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16 Attorneys for Plaintiffs and the Proposed Class

17  
18 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 **AMY FRIEDMAN, JUDI**  
**MILLER, KRYSTAL HENRY-**  
21 **MCARTHUR, and LISA**  
**ROGERS on behalf of themselves**  
22 **and all others similarly situated,**

23 **Plaintiffs,**

24 **v.**

25 **GUTHY-RENKER LLC and**  
**WEN BY CHAZ DEAN, INC.,**

26 **Defendants.**  
27

**Case No. 2:14-cv-06009-ODW-AGR**  
**NOTICE OF UNOPPOSED MOTION**  
**AND UNOPPOSED MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**CLASS ACTION SETTLEMENT**

Judge: Hon. Otis D. Wright II  
Motion Date: August 1, 2016  
Time: 1:30 p.m.  
Location: Courtroom 11

1                   **NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR**  
2                   **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3                   **PLEASE TAKE NOTICE THAT**, on August 1, 2016, at 1:30 p.m. in Courtroom  
4 11 before the Honorable Otis D. Wright II, United States District Judge for the  
5 Central District of California, Western Division, 312 North Spring Street, Los  
6 Angeles, CA 90012, Plaintiffs Amy Friedman, Judi Miller, Krystal Henry-  
7 McArthur, and Lisa Rogers, by and through undersigned counsel will move,  
8 pursuant to Fed. R. Civ. P. 23(e), for entry of the contemporaneously filed  
9 Proposed Order Granting Preliminary Approval attached: (a) certifying a class for  
10 settlement purposes; (b) preliminarily approving the proposed settlement; (c)  
11 authorizing the form and method of class notice; (d) setting a date for a final  
12 fairness hearing to consider final approval of the settlement; and, (e) granting such  
13 other and additional relief as the Court may deem just and appropriate.

14                   In support of this Motion, Plaintiffs submit the following documents, filed  
15 concurrently herewith: (1) Memorandum of Law in Support of Motion for  
16 Preliminary Approval of Class Action Settlement; (2) Joint Declaration of Interim  
17 Lead Counsel in Support of Preliminary Approval; (3) Settlement Agreement and  
18 Release of Claims; (4) Email Notice; (5) Mail Notice; (6) Long-Form Notice; (7)  
19 Publication Notice; (8) Tier 1 Claim Form; (9) Tier 2 Claim Form; (10) Tier 1 and  
20 Tier 2 Claim Form Instructions; and (11) Proposed Order Granting Preliminary  
21 Approval.

22                   Pursuant to Local Civil Rule 7-3, Plaintiffs' counsel met and conferred with  
23 counsel for Guthy-Renker LLC, Dina Cox, and counsel for WEN by Chaz Dean,  
24 Inc., Barry Schirm, concerning the instant Motion, which relief requires the Court  
25 to weigh the various factors relating to approval of a class action settlement and  
26 can only be done on noticed motion. On June 28, 2016, both counsel for  
27

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Defendants confirmed that their clients do not oppose the relief sought by this motion based upon the Parties’ Settlement Agreement. Defendants note that the memorandum of law filed contemporaneously herewith reflects *only* the views of Plaintiffs and, but for the Parties’ Settlement Agreement, Defendants dispute Plaintiffs’ allegations of liability, causation and damages, and they further contest class certification and reserve the right to contest certification should the settlement not be finally approved or should the Effective Date otherwise not take place. Defendants deny that they did anything wrong, and liability is disputed in this matter for the primary reason that WEN Hair Care products have not been proven to cause hair loss to consumers, nor has it been legally determined that advertising of the Products was false or misleading. The makers of WEN stand behind the quality, safety, and formulation of the Products, all of which meet or exceed all safety and quality standards set by the cosmetics industry.

DATED: June 28, 2016

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Proposed Class*

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**ATTESTATION RE: SIGNATURES**

I, Jordanna G. Thigpen, am the ECF User who is filing Plaintiffs’  
Notice of Unopposed Motion and Unopposed Motion for Preliminary  
Approval. I attest that all other signatories listed, and on whose behalf the  
filings are being submitted, concur in the content of such filings and have  
authorized the filing of such documents.

DATED: 6/28/16

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25 **GUTHY-RENKER LLC and**  
26 **WEN BY CHAZ DEAN, INC.,**

27 **Defendants.**  
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**Case No. 2:14-cv-06009-ODW-AGR**

**MEMORANDUM OF LAW IN**  
**SUPPORT OF MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**CLASS ACTION SETTLEMENT**

Judge: Hon. Otis D. Wright II  
Motion Date: August 1, 2016  
Time: 1:30 p.m.  
Location: Courtroom 11

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1 **I. INTRODUCTION**

2 Plaintiffs<sup>1</sup> submit this memorandum in support of the Plaintiffs’ Motion for  
3 Preliminary Approval of Class Action Settlement.<sup>2</sup> Under the terms of the  
4 Settlement Agreement and Release of Claims (“Agreement,” filed concurrently  
5 herewith) between Plaintiffs Friedman, Miller, Henry-McArthur and Rogers  
6 (collectively, “Plaintiffs”) and Defendants Guthy-Renker LLC (“Guthy-Renker”)  
7 and WEN by Chaz Dean, Inc. (“WEN”) (collectively Guthy-Renker and WEN  
8 shall be referred to as “Defendants”), Defendants have agreed to provide valuable  
9 and substantial benefits to Settlement Class Members to resolve this Lawsuit. The  
10 Agreement contains all of the material terms of the Settlement, including the  
11 manner and form of notice to be provided to the Settlement Class, the conditions or  
12 contingencies pertaining to the settlement’s final approval, and other necessary and  
13 proper terms under Fed. R. Civ. P. 23 (“Rule 23”). The Settlement meets the  
14 criteria for preliminary approval, and is well within the range of what might be  
15 approved as fair, reasonable, and adequate. As such, Plaintiffs respectfully move  
16 this Court to enter the Proposed Preliminary Approval Order, attached as Exhibit A  
17 to the Joint Declaration of Interim Lead Counsel in Support of Preliminary

18  
19 <sup>1</sup> Pursuant to Local Civil Rule 7-3, Plaintiffs’ counsel met and conferred with  
20 counsel for Guthy-Renker LLC, Dina Cox, and counsel for WEN by Chaz Dean,  
21 Inc., Barry Schirm, concerning the instant Motion, which relief requires the Court  
22 to weigh the various factors relating to approval of a class action settlement and  
23 can only be done on noticed motion. On June 28, 2016, both counsel for  
24 Defendants confirmed that their clients do not oppose the relief sought by this  
25 motion based upon the Parties’ Settlement Agreement. Defendants note that this  
26 memorandum reflects *only* the views of Plaintiffs and, but for the Parties’  
27 Settlement Agreement, Defendants dispute Plaintiffs’ allegations of liability,  
28 causation and damages, and they further contest class certification and reserve the  
right to contest certification should the settlement not be finally approved or should  
the Effective Date otherwise not take place. Defendants deny that they did  
anything wrong, and liability is disputed in this matter for the primary reason that  
WEN Hair Care products have not been proven to cause hair loss to consumers,  
nor has it been legally determined that advertising of the Products was false or  
misleading. The makers of WEN stand behind the quality, safety, and formulation  
of the Products, all of which meet or exceed all safety and quality standards set by  
the cosmetics industry.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meanings as  
ascribed to them in the Settlement Agreement and Release of Claims.

1 Approval (“Jt. Decl.” or “Joint Declaration”), preliminarily approving the proposed  
2 settlement, conditionally certifying for settlement purposes only a Settlement Class  
3 (described below), and providing for notice to members of the Settlement Class.

4 **II. PERTINENT PROCEDURAL HISTORY**

5 This Lawsuit was initiated against Guthy-Renker on July 31, 2014.  
6 Following the filing of an amended complaint, a motion to dismiss and compel  
7 arbitration was filed on December 10, 2014. On February 27, 2015, this Court,  
8 granted in part and denied in part the motion to dismiss and compel arbitration.  
9 Shortly thereafter an intensive period of discovery began. Depositions were  
10 conducted of Plaintiffs Friedman and Miller in Florida and Maryland, respectively.  
11 Additionally, Plaintiffs conducted depositions of Guthy-Renker employees on a  
12 range of topics in North Carolina and California. Plaintiffs served more than 75  
13 formal requests for production of documents, over 100 requests for admission and  
14 18 interrogatories. Two motions to compel were litigated arising out of Plaintiffs’  
15 discovery requests. On June 19, 2015, in midst of the discovery process, Plaintiffs  
16 filed a second amended complaint naming WEN by Chaz Dean, Inc. as a  
17 Defendant. Following the filing of WEN by Chaz Dean, Inc.’s answer to that  
18 complaint, Plaintiffs served discovery on WEN by Chaz Dean, Inc. as well.

19 On September 24, 2015, this Court issued a stay of the litigation in order to  
20 facilitate negotiation of a potential settlement. The Parties attended four  
21 mediations (January 29, 2016; February 29, 2016; March 1, 2016; and March 31,  
22 2016), which were conducted at JAMS in Los Angeles before the Hon. Peter D.  
23 Lichtman (Ret.). At the conclusion of the March 31, 2016 mediation, Judge  
24 Lichtman made a mediator’s proposal that all Parties accepted on April 29, 2016.  
25 Since that time, the Parties held a two-day in-person meeting in Los Angeles on  
26 May 9-10, 2016, served and responded to a variety of confirmatory discovery, and  
27 worked diligently to reduce the Settlement Agreement to writing.

28 **III. SUMMARY OF THE SETTLEMENT**

1 The proposed Settlement contains the following material terms:

2 **Settlement Class**

3 The Settlement Class is defined as:

4 All purchasers or users of WEN Hair Care Products in the United  
5 States or its territories between November 1, 2007 and August 1,  
6 2016, excluding (a) any such person who purchased for resale and not  
7 for personal or household use, (b) any such person who signed a  
8 release of any Defendant in exchange for consideration, (c) any  
9 officers, directors or employees, or immediate family members of the  
10 officers, directors or employees, of any Defendant or any entity in  
11 which a Defendant has a controlling interest, (d) any legal counsel or  
12 employee of legal counsel for any Defendant, and (e) the presiding  
13 Judge in the Lawsuit, as well as the Judge's staff and their immediate  
14 family members.

15 **Settlement Consideration**

16 The settlement consideration consists of:

17 **Settlement Fund**

18 Defendants agree to provide consideration of \$26,250,000 (the "Fund") This  
19 Fund shall be used to, *inter alia*, pay for notice and claims administration by a  
20 professional claims administration provider (the "Settlement Administrator"), to  
21 pay Class Member claims, to provide Incentive Awards to the Named Plaintiffs, to  
22 compensate the Special Master, and to compensate Class Counsel. None of these  
23 funds shall revert to Defendants under any circumstances. To the extent residual  
24 funds exist at the conclusion of the claim period, those funds will revert to *cy pres*,  
25 as described in Section 6 of the Settlement Agreement.

26 **Tier 1 Class-Wide Flat Rate Claims**

27 Any member of the Settlement Class who purchased WEN Hair Care  
28 Products, and does not timely request to opt-out of the Settlement Class, shall be

1 entitled to submit a claim against the Fund for a one-time flat payment of \$25 per  
2 person as compensation for claims of misrepresentation regarding the qualities and  
3 attributes of WEN Hair Care Products, or undocumented claims of bodily injury,  
4 including but not limited to hair loss, hair damage, scalp pain or irritation, after  
5 using WEN Hair Care Products. Five Million Dollars (\$5,000,000) of the Fund  
6 shall be set aside to pay Class Members making Tier 1 claims.

7 Tier 2 Documented Adverse Reaction Claims

8 Any member of the Settlement Class who alleges to have suffered bodily  
9 injury, including but not limited to hair loss, hair damage, scalp pain or irritation,  
10 as a result of using WEN Hair Care Products, and does not timely request to opt-  
11 out from the Settlement Class, may make a claim against the Fund for  
12 reimbursement of amounts spent to redress such alleged injuries, as well as an  
13 injury award designed to compensate the Class Member for any alleged injuries  
14 sustained, up to a maximum of \$20,000 per Class Member, as set forth below. To  
15 make a claim under Tier 2, the Class Member must submit a valid Tier 2 Claim  
16 Form and supporting documentation, as set required by the Settlement Agreement.

17 Adverse Event Warning

18 Defendants agree that all labels for WEN Cleansing Conditioner created  
19 after the Effective Date shall bear a common sense caution materially consistent  
20 with the following: “If you experience any adverse reaction after using this  
21 product, immediately cease use and consult a physician.”

22 Release

23 In exchange for the valuable consideration provided by this Settlement, the  
24 Parties have agreed to the following release: “any and all claims arising out of or in  
25 any manner related to the subject matter of the Lawsuit, including, but not limited  
26 to, the sale, marketing, advertising, distribution, design, formulation, manufacture,  
27 purchase, or use of WEN Hair Care Products by any Settlement Class Member,  
28 regardless of whether any such claim is known or unknown, asserted or as yet



1 unasserted. This Release of Claims shall not affect the ability of any governmental  
2 entity to conduct an investigation or assert a claim on its own behalf, but the  
3 Release of Claims shall continue to have preclusive effect as to any and all relief  
4 for or on behalf of any Settlement Class Member who has not opted-out of the  
5 Settlement.”

6 Incentive Awards and Attorney’s Fees

7 Subject to approval by the Court, Named Plaintiffs Amy Friedman and Judi  
8 Miller, who were subject to extensive discovery, including invasive review of  
9 medical records and deposition, shall receive Incentive Awards of \$25,000 each for  
10 their substantial contribution in the prosecution of this Lawsuit for the benefit of  
11 the Class. Named Plaintiff Krystal Henry-McArthur shall receive an Incentive  
12 Award of \$5,000 for her efforts in prosecuting the action for the benefit of the  
13 Class. And Named Plaintiff Lisa Rogers shall receive an Incentive Award of  
14 \$2,500 for her efforts in prosecuting the Lawsuit on behalf of the Class.

15 Subject to approval by the Court, in light of the substantial work,  
16 considerable expenses expended, and risks associated with prosecuting this  
17 Lawsuit on behalf of the Class, Defendants agree not to oppose an application by  
18 Class Counsel for up to \$6,500,000 to cover all costs and fees incurred in  
19 prosecuting this action on behalf of the Class. This request equates to less than  
20 25% of the Fund. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d  
21 934, 949 (9th Cir. 2015) (recognizing 25% benchmark award in class actions and  
22 upholding award of 25% of \$27,250,000 common fund).

23 **IV. STANDARD OF REVIEW**

24 Federal Rule of Civil Procedure 23(e) requires judicial approval for any  
25 settlement agreement that will bind absent class members. *See Fed. R. Civ. P.*  
26 *23(e); see also Briggs v. United States*, No. C 07–05760 WHA, 2010 WL 1759457,  
27 at \*3 (N.D. Cal. Apr. 30, 2010). And it is well-settled in the Ninth Circuit that  
28 settlements are favored, particularly in class actions and other complex cases

1 where substantial resources can be conserved by avoiding the time, cost, and rigor  
2 of prolonged litigation. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
3 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). These  
4 economic gains multiply in pre-certification settlements since class certification  
5 undeniably represents a significant risk for Plaintiffs. *Acosta v. Trans Union, LLC*,  
6 243 F.R.D. 377, 392 (C.D. Cal. 2007).

7 A court must take three steps in considering approval of a proposed  
8 settlement: (1) the court must preliminarily approve the proposed settlement; (2)  
9 members of the class must be given notice of it; and, (3) a final hearing must be  
10 held after which the court must decide whether the tentative settlement is fair,  
11 reasonable, and adequate. See MANUAL FOR COMPLEX LITIGATION  
12 (FOURTH) § 21.632, at 320-21 (4th ed. 2004) (“MANUAL (FOURTH)”). The  
13 decision to approve a proposed class-action settlement is within the sound  
14 discretion of the district court judge “because he is exposed to the litigants, and  
15 their strategies, positions, and proof.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d  
16 454, 458 (9th Cir. 2000); see also *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,  
17 1276 (9th Cir. 1992); accord *Bruno v. Quten Research Inst., LLC*, No. SACV 11–  
18 00173 DOC (Ex), 2013 WL 990495, at \*1 (C.D. Cal. Mar. 13, 2013).

19 The sole inquiry at the preliminary approval stage is “‘whether a proposed  
20 settlement is fundamentally fair, adequate, and reasonable,’ recognizing that ‘[i]t is  
21 the settlement taken as a whole, rather than the individual component parts, that  
22 must be examined for overall fairness.’” *Staton v. Boeing Co.*, 327 F.3d 938, 952  
23 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
24 1998)). But the ultimate question of fairness, reasonableness, and adequacy is  
25 answered at the final-approval stage, after notice of the settlement has been given  
26 to class members and they have had an opportunity to comment on the settlement.  
27 See 5 JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE § 23.83(1), at  
28 23-336.2 to 23-339 (3d ed. 2002). Preliminary approval is merely the prerequisite

1 to providing notice to the class so that all class members are “afforded a full and  
2 fair opportunity to consider the proposed [settlement] and develop a response.”  
3 *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983). *See also Misra v.*  
4 *Decision One Mortgage Co.*, No. SA CV 07-0994 DOC (RCx), 2009 WL  
5 4581276, at \*3, 9 (C.D. Cal. Apr. 13, 2009) (“To determine whether preliminary  
6 approval is appropriate, the settlement need only be *potentially* fair, as the Court  
7 will make a final determination of its adequacy at the hearing on Final Approval,  
8 after such time as any party has had a chance to object and/or opt out.”) (Emphasis  
9 in original; citation omitted).

10 Courts have consistently noted that the standard for preliminary approval is  
11 less rigorous than the analysis at final approval. Preliminary approval is  
12 appropriate as long as the proposed settlement falls “within the range of possible  
13 judicial approval.” A. CONTE & H.B. NEWBERG, *NEWBERG ON CLASS ACTIONS* §  
14 11:25 (4th ed. 2002) (“NEWBERG”) (*citing* *MANUAL FOR COMPLEX LITIGATION*  
15 (THIRD) § 30.41 (3rd ed. 1995) (“MANUAL (THIRD)”)); *MANUAL (FOURTH)* §  
16 21.632, at 321. Courts employ a “threshold of plausibility” standard intended to  
17 identify conspicuous defects. *Kakani v. Oracle Corp.*, No. C 06-06493 WHA,  
18 2007 WL 1793774, at \*6 (N.D. Cal. June 19, 2007). Unless the Court’s initial  
19 examination “disclose[s] grounds to doubt its fairness or other obvious  
20 deficiencies,” the Court should order that notice of a formal fairness hearing be  
21 given to settlement class members under Rule 23(e). *West v. Circle K Stores, Inc.*,  
22 No. CIV. S-04-0438 WBS GGH, 2006 WL 1652598, at \*11 (E.D. Cal. June 13,  
23 2006) (citation omitted); *MANUAL (FOURTH)* § 21.632, at 321-22.

#### 24 **V. THE SETTLEMENT CLASS SHOULD BE CERTIFIED**

25 Certification of a Settlement Class is appropriate where the class meets the  
26 requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of  
27 representation), *and* the requirements of Rule 23(b)(3). (common questions of law  
28 or fact predominate, and the class action is superior to other available methods of

1 adjudication). *Hanlon*, 150 F.3d at 1019. In this Lawsuit, the proposed Settlement  
2 can and should be properly certified under Rule 23.

3 **A. The Requirements of Rule 23(a) are Satisfied**

4 **1. Numerosity**

5 With millions of members scattered around the country, the Settlement Class  
6 is sufficiently numerous to satisfy Rule 23(a)(1). *Hanlon*, 150 F.3d at 1019.

7 **2. Commonality**

8 There are clearly questions of law and fact common to the Settlement Class  
9 sufficient to satisfy Rule 23(a)(2). The Rule 23(a)(2) commonality threshold is  
10 easily met where, *as here*, the same common nucleus of facts will prove each class  
11 member's claim. *See Parra v. Bashas's Inc.*, 2008 U. S. App. LEXIS 15985, \*8  
12 (9th Cir. July 29, 2008) (*citing Hanlon*, 150 F.3d at 1019) (under Rule 23(a)(2) not  
13 all questions of fact and law need be common).

14 Common questions in this Lawsuit include: (1) whether Defendants'  
15 advertising was false and misleading; (2) whether WEN Hair Care Products cause  
16 hair loss, scalp irritation or other adverse reactions; (3) whether Plaintiffs and  
17 Settlement Class Members suffered damages as a result of Defendants' conduct;  
18 (4) whether WEN Hair Care Products contain a design defect; (5) whether  
19 Defendants had exclusive knowledge of, but failed to disclose, the existence of a  
20 defect in WEN Hair Care Products; (6) whether Defendants' conduct constituted a  
21 breach of warranty; and, (7) whether, as a result of Defendants' omissions and/or  
22 misrepresentations of material facts, Plaintiffs and members of the Class have  
23 suffered an ascertainable loss of monies and/or property and/or value.

24 **3. Typicality**

25 The Rule 23(a)(3) requirement of typicality is also clearly satisfied here.  
26 Typicality is satisfied when the representative's claims are reasonably co-extensive  
27 with those of absent class members, when each class member's claim arises from  
28 the same course of events and each class member makes similar legal arguments to

1 prove the defendant's liability. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir.  
2 2001); *Hanlon*, 150 F.3d at 1019. In this Lawsuit, the claims of the Named  
3 Plaintiffs and the Settlement Class Members arise from the same alleged course of  
4 events: (1) that Defendants made misrepresentations in their national, uniform  
5 advertising concerning the sulfates and synthetic ingredients; and, (2) that WEN  
6 Hair Care Products have the capacity to cause hair loss and scalp irritation.

#### 7 **4. Adequacy**

8 The adequacy prong of Rule 23(a)(4) is satisfied where the attorney or  
9 attorneys representing the class is qualified and competent, and the class  
10 representatives have no interests antagonistic to those of the Settlement Class  
11 Members. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.  
12 1978) (two criteria for determining adequacy, the named representatives must  
13 appear able to prosecute the lawsuit vigorously through competent counsel and  
14 representatives must not have antagonistic interests with absent class members).

15 Here Class Counsel is well qualified and competent. As set forth in  
16 Plaintiffs' Motion to Lift Stay and for Appointment of Interim Class Counsel  
17 Pursuant to Federal Rule of Civil Procedure 23(g) [Dkt No. 139], and the  
18 accompanying declarations of William Anderson, Neville Johnson and Brian  
19 Warwick [Dkt Nos. 139-1, 139-2, and 139-3], Plaintiffs' Counsel have substantial  
20 class action experience, as well as the financial and human resources necessary to  
21 prosecute this action through trial and any appeals. These are counsel who are  
22 "prepared to try a case." See *Hanlon*, 150 F.3d at 1021. This Court recognized as  
23 much when it granted the Motion and appointed Cuneo Gilbert & LaDuca, LLP;  
24 Johnson & Johnson LLP; and Varnell & Warwick, PA, as interim class counsel  
25 [Dkt No. 146].

26 Additionally, the Named Plaintiffs are not subject to any unique defenses  
27 that might render their interests antagonistic to those of the Settlement Class  
28

1 Members. Each Plaintiff used WEN Hair Care Products, is a Settlement Class  
2 Member, and alleges common harm as the result of utilizing the products.

3 **B. The Requirements of Rule 23(b)(3) are Satisfied**

4 **1. Predominance**

5 **a. All Claims will be Governed by California Law**

6 In this case, the California consumer laws will apply to a national class  
7 eliminating any “structural difficulties” arising from applying the consumer  
8 protection laws of the 50 states, a circumstance that could defeat a finding of  
9 predominance. *Hanlon*, 150 F.3d at 1021.

10 Under the choice of law principles of the forum, California law will apply to  
11 this Lawsuit<sup>3</sup> unless (1) California law conflicts with the law of another state, (2)  
12 the state whose law conflicts with California law has an interest in applying its  
13 own law, and (3) the foreign state’s interest in applying its own law would be more  
14 impaired than California’s interest if the law of such state were not applied.  
15 *Washington Mut. Bank v. Superior Court*, 24 Cal. 4<sup>th</sup> 906, 919-20 (2001)  
16 (“California law may be used on a class wide basis so long as its application is not  
17 arbitrary or unfair with respect to nonresident class members”). Applying these  
18 principles to class actions asserting violations of California consumer protection  
19 laws, federal and state courts in California have held that a national class can be  
20 certified applying California laws extr territorially where the defendant’s conduct, *as*  
21 *here*, has a significant nexus with California.

22 In this Lawsuit, in particular, Plaintiffs allege that there are several factors  
23 establishing a close nexus between the claims of the entire class and the State of  
24 California:

- 25
  - Defendants are headquartered in the Central District of California;

26 \_\_\_\_\_  
27 <sup>3</sup> Although Guthy-Renker has a California forum selection clause in its terms and  
28 conditions, not all retailers or potential defendants had such a requirement,  
meaning that national class certification pursuant to California law could have  
been contested.

- 1 • All decisions concerning the ingredients and formulations of WEN Hair
- 2 Care Products during the class period were directed from the Central
- 3 District of California;
- 4 • Defendants directed their national sales campaign from the Central
- 5 District of California; and,
- 6 • Defendant Guthy-Renker’s Terms and Conditions have a forum
- 7 selection clause requiring that disputes be resolved in California.

8 *Compare Clothesrigger, Inc. v. G.T.E. Corp.*, 191 Cal. App. 3d 605, 613 (1987)

9 (in class action against a long distance telephone carrier, the court found sufficient

10 contacts with California to justify application of California law to the claims of a

11 nationwide class where (1) defendant did business in California; (2) defendant’s

12 primary offices were located in California; (3) a significant number of class

13 members were located in California; and, (4) defendant’s agents who prepared the

14 advertising materials at issue were located in California); *See also Wershba v.*

15 *Apple Computer*, 91 Cal. App. 4th 224, 242 (2001) (affirming the certification of a

16 national class in an FAL action against California computer manufacturer,

17 reasoning that “there were significant contacts with California in this case to

18 satisfy constitutional concerns and support certification of a nationwide class...”).<sup>4</sup>

19 This Lawsuit is virtually indistinguishable from the foregoing cases in which

20 courts have certified national classes under California’s consumer protection laws.

21 **b. Common Questions of Fact and Law Predominate**

22 A common nucleus of facts and potential legal remedies “dominate this

23 litigation.” *See Hanlon*, 150 F.3d at 1022. Plaintiffs would establish Defendants’

24

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25 <sup>4</sup> *Norwest Mortgage, Inc. v. Superior Court*, 72 Cal. App. 4<sup>th</sup> 214, 223-224 (1999)

26 (a national class may be certified when conduct violative of the UCL emanates

27 from California); *Diamond Multimedia Systems, Inc. v. Superior Court* 19 Cal. 4<sup>th</sup>

28 1036, 1064 (1999) (“California also has a legitimate and compelling interest in

preserving a business climate free of fraud and deceptive practices and recognized

the importance of extending state-created remedies to out-of-state parties harmed

by wrongful conduct occurring in California.”).

1 liability by demonstrating facts sufficient for the trier of fact to conclude: (1)  
2 Defendants made misrepresentations or omissions with a likelihood or tendency to  
3 deceive or confuse the public; (2) those misrepresentations or omissions were  
4 material; and, (3) WEN Hair Care Products were the proximate cause of physical  
5 injury to Plaintiffs and the Class. In this Lawsuit, the proof required at trial will be  
6 common to the entire Class, as Plaintiffs allege that the advertisements and  
7 promotional materials at issue were uniform, generated by Defendants in  
8 California, and distributed nationally. As to adverse reactions, common proof  
9 would be required at trial to demonstrate the causes of hair loss and scalp irritation.

10 Plaintiffs would be prepared to demonstrate through expert testimony that  
11 there is a quantifiable and scientifically sound method of determining the  
12 difference in value between WEN Hair Care Products as advertised and WEN Hair  
13 Care Products as they were actually provided. Put another way, Plaintiffs would  
14 utilize hedonic regression and conjoint analysis to establish the price premium paid  
15 for WEN Hair Care Products stemming from misrepresentations as to the  
16 characteristics of the products. Further, Plaintiffs would utilize expert medical and  
17 scientific testimony to establish that WEN Hair Care Products were the proximate  
18 cause of hair loss and scalp irritation for Plaintiffs and the Class.

19 And while some individual proof might be relevant to determining  
20 alternative measures of damages, i.e., the amount and severity of hair loss and  
21 scalp irritation, that does not preclude class certification. The amount of damages  
22 is invariably an individual question and does not defeat class action treatment.  
23 *Trujillo v. City of Ontario*, No. ED cv-04-1015 VAP at 7 (C.D. Cal., Apr. 14,  
24 2005) (quoting *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975)).

## 25 **2. Superiority**

26 A class action is a vastly superior means, and likely the only practical  
27 means, of adjudicating the claims of millions of class members scattered all over  
28 the country. Comparing the available mechanisms for dispute resolution, and



1 where, as here, the individual claims are relatively small when compared to the  
2 complexity of the litigation and resources necessary for establishing causation and  
3 proof, the class action is clearly superior. *See Hanlon*, 150 F.3d at 1023.

4 **VI. THE PROPOSED SETTLEMENT SATISFIES THE**  
5 **REQUIREMENTS FOR PRELIMINARY APPROVAL**

6 A presumption of fairness for a proposed settlement arises where: (1) the  
7 settlement was reached through arm's-length negotiations; (2) investigation and  
8 discovery are sufficient to allow counsel and the court to act intelligently; and, (3)  
9 counsel is experienced in similar litigation. *In re Heritage Bond Litig.*, 2005 U.S.  
10 Dist. LEXIS 13555, 11-12 (C.D. Cal. June 10, 2005); *Ellis v. Naval Air Rework*  
11 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981).  
12 Preliminary approval should be granted where a settlement has no obvious  
13 deficiencies and falls within the range of possible approval. *Alaniz v. California*  
14 *Processing, Inc.* 73 F.R.D. 296, 273 (C.D. Cal. 1976).

15 **A. The Settlement Negotiations Occurred at Arm's-Length and**  
16 **Were Assisted by an Experienced Mediator**

17 Courts accord "considerable weight" to settlements that are the product of  
18 hard-fought negotiations by experienced counsel. *Ellis*, 87 F.R.D. at 18; *Larsen v.*  
19 *Trader Joe's Co.*, 2014 WL 3404531, \*5 (N.D. Cal. July 11, 2014). Settlements  
20 that follow sufficient discovery and genuine arm's-length negotiation are presumed  
21 fair. *Nat'l Rural Telcoms. Coop. v. Directv, Inc.*, 2003 U.S. Dist. LEXIS 25375,  
22 \*13 (C.D. Cal. 2004). When a settlement is achieved through arm's-length  
23 negotiations between experienced counsel, the Court should be hesitant to  
24 substitute its own judgment for that of counsel absent a showing of fraud, collusion  
25 or other forms of bad faith because the "[p]arties represented by competent counsel  
26 are better positioned than courts to produce a settlement that fairly reflects each  
27 party's expected outcome in litigation." *Rodriguez v. West Publishing Corp.*, 563  
28 F.3d 948, 967 (9th Cir. 2009) (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373,

1 378 (9th Cir. 1995)).

2 As detailed above and in the accompanying Joint Declaration, the Settlement  
3 is the product of hard-fought arm's-length negotiations. The Parties were aided in  
4 this process by a highly respected mediator—Hon. Peter D. Lichtman (Ret.)—who  
5 assisted the negotiations during four separate mediations held at JAMS in Los  
6 Angeles. Jt. Decl., ¶ 4. The process pursuant to which the proposed settlement  
7 was achieved is a factor weighing in favor of preliminary approval. *Adams v.*  
8 *Inter-Con Sec. Sys.*, 2007 U.S. Dist. LEXIS 83147 (N.D. Cal. Oct. 29, 2007) (the  
9 assistance of an experienced mediator in the settlement process confirms that the  
10 settlement is non-collusive); *see also In re Immune Response Secs. Litig.*, 497 F.  
11 Supp. 2d 1166, 1171 (S.D. Cal. 2007) (fact that a settlement was reached through  
12 negotiations with an experienced mediator is highly indicative of fairness).

13 **B. Class Counsel Engaged in Sufficient Discovery to Make an**  
14 **Informed Judgment Concerning the Merits of Their Claims**

15 The Court need not reach any ultimate conclusions on the contested issues of  
16 fact and law underlying the merits of the dispute, for it is the uncertainty of  
17 outcome in litigation and avoidance of wasteful and expensive litigation that  
18 induce consensual settlements. *Officers for Justice v. Civil Serv. Comm'n of City*  
19 *and County of San Francisco*, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982). Approval of a  
20 class action settlement does not require that discovery be formal or exhaustive.  
21 *See Clesceri v. Beach City Investigations & Protective Servs.*, 2011 WL 320998, at  
22 \*9 (C.D. Cal. Jan. 27, 2011) (“In the context of class action settlements, formal  
23 discovery is not a necessary ticket to the bargaining table where the parties have  
24 sufficient information to make an informed decision about settlement.” (*quoting*  
25 *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998))).

26 Class Counsel firmly believe that the claims in this action have merit and are  
27 supported by ample evidence. Class Counsel has been actively engaged in this  
28 litigation for approximately two years and thoroughly researched the contested

1 issues prior to and during the Litigation. Jt. Decl., ¶ 2). As the Court is aware, the  
2 Parties engaged in extensive discovery and discovery-related motion practice. Jt.  
3 Decl., ¶ 3. Class Counsel reviewed thousands of pages of relevant documents  
4 produced by Defendants and third parties and took depositions of Defendants’  
5 employees and executives. *Id.* Plaintiffs Friedman and Miller were subject to  
6 substantial discovery and were both deposed. *Id.* Class Counsel engaged multiple  
7 experts knowledgeable about the subject matter of the Lawsuit to assist them in the  
8 review and analysis of information obtained through discovery, as well as in  
9 developing their theory of the case. *Id.* All of this helped solidify Class Counsel’s  
10 belief in the merits of the claims. This factor too supports preliminary approval.  
11 *Nat’l Rural Telcoms. Coop.*, 2003 U.S. Dist. LEXIS 25375 at\*13.

12 **C. The Proponents of the Settlement are Highly Experienced Class**  
13 **Action Litigators**

14 Parties represented by competent counsel are better positioned than courts to  
15 produce a settlement that fairly reflects each party’s expected outcome in litigation.  
16 *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995).  
17 The recommendations of plaintiffs’ counsel should be given a presumption of  
18 reasonableness. *Clesceri*, 2011 WL 320998, at \*10 (“Courts give weight to  
19 counsels’ opinions regarding the fairness of a settlement, when it is negotiated by  
20 experienced counsel.”). As the docket in this case reflects, Class Counsel have  
21 vigorously prosecuted this case from the beginning, and are willing, able, and  
22 prepared to litigate this case through trial and beyond. Class Counsel has  
23 considerable experience in handling complex class actions in general, and  
24 consumer class actions in particular. *See* Dkt Nos. 139, 139-1, 139-2, and 139-3.  
25 This factor weighs in favor of granting preliminary approval.

26 **D. The Settlement is Within the Range of Possible Approval**

27 This settlement is tailored towards resolving Class Members’ complaints  
28 concerning advertising misrepresentations and omissions, as well as claims of

1 bodily injury. The Settlement provides a simple and straightforward means by  
2 which Class Members can receive flat-rate compensation for advertising claims  
3 and for undocumented claims of bodily injury. To the extent that Class Members  
4 claim bodily injury, including hair loss and scalp irritation, the Settlement provides  
5 an innovative and technologically advanced means by which Class Members can  
6 receive up to \$20,000 each. The claim process for Tier 2 claims is efficient and  
7 designed to reduce the burden on the Court. Finally, the adverse reaction warning  
8 ensures that those who use WEN Hair Care Products are instructed to cease use of  
9 the product and consult a physician if they experience an adverse reaction.

10 The Parties worked long and hard to come up with a settlement that provides  
11 meaningful benefits to all Settlement Class Members, that is tailored to remedy the  
12 specific issues raised by Plaintiffs' allegations, and that is user-friendly and  
13 accessible to Settlement Class Members. It is unlikely that a successful result at  
14 trial would garner a significantly better result than that achieved by the proposed  
15 Settlement. But even if it did, "[i]t is well-settled law that a cash settlement  
16 amounting to only a fraction of the potential recovery will not *per se* render the  
17 settlement inadequate or unfair." *Officers for Justice v. Civil Serv. Comm'n of City*  
18 *& Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (citing *Flinn v. FMC*  
19 *Corp.*, 528 F.2d 1169, 1173-74 (4th Cir. 1975)). Given the uncertainties of class  
20 certification and trial, the value of the Settlement plainly meets (and exceeds) the  
21 adequacy standard and renders this factor supportive of the proposed Settlement.

22 **E. Additional Factors Weighing in Favor of Preliminary Approval**

23 Although not required to be demonstrated at the preliminary approval stage,  
24 the proposed settlement also satisfies many of the other criteria for final approval  
25 as being fair, reasonable, and adequate.

26 Courts in the Ninth Circuit have examined some or all of the following  
27 factors in making such a determination: (1) the strength of plaintiff's case; (2) the  
28 risk, expense, complexity, and likely duration of further litigation; (3) the risk of

1 maintaining class action status throughout the trial; (4) the amount offered in  
2 settlement; (5) the extent of discovery completed and the stage of the proceedings;  
3 (6) the experience and view of counsel; (7) the presence of a governmental  
4 participant; and, (8) the reaction of the class members to the proposed settlement.  
5 *Hanlon*, 150 F.3d at 1026.<sup>5</sup> Factors (1), (4) (5), and (6) are largely discussed  
6 above, and factor (8), the reaction of the class to the settlement, can only be  
7 determined after notice has been accomplished.<sup>6</sup> An analysis of factors (2) and  
8 (3), further favors preliminary approval of the proposed Settlement.

9 **1. The Complexity, Expense, and Likely Duration of the Litigation**  
10 **Favors Settlement**

11 Significantly, despite having a factually well-developed case, the Parties still  
12 face significant uncertainty due to the novelty of the factual and legal issues  
13 presented and the lack of binding authority on point. Defendants deny the factual  
14 allegations in the operative complaint and any legal liability arising from those  
15 claims. Plaintiffs and Defendants recognize the substantial time and expense that  
16 would be required to take this case to trial and through appeal, and the  
17 circumstances and attendant risks favor settlement. *See Hanlon*, 150 F. 3d at 1026.

18 While Plaintiffs largely prevailed on Guthy-Renker's motion to dismiss and  
19 compel arbitration, and the Parties were able to reach the proposed settlement  
20 through meaningful discovery and mediation, the continued litigation of contested  
21 issues would involve significant time and expense. Additional discovery would be  
22 needed to prepare for class certification, trial, and beyond. *See Jt. Decl.* at ¶ 5.

23  
24 <sup>5</sup> The Ninth Circuit has stressed that this is not an exhaustive list of relevant  
25 considerations, nor even necessarily the most significant factors. *Officers For*  
26 *Justice*, 688 F.2d at 625. Moreover, the relative degree of importance to be  
27 attached to any particular factor will depend upon and be dictated by the nature of  
28 the claims advanced, the types of relief sought, and the unique facts and  
circumstances presented by each individual case. *Id.* The issue is not whether the  
settlement could be better, but whether it is fair, reasonable, and adequate and free  
from collusion. *Hanlon*, 150 F.3d at 1027.

<sup>6</sup> Factor (7) does not appear to be pertinent, as no government agency is or was a  
party to this action.

1 Additional motions to compel discovery would be likely. *Id.* The parties would  
2 require additional depositions and motion practice to brief and argue class  
3 certification. *Id.* Multiple expert reports would be prepared and exchanged.  
4 Summary judgment briefs would likely be exchanged and argued, and further time  
5 and expense would be endured in preparation for and through the duration of any  
6 trial and future appeal. And an MDL motion would be probable, if not certain. As  
7 such, the proposed settlement offers a compromise that meaningfully addresses the  
8 claims at issue in light of the substantial amount of time and expense that would be  
9 involved with litigating the claims through trial and appeal. This factor weighs in  
10 favor of granting preliminary approval.

11 **2. The Risk of Maintaining Class Action Status through Trial**  
12 **Favors Settlement**

13 The risks associated with maintaining a class action through trial are a  
14 relevant criterion in evaluating the reasonableness of a proposed class action  
15 settlement. *Amchem Products, Inc., et al. v. Windsor et al.*, 521 U.S.at 591 (1997)  
16 ; *see also In re Heritage Bond Litig.*, 2005 WL 1594403 (C.D. Cal. June 10, 2005).

17 Plaintiffs anticipate that Defendants would vigorously contest class  
18 certification. Defendants engaged in sufficient class discovery (i.e., depositions  
19 and document discovery of Named Plaintiffs), to make evident that Defendants  
20 carefully considered various possible defenses against class certification. While  
21 Plaintiffs believe the criteria of Rule 23 are satisfied here, Plaintiffs recognize the  
22 risks inherent in obtaining, and maintaining, class certification in a nationwide  
23 consumer class action applying California law.

24 It should be noted that the requirement of Rule 23 that the class action be  
25 “manageable” need not be met in the context of certification of a settlement class.  
26 *Amchem*, 521 U.S. at 591. If this action were to continue, Defendants would likely  
27 contend that this case would present a host of case management problems.

28 Finally, even if Plaintiffs were successful in obtaining class certification,

1 Defendants would likely pursue an interlocutory appeal pursuant to Rule 23(f).  
2 The outcome of such an appeal would also be uncertain, and, at a minimum, would  
3 delay and add complexity and additional risk and cost to the proceedings, delaying  
4 or eliminating the possibility of meaningful recovery for Plaintiffs and the Class.

5 **VII. THE FORM AND METHOD OF CLASS NOTICE SHOULD BE**  
6 **APPROVED**

7 A Rule 23(e) class notice is sufficient if it informs the class members of the  
8 nature of the pending action, the general terms of the settlement, the options  
9 available to class members (e.g. submitting a claim form, opting out, and/or  
10 objecting), the time and place of the fairness hearing, and ways to obtain more  
11 detailed information. *Manual for Complex Litigation*, § 21.312 (4<sup>th</sup> ed. 2004). The  
12 distribution of class notice is sufficient if it is given in a form and manner that does  
13 not systematically leave an identifiable group without notice. *San Francisco*  
14 *NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1027-1028  
15 (N.D. Cal. 1999), quoting *Officers for Justice*, 688 F.2d at 624 (citing *Mandujano*  
16 *v. Basic Vegetable Prod., Inc.*, 541 F.2d 832, 835-836 (9th Cir. 1976)). Due  
17 process requires only a procedure reasonably calculated to reach class members.  
18 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

19 More specifically, Rule 23(c)(2)(B) requires the notice directed to the class  
20 to clearly, and in concise, plain, easily-understood language state: (a) the nature of  
21 the action; (b) the definition of the class certified; (c) the class claims, issues, or  
22 defense; (d) that a class member may enter an appearance through an attorney if he  
23 or she desires; (e) that the court will exclude any member of the class upon request;  
24 (f) the method and time to request exclusion; and, (g) that the judgment will be  
25 binding on class members. Here, the Parties strictly adhered to these requirements.

26 To start, the Parties have developed a four-part Notice Plan which involves  
27 direct notice, by email and US Mail, to approximately 6 million Settlement Class  
28 members for whom Defendants possess contact information. Second, notice will

1 be published in a manner comporting with due process in order to reach those  
2 Class Members for whom no contact information is available. Third, a Settlement  
3 Website will be created. Finally, the Settlement Administrator will provide notice  
4 to governmental agencies pursuant to the Class Action Fairness Act, 28 U.S.C. §  
5 1715(b). This multi-step approach is reasonable under the circumstances of this  
6 case. Each form of Notice will be addressed in turn.

7 First, the majority of Class Members will receive notice by direct email in  
8 the form of Exhibit B to the Joint Declaration. Unlike many consumer products,  
9 the vast majority of Class Members purchase WEN Hair Care Products online,  
10 either directly from Guthy-Renker or WEN by Chaz Dean or through one of the  
11 online retailers such as QVC and Amazon. Because the majority of sales were  
12 made online, email addresses are already the primary method for communicating  
13 product information to these customers, such as receipts, promotions and delivery  
14 information. The Parties are in the process of obtaining email addresses from their  
15 online retailers. It is estimated that email notice will be issued to approximately 5  
16 million class members. *See, Spann v. J.C. Penney Corporation*, 314 F.R.D. 312,  
17 331 (C.D. Cal., 2016) (approving email and postcard notice plan); *In re Oil Spill by*  
18 *Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 151 (E.D. La. 2013) (approving  
19 email and post card notice plan.). Accordingly, providing notice to the Class  
20 through email is preferable and will cost only a fraction of the cost of regular mail.

21 Second, any Class Member who did not provide a valid email address will  
22 be issued notice by postcard delivered by regular mail in the form of Exhibit C to  
23 the Joint Declaration. Approximately 1 million class members will receive notice  
24 by regular mail. The postcard notice will be in summary form and will provide  
25 information to allow the class member to obtain more detailed information. *Eisen*  
26 *v. Carlisle & Jacqueline*, 417 U.S. 156, 173 (1974) (individual mailed notice is the  
27 best practicable notice with respect to those class members whose names and  
28 addresses are easily identifiable); *Bogges v Hogan* 410 F Supp 433, 442 (N.D. Ill.



1 1975) (Rule 23(e) is not violated where notice of settlement is individually mailed  
2 but never published).

3 The third component of the Notice Plan involves notice by publication. The  
4 publication notice will comport with due process requirements and direct potential  
5 class members to the Settlement Website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or  
6 toll-free phone line where full information concerning the Settlement, as well as  
7 Claim Forms and instructions, will be available.

8 Finally, the Court-approved Settlement website will: (1) provide full details  
9 of the benefits available under the Settlement; (2) explain the rights of Class  
10 Members to object to or opt-out of the Settlement, (3) clarify that no further notice  
11 will be provided to them and that the Settlement has been preliminarily approved;  
12 and, (4) inform Class Members that they should monitor the Settlement Website  
13 for further developments and to obtain Claim Forms. The Long-Form Notice for  
14 the Settlement Website is attached as Exhibit D to the Joint Declaration. The  
15 Publication Notice is attached as Exhibit E to the Joint Declaration.

16 Accordingly, the proposed Notice Plan describes the proposed Settlement  
17 and sets forth, among other things: (1) the nature, history and status of the  
18 litigation; (2) the definition of the proposed Class and who is excluded from the  
19 Class; (3) the reasons the parties have proposed the Settlement; (4) the amount of  
20 the Settlement; (5) the Class's claims and issues; (6) the parties' disagreement over  
21 damages and liability; (7) the plan for allocating the Settlement proceeds to the  
22 Class through the two-tier claim process; (8) the maximum amount of attorneys'  
23 fees and expenses that Class Counsel intends to seek; (9) the maximum amount of  
24 Representative Plaintiffs' request for incentive awards; and, (10) the date, time and  
25 place of the final settlement hearing.

26 Further, the proposed Notice Plan discusses the rights Class Members have  
27 in connection with the Settlement, including: (1) the right to request exclusion  
28 from the Class and the manner for submitting a request for exclusion; (2) the right

1 to object to the Settlement, or any aspect thereof, and the manner for filing and  
2 serving an objection; and, (3) the right to participate in the Settlement and  
3 instructions on how to complete and submit Tier 1 and Tier 2 Claim Forms. The  
4 Notice Plan also provides contact information for Class Counsel and counsel for  
5 the Defendants, as well as the postal address for the Court.

6 Rule 23(c)(2)(B) requires that notice of a settlement be “the best notice that  
7 is practicable under the circumstances, including individual notice to all members  
8 who can be identified through reasonable effort.” *See also* Rule 23(e)(1) (“The  
9 court must direct notice in a reasonable manner to all class members who would be  
10 bound by the propos[ed settlement].”). As detailed above, the Notice Program  
11 proposed in connection with the Settlement more than satisfies the requirements of  
12 the Federal Rules of Civil Procedure and due process. Moreover, courts routinely  
13 find that comparable notice procedures meet the requirements of Rule 23 and due  
14 process. Accordingly, in granting preliminary approval of the Settlement,  
15 Plaintiffs respectfully requests that the Court also approve the proposed form and  
16 method of giving notice to the Class as set forth herein.<sup>7</sup>

17 **VIII. THE PROPOSED CLAIMS PROCESS SHOULD BE APPROVED**

18 Under the Settlement, the Parties have agreed to a two tier claim process.  
19 First, Tier 1 Class-Wide Flat Rate Claims are class-wide flat rate claims for \$25  
20 each. Tier 1 is for Class Members that have experienced no adverse reaction to the  
21 Products or have no documentation. Exhibit F to the Joint Declaration is a copy of  
22 the Tier 1 Claim Form. The Tier 1 Claim Form is simple and requires no proof of  
23 purchase.

24 Tier 2 Documented Adverse Reaction Claim Forms will be used for Class  
25 Members that have documented adverse reactions to the product and will be  
26 eligible to receive up to \$20,000, as determined by a Court-appointed Special

27 \_\_\_\_\_  
28 <sup>7</sup> The Parties are gathering necessary data for solicitation of bids from potential  
notice and claims administration providers. The Parties expect to provide an  
update on this issue at or before the Preliminary Approval Hearing.

1 Master. A sample Tier 2 Claim Form is attached as Exhibit G to the Joint  
2 Declaration. In order to make a claim under Tier 2, the Class Member must submit  
3 a valid and complete Tier 2 Claim Form, along with Supporting Documentation as  
4 described in Section 6.B.2 of the Settlement Agreement. Draft instructions for Tier  
5 1 and Tier 2 Claim Forms are attached as Exhibit H to the Joint Declaration.

6 The Settlement Administrator and Special Master shall have authority to  
7 determine the validity, or lack thereof, of any Tier 2 claims submitted, including  
8 the sufficiency of the Class Member's evidence of his or her claimed Injury and  
9 any other documentation submitted in support of the claim. The Special Master  
10 shall have full and final authority over any decision with respect to a Tier 2 claim  
11 and that decision shall not be subject to an appeal or reconsideration.

12 The following forms of documents will be considered "Supporting  
13 Documentation" and shall be received by the Settlement Administrator and  
14 reviewed by the Special Master in support of a Tier 2 claim: before or after  
15 photographs (labeled or dated as such) depicting the Class Member's claimed  
16 injury, video testimony of the Class Member describing the claimed injury,  
17 medical records from a licensed medical professional related to the Class  
18 Member's claimed injury, and/or supporting declarations from witnesses who  
19 verify the Class Member's claimed injury. Additionally, the following forms of  
20 Supporting Documentation shall be received by the Settlement Administrator in  
21 support of a claim for reimbursement of out-of-pocket expenses incurred to redress  
22 injury purportedly caused by WEN Hair Care Products: dated medical bills  
23 evidencing payments related to the Class Member's claimed injury, dated receipts  
24 for out-of-pocket expenses, dated credit card statements evidencing payment by the  
25 Class Member related to the Class Member's claimed injury, or dated bank  
26 statements evidencing payment of out-of-pocket expenses related to the Class  
27 Member's claimed injury. Dated receipts and/or declarations supplied by, for  
28 example, a medical provider or hairdresser confirming the amount spent to redress

1 a claimed injury will also be considered. Recently, in *Martin v. Reid*, 818 F.3d  
2 302, 309 (7th Cir. 2016), the Seventh Circuit approved of a very similar settlement  
3 structure and specifically stated that the information required by the Special Master  
4 was appropriate for hair loss claims.

5 The Supporting Documentation described above is not intended to provide  
6 an exclusive list of the supporting evidence that may be submitted in support of a  
7 Claim. The Settlement Administrator and Special Master have discretion to accept  
8 forms of evidence in addition to or in place of the examples set forth above.

9 **IX. INCENTIVE AWARDS TO NAMED PLAINTIFFS AND**  
10 **ATTORNEYS' FEES AND COSTS**

11 Class Counsel is entitled to compensation and reimbursement of expenses  
12 for bringing the case and obtaining a fair, reasonable and adequate settlement.  
13 *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1997) (attorneys' fees are  
14 recoverable where plaintiff has maintained a suit that confers a common benefit).  
15 The Settlement Agreement provides that Defendants will not oppose Class  
16 Counsel's application for a fee and expense award in the amount of \$6.5 million.  
17 This amounts to less than 25% of the non-reversionary Fund established for the  
18 payment of claims. The Settlement Agreement also provides that Class Counsel  
19 will submit applications for, and Defendants will not oppose, incentive awards for  
20 Plaintiffs Friedman and Miller of \$25,000 each, an incentive award for Plaintiff  
21 Henry-McArthur of \$5,000, and Plaintiff Rogers of \$2,500.

22 The proposed Named Plaintiffs' Incentive Awards are also reasonable.  
23 Courts recognize that a class representative is entitled to compensation for the  
24 expense he or she incurred on behalf of the class lest individuals find insufficient  
25 inducement to lend their names and services to the class action. *In re Oracle Sec.*  
26 *Litig.*, No. 90-0931, 1994 U.S. Dist. LEXIS 21593, 1994 WL 502054, at \*1 (N.D.  
27 Cal. June 18, 1994) (citing *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th  
28 Cir. 1992)). Such payments are routinely approved when, as here, they are

1 reasonable in light of applicable circumstances, and not unfair to other class  
2 members. *Smith v. Tower Loan of Miss., Inc.*, 216 F.R.D. 338, 368 (S.D. Miss.  
3 2003). To assess whether an incentive award is excessive, the Court must balance  
4 the number of named plaintiffs receiving incentive payments, the proportion of the  
5 payments relative to the settlement amount, and the size of each payment. *Staton*  
6 *v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).

7 Here, the Named Plaintiffs provided meaningful representation to the class  
8 by participating in all (or some) of the following litigation-related activities:  
9 reviewing court filings, answering interrogatories, responding to document  
10 requests, preparing for depositions with their attorneys, and sitting for depositions.  
11 Jt. Decl., ¶ 3. Furthermore, Plaintiffs Friedman and Miller were subject to invasive  
12 review of their medical records. *Id.* The proposed Named Plaintiffs' Incentive  
13 Awards are appropriate considering the time and effort involved in representing the  
14 interests of the Class. Even the payments at the higher end of the spectrum for  
15 Plaintiffs Friedman and Miller represent only modestly more than the individual  
16 cap for Tier 2 claims. And, in the case of Plaintiffs Henry-McArthur and Rogers,  
17 much less. As such, the proposed incentive awards are within a reasonable range.

18 **X. CONCLUSION**

19 As the above analysis and supporting documents demonstrate, the proposed  
20 Settlement clearly meets the standards for preliminary approval. Therefore,  
21 Plaintiffs respectfully request that this Honorable Court enter an order (a)  
22 certifying, for settlement purposes, the Class; (b) preliminarily approving the  
23 proposed settlement described in the Settlement Agreement filed concurrently  
24 herewith; (c) authorizing the form and method of class notice described herein and  
25 filed concurrently herewith; (d) setting a date for the Final Approval Hearing to  
26 consider final approval of the settlement; and (e) granting such other and additional  
27 relief as the Court deems just and appropriate.

28

1 DATED: June 28, 2016

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*Counsel for Named Plaintiffs and the Proposed Class*

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**ATTESTATION RE: SIGNATURES**

I, Jordanna G. Thigpen, am the ECF User who is filing Plaintiffs’ Memorandum of Law in Support of Preliminary Approval. I attest that all other signatories listed, and on whose behalf the filings are being submitted, concur in the content of such filings and have authorized the filing of such documents.

DATED: 6/28/16

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16 Attorneys for Plaintiffs and the Proposed Class

17  
18 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 **AMY FRIEDMAN, JUDI**  
**MILLER, KRYSTAL HENRY-**  
21 **MCARTHUR, and LISA**  
**ROGERS on behalf of themselves**  
22 **and all others similarly situated,**

23 **Plaintiffs,**

24 **v.**

25 **GUTHY-RENKER LLC and**  
**WEN BY CHAZ DEAN, INC.,**

26 **Defendants.**  
27

**Case No. 2:14-cv-06009-ODW-AGR**

**JOINT DECLARATION OF INTERIM**  
**LEAD COUNSEL IN SUPPORT OF**  
**PRELIMINARY APPROVAL**

Judge: Hon. Otis D. Wright II  
Motion Date: August 1, 2016  
Time: 1:30 p.m.  
Location: Courtroom 11



1 **JOINT DECLARATION OF INTERIM LEAD COUNSEL**  
2 **IN SUPPORT OF PRELIMINARY APPROVAL**

3 Neville Johnson, William Anderson and Brian Warwick, state:

4 1. We submit this joint declaration, under penalty of perjury as Court-  
5 appointed Interim Lead Counsel and the principal partners from our firms  
6 responsible for the investigation, prosecution and proposed settlement of this  
7 Lawsuit<sup>1</sup> over the last two years, to assist the Court and members of the proposed  
8 Class in evaluating the Settlement that we recommend to the Court. Each of us has  
9 personal knowledge of the matters set forth herein, and if necessary would be  
10 competent and available to testify, if the Court were to so require.

11 2. Prior to filing this Lawsuit counsel undertook substantial pre-filing  
12 research concerning the factual and legal claims asserted in the Lawsuit. This  
13 investigation consumed significant time and resources, but was necessary to  
14 advance the claims of Plaintiffs and the proposed Class. Throughout the pendency  
15 of this action, Plaintiffs' counsel has worked on a purely contingent basis,  
16 advancing all costs and assuming the risk that the case would not succeed.

17 3. Following this period of pre-filing research, this Lawsuit was initiated  
18 against Guthy-Renker on July 31, 2014. After Plaintiffs filed an amended  
19 complaint, a motion to dismiss and compel arbitration was filed on December 10,  
20 2014. On February 27, 2015, this Court, granted in part and denied in part the  
21 motion to dismiss and compel arbitration. Shortly thereafter an intensive period of  
22 discovery began. Defendants produced and Plaintiffs reviewed thousands of pages  
23 of discovery. Plaintiffs engaged multiple experts pertaining to the advertising  
24 claims and bodily injury claims asserted in the Lawsuit. Defendants' served  
25 extensive and wide-reaching discovery on Plaintiffs Friedman and Miller including  
26 interrogatories, requests for production of documents and hotly contested third-  
27

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28 <sup>1</sup> All capitalized terms, unless otherwise defined, shall have the same meaning  
as in the Agreement.

1 party subpoenas directed to more than a dozen medical providers. Depositions  
2 were conducted of Plaintiffs Friedman and Miller in Florida and Maryland,  
3 respectively. Additionally, Plaintiffs conducted depositions of Guthy-Renker  
4 employees on a range of topics in North Carolina and California. Plaintiffs served  
5 more than 75 formal requests for production of documents, over 100 requests for  
6 admission and 18 interrogatories. In addition to the foregoing, Plaintiffs served  
7 various third-party subpoenas. Two motions to compel were litigated against  
8 Guthy-Renker arising out of Plaintiffs' discovery requests. On June 19, 2015, in  
9 midst of the discovery process, Plaintiffs filed a Second Amended Complaint  
10 naming WEN by Chaz Dean, Inc. as a Defendant. Subsequent to the filing of  
11 WEN by Chaz Dean, Inc.'s answer to the Second Amended Complaint, Plaintiffs  
12 promptly served discovery on WEN by Chaz Dean, Inc.

13 4. On September 24, 2015, this Court, issued a stay of the litigation in  
14 order to facilitate negotiation of a potential settlement. The Parties attended four  
15 mediations (January 29, 2016; February 29, 2016; March 1, 2016; and March 31,  
16 2016), which were conducted at JAMS in Los Angeles before the Hon. Peter D.  
17 Lichtman (Ret.). Negotiation of the proposed Settlement in this action was  
18 complex, hard-fought and at times highly contentious—it repeatedly appeared as  
19 though the Parties would not reach agreement. Some of the mediations involved  
20 more than a dozen representatives for Defendants, including their insurers, in-  
21 house employees and outside counsel. Nevertheless, at the conclusion of the  
22 March 31, 2016, mediation, Judge Lichtman made a mediator's proposal that all  
23 Parties ultimately accepted on April 29, 2016. Since that time, the Parties held a  
24 two-day in-person meeting in Los Angeles on May 9-10, 2016, served and  
25 responded to a variety of confirmatory discovery and worked diligently to reduce  
26 the Settlement Agreement to writing.

27 5. Should this Settlement not proceed, the Parties would be required to  
28

1 embark on a costly, time-consuming and uncertain road. Should the case not  
2 settle, Plaintiffs expect that considerable additional medical expert work would be  
3 required, including at least one clinical study anticipated to cost hundreds of  
4 thousands of dollars. Plaintiffs also expect that further conjoint analysis and  
5 hedonic regression would add significantly to this total in order to prove the false  
6 advertising claims asserted in the Lawsuit. If this case does not settle, Plaintiffs'  
7 counsel anticipate that a significant number of additional depositions would be  
8 required. It is also likely that a myriad of additional motions would be filed,  
9 including motions to compel discovery against Defendants and various third-  
10 parties. There is significant risk that an MDL would be filed further delaying the  
11 litigation. Even in the absence of an MDL, should Plaintiffs succeed on a  
12 contested motion for class certification an interlocutory appeal pursuant to Fed. R.  
13 Civ. P. 23(f) would likely be filed by Defendants. Likewise, should class  
14 certification be denied by the Court in a contested motion, Plaintiffs would likely  
15 pursue a Fed. R. Civ. P. 23(f) appeal. Even if a class were not certified, Plaintiffs'  
16 counsel would simply pursue the case on behalf of the hundreds of additional  
17 clients that have pursued representation from them. In sum, in the absence of a  
18 Settlement this Court and the Parties face the prospect of years of costly additional  
19 litigation with no guarantee as to the outcome.

20 6. Thus, having thoroughly investigated this case and aggressively  
21 litigated it on behalf of Plaintiffs, undersigned counsel firmly believe that the  
22 proposed Settlement is fair, reasonable, and adequate, and in the best interests of  
23 Named Plaintiffs and the Settlement Class.

24 7. Attached hereto as **Exhibit A** is an executed copy of the Settlement  
25 Agreement Release of Claims.

26 8. Attached hereto as **Exhibit B** is a draft of the proposed email notice.

27 9. Attached hereto as **Exhibit C** is a draft of the proposed mail notice.  
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10. Attached hereto as **Exhibit D** is a draft of the proposed long-form notice.

11. Attached hereto as **Exhibit E** is a draft of the publication notice.

12. Attached hereto as **Exhibit F** is a draft of the Tier 1 Claim Form.

13. Attached hereto as **Exhibit G** is a draft of the Tier 2 Claim Form.

14. Attached hereto as **Exhibit H** is a draft of instructions for the Tier 1 and Tier 2 Claim Forms.

We declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: June 28, 2016

**By:** s/ Neville L. Johnson  
Neville L. Johnson (SBN 66329)

**By:** /s/ William H. Anderson  
William H. Anderson (*Pro Hac Vice*)

**By:** /s/ Brian W. Warwick  
Brian W. Warwick (*Pro Hac Vice*)

**ATTESTATION RE: SIGNATURES**

I, Jordanna G. Thigpen, am the ECF User who is filing Plaintiffs' Joint Declaration of Interim Lead Counsel In Support of Motion for Preliminary Approval. I attest that all signatories listed, and on whose behalf the filings are being submitted, concur in the content of such filings and have authorized the filing of such documents.

DATED: 6/28/16

**JOHNSON & JOHNSON LLP**

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# **EXHIBIT A**

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (“Settlement” or “Agreement”) is made and entered into by and between Plaintiffs Amy Friedman, Judi Miller, Krystal Henry-McArthur and Lisa Rogers (the “Named Plaintiffs”), on behalf of themselves and the Settlement Class defined below, and Guthy-Renker LLC (“Guthy-Renker”) and WEN by Chaz Dean, Inc. (“WEN by Chaz Dean”) (collectively, “Defendants”). For purposes of this Agreement, the Named Plaintiffs and Defendants are described collectively as the “Parties” to this Agreement. Subject to preliminary and final court approval of the Settlement as described below, the Parties state and agree as follows:

**SECTION 1: RECITALS**

WHEREAS, Defendants on the one hand, and Named Plaintiffs, on the other hand, are parties to *Friedman, et al. v. Guthy-Renker et al.*, Case No. 2:14-cv-06009-ODW, a putative class action originally filed July 31, 2014, in the United States District Court for the Central District of California (the “Lawsuit”);

WHEREAS, Named Plaintiffs allege that Defendants designed, manufactured, advertised, promoted, sold, or otherwise introduced into the stream of commerce WEN Hair Care Products based upon false and misleading statements, and that WEN Hair Care Products have the capacity to, and did cause, *inter alia*, hair loss, hair damage and scalp irritation, in violation of state, federal and common law;

WHEREAS, Defendants vigorously deny all liability with respect to the individual and class claims alleged in the Lawsuit and vigorously deny all allegations of wrongdoing asserted in the Lawsuit;

WHEREAS, extensive arms-length settlement negotiations, including four sessions of mediation before the Hon. Peter D. Lichtman (Ret.), have taken place between Class Counsel, on behalf of the Named Plaintiffs and the proposed Settlement Class, and Defendants;

WHEREAS, the Parties wish to enter into a compromise and settlement to avoid the uncertainty and expense of litigation and to achieve a fair, reasonable and adequate resolution of the Lawsuit;

WHEREAS, after investigating the facts and carefully considering applicable law, the Named Plaintiffs and Class Counsel have concluded that, despite their belief that Named

Plaintiffs would prevail on their claims, it would be in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure meaningful benefits to the Settlement Class, and that the terms and conditions of this Settlement Agreement, and the Settlement contemplated hereby, are fair, reasonable, and adequate and in the best interests of all members of the Settlement Class;

WHEREAS, after investigating the facts and carefully considering applicable law, Defendants believe that they are not liable regarding any of the claims asserted in the Lawsuit and that they have valid defenses thereto, but they enter into this Settlement Agreement to avoid the risk, expense, inconvenience, and burden of further litigating the Lawsuit, and the distraction and diversion of their personnel and resources, and to obtain the conclusive and complete dismissal of the claims asserted in the Lawsuit;

WHEREAS, this Settlement Agreement is made for the sole purpose of attempting to consummate settlement of this action on a class-wide basis, is made in compromise of disputed claims, and must receive preliminary and final approval by the Court; and

WHEREAS, the Parties hereto agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation (or any defense thereto) of any federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatever (or any defense thereto), or of the truth or falsity of any of the claims asserted, or that might be asserted, in the Lawsuit, or of the infirmity of any of the claims or defenses that have been raised or could be raised by the Parties;

NOW, THEREFORE, IT IS HEREBY AGREED by and among the undersigned, on behalf of the Named Plaintiffs, the Settlement Class, and Defendants, that the Lawsuit shall be dismissed on the merits and with prejudice upon the Effective Date, and that the Lawsuit in its entirety, and all Released Claims, shall be finally and fully compromised, settled, and released, subject to the approval of the Court as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

**SECTION 2: DEFINITIONS**

The following definitions, in addition to any definitions elsewhere in this Agreement, shall apply for purposes of this Agreement and the Exhibits hereto:



**A.** “Attorney’s Fees and Costs” shall mean the portion of the Fund set aside to compensate Class Counsel for their time and to reimburse them for their reasonable expenses utilized to prosecute the Lawsuit on behalf of the Named Plaintiffs and the Settlement Class, as further defined in Section 9, below.

**B.** “Class” or “Settlement Class” or “Settlement Class Member” shall mean all purchasers or users of WEN Hair Care Products in the United States or its territories between November 1, 2007 and August 1, 2016, excluding (a) any such person who purchased for resale and not for personal or household use, (b) any such person who signed a release of any Defendant in exchange for consideration, (c) any officers, directors or employees, or immediate family members of the officers, directors or employees, of any Defendant or any entity in which a Defendant has a controlling interest, (d) any legal counsel or employee of legal counsel for any Defendant, and (e) the presiding Judge in the Lawsuit, as well as the Judge’s staff and their immediate family members.

**C.** “Class Counsel” shall mean Janet Varnell and Brian Warwick of Varnell & Warwick, P.A.; William Anderson of Cuneo Gilbert & LaDuca, LLP; and Neville Johnson of Johnson & Johnson, LLP.

**D.** “Defendants” shall mean Guthy-Renker, LLC and WEN by Chaz Dean, Inc.

**E.** “Fund” or “Settlement Fund” shall mean the \$26,250,000 amount paid by Defendants, which shall be used for the purposes set forth in Section 6, below.

**F.** “Incentive Award” shall mean payments intended to compensate the Named Plaintiffs for bringing the Lawsuit, and in consideration of the time and effort they expended in prosecuting this Lawsuit.

**G.** “Lawsuit” shall mean *Friedman, et al. v. Guthy-Renker et al.*, Case No. 2:14-cv-06009-ODW, a putative class action lawsuit originally filed July 31, 2014, in the United States District Court for the Central District of California.

**H.** “Named Plaintiffs” shall mean Amy Friedman, Judi Miller, Krystal Henry-McArthur, and Lisa Rogers.

- I. “Notice Plan” shall mean the plan for dissemination of notice, as described in Section 11, below.
- J. “Parties” shall mean the Named Plaintiffs together with Defendants.
- K. “Settlement Administrator” shall mean the entity responsible for completing the duties set forth in Section 13, below.
- L. “Special Master” shall mean the person or entity responsible for completing the duties set forth in Section 14, below.
- M. “Tier 1 Flat Rate Claim” shall mean the claim described in Section 6.A, below.
- N. “Tier 2 Adverse Reaction Claim” shall mean the claim described in Section 6.B, below.
- O. “WEN Hair Care Products” shall refer to all hair care products marketed and sold under the WEN brand, including but not limited to all fragrances and variations of Cleansing Conditioner, Re-Moist Mask, Treatment Mist Duo, Treatment Oil, SIXTHIRTEEN Ultra Nourishing Cleansing Treatment, Re Moist Intensive Hair Treatment, Styling Crème, Anti-Frizz Styling Crème, Nourishing Mousse, Volumizing Treatment Spray, Replenishing Treatment Mist, Defining Paste, Straightening Smoothing Gloss, Smoothing Glossing Serum, Glossing Shine Serum, Finishing Treatment Crème, Volumizing Root Lift, Texturizing Spray, Detangling Treatment Spray, Men Control Texture, Men Hair and Body Oil, Bath, Body and Hair Oil, and Texture Balm sold through all outlets (including, but not limited to, Guthy-Renker LLC, WEN by Chaz Dean, Inc., QVC, Amazon and Sephora) between November 1, 2007 and August 1, 2016.
- P. “Written Notice of Objection” shall mean the document by which a member of the Settlement Class objects to the Settlement, as described in Section 12, below.

### **SECTION 3: AGREEMENT TO RESOLVE PENDING LITIGATION**

In order to avoid the expense, risks and uncertainty of continued litigation, the Parties have agreed to settle this proposed class action on the terms and subject to the conditions of this Settlement Agreement. The Lawsuit, *Friedman, et al. v. Guthy-Renker et al.*, Case No. 2:14-cv-06009-ODW is currently pending in the United States District Court for the Central District of California. The Parties have reached agreement to resolve the Lawsuit as the result of arms-length negotiations between counsel for the Named Plaintiffs and counsel for Defendants,

including comprehensive discussions and four formal mediation sessions conducted by Judge Peter D. Lichtman (Ret.) of JAMS in Los Angeles. Prior to mediation, the Parties conducted extensive discovery and briefed various motions, including motions to dismiss and to compel arbitration, as well as to compel discovery. The Named Plaintiffs, believing that the claims have substantial merit and having the benefit of the advice of counsel, have determined that this Settlement Agreement is fair, reasonable, adequate and in the best interests of Named Plaintiffs and the putative Settlement Class. Defendants, denying wrongdoing of any nature and without admitting liability and believing they have no liability in this case whatsoever and meritorious defenses to any and all claims, have agreed to the terms of this Settlement Agreement in order to avoid the risk, expense and burden of further litigating the Lawsuit, and to obtain the conclusive and complete dismissal of the claims asserted in the Lawsuit.

**SECTION 4: CONDITIONAL CLASS CERTIFICATION FOR CLASS SETTLEMENT PURPOSES ONLY**

A. The Parties hereby stipulate to certification, for settlement purposes only, of a Settlement Class (the “Class”) defined as follows:

All purchasers or users of WEN Hair Care Products in the United States or its territories between November 1, 2007 and August 1, 2016, excluding (a) any such person who purchased for resale and not for personal or household use, (b) any such person who signed a release of any Defendant in exchange for consideration, (c) any officers, directors or employees, or immediate family members of the officers, directors or employees, of any Defendant or any entity in which a Defendant has a controlling interest, (d) any legal counsel or employee of legal counsel for any Defendant, and (e) the presiding Judge in the Lawsuit, as well as the Judge’s staff and their immediate family members.

On or before June 24, 2016, the Parties shall jointly file a motion seeking that the Court enter the proposed Preliminary Approval Order filed concurrently with the Parties’ Joint Motion for Preliminary Approval of Class Action Settlement, preliminarily certifying the Settlement Class, appointing the Named Plaintiffs as representatives of the Settlement

Class, and appointing Class Counsel for the Settlement Class. As will be set forth in the proposed Preliminary Approval Order, the Parties agree that Class Counsel shall be Brian Warwick and Janet Varnell of Varnell & Warwick, PA, William Anderson of Cuneo Gilbert & LaDuca, LLP, and Neville Johnson of Johnson & Johnson, LLP.

**B.** The Parties further agree and stipulate that the preliminary and conditional certification of the Settlement Class and appointment of Class Counsel shall be binding only if this Settlement Agreement is executed, not terminated in accordance with Section 18, approved by the Court both preliminarily and finally, and affirmed upon any appeal. If the Settlement Agreement is terminated or rejected, the Parties stipulate and agree that they will jointly request that the Court vacate the certification of the Settlement Class without prejudice to any Party's position on the issue of class certification, and restore the Parties to their respective litigation positions as they existed immediately prior to their entry into this Settlement Agreement.

#### **SECTION 5: NO ADMISSION OF LIABILITY OR OTHER CONCESSION**

The Parties and their respective counsel agree that the settlement of the Lawsuit is not a concession, admission or acknowledgement by any Defendant that a litigation class could properly be certified in the Lawsuit. The Parties therefore agree not to assert in any context that the fact of this proposed settlement, or any stipulation to certification of the Settlement Class, constitutes any concession or admission by Defendants that a litigation class could properly be certified. The Parties and their respective counsel further agree that no aspect of this Agreement, its provisions, the negotiations or the positions of any of the Parties leading to its execution, shall be construed as a concession, admission or acknowledgement by Defendants of the truth of any of the allegations made in the Lawsuit, or of any liability, fault or wrongdoing of any kind on the part of any Defendant. Accordingly, this Settlement Agreement shall not be offered or received in evidence in any action or proceeding in any court, private forum, administrative proceeding, or other tribunal as any kind of admission or concession by Defendants.

#### **SECTION 6: SETTLEMENT CONSIDERATION**

In exchange for the releases provided in Section 16 of this Agreement, Defendants agree to provide consideration of \$26,250,000 (the "Fund"). This Fund shall be used to, *inter alia*, pay for notice and claims administration by a professional claims administration provider (the

“Settlement Administrator”), to pay Class Member claims, to provide incentive awards to the Named Plaintiffs, as described in Section 8, to compensate the Special Master, as described in Section 14, and to compensate Class Counsel, as described in Section 9. None of these funds shall revert to Defendants under any circumstances. To the extent any money remains in the Fund after all valid claims have been paid, all notice and administration costs have been paid, all incentive awards have been paid, and the attorney’s fees and costs have been distributed, such residual funds, to the extent any exist, shall revert to *cy pres*. The Parties will agree on an acceptable *cy pres* recipient(s) within 30 days after the hearing on the Parties’ Motion for Preliminary Approval and will submit the proposed *cy pres* recipient(s) to this Court for approval. Assuming Court approval, the Settlement Administrator shall remit payment to the *cy pres* recipient(s) of any residual money in the Fund within 30 days of the expiration date of the last check mailed to a Settlement Class Member.

**A. Tier 1 Class-Wide Flat Rate Claims**

Any member of the Settlement Class who purchased WEN Hair Care Products, and does not timely request to opt-out of the Settlement Class, shall be entitled to submit a claim against the Fund for a one-time flat payment of \$25 per person as compensation for claims of misrepresentation regarding the qualities and attributes of WEN Hair Care Products, or undocumented claims of bodily injury, including but not limited to hair loss, hair damage, scalp pain or irritation, after using WEN Hair Care Products or Hair Care Products. \$5,000,000 of the Fund shall be set aside to pay Class Members making Tier 1 claims.

1. To be eligible for a Tier 1 payment from the Fund, a Class Member must timely submit to the Settlement Administrator a completed Tier 1 Claim Form signed by the Settlement Class Member under penalty of perjury, in the form attached as Exhibit 2 to this Settlement Agreement attesting that the Settlement Class Member purchased WEN Hair Care Products. A Class Member submitting only a Tier 1 Claim need not submit any additional Supporting Documentation, as defined in Section 6.B.2 of this Agreement, below.

2. The Settlement Administrator as defined in Section 13 of this Agreement shall have the full and final authority to determine the validity of any Tier 1

claims submitted against the \$5,000,000 allocated to pay Tier 1 claims. Before declining any Tier 1 claim, the Settlement Administrator shall issue a one-time request to the Class Member, in order to permit the Class Member to provide any information that is missing or improperly submitted on the Tier 1 Claim Form.

3. If Tier 1 Claims exceed the \$5,000,000 allocated for payment of such claims at \$25 per class member, then the Settlement Administrator shall distribute the funds pro rata, so that the full proceeds of the Tier 1 allocation are paid to all Class Members who submitted valid claims. If there are amounts remaining in the Tier 1 allocation after the payment of all valid Tier 1 claims, those remaining amounts shall be added to the monies allocated for Tier 2 claims.

**B. Tier 2 Documented Adverse Reaction Claims**

Any member of the Settlement Class who alleges to have suffered bodily injury, including but not limited to hair loss, hair damage, scalp pain or irritation, as a result of using WEN Hair Care Products, and does not timely request to opt-out from the Settlement Class, may make a claim against the Fund for reimbursement of amounts spent to redress such alleged injuries, as well as an injury award designed to compensate the Class Member for any alleged injuries sustained, up to a maximum of \$20,000 per Class Member, as set forth below. In order to make a claim under Tier 2, the Class Member must submit a valid and complete Tier 2 Claim Form, along with Supporting Documentation as described in Section 6.B.2 of this Agreement.

1. The Settlement Administrator and Special Master shall have authority to determine the validity, or lack thereof, of any Tier 2 claims submitted, including the sufficiency of the Class Member's evidence of his or her claimed injury and any other documentation submitted in support of the claim. After reviewing the evidence submitted on any claim, the Special Master shall have the authority to decline to award any damages. Before declining any claim against the Fund for reimbursement of expenses, the Settlement Administrator shall issue a one-time request to the Class Member to provide any information that is missing or improperly submitted on the claim form. The Special Master shall review any Tier 2 Claims prior to final denial. The Special Master identified in Section 14

shall have full and final authority over any declination decision with respect to a Tier 2 claim and the Special Master's decision shall not be subject to an appeal or reconsideration. Any Class Member whose Tier 2 Claim is denied shall be considered to have submitted a Tier 1 Claim and shall be considered eligible for such claim; and, the Settlement Administrator shall consider the validity of the Tier 1 Claim.

2. The following forms of documents will be considered "Supporting Documentation" and shall be received by the Settlement Administrator in support of a Tier 2 claim: before or after photographs (labeled or dated as such) depicting the Class Member's claimed injury, video testimony of the Class Member describing the claimed injury, medical records from a licensed medical professional related to the Class Member's claimed injury, and/or supporting declarations from witnesses who verify the Class Member's claimed injury. Additionally, the following forms of Supporting Documentation shall be received by the Settlement Administrator in support of a claim for reimbursement of out-of-pocket expenses incurred to redress injury purportedly caused by WEN Hair Care Products: dated medical bills evidencing payments related to the Class Member's claimed injury, dated receipts for out-of-pocket expenses, dated credit card statements evidencing payment by the Class Member related to the Class Member's claimed injury, or dated bank statements evidencing payment of out-of-pocket expenses related to the Class Member's claimed injury. Dated receipts and/or declarations supplied by, for example, a medical provider or hairdresser confirming the amount spent to redress a claimed injury will also be considered.

3. The Supporting Documentation described above is not intended to provide an exclusive list of the supporting evidence that may be submitted in support of a Claim. The Settlement Administrator and Special Master shall have discretion to accept forms of evidence in addition to or in place of the examples set forth above and explained more fully in the Tier 2 Claim Form submitted as Exhibit G to the Joint Declaration of Interim Lead Counsel in Support of Preliminary Approval.

4. Should Tier 2 Claims exceed the amount available to pay Tier 2 Claims after the deduction of the \$5,000,000 fund set aside for Tier 1 Claims, Incentive Awards, Attorney's Fees and Costs and Administrative Costs and Expenses, the payment of Tier 2 claims will be reduced on a pro rata basis.

**C. Adverse Event Warning**

Defendants agree that all labels for WEN Cleansing Conditioner created after the Effective Date shall bear a common sense caution materially consistent with the following: "If you experience any adverse reaction after using this product, immediately cease use and consult a physician."

Under no circumstances shall Tier 2 Claims exceed the total amount of the Fund less Tier 1 Claims, Incentive Awards to Named Plaintiffs (Section 8); Attorneys' Fees and Costs (Section 9); and Administrative Costs and Expenses (Section 17). If Tier 2 Claims exceed the amount of the Fund less Tier 1 Claims, Incentive Awards to Named Plaintiffs (Section 8); Attorneys' Fees and Costs (Section 9); and Administrative Costs and Expenses (Section 17), the Settlement Administrator shall distribute the funds pro rata so that the remaining proceeds of the Fund are paid to all Class Members who submitted valid Tier 2 Claims.

**SECTION 7: TIMING OF PAYMENTS TO CLASS MEMBERS**

**A.** No payments shall be made to any Settlement Class Member until after the Effective Date defined in Section 22 below. Payments from the Fund shall be made after the Effective Date, no later than ten (10) days after all Claims have been received and approved for payment. The Settlement Administrator shall determine appropriate payment on a *pro rata* basis if the number of claims paid in full would exceed the amount available for payment of Tier 1 Claims or Tier 2 Claims, respectively.

**B.** Payments for Tier 2 Claims shall not be made until the Settlement Administrator and the Special Master have determined the appropriate amount to pay for each valid claim, so that a determination can be made as to whether any amounts will need to be adjusted pro rata. Payments to Settlement Class Members shall be paid by check from the Settlement accounts administered by the Settlement Administrator, and shall be sent by first-class mail. All checks (or cover letters transmitting them) issued to Settlement Class Members on Tier 2 Claims submitted pursuant to this Agreement shall



state that they must be cashed within 120 days from the date issued. The Settlement Administrator will make its best efforts to contact any Settlement Class Member whose check has been returned as undeliverable, and will have the power to void, reissue and re-mail checks as appropriate. To the extent that any amount awarded and sent to a Settlement Class Member remains unclaimed at the conclusion of this period, the Settlement Administrator shall remit payment to the Court-approved *cy pres* recipient(s) discussed in Section 6, *supra*.

#### **SECTION 8: INCENTIVE AWARDS TO NAMED PLAINTIFFS**

Subject to approval by the Court, Named Plaintiffs Amy Friedman and Judi Miller, who were subject to extensive discovery, including review of medical records and deposition shall receive Incentive Awards of \$25,000 each for their substantial contribution in the prosecution of this Lawsuit for the benefit of the Class. Named Plaintiff Krystal Henry-McArthur shall receive an Incentive Award of \$5,000 for her efforts in prosecuting the action for the benefit of the Class. And Named Plaintiff Lisa Rogers shall receive an Incentive Award of \$2,500 for her efforts in prosecuting the Lawsuit on behalf of the Class. These payments are incentive payments intended to compensate the putative class representatives for bringing the Lawsuit, and in consideration of the time and effort they expended in prosecuting these class actions. The Parties agree that the Named Plaintiffs may submit claims as Settlement Class Members under the terms and provisions of this Settlement Agreement and the award of an incentive payment for service as a Named Plaintiff shall not in any way bar or limit their entitlement to seek recovery under this Settlement Agreement. Subject to Court approval, the Incentive Awards shall be paid within five (5) days of the Effective Date. Payments shall be made by the Settlement Administrator out of the Fund, by check, payable to the Named Plaintiffs, and sent by first-class mail to Class Counsel, Varnell & Warwick, P.A.

#### **SECTION 9: ATTORNEY'S FEES AND COSTS**

In light of the substantial work, considerable expenses expended, and risks associated with prosecuting this Lawsuit on behalf of the Class, Defendants agree not to oppose an application by Class Counsel for up to \$6,500,000 to cover all costs and fees incurred in prosecuting this action on behalf of the Class. This request equates to slightly less than 25% of the Fund. Subject to Court Approval, payment of the Court-awarded Attorney's Fees and Costs

shall be paid within five (5) days of the Effective Date. Payments shall be made out of the Fund, by check, payable to Varnell & Warwick, P.A. Trust Account, for distribution to all Class Counsel. Defendants shall have no liability to any Class Counsel or other person claiming entitlement to any portion of the Court-awarded Fees and Costs, and Class Counsel shall defend and indemnify Defendants against any claims, demands, liens, actions or proceedings arising out of or relating to any dispute over the distribution of the Attorney's Fees and Costs.

#### **SECTION 10: PRELIMINARY APPROVAL ORDER**

As set forth in Section 4.A above, on or before June 24, 2016, the Parties shall jointly move the Court for entry of an order (the "Preliminary Approval Order") not materially different from the Proposed Preliminary Approval Order submitted concurrently with the Parties' Joint Motion for Approval of Class Action Settlement.

#### **SECTION 11: NOTICE TO SETTLEMENT CLASS**

With the motion for preliminary approval, counsel for the Parties shall jointly submit to the Court a proposed notice documents including: (1) a proposed email notice; (2) a proposed US mail notice; (3) a long-form notice to be used on the Settlement website; and (4) a draft publication notice, which shall be disseminated by a Court-approved Settlement Administrator who shall provide notice to the Settlement Class (the "Class Notice"). The Parties agree that the Notice Plan will include the following, subject to the approval of the Court:

##### **A. U.S. Mail and Electronic Mail Notice**

The Settlement Administrator shall provide notice by electronic mail to every Settlement Class Member for whom Defendants possess an email address. If Defendants possess only a physical address for a Settlement Class Member, the Settlement Administrator shall provide notice by First-Class United States mail, postage pre-paid. Each notice to be sent via U.S. Mail shall be run through the National Change of Address Database. The text of the Mailed and Electronic Mail Notice shall be agreed upon by the Parties and submitted to the Court for advance review and approval. The U.S. Mail and Electronic Mail Notice program shall be completed within 60 days of the Court's entry of an order granting preliminary approval to the Settlement.

##### **B. Settlement Website**

Within two (2) business days after the Court grants Preliminary Approval, the Settlement Administrator shall cause the Settlement Website (www.xxxx.com) to become accessible to Settlement Class Members. The Settlement Website shall include, at a minimum, the following documents: the operative complaint, the Settlement Agreement and all Exhibits, the Preliminary Approval Order, the Claim Form, the Long Form Notice, as well as a set of Frequently Asked Questions (“FAQ”) and corresponding answers, which shall set forth key dates and information pertinent to the Lawsuit. The Settlement Website shall be maintained and updated until 30 days after the Effective Date, or 30 days after the conclusion of the Claims Period, whichever occurs later.

**C. Publication Notice**

Notice will also be provided by advertisements in appropriate print and electronic media as agreed to by the Parties. The Publication Notice shall include reference to the URL for the Settlement Website, in accordance with the approved Notice Plan. The text of the Publication Notice shall be approved by the Parties and submitted to the Court for advance review and approval. Publication Notice shall be completed within 60 days of the Court’s entry of an order granting preliminary approval to the Settlement.

**SECTION 12: OPT-OUT AND OBJECTION PROCEDURES**

**A. Opt-Out Procedures**

Any potential member of the Settlement Class who wishes to be excluded from the Settlement may submit a written request to opt out of the Settlement Class. Any such request must be prepared in the manner directed in the Class Notice, must be postmarked no later than 105 days after the date the Court enters an order granting preliminary approval, and must be mailed to the Settlement Administrator at the address specified in the Notice. Opt-out requests must be exercised individually by a potential Settlement Class Member, not as or on behalf of a group, class or subclass, and must be signed by the Class Member. The Settlement Administrator shall promptly log each opt-out request received and provide copies of the log and all opt-out requests to Class Counsel and Defendants within five (5) business days of receiving the opt-out request.

**B. Effect of Not Opting Out**

This Settlement Agreement shall bind all putative Settlement Class Members who do not timely and properly opt-out of the Settlement Class, and all their claims shall be dismissed on the merits and with prejudice and released as provided for in this Settlement Agreement. The Named Plaintiffs shall not elect or seek to opt out from the Settlement Class and agree to refrain from disparaging the Settlement Agreement to Class Members or encourage Class Members to not submit a Claim Form or to submit an opt-out request to be excluded from the Settlement Agreement.

**C. Objections**

Settlement Class Members who do not submit a timely opt-out request from the Settlement Class and who wish to object to the fairness, reasonableness, or adequacy of this Settlement Agreement, may do so if they comply with the procedures set forth in this Settlement Agreement.

1. Required Content for Objections. In order to be effective, any objection must be in writing, and must contain the following information (the “Written Notice of Objection”): (1) a heading referring to the Lawsuit and identification of any litigation in which the Class Member is a named party; (2) a statement expressly indicating when the Class Member purchased WEN Hair Care Products, the outlet from which it was purchased, an accounting of any claimed damages (including any damages claimed for false or misleading advertising and/or from an adverse reaction to WEN Hair Care Products); (3) the court, case name and case number of any lawsuit in the last ten (10) years in which the Class Member has objected or served as a class representative; (4) whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and if through counsel, information identifying that counsel by name, address, bar number, and telephone number; (5) a statement of the legal and factual bases for the objection; (6) a description of any and all evidence the objecting Settlement Class Members may offer at the Final Approval Hearing, including but not limited to the names and expected testimony of any witnesses, and copies of any exhibits; and (7) the signature of the Class Member.

2. Objection by Settlement Class Members through Legal Counsel. Settlement Class Members who are represented by counsel must file an appearance and the Written Notice of Objection with the Clerk of the Court for the United States District Court for the Central District of California within 105 days after the Court enters an order granting preliminary approval. These materials must also be served upon the Settlement Administrator by first class mail, postmarked no later than 105 days after the Court enters an order granting preliminary approval.

3. Objection by Unrepresented Settlement Class Members. Settlement Class Members who are not represented by counsel and wish to object shall serve their Written Notice of Objection upon the Settlement Administrator by first class mail, postmarked no later than 105 days after the Court enters an order granting preliminary approval. The Settlement Administrator shall promptly provide copies to the Court and to counsel for the Parties.

4. Individual Objections Only. The right to object to the proposed settlement must be exercised individually by a Settlement Class Member, or his or her attorney, and not as a member of a group, class or subclass. The objection must be signed by the Class Member and his or her counsel; an objection signed by counsel alone shall not be sufficient.

5. Invalid Objections. Failure to comply timely and fully with these objection procedures shall result in the invalidity and dismissal of any objection. Class Members who fail to file and serve timely written objections in accordance with this Settlement Agreement shall be deemed to have waived any objections, shall not be heard at the Final Approval Hearing, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Defendants and Class Counsel shall file any response to the objections with the Court no later than seven (7) days before the Final Approval Hearing.

### **SECTION 13: SETTLEMENT ADMINISTRATION**

The Parties will select an experienced Settlement Administrator to perform the services described in this Settlement Agreement, subject to the approval of the Court. The Parties shall

enter into an agreement with the Settlement Administrator regarding settlement administration. Among its other duties, the Settlement Administrator shall:

**A. Attorney General Notice**

Mail notice of this Settlement Agreement to the state attorneys general and the United States Attorney General, in accordance with the Class Action Fairness Act, within ten days of the date on which this Settlement Agreement is filed with the Court;

**B. Settlement Website**

Maintain the Settlement Website, which shall include copies of the operative complaint, the Settlement Agreement and all Exhibits, the Preliminary Approval Order, the Claim Form, the Long Form Notice, as well as a set of Frequently Asked Questions (“FAQ”), which set forth key dates and information pertinent to the Lawsuit. The Settlement Website shall include an email address through which Settlement Class Members may submit questions concerning the Settlement. The Settlement Administrator shall maintain the Settlement Website until 30 days after the Effective Date, or 30 days after the conclusion of the Claims Period, whichever occurs later;

**C. Notice Dissemination**

Provide Notice in accordance with the Notice Plan submitted by the Parties and approved by the Court;

**D. Informational Phone Line**

Maintain a toll-free VRU telephone system containing recorded answers to frequently asked questions, along with an option permitting callers to leave messages in a voicemail box and receive a return call from a live operator;

**E. Class Member Communications**

Respond, as necessary, to inquiries from Settlement Class Members and potential Settlement Class Members;

**F. Provision of Exclusion Requests**

Receive and provide to counsel for the Parties, within five (5) business days of receipt, copies of all requests for exclusion from the Settlement Class. In addition, the Settlement Administrator shall prepare and provide to the Court and counsel for the Parties a list of all persons who timely request exclusion from the Settlement Class and

any necessary affidavit or declaration of the Settlement Administrator concerning such list;

**G. Provision of Claim Forms**

At the request of counsel for the Parties, provide copies of Claim Forms and supporting materials submitted by Settlement Class Members;

**H. Claim Review**

Evaluate, and determine the validity of, Tier 1 Claims, as well as analyzing Tier 2 Claims in order to assist the Special Master;

**I. Notice Declaration**

On or before the deadline set for moving for final approval, the Settlement Administrator shall prepare a declaration concerning the notice program and attesting to the fact that the notice program satisfies due process requirements and is the best notice practicable pursuant to Fed. R. Civ. P. 23;

**J. Responsibility for Fund**

The Settlement Administrator shall safely and securely maintain the settlement Fund in compliance with the terms of the Settlement Agreement;

**K. Dissemination of Class Member Payments**

Make the payments to claimants as specified in this Settlement Agreement;

**L. Claim Review and Auditing**

The Settlement Administrator shall be responsible to review and audit claims submitted, and any supporting factual material, and to obtain such additional information from the claimants as the Special Master may request.

**M. Dispute Resolution**

The Claims Administrator and/or Special Master shall have broad powers to seek the input and advice of the parties regarding any issue that may arise and both shall have the ability to contact counsel for all parties regarding any issue that may arise. In the event that an issue involving the Settlement cannot be resolved by the parties with the assistance of the Claims Administrator and Special Master, any party has the right to seek a determination by the Court to resolve any conflicts that arise, if and when necessary.

#### **SECTION 14: SPECIAL MASTER**

The Parties will select, subject to Court approval, a competent and experienced Special Master to evaluate and make a final determination of Tier 2 Claims. The Parties shall enter into an agreement with the Special Master to perform analysis and determine the amount of any claims for payment for Tier 2 claims. The Special Master's fees will be capped at \$250,000 and will be paid out of the Fund. Any and all unused portion of the \$250,000, shall be made available for payment of notice and costs of administration.

#### **SECTION 15: CLAIM PERIOD**

Class Members shall have six (6) months from the completion of the Notice period to file postmarked claims. Claims submitted after this deadline will not be considered. Settlement Class Members may obtain the Claim Form online from the Settlement Website, by emailing or writing the Settlement Administrator, or by calling the toll free telephone number maintained by the Settlement Administrator. Claim Forms and supporting documentation may be submitted electronically or by regular mail.

#### **SECTION 16: RELEASE OF CLAIMS**

For purposes of this Settlement Agreement, "Released Claims" means any and all claims arising out of or in any manner related to the subject matter of the Lawsuit, including, but not limited to, the sale, marketing, advertising, distribution, design, formulation, manufacture, purchase, or use of WEN Hair Care Products by any Settlement Class Member, regardless of whether any such claim is known or unknown, asserted or as yet unasserted.

It is the clear and unequivocal intention of the Parties, and each of them, that this Agreement shall be effective as a full and final accord and satisfaction, release, and discharge of each and every released claim specifically or generally referred to in this Agreement. In furtherance of this intention, each party hereto acknowledges that it or she understands Section 1542 of the Civil Code of the State of California, which provides as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**



Each party waives and relinquishes any and all rights and benefits which it or she has or may have under Section 1542 of the Civil Code of the State of California, and under any and all similar provisions contained in the law of any and all other jurisdictions, within and without the United States, to the full extent that it or she may lawfully so waive all such rights and benefits pertaining to the subject matter of the releases contained in this Agreement.

This Release of Claims shall not affect the ability of any governmental entity to conduct an investigation or assert a claim on its own behalf, but the Release of Claims shall continue to have preclusive effect as to any and all relief for or on behalf of any Settlement Class Member who has not opted-out of the Settlement.

#### **SECTION 17: ADMINISTRATIVE COSTS AND EXPENSES**

All reasonable costs associated with the implementation of the proposed Settlement, including (a) the reasonable fees and costs incurred by the Settlement Administrator, (b) the reasonable fees and costs incurred by the Special Master (up to \$250,000), and (c) the reasonable cost of providing notice of the proposed Settlement to the members of the Settlement Class in accordance with the Notice Plan approved by the Court, shall be paid out of the Fund.

#### **SECTION 18: RESERVATION OF RIGHT TO VOID AGREEMENT**

The Parties reserve the right to void this Settlement Agreement, from inception, as if it had never been entered into, if:

- A.** there are more than a specified number of opt-outs. Defendants and counsel for Plaintiffs have reached a confidential agreement on that number, and jointly shall ask leave of Court to submit that information to the Court under seal at or before the Preliminary Approval hearing scheduled for August 1, 2016, and to maintain that information under seal thereafter; or
- B.** if the Court, or a reviewing court, fails to approve the fairness of this Settlement, or reverses or modifies it in any material respect.

#### **SECTION 19: FINAL JUDGMENT**

If none of the events described in Section 18 occur, and this Settlement Agreement (including any modification to this Settlement Agreement made with the written consent of all Parties) is approved by the Court following the Final Approval Hearing scheduled by the Court,

the Parties shall request that the Court enter an order granting final approval to this class action settlement.

**SECTION 20: EXECUTION OF DOCUMENTS AND BEST EFFORTS**

The Parties to this Settlement Agreement shall execute all documents and perform all acts reasonably necessary and proper to effectuate its terms. The Parties agree to put forth their best efforts to obtain preliminary and final approval of the Settlement.

**SECTION 21: JURISDICTION**

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement terms reflected in this Settlement Agreement.

**SECTION 22: EFFECTIVE DATE**

The “Effective Date” of this Settlement Agreement shall be the first date when each and all of the following conditions have occurred: (a) This Settlement Agreement has been fully executed by the Parties and their counsel; (b) Orders have been entered by the Court granting preliminary approval of this Settlement Agreement and approving the Notice Plan, as provided above; (c) The Court has entered a Final Order and Judgment approving this Settlement Agreement, as provided above; and (d) The Final Order and Judgment is no longer subject to review by any court, and has not been reversed or modified in any material respect.

**SECTION 23: COMMUNICATIONS WITH THE SETTLEMENT CLASS**

The Class Notice shall list the addresses, telephone numbers, e-mail addresses, websites, and other contact information of Class Counsel and the Settlement Administrator. Other than as provided in this Settlement Agreement, communications with Settlement Class Members relating to the Lawsuit or this Settlement, after preliminary certification of the class, shall be handled through Class Counsel and the Settlement Administrator. Nothing in this Settlement Agreement shall be construed: (a) to prevent Defendants from communicating orally, electronically, or in writing with potential Settlement Class Members in the ordinary course of business on matters unrelated to the Lawsuit; or (b) to prevent Defendants from communicating with Settlement Class Members regarding WEN Hair Care Products in direct response to a consumer call, email or post (in which case Defendants will only provide hair treatment or care advice to a consumer

who used WEN Hair Care Products, or direct a Settlement Class Member to the Settlement Administrator or the Settlement Website). The Parties agree that, subject to the conditions set forth herein, they shall be permitted to respond to any and all media inquiries provided that said responses do not disparage Defendants, Defendants' counsel, WEN Haircare Products, Plaintiffs, Plaintiffs' counsel, the merits of Plaintiffs' claims, or the Settlement. In addition, prior to making any responsive public statements to any media or press outlets, the Parties shall first obtain prior written approval from the other Parties of the statement to be made, or the talking points to be used; and, such approval shall not be unreasonably withheld. Plaintiffs' Counsel hereby expressly approve of Defendants' prior media statement regarding the tentative settlement of this litigation, along with the language contained within the May 5, 2016 Joint Status Report. Further, nothing in this provision shall preclude or limit Defendants from engaging in any and all marketing, public relations, sales and other activities in their normal course of business, or from continuing to dispute the proposition that WEN Hair Care Products are unsafe or that they cause hair loss or hair breakage.

#### **SECTION 24: RESOLUTION OF OTHER ISSUES**

In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not addressed by the terms of this Agreement, then such matters shall be addressed as agreed upon by counsel for the Parties, and, failing agreement, as shall be ordered by the Court.

#### **SECTION 25: ENTIRE AGREEMENT**

This Settlement Agreement, together with the confidential agreement of the parties regarding the number of opt-outs that will trigger Defendants' reservation of the right not to be bound by this Settlement Agreement in accordance with Section 18 above, constitutes the entire agreement between and among the Parties with respect to Settlement of the Lawsuit. The Exhibits to this Settlement Agreement are an integral part of the Settlement and are hereby incorporated and made part of this Settlement Agreement. This Settlement Agreement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by Counsel for Defendants and by Class Counsel.

#### **SECTION 26: CHOICE OF LAW**

This Settlement Agreement shall be governed by the internal laws of the State of California; provided, however, that the terms of the Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations resulting in the Settlement Agreement, both Parties have contributed substantially and materially to the preparation of the Settlement Agreement.

**SECTION 27: DISPUTE RESOLUTION**

Any dispute arising from or related in any way to this Settlement Agreement shall be resolved solely and exclusively before the United States District Court for the Central District of California.

**SECTION 28: HEADINGS AND GRAMMAR**

The various headings used in this Agreement are solely for the Parties' convenience and may not be used to interpret this Agreement. The headings do not define, limit, extend or describe the Parties' intent or the scope of this Agreement. The neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa.

**SECTION 29: EXECUTION IN COUNTERPARTS**

This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**SECTION 30: NOTICES AND DATES**

With respect to dates, the Parties agree that if the last day of any period mentioned in this Settlement Agreement falls on a weekend or court holiday, that period shall include the next business day.

DATED: June 28, 2016

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*Counsel for Named Plaintiffs and the  
Proposed Class*

**Guthy-Renker, LLC**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_  
**WEN by Chaz Dean, Inc.**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Approved as to Form:**

**LEWIS WAGNER, LLP**

**By:** s/ Dina M. Cox\_\_\_\_\_

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*Counsel for Named Plaintiffs and the Proposed Class*

**Guthy-Renker, LLC**

By:                     *D. Wanda*                    

Title:                     *ENP / CAO*                      
**WEN by Chaz Dean, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to Form:**

**LEWIS WAGNER, LLP**

By:                     *s/*                    

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**Guthy-Renker, LLC**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

WEN/by Chaz Dean, Inc.

**By:** \_\_\_\_\_

**Title:** *President & CEO*

**Approved as to Form:**

**LEWIS WAGNER, LLP**

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

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*Counsel for Defendant Wen by Chaz Dean,  
Inc.*

# **EXHIBIT B**

<<Email Subject:>>

WEN Hair Care Products Class Action Settlement

<<Email Text:>>

This Summary Notice is for: <<Name>>

**If you purchased or used WEN® Hair Care Products, you could receive a payment from a class action settlement. To learn more, read the rest of this email, visit [www.WENClassSettlement.com](http://www.WENClassSettlement.com), or call 1-888-XXX-XXXX.**

*LEGAL NOTICE: Your legal rights are affected. Read this Summary Notice carefully. The United States District Court for the Central District of California ordered this Notice after it preliminarily approved a Class Action Settlement in the case of Friedman, et al. v. Guthy-Renker, et al., Case No. 2:14-cv-06009-ODW.*

A settlement has been reached in a lawsuit filed against Guthy-Renker LLC and WEN by Chaz Dean, Inc. (“Defendants”). The lawsuit alleges that Defendants designed, manufactured and sold WEN® Hair Care Products (“WEN®”) which allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation. Plaintiffs also asserted that statements made in connection with the marketing of WEN® were untrue and misleading. Defendants vigorously deny these allegations and contend that there is no link between hair loss and WEN®. Liability is disputed in this matter, and WEN® has not been proven to cause hair loss to consumers, nor has it been legally determined that any advertising of the Products was false or misleading. The makers of WEN® stand behind the quality, safety, and formulation of the Products, all of which meet or exceed all safety and quality standards set by the cosmetics industry. However, to avoid the cost of a trial, and potential risks for both sides, the Parties have reached a Class Action Settlement, which was preliminarily approved by the United States District Court for the Central District of California on \_\_\_\_\_, 2016.

### **What Does the Settlement Provide?**

Defendants have agreed to settle this matter through the creation of a non-reversionary Settlement Fund of \$26,250,000.00, which will be used to pay valid claims, as well as for the costs of notice and administration of the Settlement, as well as incentive awards to the Named Plaintiffs and attorneys’ fees and costs. \$5,000,000 of the Fund will be set aside to pay Tier 1 Class-Wide Flat Rate claims. Any person who purchased or used WEN® can file a Tier 1 Claim for a one-time \$25 cash payment as compensation for claims of personal injury after using WEN® or for alleged false statements regarding WEN®. If

Tier 1 Claims exceed the \$5,000,000 allocated to pay Tier 1 Claims, the payments made to each Class Member who submit a valid Tier 1 Claim will be reduced on a *pro rata* basis.

The remainder of the Fund will be used to pay Tier 2 Documented Adverse Reaction Claims of up to \$20,000 per Class Member, to compensate consumers for claimed adverse reactions causing personal injury such as hair loss, hair damage, scalp irritation and emotional distress that accompanied such alleged injuries. If the claims made against the Fund collectively exceed the total amount of the Fund (after the deduction of the \$5,000,000 fund set aside for Tier 1 Claims, Incentive Awards, Attorney's Fees, and Costs and Administrative Costs and Expenses), the payments to each Class Member who submit a valid Tier 2 Claim will be reduced on a *pro rata* basis.

Class Members can submit only one claim, either a Tier 1 Claim or a Tier 2 Claim. However, Class Members whose Tier 2 Claims are denied shall be automatically considered to have made and be eligible for a Tier 1 Claim.

### **How Do You Submit A Claim?**

To qualify for payment, you must complete and submit the appropriate Claim Form, signed by you under penalty of perjury, along with any required supporting documents by \_\_\_\_\_, 2017. Online Claim Forms and instructions for submitting claims are available at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). Paper Claim Forms and instructions can also be obtained by calling 1-888-XXX-XXXX.

### **What Are Your Other Options?**

If you do not want to be legally bound by the Settlement, you must "opt out" or exclude yourself by mailing a note signed by you that lists: your full name, signature, address and the statement: "I wish to be excluded from the WEN Class Action Settlement." Opt-Out statements must be postmarked no later than \_\_\_\_\_, 2016. If you properly exclude yourself, you will not get any Settlement payment and you cannot object to the Settlement. However, you will retain any legal claims you may have against the Defendants and may be able to sue on your own in the future.

If you are a Class Member, you can object to any part of the Settlement you do not like and the Court will consider your views. Your objection must be timely, in writing, and contain certain specific information as described in more detail at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or available by calling 1-888-XXX-XXXX. Objections must be received by the Court, Class Counsel and Defendants' Counsel by \_\_\_\_\_, 2016 [insert date 45 days prior to Final Hearing].

The Court will hold a Final Approval Hearing at \_\_\_\_ on \_\_\_\_\_ 2016, in Los Angeles, California. At this hearing, the Court will consider whether the settlement is fair,

reasonable and adequate and whether to approve the Named Plaintiffs' incentive awards and the attorneys' fees requested by Class Counsel. You may attend the hearing, and you may hire your own lawyer, but you are not required to do either. The Court will consider timely written objections and will listen to objectors who request to speak at the hearing.

### **What To Do If You Have Questions**

This Notice is just a summary. A more detailed notice, as well as the Settlement Agreement and other documents related to this lawsuit, can be found online at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). For more information, you may call or write to the Settlement Administrator at 1-888-XXX-XXXX or P.O. Box XXXX, XXXXXXXXX.

# **EXHIBIT C**

**LEGAL NOTICE**

**If you purchased WEN Haircare Products, you could receive payment from a Class Action Settlement.**

A Settlement has been reached in a lawsuit filed against Guthy-Renker LLC and WEN by Chaz Dean, Inc. ("Defendants") alleging that Defendants designed, manufactured and sold WEN® Hair Care Products, which allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation. Plaintiffs also asserted that marketing statements regarding WEN® were untrue and misleading. Defendants vigorously deny these allegations and contend there is no link between hair loss and WEN®. Liability is disputed in this matter, and WEN® has not been proven to cause hair loss to consumers, nor has it been legally determined that any advertising of WEN® was false or misleading. The makers of WEN® stand behind the quality, safety, and formulation of the Products, all of which meet or exceed all safety and quality standards set by the cosmetics industry. However, to avoid the cost of a trial, and potential risks for both sides, the Parties have reached a Class Action Settlement, which was preliminarily approved by the California Federal Court on \_\_\_\_\_, 2016. Under the terms of the settlement, you may be entitled to compensation if you purchased or used WEN® for personal use in the United States before August 1, 2016.

PRESORT  
FIRST CLASS  
U.S. POSTAGE  
PAID  
PERMIT NO

WEN CLASS SETTLEMENT  
<<NAME OF SA>>  
<<SA ADDRESS>>

CLAIMANT ID: <<CLAIMANTID>>

<<BARCODE>>  
<<NAME>>  
<<ADDRESS>>  
<<CITY>> <<ST>> <<ZIPCODE>>

**What Does the Settlement Provide?**

Defendants have agreed to settle this matter through the creation of a non-reversionary Settlement Fund of \$26,250,000.00, which will be used to pay valid claims, as well as for the costs of notice and administration of the Settlement, as well as incentive awards to the Named Plaintiffs and attorneys' fees and costs. \$5,000,000 of the Fund will be set aside to pay Tier 1 Class-Wide Flat Rate claims. Any person who purchased or used WEN® can file a Tier 1 Claim for a one-time \$25 cash payment as compensation for claims of personal injury after using WEN or for alleged false statements regarding WEN®. If Tier 1 Claims exceed the \$5,000,000 allocated to pay Tier 1 Claims, payments will be reduced on a *pro rata* basis. The remainder of the Fund will be used to pay Tier 2 Documented Adverse Reaction Claims of up to \$20,000 per Class Member, to compensate consumers for claimed adverse reactions causing personal injury such as hair loss, hair damage, scalp irritation and emotional distress that accompanied such alleged injuries. If the claims made against the Fund collectively exceed the total amount of the Fund (after the deduction of the \$5,000,000 fund set aside for Tier 1 Claims, Incentive Awards, Attorney's Fees, and Costs and Administrative Costs and Expenses), the payments to each Class Member who submit a valid Tier 2 claim will be reduced on a *pro rata* basis. Class Members can submit only one claim, either a Tier 1 Claim or a Tier 2 Claim.

**How Do You Submit a Claim?**

To qualify for payment, you must complete and submit the appropriate Claim Form, signed by you under penalty of perjury, along with any required supporting documents by \_\_\_\_\_, 2017. Online Claim Forms and instructions for submitting claims are available at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). Claim Forms and instructions can also be obtained by calling 1-888-XXX-XXXX.

**What Are Your Other Options?**

If you don't want to be legally bound by the Settlement, you must "opt-out" or exclude yourself by mailing a note signed by you that lists your full name, address and the statement: "I wish to be excluded from the WEN Class Action Settlement." Opt-Out statements must be postmarked no later than \_\_\_\_\_, 2016. If you properly Opt-Out, you will not get any settlement payment and you cannot object to the Settlement. But you will retain any legal claims you may have against Defendants and may be able to sue on your own in the future.

If you are a Class Member, you can object to any part of the Settlement you don't like and the court will consider your views. Your objection must be timely, in writing, and contain required information as described at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or available by calling 1-888-XXX-XXXX.

The Court will hold a Final Approval Hearing at \_\_\_\_\_ on \_\_\_\_\_ 2016, in Los Angeles, California. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate and whether to approve Class Representatives' incentive awards and attorneys' fees. You may attend the hearing, and you may hire your own lawyer, but you are not required to do either. The Court will consider timely written objections and will listen to objectors who request to speak at the hearing.

**What To Do If You Have Questions.**

This Notice is just a summary. A more detailed notice, as well as the Settlement Agreement and other documents related to the Lawsuit, can be found online at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). For more information, you may call the Class Administrator at 1-888-XXX-XXXX.

# **EXHIBIT D**



IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**If you purchased and/or used WEN® Hair Care Products, you could get a payment from a class action settlement.**

*A federal court ordered this Notice. This is not a solicitation from a lawyer.*

- The Settlement will provide a total of \$26,250,000 to fully settle and release claims of all persons who purchased and/or used WEN® Hair Care Products (“WEN®”) in the United States and its territories, excluding any person who purchased WEN® for resale and any person who previously signed a release of claims relating to WEN Hair Care Products, among others.
- The Settlement resolves a lawsuit brought against Guthy-Renker, LLC and WEN by Chaz Dean, Inc., (together “Defendants”). The lawsuit alleges that Defendants designed, manufactured and sold WEN® which allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation. Plaintiffs also asserted that statements made in connection with the marketing of WEN® were untrue and misleading. Defendants vigorously deny these allegations and contend that there is no link between hair loss and WEN®. Liability is disputed in this matter, and WEN® has not been proven to cause hair loss to consumers, nor has it been legally determined that any advertising of the Products was false or misleading. The makers of WEN® stand behind the quality, safety, and formulation of the Products, all of which meet or exceed all safety and quality standards set by the cosmetics industry. However, to avoid the cost of a trial, and potential risks for both sides, the Parties have reached a Class Action Settlement, which was preliminarily approved by the United States District Court for the Central District of California on \_\_\_\_\_, 2016.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to be part of another lawsuit against the Defendants involving WEN®.
<b>OBJECT</b>	Write to the Court about why you don’t like the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights to assert an action against Defendants involving WEN®.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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- 2. Why is this a class action?
- 3. Why is there a settlement?

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## **BASIC INFORMATION**

### **1. What is this lawsuit about?**

Plaintiffs filed a lawsuit in the United States District Court for the Central District of California claiming that Guthy-Renker, LLC and WEN by Chaz Dean, Inc. (“Defendants”) designed, manufactured and sold WEN® Hair Care Products (“WEN®”) which allegedly cause certain users to suffer personal injury including hair loss, hair damage and and/or scalp irritation. Plaintiffs also asserted that statements made in connection with the marking of WEN® were untrue and misleading. Defendants vigorously deny these allegations and contend that there is no link between hair loss and WEN®.

### **2. Why is this a class action?**

In a class action, one or more people called Named Plaintiffs, sue on behalf of themselves and other people. All people who purchased or used WEN® before August 1, 2016 are Class Members, except for those who are excluded or who exclude themselves from the Class (see Question 15). The Court then resolves the claims asserted for all Class Members at one time. Here, the Court has preliminarily certified a Class for settlement purposes only. United States District Court Judge Otis T. Wright II is in charge of this class action.

### **3. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to this Settlement. This way, both sides avoid the potential risks and cost of a trial, and the Class Members who timely submit a claim supported by appropriate documentation (see Question 12) will get compensation without having to commit to a full trial. The Class Representatives and counsel for the Class (“Class Counsel”) believe the Settlement is best for all Class Members considering the risks of going forward to trial.

## **WHO IS IN THE SETTLEMENT?**

To be eligible to submit a claim for a payment from the Settlement, you must have purchased or used at least one of the following WEN® Products between November 1, 2007 and August 1, 2016: All fragrances and variations of Cleansing Conditioner, Re-Moist Mask, Treatment Mist Duo, Treatment Oil, SIXTHIRTEEN Ultra Nourishing Cleansing Treatment, Re Moist Intensive Hair Treatment, Styling Crème, Anti-Frizz Styling Crème, Nourishing Mousse, Volumizing

Treatment Spray, Replenishing Treatment Mist, Defining Paste, Straightening Smoothing Gloss, Smoothing Glossing Serum, Glossing Shine Serum, Finishing Treatment Crème, Volumizing Root Lift, Texturizing Spray, Detangling Treatment Spray, Men Control Texture, Men Hair and Body Oil, Bath, Body and Hair Oil, and Texture Balm sold through all outlets (including, but not limited to, Guthy-Renker LLC, WEN by Chaz Dean, Inc., QVC, Amazon and Sephora).

#### 4. How do I know if I am part of the Settlement?

You are a Class Member for purposes of the Settlement if you fit this description:

All purchasers or users of WEN® in the United States or its territories between November 1, 2007 and August 1, 2016, excluding (a) any such person who purchased for resale and not for personal or household use, (b) any such person who signed a release of any Defendant in exchange for consideration, (c) any officers, directors or employees, or immediate family members of the officers, directors or employees, of any Defendant or any entity in which a Defendant has a controlling interest, (d) any legal counsel or employee of legal counsel for any Defendant, and (e) the presiding Judge in the Lawsuit, as well as the Judge's staff and their immediate family members.

#### 5. If I purchased WEN Hair Care Products but did not suffer any personal injury, am I included?

Any person who purchased WEN® in the United States between November 1, 2007 and August 1, 2016 is a Class Member unless such person is within one of the excluded categories or properly excludes himself or herself from the Class, even if such person did not suffer any personal injury from using WEN®. Class Members who purchased WEN®, but did not suffer physical injury, are still eligible for a one-time payment of \$25.

#### 6. Are there exceptions to being included?

The following categories of people are not included in the Class even if they purchased WEN® between November 1, 2007 and August 1, 2016:

- Persons who purchased WEN® for resale and not for personal or home use;
- Persons who signed a release of any Defendant for compensation for the claims covered by the Settlement;
- Officers, directors or employees, or immediate family member of officers, directors, or employees, of any Defendant or any entity in which a Defendant has a controlling interest;
- Any legal counsel or employee of legal counsel for any Defendant; and

- The presiding judge in the class action lawsuit and his immediate family members and staff members.

#### 7. I'm still not sure if I'm included.

If you are still not sure whether you are eligible to submit a claim, you can call 1-888-XXX-XXXX or visit [www.WENClassSettlement.com](http://www.WENClassSettlement.com) for more information.

## THE SETTLEMENT BENEFITS—WHAT YOU GET

#### 8. What does the settlement provide?

While disputing liability, Defendants have agreed to settle this matter through the creation of a non-reversionary Settlement Fund of \$26,250,000.00, which will be used to pay valid claims, as well as for the costs of notice and administration of the Settlement, incentive awards to the Named Plaintiffs and attorneys' fees and costs. \$5,000,000 of the Fund will be set aside to pay Tier 1 Class-Wide Flat Rate Claims. Any person who purchased or used WEN® can file a Tier 1 Claim for a one-time \$25 cash payment as compensation for claims of personal injury after using WEN® or for alleged false statements regarding WEN®. If Tier 1 Claims exceed the \$5,000,000 allocated to pay Tier 1 Claims, the payments made to each Class Member who submit a valid Tier 1 Claim will be reduced on a *pro rata* basis.

The remainder of the Fund will be used to pay Tier 2 Documented Adverse Reaction Claims of up to \$20,000 per Class Member, to compensate consumers for claimed adverse reactions causing personal injury such as hair loss, hair damage, scalp irritation and emotional distress that accompanied such alleged injuries. If the claims made against the Fund collectively exceed the total amount of the Fund (after the deduction of the \$5,000,000 fund set aside for Tier 1 Claims, Incentive Awards, Attorney's Fees and Costs and Administrative Costs and Expenses), the payments to each Class Member who submit a valid Tier 2 claim will be reduced on a *pro rata* basis. Class Members can submit only one claim, either a Tier 1 Claim or a Tier 2 Claim. However, Class Members whose Tier 2 Claims are denied shall be automatically considered to have made and be eligible for a Tier 1 Claim.

#### 9. Tier 1 Class-Wide Flat Rate Claims (\$25).

Any Class Member who purchased WEN® and does not timely request exclusion (see Question 15) may submit a Tier 1 Claim for a one-time payment of \$25 as compensation for claims of personal injury after using WEN® or for alleged false statements regarding WEN®. If Tier 1 Claims made against the Fund collectively exceed \$5,000,000, payments made to each Class Member who submitted a valid Tier 1 Claim will be reduced on a *pro rata* basis. If there are amounts remaining in the Fund after payment of all claims determined to be valid, then those remaining amounts shall be added to the monies allocated for Tier 2 Documented Adverse Reaction Claims.

## 10. Payment for Tier 2 Documented Adverse Reaction Claims.

### Tier 2 Documented Adverse Reaction Claims

Any member of the Settlement Class who alleges to have suffered personal injury including hair loss, hair damage, scalp irritation and emotional distress as a result of using WEN®, and does not timely request to opt-out from the Settlement Class, may make a claim against the Fund for reimbursement of amounts spent to redress such alleged injuries, as well as an injury award designed to compensate the Class Member for any alleged injuries sustained, up to a maximum of \$20,000 per Class Member, as set forth below. In order to make a Tier 2 Claim, the Class Member must submit a valid and complete Tier 2 Claim Form, along with Supporting Documentation as described therein.

The amount of any claim payment will be determined by a Special Master to be appointed by the Court. The parties anticipate that the Special Master will be a former judge with experience in the claims process. The Special Master with the assistance of the Claims Administrator shall have authority to determine the validity, or lack thereof, of any Tier 2 Claims submitted, including the sufficiency of the Class Member's evidence of his or her claimed injury, and any other documentation submitted in support of the Tier 2 Claim. After reviewing the evidence submitted on any Tier 2 Claim, the Special Master shall have the authority to decline to award any damages. Before declining any claim against the Fund for reimbursement of expenses, the Settlement Administrator shall have the ability to issue a one-time request to the Class Member to provide any information that is missing or improperly submitted on the Tier 2 Claim Form. The Special Master shall review any Tier 2 Claims prior to final denial.

The Special Master shall have full and final authority to decline a Tier 2 Claim and the Special Master's decision shall not be subject to an appeal or reconsideration. Any Class Member whose Tier 2 Claim is denied shall be considered to have submitted a Tier 1 Claim to be determined under the applicable criteria.

Should Tier 2 Claims exceed the amount available to pay Tier 2 Claims, the payment of Tier 2 Claims will be reduced on a *pro rata* basis.

## HOW YOU GET A PAYMENT—SUBMITTING A CLAIM

### 11. How can I get a payment?

To qualify for payment under Tier 1 or Tier 2, you must complete and submit the appropriate Claim Form, signed by you under penalty of perjury, along with any required supporting documents, which are described above and in the Claim Form.

Claim Forms and instructions for submitting them are available at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). Claim Forms and instructions for completing them can also be obtained by calling 1-888-XXX-XXXX.

Read the instructions carefully, complete the Claim Form, include all the documents it asks for, sign it and submit it with the supporting documents no later than \_\_\_\_\_, 2016, as explained in the Claim Form instructions.

**12. What supporting documents am I required to submit with a Tier 2 Documented Adverse Reaction Claim?**

To be eligible for a payment from the Fund for a Tier 2 Adverse Reaction Claim, you must submit to the Settlement Administrator, in addition to a completed Tier 2 Claim Form signed under penalty of perjury, appropriate evidence documenting the injuries you suffered after using WEN®. The following forms of documents will be considered “Supporting Documentation” and shall be received by the Settlement Administrator in support of a Tier 2 Claim:

- Before or after photographs showing the damage to your hair and/or scalp. Each photo submitted must be dated and labeled as either a “before” or “after” photo.
- Video testimony of the Class Member describing the claimed injury.
- Medical records, doctor’s notes, test results, and/or a statement from a licensed medical professional indicating damage to the Class Member’s hair or scalp after using WEN® as well as any pre-existing conditions that may have caused the alleged hair loss.
- Written or video statement from the Claim Member’s hair stylist(s) indicating the amount of hair loss suffered and any lasting effects. If written, this statement must be dated and signed.
- Written or video statements from other witnesses that can testify about the damage to your hair or scalp and its effect on you (i.e., spouse, family, friends). Any statement must include the witnesses name and their relationship to the Class Member. If written, these statements must be dated and signed by the witnesses.

Additionally, the following forms of Supporting Documentation shall be received by the Settlement Administrator in support of a claim for reimbursement of out-of-pocket expenses incurred to redress injury purportedly caused by WEN® Hair Care Products: dated medical bills evidencing payments related to the Class Member’s claimed injury, dated receipts for out-of-pocket expenses, dated credit card statements evidencing payment by the Class Member related to the Class Member’s claimed injury, or dated bank statements evidencing payment of out-of-pocket expenses related to the Class Member’s claimed injury. Dated receipts and/or

declarations supplied by, for example, a medical provider or hairdresser confirming the amount spent to redress a claimed injury will also be considered.

The Supporting Documentation described above is not intended to provide an exclusive list of the supporting evidence that may be submitted in support of a Tier 2 Claim. The Settlement Administrator and Special Master shall have discretion to accept forms of evidence in addition to or in place of the examples set forth above.

### 13. When would I get my payment?

The Court will hold a hearing at \_\_\_\_\_ on \_\_\_\_\_, 2016 to decide whether to grant final approval to the Settlement. If Judge Wright approves the Settlement, any objecting class member has the right to file an appeal. Reimbursement payments under the Settlement will be made only after any appeals have been resolved in favor of the Settlement. Payments to eligible Class Members who submit valid and timely Claims will be distributed only after the Special Master evaluates all Tier 2 Claims. Please be patient.

### 14. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are a member of the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit concerning WEN®. The Released Parties are: Guthy-Renker, LLC, and WEN by Chaz Dean, Inc., as well as their successors, assigns, agents, employees, consultants, independent contractors, direct and indirect retail customers and brokers, insurers, parents, subsidiaries and other corporate affiliates. Staying in the Class means that you will have the right to submit a Claim Form, and will also mean that you release all claims against the Released Parties arising out of or relating in any way to the purchase and/or use of WEN® Hair Care Products, regardless of whether such claim is known or unknown, asserted or as yet unasserted. Staying in the Class also means that all of the Court's orders will apply to you and legally bind you.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to submit a claim for payment from the settlement, and you want to keep the right to sue or continue to sue Defendants (or any of the other Released Parties) in the future about WEN®, then you must take steps to remove yourself from the Class. This process is sometimes called "opting out" of the Settlement Class.

### 15. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from the Settlement. Be sure to include the case name and number, *Friedman, et al.*



*v. Guthy-Renker et al.*, Case No. 2:14-cv-06009-ODW, your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 2016 [Insert date 45 days prior to Fairness Hearing] to the Settlement Administrator at WEN Class Settlement Exclusions, Claims Administrator, XXXXX, XXXXXX, XX, XXXXX.

Requests for exclusion must be exercised individually, not as or on behalf of a group, class or subclass. You cannot exclude yourself by phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit. You may be able to sue (or continue to sue) Defendants (or the other Released Parties) in the future, after the Settlement is finally approved. Do not submit both a Claim Form and a request for exclusion. If you submit both, the Court may disregard your request for exclusion.

**16. If I don't exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the Defendants for claims about any injury or misrepresentation regarding WEN®. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue with your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2016.

**17. If I exclude myself, can I get money from this Settlement?**

No. If you exclude yourself, do not send in a Claim form to ask for any benefits from this Settlement. However, you may be able to sue, continue to sue, or be part of a different lawsuit against the Defendants in the future.

**THE LAWYERS REPRESENTING YOU**

**18. Do I have a lawyer in this case?**

The Class is represented by Janet Varnell and Brian Warwick of Varnell & Warwick, P.A., Lady Lake, Florida; William Anderson of Cuneo Gilbert & LaDuca, LLP, Washington, D.C.; and Neville Johnson of Johnson & Johnson, LLP, Beverly Hills, California. These lawyers have been appointed by the Court to act as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**19. How will the lawyers and other expenses be paid?**

Class Counsel will ask the Court for an award of attorneys' fees and expenses equal to 25% of the Settlement Fund. Class Counsel will also ask the Court to approve a \$25,000 payment to Named Plaintiffs Amy Friedman and Judi Miller, who were subject to extensive discovery, including review of medical records and depositions, and for their substantial contribution in the

prosecution of this Lawsuit for the benefit of the Class; Named Plaintiff Krystal Henry-McArthur shall request court approval of an Incentive Award of \$5,000 for her efforts in prosecuting the action for the benefit of the Class; and Named Plaintiff Lisa Rogers shall receive an Incentive Award of \$2,500 for her efforts in prosecuting the Lawsuit on behalf of the Class. These payments are incentive payments intended to compensate the putative class representatives for bringing the Lawsuit, and in consideration of the time and effort they expended in prosecuting this class action.

These amounts and the cost of administering the Settlement will be deducted from the Settlement Fund.

## OBJECTING TO THE SETTLEMENT

If you are a Class Member and do not exclude yourself, you can tell the Court that you don't agree with the Settlement, or some part of it, and request that the Settlement not be approved.

### 20. How do I tell the Court that I don't like the Settlement?

If you are a Class Member and do not exclude yourself, you can object to the Settlement. You can provide the Court with the reasons why you think the Court should not approve it. The Court will consider your views. To be effective, any objection must be in writing, and must contain the following information ("Written Notice of Objection"): (1) a heading referring to the *Friedman v. Guthy-Renker, L.L.C., et al.*, lawsuit, and identify any litigation in which you are a named party; (2) a statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel, and if through counsel, information identifying that counsel by name, address, bar number, and telephone number; (3) a statement of the legal and factual reasons for your objection; (4) a description of any and all evidence you may offer at the Final Approval Hearing, including but not limited to the names and expected testimony of any witnesses, and copies of any exhibits; and, (5) your signature.

If you are not represented by your own lawyer you must mail your Written Notice of Objection to the Settlement Administrator at \_\_\_\_\_, postmarked no later than \_\_\_\_\_, 2016. [insert date 45 days prior to Fairness Hearing].

If you are represented by your own lawyer (*i.e.*, not Class Counsel) then your lawyer must file an appearance and your Written Notice of Objection with the Clerk of the Court in which the *Friedman v. Guthy-Renker, LLC., et al.* lawsuit is pending by \_\_\_\_\_, 2016 [insert date 45 days prior to Fairness Hearing], and must also mail these materials to the Settlement Administrator at WEN Class Settlement Objections, c/o Settlement Administrator, XXXXXXXXXXXX, received by the Court, Class Counsel and Defendants' Counsel no later than \_\_\_\_\_, 2016 [insert date 45 days prior to Fairness Hearing].

The right to object to the Settlement must be exercised individually by a Class Member or through his or her attorney, and not as a member of a group, class or subclass.

**21. What is the difference between objecting and excluding?**

Objecting is staying a member of the Settlement Class but telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both a request to be excluded and an objection to the settlement, the Court will honor your request to be excluded and your objection will be disregarded.

**THE COURT’S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to give the Settlement Final Approval. You may attend personally or through your own lawyer, at your own expense, and you may ask to speak, but you don’t have to do either.

**22. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at \_\_\_\_\_ on \_\_\_\_\_, at the United States District Court for the Central District of California, 312 N. Spring Street, Los Angeles, California, in Courtroom \_\_\_\_\_. At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Wright will listen to people who have asked to speak at the hearing and who have complied with the requirements for submitting objections set forth in Question 20 above. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long that decision will take.

**23. Do I have to come to the hearing?**

No. Class Counsel will answer questions Judge Wright may have. However, you are welcome to come at your own expense. If you submit an objection, you do not have to come to Court to talk about it. As long as you submitted your objection on time in accordance with the procedures set forth in Question 20 above, the Court will consider it. You may also pay your own lawyer to attend, but it’s not necessary.

**24. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted in accordance with the procedure set forth in Question 20 above. You cannot speak at the Final Approval Hearing if you have excluded yourself.

## IF YOU DO NOTHING

If you do nothing, you will get no money from this Settlement. If you do not submit a Claim Form, your claim will not be considered. If you do not exclude yourself, you will not be able to start a new lawsuit, continue with a lawsuit, or be part of any other lawsuit against any of the Defendants (or the other Released Parties) concerning WEN®, ever again.

## GETTING MORE INFORMATION

### 25. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by visiting [www.WENClassSettlement.com](http://www.WENClassSettlement.com), by calling the Settlement Administrator toll free at 1-888-XXX-XXXX, or by writing to Class Counsel at either of these addresses:

Brian Warwick  
Varnell & Warwick, PA  
P.O. Box 1870  
Lady Lake, FL 32158

William Anderson  
Cuneo, Gilbert & LaDuca, LLP  
507 C Street, NE  
Washington, D.C., 20002

### 26. How do I get more information about the Settlement?

You can call 1-888-XXX - XXXX toll free, write to the Settlement Administrator at WEN Class Settlement Class Action Administrator, \_\_\_\_\_, or visit the website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com), where you will find answers to common questions about the settlement, the Claim Form and instructions for submitting it, important documents filed in the Lawsuit, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

**PLEASE DO NOT CALL THE COURT FOR INFORMATION OR ADVICE**

# **EXHIBIT E**

**LEGAL NOTICE**

**If you purchased WEN® Haircare Products, you  
could receive payment from a Class Action  
Settlement.**

A settlement has been reached in a lawsuit filed against Guthy-Renker, LLC and WEN by Chaz Dean, Inc. (“Defendants”). The lawsuit alleges that Defendants designed, manufactured and sold WEN® Hair Care Products which allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation. Plaintiffs also asserted that statements made in connection with the marketing of WEN® were untrue and misleading. Defendants vigorously deny these allegations and contend that there is no link between hair loss and WEN®. Liability is disputed in this matter, and WEN® has not been proven to cause hair loss to consumers, nor has it been legally determined that any advertising of the Products was false or misleading. The makers of WEN® stand behind the quality, safety, and formulation of the Products, all of which meet or exceed all safety and quality standards set by the cosmetics industry. However, to avoid the cost of a trial, and potential risks for both sides, the Parties have reached a Class Action Settlement, which was preliminarily approved by the United States District Court for the Central District of California \_\_\_\_\_, 2016.

Under the terms of the Settlement, you may be entitled to compensation if you purchased or used WEN® for personal use in the United States or its territories on or before August 1, 2016. Excluded from the Class are (a) any such person who purchased for resale purposes, (b) any such person who signed a release of any Defendant in exchange for compensation, (c) employees of Defendants including their counsel, and (e) the presiding Judge, his employees and their family members. Also excluded are those persons who timely and validly request exclusion from the Settlement Class.

**What Does the Settlement Provide?**

Defendants have agreed to settle this matter through the creation of a non-reversionary Settlement Fund of \$26,250,000.00 which will be used to pay valid claims, as well as for the costs of notice and administration of the Settlement, as well as incentive awards to the Named Plaintiffs and attorneys’ fees and costs. \$5,000,000 of the Fund will be set aside to pay Tier 1 Class-Wide Flat Rate claims. Any person who purchased or used WEN® can file a Tier 1 Claim for a one-time \$25 cash payment as compensation for claims of personal injury after using WEN or for alleged false statements regard WEN®. If Tier 1 Claims exceed the \$5,000,000 allocated to pay Tier 1 Claims, the payments made to each Class Member who submit a valid Tier 1 Claims will be reduced on a *pro rata* basis.

The remainder of the Fund will be used to pay Tier 2 Documented Adverse Reaction Claims of up to \$20,000 per Class Member, to compensate consumers for claimed adverse reactions causing personal injuries such as hair loss, hair damage, scalp irritation and emotional distress that accompanied such alleged injuries. If the claims made against the Fund collectively exceed the total amount of the Fund (after the deduction of the \$5,000,000 fund set aside for Tier 1 Claims, Incentive Awards, Attorney's Fees and Costs and Administrative Costs and Expenses), the payments to each Class Member who submit a valid Tier 2 Claim will be reduced on a *pro rata* basis.

Class Members can submit only one claim, either a Tier 1 Claim or a Tier 2 Claim. However, Class Members whose Tier 2 Claims are denied shall be automatically considered to have made and be eligible for a Tier 1 Claim.

### **How Do You Submit A Claim?**

To qualify for payment, you must complete and submit the appropriate Claim Form, signed by you under penalty of perjury, along with any required supporting documents by \_\_\_\_\_, 2016. Online Claim Forms and instructions for submitting claims are available at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). Claim Forms and instructions can also be obtained by calling 1-888-XXX-XXXX.

### **What Are Your Other Options?**

If you don't want to be legally bound by the settlement, you must "opt out" or exclude yourself by mailing a note signed by you that lists your full name, address and the statement: "I wish to be excluded from the WEN Class Action Settlement." Opt-Out statements must be postmarked no later than \_\_\_\_\_, 2016. If you properly exclude yourself, you will not get any settlement payment and you cannot object to the settlement. However, you will retain any legal claims you may have against the Defendants and may be able to sue on your own in the future.

If you are a Class Member, you can object to any part of the settlement you don't like and the Court will consider your views. Your objection must be timely, in writing, and contain certain specific information as described at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or available by calling 1-888-XXX-XXXX. Objections must be received by the Court, Class Counsel and Defendants' Counsel by \_\_\_\_\_, 2016 [insert date 45 days prior to Final Hearing].

The Court will hold a Final Approval Hearing at \_\_\_\_\_ on \_\_\_\_\_ 2016, in Los Angeles, California. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate and whether to approve the Named Plaintiffs' incentive awards and the attorneys' fees requested by Class Counsel. You may attend the hearing, and you may hire your

own lawyer, but you are not required to do either. The Court will consider timely written objections and will listen to objectors who request to speak at the hearing.

### **What To Do If You Have Questions**

This Notice is just a summary. A more detailed notice, as well as the Settlement Agreement and other documents related to this lawsuit, can be found online at [www.WENClassSettlement.com](http://www.WENClassSettlement.com). For more information, you may call or write to the Class Administrator at 1-888-XXX-XXXX or P.O. Box XXXX, XXXXXXXXXX.



# **EXHIBIT F**

**TIER 1 CLASS-WIDE FLAT RATE CLAIM**

**TIER 1 CLASS-WIDE FLAT RATE CLAIM**

- Please complete all steps of the Tier 1 Class-Wide Flat Rate Claim Form. You must submit all of the required information in order to have a valid claim.
- Any person who purchased or used WEN® Hair Care Products ("WEN®") can file a Tier 1 Class-Wide Flat Rate Claim for a **one-time \$25 Cash Payment** as compensation for claims of personal injury including hair loss, hair damage, or scalp irritation after using WEN®, or for alleged false statements regarding WEN®.
- Instead of submitting a Tier 1 Class-Wide Flat Rate Claim Form, you may submit a Tier 2 Documented Adverse Reaction Claim Form. However, to submit a valid Tier 2 Documented Adverse Reaction Claim, you must have documentation to support your personal injury claim.
- To complete the Tier 1 Class-Wide Flat Rate Claim Form, you must sign and date the Declaration at the bottom of this form.
- Return your signed and completed Tier 1 Class-Wide Flat Rate Claim Form postmarked by \_\_\_\_\_, 2017. Your claim can be submitted by mail, email or online:

By mail: WEN Settlement Administrator  
 c/o XXXXXXXXX  
 Address 1  
 City, ST ZIP

By email: EMAIL

Online: WEBSITE

- QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX.

**CLASS MEMBER IDENTIFICATION**

FIRST NAME OF SETTLEMENT CLASS MEMBER																	MIDDLE INITIAL
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LAST NAME OF SETTLEMENT CLASS MEMBER																			
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MAILING ADDRESS																								
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CITY															STATE	ZIP CODE				
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DAYTIME PHONE NUMBER					MOBILE/HOME PHONE NUMBER				
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EMAIL ADDRESS																								
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**ATTORNEY NAME AND CONTACT INFORMATION (IF REPRESENTED)**

- I am represented by an attorney (if yes, please list your attorney's name and contact information below.)  YES  NO

NAME OF ATTORNEY																								
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MAILING ADDRESS OF ATTORNEY																								
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CITY															STATE	ZIP CODE				
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WEN® HAIRCARE PRODUCTS SETTLEMENT

TIER 1 CLASS-WIDE FLAT RATE CLAIM

Three groups of three empty boxes for phone number input.

PHONE NUMBER OF ATTORNEY

A long row of 25 empty boxes for email address input.

EMAIL ADDRESS OF ATTORNEY

CLASS MEMBERSHIP & BACKGROUND

Please provide information for all of the statements below.

- 1. I purchased WEN® approximately \_\_\_\_ times between November 1, 2007 and August \_\_\_\_, 2016.
2. I purchased WEN® through the following outlet(s) (check all that apply):
www.wen.com www.wenhaircare.com www.chazdean.com Sephora QVC
Amazon Overstock Chaz Dean Salon
Other. If other, please list: \_\_\_\_\_

DECLARATION

I wish to receive a \$25 Cash Payment for my Tier 1 Class-Wide Flat Rate Claim.

I declare, under penalty of perjury, under the laws of the United States, that the information provided in the Claim Form is true and correct.

PRINT NAME followed by a row of 25 empty boxes for name input.

SIGNATURE followed by a large empty box for signature input.

DATE followed by three groups of two empty boxes for date input.

# **EXHIBIT G**

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

**TIER 2 – DOCUMENTED ADVERSE REACTION CLAIM FORM INSTRUCTIONS**

1. Please complete all steps of this Tier 2 Documented Adverse Reaction Claim Form. You must submit all of the required information and documentation in order to have a valid claim. **Note: If you do not claim to have experienced personal injury after using WEN® Hair Care Products, or if you have no documentation of same, but nevertheless wish to file a Tier 1 Class-Wide Flat Rate Claim, you will need to fill out and submit only the Tier 1 Class-Wide Flat Rate Claim Form.**
2. To complete the Tier 2 Documented Adverse Reaction Claim Form, you must sign and date the Declaration at the bottom of this form.
3. Return your signed and completed Tier 2 Documented Adverse Reaction Claim Form and all of your documentation postmarked by \_\_\_\_\_, 2016. Your Claim can be submitted by mail, email or online:

By mail: WEN Settlement Administrator  
 c/o XXXXXXXXX  
 Address 1  
 City, ST ZIP

By email: EMAIL

Online: WEBSITE

4. QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX.

**STEP ONE: CLASS MEMBER IDENTIFICATION**

<b>FIRST NAME OF SETTLEMENT CLASS MEMBER</b>	<b>MIDDLE INITIAL</b>	
<b>LAST NAME OF SETTLEMENT CLASS MEMBER</b>		
<b>MAILING ADDRESS</b>		
<b>CITY</b>	<b>STATE</b>	<b>ZIP CODE</b>
<b>DAYTIME PHONE NUMBER</b>	<b>MOBILE/HOME PHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>		

**STEP TWO: ATTORNEY NAME AND CONTACT INFORMATION (IF REPRESENTED)**

1. I am represented by an attorney. If yes, please list your attorney's name and contact information below. If no, continue to step three. 
 YES       NO

<b>NAME OF ATTORNEY</b>																								
<b>MAILING ADDRESS OF ATTORNEY</b>																								
<b>CITY</b>	<b>STATE</b>	<b>ZIP CODE</b>																						
<b>PHONE NUMBER OF ATTORNEY</b>																								

QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

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EMAIL ADDRESS OF ATTORNEY

**STEP THREE: CLASS MEMBERSHIP & BACKGROUND**

Please provide information for all of the statements below.

- I purchased WEN® approximately \_\_\_\_\_ times between November 1, 2007 and August 1, 2016.
- I purchased WEN® through the following outlet(s) (check all that apply):  
 [www.wen.com](http://www.wen.com)    [www.wenhaircare.com](http://www.wenhaircare.com)    [www.chazdean.com](http://www.chazdean.com)    Chaz Dean Salon    Sephora    QVC  
 Amazon    Overstock  
 Other. If other, please list: \_\_\_\_\_
- I used WEN® between the approximate dates: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ and \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_.
- 

**STEP FOUR: DAMAGE TO HAIR & SCALP**

Please complete all of the questions/statements below. As explained below, you must supply a personal statement fully describing your injuries.

- When was the approximate date you began to notice injury to your hair or scalp? \_\_\_\_ / \_\_\_\_ / \_\_\_\_
- I suffered from the following injuries (check all that apply):  
 Loss of hair    Change in hair texture    Hair breakage    Loss of hair color/color change  
 Bald spots    Visible thinning    Damage to scalp  
 Other. If other, please explain: \_\_\_\_\_
- If you suffered from hair loss, what was the extent of your hair loss? Please describe:  
 \_\_\_\_\_
- Has your hair returned to normal?  YES    NO
- If yes, how long did your hair take to return to normal?  
 3 months or less    3 to 6 months    6 months to 1 year    More than 1 year    More than 2 years
- If no, what percentage of your hair has not grown back? \_\_\_\_\_%
- Did you contact the outlet you purchased WEN® or anyone else with a complaint about the damage to your hair or scalp?  YES    NO
  - If you made a complaint, what is the approximate date of your complaint? \_\_\_\_ / \_\_\_\_ / \_\_\_\_
  - If you made a complaint, with whom did you make your Complaint (Check all that apply)?  
 Guthy-Renker    WEN by Chaz Dean    Sephora    QVC    Amazon    Overstock  
 Government entity    Other. If other, please list: \_\_\_\_\_
  - I have attached a copy of my complaint.  YES    NO

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

## TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM

### STEP FOUR: DAMAGE TO HAIR & SCALP, CONTINUED

8. **Injury statement:** Please provide a detailed statement fully describing your injuries related to hair loss, thinning, scalp irritation, etc. If you need additional space, attach additional sheets as necessary and mark the statement as "**Exhibit A**" on the top of each page. Make sure your full name is on each page of Exhibit A.

### STEP FIVE: EMOTIONAL INJURIES

Please complete all of the questions/statements below and attach any additional documentation or statements you may have. You must supply a written or video statement fully describing any emotional injuries that resulted from the damage to your hair and/or scalp.

1. I have one or more of the following conditions (check all that apply):

- Anxiety     Depression     Damage to self-esteem     Impaired daily activity  
 Impaired ability to do my job     Damage to relationships     Affected special event  
 Other. If other, please explain briefly and in detail in your statement:

\_\_\_\_\_

2. How long did your emotional injuries last? Please describe: \_\_\_\_\_

3. Did you seek professional help, like counseling, for your emotional damages?     YES     NO

4. If yes, what type of treatment did you seek? \_\_\_\_\_

5. How many times have you sought treatment? \_\_\_\_\_ times

6. What time period did you seek treatment? \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ to \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_.

7. Are you still seeking treatment?     YES     NO

8. **Emotional Injury statement:** Please provide a detailed statement fully describing the emotional injuries you suffered. For instance, if you marked "impaired daily activity" above, you should state what that means and the extent to which your daily activity was impaired. If you need additional space, please attach additional sheets as necessary and mark the emotional injury statement as "**Exhibit B**" on the top of each page. Make sure your full name is on each page of Exhibit B.



TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM

**STEP SIX: PRE-EXISTING CONDITIONS**

1. Have you ever suffered from any hair loss or scalp irritation **prior** to using WEN®?  YES  NO
2. If yes, please describe: \_\_\_\_\_
3. Have you experienced any of the following in the three years before, during, or after your use of WEN®? Check all that apply:  
 Pregnancy  Death of a Close Friend/Family Member  Job Change  
 Financial Troubles (i.e., declared bankruptcy; lost job)  Divorce
4. Have you ever suffered from any of the following prior to using WEN®? Check all that apply:  
 Hormone replacement therapy  Autoimmune disease or alopecia  Thyroid problems  
 Other pre-existing hair loss. If other, please explain: \_\_\_\_\_
5. Have you had any of the following treatments? Check all that apply:  
 Chemotherapy  Radiation  
 Other treatment resulting in hair loss. If other, please explain: \_\_\_\_\_
6. If you had hair loss prior to using the WEN®, did your hair loss worsen after you started using WEN®?  YES  NO

**Pre-Existing Conditions Statement:** If you had pre-existing hair loss, please describe how the use of WEN® effected your hair loss (if at all). You should provide as many details as possible and attach any documentation you may have. (e.g., statements, medical records or other documentation indicating prior conditions or worsening of those conditions after using WEN®). If you need additional space, please additional sheets as necessary and mark the pre-existing conditions statement as "**Exhibit C**" on the top of each page. Make sure your full name is on each page of Exhibit C.

**STEP SEVEN: MEDICAL TREATMENTS**

1. Did you see a doctor or other medical provider related to your injuries? If yes, complete this section. If not, continue to the next step.  YES  NO
2. If you had medical treatments related to your injuries, please describe them below:

QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

Under the terms of the Settlement, you will be reimbursed for any out-of-pocket expenses you incurred as a result of the hair loss or scalp irritation. However, **PROOF OF PAYMENT IS REQUIRED** for reimbursement, such as receipts, cancelled checks, bank statements, account statements, etc. Medical payments covered by insurance will not be reimbursed. Co-pay or out-of-pocket medical payments related to hair loss or scalp irritation qualify for reimbursement. Payments made by your insurance company are not recoverable.

**STEP SEVEN: MEDICAL TREATMENTS, CONTINUED**

In the space below, list your out-of-pocket expenses for medical treatments, approximate date of payment and to whom payment was made. **Attach the corresponding documentation to your Claim Form and label these documents as "Exhibit D."** Please attach an additional sheet if you have additional expenses. If you need additional space, please additional sheets as necessary and also mark the additional sheets as **"Exhibit D."** If some of your expenses were paid by insurance or otherwise reimbursed, please indicate below.

<b>Date</b>	<b>Name of Provider</b>	<b>Description of Services</b>	<b>Amount Paid</b>	<b>Proof attached?</b>
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
<b>Less Amount Paid by Insurance or Otherwise Reimbursed:</b>			\$ _____	
<b>Total Out-of-Pocket Expenses:</b>			\$ _____	

**STEP EIGHT: OTHER TREATMENTS & EXPENSES**

Please complete all of the questions/statements below and attach any additional documentation or statements you may have.

- As a result of the damage to my hair and/or scalp from the use of WEN®, I used the following treatments to repair the damage to my hair and/or scalp or address a change in my appearance (check all that apply):
  - Salon treatments
  - Special haircuts
  - Wigs
  - Extensions
  - Home treatment/Over-the-counter
  - Other. If other, please explain: \_\_\_\_\_

Under the terms of the Settlement, you will be reimbursed for any out-of-pocket expenses you incurred as a result of the hair loss or scalp irritation. However, **PROOF OF PAYMENT IS REQUIRED** for reimbursement, such as

QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

receipts, cancelled checks, bank statements, account statements, etc.

In the space below, list your out-of-pocket expenses, approximate date of payment and to whom payment was made. **Attach the corresponding documentation to your Claim Form and label these documents as "Exhibit E."** Please attach an additional sheet if you have additional expenses. If you need additional space, please additional sheets as necessary and also mark the additional sheets as "Exhibit E."

<u>Date</u>	<u>Name of Provider</u>	<u>Description of Services</u>	<u>Amount</u>	<u>Proof attached?</u>
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

**STEP EIGHT: OTHER TREATMENTS & EXPENSES, CONTINUED**

___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
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___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
___ / ___ / ___	_____	_____	\$ _____	<input type="radio"/> YES <input type="radio"/> NO
<b>Total Out-of-Pocket Expenses:</b>			\$ _____	

**STEP NINE: PROOF OF INJURIES & WITNESS STATEMENTS**

The extent of scalp irritation and/or hair loss suffered and the duration of the hair loss are two critical components of evaluating your claim. Before and after photographs are often the best resource for demonstrating the amount of hair loss or scalp damage suffered. If you would like to provide additional information in the form of a written statement or video, you may also include any additional information you believe would be helpful in evaluating your claim. Any written statements must be dated and signed. **Any documents relating to Step 9 should be labeled "Exhibit F."**

Your claim should include the following:

- 1. Proof of injuries and witness statements.** You should attach Proof of injuries or witness statements you have and would like to be considered with your claim. This may include:
  - a. Photos: Before and after photos of the damage to your hair and/or scalp. Each photo must be dated and labeled as either "before" or "after" photos.
  - b. Medical records: Copies of medical records, doctor's notes, test results and/or a statement from your doctor indicating damage to your hair or scalp after using WEN®.
  - c. Statement from your hair stylist(s): Written or video statements from your hair stylist(s) indicating the amount of hair loss suffered and any lasting effects.
  - d. Statements from other witnesses: Written or video statements that can testify about the damage to your hair and its effect on you (e.g. spouse, family friends). Please be sure to include any witnesses name and their relationship to you.
- 2. Copies of receipts or other proof of expenses.** As detailed in Step Seven and Step Eight, in order to be reimbursed for any expenses related to your Tier 2 Documented Adverse Reaction Claim, **you must submit copies of receipts or other proof of payment along with your Claim Form.**

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM FORM**

**STEP TEN: ADDITIONAL PERSONAL STATEMENT**

If you would like to provide any additional information to be considered with your claim, please provide it below. If you need additional space, attach additional sheets as necessary. If you need additional space, please additional sheets as necessary and mark the additional personal statement as "Exhibit G" on the top of each page. Make sure your full name is on each page of Exhibit G.

**STEP ELEVEN: DECLARATION**

I declare, under penalty of perjury, under the laws of the United States, that the information provided in the Claim Form is true and correct.

PRINT NAME

SIGNATURE

DATE

QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX

# **EXHIBIT H**

**WEN® HAIR CARE PRODUCT SETTLEMENT**

**CLAIM FORM INSTRUCTIONS**

The WEN® Hair Care Product (“WEN®”) Settlement that has been approved by the Court contains two separate claims: (1) Tier 1 Class-Wide Flat Rate Claims; and (2) Tier 2 Documented Adverse Reaction Claims.

Please read and follow the Claim Form instructions and complete the appropriate Claim Form.

Your signed and completed Claim Form and all of your supporting documentation MUST be submitted or postmarked by \_\_\_\_\_, 2017.

Make sure you complete all steps of the Claim Form you submit. You must submit all of the required information and/or documentation in order to have a valid claim. Additional information requested should be attached to your Claim Form and be labeled according to the instructions on the Claim Form. Be sure to sign and date the Declaration.

You may submit your completed Claim Form and documentation to the Settlement Administrator by mail, email or online:

By mail: Wen Settlement Administrator  
XXX  
XXXXX, XX XXXXX

By email: [XXX@XXXXX.com](mailto:XXX@XXXXX.com)

Online: [www.WENSettlementClass.com](http://www.WENSettlementClass.com)

**TIER 1 CLASS-WIDE FLATE RATE CLAIM**

Any person who purchased or used WEN® Hair Care Products can file a Tier 1 claim for a one-time \$25 Cash Payment as compensation for release of all claims of personal injury including hair loss, hair damage, scalp pain or irritation after using WEN®, or for alleged false statements regarding WEN®. Class Members making a Tier 1 Class-Wide Flat Rate Claim ONLY should return the Tier 1 Claim Form to the Settlement Administrator by submitting it directly via the Settlement Website, or at the address on the second page of these instructions.

**TIER 2 DOCUMENTED ADVERSE REACTION CLAIM**

For those few individuals that claim to have experienced a personal injury including hair loss, hair damage, or scalp irritation to their hair or scalp after using WEN®, the ten-step Tier 2 Documented Adverse Reaction Claim Form must be fully completed. Additional information requested should be attached to your Claim Form. The more information and supporting information you are able to provide, the more accurately the Special Master will be able to value your claim. Be sure to write detailed, narrative statements describing your injuries and treatments where indicated on the Tier 2 Documented Adverse Reaction Claim Form. You may also provide an additional written or video statement to provide additional information if you need more room or would like to provide additional details.

QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX.

**WEN® HAIR CARE PRODUCT SETTLEMENT****TIER 2: DOCUMENTED CLAIM, CONTINUED**

**Written Statements:** When asked to submit a written statement in the Tier 2 Documented Adverse Reaction Claim Form, please write a detailed statement regarding your injuries and treatments. The more detail you can provide the better. If you need additional room or would like to provide additional details, you may attach an additional statement and label them pursuant to the directions in the Tier 2 Documented Adverse Reaction Claim Form. Add photographs and/or videos to further support your claim. Make sure your name is included on every page submitted.

**Video Statements:** Instead of a written statement, you may submit a video statement explaining your experience with WEN® as instructed more fully below. The more detail you can provide the better. Video statements can be made with a cell phone or other device and can be uploaded to the Settlement Administrator at the email/website listed above. Make sure to identify yourself by name and confirm you are the Class Member making a claim in any video statement submitted.

Once all Tier 2 Documented Adverse Reaction Claim Forms are received, a Special Master (a retired United States Federal Magistrate Judge) will review each Claim and determine the amount each person shall receive, up to a maximum of \$20,000. The decision by the Special Master will be based on the information provided with your Claim Form. The Special Master's decision is final and cannot be appealed or reconsidered.

**TIER 2: DOCUMENTED CLAIM CRITERIA**

The criteria to be used by the Special Master in calculating Settlement Payments include:

1. Duration of product use;
2. Whether a Complaint was filed by the consumer;
3. Severity of Scalp Irritation;
4. Amount of Hair Loss;
5. Duration of Hair Loss;
6. Portion of regrowth;
7. Physical discomfort;
8. Duration of physical discomfort;
9. Medical Treatment(s)
10. Supporting documentation from medical provider(s) including receipts;
11. Supporting documentation from non-medical provider(s) including receipts;
12. Personal statement and/or video regarding effect on their daily life;
13. Whether a Complaint was filed by the consumer;
14. Out-of-pocket expenses with supporting receipts; and
15. Any pre-existing medical conditions

**Note:** The more information and Supporting Documentation provided, the more accurately the Special Master will be able to value the claim.

QUESTIONS? Visit the settlement website at [www.WENClassSettlement.com](http://www.WENClassSettlement.com) or call 1-888-XXX-XXXX.



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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

**AMY FRIEDMAN, JUDI  
MILLER, KRYSTAL HENRY-  
MCARTHUR, and LISA  
ROGERS on behalf of themselves  
and all others similarly situated,**

**Plaintiffs,**

**v.**

**GUTHY-RENKER LLC and  
WEN BY CHAZ DEAN, INC.,**

**Defendants.**

**Case No. 2:14-cv-06009-ODW-AGR**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL**

**Judge: Hon. Otis D. Wright II**

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

Before the Court is the Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement. The Court has considered the Settlement Agreement and Release of Claims; the Joint Declaration of Interim Lead Counsel and the exhibits thereto.

The matter having been submitted and good cause appearing therefore, the Court finds as follows:

1. All defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement and Release of Claims executed by the settling parties and filed with this Court (the “Settlement Agreement”).

2. The Named Plaintiffs and the Released Parties, through their counsel of record in the Lawsuit, have reached an agreement to settle all claims in the Lawsuit.

3. The Court preliminarily concludes that, for the purposes of approving

1 this settlement only, and for no other purpose and with no other effect on the  
2 Lawsuit, and with no effect upon the Defendants' right to contest certification  
3 should the proposed Settlement Agreement not ultimately be approved or should  
4 the Effective Date not occur, the proposed Settlement Class meets the requirements  
5 for certification under Rule 23 of the Federal Rules of Civil Procedure in that:

6 (a) the proposed Settlement Class is ascertainable and so numerous  
7 that joinder of all Settlement Class Members is impracticable;

8 (b) there are questions of law or fact common to the proposed  
9 Settlement Class;

10 (c) the claims of the Named Plaintiffs are typical of the claims of  
11 the proposed Settlement Class Members;

12 (d) the Named Plaintiffs will fairly and adequately represent the  
13 interests of the proposed Settlement Class Members;

14 (e) certification of a Settlement Class is superior to other available  
15 methods for efficient adjudication of this controversy;

16 (f) Class Counsel are qualified to serve as counsel for the Named  
17 Plaintiffs and the Settlement Class; and

18 (g) common issues will predominate over individual issues with  
19 respect to the Settlement Class.

20 4. The parties have also presented to the Court for review a Settlement  
21 Agreement, which proposes a Settlement that is within the range of reasonableness  
22 and meets the requirements for preliminary approval.

23 5. The parties have also presented to the Court for review a plan to  
24 provide notice to the proposed Settlement Class of the terms of the Settlement and  
25 the various options each Settlement Class Member has, including, among other  
26 things, (1) the option for Settlement Class Members to opt-out of the class action;  
27 (2) the option to be represented by counsel of their choosing and to object to the  
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1 proposed settlement; and/or (3) the option to participate in the Settlement. Notice  
2 will be disseminated consistent with the Settlement Agreement. The Court  
3 preliminarily concludes that:

4 (a) the notice proposed is the best practicable under the  
5 circumstances, consistent with Fed. R. Civ. P. 23(c)(2)(B), and provides sufficient  
6 notice to all Settlement Class Members, and

7 (b) the contents of the proposed notice and the manner of its  
8 dissemination satisfy the requirements of state and federal due process.

9 Good cause appearing therefore, IT IS HEREBY ORDERED that:

10 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the  
11 Settlement Agreement and Release of Claims, and the Settlement contemplated  
12 therein, is preliminarily approved.

13 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for  
14 purposes of, and solely in connection with, the Settlement, the Court finds that  
15 each of the requirements for certification of the Settlement Class set forth in  
16 Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Class  
17 Action Settlement are met and hereby conditionally certifies the following  
18 Settlement Class:

19 All purchasers or users of WEN Hair Care Products in the  
20 United States or its territories between November 1, 2007  
21 and August 1, 2016, excluding (a) any such person who  
22 purchased for resale and not for personal or household  
23 use, (b) any such person who signed a release of any  
24 Defendant in exchange for consideration, (c) any officers,  
25 directors or employees, or immediate family members of  
26 the officers, directors or employees, of any Defendant or  
27 any entity in which a Defendant has a controlling interest,

1 (d) any legal counsel or employee of legal counsel for any  
2 Defendant, and (e) the presiding Judge in the Lawsuit, as  
3 well as the Judge’s staff and their immediate family  
4 members.

5 3. The Court appoints and designates the Named Plaintiffs, Amy  
6 Friedman, Judi Miller, Krystal Henry-McArthur, and Lisa Rogers as Settlement  
7 Class Representatives. The Court appoints and designates the following attorneys  
8 and law firms as Class Counsel: Neville L. Johnson of Johnson & Johnson, LLP;  
9 William H. Anderson of Cuneo Gilbert & LaDuca, LLP; and Brian W. Warwick of  
10 Varnell & Warwick, P.A. The Court authorizes Class Counsel to take approved  
11 steps to effectuate the Settlement Agreement and the Settlement contemplated  
12 therein on behalf of the Named Plaintiffs and Settlement Class Members.

13 4. The Court directs that Notice be provided consistent with the terms of  
14 the Settlement Agreement.

15 5. Notice of the proposed Settlement and the rights of Settlement Class  
16 members to opt out of the settlement, to object to the settlement, and/or to make a  
17 claim shall be given by issuance of Notice consistent with the terms of the  
18 Settlement Agreement. Non-substantive changes to the form of the Notice may be  
19 made without seeking further approval of the Court.

20 6. Class Counsel shall file a Motion for Fees and Costs on or before  
21 \_\_\_\_\_ [30 days before the Final Approval Hearing].

22 7. A hearing (the “Final Approval Hearing”) shall be held in Courtroom  
23 11 of the United States District Court for the Central District of California,  
24 Western Division, 312 North Spring Street, Los Angeles, CA 90012, on  
25 \_\_\_\_\_ at \_\_:\_\_ a.m./p.m. to consider whether the settlement should be given  
26 final approval by the Court and whether this Court should enter a Final Approval  
27 Order.

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1 8. Written objections by Settlement Class Members to the proposed  
2 Settlement will be considered if they are filed with the Court and received by Class  
3 Counsel and counsel for Defendants on or before \_\_\_\_\_ [45 days before the Final  
4 Approval Hearing].

5 9. All papers filed in support of final approval of the proposed  
6 Settlement shall be filed on or before \_\_\_\_\_ [30 days before the Final Approval  
7 Hearing]. The form of Notice disseminated to the Settlement Class shall be filed  
8 with the Court on or before \_\_\_\_\_ [30 days before the Final Approval Hearing].  
9 Evidence that the parties have complied fully with the notice provisions of the  
10 Class Action Fairness Act of 2005, 28 U.S.C. § 1715, shall be filed with the Court  
11 on or before \_\_\_\_\_ [30 days before the Final Approval Hearing].

12 10. At the Final Approval Hearing, Settlement Class Members may be  
13 heard orally in support of or, if they have timely submitted written objections, in  
14 opposition to the proposed Settlement.

15 11. Class Counsel and counsel for Defendants should be prepared at the  
16 Final Approval Hearing to respond to any objections filed by Settlement Class  
17 Members and to provide other information as appropriate, bearing on whether or  
18 not the proposed Settlement should be finally approved.

19 12. In the event that the Effective Date occurs, all Settlement Class  
20 Members will be deemed to have forever released and discharged the Released  
21 Claims. In the event that the Effective Date does not occur for any reason  
22 whatsoever, the Settlement Agreement shall be deemed null and void and shall  
23 have no effect whatsoever.

24 13. Pending entry of a Final Approval Order (and any appellate review  
25 thereof), all discovery, pretrial deadlines, and other pretrial proceedings in the  
26 Lawsuit are stayed and suspended until further order of this Court, except as  
27 otherwise agreed to by the parties, or as may be necessary to implement the  
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1 Settlement Agreement or this Order.

2 14. Pending a ruling on the Final Approval Order (and any appellate  
3 review thereof) or termination of the Settlement Agreement, whichever occurs  
4 earlier, all Settlement Class Members, and any person actually or purportedly  
5 acting on behalf of any Settlement Class Member(s), are stayed and enjoined from  
6 commencing, instituting, continuing, pursuing, maintaining, prosecuting, or  
7 enforcing any Released Claim, directly or indirectly, in any judicial,  
8 administrative, arbitral, or other forum, against any of the Released Parties.

9 15. Other than to enforce its terms, this Order is not admissible as  
10 evidence for any purpose against the Released Parties in any pending or future  
11 litigation. In the event that no Final Approval Order is issued or the Settlement  
12 Agreement is otherwise terminated pursuant to its terms, the Order shall not be  
13 construed or used: (a) as an admission or evidence of the validity of any Released  
14 Claim or of any wrongdoing by or against the Released Parties, or (b) as a waiver  
15 by the Released Parties of any right to present any evidence, arguments, or  
16 defenses (including without limitation to class certification) in this action or any  
17 other proceeding.

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19 DATED: \_\_\_\_\_, 2016

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HON. OTIS D. WRIGHT II  
United States District Judge

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