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12
 13 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

14 RODNEY WIGGINS, individually and on behalf
 15 of all others similarly situated,

16 Plaintiff,

17 v.

18 RISE-N-SHINE, LLC and CATHY BEGGAN,
 19

20 Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 only temporarily covers the gray hair, while Go Away Gray™ works to replenish the amount of
2 Catalase your body produces, which then breaks down the hydrogen peroxide in your body that
3 actually causes your hair to turn gray.”

4 5. Defendants’ representations concerning GAG Products are false and misleading
5 because GAG Products are ineffective and claims of their effectiveness are based on fraudulent or
6 nonexistent data. Specifically, none of the GAG Products: will restore a person’s natural hair color;
7 will prevent and reverse gray hair; are based on scientific studies; are clinically proven to eliminate
8 gray hair; or have a 96% success rate.

9 6. Plaintiff relied on Defendants’ false and misleading sales pitch for GAG Products,
10 and he would not have purchased any GAG Products had he known that they were ineffective. He
11 brings this class action on behalf of himself and other purchasers of GAG Products and asserts
12 claims against Defendants for violations of the Magnuson-Moss Warranty Act, California’s False
13 Advertising Law, the unlawful, unfair and fraudulent prongs of California’s Unfair Competition
14 Law, for breach of implied and express warranties, and for negligent misrepresentation.

15 **THE PARTIES**

16 **Defendants**

17 7. Defendant Rise-N-Shine, LLC is a New Jersey limited liability company with its
18 principal place of business located at 17 Woodport Road, Sparta, New Jersey 07871.

19 8. Defendant Cathy Beggan is a resident of the State of New Jersey.

20 9. Each of the Defendants acted jointly to perpetrate the acts described herein. At all
21 times relevant to the allegations in this matter, each Defendant acted in concert with, with the
22 knowledge and approval of, and/or as the agent of the other Defendant within the course and scope
23 of the agency, regarding the acts and omissions alleged.

24 **Plaintiff**

25 10. Plaintiff Rodney Wiggins is a resident of San Francisco, California who purchased
26 GAG Pills on July 17, 2010 from his home through Puritan Pride’s internet website located at
27 www.puritan.com. He paid \$58.73 for a three-month supply. Prior to making his purchase,
28

1 Plaintiff saw Defendant Beggan's appearance on a local television news program promoting the
2 product. He purchased GAG Pills after reviewing the representations on the GAG Pills' product
3 packaging which claimed that GAG Pills would restore his natural hair color, and reverse and
4 prevent his hair from turning gray. This information was displayed on the Puritan's Pride Website
5 and Defendants' website for the product. The representations made on the product packaging and
6 in those advertisements and Beggan's statements on the local news program influenced Mr.
7 Wiggins decision to purchase GAG Pills. If he had not seen those advertisements and read the
8 representations on the product packaging, Mr. Wiggins would not have purchased any GAG
9 Products.

10 JURISDICTION AND VENUE

11 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question).

12 12. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §
13 1332(d)(2)(A). There are more than 100 Class Members, and the aggregate claims of all members
14 of the proposed Class exceed \$5,000,000.00, exclusive of interest and costs. At least one Class
15 Member is a citizen of a state different than at least one Defendant.

16 13. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. §
17 1367.

18 14. This Court has personal jurisdiction over RNS because it conducts substantial
19 business within California.

20 15. This Court has personal jurisdiction over Beggan because she purposefully directed
21 her activities at California residents through her active participation in the fraudulent sale and
22 marketing of GAG Products to California residents. Specifically, Beggan created GAG with the
23 intention that it would be marketed and sold to California residents. She has also appeared on local
24 California television programs promoting GAG, including news interviews for KPIX in San
25 Francisco; KFMB News in San Diego, and KXTV in Sacramento. Beggan also issued a press
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1 release in March 2014 announcing RNS' participation in the Natural Products, Expo in Anaheim
2 California to promote GAG Products.¹

3 16. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Plaintiff purchased
4 GAG Pills in this District and also resides in this District.

5 FACTUAL BACKGROUND

6 17. A pill that can prevent or reverse gray hair or restore a user's natural hair color is the
7 holy grail of the hair color industry. Despite more than a decade of research from the nation's
8 leading cosmetics researchers, there is currently no pill on the market that can effectively prevent or
9 reverse gray hair or restore a user's natural hair color.

10 18. Since 2002, scientists with L'Oreal, the world's largest cosmetics manufacturer, have
11 been working to develop a hair color restoration pill. In 2011, Dr. Bruno Bernard, Ph.D., head of
12 L'Oreal's Hair Color Quality and Color team, announced that L'Oreal expected to have such a
13 product on the market by 2015. Dr. Bernard, a trained cell biologist and biochemist, acknowledged
14 the limitations of the company's product, noting that a consumer may need to use the product for as
15 many as ten years *before* their hair started turning gray, in order to see the full effect. Dr. Bernard
16 said, "[y]ou would take it for your whole life, but realistically, we'd encourage people to start using
17 it before their hair goes gray, because *we don't think it can reverse the process once it has*
18 *started.*" (emphasis added).

19 19. Nevertheless, L'Oreal's decade long investment in the product may still pay off
20 handsomely. According to a 2001 Economist article, the global market for hair colorants, was
21 worth an annual \$7 billion in retail sales. At that time, sales were expected to grow by 8-10% a
22 year until 2006. The potential market for sellers of hair color restoration pills is enormous.

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25 _____
26 ¹ "This year, Rise-N-Shine will be show casing [sic] the newest formula for the Go Away
27 Gray™ capsules, as well as other products such as Go Away Gray™ shampoo and conditioner."
28 <http://www.prweb.com/releases/GoAwayGray/expowest/prweb11624925.htm> (last viewed March 23, 2014).

1 **Defendants And Their Dubious Products**

2 20. In late 2009, a savvy huckster and self-proclaimed wellness expert and holistic healer
3 stepped into this lucrative market with claims of having created a pill that the world's largest
4 cosmetics manufacturer could not, one that will permanently prevent and reverse gray hair and
5 restore a consumer's natural hair color in a matter of weeks.

6 21. The huckster and her company were and are determined to take a sizeable chunk of
7 the hair color restoration market for themselves. They tell potential customers to forego salon
8 treatments and save money using GAG Products, stating: "Compare Go Away Gray's cost to the
9 average salon care, and you will be able to say good-bye to gray hair and hello to designer shoes! A
10 month's supply of Go Away Gray is \$29.99 which equals \$360 per year giving the average woman
11 a \$343 savings per year!"

12 22. Defendant Cathy Beggan is a
13 former real estate agent. She is a self-
14 proclaimed wellness expert and holistic healer
15 and radio show host with a Bachelor's degree in
16 Business Administration.



Defendant Cathy Beggan, Holistic Healer and Creator of GAG Pills

17 23. Defendant Beggan founded
18 Defendant RNS in 2006 to market and sell
19 dietary supplements. Through her company
20 Defendant RNS, she has launched more than
21 twenty fraudulent and/or sketchy products on unsuspecting consumers making millions of dollars in
22 the process. Beggan claims: "Our company was founded on the foreground of providing natural
23 solutions to every day [sic] problems." GAG Pills are Defendants' best-selling product.

24 24. Defendant Beggan is President of Defendant RNS, the creator of GAG Pills and
25 spokesperson for GAG Products.

1 25. Defendant Beggan has no medical or clinical background (other than sales training)
2 relevant to the creation and distribution of GAG Products or any products whose efficacy depends
3 on interaction with the human digestive system or other bodily systems.

4 26. Beggan has claimed that her utter lack of qualifications is the secret to her success.
5 She told one radio talk show host, “If you have an idea just go with it ... anybody can pretty much
6 do what I did ... there is nothing that I did that somebody else out there couldn’t do. ... If you
7 really don’t know how to go about things, that’s probably a blessing in disguise.”

8 27. Beggan seized on the idea to create GAG Pills after learning about a scientific study
9 that was published in Federation of American Societies for Experimental Biology Journal in July
10 2009 (the “2009 FASEB Study” or the “Study”).²

11 28. By August 2009, one month after the Study was published, Defendants had already
12 started using the Go Away Gray trademark in commerce. By October of that year, GAG Pills were
13 added to Defendants’ product line. Thereafter, they began selling GAG Pills to unwary consumers,
14 and made pseudoscientific claims about the efficacy of GAG Pills in order to induce those sales.
15 Later, Defendants added GAG Shampoo and GAG Conditioner to the GAG Product line.

16 29. To support their pseudoscientific claims, Defendants included the assertion on their
17 website that “Go Away Gray™ is the leading natural way to get rid of gray hair and is a fraction of
18 the price of a typical salon visit. And the best part is there is a 96% success rate, which means the
19 chance of you seeing your money go down the shower drain after you wash your hair each morning
20 is pretty slim.”³

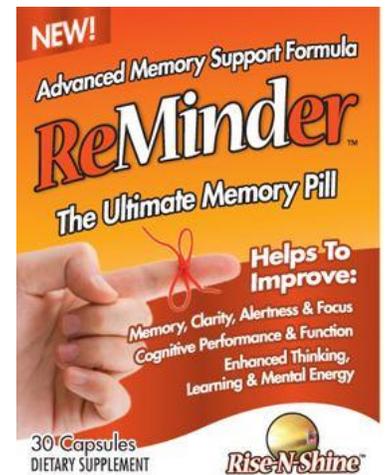
21
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23
24 ² Wood, J.M., et al, (2009) Senile Hair Graying: H2O2-Mediated Oxidative Stress Affects
25 Human Hair Color By Blunting Methionine Sulfoxide Repair, FASEB J. 23, 2065-2075, obtained
26 from Defendants’ website located at http://www.goawaygray.com/scientific_study_gray_hair.pdf.
(last visited on May 26, 2014).

27 ³ “Ever Wonder Why Dye Doesn’t Cover Your Gray Hair?,”
28 <http://www.goawaygray.com/blog/ever-wonder-why-dye-doesnt-cover-your-gray-hair/> (last visited
June 3, 2014).

1 30. RNS and Beggan market and sell more than twenty questionable products for the
2 treatment of a myriad of conditions and ailments including memory deficiency, menopause
3 symptoms, hangovers, obesity and hair loss.

4 31. The list of Defendants' dubious and/or fraudulent products includes the following:

- 5 • **Wake Up on Time**, a purported "all natural energy blend taken BEFORE bed that doesn't
6 start working until it's time to wake up." Wake Up On Time is another product developed
7 by Defendant Beggan with a purported **100% success rate**. Defendants further claim that
8 Wake Up On Time is a time release energy pill. Defendants claim that "[w]ith scientific
9 research, testing and manufacturing experience we have for the first time created the most
10 effective and science-driven morning energizer product in existence"
- 11 • **ReMinder**, Advanced Memory Support Formula.
12 Defendants claim that ReMinder is "The Ultimate Memory
13 Pill," which will improve the user's "memory, clarity,
14 alertness and focus, cognitive performance and function,
15 enhanced thinking and learning and mental energy."
16 Defendants claim that their "key ingredients work to boost
17 cognitive performance and function. These special 'brain
18 herbs' can enhance thinking, learning and mental energy."
- 19 • **MenoPause Chill Pills**, a "Powerful Safe and Effective
20 Hormone Regulation Formula," which purportedly "provides
21 fast, safe & effective relief from: Hot flashes, Night Sweats,
22 Mood swings, Bloating, Fatigue & Loss of libido. Powerful,
23 Safe and Effective Hormone Regulation Formula. Feel Like
24 Yourself again...Naturally!"
- 25 • **Wrinkle Remedy**, a pill for the removal of wrinkles. "Wrinkle Remedy attacks the
26 damaging free radicals in the body with a powerful blend of antioxidants including
27 Resveratrol, Grape Seed, Green Tea and Alpha Lipoic Acid. Turn back the clock with
28 Wrinkle Remedy and put your best face forward ... Naturally!"
- **Immune Shield**, an immune system booster. "Immune Shield may be taken daily to help
ward off illness and keep you healthy and strong! Let Immune Shield take care of your
immune system so your immune system can take care of you!"
- **Hangover Helper**, an "advanced hangover prevention formula." "Hangover Helper is ideal
for Jersey Shore guidos and guidettes or anyone in need of hangover relief."⁴



ReMinder: The Ultimate Memory Pill

⁴ See <http://www.prweb.com/releases/2012/7/prweb9682384.htm> (last visited May 23, 2014).

- 1 • **Light'n Up**, an all-natural "Rapid Weight Loss Formula." Defendants claim, "[i]t is filled
2 with the special ingredients that will help you to lose weight, build muscle, boost
3 metabolism, control appetite, reduce bloating & fatigue and
4 increase overall energy."
- 5 • **Hair U-Grow**, hair restoration products. Like GAG Products,
6 Defendants' line of Hair-U-Grow products includes a pill, a
7 shampoo and a conditioner. Defendants promise accelerated
8 results with the use of all three products. They claim: "Hair
9 U-Grow is an all-natural hair loss solution that helps promote
10 a health [sic] scalp and hair, leading to new hair growth and
11 healthier hair, overall. In addition to our revolutionary Hair
12 U-Grow all natural vitamin tablets, customers can now couple
13 the supplement with the shampoo and conditioner, delivering
14 desired results more quickly."⁵



Hair U-Grow Pills, Shampoo and Conditioner

10 The Go Away Gray Products

11 32. The GAG Product line include three products which are marketed collectively, but
12 sold separately: GAG Pills, GAG Shampoo and GAG Conditioner.

13 33. GAG Products are sold on Defendants' websites located at www.goawaygray.com,
14 www.wakeupontime.com, and www.rise-n-shine.com. In addition, GAG Products are sold at
15 traditional and online retail stores including Walgreens, CVS, Vitacost.com, Luckyvitamin.com,
16 Drugstore.com, and Amazon.com.

17 Go Away Gray Pills

18 34. Defendants describe GAG Pills as an all-natural vitamin supplement specially
19 formulated with proprietary ingredients to prevent and reverse gray hair. They claim that "the
20 magic behind Go Away Grey is the special combination of Catalase along with other grey fighting
21 vitamins and nutrients."

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27 ⁵ See <http://www.wakeupontime.com/blog/new-product-release-hair-u-grow-shampoo-and-conditioner> (last visited May 24, 2014).

1 35. Defendant Beggan is the creator of GAG Pills. She claims to have had the idea for
2 GAG Pills after she read the 2009 FASEB Study⁶ concerning the presence of high levels of
3 hydrogen peroxide and low levels of catalase in gray hair follicles.

4 36. Beggan told a Fox News affiliate that she “happened to read that study and another
5 light bulb went off. And I said, ‘Wow, this is another product that we can make to help people to
6 turn back the clock a little bit, make them look a little but younger and feel a little bit better about
7 themselves.’”

8 37. The Study was published in July 2009. Defendant began using the Go Away Gray
9 mark approximately one month later in August 2009 and by August of that year, Defendants added
10 GAG Pills to the RNS product line.

11 38. Defendants admit that they brought the magic GAG Pills to market without any
12 clinical testing whatsoever.

13 39. GAG Pills are sold for a retail price of approximately \$29.99 for a one-month supply
14 of 60 pills.⁷

15 40. Defendants claim on GAG Pills product packaging that they are made with
16 “Catalase, The Ingredient That Helps Prevent Gray Hair.” They further promise that GAG Pills will
17 “PREVENT & REVERSE Gray Hair” and “RESTORE your natural hair color.”

18 On the GAG Pills website, Defendants explain the purportedly scientific basis for their
19 efficacy claims about GAG Pills as follows:

20 Based on scientific studies, this anti-gray formula replenishes the enzyme Catalase, which
21 slowly depletes as we age. Hydrogen Peroxide is naturally produced by the body and
22 Catalase breaks it down. If you do not produce enough Catalase, the hydrogen peroxide
23 takes over and bleaches your hair from the inside out, causing you to get grey hair. Go
24 Away Gray contains a high concentration of Catalase along with other special nutrients to
25 help restore your natural hair color, stop the gray hair process, promote thicker, healthier
26 hair and help you look and feel years younger.

25 ⁶ See Wood, J.M., et al, (2009) Senile Hair Graying: H2O2-Mediated Oxidative Stress Affects
26 Human Hair Color By Blunting Methionine Sulfoxide Repair, FASEB J. 23, 2065-2075 located at
27 http://goawaygray.com/scientific_study_gray_hair.pdf (last visited May 24, 2014).

27 ⁷ See <http://www.goawaygray.com/capsules/go-away-gray/> (last visited May 24, 2014).

1 41. Users are directed to take two GAG Pills per day and are told that “within 6 to 8
2 weeks, your natural hair color will begin to replace your stubborn grey hair, right at the root!”

3 42. The representations on the GAG Pills website are consistent with and reinforce the
4 representations on the GAG Pill packaging.

5 43. The representations on the GAG Pills website are also consistent with the other
6 marketing representations made by Defendants concerning GAG Shampoo and GAG Conditioner.

7 44. Defendants have also used phony
8 before and after photos in the promotion of GAG
9 Pills. These photos are prominently featured on
10 Defendants’ website. Upon information and
11 belief, the before and after photos feature
12 professional models with dyed hair rather than
13 actual users of GAG Pills.



GAG Pills And The Phony Before and After Photos

14 45. Similarly, the GAG Products’
15 website and Defendant Beggan’s personal
16 YouTube.com page feature a testimonial from a
17 gentleman that is either lying or mistaken about the
18 results he achieved using GAG Products.
19 Defendants know that the man is either lying or
20 mistaken, but they published the false testimonial
21 anyway.⁸ The man has a full head of jet black hair,
22 and claims that all of his gray hair went away after
23 one month of use.⁹



The False Testimonial Adopted By Defendants

24 _____
25 ⁸ Federal Trade Commission regulations provide that a testimonial “may not convey any
26 express or implied representation would be deceptively made if made directly by the advertiser.”
16 CFR 255 §255.1(a).

27 ⁹ See <http://www.goawaygray.com/index.php?p=videos&vid=50> (last visited May 25, 2014);
28 https://www.youtube.com/watch?v=o_bZUPhcyNI (last visited May 25, 2014).

1 46. This testimonial is inconsistent with Defendants’ own claim that GAG Products can
2 only restore natural hair color from the root. According to Defendants, hair that has also already
3 grown out will not change from gray to black. Despite the fact that this man could not have grown
4 a full head of hair in only one month, Defendants knowingly showcased his false testimonial on
5 their websites, adopted his false statements, and referred to him as “one of our many satisfied
6 customers.”

7 47. In addition, Defendants’ website includes numerous purported customer testimonials
8 claiming that GAG products produced results in two weeks or less, which is inconsistent with
9 Defendants’ claims that GAG Products produce results in 6-8 weeks.

10 Go Away Gray Shampoo

11 48. Defendants describe GAG Shampoo as a “daily anti-gray shampoo” made with
12 Catalase, “the ingredient that helps prevent gray hair.” They maintain that GAG Shampoo “is an
13 all-natural hair care formula specially designed to prevent & reverse gray hair!”

14 49. Like the product packaging for GAG Pills, the product packaging for GAG Shampoo
15 promises that it is “Made with Catalase, The Ingredient That Helps Prevent Gray Hair,” will “Help
16 Restore Your Natural Hair Color” and will “Prevent & Reverse Gray Hair.”

17 50. Defendants maintain a website for information concerning the
18 marketing and sale of GAG Shampoo at the following address:
19 <http://www.goawaygray.com/shampoo/>.

20 51. GAG Shampoo is sold in eight fluid ounce containers for
21 approximately \$19.99.

22 52. The representations on the GAG Shampoo website are consistent
23 with and reinforce the representation on the GAG Shampoo packaging. The
24 representations on the website are also consistent with the other marketing
25 representations made by Defendants concerning GAG Pills and GAG Conditioner.

26 53. On the GAG Shampoo website, Defendants explain the
27 purportedly scientific basis for their efficacy claims about GAG Shampoo using



GAG Shampoo

1 the same language quoted in the above paragraph concerning the efficacy claims of GAG Pills.

2 54. Defendants also promise that the results of GAG Pills will be accelerated when used
3 with GAG Shampoo and Conditioner.¹⁰ Defendants recommend that consumers “[u]se Go Away
4 Gray Shampoo in conjunction with the Go Away Gray pills for optimal results. Use all the products
5 in the Go Away Gray family today and GET RID of your gray hair ... Naturally!”

6 55. Directions for GAG Shampoo read as follows: “Wet hair, lather, leave on for 1-2
7 minutes and rinse. Repeat as necessary. Suitable for all hair types and daily use. Best results
8 obtained with continued use.”

9 56. GAG Shampoo contains the following ingredients: Aqua (Water), Sodium Methyl,
10 2-Sulfolaurate (and) Disodium 2-Sulfolaurate, Cetyl Betaine, Lauryl Lactyl Lactate, Sodium
11 Lauroyl Glutamate, Guar Hydroxypropyltrimonium Chloride, Phenoxyethanol (and) Caprylyl
12 Glycol, Betaine, Panthenol, Catalase.

13 57. Except for the addition of catalase, the list of ingredients for GAG Shampoo is
14 identical to a number of commercial shampoos which do not claim to have magical
15 properties and cost a fraction of the price of GAG Shampoo including: Ology
16 Shampoo, Miss Stephanie’s Essence of Fairy Dust Shampoo, and Miss Stephanie’s
17 Monster Armor Shampoo.

18 Go Away Gray Conditioner

19 58. Defendants describe GAG Conditioner as a “daily anti-gray
20 conditioner” made with Catalase, “the ingredient that helps prevent gray hair.”
21 They maintain that GAG Conditioner “is an all-natural hair care formula specially
22 designed to prevent & reverse gray hair!”

23 59. The product packaging for GAG Conditioner promises that the
24 product is “Made with Catalase, The Ingredient That Helps Prevent Gray Hair,”



GAG Conditioner

25
26 ¹⁰ See <http://www.goawaygray.com/about-us> (“Results are now accelerated with our new Go
27 Away Gray Shampoo and Conditioner, which also contain the magical anti gray ingredients.”) (last
28 visited May 24, 2014).

1 and it will “Help Restore Natural Hair Color” and “Prevent and Reverse Gray Hair.”

2 60. Defendants maintain a website for information concerning the marketing and sale of
3 GAG Conditioner at the following address: <http://www.goawaygray.com/conditioner/>.

4 61. GAG Conditioner is sold in eight fluid ounce containers at a retail price of \$19.99.

5 62. The representations on the website are consistent with and reinforce the
6 representation on the GAG Conditioner packaging. The representations on the website are also
7 consistent with the other marketing representations made by Defendants concerning GAG Pills and
8 GAG Shampoo.

9 63. On the GAG Conditioner website, Defendants explain the purportedly scientific
10 basis for their efficacy claims about GAG Conditioner using the same language quoted in the
11 previous paragraph concerning the efficacy claims of GAG Pills.¹¹

12 64. Defendants also advise consumers to “Use Go Away Gray Conditioner after Go
13 Away Gray Shampoo, and in conjunction with the Go Away Gray pills for optimal results. Use all
14 the products in the Go Away Gray family today and GET RID of your gray hair ... Naturally!”

15 65. Directions for the use of GAG Conditioner are identical to those for GAG Shampoo
16 and read as follows: “Wet hair, lather, leave on for 1-2 minutes and rinse. Repeat as necessary.
17 Suitable for all hair types and daily use. Best results obtained with continued use.”

18 66. GAG Conditioner contains the following ingredients: Aqua (Water), Cetearyl
19 Alcohol, Caprylic/Capric Triglyceride, Glyceryl Stearate, Stearalkonium Chloride, Cocos Nucifera
20 (Coconut) Oil, Simmondsia Chinensis (Jojoba) Oil, Butyrospermum Parkii (Shea) Butter, Guar
21 Hydroxypropyltrimonium Chloride, Wheat Germamidopropylidimonium Hydroxypropyl
22 Hydrolyzed Wheat Protein, Phenoxyethanol (and) Caprylyl Glycol, Tocopheryl Acetate, Catalase.

23 67. Except for the addition of catalase, the list of ingredients for GAG Conditioner is
24 identical to a number of commercial hair conditioners which do not claim to have magical
25 properties and cost a fraction of the price of GAG Conditioner including: Earth View Conditioner,
26

27 ¹¹ *Id.*

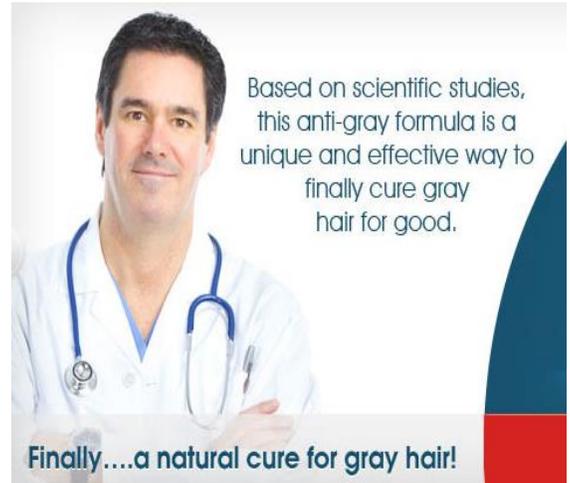
1 Miss Stephanie’s Essence of Fairy Dust Conditioner, Miss Stephanie’s Monster Armor Conditioner,
2 and Freakin Fruity Chick Conditioner.

3 **Defendants’ Pseudoscientific Basis for the Efficacy of GAG Products**

4 GAG Products are Not Based on Scientific Studies

5 68. Defendants’ maintain that GAG Products are “based on scientific studies.” This
6 statement is false, misleading, and designed to make consumers believe that scientific support exists
7 for their claims that GAG Products will restore a user’s natural hair color and prevent and reverse
8 graying hair, when in fact there is no scientific support for Defendants’ claims that GAG Products
9 are effective.

10 69. Defendants bolster this attempt to
11 give a false aura of scientific credibility to their
12 claims concerning on the GAG Products website by
13 featuring the photograph of a man wearing a lab coat
14 above hospital scrubs with a stethoscope draped
15 around his neck. Beside this photograph is text
16 which reads, “Based on scientific studies, this anti-
17 gray formula is a unique and effective way to finally
18 cure gray hair for good. Finallya natural cure for
19 gray hair.”



www.goawaygray.com (last visited May 25, 2014)

20 70. The photograph of the doctor and the reference to scientific studies are designed to
21 induce consumers into believing that the efficacy of GAG Products is supported by scientific
22 evidence and by doctors who understand scientific principles.

23 71. In fact, the efficacy claims of GAG Products are not supported by scientific evidence
24 and GAG Pills were created by a real estate agent and holistic healer whose only experience with
25 biochemistry is the creation of other phony products.

26 72. Moreover, it is false to state that GAG Products are based on scientific studies, when
27 they refer to only a single scientific study. Defendants repeatedly reference the 2009 FASEB Study,
28

1 provide multiple links to articles concerning the Study on the “Scientific Research” section of the
2 GAG website, and provide the single Study to media outlets who inquire about GAG Products.

3 73. In addition, Beggan’s claim that she read the 2009 FASEB Study and relied on it to
4 create GAG Pills, falsely implies that she understood the Study. Because the Study concerns the
5 complexities of biochemistry, the study itself is extremely dense, filled with scientific jargon and
6 impossible for a layperson with no scientific background such as Defendant Beggan to understand.
7 Moreover, it is impossible for a lay person with no scientific background, such as Defendant
8 Beggan, to create a hair color restoration product based on the Study’s findings in a matter of
9 months.

10 The 2009 FASEB Study Does Not Support Defendants’ Efficacy Claims

11 74. The 2009 FASEB Study does not support Defendants’ claims that their catalase-
12 based pill, topical shampoo, and topical conditioner can prevent and reverse gray hair and restore a
13 user’s natural hair color for at least four reasons:

14 75. First, the Study did not even attempt to introduce catalase into human bodies in oral
15 or topical form. In fact, the Study did not introduce catalase into the human body at all; the
16 researchers compared the catalase levels in gray and pigmented hair follicles.

17 76. Second, the Study did not show that an increase in catalase levels will prevent or
18 reverse gray hair production, but found that low levels of catalase and other proteins correlated with
19 the occurrence of gray hair.

20 77. Third, the Study did not look at catalase levels in human bodies. It evaluated
21 catalase levels in hair follicles isolated from human bodies in cell cultures.¹²

22 78. Fourth, because it is a well-known principal of biochemistry that catalase will
23 unravel or “denature” when it is in an environment outside of its optimal range for temperature and pH
24 value, the Study’s protocols included precautions “to avoid protein denaturation.”¹³

25
26 ¹² Ex. A., 2009 FASEB Study at 2066.

27 ¹³ See Ex. A, at 2067.

1 79. Consumer Reports Magazine originally reported on Defendants' misuse of the Study
2 in 2010 in an article entitled "Dangerous Supplements." They wrote:

3 Consider the path to market of Go Away Gray, a product that is claimed to "help
4 stop your hair from turning gray." Cathy Beggan, president of the supplement's
5 maker, Rise-N-Shine, based in New Jersey, said that her company has not had to
6 provide product information to the FDA. Nor did it conduct any clinical trials of the
7 supplement, which includes a natural enzyme called catalase, before putting it on
8 sale. Beggan pointed us to a study by European researchers published in the July
9 2009 issue of the Federation of American Societies for Experimental Biology
10 Journal. The study found that gray hair had lower-than-normal levels of catalase but
11 did not prove that taking that enzyme by mouth would stop hair from turning gray.

12 80. Consumer Reports reported again on Defendants' misuse of the Study in 2013, in an
13 article entitled "Gray Hair Cure? Go Away Gray is No Fountain of Youth" after they noticed that
14 Defendants continued to make the same false association between GAG Pills and the 2009 FASEB
15 Study.¹⁴

16 GAG Products Are Not Clinically Proven and They Do Not Have a 96% Success Rate

17 81. Defendants claim that GAG Products are clinically proven and have a 96% success
18 rate.¹⁵ Specifically, they claim that GAG is a "leading natural way to get rid of gray hair and is a
19 fraction of the price of a typical salon visit" and the "96% success rate" is the best part of using the
20 product. These claims are false.

21 82. Defendants claimed that Go Away Gray™ has a been [sic] clinically proven to
22 eliminate gray hair by getting to the root of the cause."¹⁶

23 ¹⁴ See <http://www.consumerreports.org/cro/news/2013/05/gray-hair-cure-go-away-gray-is-no-fountain-of-youth/index.htm> ("[H]ere's what not to give her this Mother's Day: a bottle of Go Away Gray." ... A press release we got last week promoting Go Away Gray (just \$29.99 a bottle!) said it was "the best gift possible" for Mother's Day. If that were true, we'd feel seriously bad for your mom.").

24 ¹⁵ "Ever Wonder Why Dye Doesn't Cover Your Gray Hair?," <http://www.goawaygray.com/blog/ever-wonder-why-dye-doesnt-cover-your-gray-hair/> (last visited June 3, 2014).

25 ¹⁶ See e.g., <http://www.wakeupontime.com/blog/no-need-to-spend-1000-to-cover-gray-hair/> (last visited May 24, 2014).

1 83. Also during the class period, Defendants issued a press release titled “Rise-N-Shine
2 Announces 96% success rate of Go Away Gray.” The press release reads:

3 Rise-N-Shine LLC has found an increased success rate of their natural revolutionary
4 product Go Away Gray™, to 96% among consumers.

5 After careful review of product use among consumers, Rise-N-Shine LLC is proud to
6 announce a 96% success rate of its revolutionary product Go Away Gray™.

7 Go Away Gray™ has been clinically proven to eliminate gray hair by getting to the
8 root of the cause. Hair dye only temporarily covers the gray hair, while Go Away
9 Gray™ works to replenish the amount of Catalase your body produces, which then
breaks down the hydrogen peroxide in your body that is responsible for turning hair
gray.

10 84. Specific information concerning Defendants’ claims that GAG Products are
11 clinically proven and have a 96% success rate, do not appear anywhere on Defendants’ website,
12 including the “Scientific Research” section of the website.

13 85. Defendants’ claims that GAG Products are clinically proven and have a 96% success
14 rate are false for the same reason that their claims that GAG Products will restore a user’s natural
15 hair color and reverse and prevent gray are false. For those claim to be true, GAG Products would
16 have to violate the laws of biochemistry.

17 **The Actual Science of Catalase Absorption**

18 **Biochemistry 101**

19 86. Licensed medical doctors who understand scientific principles and anyone with a
20 foundation in undergraduate level biology can understand that GAG Products are worthless and
21 cannot be effective.

22 87. Defendants explain the process by which GAG Products supposedly work as
23 follows: “Hydrogen Peroxide is naturally produced by the body, and so is the enzyme Catalase,
24 which works to break down the Peroxide. When your body stops producing enough Catalase, the
25 Hydrogen Peroxide takes over and can bleach the hair from the inside out, causing it to turn gray.”

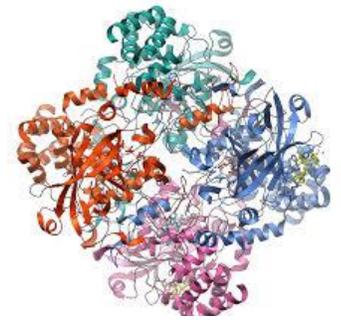
26 88. Defendants claim that “regularly taking one pill, twice daily, will put enough
27 Catalase back into your body to keep the hydrogen peroxide from turning your hair gray.”
28

1 89. This claim is biologically impossible. Hair follicles cannot make use of catalase
 2 molecules ingested in pill form or rubbed into the scalp in a shampoo or conditioner.

3 90. Basic laws of biochemistry refute Defendants' claims.

4 91. Orally ingested catalase molecules will not find their way to the hair follicle and
 5 break down hydrogen peroxide. The complex catalase molecule is unraveled in the stomach and
 6 several other enzymes then break the molecule down into the thousands of amino acids of which it
 7 is comprised.

8 92. Human catalase is an enzyme, a biological catalyst that works to speed up chemical
 9 reactions in living systems without being consumed by the reaction.
 10 Catalase aids in the decomposition of hydrogen peroxide into water and
 11 oxygen in organs throughout the body.

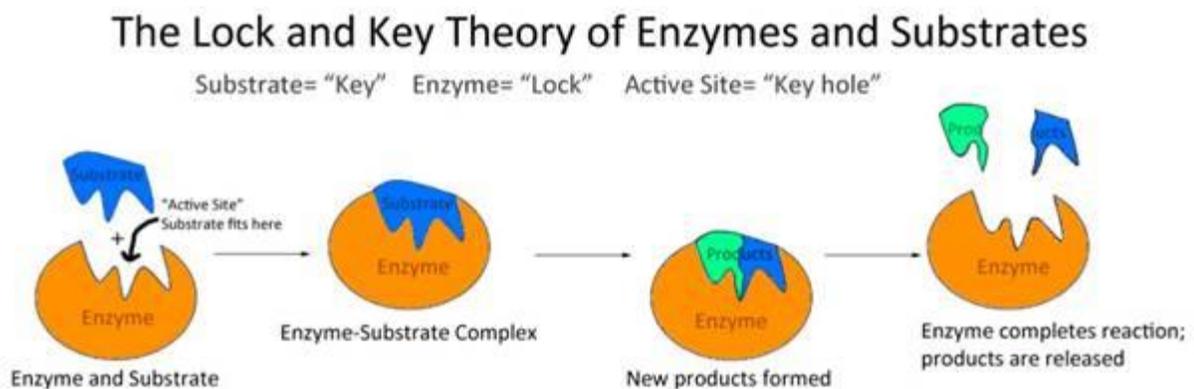


Catalase Molecule

12 93. Human catalase has a large, complex, and unique three-
 13 dimensional shape. Indeed, human catalase is comprised of four chains
 14 of amino acids with more than 500 amino acids in each chain.

15 94. The chemical reaction between catalase and hydrogen
 16 peroxide only occurs because of the unique shape of catalase.

17 95. Scientists use the "lock and key analogy" to explain how catalase breaks down
 18 hydrogen peroxide in the hair follicle. The three-dimensional shapes of catalase and hydrogen
 19 peroxide molecules are "complementary." They fit together like a lock and key.



1 96. When catalase locks together with hydrogen peroxide, it forces hydrogen peroxide to
2 change its shape and breaks the hydrogen peroxide up into its constituent atoms of hydrogen and
3 oxygen. If catalase molecules lose their shape, they cannot break down hydrogen peroxide.

4 97. Human catalase ingested orally can never reach the hair follicle while maintaining its
5 unique shape.

6 98. First, the molecule is too large to be transported from the stomach to the hair follicle.

7 99. Second, once ingested orally, human catalase is broken down in the stomach, which
8 is an incredibly hostile environment for human catalase molecules. These hostile conditions include
9 the extremely acidic pH value of stomach acids which causes human catalase molecules to unravel
10 and lose their shape.

11 100. The stomach has a highly acidic pH value. In chemistry, pH is a measure of the
12 acidity or basicity of a solution. When an enzyme is placed in an environment with a pH value
13 lower than the enzyme's optimum pH value, the enzyme becomes ineffective. Where the
14 environment has a substantially lower pH value than the enzyme's optimum pH, the enzyme will
15 unravel and lose its shape.

16 101. A pH of less than 7 is acidic, while a pH value greater than 7 is basic or alkaline.
17 Human catalase has a neutral pH of 7. Gastric acid in the stomach has an extremely acidic pH value
18 of 1.5 to 3.5. When catalase molecules ingested orally reach the stomach, they immediately unravel
19 due to the highly acidic environment.

20 102. In the stomach, a digestive enzyme called pepsin then acts like a molecular cleaver,
21 attacking these unfolded catalase molecules and chopping them into large fragments. Following
22 digestion in the stomach, these fragments pass into the small intestine, where alkaline secretions
23 from the pancreas neutralize the low pH in preparation for the next phase of digestion.

24 103. In the small intestines, enzymes called trypsin and chymotrypsin continue the job of
25 cleaving the large fragments into smaller ones that was started by pepsin. Both trypsin and
26 chymotrypsin only make cuts next to certain amino acids. Dipeptidases, carboxypeptidase and
27 aminopeptidase finish the job by slicing amino acids off the end of a chain one at a time.

28

1 104. In the small intestine, the epithelial cells expend energy to take up amino acids.
2 Once the amino acids are inside the epithelial cell, the cell will transfer them into the bloodstream.
3 The blood carries the amino acids to the liver and other organs of the body. In general, the
4 epithelial cells do not and cannot take up intact proteins, and peptides with more than four amino
5 acids are not absorbed to any significant extent. Catalase has more than two thousand amino acids.

6 The Great Debates

7 105. Defendant Beggan appeared on Fox New 8 in Austin Texas to debate with an actual
8 scientist about the scientific basis for Defendants' efficacy claims concerning GAG Pills.¹⁷

9 106. Her opponent was the world renowned biochemical scientist, Dr. S. Michal
10 Jazwinski, PhD. Dr. Jazwinski is the Director of the Tulane University Center for Aging and a
11 Professor of Medicine at the university. He has reviewed and performed extensive research
12 concerning the molecular and cell biology of aging and has published numerous papers on this
13 subject.

14 107. Defendant Beggan began with her usual talking points: "Go Away Gray is simply
15 putting the catalase back into your body, so it can work on breaking down the peroxide, and your
16 new growth at the root will come back to your natural hair color and your gray hair will go away."

17 108. Dr. Jazwinski responded: "The catalase, it's not going to end up in your hair
18 follicle." He explained that Beggan's claims are doubtful because the ingredients in GAG Pills
19 would not survive the acidity in the stomach to augment catalase in the cells.

20 109. Defendant Beggan response was uninformed and anemic. She said, "Well, it is
21 interesting that he would say that, because I would agree with him to a point if somebody had a very
22 acidic body and it broke it down too quickly."

23 110. Dr. Jazwinski concluded, "Based on the science, what we know about the graying of
24 hair, the composition of this pill and the rationale for its use, [] it's not going to be effective to
25 prevent graying of hair."

26 _____
27 ¹⁷ See <https://www.youtube.com/watch?v=971VoO2LpDM> (from Defendant Beggan's
28 personal YouTube.com page, last visited May 24, 2014).

1 111. Defendant Beggan also appeared on WCVB News 5 in Boston to defend her claim
2 that GAG Pills are effective against a challenge by a physician and Assistant Professor of Medicine
3 at Weill Cornell Medical College, Dr. Cathleen London, M.D.¹⁸ Dr. London evaluated the product
4 and determined:

5 This [] falls into that category of ‘here’s a pill that’s going to make me thin’ ...
6 ‘here’s a pill that is going to make me young.’ ... When you take it orally, your
7 stomach acids are going to destroy it. Our stomach has incredibly strong stomach
8 acids. It (catalase) is an enzyme, it (the stomach acids) will just unravel it. ... They
9 haven’t done any of their homework. This is a lot of wishful thinking.

10 112. Rather than discussing her uninformed theory of “acidic bodies” or other
11 pseudoscientific nonsense, Beggan responded indignantly, “It’s not wishful thinking. Its 100% real.
12 It works.”

13 113. In fact, neither Defendants nor any other medical professional has ever “clinically
14 proven” that GAG Products can prevent and reverse gray hair or restore a user’s natural hair color.
15 Defendants’ claim that GAG Products are clinically proven and have a 96% success rate are
16 fraudulent and belied by the overwhelming negative response of consumers who have used the
17 product.

18 114. Defendants maintain “that the magic behind Go Away Grey is the special
19 combination of Catalase along with other grey fighting vitamins and nutrients.” Defendants’
20 reliance on magic to support their efficacy claims is appropriate, because basic scientific principles
21 of biochemistry refute those claims.

22 **Customers Hate Go Away Gray Products**

23 115. Plaintiff saw a 2010 news report featuring Beggan which stated that “Beggan
24 claimed no one complained that it didn’t work and no one has returned the product and asked for a
25 refund.” However, customer complaints about GAG Products vastly outnumber positive comments.

26 116. Defendants continue to laud their high rate of customer satisfaction with GAG
27 Products, stating: “The results from Go Away Gray have been astounding, since being added to the
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¹⁸ See <https://www.youtube.com/watch?v=eFSWDagCw4Q> (from Defendant Beggan’s personal YouTube.com page, last visited May 24, 2014).

1 product line in late 2009. Customers are giving excellent feedback in regards to the supplement.
2 Customers LOVE: Go Away Gray for its amazing hair color restoring power.”¹⁹

3 117. In fact, customer hate GAG Products because they only learn about Defendants’ lies
4 after using GAG Products for several months.

5 118. Defendants inform customers that Go Away Gray takes several months to produce
6 any results. Moreover, they claim that results start off slow and increase over time.

7 119. Without a background in biochemistry, a consumer cannot reasonably determine that
8 GAG Products are ineffective until they have consumed several bottles of the products.

9 120. GAG Pills have 114 reviews on Amazon.com. The product has more than twice as
10 many negative reviews as it does positive reviews and many of the negative reviewers allege that
11 the few positive comments were fabricated by Defendants. Not only do customers regularly
12 complain about the product, but they accuse Defendants of failing to honor their own money back
13 guarantee.

14 121. Customers have said the following about GAG Pills:

15 1.0 out of 5 stars **DO NOT FALL FOR THE SCAM!!!!**, July 29, 2010

16 By **ArnoldLayne Verified Purchase**

17 They should call this product “Go Away Money” because that’s all it will do
18 for you. I think the people claiming this works for them are plants for this scam,
19 or if that is not so, then it is something else working for them, and NOT
20 catalase, I repeat NOT catalase. Catalase is an enzyme, and it gets digested and
21 turned into a protein. So it never makes it to your cells as catalase and therefore
22 cannot, and I mean CANNOT increase the catalase levels in your cells. The
23 only thing that could possibly be beneficial in this product is it’s high level of
24 copper, which the body needs to produce catalase. So if anything, go buy some
25 cheap copper supplements and hope a copper deficiency is what is causing your
26 gray (not usually) because that’s about the only thing you can do.

27 This woman who created this product probably already knows it will never
28 work. I can’t imagine she didn’t do the research. This is why, you don’t see
before and after pictures all over the place and their website. If people were
really benefiting from this, it would be starting to become apparent and you
would see pictures all over the place. But instead, none. They are frauds and the
positive feedbacks are carefully planned frauds as well. But she can make a
huge amount of money before people catch up to her. She’ll already be loaded
by then.

¹⁹ See <http://www.goawaygray.com/about-us> (last visited May 24, 2014).

1 1.0 out of 5 stars **Faulty premise**, August 18, 2010 By chemistryprofessor
2 "deutschdriver"

3 This product is claimed to reverse a deficiency of the enzyme catalase that has
4 been reported in gray hair. It does include catalase in its ingredients list, but
5 there are many others. It is certain that the catalase in this product has
6 NOTHING to do with any effects on gray hair that it might have. Catalase is a
7 protein, just like the protein in a steak. If you take it in a supplement, the
8 protein is broken down and can have NO effect on hair. It is exactly the same
9 situation as with insulin. It is a protein that is deficient in many diabetics. It
10 must be given by injection, because if it ingested, it is simply broken down in
11 the digestive track and does NOT have any effect on blood sugar.

12 1.0 out of 5 stars **Go away, money !!!**, January 25, 2011 By RBPP - **Verified**
13 **Purchase**

14 Last year I bought a 6-month supply and for the past five months I have been
15 taking 2 pills every day as directed. Guess what? NO RESULTS AT ALL !!!!
16 I will finish the last bottle soon very frustrated, with the feeling that I was
17 framed by false advertising.

18 The only thing that went away was my money.
19 DO NOT BUY THIS PRODUCT !!!!!

20 1.0 out of 5 stars **don't buy it**, February 21, 2013 By Tom H. Alkadri "TA"
21 (Los Angeles)

22 it does NOT work. I used 10 bottles and I found no effect what so ever.. I had a
23 friend of mine buy it as well and use it and he found no difference in his white
24 hair either.. It is fake, fake , fake..

25 1.0 out of 5 stars **Doesn't work for me**, January 25, 2013 By Fred QC -
26 **Verified Purchase**

27 I still have to color my gray hair after taking this product for 6 months as per
28 the instruction on the label. No sign of any gray reversal. No, this product
doesn't work for me.

1 1.0 out of 5 stars **IT IS A LIE!!!!**, November 12, 2011 By Adri - **Verified**
2 **Purchase**

3 Don't waste your money with this product. They advertise that people will see
4 results in 6-8 weeks. I used the product for three months and it did not work, I
5 contacted the seller asking for warranty and they said: "We don't offer warranty
6 for effectiveness, contact the manufacturer". I contacted the manufacturer Rise-
7 N Shine and they said: "go with the seller, you did not buy the product directly
8 to us". So it is just about making profit with a product that they already know it
9 does not work. I guess they are trying to make as much money as they can
10 before people make it very public that the product does not work. What these
11 people do is unethical and they just don't care. That is why we need to make it
12 public so people will stop buying this lie. I'll be sure to continue sharing this
13 information in the media.

1 1.0 out of 5 stars **They took my money and would not honor their**
2 **guarantee**, December 5, 2011 By mag911 **Verified Purchase**
3 I tried Go Away Grey and after 5 months there were NO changes to my hair.
4 So, I contacted the company to get my 100% Guaranteed refund. They would
5 NOT send me a refund.

6 1.0 out of 5 stars **DON'T WASTE YOUR MONEY**, March 20, 2012
7 By XDTim - **Verified Purchase**
8 Rated this crap a "one star: as Amazon will not let you rate it any lower.
9 I purchased a three month supply of this worthless "snake oil," took it daily and
10 faithfully as directed, and if ANYTHING, I think I have more grey hair than I
11 did when I started, just LESS MONEY !

12 1.0 out of 5 stars **Big Disappointment**, August 22, 2012 By Nathan J. Simons
13 **"Nate"**
14 I used this product for 3 months with the recommended daily usage. I don't
15 believe that one gray hair went away! This was a big waste of my time and
16 money. Do not be fooled with this hype.

17 1.0 out of 5 stars **Terrible Product**, July 2, 2013 By PdxJock503
18 Several of us decided to try it. We all took it for the same period of time. It did
19 nothing except make my wallet lighter. Don't buy, does not work.

20 1.0 out of 5 stars **All the other One Stars have it right**, April 29, 2011
21 By Slice
22 I also thought that the "science" behind it was logical. Tried it with a 90 day
23 supply. No change. Save your dough.

24 2.0 out of 5 stars **Gray No Go Away!**, June 5, 2013 By David **Verified**
25 **Purchase**
26 I have been using this product as instructed for 3 months. No gray gone away! I
27 will only buy one more bottle. I will consider myself lucky that I only wasted
28 money on three or four bottles. I see why Anderson Cooper would not take their
1 million dollar challenge.

2.0 out of 5 stars **no results**, October 5, 2012 By lakeman70 **Verified**
Purchase
I have used this product for 3 months without any change in the color of my
hair. Don't waste your money.

122. Similarly, the Amazon.com reviews for GAG Shampoo and GAG Conditioner are
overwhelmingly negative. Customers taken in by Defendants' scam write:

1.0 out of 5 stars **BIG JOKE**, April 5, 2013 By P. Wojtkiewicz **"WOJO"**
(Chicago) - **Verified Purchase**

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This review is from: Rise-n-shine Go Away Gray Shampoo 8 Fl Oz (Health and Beauty)

I used this with Go Away Gray 60 count pills and just like that product this crap is worthless also. I'm still Gray as Gray can be and did not see any, any, any improvement after doing this with 2 pills per day for 4 months now. IT's A Big SCAM !!!!!!!!

1.0 out of 5 stars **come back, not go away**, August 21, 2013 By Mike - **Verified Purchase**

This review is from: Rise-n-shine Go Away Gray Shampoo 8 Fl Oz (Health and Beauty)

pure garbage...just thinking of all of the high end nivea, axe brand shampoos i could have bought that actually smell good and clean your hair. this shampoo is made for cleaning horses, just like the mane n tail brand that claims to get rid of grey too. save your money folks

1.0 out of 5 stars **Go away BLACK!**, November 20, 2013 By M. Thavara "archi" (SAN JOSE, CA) -

This review is from: Rise-n-shine Go Away Gray Shampoo 8 Fl Oz (Health and Beauty)

Go away BLACK! After using this my black hair went away and too many white hairs..so a big NO NO to this.

1.0 out of 5 stars **Useless!!!**, January 25, 2014 By williecaraballo -

This review is from: Rise-n-shine Go Away Gray Shampoo 8 Fl Oz (Health and Beauty)

product did not work at all, used every day, no visual changes on my hair. False marketing and false results.

1.0 out of 5 stars **Snake oil here folks!**, December 10, 2013

By RONALD "LOANMASTER" (LAKE FOREST, CA, United States) - **Verified Purchase**

This review is from: Rise-n-shine Go Away Gray Conditioner 8 Fl Oz (Health and Beauty)

Don't waste your money - this did not work at all and is very speculative at best as to why it might help. It was inexpensive so I decided against my own best judgement to buy it. Also, adding insult to injury, I bought the shampoo and the pills to take. zero result after taking all three products as directed until finished. Snake oil here folks!

1.0 out of 5 stars **It didn't work for me**, April 2, 2013 By Frapples

This review is from: Rise-n-shine Go Away Gray Conditioner 8 Fl Oz (Health and Beauty)

I used this product faithfully as per the instructions. It absolutely did not change a thing. Maybe it was because my normal color is blonde/light brown. I was disappointed that my money was wasted. I suggest just to dye your hair.

1 123. Defendants' claims that the product receives excellent feedback for its astounding
2 results are misleading or false in light of customer complaints that GAG Products are a big scam,
3 fake, worthless, snake oil, and a waste of money. Moreover, customer complaints that Defendants
4 are frauds, uncaring, and unethical do not suggest that the product achieves astounding results.
5 Finally, customer complaints that the product should be renamed "Go Away Money" or "Go Away
6 Black" also suggest that the product is ineffective.

7
8 **CLASS ACTION ALLEGATIONS**

9 124. Plaintiff seeks to represent a class defined as all persons in the United States who
10 purchased the Go Away Gray Products. Excluded from the Class are governmental entities,
11 Defendants, Defendants' affiliates, parents, subsidiaries, employees, officers, directors, and co-
12 conspirators, and anyone who purchased Go Away Gray Products for resale. Also excluded is any
13 judicial officer presiding over this matter and the members of their immediate families and judicial
14 staff.

15 125. Plaintiff also seeks to represent a subclass defined as all California residents who
16 purchased Go Away Gray (the "California Subclass").

17 126. Members of the Class and the California Subclass are so numerous that their
18 individual joinder herein is impracticable. The precise number of Class members and their
19 identities are unknown to Plaintiff at this time but will be determined through discovery of
20 Defendants' records. Class members may be notified of the pendency of this action by mail, email,
21 and/or publication.

22 127. Common questions of law and fact exist as to all Class members and predominate
23 over questions affecting only individual Class members. These common legal and factual questions
24 include, but are not limited to:

- 25 a. Whether the marketing and advertisements for GAG Products included false,
26 misleading statements;
27 b. Whether Defendants' conduct violated the Magnuson-Moss Warranty Act;
28 c. Whether Defendants' conduct violated the CLRA;

- 1 d. Whether Defendants' conduct violated the FAL;
- 2 e. Whether Defendants' conduct violated the unlawful, unfair, and fraudulent
- 3 and/or deceptive prongs of the UCL;
- 4 f. Whether Defendants' conduct breached express or implied warranties; and
- 5 g. Whether Defendants made negligent misrepresentations.

6 128. Plaintiff's claims are typical of the claims of the proposed Class and the California
7 Subclass he seeks to represent. Each Class member was subjected to the same illegal conduct, was
8 harmed in the same way, and has claims for relief under the same legal theories.

9 129. Plaintiff is an adequate representative of the Class and the Subclass he seeks to
10 represent because his interests do not conflict with the interests of the Class and Subclass members
11 he seeks to represent, he has retained counsel competent and experienced in prosecuting class
12 actions, and he intends to prosecute this action vigorously. The interests of Class and Subclass
13 members will be fairly and adequately protected by Plaintiff and his counsel.

14 130. The class mechanism is superior to other available means for the fair and efficient
15 adjudication of the claims of Class members. Each individual Class member may lack the resources
16 to undergo the burden and expense of individual prosecution of the complex and extensive litigation
17 necessary to establish Defendants' liability. Individualized litigation increases the delay and
18 expense to all parties and multiplies the burden on the judicial system presented by the complex
19 legal and factual issues of this case. Individualized litigation also presents a potential for
20 inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
21 management difficulties and provides the benefits of single adjudication, economy of scale, and
22 comprehensive supervision by a single court on the issue of a defendants' liability. Class treatment
23 of the liability issues will ensure that all claims and claimants are before this Court for consistent
24 adjudication of the liability issues.

25 131. Unless a class is certified, Defendants will retain monies received as a result of their
26 conduct that were taken from Plaintiff and proposed Class members. Unless a class-wide injunction
27
28

1 is issued, Defendants will continue to commit the violations of law alleged, and the members of the
2 Class and the general public will continue to be harmed thereby.

3 **COUNT I**

4 **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.**

5 132. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
6 above as though fully set forth herein.

7 133. Plaintiff brings this claim individually and on behalf of the members of the proposed
8 Class against Defendants.

9 134. Each of the Go Away Gray Products is a consumer product within the meaning of
10 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

11 135. Plaintiff and Class members are “consumers” within the meaning of the Magnuson-
12 Moss Warranty Act, 15 U.S.C. § 2301(3).

13 136. Defendants are both “suppliers” and a “warrantors” within the meaning of the
14 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4) and (5).

15 137. Defendants’ statements as alleged herein (including, *inter alia*, statements that GAG
16 Products: are “based on scientific studies;” “prevent & reverse gray hair;” “restore your natural hair
17 color;” are clinically and/or scientifically proven; provide results in 6-8 weeks; and have “a 96%
18 success rate” are “written warranties” within the meaning of the Magnuson-Moss Warranty Act, 15
19 U.S.C. § 2301(6)(A).

20 138. As alleged herein, Defendants have breached this written warranty by selling
21 consumers GAG products which are not based on scientific studies, which do not prevent and
22 reverse hair loss, do not restore natural hair color, are not “clinically proven,” do not provide results
23 within 6-8 weeks, and do not have a 96% rate of success as warranted, thus failing to conform to the
24 written warranties, violating the Magnuson-Moss Warranty Act, and causing Plaintiff and the Class
25 injury and damage.

COUNT II

Breach of Express Warranty

1
2 139. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
3 above as though fully set forth herein.

4 140. Plaintiff brings this claim individually and on behalf of the members of the proposed
5 Class against Defendants.

6 141. Plaintiff, and each member of the Class, formed a contract with Defendants at the
7 time Plaintiffs and the other members of the Class purchased GAG Products. The terms of that
8 contract include the promises and affirmations of fact made by Defendants in advertisements and
9 the packaging of GAG Products as described above. This product packaging and advertising
10 constitute express warranties, became part of the basis of the bargain, and are part of a
11 standardized contract between Plaintiff and the members of the Class on the one hand, and
12 Defendants on the other.

13 142. All conditions precedent to Defendants' liability under this contract have been
14 performed by Plaintiff and the Class. Defendants breached the terms of this contract, including the
15 express warranties, with Plaintiff and the Class by not providing a product that: restores the user's
16 natural hair color; prevents and reverses gray hair; achieves results in 6-8 weeks; is based on
17 scientific studies; is clinically proven; or has a 96% success rate.

18 143. As a result of Defendants' breaches of warranty, Plaintiff and the Class have
19 been damaged in the amount according to proof.

20
21 **COUNT III**

Breach of Implied Warranties

22 144. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
23 above as though fully set forth herein.

24 145. Plaintiff brings this claim individually and on behalf of the members of the proposed
25 Class against Defendants.

26 146. Defendants knew that Plaintiff and other Class members were buying GAG Products
27 for a particular purpose – to prevent or reverse gray hair and to restore their natural hair color – and
28

1 that Plaintiff and other Class members relied on Defendants' skill and judgment to select goods fit
2 for that purpose.

3 147. GAG Products are not fit for this purpose because they do not produce the results
4 that Defendants promise in the advertising, labeling, and packaging for GAG Products. For the
5 same reasons, GAG Products were unmerchantable at the time they left the location where they
6 were created, and remained unmerchantable at all times after that. This unmerchantability is
7 inherent in the products.

8 148. Plaintiff notified Defendants of the acts constituting breach of the implied warranties
9 of fitness for a particular purpose and merchantability, both for himself and the Class. Plaintiff and
10 other Class members suffered injury as a result of these breaches of warranty, for which Plaintiff
11 hereby prays, because they paid for and received GAG Products that were not as warranted.

12 **COUNT IV**

13 **Violation of California's False Advertising Law ("FAL"),
14 Business & Professions Code § 17500 *et seq.***

15 149. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
16 above as though fully set forth herein.

17 150. Plaintiff brings this claim individually and on behalf of the members of the proposed
18 California Subclass against Defendants.

19 151. Defendants violated Business & Professions Code § 17500 by publicly disseminating
20 false, and misleading advertisements regarding GAG Products.

21 152. Defendants' false and misleading advertisements were disseminated to increase the
22 sales of GAG Products.

23 153. Defendants knew or should have known that their advertisements for GAG Products
24 were false and misleading, and that those advertisements would induce consumers to purchase GAG
25 Products.

26 154. Furthermore, Defendants publicly disseminated the false and misleading
27 advertisements as part of a plan or scheme with the intent to sell an unproven, ineffective, and
28 worthless product.

1 155. Plaintiff and the members of the Class and California Subclass have suffered harm as
2 a result of these violations of the FAL because they have incurred charges and/or paid monies for
3 GAG Products that they otherwise would not have incurred or paid.

4 156. Pursuant to Bus. & Prof. Code § 17500, Plaintiff seeks an order of this Court
5 permanently enjoining Defendants from continuing to publicly disseminate false and misleading
6 advertisements for GAG Products as alleged herein. Plaintiff also seeks an order requiring
7 Defendants to:

- 8 a. make full restitution for all monies wrongfully obtained; and
- 9 b. disgorge all ill-gotten revenues and/or profits.

10 **COUNT V**

11 **Unlawful Business Practices in Violation of California’s Unfair Competition Law (“UCL”),**
12 **Business & Professions Code §§ 17200 *et seq.***
13 **(Unlawful Practices)**

14 157. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
15 above as though fully set forth herein.

16 158. Plaintiff brings this claim individually and on behalf of the members of the proposed
17 California Subclass against Defendants.

18 159. Defendants violated the unlawful prong of the UCL by violating Business &
19 Professions Code § 17500 as described above.

20 160. Defendants also violated the unlawful prong of the UCL by violating the FTC Act,
21 15 U.S.C. § 45(n) because false and misleading claims concerning the efficacy of GAG Products
22 are likely to deceive reasonable consumers and are likely to cause injury to consumers by enticing
23 them to purchase a worthless and ineffective product. These claims are also likely to incur charges
24 and/or pay monies for GAG Products that they otherwise would not have incurred or paid. These
25 injuries are substantial, and are not reasonably avoidable by consumers who in most cases would be
26 unable to debunk Defendants’ bogus claims about the purported efficacy of GAG Products without
27 using one or more GAG Products for several months.

1 161. Furthermore, “[t]he FTC typically requires claims about the efficacy or safety of
2 dietary supplements to be supported with ‘competent and reliable scientific evidence,’ defined in
3 FTC cases as ‘tests, analyses, research, studies, or other evidence based on the expertise of
4 professionals in the relevant area, that have been conducted and evaluated in an objective manner
5 by persons qualified to do so, using procedures generally accepted in the profession to yield
6 accurate and reliable results.’”²⁰ Such support was lacking here, thus Defendants’ claims
7 concerning the efficacy of GAG Products were unsupported and deceptive in violation of the FTC
8 Act.

9 162. Plaintiff and the members of the Class and California Subclass have suffered harm as
10 a result of these violations of the unlawful prong of the UCL because they have incurred charges
11 and/or paid monies for GAG Products they otherwise would not have incurred or paid.

12 163. Pursuant to Business & Professions Code § 17203, Plaintiff seeks an order of this
13 Court permanently enjoining Defendants from continuing to engage in their unlawful conduct as
14 alleged herein. Plaintiff also seeks an order requiring Defendants to:

- 15 a. make full restitution of all monies wrongfully obtained; and
16 b. disgorge all ill-gotten revenues and/or profits.

17 **COUNT VI**

18 **Unlawful Business Practices In Violation Of California’s Unfair Competition Law (“UCL”),**
19 **Business & Professions Code §§ 17200 *et seq.***
20 **(Unfair Practices)**

21 164. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
22 above as though fully set forth herein.

23 165. Plaintiff brings this claim individually and on behalf of the members of the proposed
24 California Subclass against Defendants.

25 _____
26 ²⁰ Federal Trade Commission, *Dietary Supplements: An Advertising Guide for Industry*, p. 9,
27 available at [http://business.ftc.gov/sites/default/files/pdf/bus09-dietary-supplements-advertising-
28 guide-industry.pdf](http://business.ftc.gov/sites/default/files/pdf/bus09-dietary-supplements-advertising-guide-industry.pdf) (“FTC Advertising Guide”).

1 166. Defendants' conduct, described herein, violated the unfair prong of the UCL because
2 such conduct violated various laws and policies recognized by the California Legislature and the
3 California courts, including without limitation, the FAL, because the utility of Defendants' conduct
4 is significantly outweighed by the gravity of the harms it imposed on consumers, and because
5 Defendants' business practices described herein are oppressive, unscrupulous or substantially
6 injurious to consumers.

7 167. Plaintiff and the members of the California Subclass have suffered harm as a result
8 of these violations of the unfair prong of the UCL because they have incurred charges and/or paid
9 monies for GAG Products they otherwise would not have incurred or paid.

10 168. Pursuant to Business & Professions Code § 17203, Plaintiff seeks an order of this
11 Court permanently enjoining Defendants from continuing to engage in their unfair and unlawful
12 conduct as alleged herein. Plaintiff also seeks an order requiring Defendants to:

- 13 a. make full restitution of all monies wrongfully obtained; and
14 b. disgorge all ill-gotten revenues and/or profits.

15 **COUNT VII**

16 **Unlawful Business Practices In Violation of California's Unfair Competition Law ("UCL"),**
17 **Business & Professions Code §§ 17200 *et seq.***
18 **(Fraudulent and Deceptive Practices)**

19 169. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
20 above as though fully set forth herein.

21 170. Plaintiff brings this claim individually and on behalf of the members of the proposed
22 California Subclass against Defendants.

23 171. Defendants violated the fraudulent and deceptive prong of the UCL by disseminating
24 false and misleading advertisements and marketing materials regarding the effectiveness of GAG
25 Products.

26 172. Plaintiff and the members of the California Subclass have suffered harm as a result
27 of these violations of the fraudulent and deceptive prong of the UCL because they have incurred
28 charges and/or paid monies for GAG Products they otherwise would not have incurred or paid.

1 173. Pursuant to Business & Professions Code § 17203, Plaintiff seeks an order
2 permanently enjoining Defendants from continuing to engage in their fraudulent and deceptive
3 conduct alleged herein. Plaintiff also seeks an order requiring Defendants to:

- 4 a. make full restitution of all monies wrongfully obtained; and
- 5 b. disgorge all ill-gotten revenues and/or profits.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment and relief as follows:

- 8 A. An order certifying that this lawsuit is properly maintainable as a class action and
9 certifying Plaintiff as the representative of the Class and California Subclass;
- 10 B. For all forms of relief set forth above;
- 11 C. Damages against Defendants in an amount to be determined at trial, together with
12 pre- and post-judgment interest at the maximum rate allowable by law on any
13 amounts awarded;
- 14 D. Restitution and/or disgorgement in an amount to be determined at trial;
- 15 E. An order enjoining Defendants from continuing to engage in the unlawful conduct
16 and practices described herein;
- 17 F. Reasonable attorneys' fees and costs;
- 18 G. Granting such other and further relief as may be just and proper.

19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff demands a trial by jury of all issues so triable.
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RODNEY WIGGINS, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

L. Timothy Fisher, Bursor & Fisher, P.A. 1990 N. California Blvd., Suite 940 Walnut Creek, CA 94596; Telephone: (925) 300-4455

DEFENDANTS

RISE-N-SHINE, LLC and CATHY BEGGAN

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332(d)(2)(A) and 15 U.S.C. Section 2301. Brief description of cause: Defendants make false and misleading statements about Go Away Gray.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/12/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ L. Timothy Fisher

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA