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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JULIE CORZINE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WHIRLPOOL CORPORATION, a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 5:15-cv-05764-BLF

CLASS ACTION

FIRST AMENDED COMPLAINT

- 1. STRICT LIABILITY: FAILURE TO WARN**
- 2. STRICT LIABILITY: MANUFACTURING DEFECT**
- 3. STRICT LIABILITY: DESIGN DEFECT**
- 4. NEGLIGENCE**
- 5. NEGLIGENCE: FAILURE TO RECALL/RETROFIT**
- 6. BREACH OF EXPRESS WARRANTY**
- 7. BREACH OF IMPLIED WARRANTY OF FITNESS**
- 8. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
- 9. VIOLATIONS OF CIVIL CODE § 1790, et seq.**
- 10. VIOLATIONS OF CAL. BUS. & PROF. CODE § 17200, et seq.**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT**

2 Plaintiff Julie Corzine, individually and on behalf of all others similarly
3 situated (“the Class” or “Class Members”), brings this action and alleges as follows
4 on information and belief:

5
6 **THE PARTIES**

7 1. Plaintiff Julie Corzine is a resident of the city of San Jose in Santa
8 Clara County, California.

9 2. Plaintiff and the Class are collectively referred to herein as
10 “Plaintiffs.”

11 3. Defendant Whirlpool Corporation (“Whirlpool”) is a Delaware
12 corporation regularly doing business in Santa Clara County, California.

13 4. Plaintiffs herein allege that Whirlpool purchased Maytag Corporation
14 (“Maytag”) in 2006 and subsequently dissolved Maytag. Maytag is now a
15 Whirlpool brand (“Maytag Brand”).

16 5. Defendants DOES 1 through 25 inclusive participated in or controlled
17 the design, sale, manufacture, and distribution of said Drain Tubes and/or are
18 Defendants’ alter egos. Plaintiff is ignorant of the true names and/or capacities of
19 DOES 1 through 25 and will seek leave to name them in this case if and when
20 Plaintiff ascertains their names and capacities.

21 6. Defendants DOES 26 through 50 inclusive are manufacturers and
22 distributors of Drain Tubes sold and distributed in California. Plaintiff is ignorant
23 of the true names and/or capacities of DOES 26 through 50 and will seek leave to
24 name them in this case if and when Plaintiff ascertains their names and capacities.

25 7. The true names and capacities of Defendants DOES 1 through 50 are
26 unknown to Plaintiff, and Plaintiff will seek leave of court to amend this complaint
27 to allege such names and capacities as soon as they are ascertained. Each of the
28 Defendants herein was the agent, joint venturer, or employee of each of the

1 remaining Defendants, and in doing the things hereinafter alleged, each was acting
2 in the course and scope of said agency, employment or joint venture with advance
3 knowledge of, acquiescence in or subsequent ratification of the acts of each and
4 every other remaining defendant. Each of Defendants 1 through 50 is responsible,
5 legally, negligently or in some other actionable manner, for the events and
6 happenings hereinafter referred to, and caused injuries and damages proximately
7 thereby to Plaintiff and the Class as hereinafter alleged, either through co-
8 defendants' conduct or through the authorized and/or ratified conduct of its agents,
9 servants or employees or in some other manner.

10 8. Whirlpool, DOES 1 through 25, and DOES 26 through 50 are
11 collectively referred to herein as "Defendants."

12 9. Defendants designed, manufactured and sold combination
13 refrigerator-freezers equipped with defective drain tube parts, including product
14 part nos. W10210987, W10210988, W10309238, W10344401, W10344402,
15 W10585186, W10588598, W10604169, PS8691807, and/or 2887289 ("Drain
16 Tubes"). Defendants designed, created product materials for, designed instructions
17 for, caused the manufacture of, distributed and sold refrigerator-freezers with the
18 Drain Tubes ("Class Refrigerators"), and Plaintiff and the Class Members
19 purchased the Class Refrigerators with the Drain Tubes in them.

20 21 **JURISDICTION AND VENUE**

22 10. This Court has jurisdiction over this action pursuant to California Code
23 of Civil Procedure § 410.10. Plaintiff seeks damages on behalf of herself and the
24 Class under the laws of the State of California.

25 11. Venue is proper in this Court pursuant to California Code of Civil
26 Procedure section 392 because Plaintiff resides in this County and pursuant to
27 section 393 because some portion of the causes of action arose in this County.
28

1 **CLASS ACTION ALLEGATIONS**

2 12. Plaintiff brings this case as a class action pursuant to California Code
3 of Civil Procedure § 382 and on behalf of a class defined as follows (“the Class”):

4 All individuals and entities in the State of California who
5 purchased and/or owned Whirlpool-manufactured refrigerator-
6 freezer appliances equipped with drain tube parts numbered
7 W10210987, W10210988, W10309238, W10344401,
8 W10344402, W10585186, W10588598, W10604169,
9 PS8691807, and/or 2887289.

10 13. **Exclusions from the Class.** Plaintiff specifically excludes from the
11 Class all Defendants, Defendants’ subsidiaries or affiliates, entities in which any
12 Defendant has a controlling interest, and any and all of Defendants’ employees,
13 affiliates, legal representatives, successors or assignees. Plaintiff also excludes
14 from the Class any judicial officers assigned to this case and their immediate
15 family members.

16 14. **Ascertainability.** Plaintiff brings this action on behalf of herself and
17 on behalf the Class, which is comprised of members identified by the class
18 definition.

19 15. **Numerosity.** The members of the Class are so numerous that their
20 joinder would be impracticable, and disposition of their claims in a class action
21 rather than in individual actions would benefit the parties and the courts.

22 16. **Means for Identification.** Reasonably available means of identifying
23 class members (at the appropriate time following class certification) exist. Class
24 Members are “consumers” within the meaning of California Civil Code section
25 1761(d).

26 17. **Community of Interest -- Commonality.** There is a well-defined
27 community of interest amongst the members of the Class in the questions of law.
28 Questions of fact and law predominate and include but are not limited to the

1 following:

- 2 • Whether the Drain Tubes are defective;
- 3 • Whether the Drain Tubes have an impeded useful life;
- 4 • Whether the Drain Tubes serve their intended purposes, including
5 their intended purpose of adequately draining water from refrigerator-
6 freezer interiors during defrost cycles;
- 7 • Whether the Drain Tubes impede the useful lives of the Class
8 Refrigerators;
- 9 • Whether the Drain Tubes cause damage to other components in
10 Plaintiff's and the Class' homes;
- 11 • Whether Defendants had a duty to disclose the defective nature of the
12 Drain Tubes;
- 13 • Whether Defendants are responsible for the costs and expenses of
14 repairing and replacing the defective Drain Tubes, including
15 applicable labor costs;
- 16 • Plaintiff's and the Class' damages;
- 17 • Whether Defendants breached the implied warranty of
18 merchantability;
- 19 • Whether Defendants breached their express warranties; and
- 20 • Whether Defendants engaged in unfair, unlawful, and fraudulent acts.

21 18. **Community of Interest – Typicality.** The named Plaintiff's claims
22 are typical of those of the Class.

23 19. **Community of Interest – Adequacy of Class Representatives.** The
24 named Plaintiff can fairly and adequately represent the Class because she is a Class
25 Member, has claims that are typical of the Class, and there is no reason why she
26 cannot adequately represent the Class.

27 20. **Community of Interest – Adequacy of Counsel.** Counsel for
28 Plaintiff are competent, qualified, and experienced in large class actions,

1 multiparty complex cases and product defect cases, and there is no reason why
2 they cannot adequately represent the Class.

3 21. **Impracticability of Joinder.** Joinder of the unnamed Class Members
4 on an individual basis would be impracticable in light of their number and their
5 locations throughout the State of California.

6 22. **No Better Remedy.** There is no plain, speedy, or adequate remedy
7 other than by maintenance of this Class since the damage to each victim is
8 relatively small, making it economically infeasible to pursue lawful remedies other
9 than by a class action. The Class would be superior to individualized actions for
10 the fair and efficient adjudication of this controversy.

11 23. **No Individualized Defenses.** There are no predominately unique or
12 individualized defenses anticipated in this action that might be asserted against
13 Plaintiff individually, as distinguished from the Class.

14 24. **Fees.** Plaintiff has incurred and, during the pendency of this action,
15 will incur expenses for attorneys' fees and costs herein. Such attorneys' fees and
16 costs are necessary for the prosecution of this action and will result in a benefit to
17 the Class. This action will result in the enforcement of important rights supported
18 by strong public policy affecting the public interest, conferring a significant benefit
19 to the general public and a large class of persons.

20
21 **FACTUAL ALLEGATIONS**

22 25. In or about November 2010, Plaintiff purchased a Class Refrigerator,
23 model no. MBR2256KES, in which Defendants installed a defective Drain Tube as
24 part of its original design and manufacture. Plaintiff made this purchase in
25 California and installed her refrigerator in her home in California.

26 26. Plaintiff's Drain Tube has clogged, has overflowed, and has caused
27 water to leak from Plaintiff's refrigerator on numerous occasions, causing plaintiff
28 to incur financial injuries, and exposing Plaintiff and others in her home to a risk of

1 physical injuries, including the risks of slipping and electrical shock due to leaking.

2 27. Defendants designed, manufactured and installed the Drain Tubes in
3 the Class Refrigerators to enable water from the freezer evaporator coils to drain
4 during the automatic defrost cycle. The original Drain Tubes were elongated, S-
5 shaped tubes with “duck bill” shaped ends that would affix to the Class
6 Refrigerators with a grommet. These Drain Tubes are critical to the daily
7 maintenance and proper functioning of the Class Refrigerators because they carry
8 water through the inner workings of the Class Refrigerators during a daily cycle.

9 28. Exhibit 1 to this First Amended Complaint lists the refrigerator-
10 freezer models that were designed, manufactured, sold, and/or distributed with
11 defective Drain Tubes and purchased by Plaintiff and the Class Members.
12 Defendants are in possession of part numbers, UPCs, descriptions, and/or
13 representations of additional defective Drain Tubes that Plaintiff may use to
14 supplement the list of defective Drain Tubes in an amendment to this First
15 Amended Complaint.

16 29. The Drain Tubes are defective in that they become clogged, have
17 impeded flow, have a blocked grommet, and/or have an impeded useful life. The
18 Drain Tubes also damage and impede the useful life of other components in
19 Plaintiff’s and the Class’ refrigerator-freezers and homes including, but not limited
20 to, the evaporator coils, panels, and/or home interior near and around the leaking
21 Class Refrigerators.

22 30. The Drain Tubes fail in performing their intended purposes as a result
23 of their defects. The Drain Tube defects also cause other components in Plaintiffs’
24 refrigerator-freezers, including but not limited to its evaporator coils, interior and
25 exterior panels, and/or defrost function, to fail their intended purposes.

26 31. Defendants knew, or should have known, that the Drain Tubes are
27 defective such that the opening of the grommet sticks closed, impeding water flow
28 through the Drain Tubes and causing water to accumulate, freeze, and/or leak to

1 other areas of the refrigerator-freezer and/or outside of the refrigerator-freezer,
2 and/or have an impeded useful life. Defendants also knew, or should have known,
3 that the Drain Tubes damage and impede the useful life of other components in the
4 Class Refrigerators, including but not limited to evaporator coils, interior and
5 exterior panels, and/or defrost function.

6 32. Due to their faulty, defective, and careless design, as described herein,
7 the Drain Tubes do not operate properly under normal conditions. The Drain Tubes
8 become clogged and lose their ability to effectively drain evaporated water from
9 the Class Refrigerators. Clogged Drain Tubes cause a build-up of ice and excess
10 water to overwhelm the bottoms of the Class Refrigerators.

11 33. The leaks caused by the defective Drain Tubes cause damage to and
12 necessitate costly repairs to the refrigerator units themselves. The leaks caused by
13 the Drain Tubes also cause damage to and necessitate costly repairs to other
14 property in the surrounding area affected by the leaks, including but not limited to
15 floors, baseboards, walls, kitchen cabinetry and other appliances in the vicinity.
16 There is also a risk of food spoiling while the Class Refrigerators are out of
17 commission due to the leaks in the Drain Tubes and repairs necessitated thereby.
18 In addition, the leaks caused by the defective Drain Tubes also pose a risk of
19 serious physical injuries such as the risks of slipping and electrical shock when
20 leaking in the vicinity of electrical cabling, outlets and appliances.

21 34. The Drain Tubes continue to fail and are unreliable, necessitating
22 repairs, damaging and posing the risk of damaging other property, risking serious
23 physical injuries and causing Plaintiff and the Class to incur substantial costs.

24 35. Hundreds, if not thousands, of purchasers of Class Refrigerators are
25 equipped with Defendants' defective Drain Tubes, exposing all of them to injuries,
26 including but not limited to financial injuries incurred to repair and replace
27 components in the Class Refrigerators, financial injuries to repair and replace other
28 property damaged by the leaking and physical injuries due to hazards such as

1 slipping and electrical shock.

2 36. Defendants knew about the Drain Tube defect through sources not
3 available to consumers, early consumer complaints about leaks caused by the
4 Drain Tubes to Defendants, including warranty reimbursement requests and repair
5 orders, testing conducted in response to complaints and repair orders, replacement
6 part sales data, and consumer complaints on internet forums, among other internal
7 sources of aggregate information about the problem. Complaints about water
8 leaking and ice forming in bottom panels have appeared online since at least 2005
9 but chose not to inform their purchases about these risks and not to issue a recall
10 on the products.

11 37. The existence of the Drain Tube defect is a material fact that a
12 reasonable consumer would consider when deciding whether to purchase a
13 refrigerator-freezer equipped with the Drain Tube. Had Plaintiff and other Class
14 Members known that the Class Refrigerators were equipped with defective Drain
15 Tubes, they would not have purchased said refrigerator-freezers or would have
16 paid less for them.

17 38. Consumers, like Plaintiffs, reasonably expect that a refrigerator-
18 freezer's component parts, including the Drain Tubes, are free of defects and will
19 function in a manner that will not cause damage. Plaintiff and Class Members
20 further reasonably expect that Defendants will not manufacture, market, distribute,
21 and/or sell refrigerator-freezers with known defects, such as the defective Drain
22 Tubes, and will disclose any such defects when known.

23 39. Plaintiff has suffered and/or has been in danger of suffering injury
24 and/or significant property damage and physical harm due to the defective Drain
25 Tube.

26 40. The repairs for the damages caused by the defective Drain Tubes are
27 significant.

28

FIRST CAUSE OF ACTION

STRICT LIABILITY: FAILURE TO WARN

(Against All Defendants by Plaintiff and the Class)

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4 41. Plaintiff and the Class hereby reallege and incorporate by reference all
5 previous paragraphs of this complaint as though fully set forth herein.

6 42. Defendants manufactured, distributed, and/or sold the Drain Tubes as
7 component parts of the Class Refrigerators.

8 43. The Drain Tubes were defective due to inadequate warnings or
9 instruction for use, both prior to marketing and post-marketing.

10 44. The Drain Tubes had risks that were known or knowable in light of
11 the scientific knowledge that was generally accepted at the time of manufacture,
12 distribution, and/or sale.

13 45. The risks in the Drain Tubes presented a substantial danger when the
14 Drain Tubes were used or misused in an intended or reasonably foreseeable way.

15 46. Ordinary consumers would not have recognized the potential risks.

16 47. Defendants knew or should have known that the Drain Tubes created
17 significant risks to consumers.

18 48. Defendants failed to adequately warn consumers of such risks.

19 49. Because of Defendants' failure to provide adequate warnings with
20 their products, the Class Refrigerators were purchased, equipped with the Drain
21 Tubes, for use in Plaintiff's and Class Members' homes after Defendants
22 manufactured, designed, sold, supplied, marketed or otherwise introduced them
23 into the stream of commerce.

24 50. Plaintiff and the Class suffered harm, damages and economic losses,
25 and Plaintiff and the Class will continue to suffer such harm, damages and
26 economic loss in the future.

27 51. Defendants' misconduct was a substantial factor in causing and
28 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

1 and Plaintiff and the Class will continue to suffer such harm, damages and
2 economic loss in the future.

3 62. Defendants' misconduct was a substantial factor in causing and
4 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

5 63. Defendants' conduct was gross, reckless, and in bad faith or willful
6 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
7 intentionally, maliciously, and oppressively, with a willful and conscious disregard
8 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
9 malice under the law.

10
11 **THIRD CAUSE OF ACTION**

12 **STRICT LIABILITY: DESIGN DEFECT**

13 (Against All Defendants by Plaintiff and the Class)

14 64. Plaintiff and the Class hereby reallege and incorporate by reference all
15 previous paragraphs of this complaint as though fully set forth herein.

16 65. Defendants manufactured, distributed, and/or sold the Class
17 Refrigerators equipped with the Drain Tubes.

18 66. The Drain Tubes contained a design defect when they left Defendants'
19 possession.

20 67. The Drain Tubes had risks that were known or knowable in light of
21 the scientific knowledge that was generally accepted at the time of manufacture,
22 distribution, and/or sale.

23 68. The risks in the Drain Tubes presented a substantial danger when the
24 Class Refrigerators were used or misused in an intended or reasonably foreseeable
25 way.

26 69. Ordinary consumers would not have recognized the potential risks.

27 70. Defendants knew or should have known that the Drain Tubes created
28 significant risks to consumers.

1 continued to manufacture and market their products, and failed to exercise
2 reasonable care with respect to post-sale warnings and instructions for safe use.

3 79. At all relevant times, it was foreseeable to Defendants that
4 homeowners like Plaintiff and the Class would suffer damages as a result of
5 Defendants' failure to exercise ordinary care as described above.

6 80. Plaintiff and the Class suffered harm, damages and economic losses,
7 and Plaintiff and the Class will continue to suffer such harm, damages and
8 economic loss in the future.

9 81. Defendants' misconduct was a substantial factor in causing and
10 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

11 82. Defendants' conduct was gross, reckless, and in bad faith or willful
12 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
13 intentionally, maliciously, and oppressively, with a willful and conscious disregard
14 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
15 malice under the law.

16
17 **FIFTH CAUSE OF ACTION**

18 **NEGLIGENCE: FAILURE TO RECALL/RETROFIT**

19 (Against All Defendants by Plaintiff and the Class)

20 83. Plaintiff and the Class hereby reallege and incorporate by reference all
21 previous paragraphs of this complaint as though fully set forth herein.

22 84. Defendants manufactured, distributed and/or sold the Class
23 Refrigerators and defective Drain Tubes.

24 85. Defendants knew or reasonably should have known that the Class
25 Refrigerators and defective Drain Tubes were dangerous or were likely to be
26 dangerous when used in a reasonably foreseeable manner.

27 86. Defendants became aware of these defects after the Class
28 Refrigerators and defective Drain Tubes were sold.

1 warranting that the Drain Tubes were free of defects such that they would properly
2 perform as intended.

3 95. Plaintiff and the Class purchased refrigerator-freezers containing the
4 Drain Tubes.

5 96. Defendants breached their warranties concerning the Drain Tubes

6 97. Plaintiff and the Class suffered harm, damages and economic losses,
7 and Plaintiff and the Class will continue to suffer such harm, damages and
8 economic loss in the future.

9 98. Defendants' misconduct was a substantial factor in causing and
10 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

11 99. Defendants' conduct was gross, reckless, and in bad faith or willful
12 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
13 intentionally, maliciously, and oppressively, with a willful and conscious disregard
14 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
15 malice under the law.

16
17 **SEVENTH CAUSE OF ACTION**

18 **BREACH OF IMPLIED WARRANTY OF FITNESS**

19 (Against All Defendants by Plaintiff and the Class)

20 100. Plaintiff and the Class hereby reallege and incorporate by reference all
21 previous paragraphs of this complaint as though fully set forth herein.

22 101. Defendants made implied warranties concerning the Drain Tubes,
23 including but not limited to the warranty of fitness.

24 102. Defendants intended that their implied warranties were extended to
25 and would benefit purchasers of the Class Refrigerators, including but not limited
26 to, warranting that the Drain Tubes were free of defects such that they would
27 properly perform as intended.

28 103. Plaintiff and the Class purchased Class Refrigerators equipped with

1 Drain Tubes.

2 104. At the time the Class Refrigerators were purchased, Defendants knew
3 or had reason to know that Class Refrigerators containing Drain Tubes would be
4 used for a particular purpose in Plaintiff's and the Class' homes and that
5 purchasers and/or installers would justifiably rely on Defendants' skill and
6 judgment in selecting, providing and/or furnishing Drain Tubes suitable for that
7 particular purpose.

8 105. The Drain Tubes were not suitable for their particular purpose.

9 106. The Drain Tubes suffered from an inherent, latent defect at the time of
10 sale and thereafter were not fit for their intended purpose. Said defects include, but
11 are not limited to, the defective design and manufacture of the Drain Tubes.

12 107. The Drain Tubes are defective in that they become clogged, have
13 impeded flow, have a blocked grommet, and/or have an impeded useful life. The
14 Drain Tubes also damage and impede the useful life of other components in
15 Plaintiff's and the Class' refrigerator-freezers and homes including, but not limited
16 to, the evaporator coils, panels, and/or home interior near and around the leaking
17 Class Refrigerators.

18 108. The Drain Tubes fail in performing their intended purposes as a result
19 of their defects. Said defects require repairs such that the Class Refrigerators are
20 taken out of service.

21 109. Defendants breached their implied warranty of fitness concerning the
22 Drain Tubes used in the Class Refrigerators.

23 110. Plaintiff and the Class suffered harm, damages and economic losses,
24 and Plaintiff and the Class will continue to suffer such harm, damages and
25 economic loss in the future.

26 111. Defendants' misconduct was a substantial factor in causing and
27 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

28 112. Defendants' conduct was gross, reckless, and in bad faith or willful

1 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
2 intentionally, maliciously, and oppressively, with a willful and conscious disregard
3 of the rights of Plaintiff and the Class Members, so as to constitute oppression,
4 fraud, or malice under the law.

5
6 **EIGHTH CAUSE OF ACTION**

7 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

8 (Against All Defendants by Plaintiff and the Class)

9 113. Plaintiff and the Class hereby reallege and incorporate by reference all
10 previous paragraphs of this complaint as though fully set forth herein.

11 114. Defendants made implied warranties concerning the Drain Tubes,
12 including but not limited to the warranty of merchantability.

13 115. Defendants intended that their implied warranties extend to and
14 benefit purchasers of the Class Refrigerators equipped with the Drain Tubes.

15 116. Plaintiff and the Class purchased Class Refrigerators containing Drain
16 Tubes.

17 117. At the time of said purchases, Defendants were in the business of
18 selling the Class Refrigerators.

19 118. Defendants breached their implied warranty of merchantability for the
20 Drain Tubes.

21 119. The Drain Tubes suffered from an inherent, latent defect at the time of
22 sale and thereafter were not fit for their intended purpose. Said defects include, but
23 are not limited to, the defective design and manufacture of the Drain Tubes.

24 120. The Drain Tubes in the Class Refrigerators were not of the same
25 quality as those generally acceptable in the trade, were not fit for the ordinary
26 purposes for which such goods are used, were not adequately contained, packaged,
27 and labeled, had inadequate instructions, and/or did not measure up to the promises
28 or facts stated about the product.

1 128. Plaintiff purchased her Class Refrigerator from a retail seller in
2 California.

3 129. Defendants' express and implied warranties accompanied the sale of
4 the Class Refrigerator. The Class Refrigerator was delivered with serious defects,
5 including, but not limited to, a defective Drain Tube, in breach of Defendants'
6 express and implied warranties.

7 130. Defendants' actions, as complained of herein, breached Defendants'
8 express and implied warranties in violation of the Act including, but not limited to,
9 California Civil Code sections 1791.1 and 1791.2.

10 131. Defendants breached their express and implied warranties because the
11 Drain Tubes suffered from an inherent, latent defect at the time of sale and
12 thereafter were not fit for their intended purpose. Said defects include, but are not
13 limited to, the defective design and manufacture of the Drain Tubes.

14 132. Plaintiff and the Class suffered harm, damages and economic losses,
15 and Plaintiff and the Class will continue to suffer such harm, damages and
16 economic loss in the future. In addition, Plaintiff and the Class have been harmed
17 and suffered actual damages given that the Drain Tubes are substantially certain to
18 fail before their expected useful life has run.

19 133. Defendants' misconduct was a substantial factor in causing and
20 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

21 134. Defendants' conduct was gross, reckless, and in bad faith or willful
22 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
23 intentionally, maliciously, and oppressively, with a willful and conscious disregard
24 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
25 malice under the law.

26 135. Plaintiff is entitled to damages and other legal and equitable relief,
27 including, but not limited to, all incidental, consequential and general damages
28 resulting from Defendants' failure to comply with its obligations under the Act.

1 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
2 malice under the law.

3
4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff and the Class respectfully request the following and
6 pray for judgment as follows:

- 7 1. For a declaration that this lawsuit may properly maintained as a class
8 action and certifying the Class claims herein;
- 9 2. For general damages according to proof;
- 10 3. For special damages according to proof;
- 11 4. For restitution in amounts according to proof;
- 12 5. For injunctive relief;
- 13 6. For any other available penalties for each illegal or fraudulent
14 business act or practice;
- 15 7. For costs and expenses of suit incurred herein, including investigative
16 costs;
- 17 8. For attorneys' fees;
- 18 9. For punitive damages;
- 19 10. For prejudgment and post-judgment interest; and
- 20 11. Such other and further relief as is proper and just.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Class, hereby demands a jury trial for all issues so triable.

Dated: January 13, 2016 **KASDAN LIPPSMITH WEBER TURNER LLP**

By: /s/ Graham B. LippSmith
GRAHAM B. LIPPSMITH
Attorneys for Plaintiff and the Class