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

10 EVANGELINA AIROSO, SANDRA
11 BOWERS, and ALAINA GARCIA,
12 individually and on behalf of all others
similarly situated,

13 Plaintiffs,

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15 v.

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17 DEVA CONCEPTS, LLC, d/b/a
18 DevaCurl,

19 Defendant.
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CASE NO.

CLASS ACTION COMPLAINT FOR:

1. **MAGNUSON-MOSS WARRANTY ACT**
2. **BREACH OF EXPRESS WARRANTY**
3. **BREACH OF IMPLIED WARRANTY**
4. **UNJUST ENRICHMENT**
5. **NEGLIGENT FAILURE TO WARN**
6. **NEGLIGENT FAILURE TO TEST**
7. **VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT, Cal. Bus. & Prof. Code § 1750, et seq.**
8. **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW, Cal. Bus. & Prof. Code § 17200, et seq.**
9. **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW, Cal. Bus. & Prof. Code § 17500, et seq.**

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs Evangelina Airoso, Sandra Bowers, and Alaina Garcia (“Plaintiffs”)
3 bring this Class Action Complaint against Defendant Deva Concepts, LLC, d/b/a
4 DevaCurl (“Defendant”), individually and on behalf of all others similarly situated,
5 and complain and allege upon personal knowledge as to themselves and their own acts
6 and experiences and, as to all other matters, upon information and belief, including
7 investigation conducted by their attorneys:

8 **NATURE OF THE ACTION**

9 1. This is a civil class action brought by Plaintiffs on behalf of consumers
10 who purchased Defendant’s “DevaCurl No-Poo Original” non-lathering conditioning
11 cleanser (the “No-Poo Product”), DevaCurl One Condition® Original hair-
12 conditioner, DevaCurl Light Defining Gel, DevaCurl Low-Poo Original cleanser,
13 DevaCurl Low-Poo Delight cleanser, DevaCurl No-Poo Decadence cleanser,
14 DevaCurl One Condition® Delight hair-conditioner, DevaCurl One Condition®
15 Decadence hair-conditioner, Melt into Moisture Mask, Styling Cream, DevaCurl
16 Leave-In Decadence conditioner, Super Stretch Coconut Curl Elongator, Wavemaker,
17 and DevaCurl Ultra Defining Gel (collectively “the Products”), which are used for
18 personal cosmetic purposes. Plaintiffs seek damages and equitable remedies for
19 themselves, and for the Class and California Subclass (defined *infra* ¶¶ 86-87).

20 2. Defendant formulates, manufactures, advertises, and sells the Products to
21 consumers throughout the United States, including in the State of California.

22 3. In 2002, Defendant created and developed the formula for the DevaCurl
23 No-Poo Original, which is marketed as containing no sulfate, and is also marketed as
24 an “innovative new haircare category” and a “game-changing alternative to traditional
25 shampoo.”¹

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27 _____
28 ¹ <https://www.devacurl.com/us/curl-101/our-story>

1 4. Defendant further markets the No-Poo Product as a “first-of-its-kind, no-
2 suds conditioning cleanser” that is “free of sulfates, parabens, and silicones” and that
3 is used “to gently cleanse curls without stripping the natural oils they need to look
4 healthy, bouncy and simply gorgeous.”²

5 5. One of the founders of DevaCurl was quoted as saying that the No-Poo
6 Product “allows your scalp to regulate, and your hair to become more what nature
7 intended.”³

8 6. Consumers purchase Defendant’s No-Poo Product because it does not
9 contain sulfate, and because of Defendant’s marketing, which claims that the No-Poo
10 Product “allows your scalp to regulate, and your hair to become more of what nature
11 intended.”⁴

12 7. Consumers seek out the No-Poo Product because it provides maximum
13 frizz prevention and slows color fading.⁵

14 8. Defendant and publications have suggested that those with curly hair
15 should not use shampoo because it dries out peoples’ curls when their hair is being
16 washed.⁶

17 9. The No-Poo Product was touted as the answer to this age-old issue and
18 does not contain lather, or any of the sulfates found in shampoos that dry out curls.⁷

19 10. DevaCurl’s No-Poo Product has been deemed (by Defendant) the
20 shampoo that still moisturizes and is made with a peppermint scent.⁸

21 11. Many have used the No-Poo Product as a complete shampoo replacement
22 once or twice a week to cleanse hair rather than using traditional shampoo.⁹

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² *Id.*

24 ³ <https://www.nytimes.com/2010/09/30/fashion/30Skin.html> (last visited Jan. 13, 2020).

25 ⁴ *Id.*

26 ⁵ https://www.amazon.com/gp/product/B0030LF1KA?pf_rd_p=ab873d20-a0ca-439b-ac45-cd78f07a84d8&pf_rd_r=7JK77ENMJZXVFMJHKQWJ, (last visited Jan. 13, 2020).

27 ⁶ <http://nymag.com/strategist/article/best-curly-hair-products-review-devachan-no-poo-conditioner.html>. (last visited Jan.13, 2020).

28 ⁷ *Id.*

⁸ *Id.*

1 12. Therefore, consumers seeking a complete alternative to traditional
2 shampoo end up purchasing the No-Poo Product. Consumers pay a premium over the
3 cost of traditional retail and salon shampoos for the No-Poo Product, based upon the
4 representations above.

5 13. However, despite the “DevaCurl phenomenon” that has caused many
6 curly haired consumers across the United States to purchase and use the Products, use
7 of the Products cause scalp irritation, excessive shedding, hair loss, thinning,
8 breakage, and/or balding during normal use by consumers.

9 14. Indeed, thousands of consumers have reported their hair falling out
10 shortly after or during actual use of the Products.

11 15. Defendant provides no warning about these consequences, and in fact
12 makes numerous assertions about the gentle and beneficial nature of the Products. For
13 example, Defendant’s website makes statements relating to its No-Poo Product such
14 as “[t]raditional shampoo can be too harsh for curls. That’s why we made No-Poo
15 Original! The non-lathering formula with peppermint and grapeseed oil gently
16 cleanses without stripping the natural oils your curls need.”¹⁰ With regard to its One
17 Condition® Original product, Defendant’s website states “When it comes to curls, it’s
18 all about condition, condition, condition. So apply, rinse and repeat as often as
19 needed!”¹¹ These statements and others were and are false, deceptive, and misleading
20 and have harmed Plaintiffs and the Class.

21 16. Disturbingly, Defendant appears to be aware of the issues with its
22 Products but conceals and fails to disclose that the Products cause hair loss and
23 shedding, by intentionally blaming other risk factors such as giving birth, stress, scalp
24 buildup, dandruff, losing weight, certain illnesses, and more.¹²

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26 ⁹ <https://www.glamour.com/gallery/best-curly-hair-products> (last visited Jan. 13, 2020).

27 ¹⁰ <https://www.devacurl.com/us/products/cleansers/no-poo-original/v/29767841742930>

28 ¹¹ <https://www.devacurl.com/us/products/conditioners/one-condition-original/v/29778541346898>

¹² <https://www.devacurl.com/blog/hair-shedding-101/>

1 17. Defendant conceals and fails to disclose the defective nature of its
2 Products by actively misleading consumers into believing that the hair loss and
3 shedding caused by the Products is “normal” and “common,” that even excessive
4 shedding of over 100 strands of hair per day is “common,” and that shedding is not
5 preventable.¹³

6 18. Defendant unambiguously has knowledge of the hair loss and scalp
7 irritation caused by the Products. For example, Defendant has received multiple FDA
8 complaints of hair loss and scalp irritation beginning in February 2018. There have
9 been hundreds of complaints posted on social media sites like Facebook. Social media
10 influencers have spread the word about the hair loss and scalp irritation caused by
11 Defendant’s Products. Major media outlets including the ABC television affiliate in
12 New York City have broken the story.¹⁴ Defendant has explicitly acknowledged the
13 reports of hair loss and scalp irritation associated with its products, going so far as to
14 post an explanatory statement on its website, prominently featured with a link entitled
15 “a message for our devas” in the top right corner of the website’s homepage.¹⁵

16 19. Despite notice and knowledge of the problems caused by the Products,
17 Defendant has not recalled the Products, has not provided any warnings of the known
18 risks, has denied that the Products cause the reported health issues, and has not offered
19 its customers any compensation for their damages.

20 20. Had Plaintiffs and other Class Members known that Defendant’s
21 Products would cause hair loss, scalp irritation and other problems, they would not
22 have purchased the Products.

23 21. Plaintiffs and each of the Class Members have been damaged and
24 suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and
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26 ¹³ *Id.*

27 ¹⁴ <https://abc7ny.com/health/customers-say-curly-styling-products-made-their-hair-fall-out/5906690/>

28 ¹⁵ <https://www.devacurl.com/us/deva-community-statement>

1 misleading practices as set forth herein by Defendant and seek compensatory damages
2 and injunctive relief.

3 22. Given the massive quantities of the Products sold all over the country,
4 this class action is the proper vehicle for addressing Defendant's misconduct and for
5 attaining needed relief for those affected.

6 **JURISDICTION AND VENUE**

7 23. This Court has subject matter jurisdiction over this action pursuant to 28
8 U.S.C. §§ 1332 & 1367 because this is a class action in which the matter or
9 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and in
10 which some members of the proposed Classes are citizens of a state different from
11 Defendant.

12 24. This Court has personal jurisdiction over Defendant because it transacts
13 business in the United States, including in this District, has substantial aggregate
14 contacts with the United States, including in this District, engaged in conduct that has
15 and had a direct, substantial, reasonably foreseeable, and intended effect of causing
16 injury to persons throughout the United States, and purposely availed itself of the laws
17 of the United States.

18 25. In accordance with 28 U.S.C. § 1391, venue is proper in this District
19 because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in
20 this District, Defendant transacts business in this District, and at least one Plaintiff
21 resides in this District.

22 **PARTIES**

23 26. Plaintiff Evangelina Airoso is a resident of Fresno, California who has
24 purchased and used DevaCurl Products within the relevant time period. Plaintiff
25 Airoso experienced scalp irritation and hair loss after using DevaCurl Products.

26 27. Plaintiff Sandra Bowers is a resident of Ridgecrest, California who has
27 purchased and used DevaCurl Products within the relevant time period. Plaintiff
28 Bowers experienced scalp irritation and hair loss after using DevaCurl Products.

1 28. Plaintiff Alaina Garcia is a resident of San Pedro, California who has
2 purchased and used DevaCurl Products within the relevant time period. Plaintiff
3 Airoso experienced scalp irritation and hair loss after using DevaCurl Products.

4 29. Defendant Deva Concepts, LLC is incorporated in Delaware with its
5 principal place of business at 560 Broadway, Suite 206, New York, NY 10012.

6 **FACTUAL ALLEGATIONS**

7 30. At all relevant times, Defendant has marketed the No-Poo Product
8 through national marketing and advertising campaigns as being “free of harsh
9 ingredients,” a complete replacement for traditional shampoo that creates healthy
10 curly hair without color fading, and as a “game-changing alternative to traditional
11 shampoo.”¹⁶

12 31. On Defendant’s website, it gives a three-step process for using the No-
13 Poo Product and the DevaCurl One Condition® Original conditioner. Step one is
14 “Wet curls and apply a generous amount to your scalp, scrubbing it in. Remember it
15 won’t lather, but it’s still working!”¹⁷

16 32. For step two it states, “Rinse thoroughly by scrubbing your scalp and
17 letting the water move No-Poo Original through your ends.”¹⁸

18 33. Step three states, “Follow with One Condition® Original for additional
19 moisture.”¹⁹

20 34. However, despite using Defendant’s three step process, the No-Poo
21 Product causes users to sustain scalp irritation, hair loss, and/or balding during normal
22 use. Users have hair fall out in varying degrees during and immediately after use. The
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25 ¹⁶ <https://www.devacurl.com/us/curl-101/product-philosophy>

26 ¹⁷ <https://www.devacurl.com/us/products/cleansers/no-poo-original/v/29767841742930> (last visited
27 Jan. 22, 2019).

28 ¹⁸ *Id.*

¹⁹ *Id.*

1 hair loss, scalp irritation and balding suffered by Plaintiffs and Class Members is
2 embarrassing and can be extreme in certain instances.

3 35. The hair loss suffered by Plaintiffs and Class Members is not limited to
4 the No-Poo Product. Indeed, many consumers, including Plaintiffs, have experienced
5 hair loss, “shedding” and/or “thinning” after using Defendant’s Products. Some users
6 have had hair fall out in “clumps” and have suffered extreme distress as a result.

7 36. Consumers of the Products pay a premium for them far and above what
8 normal hair care products cost. For example, Defendant’s No-Poo Product sells for
9 forty-six dollars (\$46.00) as compared to similar retail products sold at Target for as
10 little as three dollars and ninety-nine cents (\$3.99)²⁰—a difference of more than forty-
11 two dollars (\$42.00).

12 37. Consumers pay a premium for Defendant’s Products because of the
13 benefits Defendant claims they provide above and beyond normal hair care products.
14 For example, in respect to Defendant’s No-Poo Product, Defendant claims that the
15 No-Poo Product is “Sulfate Free,” that it is used to “gently cleanse,” that it is not
16 “harsh” or made with “harsh ingredients,” that it gives “your curls what they need and
17 nothing they don't,” and that it comes with benefits such as the ability to keep hair
18 from drying out and maintain composure.

19 38. However, neither the product packaging nor any other advertising from
20 Defendant warns users that the Products cause scalp irritation, excessive shedding,
21 hair loss, thinning, breakage, and/or balding, or any related injury during normal use.
22 For example, nowhere on the labeling of the No-Poo Product does it mention scalp
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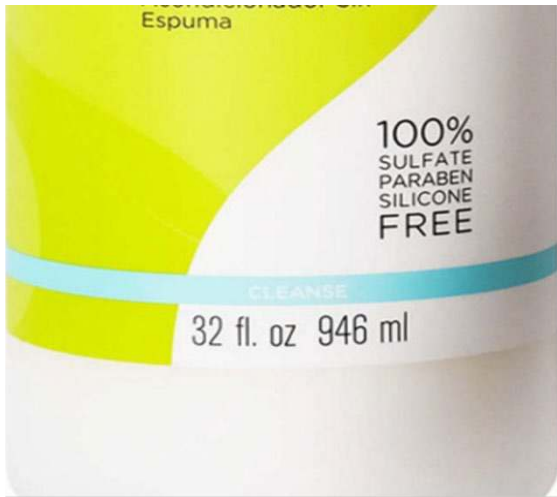
25 ²⁰ Compare https://www.sephora.com/product/no-poo-P378324?skuId=1784578&om_mmc=ppc-G
26 [G_1918213323_70847768576_pla419288853760_1784578_353573794076_9021734_c&country_](https://www.sephora.com/product/no-poo-P378324?skuId=1784578&om_mmc=ppc-G)
27 [switch=us&lang=en&gclsrc=aw.ds&ds_rl=1261471&gclid=EAIaIQobChMIItJr6jNG_5wIVRtbACh](https://www.sephora.com/product/no-poo-P378324?skuId=1784578&om_mmc=ppc-G)
28 [3WQw2KEAYYBCABEgLOjvD_BwE](https://www.sephora.com/product/no-poo-P378324?skuId=1784578&om_mmc=ppc-G) with [https://www.target.com/p/suave-professionals-2-in-1-](https://www.target.com/p/suave-professionals-2-in-1-shampoo-and-conditioner-32-fl-oz/-/A-75560945)
[shampoo-and-conditioner-32-fl-oz/-/A-75560945](https://www.target.com/p/suave-professionals-2-in-1-shampoo-and-conditioner-32-fl-oz/-/A-75560945).

1 irritation, excessive shedding, hair loss, thinning, breakage, and/or balding, or any
2 related injury during normal use:
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27 ²¹ https://www.amazon.com/gp/product/B0030LF1KA?pf_rd_p=ab873d20-a0ca-439b-ac45-cd78f07a84d8&pf_rd_r=7JK77ENMJZXVFMJHKQWJ (last visited Jan. 13, 2020).
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²² <https://www.ulta.com/no-poo-original-zero-lather-conditioningcleanser?productId=xlsImpprod3960027> (last visited Jan. 13, 2020).

²³ *Id.*

²⁴ https://www.amazon.com/gp/product/B0030LF1KA?pf_rd_p=ab873d20-a0ca-439b-ac45-cd78f07a84d8&pf_rd_r=7JK77ENMJZXVFMJHKQWJ (last visited Jan. 13, 2020).

²⁵ *Id.*

1 39. Similarly, nowhere on any of the packaging of the other of the Products
2 does it state that scalp irritation, excessive shedding, hair loss, thinning, breakage,
3 and/or balding, or any related hair injury occurs from normal use of the Products.²⁶

4 40. With regard to its One Condition® Original product, at all relevant times,
5 Defendant has marketed this product through national marketing and advertising
6 campaigns as a premium product that is “free of harsh ingredients” and made with
7 “nourishing, hydrating ingredients.”

8 41. Defendant’s website states “When it comes to curls, it’s all about
9 condition, condition, condition. So apply, rinse and repeat as often as needed!”²⁷

10 42. Incredibly, on Defendant’s website, Defendant claims that shedding of
11 hair is “normal”: If you have curly hair, chances are you’ve dealt with hair shedding.
12 **For most of us, it can be concerning when hair falls out on a daily basis, but it’s**
13 **totally normal.** But, what causes hair shedding? How much hair loss is too much?
14 And, how can you prevent it? Today we’re here to give you the lowdown on
15 everything you need to know about hair shedding.²⁸

16 43. Defendant further explains hair loss is more prominent in curly-haired
17 women because “Sadly, shedding is more common with curly-haired gals because we
18 don’t wash or brush our hair as often as our straight hair counter parts.”²⁹

19 44. Defendant further attributes shedding to “giving birth, stress, scalp
20 buildup, dandruff, losing weight, certain illnesses, and more.”³⁰

21 45. Defendant states that “If you’re losing more than 100 strands of hair per
22 day, you’re dealing with excessive shedding, which is also fairly common.”³¹

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25 ²⁶ See Appendix A attached hereto.

26 ²⁷ <https://www.devacurl.com/us/products/conditioners/one-condition-original/v/29778541346898>

27 ²⁸ <https://www.devacurl.com/blog/hair-shedding-101/> (last visited Jan. 22, 2019).

28 ²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

1 46. Further, Defendant claims that shedding is not preventable. On its
2 website it states:

3 **Can I prevent shedding?**

4 In short, not entirely. While you can lessen the amount of hairs that shed,
5 you'll never be able to completely stop shedding. See your hairstylist or
6 dermatologist if you're really concerned.³²

7 47. Defendant further includes a list of recommendations to lessen shedding.
8 None of the recommendations to reduce shedding include ceasing the use of the No-
9 Poo Product or any of the Products:

10 **How can I lessen the shedding?**

- 11 1. Find the right [cleanser and conditioner](#) for your curl type. This ensures
12 that your curls won't dry out or be damaged which can lead to
13 shedding.
- 14 2. Remove build up. Product build up and dandruff can block your roots
15 and lead to shedding, so be sure to [clarify](#) and [exfoliate](#).
- 16 3. Make sure to detangle your hair every time you finish washing your
17 hair. Using a pre-poo (like [Wash Day Wonder](#)) before cleansing and
18 finger detangling afterwards can make a world of difference.³³

19 48. Above all, far from being the panacea promised by Defendant, the
20 Products cause scalp irritation, excessive shedding, hair loss, thinning, breakage,
21 and/or balding. The hair loss is not *de minimis*—consumers, who suffer hair loss often
22 lose significant amounts of hair—and the hair loss persists as long as the user uses the
23 Products.

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27 ³² *Id.*

28 ³³ *Id.*

1 49. Many consumers who suffered scalp irritation, excessive shedding, hair
2 loss, thinning, breakage, and/or balding from the Products saw their symptoms stop by
3 discontinuing their use of the Products.

4 50. Every consumer who purchased the Products without the true facts about
5 the Products and disclosure of the inherent health risks prior to purchase was injured
6 at the point of sale when, instead of obtaining safe, natural, proven, guaranteed to
7 promote hair growth, strengthening, and conditioning cleanser, consumers obtained
8 Defendant's unreasonably dangerous and defective Products. Consumers have been
9 further injured by way of requiring expensive professional hair treatment and medical
10 treatment as a result of injuries caused by the Products.

11 51. By marketing, selling and distributing the Products from New York to
12 purchasers throughout the United States, Defendant made actionable statements that
13 the Products were free of defects and safe and fit for their ordinary intended use and
14 purpose.

15 52. By marketing, advertising, selling and distributing the Products from
16 New York to purchasers throughout the United States, Defendant made actionable
17 statements that the ordinary use of the Products would not involve undisclosed safety
18 risks. Further, Defendant concealed what they knew or should have known about the
19 safety risks resulting from the material defects in the Products.

20 53. Defendant engaged in the above-described actionable statements,
21 omissions and concealments with knowledge that the representations were false
22 and/or misleading and likely to mislead reasonable consumers. Alternatively,
23 Defendant was reckless in not knowing that these representations were false and
24 misleading at the time they were made. Defendant had and has exclusive access to
25 data pertaining to the Products' defect that Plaintiffs and members of the proposed
26 Classes could not and did not have.

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1 54. Therefore, Plaintiffs, on behalf of themselves, the Nationwide Class, and
2 the California Subclass, hereby bring this action for violations of various state and
3 federal laws.

4 **I. Defendant’s Misrepresentations and Omissions are Material to**
5 **Consumers**

6 55. Consumers seek out Defendant’s Products specifically for the benefits
7 that Defendant claims they provide—namely, to promote healthier hair than other
8 traditional cleansers and conditioners. Consumers purchase the Products due to
9 Defendant’s claim they will not dry out hair and maintain maximum color.

10 56. Consumers also pay a premium for the Products over comparable hair
11 products on the market.

12 57. Defendant misleads consumers into thinking they purchased a premium
13 product with greater health benefits and even say that excessive shedding is common,
14 normal and non-preventable; however, users have revealed that in fact the Products
15 cause hair loss, scalp irritation, thinning, breakage, balding during normal use.
16 Further, consumers have also shown that changing from using the Products eliminates
17 shedding.

18 58. Risk of hair loss, scalp irritation, thinning, breakage, or balding are
19 material risks to consumers.

20 59. Failing to include hair loss, scalp irritation, thinning, breakage, balding,
21 on the labeling, product packaging, and by misleading customers by stating that
22 shedding is “normal,” “common,” and “non-preventable” are material
23 misrepresentations for consumers of the Products at issue here.

24 60. Defendant further misleads consumers into thinking they can and should
25 use unlimited amounts of the Products, through statements such as ““When it comes
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1 to curls, it's all about condition, condition, condition. So apply, rinse and repeat as
2 often as needed!"³⁴

3 **II. Plaintiffs' Experiences**

4 61. Plaintiff Evangelina Airoso purchased a DevaCurl Share the Curly Love
5 kit from Ulta Beauty in December of 2019. The kit included No-Poo Original, One
6 Condition Original, Light Defining Gel, and Set it Free.

7 62. Plaintiff Airoso relied on the representations on the packaging, labeling
8 and online marketing of the Products when deciding to purchase and use them.

9 63. During the two-week period of using the Products, Plaintiff Airoso began
10 to notice the problems alleged herein. For example, while massaging the No-Poo
11 Original onto her scalp, Plaintiff Airoso began to feel tingling followed by a warm
12 sensation on her scalp. Plaintiff Airoso quickly began to rinse off the No-Poo Original
13 but was left with irritation and sensitivity of the scalp. She followed up with the One
14 Condition Original which did not calm the scalp irritation and sensitivity. After the
15 first use of the Products, Plaintiff Airoso's scalp became very itchy. On her following
16 wash day, Plaintiff Airoso used No-Poo Original and One Condition Original again.
17 Plaintiff Airoso immediately began to experience unusual, excessive shedding and
18 significant hair loss.

19 64. Plaintiff Airoso discontinued use of the Products due to the irritation and
20 hair loss, and thereafter switched to another brand of hair care products. Within days
21 of switching brands, Plaintiff Airoso's scalp irritation subsided and within two weeks
22 the hair loss had also subsided.

23 65. Plaintiff Sandra Bowers purchased and used the Products, including the
24 No-Poo Original and One Condition Original in February and March of 2019.
25 Plaintiff Bowers purchased the Products from Amazon.

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28 ³⁴ <https://www.devacurl.com/us/products/conditioners/one-condition-original/v/29778541346898>

1 66. When purchasing and using the Products, Plaintiff Bowers relied on
2 information on the packaging, labeling, and marketing of the Products representing
3 that the Products were made specifically for curly hair, and would help define and
4 manage her curls.

5 67. During the four months of using the Products, Plaintiff Bowers began to
6 notice the problems alleged herein. For example, immediately after using No-Poo
7 Original and One Condition Original, Plaintiff Bowers experienced scalp irritation in
8 the form of small itchy bumps on her scalp. Plaintiff Bowers also began to notice
9 thinning of the hair at her scalp.

10 68. Plaintiff Bowers discontinued use of the Products due to the irritation and
11 hair loss, switching to another brand of hair care products. Plaintiff Bowers has not
12 experienced any scalp irritation in the ten months since switching brands, and, within
13 days of switching, Plaintiff Bowers noticed her hair had begun to grow back in the
14 thinned areas.

15 69. Plaintiff Alaina Garcia last purchased and used the Products in May of
16 2018. Plaintiff Garcia purchased the Products from Ulta Beauty.

17 70. Plaintiff Garcia relied on the information on the packaging, labeling and
18 marketing of the Products, representing that the Product were made specifically for
19 curly hair, when deciding to purchase and use them.

20 71. Within the first three uses of the Products, Plaintiff Bowers began to
21 notice the problems alleged herein. For example, Plaintiff Garcia used No-Poo
22 Original in May of 2018. Plaintiff Garcia experienced excessive shedding
23 immediately during the washing process. A substantial amount of loose hair would
24 wrap around Plaintiff Garcia's fingers and come out in her Wet Brush; she also had
25 issues with the loose hair clogging her shower drain. After using the Products a few
26 times, Plaintiff Garcia's hair began to look matted and she began experiencing scalp
27 irritation, along with a very oily and flakey scalp.

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1 72. Plaintiff Garcia discontinued use of the DevaCurl Products due to the
2 scalp irritation and hair loss, switching to another brand of hair care products.
3 Immediately after switching brands, Plaintiff Garcia's scalp irritation and hair loss
4 subsided.

5 73. Plaintiffs are in the same Class as all other consumers who purchased
6 Defendant's Products during the relevant time period. Plaintiffs and Class Members
7 purchased worthless products that caused scalp irritation, hair loss, balding, or
8 otherwise failed to perform as they were intended, *i.e.*, promoting healthy hair.

9 74. Plaintiffs and the Class Members were in fact misled by Defendant's
10 omissions and misrepresentations in respect to the Product. Plaintiffs and Class
11 Members would have purchased other hair care products if they had not been deceived
12 by the misleading and deceptive marketing and/or labeling of the Product.

13 **III. Additional Common Facts**

14 75. Plaintiffs' experiences are by no means isolated or outlying occurrences.
15 Indeed, the internet is littered with stories of from other Class Members complaining
16 of the same issues with the Products as Plaintiffs have alleged herein.

17 76. As reported by ABC News, stylist and author Stephanie Mero, who goes
18 by the handle 'thecurlninja' on social media, had been a longtime proponent of
19 DevaCurl's Products, using them to maximize her customers' natural curls in her salon
20 and encouraging her thousands of followers online to use them to help bring out their
21 own curls.³⁵

22 77. According to the report, Ms. Mero says that changed when she started to
23 see damage in her own hair. She eventually stopped using the Products and
24 recommended that her clients do the same.

25 78. Before and after photos show the damage that Defendant's Products
26 caused to Ms. Mero's hair:

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28 ³⁵ <https://abc7ny.com/5906690/>.

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Before:



After:



1 79. As further reported, Ms. Mero went on to create a Facebook group for
2 others who believe DevaCurl is behind their hair damage. Currently, there are more
3 than **22,400 members**.

4 80. According to the report, Ms. Mero says she'll continue speaking out
5 about the issue until DevaCurl issues a recall and the FDA takes the issue more
6 seriously.³⁶

7 81. According to reports, Ms. Mero isn't alone. Another famous Youtuber
8 with more than 200,000 subscribers, posted a [video on January 31](#) where she speaks
9 about her own experience with Defendant's Products. *See* Ayesha Malik, "Why I
10 Stopped Using DevaCurl," <https://www.youtube.com/watch?v=nuo8UCcyDhg>.

11 82. According to reports, the YouTuber tells viewers to immediately stop
12 using the Products and apologizes for recommending them: "For the first time in my
13 life I experienced dandruff," Malik said. "My scalp was on fire on some days, I didn't
14 know what it was."³⁷

15 83. Similarly, a [thread](#) on Sephora originally posted in 2016 is now flooded
16 with comments from customers complaining about the products and looking for
17 answers.³⁸

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³⁶ <https://www.abcactionnews.com/news/national/florida-hairstylist-among-customers-claiming-devacurl-products-caused-serious-damage>

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³⁷ <https://www.abcactionnews.com/news/national/florida-hairstylist-among-customers-claiming-devacurl-products-caused-serious-damage>

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³⁸ <https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/m-p/2411473>

84. The complaints are endless:



85. Additional online complaints, dating back several years, are documented below:

- <https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473> posted on March 20, 2016, updated on December 4, 2019: “I started using DevaCurl No Poo and One Condition in early January and used it until about a week ago. My hair was gorgeous but I wasn't able to get my hair really clean and developed some crazy dandruff which I've NEVER had a problem with before. I also noticed that I was shedding more hair than I was used to and that my hair seemed to be thinning a little. The shedding seem to get worse and that is the main reason that I stopped using it. When I switched back to Ogx coconut curls I was no longer shedding like crazy. Has anyone else had either of these issues while on these products?”
- <https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473> posted on December 4, 2019: “I had long hair to my belly

1 button and after switching everything to deva curl I was in denial of my
2 hair loss until my hairdresser pointed out how my hair was shedding
3 super bad and how it was thinking out. It's been a couple months now
4 and my hair is getting back to normal. Devacurl didn't work for me and
5 now I'm dealing with the issues it caused. I would just cry because my
6 hair was falling out in big clumps!! Now I just use Olaplex for most my
7 hair needs. Olaplex #3 has been helping with the bonding of my hair. I
8 feel so sad you had to go through this as well."

9 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
10 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on November 4, 2019: "The same thing happened to
11 me a couple of years ago. I went to a Deva salon in Nashville, TN. After
12 my appointment I purchased the product line that was used. From my 1st
13 time using it at home my hair began shedding in large clumps. I tried it
14 one more wash day and the same thing happened. Once I stopped using
15 the products the clumps of hair ceased from falling out. I informed my
16 stylist at the salon and she told one of the Level 3 stylists who has done
17 my hair there before too. Both said they had never heard of what I had
18 experienced. Of course I'm thinking if the large clumps of hair that came
19 out were that noticeable to me that they had to have seen it when they did
20 my hair."

21 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
22 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on November 7, 2019: "This is crazy reading these
23 posts! I went "no poo" over 10 years ago and hit the curly girl method
24 HARD! Used all DC products and my hair was ridiculously gorgeous.
25 I'm a redhead and typically shed a lot so I didn't really think too much
26 about it but I remember thinking damn this is a lot! My stylist at the time
27 commented on increased shedding but just assumed it was normal. She
28 started getting out an extra towel to wipe the hair off her hands after

1 washing my hair!! Gradually my hair started feeling dry and brittle,
2 especially after ArcAngel and whatever the deep conditioner is. I started
3 using new products and once I got rid of all DC products my hair was
4 soft and happy again. Lesson learned!

5 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
6 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on November 6, 2019: “Hi - so glad I found your post
7 and many others about how Deva Curl products ruined my hair !! First it
8 looked good but within 4 months of use my hair became dry , brittle ,
9 broom like and was falling out !! I thought something was wrong with
10 my health and started taking hair & skin vitamins and complained to the
11 hair dresser who recommended deva curl to me. She had no idea it was
12 the product that is absolutely horrible!! I spent over \$100 on all the
13 products and am now very upset trying to repair my hair ! If anyone has a
14 shampoo they recommend let me know. For now I’m going back to using
15 Quidad and praying my hair grows back thick again & my curls come
16 back . Good luck to you & everyone out there who experienced what I
17 did - I wish we could all sue them !!!”

18 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
19 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on November 8, 2019: “Me too! I thought it was
20 menopause but it's Deva Curl products! There's a Facebook group about
21 the issue too. I've emailed Deva Curl to return my products for a refund.
22 Hope they will be responsible enough to do at least a refund. Horrible
23 hair loss! Even my daughter had horrible hair loss.

24 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
25 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on September 12, 2019: “I am mind-blown at this
26 thread. I was alwaysss the kid with hair so thick that hair stylists said
27 something about it every time I had my hair cut. A year ago I noticed hair
28 loss starting. And a year ago I started Deva Curl styling products. I don't

1 use their hair washing products. In June, I got my first Deva cut and she
2 told me I have thin hair, and that was crazy to hear. It's now to the point
3 that I have super thin areas on each side of my forehead, which made me
4 go to the doctor. I had my hormones checked and all kinds of other blood
5 work done, and it's all normal. I put the thoughts together and realized the
6 hair loss started the same time I started Deva products. Then I found this
7 thread. I am switching ASAP. Please, if anyone knows of cruelty-free
8 products that give poofy, frizzy, curly hair definition and frizz control,
9 help a girl out!! and Deva Curl... thanks for that medical bill!"

10 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
11 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on September 4, 2019: "Yes. I used the No Poo
12 Shampoo and Conditioner for two months. Every time I used these
13 products my hair fell out in clumps during the shampoo and conditioning
14 process. Initially, I thought this was me losing dead hair, but it was
15 more than that. I discontinued use and my hair slowed down dramatically
16 in falling out. I've continued to use the styling products, but I'm
17 questioning this now. Some days my hair looks amazing, and other days
18 these products make my hair look terrible (i.e. stringy, frizzy, broomstick
19 dry, distorted curl patterns). I don't have heat damage because I love
20 wearing my hair flowy and curly, so it's not that. I'm very confused by
21 these experiences! Overall, I'm not convinced it's worth the money. I've
22 been reading about other women who've had similar experiences, which
23 is alarming. I hope all of us continue to share. Granted, there are pros to
24 the styling products, but the cons are pushing me away. I've watched the
25 videos on how to use the products and I'm skilled at styling my hair, but
26 all of this isn't adding up for me. I hope this helps!"

27 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
28 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on August 15, 2019: "I have had the exact same issues.

1 When I started doing the curly girl process i lost a lost of hair, but I had
2 not 'molted' for a while, so I wrote this off. I have continued to see
3 molting and a lot of breakage as well, tho. The more concerning issue
4 was the extreme itching and what was almost like flaky acne. Bumps on
5 my scalp that hurt and itched. I have found that the Arc Angel gel is the
6 worst offender and now that I have stopped using that it has gotten a lot
7 better. The products make my hair look great, but I wish I knew what
8 ingredient was causing this issue. Spent SO MUCH MONEY on these
9 products and am not excited about buying more products that may have
10 the same stuff in them that will cause the same issue.”

11 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
12 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on August 13, 2019: “I had the same reaction, I never
13 really had dandruff until using devacurl. I bought the shampoo &
14 conditioner & didn’t finish either. My head was super itchy along with
15 dandruff & hair-loss. It did make my hair a little curlier but overall I
16 thinks it’s a terrible product.”

17 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
18 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on May 19, 2019: “Yes! My hair is thin, fine, frizzy,
19 and curly. Deva curl took half of the little bit of hair I had! I'm so upset! I
20 finally grew my hair long. And now I have to crop it!”

21 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
22 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on August 12, 2019: “Hi, just wanted to let you know
23 you are not alone! Other men and woman have had the same results from
24 using Deva Curl products in this last years specially in 2019 which the
25 major complaints are excessive hair loss, very dry and broken hairs and
26 irritation. Like most people that call Deva Curl and complained they
27 always get an answer that puts the blame on us and never the products.
28 We have started a support group page on Facebook called "Hair and

1 Scalp Issues from Deva Curl Products - You are not Alone! We hope that
2 you will join us and share your story so we can help many men and
3 women around the world to help them figure out that they are not crazy,
4 that is not their hormones or their old age and that there is a chance that it
5 was their products they believed in that did this to them!”

6 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
7 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on April 10, 2019: “I'm having the exact same problem
8 right now!!!!”

9 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
10 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on April 28, 2019: “Me too! I have been using the
11 Devacurl no poo original and one condition since Christmas. I just
12 recently had a deva cut and purchased the products recommended and I
13 have been losing a lot of hair. My hair feels thinner, looks thinner, and
14 my hair just is not the same.”

15 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
16 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on March 24, 2019: “This can't be a coincidence. So I
17 started using the no-poo almost exclusively on my wash days except for
18 once a month when I used build up buster. Before that I alternated with
19 the low poo Every other wash day and I never experienced shedding.
20 Now that I started using mostly noo poo I'm seeing crazy shedding and
21 breaking. I just switched to Oidad VitalCurl and can't report on results
22 but first impressions my scalp feels clean and my hair looks nice. I also
23 read online that noo-poo in hard water areas can cause PH imbalances in
24 the hair, which can lead to shedding. I know I have hard water so I'm
25 hoping by using new brands I'll be able to use DevaCurl again someday
26 because for the first 2 years it was great.”

27 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
28 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on February 10, 2019: “I've used DivaCurl for a while

1 and wonder now if it's making my hair thin out. It may be because I'm an
2 little older, but I never had a problem before. The no-poo option works
3 well for me because sulfates dry out my hair really bad. I think I'll switch
4 over to Carol's Daughter, Mixed Chicks, or Shea Moisture to see what
5 happens"

6 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
7 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on February 7, 2019: "I finally had to stop using their
8 products, which broke my heart because they made my hair so
9 beautiful...I really loved my unruly, curly, red Irish hair for the first time
10 ever. I used it for probably two years. I started noticing my hair thinning,
11 which was disturbing because I have always had extremely thick hair.
12 Finally, I couldn't ignore it anymore this year when I could see through to
13 my scalp, and I looked balding when my hair was wet. My ponytail is
14 barely anything now, and my long hair (which I took such a long time to
15 grow and care for) is limp and straggly looking when I don't take great
16 care to fluff it up with thickening products. I was losing clumps of hair
17 not just in the shower (where I would find whole chunks wrapped around
18 my hands), but all over my bathroom floor, my bed, my couch...literally
19 anywhere I had been, there was hair to clean up. . Horrifying at any age,
20 and especially in your mid twenties. I have also developed very sensitive
21 spots on my scalp, where I feel "pinpricks" in the front whenever wearing
22 a ponytail (no matter how loose it is). I finally saw a dermatologist that
23 specialized in women's hair loss. She agreed I had hair loss, but could not
24 give a definitive answer as to why and started me on spironolactone to
25 suppress any excess androgen (although my hormone levels were tested
26 and found to be normal). Around the same time I switched from Deva
27 products to more generic (but curly-girl friendly) products. After a couple
28 months, I started to notice I had probably 1/5 the amount of hair loss, and

1 it finally seemed normal. No more sweeping up hair from the bathroom
2 floor every single day. I was able to purchase the Deva gel again (the one
3 I had been using in the interim shaped my curls nicely, but left it too
4 frizzy and they fell out quickly). Each time I use this, I am right back to
5 crazy clumps of hair in the shower and on the floor again. I realized
6 something in the Devacurl *has* to be contributing to my hair loss over
7 the last two years, and especially the last year before I finally got medical
8 help. I don't know if it's an allergy or what, I have no known problems.
9 But it's sort of a relief to see other people reporting these problems, too.
10 If anyone has recommendations for products with similar hold and frizz-
11 taming capability, I really miss loving my hair. It used to be my proudest
12 feature (after a lifetime of hating and fighting it), and now I feel like it's
13 something I dislike about myself again.”

14 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
15 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on December 1, 2017: “I'm having the same
16 experience with DevaCurl o Decadence. It does an incredible job of
17 detangling but I'm losing my hair. The folks here saying this is about
18 perception don't get it. I started using this about two years ago and wasn't
19 attributing it to the product because it was happening before that - from
20 my attempts to detangle it. The devacurl worked for awhile, but then
21 recently, and particularly in the last few months, my hair has been
22 coming out in small clumps, from the root whenever I use it. I notice it
23 because I've been washing and conditioning more regularly for a newer
24 style. It doesn't happen when I use other conditioners, and I know the
25 difference because when I would go back to the Decadence (for the
26 detangling) my hair would be coming out in clumps in my hands. Also,
27 when so many people are saying the same thing, clearly there is an issue,
28 so it's not just about our perception. I'm done with this product. If anyone

1 has any detangling recommendations - not just products, but techniques
2 too, I'm happy for them.”

3 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
4 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on April 5, 2019: “Good morning, I could do, use your
5 help. I'm going through the exact same thing. Except, I have never used
6 this product. I was just wondering if you ever found a solution to your
7 hair loss?”

8 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
9 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on October 17, 2019: “The same thing happened to
10 me. Hair loss in Clumps, scalp irritation, and very noticeable loss in
11 volume. I can see my scalp now. I feel like crying knowing that I have an
12 entire box of products to throw away that cost me \$100's. I'm terrified
13 now of this happening with other "reputable" distributors. I can't believe
14 this. It has really hit my self-esteem hard and my faith in curl brands.

15 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
16 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on February, 2, 2017: “I have been using this for a few
17 months and I have lost TONS of hair, I even went to get my hormones
18 checked, they were on point!! I have lost so much it's noticeable and
19 looking completely different including parting all over... very unhappy
20 and nervous , I am going to stop using it and see if it make a difference!

21 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
22 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on August 24, 2018: “My hair was so thick and it
23 grew, I kid you not, nearly 3 inches a month. I measured. And I cut 6
24 inches off my very long hair to see if it would help curls form when I
25 switched to Deva Curl. Well... after almost 2 months, my hair had gotten
26 shorter. The breakage is horrible and it's falling out in clumps! Not just
27 in the shower either! I don't dye my hair, I don't use any heat on it at all,
28 and I don't use any product except the wave maker stuff from Deva Curl.

1 So it had to be switching to Deva Curl. I also only wash my hair once a
2 week. So I know i'm not over washing it. I was also using the buildup
3 buster every 2 washes. I am nearly in tears from how much hair it caused
4 me to lose. I'm going back to Lush ASAP. I'll never switch from Lush
5 again. No matter what hair products I use from there, my hair stays
6 beautiful, thick, and fast growing! I had to get supplements just to get my
7 hair to start growing again... unfortunately my nails were still growing
8 fast and strong. So I'm having to trim them 3 times a week. Ugh. Don't
9 let anyone talk you into sticking with Deva Curl! If you get a feeling that
10 it's messing your hair up, STOP! I wish I would have after hair started
11 coming out the first shower... but I thought it was just because it wasn't
12 as easy to work through my hair as my Lush products were. I'm
13 heartbroken you guys."

14 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
15 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on September 22, 2016: "Wow! You lasted longer than
16 me. I find Deva Curl to be too heavy for the hairstyle I want. Also,
17 couldn't get my scalp clean with it. It used to cause oily spots.
18 I feel that hair sheds everyday. You just notice it a lot more during
19 shampoo'ing. Some people are not washing their hair for days so then it
20 may seem like a lot of hair shedding at once."

21 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
22 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on May 2, 2019: "Me too I have never had thin hair its
23 so thin and limp and disgusting. Im so sad"

24 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473)
25 [p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on September 22, 2016: "I feel like i have been loosing
26 a lot of hair. I notice its thinner. When i use my no poo shampoo and
27 conditioner, tons of hair comes out. I am curious too if thats the problem.
28

1 For now i am going to use my shea moisture shampoo and conditioner to
2 see if shedding slacks off.

3 • [https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-
4 p/2411473](https://community.sephora.com/t5/Best-Hair-Ever/DevaCurl-Issues/td-p/2411473) posted on February 7, 2018: “I use every three days and my
5 hair is shedding REALLY bad”

6 • [https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-
7 using-deva-products](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products) in December 2011: “A gal in my office and I are
8 both losing handfuls of hair when using these products and I wasn't sure
9 if it's the Deva products or the CG method in general causing the issue. I
10 am a fine porous 3a / 3b and my friend has course 4a thick hair. Thanks!”

11 • [https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-
12 using-deva-products](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products) in November 2013: “it happens to me, too. I'm using
13 Deva Products, and for the last 3 months, I'm losing hair handful after
14 handful!”

15 • [https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-
16 using-deva-products](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products) in November 2013: “It happened to me using the no
17 poo, because of the wheat protein (I'm a gluten free gal). Can't say that
18 this would be the same case for you. Try switching up your products to
19 see if it still happens. I used their low poo and one condition without any
20 problems.”

21 • [https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-
22 using-deva-products](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products) in March 2014: “I've been experiencing this also!
23 I'm a little freaked out as I'm getting married in September, and I'm afraid
24 I won't have any [hair left](#) by then! I've been using CG method for about 3
25 years. Was using WEN but found it to be too expensive to keep up. I
26 switched to Deva about a year ago. I've been using Lo-Poo once a week,
27 then One condition and styling cream every other day. Lately, I've been
28 taking gobs of hair out of the shower drain. I haven't changed meds, or

1 anything else that I can think of, so I'm wondering what's going on. I'd
2 make a switch to something else, but I want to be sure I'm still 100%
3 sulfate and silicone free. Any suggestions?"

4 • [https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products)
5 [using-deva-products](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products) in March 2014: "Thanks! A quick observation this
6 morning...I used Lo-Poo and One Cond today, and just now, I found
7 myself itching my scalp. :sad1: HHmmmmmm....I wonder how long I've
8 been doing this subconsciously without noticing it! Even thought I only
9 use it once a week, maybe it's the Lo Poo and not the One that's causing
10 the issue. I'm going to try KMF Whenever, and also I'm reading a lot
11 about Trader Joe's [conditioners](#), so that may be another option to try."

12 • [https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products)
13 [using-deva-products](https://curltalk.naturallycurly.com/discussion/136936/help-losing-hair-using-deva-products) in May 2016 "Hey, I really appreciate your post
14 about the problems you are having with hair loss. I am new to the
15 NaturallyCurly world and I am still working on being acclimated.
16 Anyway, I too am having a similar problem. I was using a really nice
17 [shampoo](#) and conditioner that had Keratin in it and I was loving it.
18 Several months back, I saw a commercial for Wen and thought I would
19 give it a try. After about a month of using it, my hair started to fall out. I
20 switched back to a lathering shampoo until about five months ago. I went
21 and tried a Deva Cut for the first time and bought all of the products. As I
22 am sure most would agree, I fell in love with the stuff. My hair felt and
23 looked great. Now, the ball of hair in my shower nearly doubles in size
24 from one day to the next. I am not sure if it isn't clearing my scalp
25 properly or it is causing more build up that usual but all I know is it has
26 me concerned. I also had some itching when I first started using the
27 products. That had me concerned but it went away after I started to use
28 the products regularly. I have been a Ouidad girl from about 20 years,

1 give or take, and I just started to try new things. After this experience, I
 2 am not sure what to do. I am taking a break from Deva Curl for a little
 3 while and I will go back to my out routine and see if I notice a difference.
 4 I really think that is the only way to tell. I'm not sure what it is worth but
 5 I was using shampoo and conditioner by OGX called [Brazilian Keratin](#)
 6 [Therapy](#). It was designed for women who get Brazilian Keratin
 7 Treatments, something I fell victim too as well. At any rate, it works
 8 beautifully in conjunction with my Ouidad products. I'm also not sure if
 9 my hair type has anything to do with all of this. My curls are tight and
 10 spirally. a pencil fits inside them perfectly. My hair is very fine but I have
 11 a lot of it!"

12 86. Because of the pervasive complaints in respect to the Products,
 13 Defendant has knowledge of the alleged defects. Indeed, in January, Defendant issued
 14 a public statement acknowledging the alleged defects but **refused** to take
 15 responsibility for the problem and otherwise refused to cure the alleged defects and
 16 remedy consumers.³⁹

CLASS ACTION ALLEGATIONS

17
 18 87. Plaintiffs bring this action individually and as representatives of all those
 19 similarly situated, pursuant to Fed. R. Civ. P. 23, on behalf of the below-defined
 20 Class:

21 **Nationwide Class: All persons in the United States who, during the**
 22 **maximum period permitted by the law, purchased the Products from**
 23 **a third-party retailer, including web retailers, for personal, family,**
 24 **or household use and not for resale.**

25
 26
 27 ³⁹ <https://www.abcactionnews.com/news/national/florida-hairstylist-among-customers-claiming-devacurl-products-caused-serious-damage>
 28

1 88. Additionally, Plaintiffs bring this action on behalf of themselves and the
2 members of the following California Subclass:

3 **California Subclass: All persons in California who, during the**
4 **maximum period permitted by the law, purchased the Products from**
5 **a third-party retailer, including web retailers, for personal, family,**
6 **or household use and not for resale.**

7 89. Specifically excluded from these definitions are: (1) any and all persons
8 who purchased the Products directly from Defendant; (2) Defendant, any entity in
9 which Defendant has a controlling interest, and its legal representatives, officers,
10 directors, employees, assigns and successors; (3) the Judge to whom this case is
11 assigned and any member of the Judge’s staff or immediate family; and (4) Class
12 Counsel.

13 90. As used herein, “Class Members” shall mean and refer to the members of
14 the Nationwide Class and all Subclasses, including Plaintiffs.

15 91. Plaintiffs seek only damages and equitable relief on behalf of themselves
16 and the Class Members. Plaintiffs disclaim any intent or right to seek any recovery in
17 this action for personal injuries, wrongful death, or emotional distress suffered by
18 Plaintiffs and/or the Class Members.

19 92. Numerosity: Although the exact number of Class Members is uncertain at
20 this time and can only be ascertained through discovery, the number is great enough
21 such that joinder is impracticable and likely in excess of 150,000. The disposition of
22 the claims of these Class Members in a single action will provide substantial benefits
23 to all parties and to the Court.

24 93. Typicality: The claims of the representative Plaintiffs are typical in that
25 Plaintiffs, like all Class Members, purchased the Products that were manufactured and
26 distributed by Defendant. Plaintiffs, like all Class Members, have been damaged by
27 Defendant’s misconduct in that, *inter alia*, they have incurred or will continue to incur
28 damage as a result of overpaying for a product that contained a significantly lesser

1 amount of hemp extract than advertised. Furthermore, the factual basis of Defendant's
2 misconduct is common to all Class Members because Defendant has engaged in a
3 systematic fraudulent behavior, that was deliberate, includes negligent misconduct,
4 and results in the same injury to all Class Members.

5 94. Commonality: Plaintiffs have numerous questions of law and fact
6 common to themselves and Class Members that predominate over any individualized
7 questions. These common legal and factual issues include:

- 8 a. Whether the Products are defective such that they cause hair loss,
9 scalp irritation or balding;
- 10 b. Whether and when Defendant had exclusive knowledge that the
11 Products are defective but failed to disclose the defect to the public;
- 12 c. Whether the Products provide the benefits claimed by Defendant on
13 the labeling, packaging, and/or in the course of its marketing;
- 14 d. Whether Defendants' conduct violated the California Unfair
15 Competition Law;
- 16 e. Whether Defendant's conduct violated the California False
17 Advertising Law;
- 18 f. Whether Defendant's conduct constituted a breach of applicable
19 warranties;
- 20 g. Whether Defendant's acts and omissions make it liable to Plaintiffs,
21 the Class, and the California Subclass for negligence and strict
22 products liability;
- 23 h. Whether Defendant engaged in unfair, deceptive, unlawful and/or
24 fraudulent acts or practices in trade or commerce by objectively
25 misleading Plaintiffs and putative Class and Subclass Members;
- 26 i. Whether Defendant's conduct, as alleged herein, was likely to mislead
27 a reasonable consumer;
- 28

1 j. Whether Defendant's statements, concealments and omissions
2 regarding the Products were material, in that a reasonable consumer
3 could consider them important in purchasing the Products;

4 k. Whether, as a result of Defendant's omissions and/or
5 misrepresentations of material facts, Plaintiffs and members of the
6 Class and Subclass have suffered an ascertainable loss of monies
7 and/or property and/or value; and

8 l. Whether Plaintiffs and Class Members are entitled to monetary
9 damages, injunctive relief, and/or other remedies and, if so, the nature
10 of any such relief.

11 95. Adequate Representation: Plaintiffs will fairly and adequately protect the
12 interests of Class Members. Plaintiffs have retained attorneys experienced in the
13 prosecution of class actions, including consumer and product defect class actions, and
14 Plaintiffs intend to prosecute this action vigorously.

15 96. Predominance and Superiority: Plaintiffs and Class Members have all
16 suffered and will continue to suffer harm and damages as a result of Defendant's
17 unlawful and wrongful conduct. A class action is superior to other available methods
18 for the fair and efficient adjudication of the controversy. Absent a class action, Class
19 Members would likely find the cost of litigating their claims prohibitively high and
20 would therefore have no effective remedy at law. Because of the relatively small size
21 of Class Members' individual claims, it is likely that few Class Members could afford
22 to seek legal redress for Defendant's misconduct. Absent a class action, Class
23 Members will continue to incur damages, and Defendant's misconduct will continue
24 without remedy. Class treatment of common questions of law and fact would also be a
25 superior method to multiple individual actions or piecemeal litigation in that class
26 treatment will conserve the resources of the courts and the litigants and will promote
27 consistency and efficiency of adjudication.

28

1 97. Defendant has acted or refused to act on grounds generally applicable to
2 the Class, thereby making appropriate final injunctive relief or corresponding
3 declaratory relief with respect to the Class appropriate.

4 **COUNT 1**

5 **VIOLATIONS OF MAGNUSON-MOSS WARRANTY ACT**

6 **15 U.S.C. § 2301, *et seq.***

7 **(On Behalf of The Nationwide Class)**

8 98. Plaintiffs bring this count on behalf of themselves and the Nationwide
9 Class and repeat and re-allege all previous paragraphs, as if fully included herein.

10 99. The Products are consumer products as defined in 15 U.S.C. § 2301(1).

11 100. Plaintiffs and Class Members are consumers as defined in 15 U.S.C. §
12 2301(3), and are persons entitled under the applicable state laws to enforce against the
13 warrantor the obligations of its express and implied warranties.

14 101. Plaintiffs purchased Products costing more than five dollars (\$5.00) and
15 their individual claims are greater than twenty-five dollars (\$25.00) as required by 15
16 U.S.C. §§ 2302(e) & 2310(d)(3)(A).

17 102. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4)
18 & (5).

19 103. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1), provides a
20 cause of action for any consumer, who is damaged by the failure of a warrantor to
21 comply with a written or implied warranty.

22 104. Defendant made promises and representations in an express warranty
23 provided to all consumers, which became the basis of the bargain between Plaintiffs,
24 Class and Subclass Members and Defendant.

25 105. Defendant's written affirmations of fact, promises and/or descriptions as
26 alleged—including promises that the Products promote healthy hair, are "free of harsh
27 ingredients," "made with nourishing, hydrating ingredients," "free of sulfates,
28 parabens, and silicones to gently cleanse curls," sourced from "the highest-quality,

1 good-for-you ingredients from around the world,” and that they give “your curls what
2 they need and nothing they don't,”⁴⁰ —are each a “written warranty.” The affirmations
3 of fact, promises, and/or descriptions constitute a “written warranty” within the
4 meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(6).

5 106. Defendant also advertises, markets, and promotes its Products, including
6 but not limited to on its website, as coming with a “satisfaction guarantee,” which
7 states that if a consumer/purchaser is not “completely satisfied with a DevaCurl
8 product that you purchased from us or one of our authorized resellers” “for any
9 reason,” Defendant will allow for a return and provide a full refund of the purchase
10 price.⁴¹ The complete satisfaction guarantee constitutes a “written warranty” within
11 the meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(6).

12 107. Further, Defendant provided Plaintiffs and the other Nationwide Class
13 Members with an implied warranty of merchantability in connection with the purchase
14 of the Products that is an “implied warranty” within the meaning of the Magnuson-
15 Moss Warranty Act, 15 U.S.C. § 2301(7).

16 108. As a part of the implied warranty of merchantability, Defendant
17 warranted to Plaintiffs and Class Members that the Products were of merchantable
18 quality (*i.e.*, a product of a high enough quality to make it fit for sale, usable for the
19 purpose it was made, of average worth in the marketplace, or not broken, unworkable,
20 contaminated or flawed or containing a defect affecting the safety of the product),
21 would pass without objection in the trade or business, and were free from material
22 defects, and reasonably fit for the use for which they were intended.

23 109. Defendant breached all applicable warranties, as described in more detail
24 above, and is therefore liable to Plaintiffs and the Nationwide Class pursuant to 15
25 U.S.C. § 2310(d)(1). Without limitation, the Products suffer from latent and/or

26 _____
27 ⁴⁰ <https://www.devacurl.com/us/curl-101/product-philosophy>; <https://www.devacurl.com/us/curl-101/product-philosophy/ingredient-glossary>

28 ⁴¹ <https://www.devacurl.com/us/faq#shipping>

1 inherent defects that cause substantial hair loss, hair breakage, and scalp irritation,
2 rendering the Products unfit for their intended use and purpose. This defect
3 substantially impairs the use, value and safety of the Products.

4 110. Any effort to limit the implied warranties in a manner that would exclude
5 coverage of the Products is unconscionable, and any such effort to disclaim, or
6 otherwise limit, for the defective Products is null and void. Any limitations on the
7 warranties are procedurally unconscionable. There was unequal bargaining power
8 between Defendant, on the one hand, and Plaintiffs and the other Nationwide Class
9 Members, on the other. Moreover, any limitations on the warranties are substantively
10 unconscionable. Following early reports of injuries caused by the Products, including
11 multiple complaints to the FDA beginning in February 2018, Defendant knew that the
12 Products were defective and would continue to pose safety risks. Defendant failed to
13 disclose the product defect to Plaintiffs and the Nationwide Class Members. Thus,
14 Defendants enforcement of the durational limitations on those warranties is harsh and
15 shocks the conscience.

16 111. Plaintiffs and each of the other Nationwide Class Members have had
17 sufficient direct dealings with Defendant to establish privity of contract.

18 112. Nonetheless, privity is not required here because Plaintiffs and each of
19 the other Class Members are intended third-party beneficiaries of contracts between
20 Defendant and its third-party retailers, and specifically of the implied warranties.
21 Third-party retailers such as Ulta Beauty and Amazon were not intended to be the
22 ultimate consumers of the Products and have no rights under the warranty agreements
23 provided with the Products; the warranty agreements were designed for and intended
24 to benefit consumers.

25 113. All conditions precedent to seeking liability under this claim for breach
26 of express and implied warranty have been performed by or on behalf of Plaintiffs and
27 others in terms of paying for the goods at issue.

28

1 114. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs and the Nationwide Class are
2 entitled to bring this class action and are not required to give Defendant notice and an
3 opportunity to cure until such time as the Court determines the representative capacity
4 of Plaintiffs and the Nationwide Class pursuant to Fed. R. Civ. P. 23.

5 115. Furthermore, affording Defendant an opportunity to cure its breach of
6 written warranties would be unnecessary and futile here. Defendant was placed on
7 reasonable notice of the defect in the Products and breach of the warranties based on
8 numerous complaints received directly and indirectly from Plaintiffs and the
9 Nationwide Class, including without limitation multiple complaints to the FDA
10 beginning in February 2018, and have had ample opportunity to cure the defect for
11 Plaintiffs and the Nationwide Class, but have failed to do so, instead denying the
12 claims and putting out public statements denying that there are any issues with the
13 Products. Under the circumstances, the remedies available under any informal
14 settlement procedure would be inadequate and any requirement that Plaintiffs and the
15 Nationwide Class resort to an informal dispute resolution procedure and/or afford
16 Defendant a reasonable opportunity to cure the breach of warranty is excused and
17 thereby deemed satisfied.

18 116. While notice is not required (for the reasons set forth above), on February
19 7, 2020, Plaintiffs sent a letter to Defendant giving notice of its violations of its
20 express and implied warranties and demanding that Defendant correct such violations.

21 117. Defendant's breaches of warranty have caused Plaintiffs and the other
22 Nationwide Class Members to suffer injuries, paying for defective Products, and
23 entering into transactions they would not have entered into at all, or not for the
24 consideration paid. As a direct and proximate result of Defendant's breaches of
25 warranty, Plaintiffs and the Nationwide Class have suffered damages and continue to
26 suffer damages, including economic damages in terms of the cost of the Products and
27 the cost of efforts to mitigate the damages caused by same.

28

1 118. Pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Nationwide
2 Class Members are also entitled to recover a sum equal to the aggregate amount of
3 costs and expenses (including attorneys’ fees based on actual time expended)
4 determined by the Court to have reasonably been incurred by Plaintiffs and the other
5 Nationwide Class Members in connection with the commencement and prosecution of
6 this action.

7 **COUNT 2**
8 **BREACH OF EXPRESS WARRANTY**
9 **(On Behalf of The Nationwide Class)**

10 119. Plaintiffs bring this count on behalf of themselves and the Nationwide
11 Class and repeat and re-allege ¶¶ 1-97, as if fully included herein.

12 120. Defendant sold and Plaintiffs purchased the Products from authorized
13 resellers of Defendant’s products.

14 121. Defendant represented in its marketing, advertising, and promotion of the
15 Products that the Products promote healthy hair, and are “free of harsh ingredients,”
16 “made with nourishing, hydrating ingredients,” “free of sulfates, parabens, and
17 silicones to gently cleanse curls,” sourced from “the highest-quality, good-for-you
18 ingredients from around the world” and that they give “your curls what they need and
19 nothing they don’t.”⁴²

20 122. Defendant also advertises, markets, and promotes its Products, including
21 but not limited to on its website, as coming with a “satisfaction guarantee,” which
22 states that if a consumer/purchaser is not “completely satisfied with a DevaCurl
23 product that you purchased from us or one of our authorized resellers” “for any
24 reason,” Defendant will allow for a return and provide a full refund of the purchase
25 price.⁴³

26 _____
27 ⁴² <https://www.devacurl.com/us/curl-101/product-philosophy>

28 ⁴³ <https://www.devacurl.com/us/faq#shipping>

1 123. Defendant made these representations to specifically induce Plaintiffs
2 and Class Members to purchase the Products.

3 124. Defendant’s representations that the Products constituted part of the basis
4 of the bargain between Defendant and Plaintiffs (and Class Members).

5 125. Each of these representations and the complete satisfaction guarantee
6 constitutes an express written warranty.

7 126. Defendant breached its express warranties because the Products suffer
8 from a latent and/or inherent defect that causes them to produce substantial hair loss
9 and scalp irritation, rendering the unfit for their intended use and purpose. This defect
10 substantially impairs the use, value and safety of the Products.

11 127. The latent and/or inherent defect at issue herein existed when the
12 Products left Defendant’s possession or control and was sold to Plaintiffs and Class
13 Members. The defect was undiscoverable by Plaintiffs and the Class Members at the
14 time of purchase of the Products.

15 128. While Defendant expressly disavows all warranties or representations,
16 this disavowal is limited by its own plain language to “any products or services
17 ordered or provided via the [Defendant’s] website.”⁴⁴ None of the Products at issue in
18 this case (including those purchased by the Plaintiffs) were products “ordered or
19 provided via the [Defendant’s] website,” and all persons who purchased the Products
20 from Defendant’s website are expressly excluded from the putative Class and
21 Subclass.

22 129. Plaintiffs and the Nationwide Class are entitled to bring this class action
23 and are not required to give Defendant notice and an opportunity to cure until such
24 time as the Court determines the representative capacity of Plaintiffs and the
25 Nationwide Class pursuant to Fed. R. Civ. P 23.

26
27 _____
28 ⁴⁴ <https://www.devacurl.com/us/terms-conditions>

1 130. Furthermore, affording Defendant an opportunity to cure its breach of
2 written warranties would be unnecessary and futile here. Defendant was placed on
3 reasonable notice of the defect in the Products and breach of the warranties based on
4 numerous complaints received directly and indirectly from Plaintiffs and the
5 Nationwide Class, including without limitation multiple complaints to the FDA
6 beginning in February 2018, and have had ample opportunity to cure the defect for
7 Plaintiffs and the Nationwide Class, but have failed to do so, instead denying the
8 claims and putting out public statements denying that there are any issues with the
9 Products.⁴⁵ Under the circumstances, the remedies available under any informal
10 settlement procedure would be inadequate and any requirement that Plaintiffs and the
11 Nationwide Class resort to an informal dispute resolution procedure and/or afford
12 Defendant a reasonable opportunity to cure the breach of warranty is excused and
13 thereby deemed satisfied.

14 131. While notice is not required (for the reasons set forth above), on February
15 7, 2020, Plaintiffs sent a letter to Defendant giving notice of its violations of its
16 express and implied warranties and demanding that Defendant correct such violations.

17 132. As a direct and proximate result of Defendant's breaches of these express
18 warranties, Plaintiffs and Class Members have been damaged because they did not
19 receive the products as specifically warranted by Defendant. Plaintiffs also paid a
20 premium for Defendant's Products that did not conform to Defendant's express
21 warranties.

22 **COUNT 3**

23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

24 **(On Behalf of The Nationwide Class)**

25 133. Plaintiffs bring this count on behalf of themselves and the Nationwide
26 Class and repeat and re-allege ¶¶ 1-97, as if fully included herein.

27 _____
28 ⁴⁵ <https://www.devacurl.com/us/deva-community-statement>

1 134. U.C.C. § 2-314 states that “a warranty that the goods shall be
2 merchantable is implied in a contract for their sale if the seller is a merchant with
3 respect to goods of that kind.”

4 135. U.C.C. § 2-314 has been adopted in California under the Cal. Com. Code
5 § 2314, and in 35 other states.

6 136. As set forth above, Plaintiffs have standing to pursue this claim as they
7 have suffered injury in fact and have lost money or property as a result of Defendant’s
8 actions.

9 137. Defendant is a “merchant” within the meaning of U.C.C. § 2-314 because
10 it deals in the sale of the Products and holds itself out as “having knowledge or skill
11 peculiar to” haircare products such as the Products at issue.

12 138. Defendant sold and Plaintiffs purchased the Products from authorized
13 resellers of Defendant’s products.

14 139. By placing such products into the stream of commerce, and by
15 operation of law under Cal. Com. Code § 2314, Defendant impliedly warranted to
16 Plaintiffs and Class Members that the Products were of merchantable quality (*i.e.*, a
17 product of a high enough quality to make it fit for sale, usable for the purpose it was
18 made, of average worth in the marketplace, or not broken, unworkable, contaminated
19 or flawed or containing a defect affecting the safety of the product), would pass
20 without objection in the trade or business, and were free from material defects, and
21 reasonably fit for the use for which they were intended.

22 140. Defendant breached the implied warranty of merchantability because the
23 Products suffer from a latent and/or inherent defect that causes them to produce
24 substantial hair loss and scalp irritation, rendering the unfit for their intended use and
25 purpose. This defect substantially impairs the use, value and safety of the Products.

26 141. The latent and/or inherent defect at issue herein existed when the
27 Products left Defendant’s possession or control and was sold to Plaintiffs and Class
28

1 Members. The defect was undiscoverable by Plaintiffs and the Class Members at the
2 time of purchase of the Products.

3 142. Defendant has misled consumers into believing the Products were
4 “Sulfate Free,” that they are used to “gently cleanse,” that they are not “harsh” or
5 made with “harsh ingredients,” and that hair loss and shedding (even excessive
6 shedding) was “common,” “normal,” and “not preventable.” Defendant took
7 advantage of Plaintiffs’ and the Classes’ trust and confidence in its brand, and
8 deceptively sold the Products, knowing that they caused hair loss, shedding, and scalp
9 irritation.

10 143. Defendant’s intended beneficiaries of these implied warranties were
11 ultimately Plaintiffs and the Classes, not distributors who sold the Products.
12 Moreover, Defendant exercises substantial control over which outlets can carry and
13 sell the Products, which are the same places that Plaintiffs purchased them. In
14 addition, Defendant’s warranties are in no way designed to apply to the distributors
15 that purchase the Products in bulk and then sell them on an individual basis to each
16 consumer. Individual consumers are the ones who ultimately review the labels, which
17 Defendant knows, prior to making any purchasing decisions. As a result, these
18 warranties are specifically designed to benefit the individual consumer who purchases
19 the Products.

20 144. Plaintiffs and Class Members sustained damages as a direct and
21 proximate result of Defendant’s breaches in that they paid a premium for the Products
22 that they would not have otherwise paid. Plaintiffs and the Classes also did not receive
23 the value of the Product they paid for—the Products are worthless or worth far less
24 than Defendant represents due to the latent and/or inherent defect that causes hair loss
25 and scalp irritation.

26 145. Plaintiffs and the Classes have sustained, are sustaining, and will sustain
27 damages if Defendant continues to engage in such deceptive, unfair, and unreasonable
28 practices.

1 146. Accordingly, Plaintiffs are entitled to injunctive relief, attorneys’ fees
2 and costs, and any other relief that the Court deems just and equitable.

3 147. As a result of the breach of the implied warranty of merchantability,
4 Plaintiffs and Class Members are entitled to legal and equitable relief including
5 damages, costs, attorneys’ fees, rescission, and/or other relief as deemed appropriate,
6 for an amount to compensate them for not receiving the benefit of their bargain.

7 **COUNT 4**

8 **UNJUST ENRICHMENT**

9 **(On Behalf of The Nationwide Class, and in the Alternative to Counts 1-3)**

10 148. Plaintiffs bring this count on behalf of themselves and the Nationwide
11 Class and repeat and re-allege ¶¶ 1-97, as if fully included herein.

12 149. According to Defendant’s website, New York law applies to all claims.⁴⁶

13 150. Plaintiffs conferred benefits on Defendant by purchasing the Products at
14 a premium price.

15 151. Defendant has knowledge of such benefits.

16 152. Defendant has been unjustly enriched in retaining the revenues derived
17 from Plaintiffs’ and Class Members’ purchases of the Products, because the Defendant
18 will obtain the benefits conferred by Plaintiffs and the Class Members without
19 adequately compensating Plaintiffs and the Class Members. Defendant failed to
20 adequately compensate the Plaintiffs for the benefits conferred by providing the No-
21 Poo Products without those products having the characteristics and benefits promised.

22 153. Retention of those moneys under these circumstances is unjust and
23 inequitable because: (a) Defendant falsely and misleadingly represented that the
24 Products promoted healthy hair, were “Sulfate Free,” that they are used to “gently
25 cleanse,” that they are not “harsh” or made with “harsh ingredients,” and that hair loss
26 and shedding (even excessive shedding) was “common,” “normal,” and “not

27 _____
28 ⁴⁶ <https://www.devacurl.com/us/terms-conditions>

1 preventable.”; (b) Plaintiffs paid a price premium for the Products based on
2 Defendant’s false and misleading statements; and (c) the Products did not have the
3 characteristics and benefits promised because of the latent and/or inherent defect that
4 causes hair loss and scalp irritation.

5 154. This has resulted in injuries to Plaintiffs and members of the Class
6 because they would not have purchased (or paid a price premium) for the Products had
7 they known of the latent and/or inherent defect that causes hair loss and scalp irritation
8 in Defendant’s Products.

9 155. Because Defendant's retention of the non-gratuitous benefits conferred on
10 it by Plaintiffs and members of the Class is unjust and inequitable, and because equity
11 and good conscience requires restitution, Defendant must pay restitution to Plaintiffs
12 and members of the Class for its unjust enrichment, as ordered by the Court.

13 **COUNT 5**

14 **NEGLIGENCE – FAILURE TO WARN**

15 **(On Behalf of The Nationwide Class)**

16 156. Plaintiffs bring this count on behalf of themselves and the Nationwide
17 Class and repeat and re-allege ¶¶ 1-97, as if fully included herein.

18 157. According to Defendant’s website, New York law applies to all claims.⁴⁷

19 158. At all times referenced herein, Defendant was responsible for
20 designing, formulating, testing, manufacturing, inspecting, distributing, marketing,
21 supplying and/or selling the Products to Plaintiffs and the Class.

22 159. At all times material hereto, the use of the Products in a manner that was
23 intended and/or reasonably foreseeable by Defendant involved substantial risk of hair
24 loss and scalp irritation.

25
26
27 _____
28 ⁴⁷ *Id.*

1 160. At all times the risk of substantial hair loss and scalp irritation was
2 known or knowable by Defendant, in light of the generally recognized and prevailing
3 knowledge available at the time of manufacture and design, as described herein.

4 161. Defendant, as the developer, manufacturer, distributor and/or seller of
5 the Products, had a duty to warn Plaintiffs and the Class of all dangers associated with
6 the intended use.

7 162. After receiving multiple complaints of hair loss and scalp irritation,
8 including multiple adverse event reports to the FDA, and after dozens (if not
9 hundreds) of online postings reporting hair loss and scalp irritation after using the
10 Products, a duty arose to provide a warning to consumers that use of the Products
11 could result in hair loss or scalp irritation.

12 163. Defendant was negligent and breached its duty of care by negligently
13 failing to give adequate warnings to purchasers and users of the Products,
14 including Plaintiffs and the Class, about the risks, potential dangers and defective
15 condition of the Products.

16 164. Defendant was negligent and breached its duty of care by negligently
17 blaming other risk factors for hair loss, by telling consumers that hair loss and
18 shedding was “common,” “normal,” and “not preventable,” thereby concealing and
19 failing to warn purchasers and users of the Products, including Plaintiffs and the
20 Class, about the risks, potential dangers and defective condition of the Products.

21 165. Defendant knew, or by the exercise of reasonable care, should have
22 known of the inherent design defects and resulting dangers associated with using
23 the Products as described herein, and knew that Plaintiffs and Class members could
24 not reasonably be aware of those risks. Defendant failed to exercise reasonable care
25 in providing the Class with adequate warnings.

26 166. As a direct and proximate result of Defendant’s failure to adequately
27 warn consumers that use of the Products could cause injuries such as hair loss, balding
28

1 and/or scalp irritation, Plaintiffs and the Class have suffered damages as set forth
2 herein.

3 **COUNT 6**
4 **NEGLIGENCE – FAILURE TO TEST**
5 **(On Behalf of The Nationwide Class)**

6 167. Plaintiffs bring this count on behalf of themselves and the Nationwide
7 Class and repeat and re-allege ¶¶ 1-97, as if fully included herein.

8 168. According to Defendant’s website, New York law applies to all claims.⁴⁸

9 169. Defendant did not perform adequate testing on the Products, which were
10 defectively designed, formulated, tested, manufactured, inspected, distributed,
11 marketed, supplied and/or sold to Plaintiffs and the Class.

12 170. Adequate testing would have revealed the serious deficiencies in the
13 Products in that it would have revealed the substantial hair loss and scalp irritation
14 occasioned by use of the Products.

15 171. Defendant had, and continues to have, a duty to exercise reasonable
16 care to properly design—including the duty to test—the Products before introducing
17 them into the stream of commerce.

18 172. Defendant breached these duties by failing to exercise ordinary care in
19 the design and testing of the Products, which it introduced into the stream of
20 commerce, because Defendants knew or should have known the Products could cause
21 substantial hair loss and scalp irritation.

22 173. Defendant knew or reasonably should have known that Class members
23 such as Plaintiffs would suffer economic damages or injury and/or be at an increased
24 risk of suffering damage and injury, as a result of its failure to exercise ordinary
25 care in the design of the Products by failing to conduct appropriate testing.

26
27 _____
28 ⁴⁸ *Id.*

1 174. By reason of the foregoing, Plaintiffs and the Class experienced and/or
2 are at risk of experiencing financial damage and injury.

3 175. As a direct and proximate result of Defendants’ failure to test the
4 Products designed, formulated, manufactured, inspected, distributed, marketed,
5 warranted, advertised, supplied and/or sold by the Defendant, Plaintiffs and the Class
6 have suffered damages as described above.

7 **COUNT 7**

8 **VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES**

9 **ACT, Cal. Civ. Code §§ 1750, *et seq.***

10 **(On behalf of the California Subclass)**

11 176. Plaintiffs identified above, individually and on behalf of the California
12 Subclass, repeat and re-allege ¶¶ 1-97, as if fully alleged herein.

13 177. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*
14 (“CLRA”), is a comprehensive statutory scheme that is to be liberally construed to
15 protect consumers against unfair and deceptive business practices in connection with
16 the conduct of businesses providing goods, property or services to consumers
17 primarily for personal, family, or household use.

18 178. Defendant is a “person” as defined by Cal. Civ. Code §§ 1761(c) & 1770
19 and has provided “services” as defined by Cal. Civ. Code §§ 1761(b) & 1770.

20 179. Plaintiffs and California Subclass members are “consumers” as defined
21 by Cal. Civ. Code §§ 1761(d) & 1770 and have engaged in a “transaction” as defined
22 by Cal. Civ. Code §§ 1761(e) & 1770.

23 180. Defendant’s unlawful conduct resulted in the sales of products and
24 services to Plaintiffs and the California Subclass Members in violation of Cal. Civ.
25 Code § 1770, including:

- 26 a. Representing that goods or services have characteristics that they do
27 not have;

- 1 b. Representing that goods or services are of a particular standard,
- 2 quality, or grade when they were not;
- 3 c. Advertising goods or services with intent not to sell them as
- 4 advertised; and
- 5 d. Representing that the subject of a transaction has been supplied in
- 6 accordance with a previous representation when it has not.

7 181. Defendant’s representations and omissions were material because they
8 were likely to deceive reasonable consumers.

9 182. Had Defendant disclosed to Plaintiffs and California Subclass Members
10 that they misrepresented Defendant’s Products, omitted material information
11 regarding the risk involved with use of the Products and true abilities of those
12 Defendant’s Products, and were otherwise engaged in common business practices that
13 ultimately hurt consumers, Defendant would have been unable to continue selling
14 defective Products. Instead, Defendant represented that its Products promoted healthy
15 hair, were “free of harsh ingredients,” “made with nourishing, hydrating ingredients,”
16 “free of sulfates, parabens, and silicones to gently cleanse curls,” sourced from “the
17 highest-quality, good-for-you ingredients from around the world,” without disclosing
18 their potential risks. Plaintiffs and the California Subclass Members acted reasonably
19 in relying on Defendant’s misrepresentations and omissions, the truth of which they
20 could not have discovered with reasonable diligence.

21 183. As a direct and proximate result of Defendant’s violations of Cal. Civ.
22 Code § 1770, Plaintiffs and California Subclass Members have suffered and will
23 continue to suffer injury, ascertainable losses of money or property, and monetary
24 and non-monetary damages, including from not receiving the benefit of their bargain
25 in purchasing the Defendant’s Products, and increased time and expense in treating
26 the damage caused by the use of Defendant’s Products.

27 184. Plaintiffs sent notice of their intention to seek damages via a letter dated
28 February 7, 2020, in compliance with Cal. Civ. Code § 1782(a). Any further notice

1 would be futile because Defendant has yet to offer relief to the California Subclass,
2 despite being on notice of its unfair, deceptive, and fraudulent conduct.

3 185. Plaintiffs, individually and on behalf of the other California Subclass
4 Members, seek all monetary and non-monetary relief allowed by law, including
5 damages and punitive damages, declaratory relief, an order enjoining the acts and
6 practices described above, attorneys' fees, and costs under the CLRA.

7 **COUNT 8**

8 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW,**

9 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

10 **(On behalf of the California Subclass)**

11 186. The California Plaintiffs identified above, individually and on behalf of
12 the California Subclass, repeat and re-allege ¶¶ 1-97, as if fully alleged herein.

13 187. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17201.

14 188. Defendant violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL") by
15 engaging in unlawful, unfair, and deceptive business acts and practices.

16 189. Defendant's "unfair" acts and practices include:

- 17 a. Knowingly designing, developing, manufacturing, advertising, and
18 selling Defendant's Products with false health claims and significant
19 defects that result in health and safety risks when used so that
20 consumers did not receive the benefit of their bargain;
- 21 b. Marketing and selling Defendant's Products that relied upon false
22 health claims, while at the same time exposing consumers to health
23 and safety risks solely to increase profits;
- 24 c. Making affirmative public representations about alleged benefits of
25 Defendant's Products while, at the same time, not ensuring consumer
26 health and safety with respect to use of the Products; and

- 1 d. Concealing material information from consumers regarding the true
2 nature of the defects in Defendant’s Products in order to impact
3 consumer purchasing behavior.

4 190. Defendant has engaged in “unlawful” business practices by violating
5 multiple laws, including the CLRA, Cal. Civ. Code §§ 1780, *et seq.*, and California
6 common law.

7 191. Defendant’s deceptive acts and practices include:

- 8 a. Knowingly designing, developing, manufacturing, advertising, and
9 selling Defendant’s Products with false health claims and significant
10 defects that result in health and safety risks when used so that
11 consumers did not receive the benefit of their bargain;
- 12 b. Marketing and selling Defendant’s Products that relied upon false
13 health claims, while at the same time exposing consumers to health
14 and safety risks solely to increase profits;
- 15 c. Making affirmative public representations about the alleged benefits
16 of Defendant’s Products while, at the same time, not ensuring
17 consumer health and safety with respect to use of the Products; and
- 18 d. Concealing material information from consumers regarding the true
19 nature of the defects in Defendant’s Products in order to impact
20 consumer purchasing behavior.

21 192. Defendant violated UCL § 17200’s prohibition against engaging in
22 unlawful acts and practices by engaging in false and misleading advertising and by
23 omitting material facts from purchasers of Defendant’s Products. As alleged more
24 fully herein, Defendant’s marketing and sale of Defendant’s Products, and more
25 specifically their failure to inform customers of the health and safety risks inherent in
26 Defendant’s Products, violated Cal. Civ. Code §§ 1750, *et seq.*, common law, and
27 other statutory violations as alleged herein. Plaintiffs reserve the right to allege other
28 violations of the law, which constitute other unlawful business acts and practices. As

1 alleged herein, Defendant continues to misrepresent the Products' abilities and
2 continues to deny that the Products pose health and safety risks, Defendant has not
3 recalled its Products nor provided any remedial efforts including a warning disclosing
4 their possible risks, and Defendant's conduct is ongoing and continues to this date.

5 193. Defendant violated UCL § 17200's prohibition against unfair conduct by
6 failing to inform its customers about Defendant's Products' abilities and their
7 potential health and safety risks; engaging in a pattern or practice of concealing those
8 facts and continuing to sell those Defendant's Products despite its knowledge that
9 they are misrepresented and carry health and safety risks (including the risks of hair
10 loss, excessive shedding, and scalp irritation) - thereby depriving customers of the
11 value of Defendant's Products as represented. This conduct is substantially injurious
12 to consumers, offends public policy, is immoral, unethical, oppressive, and
13 unscrupulous as the gravity of the conduct outweighs any alleged benefit.
14 Specifically, the health and safety risks were outweighed by Defendant's profit
15 motive. Defendant engaged in this conduct at the expense of its customers' rights
16 when other, lawful alternatives were available (such as providing customers with full
17 information about Defendant's Products, including the known risks and potential side
18 effects of use, prior to purchase).

19 194. Defendant engaged in this conduct to gain an unfair commercial
20 advantage over its competitors, seeking to avoid public knowledge of the abilities of
21 Defendant's Products and their defects to avoid damage to their sales or reputation.
22 Defendant withheld critical and material information from Plaintiffs and California
23 Subclass Members, competitors, and the marketplace, all to Defendant's unfair
24 competitive advantage.

25 195. Defendant's business practices, as alleged herein, constitute fraudulent
26 conduct because they were likely to deceive, and did deceive, California Subclass
27 Members into purchasing Defendant's Products when those Products were
28

1 misrepresented and defective with health and safety risks and otherwise did not
2 perform as advertised.

3 196. Defendant's representations and omissions were material because they
4 were likely to deceive reasonable consumers.

5 197. As a direct and proximate result of Defendant's unfair, unlawful, and
6 fraudulent acts and practices, Plaintiffs and California Subclass Members were
7 injured and lost money or property, including from not receiving the benefit of their
8 bargain in purchasing Defendant's Products, and increased time and expense in
9 dealing with treating damages from the use of Defendant's Products.

10 198. Defendant recklessly disregarded Plaintiffs and California Subclass
11 members' rights. Defendant's knowledge of the Defendant's Products' false claims
12 and health and safety risks put it on notice that the Defendant's Products were not as
13 it advertised.

14 199. Plaintiffs and California Subclass Members seek injunctive and
15 declaratory relief, any other appropriate equitable relief, and an award of reasonable
16 attorneys' fees and costs under California Code of Civil Procedure § 1021.5.

17 **COUNT 9**

18 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**

19 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

20 **(On behalf of the California Subclass)**

21 200. The Plaintiffs identified above, individually and on behalf of the
22 California Subclass, repeat and re-allege ¶¶ 1-97, as if fully alleged herein.

23 201. Defendant's acts and practices, as described herein, have deceived
24 and/or are likely to continue to deceive Class Members and the public. As described,
25 Defendant misrepresented Defendant's Products, concealed Defendant's Products'
26 defects, concealed the health and safety risk with use of Defendant's Products, and
27 also concealed and misrepresented the true nature of Defendant's Products.

28

1 202. By their actions, Defendant disseminated uniform advertising regarding
2 the Defendant's Products throughout the country, including in California. The
3 advertising was, by its very nature, unfair, deceptive, untrue, and misleading within
4 the meaning of Cal. Bus. & Prof. Code §§ 17500, *et seq.* Such advertisements were
5 intended to and likely did deceive the consuming public for the reasons detailed
6 herein.

7 203. The above-described false, misleading, and deceptive advertising
8 Defendant disseminated continues to have a likelihood to deceive in that Defendant
9 failed to disclose the true nature of Defendant's Products. Defendant failed to
10 instigate a public information campaign to alert consumers of the defects and,
11 instead, continued to misrepresent the true nature of Defendant's Products,
12 continuing to deceive consumers.

13 204. Defendant continued to misrepresent to consumers that Defendant's
14 Products were capable of certain benefits without disclosing health and safety risks.
15 Had Defendant disclosed those issues, rather than falsely advertising Defendant's
16 Products' abilities, consumers would have not purchased Defendant's Products, and
17 would not pay an inflated price for Defendant's Products.

18 205. In making and disseminating the statements alleged herein, Defendant
19 knew, or should have known, its representations, advertisements, and statements were
20 untrue and misleading in violation of California law. Plaintiffs and other California
21 Subclass Members based their purchasing decisions on Defendant's omitted material
22 facts. The revenues to Defendant attributable to Products sold in those false and
23 misleading advertisements amount to hundreds of millions of dollars. Plaintiffs and
24 California Subclass Members were injured in fact and lost money and property as a
25 result.

26 206. The misrepresentations and non-disclosures by Defendant of the material
27 facts described and detailed herein constitute false and misleading advertising and,
28 therefore, constitute violations of Cal. Bus. & Prof Code §§ 17500, *et seq.*

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JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all claims so triable.

Dated: February 10, 2020

Respectfully submitted,

/s/ Danielle L. Perry

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**pro hac vice to be filed*

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