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4 *Attorney for Plaintiff* GINA KILPELA on behalf of  
5 themselves and all others similarly situated

6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 GINA KILPELA, an individual, on  
behalf of themselves and all others  
12 similarly situated,

13 Plaintiff,

14 v.

15 INNOVATIVE STYLING OPTIONS,  
INC., and ZOTOS INTERNATIONAL,  
16 INC.,

17 Defendants.

Case No. '15CV2464 H JMA

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Trial Date:

18 **CLASS ACTION COMPLAINT**

19 Plaintiff Gina Kilpela (“Plaintiff”), by and through her attorney, bring this  
20 class action on behalf of herself and similarly-situated others who purchased  
21 Maintamer Straightening System hair-care product manufactured and marketed by  
22 Innovative Styling Options, Inc., and Zotos International Inc. (collectively,  
23 “Defendants”), and states as follows:

24 **INTRODUCTION AND NATURE OF ACTION**

25 1. Zotos International Inc. (“Zotos”) is a leading professional beauty  
26 company that manufactures its beauty products in New York.  
27  
28

1           2.     Zotos sells its products internationally through online retailers as well  
2 as professional beauty stores and salons.

3           3.     Innovative Styling Options, Inc. (“ISO”) is a professional hair product  
4 brand owned by Zotos that markets and sells the ISO Maintamer Straightening  
5 System (the “Product”).

6           4.     Defendants promote the Product claiming it is: “Damage-Free.”

7           5.     Defendants also market the Product to customers with thicker,  
8 uncolored hair as their website claims the Product is “[i]deal for smoothing coarse  
9 hair, taming unruly curls and waves, unperming ends and controlling frizzy hair”  
10 and was designed for “tinted hair (up to 20 volume) or lightly high-lighted hair (up  
11 to 40%).”

12          6.     Plaintiff, who has thick, coarse and frizzy hair and who never has  
13 colored her hair used Defendants’ Product and experienced considerable damage to  
14 her hair and scalp. Three days after application Plaintiff’s hair began falling out  
15 and, two weeks after application, large sections of Plaintiff’s scalp were visible  
16 where her hair had completely broken. Plaintiff continued to experience increasing  
17 damage to her hair and scalp three weeks after application.

18          7.     Plaintiff’s experience, along with the experiences of numerous other  
19 consumers clearly demonstrate that Defendants’ product is not safe for use in thick,  
20 uncolored hair and that the Product is not “Damage-Free” as represented.

21          8.     As a result of Defendants’ deceptive representations, consumers –  
22 including Plaintiff and members of the proposed Class – have purchased products  
23 that do not perform as advertised. Plaintiff and members of the proposed Class also  
24 have suffered hair loss and damage to their hair and scalp as a result of Defendants’  
25 deceptive representations.

26          9.     Plaintiff brings this action on behalf of herself and all other similarly  
27 situated consumers to halt the dissemination of this false and misleading advertising  
28 message, correct the false and misleading perception it has created in the minds of

1 consumers, and obtain redress for those who have purchased the Products based on  
2 Breaches of Express and Implied Warranties, violations of California Consumer  
3 Protection Statutes and the Moss-Magnuson Warranty Act, Negligence/Gross  
4 Negligence, Strict Liability and Restitution based on Quasi-Contract. Plaintiff seeks  
5 injunctive and monetary relief for all consumers who purchased the Product.

### 6 **JURISDICTION AND VENUE**

7 10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d).  
8 The matter in controversy, exclusive of interest and costs, exceeds the sum or value  
9 of \$5,000,000 and is a class action in which there are in excess of 100 class  
10 members and many members of the Class are citizens of a state different from  
11 Defendants.

12 11. This Court has jurisdiction because Plaintiff Gina Kilpela is a resident  
13 of Pennsylvania, Zotos is incorporated in New York and ISO is headquartered in  
14 California and its Marketing and Sales also is located there.

15 12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)  
16 because Defendant conducts a substantial amount of business, including the  
17 marketing and distribution of the product in this judicial district.

### 18 **PARTIES**

19 13. Plaintiff Gina Kilpela is 39 years old, Caucasian, of southern Italian  
20 descent and resides in Pittsburgh, PA. She has very thick, coarse, frizzy hair and for  
21 all of her adult life has worn her hair past her shoulders, both curly and blown out  
22 smooth. Plaintiff has never used any coloring product in her hair and for many  
23 years has used several straightening products, such as Rusk Anti-Curl, to provide  
24 her hair with greater manageability and lessen bulk.

25 14. In May 2013, Plaintiff moved to Pittsburgh and once again tried Rusk  
26 Anti-Curl to relax her hair. However, it no longer worked as well as it had in the  
27 past and Plaintiff thus sought a more effective product.

28

1           15.    On October 30, 2013, Plaintiff had the Maintamer Straightening  
2 System applied to her hair. A local stylist, Maria Gaygan, owner of Elixir Hair  
3 Artistry in Mt. Lebanon, PA, recommended the Product. Ms. Gaygan assured  
4 Plaintiff the Product was not too harsh as the Product explicitly stated that it was  
5 “Lye-Free.” At this time, Plaintiff also observed and inspected the Product’s  
6 packaging and noticed the front label claimed the Product was “Damage-Free.”

7           16.    After inspection, Plaintiff purchased the Product and instructed Ms.  
8 Gaygan to apply it to her hair. Ms. Gaygan applied the Product as directed; she  
9 applied the first phase and rinsed and then applied the second phase and rinsed  
10 thoroughly and completely. Throughout application Ms. Gaygan asked time and  
11 again if Plaintiff was experiencing tingling or discomfort; she did not. Finally,  
12 Plaintiff’s hair was blow dried on low and smoothed with a flat iron.

13           17.    On November 1, 2013, Plaintiff’s scalp felt tight, as if she had been  
14 wearing a ponytail and she also felt some mild tingling. As a result, Plaintiff  
15 washed her hair that afternoon and, hardly dried it at all, fearful of possible damage.  
16 By the evening, Plaintiff felt stubble along her hairline and the tightness and tingling  
17 remained, subsiding slightly.

18           18.    On November 2, 2013, Plaintiff, while washing her hair, felt additional  
19 stubble and noticed that a substantial amount of hair had begun to fall out.

20           19.    On November 4, 2013, with the damage worsening, Plaintiff called Ms.  
21 Gaygan, and on November 5, 2013, visited the salon so that Ms. Gaygan and her  
22 partner could determine if breakage was occurring. At this point, just under a week  
23 after application, stubble could be felt all over the scalp.

24           20.    Ms. Gaygan observed hair bent at the root but was hopeful that the  
25 damage to Plaintiff’s hair would soften over time. On November 6, 2013, Ms.  
26 Gaygan called ISO customer service to discuss what she saw and seek a solution.

27           21.    In an attempt to mitigate her injuries, Plaintiff visited Ms. Gaygan  
28 every other day for the next week so that Ms. Gaygan could deep condition and dry

1 her hair, but Plaintiff's condition failed to improve. To the contrary, so much hair  
2 was lost during the second week that large sections of Plaintiff's scalp were visible.

3 22. On November 11, Plaintiff sent ISO customer service an email about  
4 her situation and followed up with a phone call on November 13, 2013. During the  
5 call, Plaintiff made clear that she was losing hair by the handful. Jeanette Toth, a  
6 customer service employee, recommended that Plaintiff use Joico Deep  
7 Reconstructor Conditioner, Leave-In Protectant and Intense Hydrator<sup>1</sup> (the "Joico  
8 Products") and sent an email outlining how Plaintiff should use these products.

9 23. On the evening of November 13, Plaintiff visited and consulted with  
10 another well-known Pittsburgh stylist. The stylist observed breakage all over  
11 Plaintiff's scalp and thus believed that the breakage would continue for some time.  
12 She also told Plaintiff the hair remaining on her scalp was damaged as it broke  
13 unevenly and even short pieces were split. The stylist recommended Bumble and  
14 Bumble curl enhancing products to permit Plaintiff's hair to dry without the use of  
15 heat and gave Plaintiff two Keratase products that she thought could strengthen  
16 Plaintiff's hair and help it grow.

17 24. On November 14, 2013, Ms. Gaygan brought the Joico Products to  
18 Plaintiff's home, which Plaintiff used, with no heat, everyday. This course of action  
19 provided no relief.

20 25. As of November 20, 2013, three weeks since the Product was first  
21 applied, Plaintiff lost more than half of the hair on the crown of her head. At this  
22 time there also were visible spots on both the left and right sides of Plaintiff's head  
23 and along her hairline, where there was hair no longer than a quarter of an inch long.  
24 In addition, the right side displayed a visible patch of broken hair. Plaintiff also  
25 suffered from stubble over the entire top of her head. This stubble was visible due  
26 to the fact that little hair remained.

27 \_\_\_\_\_  
28 <sup>1</sup> Upon information and belief Joico is a beauty brand also owned by Zotos.

1           26. Defendant Zotos International Inc. is a New York corporation,  
2 headquartered in Connecticut. Upon information and belief, at all relevant times,  
3 Zotos has manufactured the Product and advertised, marketed, provided, offered,  
4 distributed, and/or sold it through ISO throughout the United States including to  
5 individuals in Pennsylvania such as Plaintiff and the Class.

6           27. Defendant Innovative Styling Options, Inc. is a Delaware corporation  
7 owned by Zotos International Incorporated. Upon information and belief, ISO is  
8 headquartered in California and its Marketing and Sales Office also is located there.  
9 At all relevant times, ISO has advertised, marketed, provided, offered, distributed,  
10 and/or sold the Product throughout the United States including to individuals in  
11 Pennsylvania such as Plaintiff and the Class.

## ALLEGATIONS

### The False and Misleading Marketing Claims

14           28. This lawsuit concerns the ISO Maintamer Straightening System hair  
15 product marketed and sold by ISO and manufactured by Zotos.

16           29. At all relevant times, Defendants have represented that the Product is  
17 safe and “Damage-Free” when used in uncolored, coarse, thick and frizzy hair.

18           30. In an early advertisement displayed on October 16, 2006, on ISO’s  
19 website, the Product is advertised as a “damage-free, thio-free, lye-free technology  
20 that processes primarily within the cortex of the hair, to minimize damage to the  
21 cuticle.” *See*  
22 <http://web.archive.org/web/20141018010336/http://www.iso-hair.com/newsroom/view.php/2006/10/16/72>  
23 (last accessed Oct. 28, 2015). In this ad Defendants also claim  
24 that customers can “achieve the straight, frizz-free, glossy locks [they] have been  
25 dreaming about with no damage and in just two steps with the ISO Maintamer  
26 Straightening System.” *See id.* Finally, this ad claims the Product is intended for  
27 “colored, fine and wavy or super coarse and curly texture.” *See id.*

28           31. Defendants continue to make similar representations about the Product.

1 32. Defendants’ most recent website advertising the Product claims the  
2 Product can help create “beautiful, healthy, straight hair” and that it is “Virtually  
3 Damage-free,” “Frizz-free,” and provides for “Unsurpassed smoothness and  
4 manageability.” See <http://www.iso-hair.com/products/view.php?id=27> (last  
5 accessed Sept. 9, 2014). This site also maintains that the Product is “[i]deal for  
6 smoothing coarse hair, taming unruly curls and waves, unperming ends and  
7 controlling frizzy hair” and that it is designed for “normal hair, previously permed  
8 hair, tinted hair (up to 20 volume) or lightly high-lighted hair (up to 40%).” See *id.*

9 33. The Product’s packaging, both past and present, also represents that the  
10 Product is “Damage-Free” and “Lye-Free.” Interestingly, these are the only  
11 representations concerning the Product’s performance that can be seen on the front  
12 of the Product’s label and the front of the label is devoid of a warning concerning  
13 the possibility of damage or a disclaimer alerting consumers that the “Damage-Free”  
14 characteristics are limited to consumers who have uncolored hair:



1           34. By promoting the Product as “Damage-Free” and “Lye-Free” and for  
2 use in uncolored hair, Defendants warranted the Product as a safe, non-toxic hair  
3 smoothing/straightening solution for persons with uncolored hair.

4           35. An average consumer viewing the Product’s label and/or Defendants’  
5 online advertising regarding the Product would believe that the Product is “Damage-  
6 Free” when used as directed.

7           36. An average consumer also would reasonably expect a warning  
8 regarding any potential harm to consumers who have uncolored hair, especially  
9 because the Food, Drug and Cosmetic Act provides that cosmetics that may be  
10 hazardous to consumers must bear appropriate warnings. *See* 21 C.F.R. § 740.

11                   **Plaintiff’s Experience, As Well As Those of Other Consumers,**  
12                   **Demonstrate That The Product Is Not “Damage-Free” and Is Not Safe For**  
13                   **Use In The Population For Which Defendants Claim The Product Is Intended**

14           37. Defendants’ claims are false and misleading based on Plaintiff’s and  
15 countless other consumers’ experiences using the Product.

16           38. Although Plaintiff never colored her hair and had the Product applied  
17 by a professional hair stylist, after application, she experienced severe hair loss and  
18 damage to her hair and scalp. *See* PARTIES *supra*.

19           39. Other consumers, who have used the Products and commented about  
20 their experience(s), also have experienced damage to the hair and scalp as a result of  
21 the Products’ application.

22           40. Celia from Vancouver, Canada on Mar. 5, 2014 commented: “My hair  
23 was virgin, i used the product for the specified amount of time and my hair is falling  
24 out in chunks.” *See* <http://www.sleekhair.com/2433.html#reviews>

25           41. Leslie from Pasadena, CA on Feb. 18, 2014 commented: “My hair is  
26 chemically straightened, my hair dresser applied this ISO Maintamer to my hair, 10  
27 days later I colored it with permanent hair color. My hair is falling out by the  
28 handfuls.” *See Id.*



1           42.    Toi from St. Louis, MO on Jan. 7, 2014 commented: “I attend a  
2 cosmetology school n on student service day I had to use an ISO straightener on my  
3 hair and the day I got it my hair was so beautiful that my mom went and got it done  
4 on her hair. The next day and I mean the very next day after I comb down my wrap I  
5 had piles of hair on my floor and sink. The back of my hair was completely broke  
6 off and i can't touch it without it breaking off. I went to school and my instructor,  
7 who did the treatment, had no idea what went wrong. She was at a lost when she  
8 seen my hair. I tried to contact ISO to see if they can tell me what's going on n I  
9 haven't got an response back yet. My mother called me and was screaming and  
10 yelling that her hair was falling out in humps and I know that her treatment was  
11 done correctly because our campus manager did it because it was the first time  
12 someone came in and ask for one. Can anyone help us. My hair was down to he  
13 middle of my back and now it barely touch my shoulders and my mom hair is now  
14 up to her ears because of the treatment.” *See Id.*

15           43.    Dawne C from San Diego on Sept. 10, 2012 commented: “I'd had the  
16 Iso Manetamer done to my hair professionally several times with great results. I was  
17 able to grow my hair to a length of over 30" to donate to Locks of Love. Last year,  
18 after cutting my hair to my shoulders, I had the same professional do my Iso  
19 straightening and it FRIED my hair, mostly in the back ... this was strange, no other  
20 chemicals were in my hair other than permanent hair color I've used for several  
21 years. I had to grow out my hair for a year to cut off all the damage. Yesterday, I  
22 decided to give Manetamer another try and applied it at home, following all the  
23 directions EXACTLY and used a timer. I even rinsed my hair standing in the  
24 shower to insure all chemicals were fully rinsed. RESULTS ARE DISATEROUS! I  
25 now have VERY frizzy/puffy hair that is far worse than when I started with  
26 relatively straight hair with some random coarseness to it. My hair just tears apart  
27 and won't dry since all the hair bonds have been destroyed. I will be cutting my  
28 shoulder length hair into a Pixie tomorrow night ...” *See Id.*

1           44. Never Again from Charlotte NC on Nov. 11, 2011 commented: “Front  
2 hair line is thinner and my back looks as if it was purposely tapered! :(.” See  
3 [http://myaccount.sleekhair.com/mod\\_productReviews/displayProductReviews.php?](http://myaccount.sleekhair.com/mod_productReviews/displayProductReviews.php?productId=2433)  
4 [productId=2433](http://myaccount.sleekhair.com/mod_productReviews/displayProductReviews.php?productId=2433).

5           45. Christine from Flint, MI commented on Jan. 23, 2011: “I had this  
6 applied by a trained ISO Tech/Rep and immediately had scalp sensitivity and also  
7 some hair breakage in the front of my head at my appointment. The tech had no  
8 explanations as to why it happened. Well a few days later my hair started to fall out  
9 like crazy! It has been over a month and my hair is still falling out. My hair was  
10 very thick before I had this done but now my hair volume is less than half of what it  
11 was. It will take about 2 years for my hair to grow back to the length it was. I have  
12 spent a fortune on Doctor appointments and products to try to stop the hair loss and  
13 repair the damage. I am still experiencing scalp sensativity as well and my Doctor  
14 can't guarantee that I won't lose all my hair.” See *Id.*

15           46. Donna Marie from New York, NY on Jan. 10, 2011 commented: “If  
16 you are not a professional I URGE YOU NOT TO USE THIS PRODUCT. Write to  
17 me and thank me. My hair is flatironed, I go to Chinatown every 8 months. A friend  
18 had a PROFESSIONAL use this on their hair, it worked fine. My hair was like  
19 SILK. After one treatment, I was in tears in the shower. My hair is fried.” See *Id.*

20           47. SV from St Petersburg, FL on Nov. 9, 2010 commented: “I had a  
21 straightening treatment on my hair that was very expenisve. My hair dresser  
22 recommended that I use main tamer for my roots for just the growth. Three months  
23 after the first treatment (not main tamer) I had this done. It worked fine. Three  
24 months later, I had the process done again. Within a week I noticed a large amount  
25 of hair falling out. Five months later, its stil falling out! It's mostly on the top of my  
26 head but it is so embarassing becasue that section is about one inch long and I have  
27 a few comb over pieces to try and cover it but those keep falling out also. I heard  
28 they were taking it off the market. I've read other reviews with the same result. If

1 you want your hair, you won't use it. I'd rather have curly hair than no hair at all!"

2 *See Id.*

3 48. Cynthia from Puerto Rico on Oct. 6, 2010 commented: "I have been  
4 using this product for 5 years, I have coarse frizzy hair. The only problem with this  
5 product is that your hair breaks...on the sides, back and front. It is always in these  
6 places that it breaks. The last time I used it was 8 months ago, and it was a  
7 nightmare..I lost a chunk of hair on the front hairline. I always go to a professional  
8 stylist to do this. Reading the reviews this is a comon problem." *See Id.*

9 49. Stacy from Philadelphia on Oct. 5, 2010 commented: "I used the  
10 Maintainer on Sunday night on myself. I am a licensed cosmetologists. I washed  
11 my hair no conditioner towel dryed and then used step 1 fir 15 min's I then rinsed  
12 my hair for 10 min's, I towel dried again and then used step 2 for 5 minutes. after i  
13 rinsed my hair i noticed it was very dry and hard to comb. i decided to let it dry  
14 naturally. when it dried it was a brillo pad. imagine when you were a kid and your  
15 mom gave you a bad perm and it fried. thats how my hair was. Oh forgot to mention  
16 I color with 10 and 20 % peroxide on my hair. I washed my hair tuesday morning  
17 and in no way shape or form is my hair soft. i cant wait until it grows out. I am  
18 wondering if anyone had the same problem." *See Id.*

19 50. Alana from Miami, FL on Aug. 6, 2010 commented: "I have really long  
20 curly/thick hair. I'm mixed with Black and East Indian. Using this product was the  
21 first time I ever used a chemical in my hair (age 22) so I was very nervous. My goal  
22 was to just loosen my curls to make my hair more manageable. The results were not  
23 as expected. My curls did loosen, however **OVER A QUARTER OF MY HAIR**  
24 **FELL OUT. ALL MY EDGES AT THE FRONT AND BACK FELL OUT, AND**  
25 **SMALL CHUNKS IN THE MIDDLE.** At the beginning everything seemed fine,  
26 but after a month or so when I combed my hair or even touched it, hair just fell out.  
27 It was if I was shedding (so much I had to vacuum/sweep every day). The next  
28 worst part was when it started growing back. I had to hide the awkward short hairs

1 that stood out especially along my front edges with headbands, hair clips, and tons  
2 of gel. I had to keep my hair in pony tails or clip it to cover up certain areas. Its been  
3 two years, and I just decided to grow my hair out and cut the "relaxed" hair every  
4 few months to promote hair growth. I still have six more inches to go. This product  
5 may have worked for some people, but you never know how your hair will react if  
6 you've never used a chemical in it before. I researched this product and it came  
7 highly recommended from professional hair stylists, but it just didn't react well with  
8 my hair texture. Honestly, if I could go back...it wasn't worth me messing up/losing  
9 my hair. Thank God I had a lot of hair in the first place, or I would have been even  
10 more devastated.” *See Id.*

11 51. Liz from Los Angeles, CA on Sept. 16, 2009 commented: “I had this  
12 done professionally at a salon. What a big mistake, my hair was ruined! I had to cut  
13 it off. My hair looked terrible and as it grew, it looked even worse. It broke off all  
14 over my head. What a complete disaster!” *See Id.*

15 52. Rite19 commented: “This product damaged my hair the last time I used  
16 it and I also had some breakage. It has been 2 months since applying it to my hair  
17 and I am still having problems with dry hair and damage. Now I can only let it grow  
18 out and wait. Thankfully, only part of my hair was damaged. I do not recommend!”  
19 *See* [http://www.makeupalley.com/product/showreview.asp/ItemId=140464/Main-](http://www.makeupalley.com/product/showreview.asp/ItemId=140464/Main-Tamer/ISO/Treatments)  
20 [Tamer/ISO/Treatments.](http://www.makeupalley.com/product/showreview.asp/ItemId=140464/Main-Tamer/ISO/Treatments)

21 53. As such, Defendants’ representations about the safety and “Damage-  
22 Free” characteristics of the Product in persons who have uncolored hair are  
23 contradicted by numerous consumer accounts detailing damage and hair loss  
24 following proper application of the Product.

25 **Zotos And ISO Have Harmed Consumers Through Their Marketing and Sale**  
26 **Of The Product**

27 54. Undeterred by the myriad of complaints and experiences demonstrating  
28 the damaging potential of the Product in users with uncolored, thick, coarse and

1 frizzy hair Defendants have and continue to represent that the Product is safe and  
2 “Damage-Free.”

3 55. As the manufacturer and/or distributor of the Product, Defendants  
4 possess specialized knowledge regarding the safety of the ingredients contained in  
5 its Product and, moreover, is in a superior position to, and has, learned of the lack of  
6 safety for the ingredients in the Product.

7 56. Defendants also were alerted to the Product’s damaging quality when  
8 Plaintiff and other consumers called and/or emailed Defendants’ offices and alerted  
9 them to the damage and hair loss they experienced attendant to application of  
10 Defendants’ Product. As a result, Defendants knew, but failed to disclose, that the  
11 Product is capable of damaging the hair and scalp of customers who have uncolored,  
12 thick, coarse and frizzy hair.

13 57. As a result, Defendants knew 1) their Product posed a substantial risk  
14 of damage and hair loss to consumers, 2) their consumers were unaware of this risk  
15 and 3) their consumers had a reasonable expectation that Defendants would disclose  
16 the risk so that consumers could make an informed choice about the purchase and  
17 use of the Product.

18 58. Despite this knowledge, Defendants failed to disclose the risks  
19 associated with its Product. To this day the Product is available for sale, without a  
20 disclaimer or warning, on the Internet and in numerous salons.

21 59. Plaintiff and Class members have been misled by Defendants’  
22 deceptive representations and as a result have incurred hair loss as well as damage to  
23 their hair and scalp. Plaintiff purchased and used the Product during the Class  
24 period and in doing so, read and considered the advertising and marketing by  
25 Defendants and based their decisions to purchase and use the Product on the  
26 representations on the packaging and on Defendants’ website. Defendants’  
27 representations and omissions were a material factor in influencing Plaintiff’s  
28 decision to purchase and use the Product.

1 60. Plaintiff and the Class would not have purchased the Products had they  
2 known it would damage their hair and scalp and cause hair loss.

3 61. As a result, Plaintiff and the Class members have been injured in fact in  
4 their purchases of the Supplements in that they were deceived into purchasing a  
5 Product that did not perform as advertised.

6 62. Plaintiff and the Class members also have been injured in fact in their  
7 use of the Product in that they have experienced damage to their hair and scalp and  
8 have suffered substantial hair loss. In suffering these personal injuries, Plaintiff and  
9 the Class members have been forced to expel time and money in order to mitigate  
10 and repair the damage to their hair and scalp caused by Defendants' Product.

11 63. Defendants, by contrast, reaped enormous profit from its false  
12 marketing and sale of the Product.

### 13 **CLASS DEFINITION AND ALLEGATIONS**

14 64. Plaintiff brings this action on behalf of themselves and all other  
15 similarly situated persons pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal  
16 Rules of Civil Procedure and seeks certification of the following Class:

17 All consumers who, within the applicable statute of  
18 limitations period, purchased the Product, used the Product  
19 as directed and experienced hair loss, damage to their hair  
and/or scalp, or any combination thereof.

20 Excluded from the Class are Defendants, their parents,  
21 subsidiaries, affiliates, officers and directors, and those  
22 who purchased the Product for resale.

23 65. The members of the Class are so numerous that joinder of all members  
24 of the Class is impracticable. Plaintiff is informed and believes that the proposed  
25 Class contains thousands of purchasers of the Product who have been damaged by  
26 Defendants' conduct and their Product as alleged herein. The precise number of  
27 Class members is unknown to Plaintiff.

28 66. This action involves common questions of law and fact, which  
predominate over any questions affecting individual Class members. These

1 common legal and factual questions include, but are not limited to, the following:

- 2 (1) whether the claims discussed above are true, or are misleading,  
3 or objectively reasonably likely to deceive;
- 4 (2) whether Defendants' alleged conduct violates public policy;
- 5 (3) whether the alleged conduct constitutes violations of the laws  
6 asserted;
- 7 (4) whether Defendants engaged in false or misleading advertising;
- 8 (5) whether Plaintiff and Class members have sustained monetary  
9 loss and the proper measure of that loss;
- 10 (6) whether Plaintiff and Class members have sustained personal  
11 injury by means of damage to their hair and scalp and hair loss as  
12 a result of using Defendants' Product; and
- 13 (7) whether Plaintiffs and Class members are entitled to other  
14 appropriate remedies, including corrective advertising and  
15 injunctive relief.

16 67. Plaintiff's claims are typical of the claims of the members of the Class  
17 because, inter alia, all Class members were injured through the uniform misconduct  
18 described above. Plaintiff is advancing the same claims and legal theories on behalf  
19 of herself and all members of the Class.

20 68. Plaintiff will fairly and adequately protect the interests of the members  
21 of the Class, have retained counsel experienced in complex consumer class action  
22 litigation, and intend to prosecute this action vigorously. Plaintiff has no adverse or  
23 antagonistic interests to those of the Class.

24 69. A class action is superior to all other available means for the fair and  
25 efficient adjudication of this controversy. The damages or other financial detriment  
26 suffered by individual Class members is relatively small compared to the burden and  
27 expense that would be entailed by individual litigation of their claims against  
28 Defendants. It would thus be virtually impossible for the Class, on an individual  
basis, to obtain effective redress for the wrongs done to them. Individualized  
litigation would create the danger of inconsistent or contradictory judgments arising  
from the same set of facts and would also increase the delay and expense to all

1 parties and the courts. By contrast, the class action device provides the benefits of  
2 adjudication of these issues in a single proceeding, ensures economies of scale and  
3 comprehensive supervision by a single court, and presents no unusual management  
4 difficulties under the circumstances here.

5 70. Plaintiff seeks preliminary and permanent injunctive and equitable  
6 relief on behalf of the entire Class, preventing Defendants from further engaging in  
7 the acts described and requiring Defendants to provide full restitution to Plaintiff  
8 and Class members.

9 71. Unless a Class is certified, Defendants will retain monies received as a  
10 result of its conduct that were taken from Plaintiff and Class members. Unless a  
11 Class-wide injunction is issued, Defendants will continue to commit the violations  
12 alleged, and the members of the Class and the general public will continue to be  
13 deceived and injured.

14 72. Defendants have acted and refused to act on grounds generally  
15 applicable to the Class, making appropriate final injunctive relief with respect to the  
16 Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Express Warranty)**

19 73. Plaintiff incorporates by reference and reasserts all previous  
20 paragraphs.

21 74. Defendants explicitly warranted on the Product's Label and Packaging  
22 that the Product was "Damage-Free." Defendants also warranted through its  
23 marketing and advertising that the Product was "Damage-Free" when used by  
24 persons with uncolored hair.

25 75. Plaintiff and the Class members bought the Product in reliance on these  
26 warranties and as a result, Defendants' warranties became the basis of the bargain  
27 between the Class and Defendants and are part of the standardized contract formed  
28 between the Class and Defendants upon purchase of the Product.



1 76. The Product failed to perform as warranted because it failed to avoid  
2 causing damage to Plaintiff's and the Class member's hair and scalp, and, in fact  
3 caused, substantial hair loss. As a result, the Product failed to conform to  
4 Defendants' affirmations and representations as described above and Defendants'  
5 thus breached their express warranties regarding the Product.

6 77. Plaintiff and the Class took reasonable steps to notify Defendants of the  
7 alleged breach by calling and emailing ISO's customer service department and  
8 describing the damage and injury the Product was causing.

9 78. Plaintiff and the Class were harmed because they would not have  
10 purchased the Product had they known about its damaging nature. In addition,  
11 Plaintiff and the Class were harmed when they experienced hair loss and damage to  
12 their hair and scalp after using the Product.

13 79. Defendants' breach was a substantial factor in causing Plaintiff's and  
14 the Class members' harm because they would not have purchased or used a Product  
15 which had a risk of causing hair damage and loss.

16 80. As a result of Defendants' breach, Plaintiff and the Class have suffered  
17 damages in the amount of the purchase price of the Product and its professional  
18 application and any consequential damages resulting from purchase and application,  
19 including the cost to repair their hair and scalp.

20 **SECOND CAUSE OF ACTION**

21 **(Breach of Implied Warranty of Merchantability)**

22 81. Plaintiff incorporates by reference and reasserts all previous  
23 paragraphs.

24 82. At all relevant times, there was a duty imposed by law on Defendants  
25 requiring them to conform the Products to the representations made on the Product's  
26 label and packaging and made in the Product's advertising and ensure that the  
27 Product was fit for the ordinary purposes commonly associate with hair smoothing  
28 products.

1           83. The Product was not merchantable upon delivery and purchase because  
2 it caused hair loss and damage to hair and scalp. As a result, the Product failed to  
3 conform to the “Damage-Free” representation found on its label and in Defendants’  
4 marketing. In addition, the Product was not fit for the ordinary purposes associated  
5 with hair smoothing/straightening products because, contrary to  
6 smoothing/straightening hair, it damaged hair and caused it to fall out.

7           84. Defendants were notified that the Product was not merchantable within  
8 a reasonable time after the defect manifested itself to Plaintiff and the Class  
9 members.

10           85. As a result of the Product’s non-merchantability, Plaintiff and the Class  
11 members have sustained damages in the purchase price of the Product, their loss of  
12 hair and damage to their hair and scalp.

### 13                                   **THIRD CAUSE OF ACTION**

#### 14           **(Violation of California False Advertising Law – Cal. Bus. & Prof. Code §** 15                                   **17500, et. seq.)**

16           86. Plaintiff incorporates by reference and reasserts all previous  
17 paragraphs.

18           87. Defendants engaged in unlawful conduct under California Business &  
19 Professions Code § 17500, et seq., by marketing its Product in a manner suggesting  
20 that it was “Damage-Free” when used in persons with uncolored hair, when, in fact,  
21 the Product was far from “Damage-Free” as it caused hair loss and damage the hair  
22 of Plaintiff and the Class members.

23           88. Plaintiff and the Class reasonably relied on Defendants’ representations  
24 in purchasing the Product. Thus, as a direct proximate result of Defendants’  
25 misrepresentations, Plaintiff and the Class purchased and used the Product. Plaintiff  
26 and the Class were harmed in this regard because 1) they purchased a Product they  
27 otherwise would have refrained from buying and 2) the otherwise purchased Product  
28 caused hair damage and loss, forcing Plaintiff and the Class to expel time and

1 money to remedy the damage to their hair and scalp.

2 89. Plaintiff is informed and believes, and on that basis alleges, that as a  
3 further direct and proximate result of the marketing described above, Defendants  
4 have received from members of the general public, including the Class, money  
5 Defendants obtained through its violation of § 17500, which Defendants continue to  
6 hold for its sole benefit.

7 90. Accordingly, Plaintiff, on behalf of themselves and all others similarly  
8 situated, seek equitable relief in the form of an order requiring Defendants to refund  
9 to Plaintiff and the Class members all monies they paid for the Product, an order  
10 requiring Defendants to pay Plaintiff for the consequential damages associated with  
11 the Product's use and, in addition, an order requiring Defendants to inform the  
12 consuming public that the Product is not "Damage-Free" and that it can cause  
13 damage to hair and substantial hair loss in persons with uncolored hair.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of California Unfair Competition Law – Cal. Bus. & Prof. Code §**  
16 **17200, et seq.)**

17 91. Plaintiff incorporates by reference and reasserts all previous  
18 paragraphs.

19 92. Defendants engaged in unlawful conduct under California Business &  
20 Professions Code § 17200, et seq., by marketing the Product in a manner suggesting  
21 that the Product was "Damage-Free" and intended for use in persons with uncolored  
22 hair, when, in fact, the Product was far from "Damage Free" when used in persons  
23 with uncolored hair.

24 93. Defendants' conduct is unlawful in that it violates the False Advertising  
25 Law, California Business & Professions Code § 17500, et seq.

26 94. Defendants' conduct is unfair in that it offends established public  
27 policy or is immoral, unethical, oppressive, unscrupulous, unconscionable or  
28 substantially injurious to Plaintiff and the Class members. The harm to Plaintiff and

1 the Class members arising from Defendants’ conduct outweighs any legitimate  
2 benefit Defendants have derived from the conduct.

3 95. Defendants’ misrepresentations and omissions are likely to mislead a  
4 reasonable consumer.

5 96. Plaintiff relied on Defendants’ misrepresentations and omissions

6 97. As a direct proximate result of Defendants’ violations, Plaintiff would  
7 have otherwise purchased or used the Product and, therefore suffered injury in fact  
8 through lost money attendant to purchase of the Product and lost money and time  
9 attendant to the damage caused by the Product’s use.

10 98. Plaintiff, on behalf of herself and the Class members, seeks restitution  
11 of monies they paid for the Product. Plaintiff also seeks relief on behalf of herself  
12 and the Class members for time and money expended in efforts to remedy the  
13 damage inflicted by use of Defendants’ Product. Finally, Plaintiff seeks equitable  
14 and injunctive relief on behalf of herself and the Class members pursuant to  
15 California Business & Professions Code § 17203.

16 **FIFTH CAUSE OF ACTION**

17 **(Magnuson-Moss Warranty Act – 15 U.S.C. § 2301, et seq.)**

18 99. Plaintiff incorporates by reference and reasserts all previous  
19 paragraphs.

20 100. Plaintiff and the Class are consumers as defined in 15 U.S.C. §  
21 2301(3).

22 101. Defendants are suppliers and warrantors as defined in 15 U.S.C. §  
23 2301(4), (5).

24 102. The Product is a consumer product as defined in 15 U.S.C. § 2301(6).

25 103. Defendants warranted to Plaintiffs and Class members that the Product  
26 was of merchantable quality and fit for the ordinary purposes for which it was  
27 intended to be used.

28 104. Defendants’ warranties that its Product is “Damage-Free” is a promise

1 that the Product will meet a specified level of performance; the Product will  
2 straighten hair without causing damage. The “Damage-Free” affirmation is more  
3 than a product description because the affirmation concerns how the Product will  
4 operate when it is applied, rather than its composition.

5 105. Defendants’ breached their express warranties because their statements  
6 about the Product were false and the Product does not conform to Defendants’  
7 affirmations and promises described above.

8 106. By reason of Defendants’ breach of its express and implied warranties  
9 set forth above, Defendants have violated the statutory rights due to Plaintiff and the  
10 Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.,  
11 thereby damaging Plaintiff and the Class.

12 107. As a result of Defendants’ breach, Plaintiffs and the Class have  
13 sustained damages and other losses in an amount to be determine at trial. Plaintiff  
14 and the Class are entitled to recover damages, costs, attorneys’ fees, rescission and  
15 other relief as is deemed appropriate.

16 **SIXTH CAUSE OF ACTION**

17 **(Negligence and/or Gross Negligence**

18 108. Plaintiff incorporates by reference and reasserts all previous  
19 paragraphs.

20 109. Defendants owed Plaintiff a duty to use due care in their development,  
21 testing, planning, design, marketing, sale and recall of the Product offered for use by  
22 consumers.

23 110. Through their failure to exercise due care, Defendants breached this  
24 duty by producing, processing, manufacturing, distributing and/or offering for sale a  
25 Product in a defective condition that was unsafe for its intended use.

26 111. Additionally, Defendants breached their duty of care to Plaintiff by  
27 failing to use sufficient quality control, perform adequate research or testing, proper  
28 manufacturing, production or processing, and failing to take sufficient measures to

1 prevent the Product from being offered for sale in an unsafe and hazardous form.

2 112. Defendants further breached their duty of care by failing to properly  
3 and adequately inform consumers once safety concerning, including hair loss and  
4 damage, were brought to Defendants' attention, by making affirmative  
5 representations about the Product without reasonable grounds for believing the  
6 representations were complete and accurate, by omitting material information from  
7 consumers, and Defendants further breached their duty of care by failing to fully and  
8 appropriately recall the Product.

9 113. Defendants knew, or in the exercise of reasonable care should have  
10 known, that the Product presented an unacceptable risk to consumers, and would  
11 result in damages that were foreseeable and reasonably avoidable.

12 114. As a direct and proximate result of Defendants' above-referenced  
13 negligence and/or gross negligence, Plaintiff and the Class have suffered and are  
14 entitled to recover damages, both compensatory and punitive.

15 **SEVENTH CAUSE OF ACTION**

16 **(Strict Liability)**

17 115. Plaintiff incorporates by reference and reasserts all previous  
18 paragraphs.

19 116. Defendants are producers, manufacturers, marketers and/or distributors  
20 of the Product.

21 117. Defendants produced, manufactured, designed, marketed and/or  
22 distributed the Product that was defective in design or formulation in that, when the  
23 Product left the hands of Defendants, the foreseeable risk of harm exceeded the  
24 benefits associated with the design or formulation.

25 118. Defendants' Product was expected to, and did, reach Plaintiff without  
26 substantial change in condition.

27 119. Alternatively, the Product, manufactured, designed, marketed and/or  
28 supplied by Defendants was defective in design or formulation in that, when it left

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

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

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

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

## 16 **EIGHTH CAUSE OF ACTION**

### 17 **(Restitution Based on Quasi-Contract)**

18 123. Plaintiff incorporates by reference and reasserts all previous  
19 paragraphs.

20 124. At all relevant times Defendants represented that the Product was  
21 “Damage-Free” when used in persons with uncolored hair.

22 125. Defendants enticed Plaintiff and members of the Class to purchase the  
23 Product through its false and misleading packaging, labeling and marketing.

24 126. Defendants took money and/or property of Plaintiff and members of the  
25 Class paid by Plaintiff and the Class for what they believed was a “Damage-Free”  
26 hair-straightening product. Defendants took their money despite the fact that it  
27 knew the Product was anything but “Damage-Free.”

28 127. Defendants have been unjustly enriched as a result of its unjust and

1 unlawful conduct, thereby creating a quasi-contractual obligation on part of  
2 Defendants to restore its ill-gotten gains to Plaintiff and the Class.

3 128. Plaintiff and the members of the Class are therefore entitled to  
4 restitution or disgorgement of profits in an amount to be proven at trial.

5  
6 **PRAAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for a judgment:

- 8 1. Certifying the Class as requested herein;
- 9 2. Awarding Plaintiff and the proposed Class members damages;
- 10 3. Awarding restitution and disgorgement of Defendants' revenues to  
11 Plaintiff and the proposed Class members;
- 12 4. Awarding consequential damages for time and money spent by Plaintiff  
13 and the members of the Class to mitigate and remedy the damage to their hair and  
14 scalp caused by application of Defendants' Product.
- 15 5. Awarding injunctive relief as permitted by law or equity, including  
16 enjoining;
  - 17 a. Defendants' from continuing the unlawful practices as set forth  
18 herein, and directing Defendants' to identify, with Court supervision, victims  
19 of its conduct and pay them all money it is required to pay;
  - 20 b. Ordering Defendants' to engage in a corrective advertising  
21 campaign;
- 22 6. Awarding statutory and punitive damages, as appropriate;
- 23 7. Awarding attorneys' fees and costs; and
- 24 8. Providing such further relief as may be just and proper.

25 DATED: October 30, 2015.

Respectfully submitted,

26 By: TODD D. CARPENTER

27  
28 By: \_\_\_\_\_/s/\_\_\_\_\_



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**CARPENTER LAW GROUP**  
*Attorneys for Plaintiff* GINA KILPELA, on  
behalf of herself and all others similarly  
situated.

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of their claims by jury to the extent authorized by law.

DATED: October 30, 2015.

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_

***TODD D. CARPENTER***

*Attorneys for Plaintiff* GINA KILPELA, on behalf of herself and all others similarly situated.