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

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

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

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. '15CV2464 H JMA

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Trial Date:

18 **CLASS ACTION COMPLAINT**

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

24 **INTRODUCTION AND NATURE OF ACTION**

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

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

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

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

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

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

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

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

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

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

6 **JURISDICTION AND VENUE**

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

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

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

18 **PARTIES**

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

25 14. In May 2013, Plaintiff moved to Pittsburgh and once again tried Rusk
26 Anti-Curl to relax her hair. However, it no longer worked as well as it had in the
27 past and Plaintiff thus sought a more effective product.
28

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

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

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

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

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

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

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

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

3 22. On November 11, Plaintiff sent ISO customer service an email about
4 her situation and followed up with a phone call on November 13, 2013. During the
5 call, Plaintiff made clear that she was losing hair by the handful. Jeanette Toth, a
6 customer service employee, recommended that Plaintiff use Joico Deep
7 Reconstructor Conditioner, Leave-In Protectant and Intense Hydrator¹ (the "Joico
8 Products") and sent an email outlining how Plaintiff should use these products.

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

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

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

27 _____
28 ¹ Upon information and belief Joico is a beauty brand also owned by Zotos.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 *See Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Express Warranty)**

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

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

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

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

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

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

14 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

5 96. Plaintiff relied on Defendants’ misrepresentations and omissions

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

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

16 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

16 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **(Strict Liability)**

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

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

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

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

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

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

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

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

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

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

5
6 **PRAAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for a judgment:

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

25 DATED: October 30, 2015.

Respectfully submitted,

26 By: TODD D. CARPENTER

27
28 By: _____/s/_____

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CARPENTER LAW GROUP

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

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DEMAND FOR JURY TRIAL

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

DATED: October 30, 2015.

Respectfully submitted,

By: _____/s/_____

TODD D. CARPENTER

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

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Todd . D. Carpenter (CA SBN 234464) 402 West Broadway 29th Floor San Diego, California 92101

DEFENDANTS

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

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

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

Attorneys (If Known) '15CV2464 H JMA

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sec 1332(d) and 28 U.S.C. Sec 1391(a) and (b) Brief description of cause: Consumer product liability class action.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/30/2015 SIGNATURE OF ATTORNEY OF RECORD s/ TODD D. CARPENTER

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

1 CARPENTER LAW GROUP
Todd . D. Carpenter (CA SBN 234464)
2 402 West Broadway 29th Floor
San Diego, California
3 (619)347-3517
Todd@Carpenterlawyers.com

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

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

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

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. '15CV2464 H JMA

Declaration in Support of Jurisdiction

Trial Date:

18
19
20 I, Todd D. Carpenter, declare under penalty of perjury the following:

21
22 1. I am an attorney duly licensed to practice before all of the courts of the
23 State of California. I am the principle and owner of the Carpenter Law Group, and
24 the counsel of record for plaintiffs in the above-entitled action

25 2. Defendants Innovative Styling Options, Inc. and Zotos International,
26 Inc. have done and are doing business in the Southern District of California. Such
27 business includes the marketing, distributing and sale of their products.
28

1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct.

3 Executed this 30th Day of October, 2015 in San Diego, California.
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7 Dated: October 30, 2015

8 */s/ Todd D. Carpenter*
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DEMAND FOR JURY TRIAL

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

DATED: October 30, 2015.

Respectfully submitted,

By: _____/s/_____

TODD D. CARPENTER

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