

1 VENABLE LLP
Jennifer Levin (SBN 252420)
2 jlevin@venable.com
2049 Century Park East, Suite 2100
3 Los Angeles, CA 90067
Telephone: (310) 229-9900
4 Facsimile: (310) 229-9901

5 Attorneys for Defendant TRISTAR
6 PRODUCTS, INC.

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

10
11 Jeanne Burns, individually and on
behalf of all others similarly situated,

12 Plaintiffs,

13 v.

14 Tristar Products, Inc., a Pennsylvania
Corporation, and Does 1 through 50.

15 Defendant.
16

CASE NO. '14CV0749 JAH DHB

**DEFENDANT TRISTAR
PRODUCTS, INC.'S NOTICE OF
REMOVAL**

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

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NOTICE OF REMOVAL

NOTICE OF REMOVAL**(DIVERSITY-CLASS ACTION FAIRNESS ACT)**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, Defendant TRISTAR PRODUCTS, INC. ("Tristar"), by and through its attorneys, Venable LLP, remove to this Court the action titled *Jeanne Burns, individually and on behalf of all others similarly situated, v. Tristar Products, Inc.*, Case No. 37-2014-00082795-CU-FR-CRL (the "Action"), which was originally filed in the Superior Court of the State of California for the County of San Diego. As grounds for removal, Tristar states as follows:

1. As set forth below, this Court has original jurisdiction over this putative class action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because it is between citizens of different states, the putative class has more than 100 members, and the amount in controversy exceeds \$5,000,000, exclusive of costs and interest.

2. By filing this Notice of Removal, Tristar does not intend to waive, and hereby reserves, any objection as to venue, the legal sufficiency of the claims alleged in the Action and all other defenses. Tristar reserves the right to supplement and amend this Notice of Removal.

3. On February 11, 2014, Jeanne Burns commenced this putative class action by filing a Complaint in the San Diego County Superior Court (the "Complaint" or "Compl."). (Copies of the Complaint and all other papers in the Court file are attached hereto as Exhibit A.)

BASES FOR REMOVAL

4. The Class Action Fairness Act of 2005 ("CAFA") creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and involves a putative class that consists of more than 100 members.

28 U.S.C. §§ 1332(d)(2)(A) and (d)(5). Each of these three requirements is met, and none of the exceptions to CAFA jurisdiction apply here.

DIVERSITY OF CITIZENSHIP

5. In the instant circumstances, there is diversity of citizenship. “The district courts shall have original jurisdiction of any civil action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.”

28 U.S.C. §§ 1332(d)(2)(A).

6. Plaintiff is an individual residing in San Diego County, California. Compl. ¶ 7.

7. Tristar is a Pennsylvania corporation with its principal place of business in New Jersey. Declaration of Steven Sowers (“Sowers Decl.”), ¶3.

8. Because the Plaintiff is a citizen of a different State than Tristar, the diversity requirement set forth in 28 U.S.C. §§ 1332(d)(2) is satisfied.

THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000

9. Tristar denies any liability for the claims asserted in the Complaint, and further denies that Plaintiff has any right to any relief for herself or for members of the putative class. Nevertheless, for purposes of removal, the Complaint as pled gives rise to an amount in controversy which well exceeds \$5,000,000.

10. The Complaint alleges that the aggregate amount in controversy is less than \$5,000,000. However, the Complaint seeks, restitution to Plaintiff and all putative class members, disgorgement of amounts received by Tristar from sales of the products at issue in California, injunctive relief requiring Tristar to make “corrective disclosures,” an award of attorneys’ fees, and pre-judgment interest. Compl. at p. 16 (“Prayer for Relief”).

11. To establish the amount in controversy required for removal, the defendant may submit “summary-judgment-type evidence.” *See Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (quoting *Singer v. State*

1 *Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).

2 12. The restitution and disgorgement relief sought by Plaintiff are more
 3 than sufficient by themselves to satisfy the amount in controversy requirement.
 4 The Complaint does not quantify the amounts sought for restitution or
 5 disgorgement. Nevertheless, the request for restitution may fairly be understood to
 6 seek recovery of all amounts paid by putative class members to purchase a Flex-
 7 Able Hose in California. *See Watkins v. Vital Pharm., Inc.*, 720 F.3d 1179 (9th
 8 Cir. 2013) (finding a declaration stating that total sales of a product exceeded \$5
 9 million sufficient for removal under CAFA where plaintiff class sought restitution,
 10 disgorgement of profits, and attorney's fees).

11 13. Here, as shown in the accompanying Declaration of Steven Sowers,
 12 Chief Financial Officer and Vice President of Tristar ("Sowers Declaration"),
 13 putative class members paid more than \$5 million between August 24, 2012 and
 14 March 28, 2014 to purchase the Flex-Able Hose. As the restitution claim seeks all
 15 of these revenues as damages, the amount in controversy exceeds the \$5 million
 16 threshold in 28 U.S.C. § 1332(d)(6).

17 14. Moreover, in computing the aggregate amount under CAFA, the
 18 Court may consider the cost of complying with the requested injunctive relief, as
 19 well as potential recovery of attorneys' fees. *See Yeroushalmi v. Blockbuster, Inc.*,
 20 No. CV 05-225-AHM (RCX), 2005 WL 2083008, at *5 (C.D. Cal July 11, 2005).
 21 These amounts, while not quantified here, would further increase the amount in
 22 controversy above the CAFA threshold.

23 **THE PUTATIVE CLASS EXCEEDS 100 MEMBERS**

24 15. The putative class consists of more than 100 members. The
 25 Complaint seeks to certify a class of "[a]ll California residents during the period
 26 January 12, 2012 until the present who purchased a FlexAble Hose in California . .
 27 ." Compl. ¶ 23. The Complaint alleges that "the Class includes many thousands of
 28 members." Compl. ¶ 26.

2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

NOTICE OF REMOVAL TIMELY FILED

Notice To Plaintiffs And State Court

DATED: April 1, 2014

VENABLE LLP

By: /s/ Jennifer Levin

Jennifer Levin
Attorney for Defendant TRISTAR
PRODUCTS, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **April 1, 2014**, I served a copy ☒ / original ☐ of the foregoing document(s) described as **DEFENDANT TRISTAR PRODUCTS, INC.'S NOTICE OF REMOVAL** on the interested parties in this action addressed as follows

Alexander M. Schack, Esq.
 Natasha Naraghi, Esq.
 Law Offices of Alexander M. Schack
 16870 West Bernardo Drive, Suite 400
 San Diego, CA 92127

Geoffrey J. Spreter, Esq.
 Spreter Legal Services, APC
 601 3rd Street
 Coronado, CA 92118

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY MAIL (FRCP 5(b)(1)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

☐ **BY PERSONAL SERVICE (FRCP 5(b)(1)(B)(i)):** I caused to be delivered such envelope(s) by hand to the addressee(s) as stated above.

☒ **BY OVERNIGHT DELIVERY (FRCP 5(b)(1)(F)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **April 1, 2014**, at Los Angeles, California.

 /s / Jennifer Levin
 Jennifer Levin

TABLE OF CONTENTS OF EXHIBITS
TO NOTICE OF REMOVAL

| <u>Exhibit</u> | <u>Page(s)</u> |
|-----------------------|-----------------------|
| Exhibit A | 1-33 |

EXHIBIT A

1 ALEXANDER M. SCHACK, Esq., Bar No. 99126
 (alexschack@amslawoffice.com)
 2 NATASHA NARAGHI, Esq., Bar No. 284711
 (natashanaraghi@amslawoffice.com)
 3 LAW OFFICES OF ALEXANDER M. SCHACK
 16870 West Bernardo Drive, Suite 400
 4 San Diego, CA 92127
 Tel: (858) 485-6535 Fax: (858) 485-0608

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

01/09/2014 at 09:01:31 AM

Clerk of the Superior Court
 By Sandra Villanueva, Deputy Clerk

5 GEOFFREY J. SPRETER, Esq., Bar No 257707
 (spreterlegalservices@gmail.com)
 6 SPRETER LEGAL SERVICES, APC
 7 601 3rd Street
 Coronado, CA 92118
 8 Telephone: 619-865-7986

9 Attorneys for Jeanne Burns,
 individually and on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF SAN DIEGO**
 12 **CENTRAL DIVISION**

| | | |
|--|---|---|
| 13 Jeanne Burns, individually and on behalf of all |) | CASE NO: 37-2014-00082795-CU-FR-CTL |
| 14 others similarly situated, |) | CLASS ACTION |
| |) | |
| 15 Plaintiffs, |) | 1.) Violation of Consumers Legal |
| |) | Remedies Act - California Civil Code § |
| 16 v. |) | 1750, <i>et seq.</i> ; |
| |) | 2.) Violation of the Unfair Competition |
| 17 Tristar Products, Inc., a New Jersey Corporation, |) | Law - Business and Professions Code § |
| and Does 1 through 50. |) | 17200, <i>et seq.</i> ; |
| |) | 3.) Violation of the Unfair Competition |
| 18 Defendant. |) | Law - Business and Professions Code § |
| |) | 17500, <i>et seq.</i> ; |
| |) | 4.) Fraud by Omission; |
| |) | 5.) Breach of Implied Warranty of |
| |) | Merchantability; |
| |) | 6.) Breach of Implied Warranty of Fitness |
| |) | |

22 **CLASS ACTION COMPLAINT AND JURY DEMAND**

1 Plaintiff Jeanne Burns ("Plaintiff"), on behalf of herself and all others similarly situated,
2 and demanding trial by jury, complain and allege upon information and belief as follows:

3 INTRODUCTION

4 1. Tristar Products, Inc. ("Defendant") designed, marketed, and sold a garden hose
5 to Plaintiff and Class members called the Flex-Able Hose. The Flex-Able Hose was an
6 expandable garden hose that was marketed as being lightweight and easy to store. It was
7 advertised as possessing the ability to expand and contract without kinking like some traditional
8 garden hoses.

9 2. At the time of sale to Plaintiff and the Class, the Flex-Able Hoses contained an
10 inherent defect causing them to leak and/or burst, among other things. Many of the hoses leaked
11 on the consumer's first use. Unlike a traditional garden hose, which is usually made of thick
12 rubber, reinforced with an internal web of fibers and designed to withstand being stepped on and
13 dragged across lawns and bushes, the Flex-Able Hoses rely on a thin elastic-like internal tube
14 that is covered by a thin cloth sheath. As a result of its design, the Flex-Able Hose has a
15 propensity to leak and burst.

16 3. Defendant's marketing and packaging of the Flex-Able Hose leads consumers to
17 believe that they are purchasing a durable and strong garden hose. For example, the Flex-Able
18 Hoses were advertised as having "a tough double wall construction..." and being "designed like
19 a fire-hose for speed storage and strength, *to last a really long time.*" Defendants, however, fail
20 to inform consumers that they are in fact purchasing a thin elastic-like hose that is prone to leaks.

21 4. Defendant knew or should have known that the Flex-Able Hoses were defective
22 and not fit for their intended purpose of being used to maintain residential homes, gardens, and
23 landscaping. Nonetheless, Defendant actively concealed and failed to disclose this fact to
Plaintiff and the Class members at the time of their purchases.

5. Despite receiving notice and hundreds of customer complaints, Defendant
continues to market and sell the Flex-Able Hoses both online and through various retail stores.

7. Plaintiff Jeanne Burns is a California citizen who resides in San Diego County, California. Ms. Burns purchased a Flex-Able Hose from Defendant's interactive website. Plaintiff reasonably expected that the Flex-Able Hose would be durable and strong, and that it would last a long time. The hose, however, was not strong and durable. Instead, it leaked and ruptured shortly after her purchase. Had Plaintiff known that the Flex-Able Hose was a flimsy hose with a propensity to leak and rupture, she would not have purchased the product. As such, Plaintiff lost money and suffered injury-in-fact as a result of purchasing Defendant's product. Plaintiff and members of the Class also suffered damages by purchasing the Flex-Able Hoses, which they would not have purchased had the true facts about the Flex-Able Hoses been disclosed prior to their purchases.

8. Defendant Tristar Products, Inc. is a New Jersey corporation with its principle place of business in Fairfield, New Jersey. It is a full service direct response television marketing company. As part of its business, the company sold Flex-Able Hoses to consumers in the State of California through its interactive website and extensive distribution network and retail contacts, which include numerous major retail stores like Target, among others. Using its extensive marketing relationships with retailers, Defendant contracted to place the hose in highly visible areas of California retail stores. Defendant undertook the aforementioned unlawful actions to deceive consumers in the State of California.

9. The true names and capacities, whether individual, corporate, associate, representative, or otherwise of defendants named herein as DOES 1-50 are unknown to Plaintiff at this time, and are therefore sued by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1

1 through 50 when Plaintiff has such information. Each of the DOES 1-50 is in some manner
2 legally responsible for the violations of law alleged herein

3 **JURISDICTION AND VENUE**

4 10. This Court has jurisdiction over all causes of action asserted herein pursuant to
5 the California Constitution, Article VI, § 10. This lawsuit is a cause not given by statute to other
6 trial courts. This Court has jurisdiction pursuant to California Business and Professions Code §
7 17200 et seq., Civil Code § 1780 and other provisions of California law

8 11. Venue is proper in this Court because Plaintiff resides in San Diego County,
9 California and purchased the Flex-Able Hose for personal use at her residence in San Diego
10 County. Attached to this Complaint as Exhibit A is a declaration from Plaintiff attesting to facts
11 establishing proper venue in this Court pursuant to California Civil Code section 1780(d).

12 12. Defendant engaged in a marketing campaign using, among other things, an
13 infomercial and an interactive website for the Flex-Able Hose, which reached consumers in San
14 Diego County and throughout California. In addition, Defendant partnered with retail stores in
15 California to market and sell the Flex-Able Hose to California consumers. These actions caused
16 significant sales of the product in San Diego County and throughout California, and led to
17 Defendant's receipt of substantial compensation. Accordingly, this Court has personal
18 jurisdiction over Defendant.

19 13. In addition, this Court has jurisdiction pursuant to California Code of Civil
20 Procedure §§395 and 395.5, California Civil Code § 1780, and California Business and
21 Professions Code §17202, 17203.

22 14. This Complaint is not based on federal law and seeks relief under California Law.
23 The amount in controversy for each member of the general public is less than \$75,000.00.
Additionally, the aggregate amount in controversy in this action is less than \$5,000,000.

15 Pursuant to Civil Code §.1780 and Business and Professions Code § 17200 et
16 seq., Plaintiff brings this action individually and on behalf of the California general public and
17 all those similarly situated. This action may be properly maintained as a California class action,

CLASS ACTION COMPLAINT AND JURY DEMAND

1 pursuant to the provisions of § 382 of the California Code of Civil Procedure and Civil Code §
2 1781 because there is a well-defined community of interest in the litigation and the proposed
3 class is easily ascertainable.

4 FACTUAL ALLEGATIONS

5 16. Defendant marketed and distributed the Flex-Able Hoses both online and through
6 retail outlets in California. Upon information and belief, several thousand Flex-Able Hoses were
7 sold in California during the class period.

8 17. The Flex-Able Hoses are inherently defective in that their design leads them to
9 break and leak often. Defendant knew that the hoses, because of their inherent design, were
10 prone to rupturing and leaking.

11 18. The Flex-Able Hose was marketed as a durable and strong garden hose. In
12 particular, the Flex-Able Hose was advertised as having "a tough double wall construction...."
13 and being "designed like a fire-hose for speed, storage and strength, to last a really long time."
14 These statements appeared on the Flex-Able Hose's packaging, on the product's website, and in
15 the infomercial. To emphasize the strength and durability of the Flex-Able Hose, the Flex-Able
16 Hose is shown being run over by a fire truck. This image appears on both the Flex-Able Hose's
17 packaging and in the infomercial. Plaintiff viewed this infomercial prior to her purchase and
18 believed that the Flex-Able Hose would be strong and would last a long time based upon
19 Defendant's representations.

20 19. The product, however, does not last a long time, and is not built strong. Moreover,
21 it is not fit for the ordinary purpose of a garden hose, as it is prone to leaks and breakage.

22 20. Hundreds, if not thousands, of purchasers of the Flex-Able Hose have
23 experienced problems with the Flex-Able Hoses leaking and rupturing. Complaints posted on the
internet demonstrate that the defect is widespread. In fact, there are hundreds of negative reviews
and user comments on Scambook.com and Amazon.com about Defendant and the Flex-Able
Hose.

CLASS ACTION COMPLAINT AND JURY DEMAND

Scambook.com posters have written:

"all 4 hoses sprung leaks immediately upon using. Customer service is no help. They won't reimburse us. We are in our mid-80's and feel completely victimized."

"When first connected hose the plastic on and off switch broke, then a few days later when turned on a big bubble came up in the hose like a balloon and burst, total waste of money, would very much like to have my money back, definitely don't want another one of these hoses, will go back to regular water hose."

"I purchased the 50 foot buy one get one free I watered my lawn twice before it popped in the middle and the nozzle also leaked bad. I tried the other hose with the same results. I would appreciate anything you can do to resolve this scam."

Among other things, Amazon.com reviewers have stated:

"This hose is a piece of junk! The outer layer is cloth. The inner tube popped like a balloon on both the hoses I bought after a couple uses. Don't waste your money. Seems to good to be true because it is!"

"It broke and leak after 10 minutes use, totally not acceptable. I will not recommend this product to anyone at all."

21. Customers have reported the inherent defect in the hoses to Defendant directly and through its retail partners. Defendant is fully aware of the inherent defect in the Flex-Able Hose. During the Class period, Defendant actively concealed the existence and nature of the inherent defect from Plaintiff and members of the Class at the time of their purchases. Specifically, Defendant has:

- a. failed to disclose, at and after the time of purchase, any and all known material defects of the Flex-Able Hose, including the propensity for the Flex-Able Hoses to leak and burst;
- b. failed to disclose at the time of purchase that the Flex-Able Hoses were inherently defective and were not fit for their intended purpose, and

1 c. failed to disclose or actively concealed the fact that the Flex-Able Hoses were
 2 inherently defective, despite the fact that Defendant knew prior to marketing the
 3 product and learned of such defects from consumers shortly after it began selling
 4 and distributing the product.

5 22. Defendant has caused Plaintiff and members of the Class to expend money to
 6 repair or replace the hoses.

7 CLASS ACTION ALLEGATIONS

8 23. Plaintiff brings this action on behalf of herself and other members of the Class
 9 defined as:

10 All California residents during the period January 1, 2012 until the present who
 11 purchased a Flex-Able Hose in California. Specifically excluded from the
 12 Plaintiff Class are the Defendants herein, officers, directors or employees of
 13 Defendants, and any entity in which the Defendants have a controlling interest,
 the agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact
 or assignees of the Defendants, and any federal, state or local governmental
 entity. Also specifically excluded is any justice, judge, judicial officer, court
 personnel or juror assigned to any part of this case.

14 24. Pursuant to Civil Code § 1780 and Business and Professions Code § 17200 et
 15 seq., Plaintiff brings this action individually, on behalf of the general public, and on behalf of all
 16 individuals similarly situated.

17 25. This action may be properly maintained as a class action, pursuant to the
 18 provisions of § 382 of the California Code of Civil Procedure and Civil Code § 1781 because
 19 there is a well-defined community of interest in the litigation and the proposed class is easily
 20 ascertainable.

21 26. Numerosity: The Plaintiff Class is so numerous that individual joinder of all
 22 members is impractical under the circumstances of this case. While the exact number of Class
 23 members is unknown to Plaintiff at this time, based upon the amount of trade and commerce in

the garden product industry, Plaintiff is informed and believes that Defendant sell hundreds of thousands of dollars worth of Flex-Able Hoses annually in California. Plaintiff is informed and believes that the Class includes many thousands of members.

Common Questions of Fact and Law Predominate: Common questions of law or fact exist as to all members of the Class. These questions predominate over the questions affecting only individual class members. These common legal or factual questions include:

- a. Whether Defendant knew of the inherent defect in its Flex-Able Hoses;
- b. Whether Defendant fraudulently concealed from or failed to disclose to Plaintiff and the Class the inherent defect in its Flex-Able Hoses;
- c. Whether Defendant had a duty to Plaintiff and the Class to disclose the inherent defect in its Flex-Able Hoses;
- d. Whether the facts concealed or not disclosed by Defendant are material;
- e. Whether, as a result of Defendant's concealment or nondisclosure of material facts, Plaintiff and the Class acted to their detriment by purchasing Flex-Able Hoses marketed by Defendant;
- f. Whether Defendant engaged in unfair competition or unfair deceptive acts or practices when it concealed and or failed to warn Plaintiff and Class members of the inherent defects in its Flex-Able Hoses;
- g. Whether Defendant's conduct in marketing, selling, and distributing Flex-Able Hoses constitutes a violation of the Consumers Legal Remedies Act, California Civil Code section 1750 et seq.;
- h. Whether Defendant's conduct in marketing, selling, and distributing Flex-Able Hoses constitutes a violation of the Unfair Competition Law, California Business & Professions Code section 17200 et seq.;

CLASS ACTION COMPLAINT AND JURY DEMAND

- i. Whether Defendant's conduct in marketing, selling and distributing Flex-Able Hoses constitutes a violation of California's False Advertising Law, California Business & Professions Code section 17500 et seq.;
- j. Whether Defendant breached the implied warranty of merchantability by selling garden hoses with known defects;
- k. Whether Defendant breached the implied warranty of fitness by selling garden hoses with known defects;
- l. Whether members of the Class have sustained damages as a result of Defendant's conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such damages;
- m. Whether Defendant should be ordered to disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of defective Flex-Able Hoses, or to make full restitution to Plaintiff and the members of the Class.

Typicality: Plaintiff's claims are typical of the claims of the Class, in that Plaintiff was a consumer who purchased a Flex-Able Hose in the State of California that was marketed as a garden hose. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent, and she has retained counsel competent and experienced in conducting complex class action litigation. Plaintiff and her counsel will adequately protect the interests of the Class.

Superiority: A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual Class member likely will be relatively small, especially given the relatively small cost of the hoses at issue and the burden

1 and expense of individual prosecution of the complex litigation necessitated by Defendant's
 2 conduct. Thus, it would be virtually impossible for the Class members individually to effectively
 3 redress the wrongs done to them. Moreover, even if the Class members could afford individual
 4 actions, it would still not be preferable to class-wide litigation. Individualized actions present the
 5 potential for inconsistent or contradictory judgments. By contrast, a class action presents far
 6 fewer management difficulties and provides the benefits of single adjudication, economies of
 7 scale, and comprehensive supervision by a single court.

8 **FIRST CLAIM FOR RELIEF**

9 **(VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT)**

10 **California Civil Code § 1750 *et seq.***

11 27. Plaintiff, on behalf of herself and all consumers similarly situated, repeats and
 12 realleges each of the foregoing paragraphs of this Complaint as if set forth in full.

13 28. Plaintiff and Class members are consumers who purchased the Flex-Able Hoses.

14 29. By failing to disclose and concealing the Flex-Able Hose's defect, Defendant
 15 violated Civil Code Section 1770(a), as it represented that its Flex-Able Hose had characteristics
 16 that it did not have and that product was of a particular standard, style, quality or grade when it
 was of another (See Civil Code 1770(a)(5)(7)).

17 30. Defendant's unfair or deceptive acts or practices, which occurred repeatedly in
 18 Defendant's trade or business, were capable of deceiving, and did deceive, a substantial portion
 19 of the purchasing public.

20 31. Defendant had a duty to disclose the defective nature of the Flex-Able Hoses to
 the Class because:

- 21 a. Defendant was in a superior position to know the true facts about the defective
 22 Flex-Able Hoses' defective nature, in that it, among other things, performed
 23 testing on the hoses prior to marketing them. Moreover, Defendant had exclusive

CLASS ACTION COMPLAINT AND JURY DEMAND

1 knowledge of material facts not known to Plaintiff and the Class prior to
2 purchase.

3 b. Plaintiff and the Class could not reasonably have been expected to learn or
4 discover that the Flex-Able Hoses had a defect until manifestation of the failure.

5 c. Defendant made representations that the Flex-Able Hoses were, among other
6 things, "built strong" and would "last a long time!"

7 d. Defendant actively concealed the defective nature of the Flex-Able Hoses from
8 Plaintiff and the Class.

9
10 32. In failing to disclose the inherent defect, Defendant knowingly and intentionally
concealed material facts and breached its duty to disclose such information.

11 33. Such facts are material in that a reasonable consumer would have considered them
12 to be important in deciding whether to purchase Defendant's Flex-Able Hose. Had Plaintiff and
13 the Class known about the defective nature of the Flex-Able Hoses, they would not have
purchased the product.

14 34. As a direct and proximate result of Defendant's unfair or deceptive acts or
15 practices, Plaintiff and the Class have suffered and will continue to suffer damages and injury in
16 fact.

17 35. Plaintiff seeks an order enjoining the above-described wrongful acts and practices
18 of defendants and awarding restitution and/or disgorgement of Defendant's revenues and profits
from the sale of the Flex-Able hoses.

19 36. Pursuant to Civil Code § 1782(a), Plaintiff, on behalf of herself and the Class,
20 through her counsel, on or about August 28, 2013, made a written demanding that Defendant
21 cease and desist its unlawful conduct and offer to make appropriate restitution, correction, or
22 remedy, including but not limited to, notifying all persons who purchased the product and giving
23 such other notice as may be required under Civil Code § 1782. Defendants, however, failed to

CLASS ACTION COMPLAINT AND JURY DEMAND

1 agree to cease and desist, to give proper notice, or to offer to make proper restitution to the Class.
 2 Pursuant to Civil Code §1782(d), Plaintiff, therefore, prays for compensatory and punitive
 3 damages under the CLRA on behalf of herself and all other similarly situated consumers, in an
 4 amount to be proven at trial, as well as interest and attorneys' fees.

5 37. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff,
 6 the general public, and the Class have suffered actual damages in an amount to be proven at trial.

7 38. Defendant's acts, omissions, statements, concealments, representations, non-
 8 disclosures, policies, procedures as described herein, were knowingly deceptive and were made
 9 in conscious disregard of their effects on consumers. Defendant was required by law to make an
 10 adequate disclosure of the true material facts of about the Flex-Able Hose to consumers.
 11 Defendant, however, failed to do so in order to conceal material information about the hoses and
 12 thereby induce consumers to purchase its misrepresented products. Accordingly, Defendant
 13 engaged in acts of fraud, malice and oppression or in conscious disregard of the rights of
 14 Plaintiff and the putative Class. As such, an award of punitive damages is justified in order to
 15 make an example of Defendant, to punish Defendant, and to prevent others, from engaging in the
 16 same or similar conduct in the future. Plaintiff and members of the Class therefore seek an
 17 award of punitive damages in an amount according to proof at trial.

18 **SECOND CLAIM FOR RELIEF**

19 **(VIOLATION OF CALIFORNIA'S UNFAIR BUSINESS PRACTICES ACT)**

20 **California Business & Professions Code section 17200 *et seq.***

21 39. Plaintiff hereby incorporates by reference the allegations contained in the
 22 preceding paragraphs of this Complaint.

23 40. California Business & Professions Code section 17200 prohibits acts of "unfair
 competition," including any "unlawful, unfair or fraudulent business act or practice" and any
 "unfair, deceptive, untrue or misleading advertising."

41. Defendant knew its Flex-Able Hoses were defectively designed, were prone to
 fail prematurely, and were not suitable for their intended use.

CLASS ACTION COMPLAINT AND JURY DEMAND

44. Defendant's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business and were capable of deceiving a substantial portion of the purchasing public.

46. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the Business & Professions Code.

(VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW)
Cal. Bus. & Prof. Code § 17500

48. Defendant advertises the hose as having “a tough double wall construction....” and being “designed like a fire-hose for speed storage and strength, to last a really long time.” These statements appeared on the Flex-Able Hose’s packaging, the product’s website, and on the infomercial. To emphasize the strength and durability of the hose, Defendant’s marketing materials and product packaging depict the hose being run over by a fire truck. Such images appear on the product’s packaging, website, and in the infomercial. Due to the hoses’ inherent defect, Defendant’s advertising, marketing materials, and packaging materials are likely to deceive, and continue to deceive, members of the Class and the general public, and are such are

EXHIBIT A - Page 13

1 untrue, deceptive, and misleading within the meaning of Cal. Bus. & Prof. Code § 17500, et seq.
2 Defendant's statements, non-disclosures, representations, acts and omissions are also likely to
3 continue deceiving members of the class and the general public, particularly because Defendant
4 has failed to take remedial measures.

5 49. In making and disseminating the statements alleged herein, Defendant knew or
6 should have known that the statements were untrue or misleading, and acted in violation of Cal.
7 Bus. & Prof. Code § 17500, et seq.

8 50. Defendant's misrepresentations and non-disclosures of the material facts detailed
9 above constitute false and misleading advertising and, as such are a violation of Cal. Bus. &
10 Prof. Code § 17500, et seq.

11 51. Through its deceptive acts and practices, Defendant has improperly and illegally
12 obtained money from Plaintiff and members of the putative Class. As such, Plaintiff requests
13 that this Court compel Defendant to restore this money to Plaintiff and members of the putative
14 Class, and to enjoin Defendant from continuing to violate Cal. Bus. & Prof. Code § 17500, as
15 discussed above.

16 52. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests that the court order
17 Defendant to fully disclose the true nature of its misrepresentations. Plaintiff also requests an
18 order requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all
19 monies wrongfully acquired by Defendant by means of such acts of false advertising. Plaintiff
20 and the putative class may be irreparably harmed and/or denied an effective and complete
21 remedy if such an order is not granted.

22 FOURTH CLAIM FOR RELIEF

23 (FRAUD BY OMISSION)

24 53. Plaintiff hereby incorporates by reference the allegations contained in the
25 preceding paragraphs of this Complaint.

26 54. Plaintiff and the Class reasonably expected the Flex-Able Hoses to function
27 properly for its useful life.

CLASS ACTION COMPLAINT AND JURY DEMAND

1 55. Defendant knew that the hoses were defectively designed, were prone to fail
2 prematurely, and were not suitable for their intended use.

3 56. Defendant concealed and failed to disclose the defective nature of the Flex-Able
4 Hoses to Plaintiff and the Class.

5 57. Defendant had a duty to disclose the defective nature of the Flex-Able Hose to
6 Plaintiff and the Class because:

7 a. Defendant was in a superior position to know the true quality of the Flex-Able
8 Hoses and had exclusive knowledge of the material facts about its defective
9 nature, which was not known to Plaintiff and the Class at the time of their
10 purchases;

11 b. Defendant made representations that the Flex-Able Hoses were "built strong" and
12 would "last a long time," among other things.

13 c. Defendant actively concealed the defective nature of the Flex-Able Hoses from
14 Plaintiff and the Class.

15 58. The facts that Defendant and/or failed to disclose were material in that a
16 reasonable person would have considered them to be important in deciding whether to purchase
17 Defendant's Flex-Able Hoses. Had Plaintiff and the Class known the defective nature of the
18 Flex-Able Hoses, they would not have purchased Defendant's product.

19 59. Defendant concealed and or failed to disclose the inherent defect in the Flex-Able
20 Hoses in order to induce Plaintiff and the Class to act thereon. Plaintiff and the Class justifiably
21 relied on Defendant's omission to their detriment, as is evident from their purchases of the Flex-
22 Able Hoses.

23 60. Defendant continued to conceal the defective nature of the Flex-Able Hoses even
after members of the Class began to report problems.

CLASS ACTION COMPLAINT AND JURY DEMAND

61. As a direct and proximate result of Defendant's misconduct, Plaintiff and the Class have suffered and will continue to suffer actual damages.

FIFTH CLAIM FOR RELIEF

(Breach of Implied Warranty of Merchantability)

62. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

63. Plaintiff and the Class bought the Flex-Able Hose, a consumer good, manufactured and marketed by Defendant.

64. At the time of purchase, Defendant was in the business of manufacturing and marketing consumer goods for distribution to retail consumers.

65. The Flex-Able Hose was not fit for the ordinary purpose of a garden hose, nor was it of the same quality as that generally acceptable in the trade.

66. As a result of Defendant's breach, Plaintiff and the Class sustained damages.

SIXTH CLAIM FOR RELIEF

(Breach of Implied Warranty of Fitness For a Particular Purpose)

67. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

68. Plaintiff and the Class were harmed because the Flex-Able Hose was not suitable for the intended use of a garden hose.

69. At the time of purchase, Defendant knew and had reason to know that Plaintiff and the Class intended to use the Flex-Able Hose as a garden hose.

70. At the time of purchase, Defendant knew or had reason to know that Plaintiff and the Class were relying on its skill and judgment of Defendant to select and provide a garden hose that was suitable for that particular purpose.

71. Plaintiff and the Class justifiably relied on Defendant's skill and judgment.

PRAYER FOR RELIEF

1. An order certifying the Class defined herein be entered designating Plaintiff and her counsel as representatives of said Class;
2. For a preliminary injunction enjoining Defendant, its successors and assigns and all others, known and unknown, from continuing to deceive consumers in the manner set forth in this complaint;
3. For permanent injunctive relief against Defendant under the CLRA, the UCL, and the FAL;
4. An order requiring that Defendant make corrective disclosures;
5. Make restitution to each plaintiff and each member of the Plaintiff Class under each cause of action in an amount according to proof at trial;
6. A judgment awarding Plaintiff and the Class compensatory, exemplary and punitive damages;
7. For other equitable relief;
8. For attorney's fees as provided by law;
9. For prejudgment interest as provided by law;
10. For costs of suit;

11. For such other and further relief as this Court deems to be just and equitable.

Dated: January 9, 2014

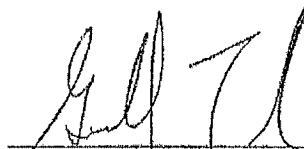


GEOFFREY J. SPRETER
Spreter Legal Services, APC
601 3rd Street
Coronado, CA 92118
(619) 865-7986
spreterlegalservices@gmail.com

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: January 9, 2014



GEOFFREY J. SPRETER
Spreter Legal Services, APC
601 3rd Street
Coronado, CA 92118
(619) 865-7986
spreterlegalservices@gmail.com

CLASS ACTION COMPLAINT AND JURY DEMAND

EXHIBIT A

ALEXANDER M. SCHACK, Esq., Bar No. 99126
 (alexschack@amslawoffice.com)
 NATASHA NARAGHI, Esq., Bar No. 284711
 (natashanaraghi@amslawoffice.com)
 LAW OFFICES OF ALEXANDER M. SCHACK
 16870 West Bernardo Drive, Suite 400
 San Diego, CA 92127
 Tel: (858) 485-6535 Fax: (858) 485-0608

GEOFFREY J. SPRETER, Esq., Bar No 257707
 (spreterlegalservices@gmail.com)
 SPRETER LEGAL SERVICES, APC
 601 3rd Street
 Coronado, CA 92118
 Telephone: 619-865-7986

Attorneys for Jeanne Burns,
 individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO
 CENTRAL DIVISION**

Jeanne Burns, individually and on behalf of all) CASE NO:
 others similarly situated,)

Plaintiffs,)

v.)

CLASS ACTION COMPLAINT

Tristar Products, Inc., a New Jersey Corporation)
 and Does 1 through 50.)

**DECLARATION OF JEANNE BURNS
 RE CIVIL CODE SECTION 1780(D)**

Defendant.)
)
)
)
)
)

DECLARATION OF JEANNE BURNS RE CIVIL CODE SECTION 1780(D)

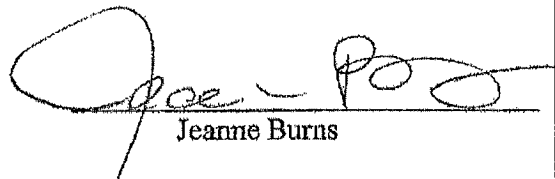
1 I, Jeanne Burns, declare as follows:

2 1. I am a plaintiff in this action and a citizen of the State of California. I have
3 personal knowledge of the facts herein and if called as a witness, I could and would testify
4 competently thereto.

5 2. This is a proper place for trial under Civil Code Section 1780(d) in that a
6 substantial portion of the transaction alleged occurred in San Diego County and because the
7 Defendant, Tristar Products, Inc. ("Defendant"), does business in San Diego County.

8 3. I purchased the Flex-Able Hose in San Diego County, California from
9 Defendant's interactive website. I was led to believe by Defendant's marketing and advertising
10 that, among other things, the Flex-Able Hose was strong and that it would last a long time. I
11 found it to be neither strong nor to last a long time. I would not have purchased the Flex-Able
12 Hose if I had known all of the true facts about the Flex-Able Hose.

13
14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct, executed on November 6, 2013 in San Diego County,
16 California.

17
18 
19 Jeanne Burns

20
21
22
23

DECLARATION OF JEANNE BURNS RE CIVIL CODE SECTION 1780(D)

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

TRISTAR PRODUCTS, INC., a New Jersey Corporation

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JEANNE BURNS, individually and on behalf of all other similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

01/09/2014 at 09:01:31 AM

Clerk of the Superior Court
By Sandra Villanueva, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

330 West Broadway, San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2014-00082795-CU-FR-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Geoffrey Spreter, Spreter Legal Services, 601 3rd St., Coronado, CA 92118 (619) 865-7986

DATE: 01/10/2014
(Fecha)

Clerk, by
(Secretario)

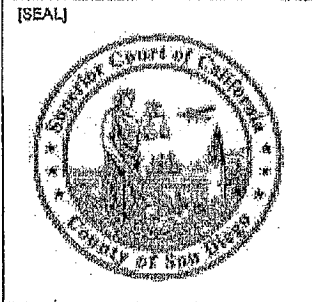
S. Villanueva
S. Villanueva

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

| | | |
|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Geoffrey J. Spreter, Esq. (Bar No. 257707) SPRETER LEGAL SERVICES, APC 601 3rd Street Coronado, CA 92118. TELEPHONE NO.: 619-865-7986 FAX NO.: ATTORNEY FOR (Name): Plaintiffs, Jeanne Burns, et al. | | FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/09/2014 at 09:01:31 AM Clerk of the Superior Court By Sandra Milanueva, Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central Division | | |
| CASE NAME: Jeanne Burns, et al. v. Tristar Products, Inc. et al. | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | |

Items 1-6 below must be completed (see instructions on page 2).

| | | |
|---|--|--|
| 1. Check one box below for the case type that best describes this case: | | |
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 9, 2014
 Geoffrey J. Spreter

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

POS-010

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Natasha A. Naraghi (284711)/Geoffrey J. Spreter (257707) LAW OFFICES OF ALEXANDER M. SCHACK 16870 West Bernardo Dr., Suite 400, San Diego, CA 92127 SPRETER LEGAL SERVICES, APC, 601 3rd St., Coronado, CA 92118 TELEPHONE NO.: 858-485-6535 FAX NO. (Optional): 858-485-0608 E-MAIL ADDRESS (Optional): natashanaraghi@amslawoffice.com ATTORNEY FOR (Name): Plaintiffs | FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/04/2014 at 09:55:00 AM Clerk of the Superior Court By E-Filing, Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central | |
| PLAINTIFF/PETITIONER: JEANNE BURNS, et al. DEFENDANT/RESPONDENT: TRISTAR PRODUCTS, INC. | CASE NUMBER: 37-2014-00082795-CU-FR-CTL |
| PROOF OF SERVICE OF SUMMONS | Ref. No. or File No.: |

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): Notice of Case Assignment and CMC; Peremptory Challenge; Notice of Case Reassignment; 1/3/13 General Order and Electronic Filing Requirements
3. a. Party served (specify name of party as shown on documents served): Tristar Products, Inc.
- b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
492 U.S. 46, Fairfield, NJ 07004
5. I served the party (check proper box)
 - a. ☐ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
 - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

| | |
|--|--|
| PLAINTIFF/PETITIONER: JEANNE BURNS, et al. | CASE NUMBER: 37-2014-00082795-CU-FR-CTL |
| DEFENDANT/RESPONDENT: TRISTAR PRODUCTS, INC. | |

5. c. ☒ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): February 18, 2014

(2) from (city): San Diego, California

(3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)

(4) ☒ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. ☐ as an individual defendant.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ as occupant.

d. ☒ On behalf of (specify):

under the following Code of Civil Procedure section:

☒ 416.10 (corporation)

☐ 415.95 (business organization, form unknown)

☐ 416.20 (defunct corporation)

☐ 416.60 (minor)

☐ 416.30 (joint stock company/association)

☐ 416.70 (ward or conservatee)

☐ 416.40 (association or partnership)

☐ 416.90 (authorized person)

☐ 416.50 (public entity)

☐ 415.46 (occupant)

☐ other:

7. Person who served papers

a. Name: Grant Gardner

b. Address: 16870 W. Bernardo Drive, Suite 400, San Diego, CA 92127

c. Telephone number: 858-485-6535

d. The fee for service was: \$

e. I am:

(1) ☒ not a registered California process server.

(2) ☐ exempt from registration under Business and Professions Code section 22350(b).

(3) ☐ a registered California process server:

(i) ☐ owner ☐ employee ☐ independent contractor.

(ii) Registration No.:

(iii) County:

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


or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: March 4, 2014

Grant Gardner

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

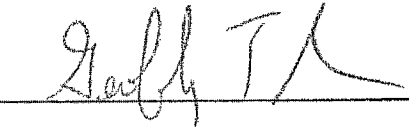

(SIGNATURE)

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Geoffrey J. Spreter (SBN 257707) SPRETER LEGAL SERVICES, APC 601 3rd Street Coronado, CA 92118 TELEPHONE NO. (Optional): 619-865-7986 FAX NO. (Optional): E-MAIL ADDRESS (Optional): spreterlegalservices@gmail.com ATTORNEY FOR (Name): Plaintiff Jeanne Burns | FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/04/2014 at 09:55:00 AM Clerk of the Superior Court By E- Filing, Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., SUITE, 1000, VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910 | |
| PLAINTIFF(S) JEANNE BURNS | JUDGE Judith F. Hayes |
| DEFENDANT(S) TRISTAR PRODUCTS, INC. | DEPARTMENT C-68 |
| CERTIFICATE OF SERVICE | CASE NUMBER 37-2014-00082795-CU-FR-CTL |

I certify under penalty of perjury under the laws of the State of California that all defendants named in the complaint of the above-entitled case have either made a general appearance or have been properly and timely served in compliance with SDSC Local Rule 2.1.5.

Date: February 28, 2014

Geoffrey J. Spreter
Type or print name


Signature

| | |
|---|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO | |
| STREET ADDRESS: 330 W Broadway | |
| MAILING ADDRESS: 330 W Broadway | |
| CITY AND ZIP CODE: San Diego, CA 92101-3827 | |
| BRANCH NAME: Central | |
| TELEPHONE NUMBER: (619) 450-7070 | |
| PLAINTIFF(S) / PETITIONER(S): JEANNE BURNS | |
| DEFENDANT(S) / RESPONDENT(S): TRISTAR PRODUCTS INC | |
| BURNS VS TRISTAR PRODUCTS INC [E-FILE] | |
| NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE | CASE NUMBER: 37-2014-00082795-CU-FR-CTL |

CASE ASSIGNMENT

Judge: Randa Trapp

Department: C-70

COMPLAINT/PETITION FILED: 01/09/2014

| TYPE OF HEARING SCHEDULED | DATE | TIME | DEPT | JUDGE |
|----------------------------------|------------|----------|------|-------------|
| Civil Case Management Conference | 10/03/2014 | 09:50 am | C-70 | Randa Trapp |

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 010313 at www.sdcourt.ca.gov for guidelines and procedures.

***ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

FILED
Clerk of the Superior Court

JAN 03 2013

By: Amy Kellers

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**IN RE PROCEDURES REGARDING
ELECTRONIC FILING**

**GENERAL ORDER OF THE
PRESIDING DEPARTMENT
ORDER NO. 010313**

THIS COURT FINDS AND ORDERS AS FOLLOWS:

On August 1, 2011, the San Diego Superior Court ("court") began an Electronic Filing and Imaging Pilot Program ("Program") designed to reduce paper filings and storage, facilitate electronic access to civil court files and, in Phase Two, allow remote electronic filing ("E-File" or "E-Filing") of papers in civil cases. The ultimate goal of the Program is to create a paperless or electronic file in all civil cases, as well as in other case categories.

Phase One of the Program, described in General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, involved the court's scanning of papers in newly filed cases in designated divisions and departments (the "Imaging Project"). Phase Two of the Program is the implementation of electronic filing by counsel and parties through the court's E-File Service Provider.

Electronic filing under Phase Two of the Program will initially be limited to the Central Civil Division only. Probate and North County Civil Divisions of the Superior Court

1 are excluded from Phase Two of the Program. This General Order relates to Phase Two,
2 and supplements General Order: *In re Procedures Regarding Electronically Imaged Court*
3 *Records, Electronic Filing, and Access to Electronic Court Records.*

4 Permissive E-Filing will begin January 7, 2013 in predetermined non-mandated civil
5 cases in the Central Division, and expand as resources permit. Beginning March 4, 2013,
6 E-Filing will be mandatory in certain types of cases. Further information on these initiatives
7 can be found on the court's website, at www.sdcourt.ca.gov.

8 Filing and service of documents by electronic means is governed by Code of Civil
9 Procedure Section 1010.6 and California Rules of Court ("CRC"), rules 2.250 et seq. and
10 CRC 2.30. In addition, the San Diego Superior Court's specific requirements for E-Filing
11 are available on the court's website. Litigants and attorneys electronically filing documents
12 must comply with all applicable rules and requirements.

13 **GENERAL E-FILING REQUIREMENTS**

14 Documents can only be electronically filed through the court's electronic service
15 provider (the "Provider"). E-File Provider information is available on the court's website.

16 Any document filed electronically shall be considered as filed with the Clerk of the
17 Superior Court when it is first transmitted to the Provider and the transmission is
18 completed, except that any document filed on a day that the court is not open for business,
19 or after 5:00 p.m. (Pacific Time) on a day the court is open for business, shall be deemed to
20 have been filed on the next court day.

21 Pursuant to Government Code section 68150 and California Rules of Court, rule
22 2.504, electronic documents, whether imaged by the court or filed by the parties, are
23 certified as official records of the court.

24 Additional and more specific information on electronic filing can be found on the
25 court's website.

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28 ///

1 This Order shall expire on December 31, 2013, unless otherwise ordered by this
2 court.

3 IT IS SO ORDERED.

4 Dated: January 3, 2013

Robert Trentacosta

ROBERT J. TRENTACOSTA
Presiding Judge

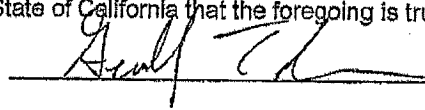
| | | | |
|---|--|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Geoffrey J. Spreter, Esq. (Bar No. 257707) SPRETER LEGAL SERVICES, APC 601 3rd Street, Coronado, CA 92118 TELEPHONE NO.: 619-865-7986 FAX NO. (Optional): E-MAIL ADDRESS (Optional): spreterlegalservices@gmail.com ATTORNEY FOR (Name): Plaintiffs Jeanne Burns, et al. | | FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/23/2014 at 02:55:00 PM Clerk of the Superior Court By Calvin Bautler, Deputy Clerk | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92066 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910 | | | |
| PLAINTIFF(S) | | JUDGE | |
| Jeanne Burns, Individually and on behalf of others similarly situated | | Randa Trapp | |
| DEFENDANT(S) | | DEPT | |
| Tristar Products, Inc., a New Jersey Corporation | | C-70 | |
| IN THE MATTER OF | | CASE NUMBER | |
| A MINOR | | 37-2014-00082795-CU-FR-CTL | |
| PEREMPTORY CHALLENGE | | | |

Geoffrey J. Spreter _____, is ☐ a party ☒ an attorney for a party in the above-entitled case and declares that Hon. Randa Trapp _____, the judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judge.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judge for further proceedings.

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

Date: January 23, 2014




Signature

ORDER OF THE COURT

☒ GRANTED - This case is referred to Presiding/Supervising Department for reassignment and a notice will be mailed to counsel.

☐ DENIED

Date: 1/28/2014



Judge/Commissioner/Referee of the Superior Court

FOR OFFICE USE ONLY

This case has been reassigned to Judge Judith F. Hayes per Presiding/Supervising Judge David Daniels on 1/29/14

| | |
|---|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7068 | FOR COURT USE ONLY |
| PLAINTIFF: JEANNE BURNS | |
| DEFENDANT: TRISTAR PRODUCTS INC | |
| Short Title: Burns vs Tristar Products Inc [E-FILE] | |
| NOTICE OF CASE REASSIGNMENT | CASE NUMBER: 37-2014-00082795-CU-FR-CTL |

Filed : 01/09/2014

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED

to Judge Judith F. Hayes, in Department C-68

due to the following reason: 170.6

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

ANY NEW HEARINGS ON THIS CASE WILL BE SCHEDULED BEFORE THE NEW JUDICIAL OFFICER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Burns vs Tristar Products Inc [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:

37-2014-00082795-CU-FR-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF CASE REASSIGNMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 01/29/2014. The mailing occurred at Sacramento on 01/30/2014.

Clerk of the Court, by: J. Park, Deputy

GEOFFREY J SPRETER
601 3RD STREET
CORONADO, CA 92118

NATASHA NARAGHI
LAW OFFICES OF ALEXANDER M SCHACK
16870 W BERNARDO DRIVE # 400
SAN DIEGO, CA 92127

ALEXANDER M SCHACK
16870 W BERNARDO DRIVE # 400
SAN DIEGO, CA 92127

CLERK'S CERTIFICATE OF SERVICE BY MAIL

1 VENABLE LLP
Jennifer Levin (SBN 252420)
jlevin@venable.com
2 2049 Century Park East, Suite 2100
Los Angeles, CA 90067
3 Telephone: (310) 229-9900
Facsimile: (310) 229-9901
4

5 Attorneys for Defendant TRISTAR
PRODUCTS, INC.
6
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 Jeanne Burns, individually and on
behalf of all others similarly situated,
12

13 Plaintiffs,

14 v.

14 Tristar Products, Inc., a New Jersey
Corporation, and Does 1 through 50.
15

16 Defendant.
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CASE NO. '14CV0749 JAH DHB

**DECLARATION OF STEVEN H.
SOWERS IN SUPPORT OF
DEFENDANT TRISTAR
PRODUCTS, INC.'S NOTICE OF
REMOVAL**

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

DECLARATION OF STEVEN H. SOWERS

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

1 I, Steven H. Sowers, declare that the following is true:

2 1. I have personal knowledge of the facts stated herein unless otherwise
3 stated and, if called upon to do so, I could and would competently testify thereto.

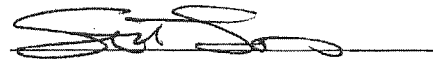
4 2. I am the Chief Financial Officer and Vice President of Tristar
5 Products, Inc. ("Tristar"). In this capacity, I have access to Tristar's books and
6 records and am familiar with the sales of Tristar's Flex-Able Hose to consumers
7 and to retailers.

8 3. Tristar is a Pennsylvania corporation, with its principal office in New
9 Jersey.

10 4. Based on my review of the records of Tristar, since August 24, 2012
11 through March 28, 2014, sales to California residents of the Flex-Able Hose have
12 been at least \$5,000,000.

13 5. Sales are continuing day to day both directly to consumers by Tristar
14 and through retailers located in California.

15 I declare under penalty of perjury under the laws of the United States that
16 the foregoing is true and correct and that this Declaration was executed on March
17 31, 2014, in Wyomissing, Pennsylvania.

18
19 

20 Steven H. Sowers
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **April 1, 2014**, I served a copy ☒ / original ☐ of the foregoing document(s) described as DECLARATION OF STEVEN H. SOWERS IN SUPPORT OF DEFENDANT TRISTAR PRODUCTS, INC.'S NOTICE OF REMOVAL on the interested parties in this action addressed as follows

Alexander M. Schack, Esq.
Natasha Naraghi, Esq.
Law Offices of Alexander M. Schack
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127

Geoffrey J. Spreter, Esq.
Spreter Legal Services, APC
601 3rd Street
Coronado, CA 92118

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY MAIL (FRCP 5(b)(1)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

☐ **BY PERSONAL SERVICE (FRCP 5(b)(1)(B)(i)):** I caused to be delivered such envelope(s) by hand to the addressee(s) as stated above.

☒ **BY OVERNIGHT DELIVERY (FRCP 5(b)(1)(F)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **April 1, 2014**, at Los Angeles, California.

/s/ Jennifer Levin

Jennifer Levin

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Jeanne Burns, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Law Offices of Alexander M. Schack; (858) 485-6535
Alexander M. Schack (SBN 99126); alexschack@amslawoffice.com
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127

DEFENDANTS

Tristar Products, Inc., a New Jersey Corporation, and Does 1 through 50

County of Residence of First Listed Defendant Pennsylvania; New Jersey

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Venable LLP; (310) 229-9900

Jennifer Levin (SBN 252420); jlevin@venable.com

2049 Century Park East, Suite 2100

Los Angeles, CA 90067

'14CV0749 JAH DHB

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

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

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332(d)

Brief description of cause:

CAFA Removal

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 1, 2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer Levin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **April 1, 2014**, I served a copy ☒ / original ☐ of the foregoing document(s) described as **CIVIL COVER SHEET** on the interested parties in this action addressed as follows

Alexander M. Schack, Esq.
Natasha Naraghi, Esq.
Law Offices of Alexander M. Schack
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127

Geoffrey J. Spreter, Esq.
Spreter Legal Services, APC
601 3rd Street
Coronado, CA 92118

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY MAIL (FRCP 5(b)(1)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

☐ **BY PERSONAL SERVICE (FRCP 5(b)(1)(B)(i)):** I caused to be delivered such envelope(s) by hand to the addressee(s) as stated above.

☒ **BY OVERNIGHT DELIVERY (FRCP 5(b)(1)(F)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **April 1, 2014**, at Los Angeles, California.

/s/ Jennifer Levin
Jennifer Levin

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-2299900