

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

G. RYAN

Plaintiff

- and -

**COMBE INCORPORATED, COMBE PRODUCTS, INC., COMBE LABORATORIES,
INC., AND COMBE INTERNATIONAL LTD.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: March 31, 2016

Issued by

(S) Signature
Local Registrar

Address of
court office:

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TO: Combe Incorporated
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AND TO: Combe Laboratories, Inc.
200 Shellhouse Dr.
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AND TO: Combe International Ltd.
1101 Westchester Avenue
White Plains, New York
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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Just For Men**” and/or “**Just For Men Products**” means the hair care products and hair dye branded under Just For Men[®] that were designed, developed, formulated, tested, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the **Defendants**;
- (b) “**Product Defect**” means the serious, pervasive, and dangerous design and manufacturing defects that render the **Just For Men Products** unmerchantable and unsuitable for use and which place persons at risk of serious injury, including the presence of Para-Phenylenediamine (“PPD”)¹ and/or other related chemicals;
- (c) “**Class**”, “**Proposed Class**” or “**Class Members**” means all persons residing in Canada who purchased and/or used one or more of the **Just For Men Products**;
- (d) “*Courts of Justice Act*” means the *Ontario Courts of Justice Act*, RSO 1990, c. C-43, as amended;
- (e) “*Class Proceedings Act*” means the *Class Proceedings Act*, SA 2003 c C-16.5, as amended;

¹ Also known as *p*-Phenylene Diamine and *p*-Phenylenediamine, Phenylenediamine base, 4-Phenylenediamine, 1,4-Phenylenediamine, 4-Benzenediamine, 1,4-Benzenediamine, para-Diaminobenzene (*p*-Diaminobenzene), para-Aminoaniline (*p*-Aminoaniline), Orsin[™], Rodol[™], and Ursol[™].

- (f) “*Sale of Goods Act*” means the *Sale of Goods Act*, RSA 2000, c. S-2, as amended, including ss. 16;
- (g) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;
- (h) “**Consumer Protection Legislation**” means:
- (i) *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;
 - (ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;
 - (iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;
 - (iv) *The Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;
 - (v) *The Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219, 228, 253 & 272;
 - (vi) *The Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;
 - (vii) *The Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;
 - (viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; and
 - (ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;

- (i) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;
- (j) “**Consumer Packaging and Labelling Act**” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38, as amended, including ss. 7, 9 & 20;
- (k) “**Food and Drugs Act**” means the *Food and Drugs Act*, R.S.C., 1985, c. F-27, as amended, including ss. 16 & 31;
- (l) “**Cosmetic Regulations**” means the *Cosmetic Regulations*, C.R.C., c. 869, as amended, including s. 22;
- (m) “**Defendants**” and/or “**Combe**” means Combe Incorporated, Combe Products, Inc., Combe Laboratories, Inc., and Combe International Ltd.;
- (n) “**Plaintiff**” means G. Ryan; and
- (o) “**Representation(s)**” means the **Defendants’** false, misleading or deceptive representations that their **Just For Men Products** (a) have performance characteristics, uses, benefits and/or qualities which they do not have, (b) are of a particular standard or quality which they are not; (c) are available for a reason that does not exist, and (d) their use of exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the **Product Defect** as such use or failure deceives or tends to deceive.

THE CLAIM

2. The proposed Representative Plaintiff, G. Ryan, claims on his own behalf and on behalf of the members of the Class as defined in paragraph 5 below (the “Class”) as against Combe Incorporated, Combe Products, Inc., Combe Laboratories, Inc., and Combe International Ltd. (the “Defendants”):
 - (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
 - (b) A declaration that the Defendants are strictly liable to the Class Members;
 - (c) A declaration that the Defendants breached their express warranty;
 - (d) A declaration that the Defendants breached their implied warranties;
 - (e) A declaration that the Defendants committed the tort of fraudulent concealment;
 - (f) A declaration that the Defendants breached their duty to warn the Plaintiff and Class Members of the dangerous and defective nature of the Just For Men Products;
 - (g) A declaration that the Defendants were negligent in the design, development, formulation, testing, manufacture, packaging, distribution, marketing, promotion, advertising, labelling, and/or sale of the Just For Men Products;

- (h) A declaration that the Defendants committed the tort of intentional and/or negligent misrepresentation;
- (i) A declaration that the Defendants breached the *Sale of Goods Act* when they breached the implied condition as to quality or fitness for a particular purpose;
- (j) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (k) A declaration that the Defendants breached the *Consumer Packaging and Labelling Act* in applying, labelling, selling, importing into Canada and/or advertising “false or misleading representations” onto the Just For Men Products and in applying, labelling, selling, importing into Canada and/or advertising the Just For Men Products such that consumers might reasonably be misled with respect to the quality of the product;
- (l) A declaration that the Defendants breached the *Food and Drugs Act* in selling the Just For Men Products containing PPD and/or other related chemicals that may cause injury to the health of the user when the Just For Men Products are used as directed;

- (m) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on his own behalf and on behalf of “persons similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (n) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (o) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, personal injury, pain, suffering, disfigurement, loss of enjoyment of life, embarrassment, stress, trouble, and inconvenience as well as dermatitis, eczema, blistering, burns, scarring, allergic reactions, anaphylactic shock, skin depigmentation, hair loss, inability to use shampoo and/or soap on the affected area(s), stunted hair growth, reddening and swelling, contact urticaria², and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage;
- (p) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, their medical expenses (including diagnostic tests and medical evaluations, as well as surgeries and/or medical procedures), ongoing/future medical expenses (to determine whether the exposure to Just For Men Products has caused or is in the process of causing sensitization to PPD and/or other related chemicals), medications purchased (including both over-

² Urticaria (from the Latin *urtica*, “nettle” from *urere*, “to burn”), commonly referred to as hives, is a kind of skin rash notable for pale red, raised, itchy bumps.

the-counter and prescriptions), aesthetic purchases (including make-up and/or other products purchased to hide/camouflage their injuries), lost wages/earnings, ruined garments/items, and/or the purchase price of the Just For Men Products (based *inter alia* on revocation of acceptance and rescission);

- (q) Punitive (exemplary) and aggravated damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (r) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (s) In the alternative, an order for an accounting of revenues received by the Defendants resulting from the sale of the Just For Men Products;
- (t) A declaration that any funds received by the Defendants through the sale of the Just For Men Products are held in trust for the benefit of the Plaintiff and Class Members;
- (u) Restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Just For Men Products to members of the Class on the basis of unjust enrichment;
- (v) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Just For Men Products to members of the Class on the basis of *quantum meruit*;

- (w) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the law, whether tortious, statutory, and/or equitable;
- (x) A mandatory order compelling the Defendants to recall their Just For Men Products;
- (y) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (z) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (aa) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (bb) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;
- (cc) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (dd) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, G. Ryan, is an individual residing in the city of Ottawa, in the province of Ontario.

4. Over the past five (5) years, the Plaintiff purchased Just For Men Products on approximately five (5) occasions, from both Shopper's Drug Mart at 4744 Bank Street, in Ottawa, Ontario and from Walmart at 2210 Bank Street, in Ottawa, Ontario for a purchase price of approximately \$10.00.

The Class

5. The Plaintiff seeks to represent the following class of which he is a member (the "Proposed Class"):

All persons residing in Canada who purchased and/or used one or more of the Just For Men® Products.

The Defendants

6. The Defendant, Combe Incorporated (hereinafter "Combe Inc."), is an American corporation with its principal place of business in White Plains, New York. It is the registrant and current owner of the trade-mark (word) "JUST FOR MEN" (TMA362263) which was filed on October 27, 1988, the trade-mark (word) "POUR HOMME SEULEMENT" (TMA383043) which was filed on March 8, 1990, the trade-mark (design) for JUST FOR MEN & DESIGN (TMA569030) which was filed on September 27, 2000, the trade-mark (design) for JUST FOR MEN & 4 CURVES LOGO (TMA852529) which was filed on August 16, 2012, the trade-mark

(design) for Mustache & Beard JUST FOR MEN & 4-Curves Rectangle Design (TMA787553) which was filed on November 20, 2009, the trade-mark (design) for JUST FOR MEN & Rectangle Design (TMA708535) which was filed on November 9, 2005, the trade-mark (design) for JUST FOR MEN AUTOSTOP Logo (TMA852522) which was filed on July 4, 2012, the trade-mark (word) “JUST FOR MEN AUTOSTOP” (TMA801395) which was filed on July 19, 2010, the trade-mark (design) for JUST FOR MEN (TARGET DESIGN) (TMA565326) which was filed on September 27, 2000, the trade-mark (word) “CHAMPIONS OF FACIAL HAIR” (TMA890584) which was failed on August 26, 2013, and the trade-mark (word) “TOUCH OF GREY” (TMA726172) which was filed on September 17, 2007. In addition, it filed the trade-mark (word) “LES CHAMPIONS DE LA PILOSITÉ FACIALE” on August 26, 2013 and the trade-mark (word) “LES CHAMPIONS DE LA BARBE ET MOUSTACHE” on November 7, 2014, both of which have since been allowed, but not yet been registered.

7. The Defendant, Combe Products, Inc. (hereinafter “Combe Products”), is a Puerto Rican corporation with its principal place of business in Naguabo, Puerto Rico.

8. The Defendant, Combe Laboratories, Inc. (hereinafter “Combe Laboratories”), is an American corporation with its principal place of business in Rantoul, Illinois.

9. The Defendant, Combe International Ltd. (hereinafter “Combe International”), is an American corporation with its principal place of business in White Plains, New York.

10. The Defendants design, develop, formulate, test, manufacture, package, distribute, market, promote, advertise, label, and/or sell Just For Men hair care products and hair dye.

11. Given the close ties between the Defendants and considering the preceding, they are all jointly and severally liable for the acts and omissions of the other.

THE NATURE OF THE CLAIM

12. These class proceedings concern the Defendants' failure to provide critical safety information and adequate warning regarding the serious risks and negative side effects associated with the use of Just For Men Products including, but not limited to, dermatitis, eczema, blistering, burns, scarring, allergic reactions, anaphylactic shock, skin depigmentation, hair loss, inability to use shampoo and/or soap on the affected area(s), stunted hair growth, reddening and swelling, contact urticaria, and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage, rendering the Just For Men Products unmerchantable, unsuitable, and unsafe for use.

13. The Defendants failed to disclose and/or actively concealed, despite longstanding knowledge, the reality that the Just For Men Products are defective and unsafe in order to induce purchase and use and the Defendants engaged in and continue to engage in conduct likely to mislead consumers including the Plaintiff about the safety of its products.

14. The Defendants, who refer to themselves as the "champions of facial hair", knew or should have known that Just For Men created an increased serious risk of injury, but they nevertheless failed to disclose to consumers, including the Plaintiff, the risk of injury, the rates of adverse reaction, and other known problems.

15. The Plaintiff, on behalf of the Class Members, seeks an award of damages against the Defendants for their intentional, willful, and/or negligent failure to disclose and/or active concealment of the inherently defective and dangerous condition posed by the Just For Men Products.

I. Just For Men Products

16. Just For Men is the brand name for a line of cosmetic hair colouring products designed for and marketed to men as state-of-the-art-grey-care products that can improve appearance by colouring grey head and facial hair using.



17. Since 1987, the Defendants have been advertising Just For Men as the #1 brand in the world “because men trust us to create products that deliver superior, natural-looking results. No other brand is 100% dedicated to giving men easy options to groom away their gray so they can look the way they want to look every day.”

18. In addition, the Defendants profess to “believe in Freedom of Grooming” and that “[m]en should feel free to look however they wish to look...”

COMBE

THE MOST PERSONAL
PERSONAL CARE PRODUCTS
IN THE WORLD

COMPANY BRANDS COMMUNITY



MEN'S HAIR CARE

We believe in Freedom of Grooming. Men should feel free to look however they wish to look — with or without gray hair. When men want to enhance, reduce or get rid of their gray, they come to Combe. Our Just For Men brand is #1 in the world, because men trust us to create products that deliver superior, natural-looking results. No other brand is 100% dedicated to giving men easy options to groom away their gray so they can look the way they want to look every day.



19. The Defendants own the trade-mark (word) “champions of facial hair” and use the slogan regularly in their advertising.



20. The Defendants claim that Just For Men Products are “backed by over three decades of research and have delivered great results over 50 million times” despite actual knowledge that thousands of people each year are severely and at times permanently injured by using their

products. Further, this claim is inaccurate, misleading, and not supported by any scientific facts or studies.

II. Para-Phenylenediamine (“PPD”)

21. Just For Men Products contain Para-Phenylenediamine (“PPD”); a chemical coal tar dye that is primarily used as a permanent and semi-permanent hair dye, colourant and tint. It is used with an oxidizing agent (such as hydrogen peroxide) in order to create colourant molecules.

22. PPD is also found in textile or fur dyes, dark coloured cosmetics, temporary tattoos, photographic developer and lithography plates, photocopying and printing inks, black rubber, oils, greases and gasoline.

23. PPD is a colourless substance that requires oxygen for it to become coloured (e.g. hydrogen peroxide). It is this intermediate, partially oxidised state that may cause allergy in certain individuals.

24. The Just For Men Products contain two bottles; one is the PPD dye preparation and the other is the developer / oxidizer, which when mixed together, is what is applied to the hair to dye it.



25. PPD is regulated by Health Canada through the *Food and Drug Act* and the *Cosmetic Regulations*, which require that hair dyes containing PPD or other coal tar dye base or coal tar intermediate must have the following warning on the labelling:

“CAUTION: This product contains ingredients that may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows. To do so may cause blindness.

MISE EN GARDE : Ce produit contient des ingrédients qui peuvent causer de l’irritation cutanée chez certaines personnes; il faut donc d’abord effectuer une épreuve préliminaire selon les directives ci-jointes. Ce produit ne doit pas servir à teindre les sourcils ni les cils; en ce faisant, on pourrait provoquer la cécité.”

26. In addition, these products must be accompanied by instructions informing consumers that they must perform a preliminary test to determine whether there is sensitivity to the substance as well as the method of performing this test referred to as the “patch test”.

27. PPD is on Health Canada's Cosmetic Ingredient Hotlist³ as an ingredient that is "Restricted for Use" in cosmetic products because many people experience adverse allergic reactions to the ingredient and it has been classified as a "strong sensitizer".
28. In Europe, PPD is considered as an "extreme sensitizer".
29. According to the National Institute for Occupational Safety and Health, PPD is "potentially capable of causing multiple toxic effects following skin contact" and there is "sufficient information available from human studies...to demonstrate that PPD is a skin sensitizer".
30. The American Contact Dermatitis Society designated PPD as "Allergen of the Year" in 2006.
31. The North American Contact Dermatitis Group ranked PPD as the ninth out of seventy other allergens to cause allergic contact dermatitis at a rate of 5.5% of patients who underwent a patch test exhibited a positive reaction to it.
32. Despite the Defendants' knowledge that their Just For Men products contained chemicals, including, but not limited to, PPD that is associated with various health risks, they failed to adequately warn consumers, including the Plaintiff.
33. According to the Environmental Protection Agency, exposure to PPD may cause:
- a) Severe dermatitis,
 - b) Eye irritation and tearing,

³ The Cosmetic Ingredient Hotlist is a science-based document that is reviewed and updated as new scientific data becomes available. It serves to keep the cosmetic industry aware of new substances that Health Canada considers inappropriate for cosmetic use, or which require hazard labelling.

- c) Asthma,
- d) Gastritis,
- e) Renal failure,
- f) Vertigo,
- g) Tremors,
- h) Convulsions,
- i) Coma, and
- j) Eczematoid contact dermatitis.

34. Some studies have linked the use of hair dyes with increased risks of certain cancer including bladder, blood and bone marrow cancer (such as non-Hodgkins lymphoma and leukemia), and breast cancer.

35. There are hundreds of complaints online written by men who have experienced the adverse effects associated with Just For Men Products such as including, but not limited to, dermatitis, eczema, blistering, burns, scarring, allergic reactions, anaphylactic shock, skin depigmentation, hair loss, inability to use shampoo and/or soap on the affected area(s), stunted hair growth, reddening and swelling, and contact urticaria.

III. The Defendants' Fault

36. Even if used as directed, the Defendants failed to adequately warn against the negative effects and risks associated with this product including, but not necessarily limited to, long term usage and the cumulative effects of long term usage, all discussed elsewhere in this Statement of Claim.

37. The Defendants do not warn about any of the above-listed conditions on the Just For Men Product packaging, the product inserts, or in any of their marketing materials, including their websites www.combe.com and www.justformen.com.

38. In addition, the Defendants place no restrictions concerning cumulative or repeated uses of the Just For Men Products despite the known increased risks associated with repeated exposure to them.

39. In omitting, concealing, and inadequately providing critical safety information regarding the use of Just For Men in order to induce its purchase and use, the Defendants engaged in and continue to engage in conduct likely to mislead consumers, including the Plaintiff and Class Members.

40. The Defendants, as self-proclaimed “champions of facial hair,” knew or should have known that Just For Men created an increased risk of injury; however, they failed to disclose to consumers, including the Plaintiff and Class Members, the risk of injury, the rates of adverse reaction, and other known problems.

41. Although in adherence to the *Cosmetic Regulations*, the Defendants instruct consumers to conduct a skin patch test prior to product use to determine whether they will have an adverse reaction to the Just For Men Product, the preliminary test that the Defendants recommend and the directions and instructions for its administration are unfortunately and inexplicably wholly inadequate.

42. The Defendants recommend a self-applied skin patch test on a consumer's arm prior to use despite knowing that facial skin is typically much more sensitive and may react differently than the arm or other parts of the body. The Defendants fail to provide any instructions or guidelines on how to test their Just For Men Products on a consumer's facial skin prior to use.

43. Because of this deficiency, users are given incorrect information and instructions on how to properly test their skin to effectively and reliably determine whether they will have an adverse reaction to PPD and/or other related chemicals.

44. The universal standard for identifying skin allergies, including acute contact dermatitis to PPD, is the patch test which is administered and monitored by a dermatologist or a similarly-trained medical professional over several days.

45. During a patch test, a trained skin specialist places small quantities of known allergens on the patient's back. The test areas are then covered with special hypoallergenic adhesive tape so the patches stay in place undisturbed for 48 hours.

46. Generally, a patch test administered by a medical professional requires two to three appointments so that the reactions can be carefully monitored by the dermatologist.

47. Despite the knowledge that trained medical professionals will perform a more accurate patch test over the course of several days or even weeks, the Defendants wrongly and negligently fail to advise or disclose to Class Members of the benefits of having a proper patch test done.

48. In December 2007, the European Commission Scientific Committee on Consumer Products released an Opinion titled "Sensitivity to Hair Dyes Consumer Self Testing." The

Committee concluded that at-home skin tests, given for the purpose of providing an indication as to whether an individual consumer may or may not have a contact allergy to hair dye chemicals, were unreliable. The committee specifically found that:

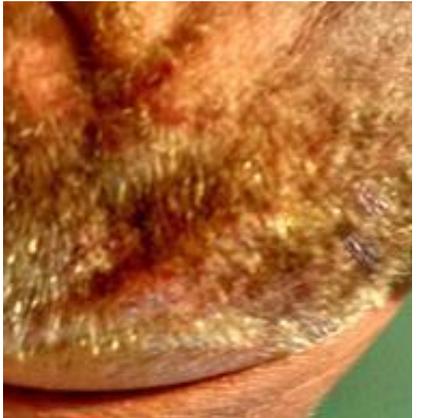
- a) Self-testing leads to misleading and false-negative results thus giving individuals who are allergic to hair dye substances the false impression that they are not allergic and not at risk of developing an allergic reaction by dyeing their hair,
- b) There is a potential risk that “self-tests” result in induction of skin sensitization to hair dye substances,
- c) The self-test recommendations were not standardized and uncontrolled allowing for large variations in dose, number of applications, and duration of exposure,
- d) False negative results from self-testing are considered to be the largest problem,
- e) 48 hours known to be too short as patch test reactions may develop up to seven days after application,
- f) Self-test locations on the arm or behind the ear are not reliable, while patch testing done on the back is good for reproducibility, and
- g) Self-tests are not performed or observed by trained observers.

49. The Defendants do not warn or disclose that self-testing, such as the test that they recommend, is not as effective or reliable as a doctor performed test as described elsewhere in this Statement of Claim.

50. Further, there are scattered news stories over the past few years describing deaths and injuries from the Product Defect.

51. A simple search on the internet reveals hundreds and hundreds of people sharing their personal stories and warning others against using Just For Men Products; however, the Defendants continue to fail in their obligation to properly warn consumers about the serious risk of injury.









52. The following is a small sample of consumer complaints retrieved from Consumer Affairs, an online website where men have been sharing their stories:

- (a) ... The manufacturer of this product claims that their product is safe, yet the instructions strongly recommend testing it on another, less visible part of your body. Hmm... if a company sells facial cream you shouldn't have to "test" it first on your elbow or little toe. When's the last time you had to test toothpaste on your ear lobe before using it. I am not, and never will be, a person that is "sue happy" but this is a case of a manufacturer putting profit above consumer safety... and this one guy who is going to put considerable resources towards bringing them to justice. Until then, maybe you should deem this product "Just For Men's Elbows-In-Case-of-Chemical-Burn, Swelling and Emergency-Room-Visit."
- (b) ... Since I've used it, I have noticed splash marks from the product on the paintwork in the bathroom. It has even burnt through the paint work. I'm now on antibiotics for 2 weeks, swelling has gone down but I'm not sure if my skin will fully heal. I have phoned JFM helpline and they don't want to know. I hope someone will take action against this company.
- (c) I have been using JFM for a few years. I had no problems until I purchased the "new formula". It is the kind you had to mix two tubes together. After following all directions, I used the product. About 2 hours later, I began itching. It has now been itching so bad for about 5 days that I have scratched my face raw. I have tried cortisone creams, vaseline, aloe to no avail. Had to go to a work meeting today and my face was so red and flaky I was afraid people were gonna think I had leprosy! If this ever goes away, I will cherish my gray! This stuff is horrible!!

- (d) After using this product, I developed oozing blisters and severe pain. I am now left with permanent scarring. Do not use this product. I am searching for a good Lawyer.
- (e) I use Just For Men as instructed no longer than 5 minutes and believe me the results even now 17 days later no one can tell me. No chemicals should be this powerful to rip a facial apart, hairline Scout headaches, hard to breathe. This is pain, suffer, a complete embarrassment. This product has done me so much harm. I am too embarrassed to be seen in the public at all even around my whole family. In a motel because this is too much to bear. I cry from embarrassment or so much pain. I cannot sleep on my face. Can I sleep on my head. It is even hard to shower. To let anyone touch my face. Even the wind hurts. I tried to get in touch with Just For Men and I got no response.
- (f) I did the skin test and waited 48 hrs. before I tried this product. I applied JFM beard and mustache dye to my skin on the night of Apr 23 @ about 8 pm, by 2 am of the 24th I was at the hospital because I had itching, swelling, oozing and a lot of heat generating from the area that I had applied the product. Today is my wife's birthday, I wanted to look my best when I took her out, now I can't even leave my house. Thanks JFM!!!
- (g) Just For Men. Real Black M-55. I tried this product. I did the 48 hour test and then used it. The afternoon after I used it my face became irritated. The next morning I had blisters all around my mouth. I immediately went to my doctor and took the prescribed medication. It's been 2 weeks and my mouth still has blisters and they're seeping a yellow puss all day and it hurts. I'm now looking online to see if there is anything else I can do. I'm going back to my doctor again tomorrow. I don't know what else to try or do. I've been in pain and I can't go to work because I look like a freak. Any answers would really help. Why would they let this product be sold on shelves?
- (h) For about two years I been using just for men beard dye. Within the last six months I notice a change in their product new line. Upon using it, I receive first degree burns over 75 percent of my face, not only that I have lesions on my face with a burning and itching sensation which is very very painful. There is times my face weeps from the burning. I spend thousands of dollars to correct what was done to me by just for men beard dye. Please be careful using this product or you will be so sorry.
- (i) Been using Just For Men for about 8 years...never had a problem. Bought a box a couple of weeks ago. Noticed when i opened it up it was different -- It was a 2 part mix. The old ones were like a toothpaste tube with a small comb. Didn't think much of it at the time. Mixed the two together while using the plastic gloves...let it stay on my head for 5 minutes and washed out... Took a towel and start dabbing it, thinking it was still wet, til i noticed a YELLOW PUS liquid on the towel??? Then all hell broke loose -- it was so bad, it was

like my head was on fire...I had blisters on top of blisters. I couldn't leave the house for two days.

Went to see the doctor on that Monday. He gave me some Steroids and a special soap. After a few days the Scalp was still sore but stopped blistering. I had to call in sick that Tuesday from work. It was the **FIRST TIME IN 25 YEARS** since i had done that. Then by that Wednesday I noticed my left arm and chest started to break out. ... after a week of it getting worst, All Red and itchy and started to scab up, went to the Urgent care last night. They said it was bad and put me on Steroids again. Now for 14 days -- total of 40 Pills. The nurse also told me that another man was there the night before with the same problems. Think Just For Men should be accountable for their product and take it off the market **NOW**. I heard there was a class action suit against them. I am really thinking about getting a lawyer myself for the Medical bills and prescriptions i had to pay so far...

- (j) This product ought to be called just for terrorists. I followed the manufacturer's instructions but the only noticeable color change was that my face turned red...with blisters and incredible itching and discomfort.
- (k) Used JFM two weeks ago for the first (and last) time. Followed the directions to the letter and woke up with yellowish ooze coming from my swollen face. Had to put a towel on my pillow for two days until the oozing subsided. It left small hard scabs under my beard where the oozing came from. Five days after that, the itching started and then my face started peeling and flaking. What is even **MORE** disturbing is that I came into contact with someone who uses this product regularly (learned this in retrospect) and after inadvertently using the same face towel, my friggin LIPS swelled up and started burning and cracking. WTF is in this stuff????
- (l) I've used it in the past. This time my face looks like the elephant man. Extremely swollen and irritated. Face feels like leather now. I can barely even open my mouth.
- (m) On 07-10-14 I purchased Just For Men dark brown. That afternoon followed direction and carried out test on arm, on the 09-10-14 test patch, ok. Applied product, looked good. 10-10-14 noticed test patch becoming irritable, by 11-10-14 climbing the ceilings with blisters throughout head and chest as I applied to chest hair as well, oozing blisters extreme itch / discomfort. Have crushed vertebrae, chain sawed leg in past, which was a walk in park compared to the discomfort this product has caused and still causing me. Now 23-10-11 blisters have subsided, however rash has now spread over large areas of body where product was not applied. Doctors have me on an array of medication, hopefully there is an end to this suffering which is not death.

- (n) I too have been a victim of this nasty product. I have used the dark brown beard dye for years and it worked fine. Recently I broke out with the intense itching, red sores that ooze liquid, and white scaly patches. This has happened several times to me. I even bought another box because I thought it was a bad batch. This time is even worse. I have been home bound for a week now because I look so bad. I emailed the company and gave them all the information on the boxes and their only response was to stop using it. Something clearly needs to be done about a class action suit. It takes forever for these sores to go away. Hopefully it won't leave permanent scars.
- (o) I have used JFM for over 10 years and have never had a problem until the past few months. I have had allergic reactions that have progressed to the point that I have experienced blisters on my head and rash and a sunburn effect on my back. I contacted the company and asked if they had changed the make up of the product telling them I had a reaction. I noticed that one of the 2 part solutions had changed. It was now a white colored. They refused to answer the question and only told me to stop using the product...
- (p) Used for 2 or 3 years with no problem until recently. Then started burning and itching. Had scabs under my mustache. Had flaking skin under my beard. It was constantly red and inflamed. Do not use as something changed in this product.
- (q) ... If JFM wants to stay in business, they need to stop messing with the successful ingredients and go back to the original formula. "If it isn't broke, please don't fix it". In my opinion, JFM obviously Did Not Test this latest formula, or, did not test the ingredients if they are now obtained elsewhere...
- (r) This product has no doubt been changed. I have used it for the last 8 or 9 years and never had a problem. I noticed the formula changed and did not look or smell the same about a month ago. I use it 3 times since then and had very bad itching on my scalp for a week after each use. I'm not using it anymore and suggest everyone else do the same.
- (s) This is only the second box of J for M I've tried. The first worked just fine. The second box the formula had obviously changed and so did the results. About 6 or 8 hours after applying my face and neck started itching and heating up horribly. My face swelled up to the point where the skin actually split open. It's been 48 hours now and finally the swelling is going down. Now there are scabs all over my face. I can't wait to shave off my beard now when this heals up enough. I genuinely feel like I have been poisoned.
- (t) I have been using JFM for many years but last year this product has made me suffer from extreme itching, oozing for weeks after a usage. Someone need to get the company to either

change it back to older formula or take it off the market and if there is a class action let me know...

- (u) After many years of using JFM, I finally had to stop using it as the allergic reaction far outweighed my vanity needs. If my affair with JFM ended here it would not be so bad. However the discoloring in and around my beard, mouth, chin, and neck continued to get worse. Not only that, the patches then started to spread to the back of my hands and also my genital area. I soon found out I had Vitiligo...
- (v) I'm gratified to see I'm not alone in discovering that something has happened over the last few months with the formula for JFM. I started using M-55 back in Sept 2013 and was thrilled with the first several applications...no irritation at all...THEN, in Dec of 2013 I noticed the formula didn't look the same when I blended the tubes together. Since then, I have major redness, irritation and bumps like the other men have reported.
- (w) I have been using JFM beard coloring for 6 years with never a problem. In the last few months the product took on a different color during mixing so I knew the formulation of the chemistry had changed. The revised formulation has given me numerous facial skin problems, including red skin, extreme itching, boil looking pimples and the worst looking lesion on my lips you have ever seen. I was forced to shave my beard off and was shocked to see the skin problems left by this horrible product. I cannot rid myself of the physical skin damages with any over the counter meds.
- (x) I bought Just For Men "Dark Brown" hair color...Touched up the 'ole 'noggin, and hell, while I was at it, applied some to the full beard I grew in over Christmas... Well as most of you know now (not sure why else you would be reading these posts), I am experiencing symptoms that I would describe as "melting of the head, face and neck areas" .. What kind of people created this... Monsters I say... I have all the same symptoms described here, except the added bonus/difference from what I can tell, is the swelling and leaking of the head area (although I only read approx. ten posts here). What is presently happening to me cannot be put into words here... Please, if for some reason you are reading this Prior to purchasing Just For Men, for the love of God, don't buy it, run the other way... Just as I was writing this, I have leaked through an entire face cloth...
- (y) I've used JFM before without any problems. I tried it before heading home after being on a business trip for about six weeks. Since arriving home, I haven't wanted to see any of my friends or family because I started looking like a monster. My skin first started turning red under my beard. Then these big sores appeared. Then the worst started to happen, this itching and painful sores started to ooze this pus out like a fountain. I've truly been worried how long it takes to go away. Because it hasn't been getting any better and it's been four

days. I haven't noticed anyone mention how long it usually takes to clear up. I'm positive they've been playing with their formula and some kind of complications is in order.

- (z) It was an eye-opening experience to find that I was not the only one to experience agony after using this product. I, like the majority of guys on this site, had used this product for years with no problems. What a shock when I started to experience the same side effects everyone has described. What the hell did they do to this product? Did they find a cheaper way to produce it in some third world country? This company really does need to be sued. God forbid they are testing this on innocent animals....
- (aa) I would really like to know who the idiot was that decided to change the formula. I've been using this product for years now and other than a little itch, never had any problems. My last purchase and application was somewhat different. My face is on fire shortly after application and itching like crazy, but the next morning my lips and lower face was swollen and I had these little sores that leak puss and sometimes blood. If you can't do any better than that maybe you should take those men pictured on the boxes off and put some swollen and puss/blood running faces on the cover or at least as a warning picture on the box then see how much you sell. Thanks for ruining my holiday season.
- (bb) I have taken this product before....about 2 yrs ago with no issues. This time my lips and throat and cheeks have swollen up to a ridiculous level..I have started to get bleeding, seeping pores with tremendous itching and fell I cannot leave the house with people looking at me like a freak-----What in hell did you people do to this product???? I would get the same results pouring battery acid all over my face ...It is a disgrace what you have done...If this scarring becomes permanent I will definitely be coming after your *****--pull this **** from the shelves you dopes...Save other people this agony...
- (cc) I have used the Just For Men mustache and beard color black m-60 for 3 yrs. I have never had problem with this product before. I recently purchased a new batch about a two weeks ago. Before I used the product I did the allergy test and it was successful. Then I followed the instructions as always for apply the dye as I have done so many times before. I also used the Just For Men shampoo to rinse. I started itching within hours but I did not think anything of it.
- (dd) I've used Just for Men Jet Black product several years now. After using this product on the three dates listed below, a severe allergic reaction occurred. My face & lips swelled up causing me a lot of discomfort. This has occurred three times: 08/10/2013, 09/23/2013 and 11/01/2013.

- (ee) I have never had an issue like this and hopefully never will again. The beard dye caused me to break out in an awful rash with pus-filled bumps and caused my neck and face to swell over three inches. I am now in the emergency room with a pile of prescriptions and a steroid shot. So this ten-dollar beard dye is turning into a giant medical bill plus prescription expenses. I hope someone ties down the guys that make this and pour it all over them for hours. I am aware that I can do nothing legally because of their fine print but I am optimistic karma will hurt these people like they have hurt me.
- (ff) The Just For Men mustache and beard dye has destroyed my skin on my face. A chemical burn has scarred me for life. The JFM company complaint rep told me that the JFM company will make millions before this company will pull their product from the shelf. The pain & blisters that everyone gets that has used JFM will have lifelong skin damage. Thousands, if not millions of men Will suffer... Do not use this product. If this happens to you or anyone you know, call them immediately & an attorney fast. We need to put an end to Just For Men. Please, if anyone can help us, please do it fast. Before some one else ends up with lifelong facial scares like the godawful ones that I have now.
- (gg) I have been using JFM for several years and I agree, the formula is not the same! Several weeks ago, I developed a rash between my lip and chin and my girlfriend looked at it and immediately said that it was caused by JFM. I said no way. I have been using it for years. Well this morning, I used it again, and it burned so bad, the rash immediately spread and I wanted to get my hands on whoever approved the formula change. This product must come off the market immediately, an urgent recall deemed necessary. My breakout is horrible, not to mention the rash. I used the product to enhance my appearance and now I hate going out the house...
- (hh) I tried a hair dye for the first time in my life. My hair is a darker brown, so I got the Just for Men Medium Dark Brown H-40. I followed the directions perfectly, leaving the product in for five minutes and then washing it out in the shower. My hair came out jet black! Also, I started having burning sensations on my head, with terrible itching and pustules that popped up all over. The next morning, my right eye started to swell and by the end of the day was swollen shut. I went to urgent care and was prescribed some Prednisone and lotion to put on the burns on my head and ears. My left ear also swelled up. There are burns all over the back of my ears, throughout my head and wherever the product touched my forehead.
- (ii) I've used the product numerous times over the years. The last couple of times it was horrible. My face was swollen, it itched and oozed pus. I couldn't sleep on my face for a week. This is why we need the EPA. The product is produced in China and no telling what is out into the product. Something has change. We all should sue for pain and suffering.

That will get their attention. Something is seriously wrong with this product and it should not be on the market!

- (jj) I have been using JFM real black for over 10years. The recent box I used this Sept 2013 caused blistering with water oozing from the pores. JFM definitely changed their chemicals inside this product without notifying their customers.
- (kk) This was a new experience for me that turned out to be horrific... I don't think I need to go into details at this point considering how many others have had the same experience. I had the burning, itching, blistering and the pus that continued to drip so much it ruined several of my shirts. I can't believe that no one has filed a class action suit. The number of complaints will get bigger.
- (ll) The next day I woke up. My face was really red, burning, just felt irritated, and just painful. I looked in the mirror and my whole face was swollen. I thought that it would get better but instead it got worst. Then what looks like a rash started to appear. I went to the doctor. The burn is so bad he has taken me out of work for a few days. Is there anything that we can do about this because something has clearly changed with this product and we were not told about the change. Everyone can not be experiencing an allergic reaction.
- (mm) I've used JFM in the past and never experienced any problems. Recently, I used the product and developed a rash, oozing sores and swelling along my chin and cheeks to the point that I couldn't leave my home and missed a week of work. ... the only conclusion I draw is JFM caused of my problem and I'd like to know what changes they may have made to the ingredients or production process that can induce such a reaction.
- (nn) My husband followed the directions to a tee, patch test and all. One day later, his head start to itch. By day 2, his head which is the shape of an oval was swollen to the shape of a circle!! With bumps all over his head, forehead and disgusting ones on his chin that even morphed his mustache. I AM FURIOUS. Their patch test obviously needs to be adjusted. WHERE IS THE CLASS ACTION ON THIS! Got to hit them where it hurts... their wallets.
- (oo) I had been using Just For Men on my sideburns and mustache for years with no problems until around March of this year when I started to notice pimple-like scabs forming on my left sideburn. This was followed months later by hair loss on the sideburn on the right side. No reaction in the area of the mustache however. After reading through all the complaints, I see many other men experiencing similar bizarre side effects so something has obviously changed and it may be they changed the formula to save money

or something, who knows. So my question, is there a class action suit against the company so we can find out what's really going on here?

(pp) I have used their product (black or dark brown) for a couple of years without problems, but the last three times I used gave me a terrible burning rash... dry and bleeding. I stopped using it for a couple of months and my facial skin and scalp got better... Then I made the mistake of using the rest of the tubes and my face, lips, skin around my ears had a terrible reaction. I am sure that this product is dangerous and should be taken off the market. I have made an appointment with my doctor and has referred me to a dermatologist. This product is dangerous and should be taken off the market. Bad company... bad people. I would be very surprised if they do not know the pain and problems they are causing people who give them money.

(qq) I have been using this product for many years. Although my skin would sometimes burn or itch, it would usually go away. Lately I have developed a rash on my neck that will not go away. I think they have definitely changed the formula to this product.

(rr) Started using JFM August 2012. No problems until March 2013. This product should be banned. What a nightmare. Still recovering, a week of suffering crusty blisters oozing water.. Still scratching my face off. They have changed a chemical in the product in Feb 2013 when the packaging changed...

(ss)I have been used Just For Men for 8 years and nothing has ever gone wrong, but the last time I used it 5 days ago (July 26, 2013), I woke up with huge red bumps and swelling all around my mouth and face. Looks like I got stung in the face by bees. They must have changed something in the formula. I just got back from the doctors and had a steroid shot and am now taking 4 different medications. Incredibly painfully. Have missed 3 days of work. Highly recommend that no one uses this product. Just For Men beard dye. I live in Scottsdale, AZ, and when I saw my doctor, he told me this is the third case he has had in two weeks. I am definitely going to pursue a legally.

(tt) As so many have stated, I believe the product was changed, perhaps to save money or given to the Chinese, noted for their agreeing to do one thing, then altering products with cheaper goods, chemicals, etc. This requires investigation and from reading everything below, a lawsuit certainly seems in order, if for no other reason to find out the truth of why we are experiencing such inconvenience. This is painful, does not clear up quickly and as I write, I am over a month suffering with this itching, oozing, blotchy skin. I have had to shave my thirty year beard and now my raw skin is exposed for its rash causing many to comment on how sick I look.

53. The Defendants knew or should have known that a significant percentage of consumers would have an allergic reaction to their products, but nonetheless failed to advise consumers to undergo proper allergy testing before using their products.

54. Despite this knowledge, the Defendants failed to warn or to disclose such rates of reaction to consumers and to the public in general.

55. Nowhere on their product packaging or inserts, websites, or marketing materials do the Defendants recommend that consumers undergo a patch test with a dermatologist prior to using Just For Men Products.

56. What the Defendants do advise is that the consumer “not wash or cover test area for 48 hours” – the burden to comply with the Defendants’ version of an allergy test is too high and essentially unfeasible. The risk of accidental contamination renders the so-called “test” useless in practice.

57. For example, during the Defendants’ version of an allergy test, for two days, consumers are unrealistically expected to:

- a) Not shower,
- b) Not wear long sleeve shirts,
- c) Not accidentally rub against anything,
- d) Not sweat, and
- e) Perhaps most impossibly, not close their elbow.

58. The Defendants knew or should have known that their recommended skin patch test was inadequate to accurately identify potential reactions to their products because:

- a) The instructions and directions for use did not disclose that the Defendants' at-home test was not a substitute for a patch test administered or monitored by a trained medical professional and that more accurate results could be obtained by a test administered by a trained medical professional,
- b) The risk that the test would be performed in the wrong area,
- c) The risk that the amount of product used would be wrong,
- d) The arm is not the appropriate location for a skin allergy test,
- e) The risk of a false negative or a false positive is high,
- f) The area that is tested is not covered or protected during the test, and
- g) The risk that the product would be disturbed by clothing or daily activities is high.

59. Consumers, including the Plaintiff and Class Members, detrimentally relied on the Defendants' instructions and patch test.

60. The Defendants knew or should have known that it is highly unlikely that a consumer would be able to perform their recommended version of the patch test properly and to obtain reliable results.

61. In addition, the Defendants knew or should have known that sensitization to PPD and/or other related chemicals during a skin patch test is likely to occur in a significant percentage of the population and that when sensitization does occur during a patch test, the consumer will have a late reaction to the PPD and/or other related chemicals of more than 48 hours, if at all, after exposure which renders the Defendants' testing procedure useless.

62. Due to sensitization during a patch test, it is possible for consumers to have a negative skin patch test result and to still have a severe reaction to the Defendants' Just For Men Products.

63. Despite this, the Defendants fail to warn or to disclose the risks of sensitization during a skin patch test.

64. Further, the Defendants provide inadequate instructions on how to combine the colour base and the colour developer prior to its application. The Defendants use vague words such as "small" and "equal" parts, but fail to provide any tools or methods to measure the actual quantity of each chemical or to ensure that equal amounts are being applied.

65. The Defendants do not provide any instructions on what a "small" amount of chemicals means leaving the consumer to guess as to the proper testing procedure.

66. Without precise measuring tools, it is impossible to determine if "equal" amounts of each chemical are being mixed for application.

67. Even if the product's patch test was adequate and reliable, which it is not, the vague, ambiguous, and inadequate instructions for its use render the test inadequate at best and useless at worst.

68. The Defendants fail to warn or to disclose the probability that a user will have an adverse reaction to Just For Men Products.

69. The Defendants spend millions of dollars on advertising via television and internet, but do not warn about any adverse reactions anywhere (or the probability thereof), including on their website and on their television commercials.

70. The Defendants do not furnish any information about adverse reactions or any warnings or precautions in the Frequently Asked Questions section of their website. In fact, the website is completely devoid of safety information or information related to adverse reactions regarding their Just For Men Products.

71. There are safer alternatives to PPD that the Defendants could have used in Just For Men Products; however, the Defendants have made the business decision to continue to use PPD in their products regardless of the risks.

72. These safer alternatives include, but are not limited to:

- (a) Henna-based hair dyes,
- (b) Para-toluenediamine sulfate hair dyes, and
- (c) Other semi-permanent dyes.

73. The Defendants fail to warn about or to disclose the true nature and extent of the risk of serious adverse reactions posed by Just For Men Products in the general population of users or consumers.

74. The Defendants also fail to warn or to disclose the fact that certain colours (i.e. darker) of Just For Men contain an increased amount of PPD, which poses an even greater risk of an adverse reaction for consumers who use those particular colours or shades.

75. Further, the Defendants fail to warn or to disclose that men with dark skin (such as African Americans, etc.) are at an even greater risk of suffering an acute reaction to PPD than those with lighter skin, such as Caucasians.

76. A 2001 study performed by the Cleveland Clinic concluded that the sensitization rate of PPD in African American users overall (men and women) was 10.6% versus 4.5% in Caucasians. The study further concluded that the sensitization rate of PPD in African American men in particular was 21.2% compared to 4.2% in Caucasians.

77. Just For Men Products have an unacceptable and unreasonable rate of adverse reaction in the general population, which is even higher in certain population groups, such as African American or dark-skinned individuals.

78. Despite knowing that the overall population of consumers were already at an increased risk of experiencing an adverse reaction to PPD and that African American men in particular were five times as likely to experience an adverse reaction to PPD, the Defendants aggressively targeted the African American community in their marketing and advertising.

79. In addition, other scientific studies have found increased sensitization rates to predominantly dark-haired populations including 11.5% in India and 15.2% in Spain.

80. In fact, PPD is now known as one of, if not the most, common allergens in the African American population, even rivaling nickel which is the leading cause of Allergic Contact Dermatitis in the world.

81. The Defendants knew or should have known that consumers were at a greater risk of experiencing an adverse reaction while using PPD compared to other hair dye products that do not, and the Defendants knew or should have known that consumers with darker hair, including but not limited to African Americans, were at an even greater risk of experiencing an adverse reaction to PPD.

82. Despite this knowledge, the Defendants failed to warn or disclose to their consumers that they were exposed to a significantly increased risk of suffering an adverse reaction.

83. The Defendants also knew or should have known that there is a substantial likelihood of serious bodily injury when using Just For Men Products because they contains PPD. However, the Defendants failed to warn or disclose this to consumers and the public in general.

84. Instead of providing adequate warnings and disclosure, the Defendants represented that their product was safe when used as directed even though the Defendants knew or should have known that their 48-hour allergy test was flawed and ineffective.

85. The Defendants also failed to warn or disclose to consumers and the public in general that African Americans are more than two times as likely to have a severe reaction to their products than other consumers, and that African-American men are five times more likely to have any reaction at all.

86. The Defendants' warning label for Just For Men inadequately addresses and cautions of potential adverse health risk associated with the use of the product, as set forth in this Statement of Claim. Even when such risks are mentioned, they are minimized and downplayed, further reducing the utility, if any, of the products' warnings.

87. The Defendants have an internal claims process in place to obtain liability releases and to compensate consumers who are injured by Just For Men Products in order to cover up any problems associated with their Just For Men Products and to prevent consumers who are injured from taking legal action against them.

88. The Plaintiff is unaware of any clinical trials or studies performed by the Defendants related to the safety and/or injury rate of any of their Just For Men Products.

89. The Defendants have a duty to monitor the safety of their products and it would have been reasonable for them to conduct multiple clinical trials and/or studies related to the safety of their Just For Men Products; however, it does not appear that they have done so.

90. The Defendants knew or should have known of the high number of adverse reactions and injuries related to their Just For Men Products from a multitude of sources, including, but not limited to their internal claims process, making their apparent failure to conduct any independent studies or clinical trials particularly abhorrent. The Defendants, who concealed their knowledge of the nature and extent of the Just For Men Products' danger from the public, have shown a blatant disregard for public welfare and safety.

IV. Summative Remarks

91. The Defendants designed, developed, formulated, tested, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold their Just For Men Products without providing critical safety information and adequate warning in Canada, including within the province of Ontario.

92. The Defendants failed to disclose and/or actively concealed, despite a wealth of longstanding knowledge, that the Just For Men Products are defective and unsafe in order to induce purchase.

93. The Defendants gave inadequate warnings about the Just For Men Products in its online and print advertisements as well as on the product packaging and insert.

94. The Defendants continue to design, develop, formulate, test, manufacture, package, distribute, market, promote, advertise, label, and/or sell the Just For Men Products throughout Canada, including within the province of Ontario, with inadequate warnings as to the above named health consequences which are described in more detail herein as well as without critical safety information in order to prevent said injuries.

95. The Defendants, through their misleading marketing campaign, successfully created a robust market for Just For Men Products.

96. The Defendants placed Just For Men Products into the stream of commerce in Ontario and elsewhere in Canada with the expectation that consumers, such as the Plaintiff and Class Members, would purchase and use it.

97. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendants' conduct.

98. The Plaintiff and Class Members would not have purchased the Just For Men Products had they known they were unsafe. When the Plaintiff and members of the Class purchased the Just For Men Products, they relied on their reasonable expectation that they did not pose an unreasonable safety risk.

99. The Defendants concealed material information regarding the truth about the existence and nature of the Product Defect from the Plaintiff and Class Members at all times, even though they knew about the Product Defect and knew that information about the Product Defect would be important to a reasonable consumer.

100. The Defendants were under a duty to disclose the Product Defect and they never disclosed it to the public at any time or place or in any manner.

THE REPRESENTATIVE PLAINTIFF

101. The Plaintiff purchased Just For Men Products on approximately five (5) occasions, from the fall of 2013 until December 20, 2015 when he used the Just For Men H-45 Dark Brown Shampoo-in Haircolour product.

102. At the time of sale, the Plaintiff was under the impression that he was purchasing a safe product that was free of any Product Defect.

103. The very next day, while washing his hair in the shower, he noticed small scabs all over his scalp that were irritating him. These scabs grew much larger and by the end of that week (which was Christmas 2015), his whole head, including his temples, the back of his neck and behind his ears especially, began to develop pustules which were leaking fluid.

104. The pus was quite extreme and would not stop dripping fluid down his neck onto his torso and beyond.

105. The Plaintiff then developed eczema all over his chest, abdomen, and legs.

106. On December 28, 2015, the Plaintiff visited the Medical Clinic at the University of Ottawa where it was determined that he was experiencing an allergic reaction and he was prescribed Penicillin, which he ingested.

107. On or about December 31, 2015, the Plaintiff returned to the Medical Clinic at the University of Ottawa where he was prescribed another antibiotic, to which he noticed no improvement in his skin condition.

108. Approximately one (1) week later, the Plaintiff returned again to the Medical Clinic at the University of Ottawa where he requested and received a referral to see a dermatologist – the next available appointment was three (3) to four (4) weeks later and he scheduled it.

109. The Plaintiff at this point was enduring incredible itchiness from his pussy sores and from the eczema and physical pain. In addition, he was unable to leave his home as his head and body were covered with unsightly, oozing, and disfiguring lesions which were causing him a good amount of emotional grief, stress, and embarrassment.

110. The Plaintiff was also unable to go to work for a two-week period causing him to lose approximately \$2,000 in gross wages (\$1,000 per week).

111. By the time he visited the dermatologist which was at the end of January 2016/ beginning of February 2016, the Plaintiff's skin condition had improved from its dreadful condition; however, he was still experiencing itchy and dry skin (and he still is at present).

112. The dermatologist prescribed the topical steroid medication, Betaderm (Betamethasone) 0.1% for application to his body and 0.05% for application to his head, temples, neck, and ears.

113. The Plaintiff now has every reason to believe that the Just For Men Products are plagued by a serious and pervasive Product Defect, that the Defendants have been engaging in widespread misrepresentations with regard thereto and he has learned that several actions for personal injury were instituted in the United States due to this same issue as well as class actions.

114. Had the Plaintiff known about the Product Defect, he would not have purchase the Just for Men Products, nor would he have ever agreed to use it on his body.

115. The problem with the Just For Men Products is significant, dangerous, economically nontrivial and widespread.

116. The Plaintiff has suffered damages as a result of purchasing the Just For Men Products. In addition to the damages as outlined above he has also endured pain, suffering, damage and inconvenience.

CAUSES OF ACTION

A. Strict Liability

117. The Just For Men Products were defective when they left the hands of the Defendants in that their formulation was unreasonably dangerous to human health and safety,, they were defective in design or formulation, there was inadequate warnings, and the products did not conform with the representations, posing a serious risk of injury.

118. When the Just For Men Products left the hands of the Defendants, the foreseeable risks of the products exceeded the benefits associated with their design or formulation and/or it was more dangerous than an ordinary consumer would reasonably expect when used in its intended or reasonably foreseeable manner.

119. In addition, the Defendants are strictly liable for their business decision to use PPD in Just For Men Products despite the fact that it is unreasonably dangerous and the fact that there are safer and effective alternative hair dyes which do not contain PPD.

120. Just For Men Products are also defectively designed because:

- (a) They cause an unreasonably high rate of adverse dermatological and other reactions in the general populace and particularly so to darker-skinned nationalities, including African-Americans,
- (b) The patch test selected by the Defendants, and the method by which the Defendants have chosen to instruct users to conduct it, is unreasonable, unsafe, unreliable, and

ineffective and it imposes unreasonable and unrealistic standards on users, greatly limiting the effectiveness of the tests, if any. These problems include, but are not limited to, the unreasonable instruction to leave the tested area of skin uncovered and undisturbed, when the risk of contamination is unreasonably high,

- (c) Their cautions and/or warnings are inadequate, as set forth in this Statement of Claim, for the following reasons, *inter alia*:
- (i) Just For Men Products fail to warn of the rates of adverse reaction among the general population and among certain population groups, such as African Americans,
 - (ii) The Defendants minimize and downplay those risks associated with Just For Men Products that they choose to disclose,
 - (iii) Just For Men Products fail to advise its users of the benefits of undergoing a patch test conducted by a medical professional,
 - (iv) Just For Men Products fail to display and advise of the product's risks, proper use, or of the need to conduct a patch test in an effective and reasonable manner,
 - (v) Just For Men Products fail to provide adequate or reasonable instructions as to the use of the patch test included with the product; and
 - (vi) Just For Men Products fail to advise users that the patch test, as Defendants have chosen to instruct users to conduct it, of problems with reliability, sensitization, and effectiveness, among others problems.

121. The Just For Men Products manufactured and supplied by the Defendants were defective due to inadequate post-marketing warning or instruction because, after Defendants knew or should have known of the risk of serious bodily harm, as set forth herein, from the use of Just For Men Products, the Defendants failed to provide an adequate warning to consumers, knowing the product could cause serious injury as set forth herein.

122. As set forth in this Statement of Claim, the Defendants made multiple material representations concerning the safety and effectiveness of Just for Men Products and minimized and downplayed those risks they chose to disclose.

123. The Just For Men Products manufactured and supplied by the Defendants were defective in that, when they left their possession, they did not conform to their representations.

124. These material misrepresentations are false as evidenced by the extreme number of adverse reactions to their Just For Men Products by Class Members.

125. As a direct and proximate result of their use of Just For Men, Class Members suffered harm, damages, and economic loss and will continue to suffer if this situation is not remedied.

126. The Defendants are strictly liable to Class Members for the reasons that follow:

- (a) The Defendants designed, developed, formulated, tested, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold the Just For Men Products,
- (b) The Just For Men Products' suffer from serious Product Defects and are unsafe,

- (c) The Just For Men Products could have been made without the Product Defect, but-for the Defendants' business decisions,
- (d) Class Members were entitled to expect that the Just For Men Products were not plagued by serious, dangerous and pervasive defects,
- (e) The defects inherent in the design of the Just For Men Products outweigh any possible benefits of their design and such defects were material contributing causes of the injuries and losses of Class Members, and
- (f) At the time of the injury and loss to Class Members, the Just For Men Products were being used for the purpose and manner for which they were intended and Class Members were not aware of the Product Defect and could not, through the exercise of reasonable care and diligence, have discovered such defects.

B. Breach of Express Warranty

127. The Defendants expressly warranted that Just For Men was a safe hair dye.

128. The Defendants expressly warrant that their product is safe and that Just for Men products “are backed by over three decades of research and have delivered great results over 50 million times”.

129. The Just For Men Products designed, developed, formulated, tested, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the Defendants did not conform to these express representations because it caused serious injury to the Plaintiff and Class Members when used as recommended and as directed.

130. As a direct and proximate result of the Defendants' breach of warranty, the Plaintiff and Class Members have suffered harm, damages, and economic loss and will continue to suffer such harm, damages, and economic loss in the future.

C. Breach of Implied Warranties

131. At all times relevant hereto, applicable law imposed a duty that requires that the Just For Men Products be of merchantable quality and fit for the ordinary purposes for which they are used.

132. The Defendants knew of the specific use, i.e. application to head and facial hair to colour grey, for which the Just For Men Products were purchased, and it impliedly warranted that the products were fit for such use, especially so as the Defendants marketed them for this particular purpose.

133. The Just For Men Products were defective at the time they left the Defendants' possession, as set forth above. The Defendants knew of this Product Defect at the time that these transactions occurred. Thus, the Just For Men Products, when sold at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

134. The Defendants knew, or should have known, that their Just For Men Products were inferior and unsafe to the other similar products sold by other manufacturers, particularly so due to their knowledge of the Product Defect.

135. The Just For Men Products are unfit, unsafe, and inherently unsound for use, and the Defendants knew that they would not pass without objection in the trade; that they were not fit for the ordinary purpose for which they were used, that they were unsafe and were unmerchantable.

136. Consequently, the Defendants breached the implied warranty of merchantability, to wit: they failed to sell safe Just For Men Products.

137. The Defendants were notified of the defects of the Just For Men Products, but have failed to correct them. The Defendants have received thousands of complaints and other notices from customers advising of the Product Defect associated with the Just For Men Products, including the present Statement of Claim and the U.S. legal proceedings referred to earlier.

138. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Class Members have suffered damages.

D. Fraudulent Concealment

139. The Defendants made material omissions as well as affirmative misrepresentations regarding the Just For Men Products.

140. The Defendants knew that the representations were false at the time that they were made.

141. The Defendants fraudulently concealed and/or intentionally failed to disclose to the Plaintiff, the Class, and all others in the chain of distribution (e.g. concealments and omissions in the Defendants' communications with wholesalers, retailers, and others in the chain of distribution that were ultimately passed on to the Plaintiff and the Class) the true nature of the Just For Men Products, which is that they contain the Product Defect.

142. The Just For Men Products that were purchased by Class Members suffered from the Product Defect.

143. The Defendants had a duty to disclose material facts regarding the true nature of the Just For Men Products because the Defendants had exclusive knowledge of the true properties of the Just For Men Products at the time of sale. The Product Defect is latent and not something that the Plaintiff or Class Members could, in the exercise of reasonable diligence, have discovered on their own prior to purchase.

144. The Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to the Defendants who have superior knowledge and access to the facts and the Defendants knew they were not known to or reasonably discoverable by the Class Members.

145. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Class Members to purchase the Just For Men Products.

146. The Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the Just For Men Product Defect and such facts were not known to the public or to the Class Members.

147. The facts concealed and/or not disclosed by the Defendants to the Plaintiff and Class Members are material facts, in that a reasonable person would have considered them important in deciding whether to purchase the Just For Men Products.

148. In addition, Class Members relied on the Defendants' Representation and they purchased Just For Men Products. Said reliance was reasonable. The Class Members were without the ability to determine the truth on their own and could only rely on the Defendants' statements and representations.

149. As a result of the concealment and/or suppression of facts, the Class Members have sustained and will continue to sustain damages.

E. Failure to Warn

150. The Defendants had a duty to warn consumers about the risks and known problems associated with the use of Just For Men Products as it is certainly reasonably foreseeable that Class Members would use the products as directed and that it so doing, be exposed to an increased serious risk of injury.

151. The Defendants failed to exercise reasonable care and to properly warn of the risks associated with the use of Just For Men Products as their warning and the instructions to conduct a skin patch test, including the instructions for its administration were inadequate and vague. In addition, the Defendants fail to inform consumers of the benefits of having a proper patch test done.

152. The Plaintiff states that his damages and the damages of other Class Members were caused by the Defendants' failure to warn, which includes, but is not limited to, the following:

- (a) The Defendants failed to provide Class Members with proper, adequate, and/or fair warning of the serious risks associated with the use of their Just For Men Products,

including, but not limited to dermatitis, eczema, blistering, burns, scarring, allergic reactions, anaphylactic shock, skin depigmentation, hair loss, inability to use shampoo and/or soap on the affected area(s), stunted hair growth, reddening and swelling, contact urticaria, and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage;

- (b) The Defendants failed to warn Class Members of the risk of developing skin sensitization to the Just For Men Products;
- (c) The Defendants failed to adequately monitor, evaluate and act upon reports of adverse reactions to Just For Men in Canada and elsewhere; and
- (d) The Defendants, after noticing problems with Just For Men, failed to issue adequate warnings, timely recall of the product, publicize the problem, and otherwise act properly and in a timely manner to alert the public, including adequately warning persons using Just For Men and their physicians or other health care providers of the product's inherent dangers.

F. Civil Negligence

153. The Defendants had a positive legal duty to exercise reasonable care to perform their legal obligations to the Class Members, including, but not limited designing, developing, formulating, testing, manufacturing, packaging, distributing, marketing, promoting, advertising, labelling, and/or selling a safe product, that did not pose a significantly increased risk of injury to the Plaintiff and Class Members.

154. The Defendants breached their duty of care to the Class Members by negligently designing, developing, formulating, testing, manufacturing, packaging, distributing, marketing, promoting, advertising, labelling, and/or selling the Just For Men Products and by failing to ensure that they were of merchantable quality and fit for their intended purpose, free from the Product Defect.

155. The Defendants knew or should have known that hair dye that is marketed to be used on a regular basis to improve cosmetic appearance presents a risk of severe injuries, including dermatitis, eczema, blistering, burns, scarring, allergic reactions, anaphylactic shock, skin depigmentation, hair loss, inability to use shampoo and/or soap on the affected area(s), stunted hair growth, reddening and swelling, contact urticaria, and other severe medical injuries, and other permanent skin reactions therefore giving rise to pain and suffering, debilitation, and the need for medical treatment including possible surgery and further complications, and therefore was not safe for use by the Plaintiff and Class Members.

156. The Defendants failed to exercise reasonable care in the manner and method by which they warned users of the risks associated with use of Just For Men, for the reasons set forth in this Statement of Claim.

157. The Defendants failed to exercise reasonable care in the patch test it chose to include with this product, and further failed to exercise reasonable care in the instructions as to how to conduct the patch test, all as set forth elsewhere in this Statement of Claim.

158. The aforesaid loss suffered by the Class Members was caused by this negligence, particulars of which include, but are not limited to, the following:

- a) The Defendants failed to properly design the Just For Men Products such that, under conditions of normal use, they were unsafe;
- b) The Defendants failed to properly develop, formulate, test, and manufacture the Just For Men Products such that, when used in an intended or reasonably foreseeable manner, they were unsafe;
- c) The Defendants failed to properly market the Just For Men Products such that they did not warn Class Members about the deficiencies with the Just For Men Products and the associated serious consequences;
- d) The Defendants failed to adequately test the Just For Men Products to ensure a proper design to eliminate the foreseeable risks;
- e) The Defendants failed to accurately, candidly, promptly and truthfully disclose the defective nature of the Just For Men Products;
- f) The Defendants failed to conform with good manufacturing practices;
- g) The Defendants failed to disclose to and/or to warn Class Members that the Just For Men Products were defective;
- h) The Defendants failed to recall said defective Just For Men Products;
- i) The Defendants continued to sell the Just For Men Products when they knew or should have known of their defective nature and other associated problems;
- j) The Defendants consciously accepted the risk of the Product Defect;

- k) The Defendants failed to provide Class Members with proper instructions on how to conduct the patch test prior to use;
- l) The Defendants failed to change their design, development, formulation, testing, manufacturing, packaging, distribution, marketing, promotion, advertising, and/or labelling process with respect to the Just For Men Products in a reasonable and timely manner; and
- m) The Defendants have not modified their practices and therefore continue to fail to fulfill their ongoing duties toward Class Members.

159. Despite the fact that the Defendants knew or should have known that Just For Men Products could cause severe reactions in consumers and therefore give rise to pain and suffering, debilitation, and the need for medical treatment including possible surgery and further complications, the Defendants continued to market Just For Men as a safe hair dye and failed to use ordinary care in warning Class Members of this risk.

160. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage and posed a real and substantial risk to the safety of the Class Members.

161. The loss, damages and injuries were foreseeable.

162. The Defendants' negligence proximately caused the loss, damage, injury and damages to the Class Members.

163. By reason of the foregoing, Class Members are entitled to recover damages and other relief from Defendants.

G. Intentional Misrepresentation

164. The Defendants falsely and fraudulently represented to the Plaintiff, to Class Members, and the public in general, that Just For Men, had been tested could be safely used.

165. The representations made by the Defendants were, in fact, false.

166. When said representations were made by the Defendants, they knew those representations to be false or, at a minimum, they willfully, wantonly and recklessly disregarded whether the representations were true.

167. These representations were made by the Defendants with the intent of deceiving Class Members and were made with the intent of inducing them to purchase Just For Men Products, which evinced a callous, reckless, willful, depraved indifference to the health, safety and welfare of Class Members.

168. At the time the aforesaid representations were made by the Defendants and, at the time the Plaintiff and Class Members used Just For Men, they was unaware of the falsity of said representations and reasonably believed them to be true.

169. In reliance upon said representations, the Plaintiff and Class Members were induced to and did use Just For Men, thereby sustaining severe and sometimes permanent personal injuries, and/or being at an increased risk of sustaining severe and permanent personal injuries in the future.

170. The Defendants knew and were aware or should have been aware that Just For Men had not been sufficiently tested, was defective in nature, and/or that it lacked adequate and/or sufficient warnings.

171. The Defendants knew or should have known that Just For Men had a potential to, could, and would cause severe and grievous injury to the users of said product, and that it was inherently dangerous in a manner that exceeded any purported, inaccurate, and/or down-played warnings and misleading instructions.

172. The Defendants brought Just For Men to the market, and acted willfully, wantonly and maliciously to the detriment of the Plaintiff and to Class Members.

H. Negligent Misrepresentation

173. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to the Class;
- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation were relied upon by the Class reasonably; and
- (e) The Class has sustained damages as a result of their reliance.

174. The Defendants represented to the Class Members that the Just For Men Products were safe when, in fact, the Just For Men Products contained PPD, which compromised the Just For Men Products' safety – this Representation was untrue as set forth herein.

175. In addition, the Defendants minimized and downplayed those risks that they elected to disclose.

176. These material misrepresentations made by the Defendants are false as evidenced by the extreme number of adverse reactions to their Just For Men products by Class Members and their materiality is evidenced by the fact that Class Members even purchased the products in the first place.

177. At the time that the Defendants made the misrepresentations herein alleged, they knew that they were false, they had no reasonable grounds to believe that they were true as there was ample evidence to the contrary as set forth in detail in this Statement of Claim, and the Defendants made the material representations recklessly.

178. The Defendants knew or were reckless in not knowing that their representations were untrue. The Defendants either had actual knowledge of the fact that the Just For Men Products were unsafe or they were reckless or negligent in not knowing.

179. The Defendants' actual knowledge was based upon studies, published reports and clinical experience that its Just For Men Products created an unreasonable risk of serious bodily injury yet the Defendants negligently misrepresented to Class Members that its hair dyes were safe.

180. The Defendants made the Representation herein alleged with the intention of inducing the Class Members to act by purchasing their Just For Men Products in reliance thereupon by appealing to the buyers' desire to improve their appearance.

181. The Class Members acted in justifiable and reasonable reliance on these material misrepresentations and purchased the Just For Men Products specifically under the belief that they would provide the claimed cosmetic benefits if used in the manner directed by the labelling.

182. The Class Members were unaware of the fact that the Just For Men Products had the Product Defect.

183. The Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendants.

184. The safety of the Just For Men Products is a primary selling point to the Plaintiff and the Class Members. Had the Class Members known the true facts, they would not have purchased the Just For Men Products and would have opted instead for a safer alternative.

185. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendants.

STATUTORY REMEDIES

186. The Defendants are in breach of the *Sale of Goods Act*, the *Consumer Protection Act*⁴, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act* and/or other similar/equivalent legislation.

187. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and the equivalent/similar legislation and common law in the other Canadian provinces and territories.

A. Breach of the *Sale of Goods Act*

188. At all times relevant to this Claim, the Class Members were “buyer[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

189. At all times relevant to this action, the Defendants were “seller[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

⁴ While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

190. There were implied conditions as to merchantable quality or fitness pursuant to s. 16 of the *Sale of Goods Act* as well as an implied condition as regards defects as the Product Defect could not have been revealed upon examination.

191. The Defendants were aware that the customers purchased the Just For Men Products based on their representations and based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will perform as presented.

192. The Defendants committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 16 of the *Sale of Goods Act*, the Defendants are liable. The Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

B. Breach of the *Consumer Protection Act*

193. At all times relevant to this action, many of the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

194. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

195. The transactions by which many of the Class Members purchased the Just For Men Products were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

196. The Defendants are resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

197. The Defendants have engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Just For Men Products have performance characteristics, uses, benefits and/or qualities, which they do not have;
- (b) Representing that the Just For Men Products are of a particular standard or quality which they are not;
- (c) Representing that the Just For Men Products are available for a reason that does not exist, namely, being a safe hair dye product; and
- (d) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the Product Defect as such use or failure deceives or tends to deceive.

198. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are likely to rely, to their detriment, on Defendants’ misleading statements as to the safety of the Just For Men Products.

199. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Class to purchase the Just For Men Products as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

200. The Class Members relied on the Representation.

201. The reliance upon the Representation by the Class Members is established by his or her purchase of the Just For Men Products. Had the Class Members known that the Representation was false and misleading they would not have purchased the Just For Men Products.

C. Breach of the *Competition Act*

202. At all times relevant to this action, the Defendants' design, development, formulation, testing, manufacturing, packaging, distribution, marketing, promotion, advertising, labelling, and/or selling was a "business" and the Just For Men Products were "product(s)" within the meaning of that term as defined in s. 2 of the *Competition Act*.

203. The Defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants;
- (b) Was made knowingly or recklessly;
- (c) Was made to the public;
- (d) Was false and misleading in a material respect; and
- (e) Stated a level of safety that was false and not based on adequate and proper testing.

204. The Class Members relied upon the Representation by buying the Just For Men Products and suffered damages and loss.

205. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

206. Pursuant to s. 36 of the *Competition Act*, the Class Members are also entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

D. Breach of the *Consumer Packaging and Labelling Act*

207. At all times relevant to this action, the Defendants were “dealer[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

208. At all times relevant to this action, the Just For Men Products were “prepackaged product[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

209. At all times relevant to this action, the Representation, including those relating to the safety of the Just For Men Products that was made to the public on the Packaging, were “label[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

210. At all times relevant to this action, the Representation that was made to the public on the Defendants’ website and otherwise, were “advertise[ments]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

211. The Defendants packaged, marketed, promoted, advertised, labelled, and/or sold the labelled Products with “false or misleading representations” under s. 7 of the *Consumer Packaging and Labelling Act* in that they used (i) expressions, words, figures, depictions or symbols that implied or may reasonably be regarded as implying that the Just For Men Products are not dangerous when used as directed, and (ii) descriptions and/or illustrations of the type, quality, performance, and/or function that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

212. In addition, the Defendants sold and/or advertised the Just For Men Products which were packaged and/or labelled in such a manner that the Plaintiff and Class Members likely would be, and were, reasonably misled with respect to the quality of the product.

213. As such, the Defendants breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages as a result under s. 20.

E. Breach of the *Food and Drugs Act*

214. At all times relevant to this action, the Just For Men Products were “cosmetic[s]” within the meaning of that terms as defined in s. 2 of the *Food and Drugs Act*.

215. The Defendants sold the Just For Men Products which contained PPD, a substance that may cause injury to the health of the user when the cosmetic is used:

- (i) According to the directions on the label or accompanying the cosmetic, or
- (ii) For such purposes and by such methods of use as are customary or usual therefor.

216. As such, the Defendants breached s. 16 of the *Food and Drugs Act* and are liable to pay damages pursuant to s. 31.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

217. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, *Consumer Packaging and Labelling Act* or the *Food and Drugs Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

218. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants or a percent of the sale of the Just For Men Products as a result of the Defendants' unfair practices and false representations which resulted in revenues and profit for the Defendants.

219. Further, the Defendants have been unjustly enriched as a result of the revenues generated from the sale of the Just For Men Products and as such, *inter alia*, that:

(a) The Defendants have obtained an enrichment through:

- i. Revenues and profits from the sale of the Just For Men Products;
- ii. The saving of costs of recalling the Just For Men Products; and
- iii. The saving of costs of replacing the Just For Men Products with properly designed and manufactured Just For Men Products.

- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation;
and
- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants' retaining any portion of such money paid.

220. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by receipt of the monies paid for the Just For Men Products;
- (b) The Class Members suffered a corresponding deprivation by purchasing the Just For Men Products;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

221. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

CAUSATION

222. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

223. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

224. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include, but are not limited to, the following general, special, and punitive damages:

A. General Damages (Non-Pecuniary Damages)

225. The general damages being claimed in this Statement of Claim include:

- a. Personal injury,
- b. Pain,
- c. Suffering,
- d. Disfigurement,

- e. Loss of enjoyment of life,
- f. Embarrassment,
- g. Stress,
- h. Trouble,
- i. Inconvenience,
- j. Dermatitis,
- k. Eczema,
- l. Blistering,
- m. Burns,
- n. Scarring,
- o. Allergic Reactions,
- p. Anaphylactic Shock,
- q. Skin Depigmentation,
- r. Hair Loss,
- s. Inability to use shampoo and/or soap on the affected area(s),
- t. Stunted hair growth,
- u. Reddening and swelling,
- v. Contact urticaria, and
- w. Other severe injuries associated with use including, but not limited to, prolonged and cumulative usage.

B. Special Damages (Pecuniary Damages)

226. The special damages being claimed in this Statement of Claim include:

- a. Medical expenses (including diagnostic tests and medical evaluations, as well as surgeries and/or medical procedures);
- b. Ongoing/future medical expenses (to determine whether the exposure to Just For Men Products has caused or is in the process of causing sensitization to PPD and other related chemicals)
- c. Medications purchased (including both over-the-counter and prescriptions);
- d. Aesthetic purchases (including make-up and/or other products purchased to hide/camouflage their injuries);
- e. Lost wages/earnings;
- f. Ruined garments/items,
- g. The purchase price of the Just For Men Products;
- h. Pain and suffering, stress, trouble and inconvenience; and
- i. Other damages as described herein.

C. Punitive (Exemplary) and Aggravated Damages

227. The Defendants have taken a cavalier and arbitrary attitude to their legal and moral duties to the Class Members and have knowingly been selling Just For Men Products that are inherently more dangerous than other hair dyes while actively misrepresenting facts concerning their safety and efficacy.

228. Notwithstanding the foregoing, the Defendants continue to aggressively market Just For Men to consumers without disclosing the aforesaid problems and injuries, which deprived Class Members of the necessary information to enable Class Members to weigh the true risk of using the products against the benefits.

229. In addition, it should be noted since the Defendants are part of a highly-revered, multi-million dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive and aggravated damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

230. At all material times, the conduct of the Defendants as set forth was deliberate and oppressive towards their customers and the Defendants conducted themselves in a wilful, wanton and reckless manner.

COMMON ISSUES

231. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Do the Just For Men Products designed, developed, formulated, tested, manufactured, packaged, distributed, marketed, promoted, advertised, labelled and/or sold by the Defendants suffer from a Product Defect?
- (b) Are the Just For Men Products defective, non-merchantable, and/or unsafe in the course of their normal use?
- (c) Did the Defendants know or should they have known about the Just For Men Product Defect, and, if yes, how long have the Defendants known of the defects?
- (d) Did the Defendants negligently perform their duties to properly design, develop, formulate, test, manufacture, package, distribute, market, promote, advertise, label, and/or sell the Just For Men Products?
- (e) Did the Defendants misrepresent the Just For Men Products as safe or fail to adequately disclose to consumers the true defective nature of the Just For Men Products?
- (f) Did the Defendants engage in marketing and promotional activities which were likely to deceive consumers by omitting, suppressing, and/or concealing the true efficacy and safety of Just For Men Products?

- (g) Did the Defendants omit, suppress, and/or conceal material facts concerning Just For Men Products from consumers?
- (h) What is the fair market value of ongoing and future diagnostic testing to determine whether their exposure to Just For Men Products has caused or is in the process of causing sensitization to PPD?
- (i) Are the Defendants strictly liable for the damages suffered by Class Members?
- (j) Did the Defendants breach their express and/or implied warranties by not providing a safe hair dye product and instead one that was unfit, unsafe, and inherently unsound for use?
- (k) Did the Defendants commit the tort of fraudulent concealment when they concealed and/or suppressed material facts concerning the Just For Men Products?
- (l) Did the Defendants misrepresent or fail to adequately disclose to customers the true defective nature of the Just For Men Products?
- (m) Do the Defendants owe the Class Members as duty to exercise reasonable care?
- (n) Did the Defendants act negligently in failing to exercise reasonable care to perform its legal obligations?
- (o) Did the Defendants intend or foresee that the Plaintiff or other Class Members would purchase the Just For Men Products based on their representations?

- (p) Did the Defendants proximately cause loss or injury and damages?
- (q) Did the Defendants engage in unfair, false, misleading, and/or deceptive acts or practices in their design, development, formulation, testing, manufacture, packaging, distribution, marketing, promotion, advertising, labelling, and/or sale of the Just For Men Products?
- (r) Did the Defendants' acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act* and/or other similar/equivalent legislation?
- (s) Have Class Members been damaged by the Defendants' conduct and, if so, what is the proper measure of such damages?
- (t) Are the Defendants responsible for all related non-pecuniary damages, including, but not limited to personal injury, pain, suffering, disfigurement, loss of enjoyment of life, embarrassment, stress, trouble, and inconvenience as well as dermatitis, eczema, blistering, burns, scarring, allergic reactions, anaphylactic shock, skin depigmentation, hair loss, inability to use shampoo and/or soap on the affected area(s), stunted hair growth, reddening and swelling, contact urticaria⁵, and other severe medical injuries associated with use including, but not limited to, prolonged and cumulative usage?

⁵ Urticaria (from the Latin *urtica*, "nettle" from *urere*, "to burn"), commonly referred to as hives, is a kind of skin rash notable for pale red, raised, itchy bumps.

- (u) Are the Defendants responsible for all related pecuniary damages, including, but not limited to, medical expenses (including diagnostic tests and medical evaluations, as well as surgeries and/or medical procedures), ongoing/future medical expenses (to determine whether the exposure to Just For Men Products has caused or is in the process of causing sensitization to PPD and other related chemicals), medications purchased (including both over-the-counter and prescriptions), aesthetic purchases (including make-up and/or other products purchased to hide/camouflage their injuries), lost wages/earnings, ruined garments/items, and/or the purchase price of the Just For Men Products, and pain and suffering, stress, trouble and inconvenience to Class Members as a result of the problems associated with the Just For Men Products?
- (v) Are the Defendants responsible to pay punitive (exemplary) and aggravated damages to Class Members and in what amount?
- (w) Were the Defendants unjustly enriched?
- (x) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair practices?

EFFICACY OF CLASS PROCEEDINGS

232. The members of the proposed Class potentially number in the thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

233. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

234. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

235. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice.

236. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to her counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

237. The Plaintiff pleads and relies on the *Courts of Justice Act*, the *Class Proceedings Act*, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Food and Drugs Act*, and other Consumer Protection Legislation.

THE DEFENDANTS' JOINT AND SEVERAL LIABILITY

238. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to himself and to Class Members and that each Defendant is responsible for the acts and omissions of the other Defendant for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other;
- (c) Each company entered into a common advertising and business plan to design, develop, formulate, test, manufacture, package, distribute, market, promote, advertise, label, and/or sell the Just For Men Products;
- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to design, develop, formulate, test, manufacture, package, distribute, market, promote, advertise, label, and/or sell the Just For Men Products;
and
- (e) The Defendants intended that their businesses be run as one global business organization.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

239. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendants engage in business with residents of Ontario;
- (b) The Defendants derive substantial revenue from carrying on business in Ontario;
and
- (c) The damages of several Class Members were sustained in Ontario.

240. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

SERVICE OUTSIDE ONTARIO

241. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));

- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute, the *Sale of Goods Act*, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and
- (f) Against a person carrying on business in Ontario (rule 17.02(p)).

Date: March 31, 2016

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ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA
Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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