

1 LEWIS WAGNER, LLP
 Dina M. Cox (admitted *pro hac vice*)
 dcox@lewiswagner.com
 2 Janelle P. Kilies (admitted *pro hac vice*)
 jkillies@lewiswagner.com
 3 Charles R. Whybrew (admitted *pro hac vice*)
 cwhybrew@lewiswagner.com
 4 501 Indiana Avenue, Suite 200
 Indianapolis, IN 46202
 5 Telephone: 317-237-0500
 Fax: 317-630-2799
 6

7 LATHAM & WATKINS LLP
 David J. Schindler, Bar # 130490
 david.schindler@lw.com
 8 Peter L. Winik (admitted *pro hac vice*)
 peter.winik@lw.com
 9 Sarah M. Gragert (admitted *pro hac vice*)
 sarah.gragert@lw.com
 10 Kristen M. Tuey
 kristen.tuey@lw.com
 11 Jonathan M. Jackson, Bar # 257554
 jonathan.jackson@lw.com
 12 355 South Grand Avenue
 Los Angeles, CA 90071
 13 Telephone: 213-891-8556
 Fax: 213-891-8763
 14

15 *Attorneys for Defendant*
Guthy-Renker LLC

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

20 AMY FRIEDMAN and JUDI
 MILLER, on behalf of themselves
 21 and all others similarly situated, et al.

22 Plaintiffs,

23 v.

24 GUTHY-RENKER LLC, et al.

25 Defendants.
 26
 27
 28

Case No. 2:14-cv-06009-ODW-AGR
JOINT FED. R. CIV. P. 26 REPORT

Action Filed: July 31, 2014
 Discovery Cut-Off: May 24, 2016
 Pre-Trial Conference: August 1, 2016
 Trial: August 30, 2016
[Matter currently stayed]

Judge: Hon. Otis D. Wright, II
 Magistrate: Hon Alicia G. Rosenberg

1 Pursuant to this Court's September 24, 2015 Order (Doc. 125) and
2 September 28, 2015 Order (Doc. 128) setting this matter for a Status Conference on
3 October 21, 2015, the parties submit the following Joint Report summarizing the
4 status of settlement negotiations between Plaintiffs and Defendants Guthy-Renker
5 LLC and Wen by Chaz Dean, Inc. (collectively "Defendants").
6
7

8 Prior to the Court's Order of September 24, 2015 (Doc. 125), the parties had
9 not had any substantial discussions regarding the possibility of early resolution.
10 Following this Court's September 24, 2015 Order, the parties have discussed the
11 possibility of early settlement but have been unable to reach an agreement on basic
12 terms.
13

14
15 **Plaintiffs' Position on Settlement**

16 After this Court's Order of September 28, 2015, Plaintiffs' Counsel sent an
17 extensive 10-page single-spaced settlement proposal to Defendants on October 7,
18 2015, which was largely rejected. Defendants responded on October 13 and 14,
19 providing their proposal for mediation. Despite having received more than 17,000
20 complaints of hair loss from customers, Defendants offered to mediate the hair loss
21 claims only on an individual basis through a one-sided and onerous process, which
22 does not have any component of finality and which requires the injured consumers
23 to pay substantially more for the mediation than the current rates offered to
24 consumers by the American Arbitration Association, the entity included within
25
26
27
28

1 Guthy-Renker's Terms and Conditions. Defendants rejected Plaintiffs' request to
2 include their proposal as an attachment to this filing, but the parties will be prepared
3 to discuss it at the hearing on October 21, 2015. Plaintiffs do not believe that
4 Defendants are prepared to enter into good faith settlement negotiations unless and
5 until this Court enters its order on class certification. Plaintiffs therefore request
6 that the stay be lifted and the briefing schedule for class certification be reset so that
7 the parties can complete discovery¹ and a decision can be made on class
8 certification.
9
10

11 **Defendants' Position on Settlement**

12
13 Defendants believe that it may be possible to mediate individual claims of
14 alleged hair loss that may be asserted by Plaintiffs' counsel's individual clients.
15 Defendants believe these individual claims may be well-suited for mediation,
16 similar to the mediation protocol that will be utilized in *Collazo et al. v. Guthy-*
17 *Renker, et al.* Case No. 2:15-cv-01974-ODW-AGR. However, Defendants believe
18 that mediation is not suitable on a class-wide basis because each potential Plaintiff
19 is unique, damages are not subject to class-wide determination, and the personal
20 injury product liability claims of Plaintiffs are not appropriate for certification.
21 Defendants are open to the possibility of mediation only if Plaintiffs present
22 individual Plaintiffs or claimants in order to evaluate individual potential claims
23
24
25
26

27 ¹ No party provided discovery during the pendency of the stay, so Plaintiffs respectfully request that the schedule for
28 class certification be reset taking this fact, and the pending motion to compel before Magistrate Judge Rosenberg,
into consideration.

1 just as in *Collazo*.

2 With respect to Plaintiffs' misrepresentation claims (including Violations of
3 California Unfair Competition Law; and, Violations of California False Advertising
4 law), Defendants believe Plaintiffs' misrepresentation claims lack merit and are not
5 subject to class-wide certification, but are agreeable to further discussion.
6

7
8 Dated: October 14, 2015

JOHNSON & JOHNSON LLP

9 **By:** s/ Jordanna G. Thigpen

10 Neville L. Johnson (SBN 66329)
11 njohnson@jllplaw.com
12 Douglas L. Johnson (SBN 209216)
13 djohnson@jllplaw.com
14 Jordanna G. Thigpen
15 (*Pro Hac Vice*)
16 jthigpen@jllplaw.com
17 JOHNSON & JOHNSON, LLP
18 439 North Canon Drive, Suite 200
19 Beverly Hills, California 90210
20 Telephone: (310) 975-1080
21 Facsimile: (310) 975-1095

22 William Anderson
23 (*Pro Hac Vice*)
24 wanderson@cuneolaw.com
25 CUNEO GILBERT & LADUCA, LLP
26 507 C Street, NE
27 Washington, DC 20002
28 Telephone: (202) 789-3960
Fax: (202) 789-1813

Michael Flannery (SBN 196266)
mflannery@cuneolaw.com
CUNEO GILBERT & LADUCA, LLP
11620 Wilshire Blvd., Suite 900
Los Angeles, CA 90025
Telephone: (202)789-3960
Fax: (202)789-1813

Charles J. LaDuca
(*Pro Hac Vice*)
charlesl@cuneolaw.com
CUNEO GILBERT & LADUCA, LLP
8120 Woodmont Avenue, Suite 810
Bethesda, MD 20814
Telephone: (202)789-3960

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Fax: (202)789-1813

Taylor Asen
(Pro Hac Vice)
tasen@cuneolaw.com
CUNEO GILBERT & LADUCA, LLP
16 Court Street, Suite 1012
Brooklyn, NY 11241
Telephone: (202)789-3960
Fax: (202)789-1813

Brian W. Warwick
(Pro Hac Vice)
bwarwick@varnellandwarwick.com
Janet R. Varnell
(Pro Hac Vice)
jvarnell@varnellandwarwick.com
Steven T. Simmons
(Pro Hac Vice)
ssimmons@varnellandwarwick.com
P.O. Box 1870
Lady Lake, FL 32158
Telephone: (352) 753-8600
Facsimile: (352) 753-8606
Attorneys for Plaintiffs

By: s/ Dina M. Cox
Jonathan M. Jackson (SBN: 257554)
jonathan.jackson@lw.com
David J. Schindler (SBN: 130490)
david.schindler@lw.com
Peter L. Winik
(Pro Hac Vice)
peter.winik@lw.com
Sarah M. Gragert
(Pro Hac Vice)
sarah.gragert@lw.com
Kristen M. Tuey
kristen.tuey@lw.com
355 South Grand Avenue
Los Angeles, CA 90071
Tel: (213) 891-8556
Fax: (213) 891-8763

Dina M. Cox
(Pro Hac Vice)
dcox@lewiswagner.com
Janelle P. Kilies

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(Pro Hac Vice)
jkilies@lewiswagner.com
Charles R. Whybrew
(Pro Hac Vice)
cwhybrew@lewiswagner.com
LEWIS WAGNER, LLP
dcox@lewiswagner.com
501 Indiana Avenue, Suite 200
Indianapolis, IN 46202
Tel: (317) 237-0500
Fax: (317) 630-2790

Attorneys for Defendant Guthy-Renker, LLC

By: s/ Michael B. Giaquinto
Barry R. Schrim (SBN 94533)
bschrim@hptylaw.com
Michael B. Giaquinto (SBN 276229)
mgiaquinto@hptylaw.com
HAWKINS PARNELL THACKSTON &
YOUNG LLP
445 S. Figueroa, Suite 3200
Los Angeles, CA 90071-1651
Telephone: (213)486-8000
Fax: (213)486-8080

Attorneys for Defendant Wen by Chaz Dean,
Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION RE: SIGNATURES

I, Jordanna G. Thigpen, am the ECF User who is filing the Parties’ Joint Federal Rule of Civil Procedure 26(f) Report. I attest that all other signatories listed, and on whose behalf the filings are being submitted, concur in the content of such filings and have authorized the filing of such documents.

Dated: October 14, 2015

JOHNSON & JOHNSON LLP

By: s/ Jordanna G. Thigpen

Neville L. Johnson (SBN 66329)
njohnson@jjllplaw.com
Douglas L. Johnson (SBN 209216)
djohnson@jjllplaw.com
Jordanna G. Thigpen
(*Pro Hac Vice*)
jthigpen@jjllplaw.com
JOHNSON & JOHNSON, LLP
439 North Canon Drive, Suite 200
Beverly Hills, California 90210
Telephone: (310) 975-1080
Facsimile: (310) 975-1095