Unilever continues to this day to advise consumers that the Product is safe to use
16 as directed, without providing any disclosure concerning the complaints of hair loss and with no
17 warnings regarding the hair loss that may result from its continued use. *See*
18 <http://keratininfusion.suave.com/us/base/howto#productFaqs>. Indeed, despite the so-called
19 “recall” and Unilever’s knowledge and awareness of hundreds if not thousands of complaints of
20 significant hair loss and breakage caused by the Product, Unilever continues to claim it is safe
21 and permits it to be sold to this day — without providing consumers with *any* revised warnings
22 or disclosures.
23

24 45. Unilever actively and intentionally misled consumers by telling consumers the
25 Product was safe to use while at the same time telling retailers to immediately recall the Product
26 and to bar sales of the Product sitting on their shelves.
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1 46. Unilever’s Code of Business Principles, Exhibit C, states that Unilever “complies
2 with laws and regulations of the countries in which they operate.” It further provides that
3 Unilever is “committed to providing products which are safe for their intended use. Products and
4 services will be accurately and properly labeled, advertised and communicated.”

5 47. Unilever also makes the following representations on its website, portions of
6 which are attached as Exhibit D:
7

- 8 • “Consumers trust us to provide them and their families with
9 products that are safe.”
- 10 • “[P]rotecting consumers’ safety is our number one priority.”
- 11 • ““We realise innovation is key to our progress, and through cutting-
12 edge science we’re constantly enhancing our brands, improving
13 their nutritional properties, taste, fragrance, or functionality. We
14 invest nearly €1 billion every year in research and development,
15 and have established laboratories around the world where our
16 scientists explore new thinking and techniques, applying their
17 expertise to our products. Consumer research plays a vital role in
18 this process. Our unrivalled global reach allows us to get closer to
19 consumers in local markets, ensuring we understand their diverse
20 needs and priorities.”
- 21 • “On any given day, two billion people use Unilever products to
22 look good, feel good and get more out of life.”

23 **Defendants’ Conduct with Respect to the Hazard Posed by the Product**

24 48. The active ingredient in the Product, Thioglycolic Acid, including its salts and
25 esters, was originally developed as a depilatory agent for uses such as removing animal hair from
26 hides so that a processor could transform a hairy hide into leather capable of being processed.
27 Thioglycolic Acid is so corrosive that, if left on too long, it will dissolve the bonds holding hair
28 together until the hair strand is transformed into a jelly-like substance that can be wiped away.

 49. Designing, manufacturing and providing a direct-to-consumer hair conditioning
with Thioglycolic Acid, at the pH levels and concentration in the Product, was unreasonably

1 dangerous and unsafe to consumers, especially when marketed as a gentle, “smoothing” hair
2 conditioning treatment.

3 50. Upon information and belief, Les Emballages Knowlton, now known as
4 Defendant LEK, manufactured the Product for Unilever.

5 51. On its website, LEK boasts that it is “strategically positioned twenty minutes from
6 the US-Canada border — immediately north of the US eastern states” in an obvious attempt to
7 solicit and obtain U.S. business. The website continues by explaining that “LEK is a highly
8 flexible manufacturing environment designed to meet the needs of mass brands; from new
9 product introductions, to brand growth, as well as the continuous improvement needs of mature
10 brands. Highly capable in the production of liquid and solid products, LEK is recognized by the
11 market as a leader in large-scale hot pour capabilities, boasting some of the best expertise in the
12 manufacture of anti-perspirants and deodorants in the world.” *See* [http://www.kdc-](http://www.kdc-companies.com/kdc/lek.php)
13 [companies.com/kdc/lek.php](http://www.kdc-companies.com/kdc/lek.php).

14 52. Under the heading “Team” the website continues to claim that the organization is
15 “best in class in planning and introducing new products to the mass market, as well as
16 introducing cost improvement programmes that secure a product’s profitability over its life-
17 cycle. Since 1991, LEK has been a stable partner to some of the most important brand-owners in
18 the world, as its management and operational teams continue to refine their approach to
19 managing the complexity of the consumer packaged goods industry.” *Id.*

20 53. Based upon LEK’s own representations, it claimed to have the expertise and
21 ability to manufacture a safe and effective Product for Unilever. Despite its purported expertise,
22 it failed to perform adequate testing to determine that the Product, at the pH and concentrations
23 in which it was offered for sale, was dangerous and unfit for sale directly to consumers. Despite
24 its purported expertise in managing “new product introductions,” LEK permitted the Product to
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1 be sold with incomplete and inaccurate instructions and warnings, and although as a
2 manufacturer it owes a duty of care to Plaintiffs and all putative Class Members, LEK failed to
3 properly warn or advise potential consumers of the risk attendant with use of the Product.

4 54. Instead, upon information and belief, LEK (with Unilever and Conopco)
5 knowingly permitted the manufacture and sale of a Product that was dangerous and unfit for sale
6 as a temporary hair “smoothing” Product.

7 55. Prior to Plaintiffs’ purchase of the Product, Defendants were aware or should
8 have been aware that the Treatment contained an inherent defect that caused significant hair loss
9 and scalp burns upon proper application and that any instructions and warnings provided with the
10 Product directly to consumers were materially insufficient.

11 56. Defendants Unilever and LEK knew, or but for their reckless indifference would
12 have known, prior to Plaintiffs’ purchases of the Product that they would continue to receive
13 complaints of hair loss attributed to the Product. Based on their experience, Defendants knew or
14 should have known that even if they diligently investigated the problem, it would be difficult if
15 not impossible to remediate the problem.

16 57. Unilever knew, or but for its reckless indifference would have known, that: (a) the
17 risk of scalp burns and hair loss was substantial, (b) Unilever’s customers were unaware of that
18 substantial risk, and (c) those customers had a reasonable expectation that Unilever would not
19 sell the Product under those conditions.

20 58. Despite such knowledge, Unilever did not disclose to prospective purchasers,
21 before or after the so-called recall, that there was a substantial risk of scalp burns and hair loss
22 associated with use of the Product. Unilever instead continued to claim the Product was safe,
23 while concealing all the adverse reports filed by consumers. Unilever told consumers that the
24 Product was discontinued because of consumer “confusion,” not because users of the Product
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1 were losing their hair and burning their scalps. This deception and cover-up continues to this
2 day.

3 **FACTS RELATING TO NAMED PLAINTIFFS**

4 59. Plaintiff Wells purchased the Treatment in or about January 2012. Based on
5 Unilever's representations, she expected to be purchasing a short-term "smoothing" conditioner
6 and not a harsh chemical relaxer which contained the same active ingredient that is used in hair
7 removal products. Wells was exposed to and familiar with Unilever's claims about the Treatment
8 not containing Formaldehyde and being a "smoothing" Product whose effects would last no
9 longer than 30 days. Each of these representations were set forth prominently on the box in
10 which the Treatment was sold. She purchased the Treatment for approximately \$15.00 at a
11 Target in Sunnyvale, California.
12

13 60. After proper application of the Treatment, Wells noticed her hair breaking at the
14 crown and she experienced significant hair loss at the crown and on the sides of her head.
15 Because of the breakage and hair loss, she has had to cut approximately ten inches off her hair
16 and has spent thousands of dollars on weaves, hair extensions, and other treatments to attempt to
17 restore the damage to her hair. The straightening effects and damage to Wells' hair continues to
18 this day - nearly two years after she used the Product. Her once long, beautiful, natural curly
19 healthy hair is now dull, fragile and short. Her hair is extremely thin and the bald spots caused by
20 the Treatment are still visible.
21

22 61. Plaintiff Reny purchased the Treatment in or about May 2012. Reny was familiar
23 with Keratin-based hair treatments and believed the Product would be a good value compared to
24 expensive salon Keratin-based treatments. Reny was exposed to and familiar with Unilever's
25 claims about the Treatment being a "smoothing" Product whose effects would last no longer than
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1 30 days. She paid approximately \$15.00 for the Treatment, which she purchased at an
2 Albertson's in California.

3 62. Reny reviewed the Product instructions and so-called warnings and applied all
4 three steps as instructed by Unilever's package inserts. Immediately upon application, the
5 Product started "melting" her hair and it was breaking and falling out. Her hair became dry and
6 brittle and she was unable to even comb it out.

7
8 63. Reny has had to cut off approximately four inches of her hair and has spent
9 hundreds of dollars on treatments and conditioners to attempt to repair the damage caused by the
10 Product. To this day, her hair is much thinner than it was and she still has a visible bald spot
11 caused by the Product.

12 64. Plaintiffs purchased the Treatment because of Unilever's false representations
13 about what the Product offered them, and because they were unaware that the Treatment was
14 unsafe and would cause hair loss and scalp burns, among other effects.

15
16 65. Plaintiffs provided pre-suit notice to Defendants of their warranty claims and
17 Defendants had actual notice of the alleged defect and harm caused by the Product.

18 **CLASS ALLEGATIONS**

19 66. Plaintiffs bring this action on behalf of themselves and all persons within the
20 United States who purchase the Product for personal or household use at any time since the date
21 in 2011 that the Product was first made available to consumers (the "Multistate Class").
22 Excluded from the Multistate Class are persons who reside in the States of Kentucky, Illinois,
23

1 Nevada, Wisconsin and Alabama who purchased the Product for personal or household use at
2 any time since the date in 2011 that the Product was first made available to consumers.²

3 67. In the alternative, Plaintiffs bring this action on behalf of themselves and all
4 California residents who purchased the Product for personal or household use at any time since
5 the date in 2011 that the Product was first made available to consumers (the “California Class.”
6 Together, the California and alternative Multistate Class are referred to herein as the “Class.”
7

8 68. Excluded from the Class are: Defendants, any entities in which Defendants have a
9 controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees
10 and members of such persons’ immediate families, the presiding judge(s) in this case and his, her
11 or their immediate family, and those who purchased the Treatment for resale, their legal counsel
12 and anyone employed thereby. Plaintiffs reserve the right to amend the definition of the Class if
13 discovery or further investigation reveals that the Class should be expanded or otherwise
14 modified.
15

16 69. Plaintiffs and the members of the Class are so numerous and geographically
17 disperse that joinder of all members individually, in one action or otherwise, is impractical.
18 Unilever’s national marketing and advertising campaigns target consumers across the country.
19 The precise number of Class members and their identities are unknown to Plaintiffs at this time
20 but will be determined through discovery. Class members may be notified of the pendency of
21 this action by mail and/or publication.
22

23 70. Upon information and belief, the Defendants sold tens of thousands of Treatment
24 kits to California residents. Plaintiffs and the members of the Class they seek to represent are so
25

26 ² Class actions have been filed in Illinois and in Kentucky on behalf of the residents of the five
27 states excluded from this Action.
28

1 numerous that joinder of all members individually, in one action or otherwise, is impractical. The
2 precise number of Class Members and their identities are unknown to Plaintiffs at this time but
3 will be determined through discovery and other means. Class Members may be notified of the
4 pendency of this action by mail and/or publication.

5
6 71. This action involves questions of law and fact common to Plaintiffs and all
7 members of the Class, which include the following:

- 8 (a) Whether the Treatment contains the defect alleged herein;
9 (b) Whether Defendants failed to appropriately warn Class Members of the
10 damage that could result from use of the Product;
11 (c) Whether Defendants had actual or imputed knowledge of the defect but
12 did not disclose it to Plaintiffs or the Class;
13 (d) Whether Unilever promoted the Product with false and misleading
14 statements of fact and material omissions;
15 (e) Whether the alleged conduct constitutes violation of the laws or
16 regulations asserted herein;
17 (f) Whether Plaintiffs and Class Members sustained damages resulting from
18 Defendants' conduct and, if so, the proper measure of damages or other
19 relief.

20 72. These and other questions of law and/or fact are common to the Class and
21 predominate over any questions affecting only individual Class Members.

22 73. The claims of the named Plaintiffs are typical of the claims of the proposed Class,
23 and Plaintiffs will fairly and adequately protect the interests of the Class and have no interests
24 adverse to, or which directly conflict with, the interests of the other members of the Class.
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1 74. Plaintiffs have engaged the services of counsel who are experienced in complex
2 class litigation, who will adequately prosecute this action, and who will assert and protect the
3 rights of and otherwise represent Plaintiffs and the absent Class Members.

4 75. Plaintiffs' claims are typical of those of the absent Class Members in that
5 Plaintiffs and the Class Members each purchased and used the Treatment and each sustained
6 damages arising from Defendants' wrongful conduct, as alleged more fully herein.

7 76. A class action is superior to other available methods for the fair and efficient
8 adjudication of this controversy. The expense and burden of individual litigation would make it
9 impracticable for proposed Class Members to prosecute their claims individually.

10 77. Plaintiffs submit that there will be fewer difficulties in the fair, efficient and cost-
11 effective management of this action or the common issues therein as a class action, and there will
12 be benefits to and protections of the legitimate interests of the parties, the court and the public
13 with the maintenance of this action as a class action than there would be under any other
14 procedural alternative. Means exist to address any individual issues of injury and damages
15 involved in fair and adequate compensation for the Class, after common issues relating to
16 Defendants' Product, conduct, knowledge, duties and breach thereof have been adjudicated.
17 Claims processes may also be employed to fashion and implement an expeditious remedy for the
18 Class.
19 Class.

20 78. Plaintiffs know of no difficulty that will be encountered in the management of this
21 litigation that would preclude its maintenance as a class action.

22 79. Defendants have acted or failed to act on grounds generally applicable to the
23 Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.
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1 80. Without a class action, Defendants will continue a course of action that will result
2 in further damage to Plaintiffs and the Class and will likely retain the benefits of their
3 wrongdoing.

4 81. Based on the foregoing allegations, Plaintiffs' claims for relief include those set
5 forth below:

6
7 **COUNT I**

8 **Breach of Express Warranty**
9 **Against Unilever Only**

10 82. Plaintiffs hereby incorporate the above allegations by reference as though fully set
11 forth herein.

12 83. Plaintiffs and each member of the Class formed a contract with Unilever at the
13 time Plaintiffs and the other Class Members purchased the Treatment. Unilever is a merchant
14 engaged in the business of selling, among other things, hair treatment products. Unilever, as the
15 designer, manufacturer, distributor and/or seller of the Product at issue herein made certain
16 express warranties through advertising and packaging, as set forth herein. This marketing,
17 packaging and advertising constitute express warranties and became part of the basis of the
18 bargain, and are part of the standardized contract between Plaintiffs and the members of the
19 Class and Unilever.
20

21 84. Unilever purports through its advertising and packaging to create express
22 warranties that the Treatment was a hair "Smoothing" Product and not a chemical relaxer, that
23 the effects of the Treatment would last no more than 30 days, and that it contained No
24 Formaldehyde and was safe.

25 85. All conditions precedent to Unilever's liability under this contract were performed
26 by Plaintiffs and the Class when they purchased the Product and used it as directed.
27
28

1 86. Unilever breached express warranties about the Treatment and its qualities
2 because Unilever's statements about the Product were false and because the Product does not
3 conform to Unilever's affirmations and promises described above. Plaintiffs and the Class relied
4 on Unilever's representations and would not have purchased the Product had they known the true
5 nature of the Treatment and the mis-statements regarding what the Product was and what it
6 contained.
7

8 87. As a result of Unilever's breach of warranty, Plaintiffs and the Class have been
9 damaged in the amount of the purchase price of the Product and any consequential damages
10 resulting from the purchases, including but not limited to the cost to repair their hair loss.
11

12 **COUNT II**

13 **Breach of Implied Warranty** 14 **Against All Defendants**

15 88. Plaintiffs hereby incorporate the above allegations by reference as though fully set
16 forth herein.

17 89. At all times relevant hereto, there was a duty imposed by law which requires that
18 a manufacturer's or seller's product be reasonably fit for the purposes for which such products
19 are used, and that product be acceptable in trade for the product description.

20 90. Notwithstanding the aforementioned duty, at the time of delivery, the Treatment
21 sold to Plaintiffs was not merchantable because it contained a defect that caused hair loss upon
22 proper application and did not otherwise perform as represented and for the particular purpose
23 for which it was intended.

24 91. Defendants were notified that the Treatment was not merchantable or fit for its
25 intended purpose within a reasonable time after the defect manifested to Plaintiffs and the Class.
26

27 92. As a result of the breaches of the implied warranty of merchantability and/or
28 implied warranty of fitness for a particular purpose, Plaintiffs and the Class sustained damages.

COUNT III

**Violation of the Song-Beverly Consumer Warranty Act for Breach of Implied Warranty
Against All Defendants on Behalf of the California Class**

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93. Plaintiffs hereby incorporate the above allegations by reference as though fully set forth herein.

94. Plaintiffs and members of the California Class are “retail buyers” within the meaning of Section 1791(b) of the California Civil Code.

95. The Treatment is a “consumer good” within the meaning of Section 1791(a) of the California Civil Code.

96. Defendants are “manufacturers” within the meaning of Section 1791(j) of the California Civil Code.

97. Defendants specifically marketed the product as a “Smoothing” treatment that would last for no longer than 30 days, contained no Formaldehyde, and was safe for at-home use. Defendants knew or should have known that the California Class would reasonably rely on Defendants’ skill or judgment to select or furnish suitable goods.

98. Plaintiffs and the California Class did in fact purchase the Treatment with the particular purpose of temporarily smoothing their hair with a keratin-based conditioner and Plaintiffs and other members of the California Class did in fact reasonably rely on Defendant’s skill or judgment to furnish suitable goods.

99. Defendants breached the implied warranty of fitness for a particular purpose by distributing a defective and dangerous Product, by failing to provide sufficient warnings for such a Product, and by continuing to fail to do so long after Defendants knew or should have known of the risks associated with the Product.

1 100. Moreover, Defendants breached the implied warranty of merchantability because
2 the Treatment was defective and unsafe and not fit for the ordinary purpose for which it was
3 intended.

4 101. Defendants' failure to warn of the Product's dangers was willful.

5 102. As a proximate result of Defendants' breach of implied warranties, Plaintiffs and
6 members of the California Class sustained damages. Plaintiffs are entitled to damages, civil
7 penalties and other legal and equitable relief including a right of reimbursement, as well as costs,
8 expenses and attorneys' fees.

10 **COUNT IV**

11 **Violation of Cal. Bus. & Prof. Code Section 17200 *et seq.* and**
12 **Similar Consumer Protection Statutes in Other States**
13 **Against Unilever**

14 103. Plaintiffs hereby incorporate the above allegations by reference as though fully set
15 forth herein.

16 104. Plaintiffs and the Class Members are consumers entitled to the protections of
17 California Business and Professions Code §17200 *et seq.* which prohibits the commission of any
18 "unlawful, unfair or fraudulent business act or practice." Similar statutes, identical in their
19 material respects, are in effect in most other jurisdictions within the United States.³

20 105. Unilever's misrepresentations and withholding of the material facts set forth
21 above defrauded the general public through deceit, fraud and/or negligent misrepresentation in
22

23
24 ³ The consumer fraud claims of Plaintiffs and absent class members who reside in California and
25 purchased the Product for personal or household use at any time since the date in 2011 that the
26 Product was first made available to consumers are brought under California Business and
27 Professions Code §17200, *et seq.* The consumer fraud claims of absent class members who
28 reside in any of the states other than California that comprise the Multistate Class are brought
under the consumer protection statutes of their respective states of residence.

1 violation of California Civil Code §§1572, 1709 and 1710, and California Business and
2 Professions Code §17500, *et seq.*, as well as other similar consumer protection statutes and
3 principles of common law. Thus, Defendant's conduct constitutes unlawful practices under the
4 UCL and similar consumer protection statutes in effect throughout the country.

5
6 106. As detailed above, Unilever, through its advertisements and packaging, used
7 unconscionable commercial practices, deception, fraud, false promises and misrepresentations in
8 connection with the marketing of the Treatment.

9 107. Unilever also knowingly concealed, suppressed and consciously omitted material
10 facts from Plaintiffs and other members of the Class knowing that consumers would rely on the
11 advertisements and packaging and Unilever's uniform representations to purchase the Product.

12 108. Because of Unilever's fraudulent concealment and deception, even after the so-
13 called "recall," Plaintiffs did not and could not have become aware of any facts which would
14 have called into question the false public perception of safety which Unilever had created.

15 109. Until the present, Unilever knowingly accepted the benefits of its deception and
16 improper conduct in the form of profits from the increased sale of the Product.

17 110. In addition, and upon information and belief, Unilever has continued to defraud
18 consumers in California and nationwide by soliciting and obtaining signatures from
19 unrepresented consumers on form releases that are oppressive and unconscionable for, among
20 other reasons: (i) the releases fail to advise consumers anywhere on the release form, of the
21 important legal consequences of releasing all claims related to their purchase and/or use of the
22 Treatment; (ii) the releases require consumers to indemnify Unilever under conditions that are
23 unfair and oppressive; (iii) the releases purport to waive claims for third party retailers, for no
24 additional consideration and without explanation; and (iv) the releases purport to release personal
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1 injury claims without providing any additional consideration beyond providing reimbursement of
2 economic losses actually sustained by consumers.

3 111. Upon information and belief, Unilever's representatives provided false and/or
4 incomplete information to unrepresented consumers in order to obtain signed releases, including
5 but not limited to representations that diminish the legal significance and consequences of the
6 releases.
7

8 112. Defendant's labeling, advertising and sale of its Product that contain Thioglycolic
9 Acid and other harsh chemicals constitute unfair business acts and practices under the UCL and
10 similar consumer protection statutes in effect throughout the country because they offend
11 established public policy and are immoral, unethical, oppressive, unscrupulous, and/or
12 substantially injurious to its customers in that Defendant deceptively, misleadingly, unfairly and
13 unlawfully claims that certain of its products are free of Formaldehyde and other harsh
14 chemicals, and are safe when, in fact, they are not safe and not free of Formaldehyde and other
15 harsh chemicals.
16

17 113. That conduct has caused substantial injury to Plaintiffs and the Class including
18 that they expended money for a Product that did not contain the benefits that were claimed, and
19 additional losses in repairing and attempting to restore the damage caused by the Product. The
20 injuries suffered by Plaintiffs and the Class are not outweighed by any countervailing benefits to
21 Defendant or competition in general and could not have been reasonably avoided by Plaintiffs
22 and the Class.
23

24 114. All of the conduct alleged herein occurred in the course of Defendant's business.
25 Defendant's wrongful conduct was part of a pattern or generalized course of conduct.

26 115. Plaintiffs and members of the Class suffered injury in fact and lost money and
27 were otherwise damaged as a result of the practices complained of herein in that they would not
28

1 have purchased the Product at issue and/or paid as much for the Product had they known that it
2 was not safe and was misrepresented as set forth herein. Meanwhile, Defendant sold more of the
3 Product than they otherwise would have and enriched themselves thereby.

4 116. As a result of their unlawful, unfair and fraudulent conduct described above,
5 Defendant has been and will be unjustly enriched by the receipt of millions of dollars in ill-
6 gotten gains. In addition, the unlawful, unfair and fraudulent business practices set forth above
7 present a continuing threat to members of the public in that Defendant continues to engage in the
8 conduct described above. Defendant should be enjoined from continuing to claim the Product is
9 safe and enjoined from continuing to permit the sale of the Product based on the same
10 misrepresentations set forth herein. In addition, the misleading, unconscionable and unfair
11 releases fraudulently procured by Defendant from unrepresented Class members should be set
12 aside.
13

14
15 **COUNT V**

16 **Deceptive Advertising Practices in Violation of Cal. Bus. & Prof. Code Section 17500 et seq.
17 Against Unilever on Behalf of the California Class**

18 117. Plaintiffs hereby incorporate the above allegations by reference as though fully set
19 forth herein.

20 118. California Business and Professions Code §17500 prohibits “unfair, deceptive,
21 untrue or misleading advertising.”

22 119. Defendant violated California Business and Professions Code §17500 by, *inter*
23 *alia*, misleadingly advertising that certain of its products were Formaldehyde free and were safe,
24 and by concealing material information about the true nature of its Product and the safety risks
25 attendant with its use.

26
27 120. Defendant’s deceptive practices were specifically designed to induce Plaintiffs
28 and Class members to purchase the Treatment over those of its competitors. Defendant’s

1 deceptive practices were carried out on Defendant's website, through broad-based media and on
2 tis packaging and advertising.

3 121. The content of the advertisements and packaging, as set forth herein, were of a
4 nature likely to deceive a reasonable consumer.

5 122. Defendant knew or in the exercise of reasonable care should have known that the
6 representations were untrue or misleading and likely to deceive reasonable consumers.

7 123. Defendant's misrepresentations and omissions alleged herein, which continue to
8 the present, and continue despite the so-called Product recall, are objectively material to the
9 reasonable consumer, and reliance upon such misrepresentations and omissions may therefore be
10 presumed as a matter of law. The unlawful, unfair and fraudulent business practices set forth
11 above present a continuing threat to members of the public in that Defendant continues to engage
12 in the conduct described above.

13 124. Unless restrained by this Court, Defendant will continue to engage in misleading
14 marketing and will continue to permit the Product to remain on the market without disclosing the
15 significant safety attendant to its use.

16 125. As a result of the foregoing, Plaintiffs and members of the Class have been
17 injured and lost money or property, and they are entitled to restitution and injunctive relief.

18
19
20 **COUNT VI**

21 **Violation of Consumer Legal Remedies Act, Cal. Civ. Code Section 1750, *et seq.***
22 **Against Unilever on Behalf of the California Class**

23 126. Plaintiffs incorporate the above allegations by reference as though fully set forth
24 herein.

25 127. The California Consumer Legal Remedies Act, Section 1750 of the California
26 Civil Code, protects consumers against fraud, unlawful practices, and unconscionable
27 commercial practices in connection with the sale of any merchandise.
28

1 128. Plaintiffs are “consumers” within the meaning of Civil Code Sections 1761(d) and
2 1770 because they sought or acquired Defendant’s goods for personal, family or household
3 purposes.

4 129. The Treatment is a “good” within the meaning of Section 1761(a) of the
5 California Civil Code.

6 130. Unilever manufactured (with LEK or as overseer of LEK), distributed and falsely
7 marketed the Treatment as a product that is safe to use when in fact it contains a corrosive
8 depilatory agent that in fact causes hair to “melt” and break and fall out and is therefore
9 unreasonably dangerous and unfit for ordinary uses. Such conduct violates the California
10 Consumer Legal Remedies Act.

11 131. Defendant violated and continues to violate the CLRA by engaging in the
12 following practices proscribed by Section 1770(a), subsections (5), (7), (9) and (16) of the
13 California Civil Code in transactions with Plaintiffs and the California Class, which were
14 intended to result in, and did result in, the sale of the Treatment, in that Defendant: represented
15 that the Treatment had characteristics, uses and benefits which it did not have; represented that
16 the Treatment was of a particular standard, quality, and grade when it was of another; advertised
17 the Treatment with the intent not to sell it as advertised, and represented that the Treatment had
18 been supplied in accordance with previous representations when it had not.

19 132. Plaintiffs and the California Class reasonably relied upon and were deceived by
20 Defendant’s representations that the Treatment was safe and defect-free and fit for ordinary use.
21 The misrepresentations made by Defendant and the omissions regarding the safety risks of the
22 Product were material in that no reasonably consumer would have purchased the Treatment had
23 they been aware of the true facts.
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1 133. Defendant also violated Section 1770(a) subsections (14) and (19) by misleading
2 unrepresented consumers into signing what Unilever purported to be a full and final release of all
3 claims, including personal injury claims, related to their purchase and use of the Treatment, for
4 no consideration beyond repayment of nominal expenses the customer had incurred, and by
5 inserting unconscionable provisions in the purported releases mentioned above, such as requiring
6 unrepresented consumers to agree to indemnify Unilever from any claims for payment of
7 medical expenses by Medicare/Medicaid certain claims.
8

9 134. As a proximate and direct result of Defendant's misrepresentations and unlawful
10 and unconscionable commercial practices, Plaintiffs and members of the California Class have
11 been injured and suffered damages.
12

13 135. Pursuant to Section 1782(d) of the California Civil Code, Plaintiffs, on behalf of
14 themselves and the California Class, seek a Court order enjoining Defendant from such future
15 conduct and any other such orders that may be necessary to rectify the fraudulent, unlawful and
16 unconscionable commercial practices of Defendant, including requiring Defendant to fully and
17 appropriately recall the Product.
18

19 136. Plaintiff Reny, on behalf of herself and the California Class, including Plaintiff
20 Wells, has complied with California Civil Code Section 1782(a) by serving a preliminary notice
21 before filing a complaint for damages under the Consumers Legal Remedies Act, Cal. Civil Code
22 Section 1750, *et seq.* Thirty days have elapsed since Plaintiffs issued such a demand and
23 Defendant has failed to make an appropriate correction, repair, replacement or other remedy.
24

25 137. Pursuant to the provisions of Cal. Civ. Code Section 1780, Plaintiffs on behalf of
26 themselves and the California Class members seek injunctive relief, restitution, compensatory
27 and punitive damages pursuant to Cal. Civil Code Sections 1780, 1782(b) as requested herein,
28 and any other relief this Court deems appropriate.

COUNT VII

**Violation of Magnuson-Moss Act (15 U.S.C. Section 2301 *et seq.*)
Against Unilever Only**

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5 138. Plaintiffs incorporate the above allegations by reference as though fully set forth
herein.

6 139. Plaintiffs and the Class are consumers as defined in 15 U.S.C. §2301(3).

7 140. Unilever is a supplier and warrantor as defined in 15 U.S.C. §2301(4)(5).

8 141. The Treatment is a consumer product as defined in 15 U.S.C. §2301(6).

9 142. By reason of Unilever's breach of warranties as set forth above, Unilever has
10 violated the statutory rights due to the Plaintiffs and the Class pursuant to the Magnuson-Moss
11 Warranty Act, 15 U.S.C. §2301, *et seq.*, thereby damaging Plaintiffs and the Class.

12
13 143. Unilever expressly warranted to Plaintiffs and Class members that the Product
14 was of merchantable quality and fit for the ordinary purpose for which smoothing kits are used.

15 144. Unilever purports through its advertising and packaging to create express
16 warranties that the Treatment is a hair "Smoothing" product and not a chemical relaxer, that the
17 effects of the Product would last no more than 30 days, and that it contained no Formaldehyde
18 and was safe.

19
20 145. Unilever breached its express warranties because its statements about the Product
21 were false and the Product does not conform to Unilever's affirmations and promises described
22 above. Plaintiffs and Class members would not have purchased the Product had they know the
23 true nature of the Treatment and the mis-statements regarding what the Product was and what it
24 contained.

25 146. Unilever refuses to recognize or honor its warranties. Unilever breached its
26 express warranties as the defective Product was not of merchantable quality and failed to
27 perform in the express purpose for which it was used.
28

1 147. The amount in controversy for each Plaintiff and Class member's individual claim
2 meets or exceeds \$25.00 including the cost of the Product and consequential damages. In
3 addition, the amount in controversy exceeds \$75,000 (exclusive of interest and costs) computed
4 on the basis of all claims to be determined in this suit.

5 148. As a result of Unilever's breach of warranty, Plaintiffs and Class members have
6 sustained damages and losses in an amount to be determined at trial. Plaintiffs and the Class are
7 entitled to damages, costs, attorney's fees, rescission and other relief as appropriate.
8

9 **COUNT VIII**

10 **Negligence and/or Gross Negligence**
11 **Against All Defendants**

12 149. Plaintiffs incorporate the above allegations by reference as though fully set forth
13 herein.

14 150. Defendants owed Plaintiffs a duty to use due care in their development, testing,
15 planning, design, marketing, sale and recall of the subject hair care Product offered for use by
16 consumers.

17 151. Through their failure to exercise due care, Defendants breached this duty by
18 producing, processing, manufacturing, distributing and/or offering for sale a Product in a
19 defective condition that was unsafe for unsupervised use at home by consumers.
20

21 152. Additionally, Defendants breached their duty of care to Plaintiffs by failing to use
22 sufficient quality control, perform adequate research or testing, proper manufacturing,
23 production or processing, and failing to take sufficient measures to prevent the Product from
24 being offered for sale in an unsafe and hazardous form.

25 153. Defendants further breached their duty of due care by failing to properly and
26 adequately inform consumers once safety concerns, including hair loss and chemical burns, were
27 brought to the Defendants' attention, by making affirmative representations about the Product
28

1 without reasonable grounds for believing the representations were complete and accurate, by
2 omitting material information from consumers, and Defendants further breached their duty of
3 care by failing to fully and appropriately recall the Product.

4 154. Defendants knew, or in the exercise of reasonable care should have known, that
5 the Product presented an unacceptable risk to consumers, and would result in damages that were
6 foreseeable and reasonably avoidable.

7
8 155. As a direct and proximate result of Defendants' above-referenced negligence
9 and/or gross negligence, Plaintiffs and the Class have suffered and are entitled to recover
10 damages, both compensatory and punitive.

11 **COUNT IX**

12 **Strict Liability**
13 **Against All Defendants**

14 156. Plaintiffs incorporate the above allegations by reference as though fully set forth
15 herein.

16 157. Defendants are producers, manufacturers, marketers and/or distributors of the
17 Product.

18 158. Defendants produced, manufactured, designed, marketed and/or distributed the
19 Product that was defective in design or formulation in that, when the Product left the hands of
20 Defendants, the foreseeable risks of harm exceeded the benefits associated with the design or
21 formulation.

22
23 159. Defendants' Product was expected to, and did, reach Plaintiffs without substantial
24 change in condition.

25 160. Alternatively, the Product manufactured, designed, marketed and/or supplied by
26 Defendants was defective in design or formulation in that, when it left the hands of Defendants,
27

1 it was unreasonably dangerous, more dangerous than an ordinary consumer would expect
2 without concomitant accurate information and warnings accompanying the Product.

3 161. Defendants researched, produced, manufactured, designed, marketed and/or
4 distributed the Product that was defective due to inadequate warning, testing, study and/or
5 reporting regarding the results of such efforts.

6 162. Defendants produced, manufactured, designed, marketed and/or distributed the
7 Product that was defective due to inadequate post-market warning or instruction because, after
8 Defendants knew or should have known of the risk of injury from the recalled Product,
9 Defendants failed to immediately provide adequate warnings to Plaintiffs and the California
10 public.

11 163. As the direct and legal result of the defective condition of the Product as
12 produced, manufactured, designed, marketed and/or distributed by Defendants, and of the
13 negligence, carelessness, other wrongdoing and actions of Defendants described herein,
14 Plaintiffs and the Class suffered damages.

15
16
17 **COUNT X**

18 **Unjust Enrichment**
19 **Against All Defendants**

20 164. Plaintiffs incorporate the above allegations by reference as though fully set forth
21 herein.

22 165. Plaintiffs and Class Members conferred a benefit on Defendants by purchasing
23 the Treatment.

24 166. Defendants have been unjustly enriched in retaining the revenues derived from
25 Class Members' purchases of the Treatment, which retention of such revenues under these
26 circumstances is unjust and inequitable because Defendants manufactured a defective Product,
27 and Unilever misrepresented the nature of the Product, misrepresented its ingredients, and
28

1 knowingly marketed and promoted a dangerous and defective Product, which caused injuries to
2 Plaintiffs and the Class because they would not have purchased the Treatment based on the same
3 representations if the true facts concerning the Product had been known.

4 167. Because Defendants' retention of the non-gratuitous benefit conferred on it by
5 Plaintiffs and the Class Members is unjust and inequitable, Defendants must pay restitution to
6 Plaintiffs and the Class Members for their unjust enrichment, as ordered by the Court.

7
8 WHEREFORE, Plaintiffs, individually and on behalf of the Class of persons described
9 herein, themselves and all others similarly situated, respectfully request the following relief:

- 10 A. An Order certifying the Class as defined above;
- 11 B. An award of restitution and other appropriate equitable relief;
- 12 C. An injunction against Unilever to enjoin it from conducting its business
13 through the unlawful, unfair and fraudulent acts or practices set forth herein;
- 14 D. An Order setting aside the fraudulent releases obtained by Unilever;
- 15 E. An Order requiring Unilever to fully and appropriately recall the Product,
16 to remove the claims on its website and elsewhere that the Product is safe to use, and to fully and
17 properly disclose the safety risks associated with the Product to anyone who may still be at risk
18 of buying and using the Product;
- 19 F. A jury trial and damages according to proof;
- 20 G. Reasonable attorney's fees and costs;
- 21 H. Civil penalties, prejudgment interest and punitive damages as permitted by
22 law; and
- 23 I. Such other and further relief as the Court deems appropriate.
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1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs, on behalf of
3 themselves and on behalf of the Class, demand a trial by jury of all claims asserted in this
4 Complaint so triable.

5 DATED: October 11, 2013

THE MEHDI FIRM, PC

7 /s/ Azra Z. Mehdi

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