

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(FORT LAUDERDALE DIVISION)**

CASE NO. _____

WAVERLY ROBINSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

QVC, INC., a Delaware for profit corporation, and
WEN BY CHAZ DEAN, INC., a California for
profit corporation,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendants QVC, Inc. (“QVC”) and WEN By Chaz Dean, Inc. (“WEN”) hereby file this Notice of Removal and remove an action that is pending in the Seventeenth Judicial Circuit Court of Broward County, Florida, Case No. CACE-16-005367. Removal is proper because this Court has jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). In support of this Notice of Removal, QVC and WEN state as follows:

I. The State Court Class Action

1. On March 21, 2016, Plaintiff Waverly Robinson (“Plaintiff”) filed a putative class action against QVC and WEN (collectively, “Defendants”) in the Seventeenth Judicial Circuit Court of Broward County, Florida, captioned *Robinson v. QVC Inc. et al.*, Case No. CACE-16-005367 (the “State Court Action”).

2. In the State Court Action, Plaintiff alleges that she purchased a hair care product manufactured by WEN and sold to Plaintiff through QVC’s online store. (Compl. ¶ 18).

Plaintiff contends that use of the hair care product can cause certain side effects, including hair loss. (*Id.* ¶¶ 1, 3, 11, 18). Plaintiff contends that she would not have purchased the product if she had known of these alleged side effects. (*Id.* ¶¶ 1, 3-4, 11, 17, 20, 21).

3. Based on these allegations, Plaintiff asserts causes of action against QVC and WEN for: (a) violations of Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA); and (b) negligent misrepresentation. (*Id.* ¶¶ 50-85). Despite not alleging which particular hair care product she purchased, Plaintiff purports to bring these claims on behalf of a class of all persons in Florida who purchased any one of five different varieties of WEN cleansing conditioner products (the “WEN Products”) from four years preceding the date of the filing of the Complaint through and until notice is provided to the class. (*Id.* ¶¶ 2, 36).

4. Plaintiff does not seek damages for personal injuries. (*Id.* ¶ 2). Instead, on behalf of the putative class, Plaintiff seeks: (a) compensatory damages equal to the amount of aggregate retail sales of the five products to Florida purchasers during the class period (*id.* ¶¶ 4, 11, 17, 32, 58, 76); (b) attorneys’ fees and costs (*id.* p. 14, 18, 20 at “Wherefore Clauses”); (c) injunctive relief that (i) prohibits Defendants from advertising any of the products; (ii) requires Defendants to launch a “corrective advertising campaign” warning of the alleged side effects; and (iii) requires WEN to conduct a “reformulation of the Products so that they no longer cause such negative Side Effects” (*id.* ¶¶ 33, 60, 78); and (d) declaratory relief (*id.* ¶¶ 45, p. 20 “Wherefore Clause” at ¶ B).

5. QVC was served with a copy of the summons and Complaint on March 31, 2016.

6. WEN was served with a copy of the summons and Complaint on April 8, 2016.

7. As of the date and time of filing of this Notice of Removal, no hearings have been set and trial has not been scheduled in the State Court Action. On March 21, 2016, the same day

Plaintiff filed this action, Plaintiff filed a motion for class certification and for a temporary stay of proceedings and briefing on that motion. No hearing has been scheduled on that motion, and no ruling has issued. A copy of Plaintiff's motion included in Composite Exhibit 1.

II. Venue

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 89(c), 1441(a), & 1446(a), because the Seventeenth Judicial District Court of Broward County, Florida, where the State Court Action was filed and has been pending prior to removal, is a state court within this federal district and division.

III. Subject Matter Jurisdiction

9. This Court has subject matter jurisdiction pursuant to CAFA, Pub. L. No. 109-2 (enacted Feb. 18, 2005), *codified at* 28 U.S.C. §§ 1332(d), 1453, & 1711-15.

10. The Supreme Court recently clarified that “no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014); *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 912 (11th Cir. 2014) (“Applying [*Dart*], we may no longer rely on any presumption in favor of remand in deciding CAFA jurisdictional questions.”).

11. CAFA confers upon the federal courts original subject matter jurisdiction over, and thus makes removable, any class action in which: (a) there is minimal diversity (*i.e.*, any member of the proposed plaintiff class is a citizen of a different state than any defendant); (b) the aggregate number of putative class members in the proposed class is at least 100; and (c) the amount in controversy exceeds \$5 million. *See* 28 U.S.C. §§ 1332(d)(2) & (d)(5)(B).

12. If the requisite elements for CAFA jurisdiction are met, as they are here,¹ the consent of all defendants in the action is not required for removal. *See* 28 U.S.C. § 1453(b). Nevertheless, both defendants in this action consent to removal.

A. CAFA Diversity Exists

13. Under CAFA, diversity of citizenship is satisfied when “any member of a class of Plaintiffs is a citizen of a State different from any Defendant.” 28 U.S.C. § 133(d)(2)(A).

14. The named Plaintiff is a citizen of and is domiciled in the State of Florida and is therefore a citizen of Florida. (Compl. ¶ 10).

15. Defendant QVC is a Delaware corporation with its principal place of business in Pennsylvania. (Compl. ¶ 8). QVC is therefore a citizen of both the States of Delaware and Pennsylvania for diversity jurisdiction purposes. *See* 28 U.S.C. § 1332(c)(1).

16. Defendant WEN is a California corporation with its principal place of business in California. (Compl. ¶ 9). WEN is therefore a citizen of the State of California for diversity jurisdiction purposes. *See* 28 U.S.C. § 1332(c)(1).

17. Because Plaintiff is a citizen of Florida, and QVC and WEN are not citizens of Florida, CAFA diversity exists because at least one putative class member (Plaintiff) is a citizen of a state different from any Defendant (QVC and/or WEN). Thus, the minimal diversity requirements of 28 U.S.C. § 1332(d)(2)(A) are satisfied.

B. The Proposed Class Consists Of More Than 100 Persons

18. Plaintiff seeks to certify a class of all “persons who have purchased the Products in the State of Florida, for personal use, and not for resale, during the time period from four years

¹ QVC and WEN dispute, and reserve the right to contest at the appropriate time, Plaintiff’s allegations that this case can properly be certified and proceed as a class action.

preceding the date of filing of this Complaint through and until Notice is provided to the Class.” (Compl. ¶ 36).

19. More than 100 customers residing in Florida have purchased the WEN Products from QVC alone between April 21, 2012 and the date of the filing of the Complaint. Many other persons residing in Florida have purchased the WEN Products from other retail sources, such as through WEN, Guthy-Renker, Sephora, and Amazon. Therefore, the 100-class member requirement is met.

3. The Amount In Controversy Exceeds \$5 Million

20. CAFA provides that the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5 million. *See* 28 U.S.C. § 1332(d)(6). Federal jurisdiction is appropriate under CAFA if, in the aggregate, “the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).” Senate Judiciary Report, S. Rep. No. 109-14, at 42 (2005); *Atkinson v. Wal-Mart Stores, Inc.*, No. 8:08-cv-691-T-30TBM, 2008 WL 2261787, at *2 (M.D. Fla. May 30, 2008) (“While the general rule of nonaggregation holds that at least one plaintiff must show that at least \$75,000 is in controversy, the amount in controversy under the CAFA can be satisfied by aggregating the individual class members’ claims”).

21. Under controlling Supreme Court and Eleventh Circuit law, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*, 135 S.Ct. at 554; *Dudley*, 778 F.3d at 912. The Supreme Court and the Eleventh Circuit have made clear that “the defendant’s amount-in-controversy allegation

should be accepted when not contested by the plaintiff or questioned by the court.” *Dart*, 135 S.Ct. at 554; *Dudley*, 778 F.3d at 912.

22. In addition, the Eleventh Circuit has recognized that the amount in controversy for CAFA jurisdiction can be satisfied through “reasonable deductions, reasonable inferences, or other reasonable extrapolations.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010).

23. Further, it is axiomatic that “[a] removing defendant need not confess liability in order to show that the controversy exceeds the threshold.” *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008) (citations omitted); *see also Pretka*, 608 F.3d at 751. The amount in controversy “concerns what the plaintiff is claiming (and thus the amount in controversy between the parties), not whether the plaintiff is likely to win or be awarded everything he seeks.” *Id.*

24. Finally, a plaintiff’s conclusory allegation and/or stipulation that the amount in controversy does not exceed \$5 million does not prevent removal under CAFA. *See Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013). This rule has particular force here, where Plaintiff merely alleges that the amount in controversy “is not expected” to exceed \$5 million, implicitly conceding that it may indeed exceed that amount. (Compl. ¶ 5).

25. Here, consistent with these principles, the amount in controversy exceeds \$5 million for all putative class members and CAFA removal is proper. Although QVC and WEN deny that they are liable to Plaintiff at all for any relief, given the Complaint’s request for compensatory damages, attorneys’ fees, and injunctive relief on behalf of the putative class, Plaintiff has put more than \$5 million in controversy.

26. **Compensatory Damages.** Plaintiff alleges that “Plaintiff and the Putative Class members have been damaged in the amount of the aggregate retail sales of the Products throughout the Class Period.” (*Id.* ¶ 58). Therefore, Plaintiff seeks compensatory damages equal to the amount of sales revenue from all retail sales of WEN Products to buyers in Florida over the past four years. (*Id.* ¶ 17).

27. While Defendants dispute that Plaintiff is entitled to any damages, Plaintiff has put “at issue” over \$5 million in compensatory damages alone. For instance, based upon a review of sales data of WEN units purchased from QVC alone, the total sales (excluding refunds) of the WEN Products to Florida customers since March 21, 2012 exceeds approximately \$3.2 million. In addition, the WEN Products are often sold by QVC as part of sets with other products manufactured by WEN, such as treatment sprays. When those sales (excluding refunds) are considered, the amount in controversy rises to more than \$3.86 million.

28. In addition, the WEN Products are sold online to Florida residents through numerous other retail sources, including through WEN’s website, Guthy-Renker, Sephora, and Amazon. Since March 21, 2012, the total sales of the WEN Products to Florida residents from retail sources other than QVC equals, if not exceeds, the total sales from QVC during that time period (*i.e.*, at least \$3.2 million + \$3.2 million). Therefore, when the total Florida sales of the WEN Products from all sources are properly considered in determining the amount in controversy, the compensatory damages alone for the putative class exceeds the \$5 million requirement for CAFA jurisdiction. *See e.g., Pretka*, 608 F.3d at 756 (holding amount in controversy exceeded \$5 million where the complaint “seeks a refund of all of the plaintiffs’ deposits,” and the plaintiffs had deposited more than \$5 million).

29. **Attorneys' Fees.** Plaintiff also seeks attorneys' fees under FDUTPA, which authorizes such fees to the "prevailing party." Fla. Stat. § 501.2105(1). When added to the compensatory damages sought, Plaintiff's demand for attorneys' fees on behalf of the putative class further satisfies the \$5 million amount-in-controversy requirement.

30. It is well-settled that potential attorneys' fees (when authorized by statute or contract) must be considered when calculating the amount in controversy. *See, e.g., Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000) ("When a statute authorizes the recovery of attorney's fees, a reasonable amount of those fees is included in the amount in controversy"); *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1079 (11th Cir. 2000) ("Cohen contends that when a statutory cause of action entitles a party to recover reasonable attorney fees, the amount in controversy includes consideration of the amount of those fees. She is correct."); *Awad v. Cici Enter.*, No. No. 8:06-cv-1278-T-24TBM, 2006 WL 2850108, at *1 (M.D. Fla. Oct. 3, 2006) (emphasizing that "[i]n determining the amount in controversy, reasonable attorney's fees may be included so long as a statute authorizes the recovery of the fees").

31. In determining the amount of attorneys' fees in controversy for purposes of CAFA, federal courts often use a 30% benchmark of total potential damages. *See e.g., Porter v. MetroPCS Commc'ns Inc.*, 592 F. App'x 780, 783 (11th Cir. 2014) (suggesting that a 30 percent benchmark may be appropriate in determining whether CAFA amount-in-controversy requirement is met); *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007) (using 30 percent benchmark). This is consistent with the approval of attorneys' fees of approximately 30% for common-fund class settlements in the Eleventh Circuit. *See e.g., Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999) (affirming fee award of 33.3 percent of class settlement); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330,

1365 (S.D. Fla. 2011) (“The Court is convinced that a fee of 30% . . . is appropriate here” and recognizing that “[n]umerous recent decisions within this Circuit have awarded attorneys’ fees up to (and at times in excess of) 30 percent.”) (collecting cases).

32. In the instant case, CAFA’s amount-in-controversy threshold is exceeded when just QVC sales are considered. For instance, applying the 30% benchmark to the approximately \$3.86 million in sales from QVC increases the amount-in-controversy by more than \$1,158,024 (to more than \$5 million), thereby satisfying the CAFA jurisdictional threshold.

33. Moreover, when the total sales in Florida since March 21, 2012 from retail sources other than QVC are considered (which are equal to, if not greater than, QVC sales), the amount of attorneys’ fees placed at issue more than doubles—from more than \$1 million to more than \$2 million. When combined with the total sales of WEN Products in Florida since March 21, 2012, the CAFA amount-in-controversy is clearly met.²

34. In addition, even if a pure lodestar approach is used to calculate attorneys’ fees, it is reasonable to assume that Plaintiff’s counsel will incur significant attorneys’ fees through the life of this case, thereby further increasing the amount in controversy above \$5 million. Defendants intend to vigorously defend against this action, and Plaintiff will incur attorneys’ fees in connection with each stage of this litigation, including dispositive motions, discovery, class certification, trial preparation, and trial.

35. ***Injunctive Relief.*** Plaintiff also seeks substantial injunctive relief that would effectively require WEN to change the chemical composition of each of the WEN Products, and both WEN and QVC to launch an “advertising campaign” informing consumers of the Products’ alleged side effects. (Compl. ¶¶ 33, 60). The Senate Judiciary Report 109-14—the authoritative

² Even if a 25% benchmark is used, the attorneys’ fees at issue bring the amount in controversy well above the \$5 million CAFA threshold. *See Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL 3818304, at *4 (S.D. Cal. Aug. 4, 2014) (applying 25% benchmark).

source regarding Congress' intent in enacting CAFA³--makes clear that the impact of injunctive relief on a defendant must be considered in determining whether CAFA's amount-in-controversy requirement is met. *See* S. Rep. No. 109-14 (2005), *available at* 2005 WL 627977 (hereinafter, the "Senate Report"); *see, also e.g., Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 274 (7th Cir. 2011) (analyzing CAFA's \$5,000,000 amount in controversy requirement by examining the cost to defendant of complying with injunction because "the cost of prospective relief cannot be ignored in the calculation of the amount in controversy"); *Ullman v. Safeway Ins. Co.*, 995 F. Supp. 2d 1196, 1218 (D.N.M. 2013) (under CAFA, "a court can calculate the defendants' costs associated with the relief sought to determine the amount in controversy"); *Otay Hydraulics, Inc. v. Safety-Kleen Sys., Inc.*, No. 2:12-CV-07357- ODW(VBKx), 2013 WL 1898573, at *2 (C.D. Cal. May 6, 2013) (same); *Magnum Minerals, L.L.C. v. Homeland Ins. Co. of N.Y.*, No. 2:13-CV-103-J, 2013 WL 4766707, at *3 (N.D. Tex. Sept. 5, 2013) (same); *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) (same); *Lewis v. Auto Club Family Inc. Co.*, CIV.A. No. 11-169-D-M2, 2011 WL 3444312, at *3 (M.D. La. July 7, 2011) (same); *Raspberry v. Capitol Cnty. Mut. Fire Ins. Co.*, 609 F. Supp. 2d 594, 600-01 (E.D. Tex. 2009) (same).⁴

36. In this case, Plaintiff's requested injunctive relief has placed in controversy the costs to WEN in developing a new composition for each of the WEN Products at issue. (Compl.

¶ 30). In addition, Plaintiff seeks an order requiring WEN and QVC to launch a "corrective

³ *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1205-06 (11th Cir. 2007) ("[The Senate Report is] the authoritative source for finding the Legislature's intent [regarding CAFA].")

⁴ Although the Eleventh Circuit has applied the "plaintiff's viewpoint" rule for determining the value of an injunction for amount-in-controversy purposes in a case removed under CAFA, the Eleventh Circuit did not provide any analysis to support or explain its application of that rule in the CAFA context. *See S. Florida Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315-16 (11th Cir. 2014). Nor did the court address the Senate Report, which expresses Congress's intent that CAFA allow courts to consider the value of injunctive relief from either the plaintiff's or the defendant's viewpoint. *See* 2015 WL 627977, at *42.

advertising campaign” for the sole purpose of disclosing alleged side effects. If Plaintiff obtains the injunctive relief sought, the costs to Defendants will be substantial, further increasing the amount-in-controversy above the CAFA threshold. *See Adams v. Am. Family Mut. Ins. Co.*, 981 F. Supp. 2d 837, 850–51 (S.D. Iowa 2013) (finding defendant sufficiently demonstrated that the “stakes” of the lawsuit exceeded the amount in controversy because “if Plaintiffs are awarded the declaratory and injunctive relief they seek, Defendant is likely to face pecuniary costs that logically flow from such relief in amounts exceeding \$5 million”).

37. In short, Defendants dispute that Plaintiff is entitled to any form of relief on any of their claims, much less on a class basis. Nonetheless, the aggregate amount in controversy that Plaintiff has placed at issue exceeds \$5 million solely based on sales data for WEN Products in Florida since March 31, 2012. When a 30% benchmark for attorney’s fees is added, the \$5 million threshold is further exceeded. Lastly, the injunctive relief that Plaintiff seeks, further pushes the amount in controversy above the \$5 million requirement.

IV. Timely Removal

38. Defendants have filed this Notice of Removal within thirty (30) days of service of process on them. Removal is thus timely under 28 U.S.C. § 1446(b).

V. Consent

39. The consent of all Defendants is not needed for removal under CAFA. *See* 28 U.S.C. § 1453(b); *Torres v. Countrywide Home Loans, Inc.*, No. 14-20759-CIV, 2014 WL 3742141, at *2 n.1 (S.D. Fla. July 29, 2014). Thus, this issue is irrelevant for CAFA removal. Nonetheless, all Defendants have consented to the removal of the State Court Action.

VI. Process and Pleadings

40. In compliance with 28 U.S.C. § 1446(a), copies of all process and pleadings served on Defendants in the State Court Action are attached hereto as part of Composite Exhibit 1.

VII. Service

41. A copy of this Notice of Removal is being served contemporaneously on Plaintiff's counsel and is being filed simultaneously with the Clerk of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

VIII. Conclusion

WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendants hereby remove this action from the Seventeenth Judicial District Court of Broward County, Florida to the United States District Court for the Southern District of Florida, Fort Lauderdale Division.

Dated: April 27, 2016

Respectfully submitted,

s/ Brian M. Ercole
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Attorneys for WEN by Chaz Dean, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 27, 2016, a true and correct copy of the foregoing Notice of Removal, and all exhibits thereto, was served via electronic mail and Federal Express on the following counsel for the parties:

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/s/ Brian M. Ercole
Brian M. Ercole

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DEFENDANTS

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

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

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

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

- 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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment
8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

s/Brian M. Ercole

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

EXHIBIT A: Counsel Information for Defendants

Attorneys for Defendant QVC, Inc.

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EXHIBIT B: RELATED CASES

1. *Friedman et al. v. Wen By Chaz Dean, Inc. et al.*, No. 2:14-cv-06009-ODW-AGR (C.D. Cal. filed July 31, 2014) (Wright, II, J.).
2. *Collazo et al. v. Wen by Chaz Dean, Inc. et al.*, No. 2:15-cv-01974-ODW-AGR (C.D. Cal. filed March 17, 2015) (Wright, II, J.).
3. *Simmons et al. v. Wen By Chaz Dean, Inc. et al.*, No. 1:15-cv-10026-VEC (S.D.N.Y. filed Dec. 23, 2015) (Caproni, J.).

EXHIBIT 1

Case Number: CACE-16-005367 Division: 04

Filing # 39285821 E-Filed 03/21/2016 08:09:49 PM

004105

CIVIL ACTION SUMMONS

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No:
Division:

WAVERLY ROBINSON, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

QVC, INC., a Delaware for profit corporation, and
WEN BY CHAZ DEAN, INC., a California for
profit corporation,

Defendants.

SUMMONS
PERSONAL SERVICE ON A CORPORATION

TO DEFENDANT(S):

QVC, INC.
c/o CORPORATION SERVICE COMPANY (Registered agent)
2711 Centerville RD Suite 400
Wilmington, DE 19808

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint/petition with the Clerk of this Court, located at 201 SE 6th Street, Fort Lauderdale, FL 33301. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

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THE STATE OF FLORIDA

TO EACH SHERIFF OF THE STATE: You are commanded to serve this Summons and a copy of the complaint/petition in this lawsuit on the above named defendant(s).

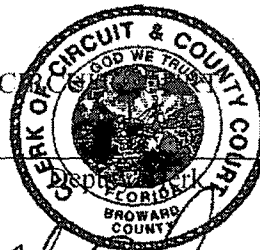
DATED ON MAR 29 2016 016.

(SEAL)

CLERK OF THE COURT

BY: _____

(See reverse side)
(Vease al revers)
(Voir de l'autre cote de)



Howard G. Forman
HOWARD G. FORMAN

SEVENTEENTH CIRCUIT – BROWARD:

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Room 470, 201 S.E. Sixth Street, Fort Lauderdale, Florida 33301, 954-831-7721 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANT

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour deposer une reponse ecrite a la plainte ci-jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

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004106

CIVIL ACTION SUMMONS

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No:

Division:

WAVERLY ROBINSON, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

QVC, INC.; a Delaware for profit corporation, and
WEN BY CHAZ DEAN, INC., a California for
profit corporation,

Defendants.

SUMMONS

PERSONAL SERVICE ON A CORPORATION

TO DEFENDANT(S):

Attn: Jeffrey Alan Deane
WEN BY CHAZ DEAN, INC.
6444 Fountain Ave
Los Angeles, CA 90028

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint/petition with the Clerk of this Court, located at 201 SE 6th Street, Fort Lauderdale, FL 33301. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

Joshua H. Eggnatz, Esq.
Fla. Bar No.: 0067926

Michael J. Pascucci, Esq.
Fla. Bar. No.: 83397
EGGNATZ, LOPATIN & PASCUCCI, LLP
5400 S. University Drive, Ste. 413
Davie, FL 33328
Tel: (954) 889-3359
Fax: (954) 889-5913
JEggnatz@ELPLawyers.com
MPascucci@ELPLawyers.com

THE STATE OF FLORIDA

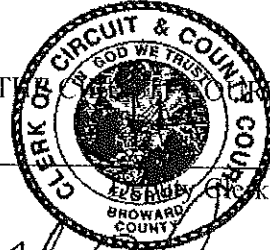
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DATED ON MAR 29 2016 2016.

(SEAL)

CLERK OF THE COURT

BY: _____



Howard C. Forman
HOWARD C. FORMAN

(See reverse side)
(Vease al reves)
(Voir de l'autre cote de)

SEVENTEENTH CIRCUIT – BROWARD:

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Filing # 39285821 E-Filed 03/21/2016 08:09:49 PM

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO.:

WAVERLY ROBINSON, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

QVC, INC., a Delaware for profit
corporation, and **WEN BY CHAZ DEAN,
INC.**, a California for profit corporation,

Defendants.

Florida Class Representation

Jury Trial Requested

CLASS ACTION COMPLAINT FOR EQUITABLE RELIEF AND DAMAGES

Plaintiff, Waverly Robinson (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned counsel, hereby files this Class Action Complaint for Equitable Relief and Damages, against Defendants, QVC, Inc. (“QVC”) and WEN by Chaz Dean, Inc. (“WEN”) (collectively, QVC and Wen are referred to as “Defendants”), and alleges as follows:

INTRODUCTION

1. This is an economic consumer protection class action for injunctive relief and economic damages based on misrepresentations and omissions committed by Defendants regarding certain varieties of their hair care products that are not worth the purchase price Plaintiff and Putative Class Members paid for them, because the products cause hair loss to those that purchase the Products and subsequently used them.

2. Plaintiff is not seeking damages for any personal injuries in this Complaint;¹ rather, this case is based on Defendants' misrepresentations and omissions regarding the hair care products purchased by Plaintiff, and members of the Putative Class, during the Class Period, defined below. Specifically, Defendants' WEN Cleansing Conditioner varieties at issue are: (1) Sweet Almond Mint, (2) Lavender, (3) Vanilla Mint, (4) Pomegranate, and (5) Summer Honey Peach (the "Products").

3. Plaintiff and numerous other Putative Class members that purchased the Products suffered economic damages in a similar manner because the amount they paid for the Products was a waste of money considering that use of the Products causes serious adverse side effects, such as hair loss, hair dryness, hair thinness, and scalp itchiness ("Side Effects"), which is the area where the Products are intended and instructed to be applied. Had Plaintiff and the Putative Class known at or before the time of purchase that the Products cause such effects, they would not have purchased the Products, and would not have used them and will continue to not use them, at least until remedial action is taken.

4. Plaintiff, and all others similarly situated consumers, did not bargain for Products that cause adverse effects in exchange for their payment of the purchase price. Plaintiff contends that the Products do not work as impliedly warranted and as a result, mislead consumers into purchasing the Products under misleading circumstances. The Products are sold pursuant to unlawful trade practices because they offend public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers. Accordingly, Plaintiff seeks damages equal to the aggregate retail purchase price paid by Plaintiff and members of the Putative Class during the Class Period, because the Products are worthless and useless due to the

1. All potential claims for individual tort relief by Plaintiff and Putative Class members are

Side Effects that Defendants have failed to disclose and adequately warn consumers about.

VENUE AND JURISDICTION

5. This Court has jurisdiction over this class action because it is an action brought on behalf of consumers who purchased the Products, which occurred in Florida, and the matter in controversy is not expected to exceed the aggregate sum of \$5,000,000.00, exclusive of interest and costs. Notwithstanding, the amount in controversy exceeds the \$15,000.00 jurisdictional threshold of this Court. Therefore, this action is properly brought in State court, and is not subject to removal under the Class Action Fairness Act.

6. This Court has personal jurisdiction over Defendants because, *inter alia*, during the Class Period, Defendants distributed, marketed, advertised, and sold the Products to Plaintiff and members of the putative Class throughout the State of Florida and in this judicial District.

7. Venue is proper in this Court because Defendants' conduct business in, and may be found in, this county, and a substantial part of the events or omissions giving rise to a substantial portion of Plaintiffs' claims occurred in this county. Plaintiff resides in this county, Class members transacted business with Defendants within this county, and Defendants have sold the Products at issue in this county. This Court also has jurisdiction over this class action pursuant the applicable Florida statutes upon which Plaintiff's claims are based.

PARTIES

8. At all times mentioned herein, QVC was and is a closely held Delaware Corporation with its principal place of business at 1200 Wilson Drive West Chester, Pennsylvania, and was, at all relevant times, engaged in commercial transactions throughout the State of Florida, including this judicial District, including internet sales in this judicial district.

preserved and outside the scope of the damages sought in this litigation.

9. At all times mentioned herein, WEN was and is a California corporation with its principal place of business at 6444 Fountain Avenue, Los Angeles, California, and was, at all relevant times, engaged in commercial transactions throughout the State of Florida, including this judicial District, including internet sales in this judicial district.

10. At all times mentioned herein, Plaintiff Waverly Robinson was and is an individual over the age of 18 and a citizen of the state of Florida, resident of Broward County, Florida.

FACTUAL ALLEGATIONS

11. Simply put, no reasonable consumer would purchase a hair product, like the ones at issue, if they knew at the time of purchase that it would cause their hair to fall out. Unfortunately, that is the case here. The Products are the cause of widespread hair loss suffered by Plaintiff and members of the Putative Class, resulting in the Products being rendered valueless to the reasonable consumer. Accordingly, Plaintiff and the Putative Class members are entitled to reimbursement of their full purchase price back.

12. Making matters worse is that Plaintiff and the Putative Class trusted the name behind the Products, Chaz Dean, so the deception has occurred on several levels and various facets. Chaz Dean is a famous celebrity hair stylist, who through his company WEN, created and developed the formula for WEN Cleansing Conditioner, which is marketed as “a fresh approach to cleansing and conditioning for hair that looks and feels soft, beautiful & healthy-looking.”² WEN licenses the Products to QVC, which manufactures, markets, sells and distributes WEN Products throughout the United States and Florida, according to the formula and instructions developed by WEN. Notably, WEN licenses the Products to other companies as well, such as

Guthy Renker.

13. Upon information and belief, Defendants have dramatically benefitted and profited through their print and online marketing campaigns linking the continuous and consistent use of the Products with the improvement of a consumer's hair health. Defendants even represent that the Products are:

“a new approach to the way you cleanse, condition, style, and care for your locks. While working in a salon, Chaz Dean realized many shampoos contain harsh lathering ingredients that sacrifice hair's natural beauty. He made it his mission to offer alternatives that are formulated with herbs and natural ingredients.... Chaz Dean's cleansing conditioners started the WEN hair-care revolution. Not only do they cleanse and condition your locks, but they also help improve its sheen, moisture, and manageability” (collectively, the “Statements”).³

14. Despite these Statements, which lead the reasonable consumer to believe that the Products improve hair health and are less harmful than other hair care products, the use of the Products cause potentially serious adverse side effects, such as hair loss. As a result, the Statements are false, misleading, and likely to deceive a reasonable consumer into purchasing the Products because they fail to warn of the negative Side Effects caused by using the Products, thereby rendering the Products worthless, valueless, and useless to the reasonable consumer.

15. For demonstrative purposes,⁴ below are internet consumer complaints depicting the various side effects associated with using the Products:

Consumer Complaints & Reviews Carla of Mechanicsville, VA on Jan. 29, 2016. I have been using Wen Cucumber Aloe for many years. **My hair has become so thin, lifeless, and very dry....** I have also developed **small itchy patches on my**

2. *WEN by Chaz Dean*, QVC, http://www.qvc.com/beauty/wen/_/N-rhtyZ1z141dz/c.html (last visited March 10, 2016).

3. *Id.*

4. *WEN by Chaz Dean – Consumer Complaints & Review*, CONSUMER AFFAIRS, <http://www.consumeraffairs.com/cosmetics/wen.html> (last visited March 10, 2016) (The referenced internet consumer complaints are publicly available online. They were not produced by Plaintiff or members of her household. Reference to these internet consumer complaints is not intended to be a waiver of the work-product privilege).

head - it feels like bugs crawling. My hair keeps coming out heavy in my brush. I try not to brush so much because of this. My hair has become so thin on the sides that you can hardly see hair there.... I need a hair transplant for sure to even feel normal. This product should not be sold and I want them to be held responsible. I try to take good care of myself and my hair. I thought I was using the best product on my hair. I never thought it could be my Wen shampoo!

Consumer Complaints & Reviews Mary of Loxahatchee, FL on Jan. 28, 2016. I ordered a complete kit and at 1st loved the way my hair felt. I noticed in less than a month that my hair was coming out in patches...

Consumer Complaints & Reviews Lisa of Newport Beach, CA on Jan. 28, 2016. I used WEN sweet almond mint cleansing conditioner and liked the bounce it gave my hair. A couple of months later my hair starting falling out! ... To my dismay and unbelief, I lost so much hair, that it would line the entire bathtub!

Consumer Complaints & Reviews Carmella of Charles Town, WV on Jan. 28, 2016. Ordered WEN products after viewing Chaz Dean on QVC and order his products and thought it seemed like something I would like to try.... [A]fter three months I started to see a lot of hair in the bathtub when I would wash my hair and was wondering what was going on. Then I would see so much hair in my hair brush -- much more than usual. The next time I went to get my hair colored my hairstylist told me I had a bald spot toward the front of my scalp. Then I really began to worry. She told me to stop using WEN because of all the bad reports she had been reading. I stop using the products and sent them back to QVC for a refund. Now my hair is thin and very dry and dull. I had very thick and curly beautiful hair. Now it is straight and dull and not manageable at all.

Consumer Complaints & Reviews Shawn of Greencastle, PA on Jan. 18, 2016. Watched and watched Chaz Dean on QVC for years and finally decided to take the plunge.... I was noticing a thinning spot in the front of my head at the part and my hair texture started feeling odd and my scalp started itching constantly. I had noticed what seemed to be an excess of hair in the drain...

16. Defendants misrepresented the deleterious Side Effects caused by using the Products, and failed to adequately disclose or warn of these Side Effects. Reasonable consumers expect companies such as WEN and QVC to warn and/or discloses of these Side Effects.

17. Accordingly, Plaintiff seeks, individually and on behalf of all other similarly situated purchasers of the Products during the Class Period throughout the State of Florida, injunctive relief and actual economic damages equaling the aggregate purchase price paid for the

Products by Plaintiff and members of the Putative Class during the Class Period.

18. Plaintiff purchased the Products on numerous occasions throughout the Class Period for personal use before realizing the Products were the cause of her hair loss. Plaintiff purchased the Products online from QVC in reliance on QVC's and WEN's express and implied representations of that the Products they sell are of high quality and fit for their intended purpose.

19. Plaintiff paid the asking retail price for the Products each time she purchased the Products. Plaintiff has spent well in excess of \$100.00 on her purchase of the Products.

20. Had Plaintiff known of the Side Effects she would not have purchased the Products. Defendants failed to disclose the Side Effects that caused Plaintiff and members of the Putative Class to purchase a product that they would not have purchased if the Products warned or informed consumers on the advertising, labeling or packaging of the Products that use of the Products can cause severe Side Effects, such as hair loss.

21. There have been numerous instances reported of the Products causing the same or similar Side Effects that Plaintiff experienced.

22. As a result, the Products are useless, worthless, and/or valueless to Plaintiff and members of the Putative Class.

23. Plaintiff, and all other similarly situated consumers, did not bargain for the Products that cause adverse Side Effects in exchange for their payment of the purchase price.

24. Defendants have profited by failing to adequately warn purchasers of the Side Effects caused from use of the Products.

25. Upon information and belief, Defendants have failed to remedy the problem with the Products, thus causing future harm to consumers. Plaintiff, members of the Putative Class, and future purchasers in the consuming public, are at risk of real, immediate, and continuing

harm if the Products continue to be sold as is, and without adequate warning of the potential Side Effects.

26. Plaintiff would continue to purchase the Products again in the future if they no longer caused the negative Side Effects.

27. Defendants have failed to provide adequate relief to the Plaintiff or members of the Putative Class as of the date of filing this Complaint.

28. Plaintiff contends that the Products were sold pursuant to unfair and unconscionable trade practices because the sale of the Products offends public policy and is immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to Plaintiff and the Putative Class.

29. Reasonable consumers do not expect the Products to cause adverse Side Effects when used as intended. Defendants' Statements and other representations convey a series of express and implied claims and/or omissions which Defendants know are material to the reasonable consumer in making a purchasing decision, and which Defendants intended for consumers to rely upon when choosing to purchase the Products.

30. Defendants misrepresented the deleterious effects caused by using the Products, and/or failed to adequately disclose the adverse effects from use of the Products, which was and is false, misleading, and/or likely to deceive reasonable consumers. Reasonable consumers expect such Side Effects to be disclosed so that they can make informed purchasing decisions.

31. Therefore, the Products are valueless, and not worth the purchase price that Plaintiff and members of the Putative Class paid for them, and/or are not what Plaintiff and members of the Putative Class reasonably intended to receive.

32. Plaintiff and the Putative Class seek damages equal to the aggregate purchase price paid for the Products throughout the State of Florida during the Class Period. Alternatively, Plaintiff and the Putative Class seek the difference between the price premium charged for the Products and their true market value. Notwithstanding, Plaintiff contends that there is no market value for a hair care product that causes such negative Side Effects.

33. Plaintiff also seeks declaratory relief in the form of an order declaring Defendants' conduct to be a deceptive and unfair business practice in violation of Florida's Deceptive And Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* ("FDUTPA"), as well as injunctive and equitable relief putting an end to Defendants' misleading and unfair business practices, including clear and full disclosure of the Side Effects caused by the Products and/or a reformulation of the Products so that they no longer cause such negative Side Effects.

CLASS ACTION ALLEGATIONS

34. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint

35. This action is maintainable as a class action under Rule 1.220 of the Florida Rules of Civil Procedure, Fla. R. Civ. P.

36. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings this class action and seek certification of the claims and certain issues in this action on behalf of Classes of individuals defined as:

All persons who have purchased the Products in the State of Florida, for personal use, and not for resale, during the time period from four years preceding the date of filing of this Complaint through and until Notice is provided to the Class.

37. Excluded from the class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns,

and successors; and (2) the judge to whom this case is assigned and the judge's staff.

38. Plaintiff reserves the right to amend the Class definition if further information and discovery indicates that the Class definition should be narrowed, expanded or otherwise modified, including but not limited to, the creation of subclasses based on geography and/or location of sale

39. All members of the Class were and are similarly affected by the deceptive advertising of the Products, and the relief sought herein is for the benefit of Plaintiff and members of the Class

40. This action has been brought and may properly be maintained as a class action under Florida Rule of Civil Procedure 1.220 because there is a well-defined community of interest in the litigation and the class is easily ascertainable.

A. Numerosity

41. Based on the annual sales of the Products and the popularity of the Products, it is readily apparent that the number of consumers in the Putative Class is so large as to make joinder impracticable, if not impossible. Members of the Putative Class may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

B. Common Questions of Law and Fact Predominate

42. There is a well-defined community in the questions of law and fact involved in this case. Questions of law and fact common to Plaintiff and members of the Putative Class that predominate over questions affecting only individual members, include:

- a. Whether Defendants' practices and representations related to the marketing, labeling and sales of the Products in Florida were unfair, deceptive, fraudulent,

and/or unlawful in any respect, thereby violating the FDUTPA;

- b. Whether Defendants failed to warn Plaintiff and Putative Class members of the Side Effects caused by purchasing and using the Products in violation of the FDUTPA with its practices and representations related to the marketing, labeling, and sale of the Products within Florida;
- c. Whether Defendants' conduct as set forth above economically injured Plaintiff and the Putative Class; and
- d. Whether Plaintiff and the Putative Class are entitled to injunctive relief.

C. Typicality

43. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Putative Class, as the claims arise from the same course of conduct by Defendants, and the relief sought within the Class is common to the members of the Putative Class. Further, there are no defenses available to Defendants that are unique to Plaintiff.

D. Adequacy

44. Plaintiff will fairly and adequately represent and protect the interests of the Putative Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation. Plaintiff and Plaintiff's counsel will fairly and adequately protect the Putative Class's interests. Undersigned counsel has represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

E. Declaratory and Injunctive Relief—Rule 1.220(b)(2)

45. Certification also is appropriate because Defendants acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate the injunctive relief

sought on behalf of the Class. Further, given the large number of consumers of the Products, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

F. Predominance and Superiority of Class Action—Rule 1.220(b)(3)

46. The prerequisites to maintaining a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(3) are met because questions of law and fact common to each class member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

47. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of the Putative Class is not practicable, and questions of law and fact common to the Putative Class predominate over any questions affecting only individual Putative Class members. Each Putative Class member has been damaged and is entitled to recovery as a result of the violations alleged herein.

48. Moreover, because the damages suffered by individual members of the Putative Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Putative Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

49. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

CLAIMS FOR RELIEF

COUNT I:

VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
FLA. STAT. §§ 501.201, ET SEQ.

(By Plaintiff, Waverly Robinson and the Proposed Class Against Defendant QVC)

50. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty-nine (49) of this Complaint, as if fully set forth herein verbatim.

51. This cause of action is brought pursuant to the FDUTPA, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of the FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” FDUTPA § 501.202(2).

52. The sale of the Products at issue in this case constituted a “consumer transaction” within the scope of FDUTPA, Sections 501.201 to 201.213, *Florida Statutes*.

53. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

54. Section 501.204(2), *Florida Statutes* states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act.” Defendant QVC’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violate Section 500.04, *Florida Statutes* and 21 C.F.R. § 740.1.

55. Defendant QVC has violated the FDUTPA by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant QVC has misrepresented the true nature of the Products and failed to adequately warn of the Side Effects caused by using the Products, thereby disseminating representations or omissions that are false, deceptive, and likely to mislead a reasonable consumer, such as Plaintiff and members of the Putative Class.

56. Simply put, Defendant QVC misrepresented and/or omitted facts about the Side Effects that the Products cause, which were and are material to Plaintiff's and Putative Class Member's decisions to purchase the Products.

57. Defendant QVC's sale of the Products is an unfair method of competition, unconscionable act and practice, and an unfair and deceptive act and practice in the conduct of its business.

58. As a result of Defendant QVC's deceptive and unfair acts, Plaintiff and Putative Class members have been damaged in the amount of the aggregate retail sales of the Products throughout the Class Period.

59. Defendant QVC's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

60. Defendant QVC should also be ordered to cease and/or continue ceasing its deceptive and unfair advertising, and should be made to engage in a corrective advertising campaign, to inform consumers of the Side Effects that the Products cause.

WHEREFORE, as more fully described in the Prayer for Relief below, Plaintiff seeks relief in the form of actual and compensatory economic damages, injunctive relief in the form of

corrective advertising, equitable relief including restitution, pre- and post- judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper.

COUNT II:
NEGLIGENT MISREPRESENTATION

(By Plaintiff, Waverly Robinson and the Proposed Class Against Defendant QVC)

61. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty-nine (49) of this Complaint, as if fully set forth herein verbatim.

62. Throughout the Class Period, Defendant QVC made incorrect representations and/or omissions of fact regarding the Products.

63. Defendant QVC advertised, labeled, packaged, marketed, distributed, and sold the Products, without adequately warning Plaintiff and members of the Putative Class of the Side Effects on mediums such as on the Products' packaging and labeling. Further, Defendant QVC represents that the Products are safe to use despite the Side Effects caused by using the Products.

64. Defendant QVC was negligent in making the misrepresentations and/or omissions at issue because they knew, or should have known, that the Products cause the Side Effects.

65. Plaintiff and members of the Putative Class relied on Defendant QVC's misrepresentations and/or omissions in purchasing the Products they believed did not cause the Side Effects.

66. The factual misrepresentations and/or omissions committed by Defendant QVC was material to Plaintiff and members of the Putative Class in making their purchases of the Products.

67. Plaintiff and other members of the Putative Class relied upon the incorrect representations and/or omissions made about the Products to their detriment, in that Plaintiff and other members of the Putative Class paid the purchase price for the Products based upon the incorrect representations and/or omissions, and had Plaintiff and other members of the Putative Class known the truth about the Products, they would not have purchased the Products.

WHEREFORE, as more fully described in the Prayer for Relief below, Plaintiff and members of the Putative Class seek economic damages equaling the aggregate retail purchase price paid by Plaintiff and the Putative Class during the Class Period throughout the State of Florida, due to Defendant QVC's negligent misrepresentations.

COUNT III:
VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
FLA. STAT. §§ 501.201, ET SEQ.

(By Plaintiff, Waverly Robinson and the Proposed Class Against Defendant WEN)

68. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty-nine (49) of this Complaint, as if fully set forth herein verbatim.

69. This cause of action is brought pursuant to the FDUTPA, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of the FDUTPA is to "protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." FDUTPA § 501.202(2).

70. The sale of the Products at issue in this case constituted a "consumer transaction" within the scope of FDUTPA, Sections 501.201 to 201.213, *Florida Statutes*.

71. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

72. Section 501.204(2), *Florida Statutes* states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act.” Defendant WEN’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violate Section 500.04, *Florida Statutes* and 21 C.F.R. § 740.1.

73. Defendant WEN has violated the FDUTPA by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant WEN has misrepresented the true nature of the Products and failed to adequately warn of the Side Effects caused by using the Products, thereby disseminating representations or omissions that are false, deceptive, and likely to mislead a reasonable consumer, such as Plaintiff and members of the Putative Class.

74. Simply put, Defendant WEN misrepresented and/or omitted facts about the Side Effects that the Products cause, which were and are material to Plaintiff’s and Putative Class Member’s decisions to purchase the Products.

75. Defendant WEN’s sale of the Products is an unfair method of competition, unconscionable act and practice, and an unfair and deceptive act and practice in the conduct of its business.

76. As a result of Defendant WEN's deceptive and unfair acts, Plaintiff and Putative Class members have been damaged in the amount of the aggregate retail sales of the Products throughout the Class Period.

77. Defendant WEN's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

78. Defendant WEN should also be ordered to cease and/or continue ceasing its deceptive and unfair advertising, and should be made to engage in a corrective advertising campaign, to inform consumers of the Side Effects that the Products cause.

WHEREFORE, as more fully described in the Prayer for Relief below, Plaintiff seeks relief in the form of actual and compensatory economic damages, injunctive relief in the form of corrective advertising, equitable relief including restitution, pre- and post- judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper.

COUNT IV:
NEGLIGENT MISREPRESENTATION

(By Plaintiff, Waverly Robinson and the Proposed Class Against Defendant WEN)

79. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty-nine (49) of this Complaint, as if fully set forth herein verbatim.

80. Throughout the Class Period, Defendant WEN made incorrect representations and/or omissions of fact regarding the Products.

81. Defendant advertised, labeled, packaged, marketed, distributed, and sold the Products, without adequately warning Plaintiff and members of the Putative Class of the Side Effects on mediums such as on the Products' packaging and labeling, Further, Defendant WEN

represents that the Products are safe to use despite the Side Effects caused by using the Products.

82. Defendant WEN was negligent in making the misrepresentations and/or omissions at issue because they knew, or should have known, that the Products cause the Side Effects.

83. Plaintiff and members of the Putative Class relied on Defendant WEN's misrepresentations and/or omissions in purchasing the Products they believed did not cause the Side Effects.

84. The factual misrepresentations and/or omissions committed by Defendant WEN was material to Plaintiff and members of the Putative Class in making their purchases of the Products.

85. Plaintiff and other members of the Putative Class relied upon the incorrect representations and/or omissions made about the Products to their detriment, in that Plaintiff and other members of the Putative Class paid the purchase price for the Products based upon the incorrect representations and/or omissions, and had Plaintiff and other members of the Putative Class known the truth about the Products, they would not have purchased the Products.

WHEREFORE, as more fully described in the Prayer for Relief below, Plaintiff and members of the Putative Class seek economic damages equaling the aggregate retail purchase price paid by Plaintiff and the Putative Class during the Class Period throughout the State of Florida, due to Defendant WEN negligent misrepresentations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Putative Class, prays for relief as follows:

- A. For an order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed the class representative, and that Plaintiff's counsel be appointed counsel for the Class;
- B. For an order declaring Defendants' conduct to be in violation of FDUTPA and enjoining Defendants from pursuing the unlawful acts and practices alleged herein by adequately disclosing the Side Effects;
- C. For an order requiring Defendants to pay full restitution to Plaintiff and all members of the Putative Class;
- D. For an order requiring Defendants to disgorge all ill-gotten gains flowing from the conduct alleged in this Complaint;
- E. For an award of actual damages in an amount to be determined at trial;
- F. For an order awarding reasonable attorneys' fees and the costs;
- G. For an award of pre- and post-judgment interest on any amounts awarded; and
- H. For such other and further relief as may be deemed just, necessary or proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: March 21, 2016

Respectfully submitted,

By: /s/ Joshua H. Eggnatz
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*Attorneys for Plaintiff Waverly Robinson
and the Proposed Class*

Filing # 39285821 E-Filed 03/21/2016 08:09:49 PM

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO.:

WAVERLY ROBINSON, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

QVC, INC., a Delaware for profit
corporation, and **WEN BY CHAZ DEAN,**
INC., a California for profit corporation,

Florida Class Representation

Defendants.

Jury Trial Requested

**PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND FOR TEMPORARY
STAY OF FURTHER PROCEEDINGS AND BRIEFING ON THAT MOTION**

Plaintiff, Waverly Robinson, ("Plaintiff"), individually and on behalf of all others similarly situated, by and through her undersigned counsel, hereby moves to certify the class of consumers identified below, and for a temporary stay of further proceedings and briefing on this motion. Plaintiff reserves the right to amend and/or supplement this Motion as further investigation and discovery occurs;¹ and states in support thereof:

1. Plaintiff is filing this Motion for Class Certification at this juncture in an abundance of caution as a prophylactic measure in order to protect the interests of the proposed Class from an attempt to "pick off" the putative lead class representative in this action, and to prevent Defendants' disputed conduct to go unaddressed as to the rest of the Classes. Plaintiff is authorized to take this action to prevent Defendants from making an offer of judgment for full relief on an individual basis and relying on certain case law suggesting that making such an offer of judgment prior to the making of a class certification motion renders the entire litigation moot. *See Keim v. ADF Midatlantic, LLC.*, No.: 12-80755-CIV-MARRA, 2013 WL 3717737, *6 (S.D. Fla. July 15, 2013) (citing *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011) (stating "Class-action plaintiffs can move to certify the class at the same time that they file their complaint. The pendency of that motion protects a putative class from attempts to buy off the named plaintiffs.") Plaintiff reserves the right to conduct discovery to fully develop the facts

1. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, pursuant to Florida Rule of Civil Procedure (“Rule”) 1.220, Plaintiff brings this action on behalf of herself and on behalf of the following class of consumers:

All persons who have purchased the Products² in the State of Florida, for personal use, and not for resale, during the time period from four years preceding the date of filing of this Complaint through and until Notice is provided to the Class.;

2. Plaintiff reserves the right to modify the class definition before moving for class certification, including a reservation of the right to seek to certify subclasses, if discovery reveals that modifying the class definitions and/or seeking additional subclasses would be appropriate.

3. Excluded from the Class are Defendants, their subsidiaries, affiliates, and employees; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge(s) to whom this case is assigned and any immediate family members thereof.

4. Plaintiff’s Classes satisfy all of the statutory prerequisites for class certification, to be detailed in future Memorandum of Law upon further discovery. *see Heaven v. Trust Co. Bank*, 118 F.3d 735, 737 (11th Cir. 1997)

5. Joinder of all Class members is not practical, as the Class likely consists of thousands of persons who reside throughout the State of Florida. Plaintiff will ascertain the precise scope of the Class through discovery. *See Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *4 (S.D. Fla. June 15, 2010)

6. There are questions of fact and law common to all Class members, which

needed for certification, and to submit full briefing, prior to this Court ruling on Plaintiffs’ Motion.

2. The term “Products” refers to the products identified in Plaintiff’s Complaint.

predominate over any issues affecting only individual Class members. *See Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1268 (11th Cir. 2009).

7. All Class claims arise from the same acts, policies, and practices of Defendants and all are based on the same typical factual and legal theories. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984).

8. Plaintiff will fairly and adequately represent and protect the interests of the Class and have no interests antagonistic to those of the Class. *See Brown v. SCI Funeral Servs. of Fla., Inc.*, 212 F.R.D. 602, 605 (S.D. Fla. 2003).

9. All Class members have the same legal right to fair treatment by Defendants.

10. Plaintiff, by proving her claims, will prove the claims of the Class.

11. Plaintiff has retained competent counsel experienced in the prosecution and successful settlement of class actions.

12. Counsel for Plaintiff have prosecuted and will continue to prosecute this action vigorously in the interests of Plaintiff and the Classes.

13. A class action is an appropriate method for the fair and efficient adjudication of the controversy.

14. Absent this case proceeding as a class action, Plaintiff and Class members will effectively be left without a remedy.

15. Absent a stay of further proceedings and briefing on this motion, the proposed classes will be prejudiced because Plaintiff will be required to either submit a memorandum of law in support of class certification without a fully developed record, or delay moving for class certification and risk Defendants' attempt to "pick off" Plaintiff to the detriment of the Class.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order:

- i. Taking this motion under submission and deferring further activity on this motion until a future class certification deadline, and after the parties have an opportunity to submit briefing informed by discovery, or alternatively;
- ii. Granting Plaintiff's motion for class certification;
- iii. Appointing Plaintiff as representative for members of the Class;
- iv. Appointing the undersigned counsel as Lead Class Counsel;
- v. Certifying the Class requested above; and
- vi. For all other relief this Honorable Court deems just, appropriate, or proper.

Dated: March 21, 2016

Respectfully Submitted,

By: /s/ Joshua H. Eggnatz
Joshua H. Eggnatz, Esq.
Fla. Bar. No.: 0067926
Michael J. Pascucci, Esq.
Fla. Bar. No.: 83397
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MPascucci@ELPLawyers.com

Trial Counsel for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Defendants, along with the service of the Complaint.

/s/ Joshua H. Eggnatz
Joshua H. Eggnatz, Esq

SERVICE LIST

Filing # 39285821 E-Filed 03/21/2016 08:09:49 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.:

WAVERLY ROBINSON, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

QVC, INC.; a Delaware for profit corporation, and
WEN BY CHAZ DEAN, INC., a California for
profit corporation,

Defendants.

PLAINTIFF'S DESIGNATION OF E-MAIL ADDRESS

PLEASE TAKE NOTICE that the undersigned hereby appears as Attorneys of Record on behalf of Plaintiff, WAVERLY ROBINSON, in the above-styled cause, and requests that copies of all pleadings, notices and, correspondence, etc., be furnished to them in accordance therewith. Pursuant to Fla. R. Jud. Admin. 2.516 the undersigned hereby designates their primary and secondary address for the service of court documents in this matter as follows:

Primary: JEGgnatz@ELPLawyers.com

MPascucci@ELPLawyers.com

Secondary: SSanchez@ELPLawyers.com

[CERTIFICATE OF SERVICE ON FOLLOWING PAGE]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the clerk of court this 21st day of March 2016, and that a copy of same will be served upon Defendants with service of the Summons and Complaint.

By: /s/ Joshua H Eggnatz, Esq.

Joshua H. Eggnatz, Esq.

Fla. Bar. No.: 0067926

Michael J. Pascucci, Esq.

Fla. Bar. No.: 83397

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