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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NANCY TURGEON, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

WHIRLPOOL CORP.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1 Plaintiff Nancy Turgeon ("Plaintiff"), by her undersigned attorneys, brings this class action
2 complaint against Whirlpool Corp. ("Whirlpool" or "Defendant"). Plaintiff's allegations are based
3 upon personal knowledge as to her own acts and upon information and belief as to all other matters.

4 **JURISDICTION**

5 1. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question).
6 This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

7 2. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)
8 because there are more than 100 class members and the aggregate amount in controversy exceeds
9 \$5,000,000.00, exclusive of interest, fees, and costs, and at least one class member is a citizen of a
10 state different from Defendant.

11 **NATURE OF THE ACTION**

12 3. This is a class action lawsuit regarding Defendant's false and misleading advertising
13 of its Whirlpool-brand ovens featuring a High-Temperature Self-Cleaning Cycle (the "Ovens").

14 4. Defendant advertises the Ovens as containing a High-Temperature Self-Cleaning
15 Cycle. According to Whirlpool's Use & Care Guide, the "Self-Cleaning Cycle uses very high
16 temperatures, burning soil to a powdery ash." Indeed, because of the Ovens feature this High-
17 Temperature Self-Cleaning Cycle, Defendant instructs owners of the Ovens not to use chemicals or
18 cleansers to clean them: "Do Not Use Oven Cleaners – No commercial oven cleaner or oven liner
19 protective coating of any kind should be used in or around any part of the oven."

20 5. However, the High-Temperature Self-Cleaning Cycle does not function as advertised
21 because use of the feature impairs the functionality of the Ovens, up to and including rendering the
22 Ovens inoperable (the "Self-Cleaning Defect"). The Self-Cleaning Defect is a result of insufficient
23 heat resistance in the Ovens and their components. The defect is caused by Defendant's failure to
24 equip the Ovens with appropriate heat-resistant insulation, properly functioning thermostats,
25 thermo-regulators, cooling fans, and/or adequate heat-resistant internal components that can
26 withstand the extreme heat produced during the High-Temperature Self-Cleaning Cycle. As a
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1 result, consumers are left with an Oven that cannot be cleaned without the risk of rendering the
2 Oven inoperable.

3 6. Plaintiff seeks relief in this action individually, and as a class action on behalf of
4 similarly situated purchasers of the Ovens for violation of the Magnuson-Moss Warranty Act;
5 breach of express warranty; breach of the implied warranty of merchantability; unjust enrichment;
6 negligent misrepresentation; fraudulent concealment; intentional misrepresentation; fraud; violation
7 of California's Consumers Legal Remedies Act ("CLRA"), Civil Code §§ 1750, *et seq.*; violation of
8 California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, *et seq.*; and violation
9 of California's False Advertising Law ("FAL"), Business & Professions Code §§ 17500, *et seq.*

10 **THE PARTIES**

11 7. Plaintiff Nancy Turgeon is a citizen of California, residing in Sacramento,
12 California. During the class period, Plaintiff Turgeon purchased an Oven with the High-
13 Temperature Self-Cleaning Cycle, model WOS51EC0AS02 for personal use. Prior to purchasing
14 her Oven, Ms. Turgeon reviewed the Oven's features and saw that the Oven featured a High-
15 Temperature Self-Cleaning Cycle. The Oven featured "Precise Clean®." "The Precise Clean®
16 cleaning system tracks the time between self-clean cycles to determine the right cycle time. This
17 makes sure the self-cleaning cycle only lasts as long as necessary for optimal cleaning and energy
18 savings. No harsh chemicals or cleansers are required." Plaintiff Turgeon saw these
19 representations prior to purchase, and understood them as representations and warranties that the
20 Oven's High-Temperature Self-Cleaning feature was effective for cleaning her Oven without the
21 use of harsh chemicals or cleansers. She understood that her Oven would function properly after
22 the use of the High Temp Self-Cleaning Cycle. Plaintiff Turgeon relied on these representations
23 and warranties in deciding to purchase her Oven. Accordingly, these representations and warranties
24 were part of the basis of the bargain, in that she would not have purchased her Oven had she known
25 that use of the High-Temperature Self-Cleaning Cycle would impair the functionality of her Oven.
26 In reliance on these representations and warranties, Plaintiff Turgeon paid a tangible increased cost
27 for her Oven, which was worth less than represented because of the Self-Cleaning Defect. Plaintiff
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1 Turgeon also understood that in making the sale, her retailer was acting with the knowledge and
2 approval of Defendant and/or as the agent of Defendant. Plaintiff Turgeon further understood that
3 the purchase involved a direct transaction between herself and Defendant. However, upon use of
4 the High-Temperature Self-Cleaning Cycle, Plaintiff's Oven ceased to function, which required
5 Plaintiff to spend over \$200 on repairs.

6 8. Defendant Whirlpool is a Delaware corporation with its principal place of business
7 located at 2000 N. M-63, Benton Harbor, MI 49022. Whirlpool designs, manufactures, markets,
8 distributes, services, repairs, and sells household appliances, including the Ovens, nationwide and in
9 California. Whirlpool is the warrantor and distributor of the Ovens in the United States. At all
10 relevant times, Whirlpool was and is engaged in the business of designing, manufacturing,
11 constructing, assembling, marketing, distributing, and selling household appliance components in
12 California and throughout the United States.

13 VENUE

14 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because
15 Defendant does business throughout this district, and a substantial part of the events giving rise to
16 Plaintiff's claims took place within this judicial district.

17 FACTUAL ALLEGATIONS

18 10. At all relevant times, Defendant has designed, manufactured, distributed, and sold
19 the Ovens. Defendant has sold, directly or indirectly, through retail outlets, thousands of Ovens
20 equipped with a High-Temperature Self-Cleaning Cycle in California and nationwide.

21 11. The Ovens also feature "Precise Clean." According to Defendant, "[t]he Precise
22 Clean® cleaning system tracks the time between self-clean cycles to determine the right cycle time.
23 This makes sure the self-cleaning cycle only lasts as long as necessary for optimal cleaning and
24 energy savings. No harsh chemicals or cleansers are required."

25 12. For self-cleaning ovens, Defendant's Use & Care Guide instructs consumers to "Not
26 Use Oven Cleaners – No commercial oven cleaner or oven liner protective coating of any kind
27 should be used in or around any part of the oven." The Use & Care Guide further instructs
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1 consumers to “not use oven cleaners” to clean the oven cavity and instead instructs them to only use
2 the Ovens’ High-Temperature Self-Cleaning Cycle. Accordingly, in order to clean the Ovens,
3 consumers must use the Ovens’ High-Temperature Self-Cleaning Cycle.

4 13. Given these instructions, the High-Temperature Self-Cleaning Cycle should clean
5 the Ovens without the use of harsh chemicals or cleansers and without impairing the Ovens’
6 functionality.

7 14. However, the Ovens’ High-Temperature Self-Cleaning Cycle fails to operate in this
8 manner because of the Self-Cleaning Defect. Due to the use of inappropriate and inadequate heat-
9 resistant and heat-regulating internal components, the extreme temperatures of the High-
10 Temperature Self-Cleaning Cycle causes the Ovens’ thermostat, thermal fuses, control panel,
11 motherboard, door glass, door latch, and/or other internal components to short-circuit, overheat, or
12 otherwise break during normal use. As a result of the Self-Cleaning Defect, use of the High-
13 Temperature Self-Cleaning Cycle impairs the functionality of the Ovens. Furthermore, because of
14 the Self-Cleaning Defect, the High-Temperature Self-Cleaning Cycle is unusable and worthless.

15 15. The alleged Self-Cleaning Defect is inherent in each Oven and was present in each
16 Oven at the time of sale.

17 16. Defendant has superior and exclusive knowledge of the Self-Cleaning Defect, and
18 knew or should have known that the defect was not known or reasonably discoverable by Plaintiff
19 and Class Members before they purchased the Ovens.

20 17. Defendant has known about the Self-Cleaning Defect for years through sources not
21 available to consumers, including pre-release testing data, early consumer complaints about the
22 Self-Cleaning Defect to Defendant and its service technicians, testing conducted in response to
23 those complaints, high failure rates, and replacement part sales data, among other internal sources of
24 aggregate information about the problem.

25 18. Indeed, in or around January 2011, Whirlpool issued TSP #4317445C-A to its
26 service departments advising them that Whirlpool and KitchenAid Built-In Single and Double
27 Ovens “do[] not operate after a Self-Clean cycle” and the “oven completely stops during the Self-
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1 Clean cycle.” Whirlpool stated that the affected ovens’ thermostat was unintentionally exposed to
2 hot air or power interruption during the self-clean cycle and instructed service technicians to replace
3 the rear oven thermostat and blower assembly.

4 19. Moreover, in or around September 2012, Whirlpool issued TSP #W10540280 to its
5 service departments advising them that “KitchenAid Self Clean Wall Ovens” are experiencing
6 issues with the door latch assembly becoming deformed during the self-clean cycle. Whirlpool
7 stated that “[h]ot air could flow around the Glass Door Liner and deform the ‘light switch activation
8 lever’” and further instructed service technicians to replace the glass door liner of the Ovens.

9 20. Despite this knowledge, Defendant never disclosed the Self-Cleaning Defect to
10 consumers.

11 21. The existence of the Self-Cleaning Defect is a material fact that a reasonable
12 consumer would consider when deciding whether to purchase an oven that was equipped with a
13 High-Temperature Self-Cleaning Cycle. Had Plaintiff and other Class Members known that the
14 Ovens were equipped with defective components, they would not have purchased the Ovens.

15 22. Reasonable consumers, like Plaintiff, reasonably expect that a High-Temperature
16 Self-Cleaning Cycle will function properly in a manner that will not impair the functionality of the
17 Oven.

18 **CLASS ACTION ALLEGATIONS**

19 23. Plaintiff seeks to represent a class defined as all persons in the United States who
20 purchased an Oven (the “Class”).

21 24. Plaintiff also seeks to represent a subclass of all Class members who purchased an
22 Oven in the State of California (the “California Subclass”).

23 25. Members of the Class and the California Subclass are so numerous that their
24 individual joinder herein is impracticable. On information and belief, members of the Class and
25 California Subclass number in the tens of thousands. The precise number of Class members and
26 their identities are unknown to Plaintiff at this time but will be determined through discovery. Class
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1 members may be notified of the pendency of this action by mail and/or publication through the
2 distribution records of Defendant and third party retailers and vendors.

3 26. Common questions of law and fact exist as to all Class members and predominate
4 over questions affecting only individual Class members. Common legal and factual questions
5 include, but are not limited to:

- 6 (a) whether Defendant misrepresented the Ovens as featuring
7 an effective High-Temperature Self Cleaning Feature;
- 8 (b) whether the High-Temperature Self-Cleaning Cycle was
9 material to consumers;
- 10 (d) whether Defendant knew about the Self-Cleaning Defect;
- 11 (e) whether Defendant had a duty to disclose the Self-Cleaning
12 Defect;
- 13 (f) whether Plaintiff and Class Members are entitled to
14 equitable relief, including but not limited to a preliminary
15 and/or permanent injunction;
- 16 (g) whether Defendant breached the Magnuson-Moss Warranty
17 Act;
- 18 (h) whether Defendant breached the Song-Beverly Act;
- 19 (i) whether Defendant breached an express warranty; and
- 20 (j) whether, as a result of Defendant's misconduct as alleged
21 herein, Plaintiff and Class members are entitled to
22 restitution, injunctive, and/or monetary relief and, if so, the
23 amount and nature of such relief.

24 27. Plaintiff's claims are typical of the claims of Class and Subclass members because
25 the Plaintiff, Class, and Subclass members all purchased Ovens featuring a High-Temperature Self-
26 Cleaning Cycle.

27 28. Plaintiff is an adequate representative of the Class because her interests do not
28 conflict with the interests of the Class members she seeks to represent, she has retained counsel
competent and experienced in prosecuting class actions, and they intend to prosecute this action

vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

29. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
Violation of the Magnuson-Moss Warranty Act
15 U.S.C. §§ 2301, *et seq.*

30. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

31. Plaintiff brings this claim individually and on behalf of the members of the Class and California Subclass against Defendant.

32. The Ovens are consumer products as defined in 15 U.S.C. § 2301(1).

33. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

34. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

35. In connection with the sale of the Ovens, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers.

1 truth concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due to
2 the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the
3 Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay
4 money to diagnose, repair, or replace the Ovens' electrical and other internal components damaged
5 as a result of the Self-Cleaning Defect.

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7 **COUNT III**
Breach of Implied Warranty of Merchantability

8 44. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
9 forth herein.

10 45. Plaintiff brings this claim individually and on behalf of the members of the Class and
11 the Subclass against Defendant.

12 46. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller
13 impliedly warranted that the Ovens were fit for their intended purpose in that that the Ovens would
14 function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-
15 Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or
16 cleansers.

17 47. Defendant breached the warranty implied in the contract for the sale of the Ovens in
18 that the Ovens could not pass without objection in the trade under the contract description, the
19 goods were not of fair average quality within the description, and the goods were unfit for their
20 intended and ordinary purpose in that the High-Temperature Self-Cleaning Cycle does not function
21 properly due to the Self-Cleaning Defect. As a result, Plaintiff and Class members did not receive
22 the goods as impliedly warranted by Defendant to be merchantable.

23 48. Plaintiff and Class members are the intended beneficiaries of Defendant's implied
24 warranties.

25 49. In reliance upon Defendant's skill and judgment and the implied warranties, Plaintiff
26 and Class members purchased the Ovens to use the High-Temperature Self-Cleaning Cycle.

27 50. The Ovens were not altered by Plaintiff and Class members. The Ovens were
28 defective when they left the exclusive control of Defendant.

57. Plaintiff and Class members conferred a benefit on Defendant by purchasing the Ovens.

58. Defendant misrepresented that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers.

59. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the Ovens. Retention under these circumstances is unjust and inequitable because Defendant misrepresented that the Ovens they would function properly after the use of the High-Temperature Self-Cleaning Cycle which caused injuries to Plaintiff and Class members because (a) they would not have purchased the Ovens on the same terms if the truth concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due to the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay money to diagnose, repair, or replace the Ovens' electrical and other internal components damaged as a result of the Self-Cleaning Defect.

60. Because Defendant's retention of the non-gratuitous benefit conferred on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

COUNT V
Negligent Misrepresentation

61. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

62. Plaintiff brings this claim individually and on behalf of the members of the Class and Subclass against Defendant.

63. Defendant represented that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers. To communicate this representation and to convince Plaintiff and Class Members to purchase an, Defendant labeled and

1 advertised the Ovens as featuring a High-Temperature Self-Cleaning Cycle. Defendant knew, or
2 should have known, that this information was false and/or misleading to Plaintiff and Class
3 Members.

4 64. The High-Temperature Self-Cleaning Cycle feature is a material fact that influenced
5 Plaintiff's and Class members' purchase of the Ovens.

6 65. Defendant knowingly concealed the Self-Cleaning Defect with the intent to induce
7 Plaintiff and Class members to act upon the High-Temperature Self-Cleaning Cycle feature by
8 purchasing the Ovens.

9 66. At the time Defendant sold the Ovens featuring the High-Temperature Self-Cleaning
10 Cycle, Defendant knew or should have known that the Self-Cleaning Defect impaired the Ovens'
11 functionality.

12 67. Plaintiff and Class members reasonably, justifiably, and detrimentally relied on the
13 High-Temperature Self-Cleaning Cycle in purchasing their Ovens and, as a proximate result
14 thereof, have and will continue to suffer damages in the form of lost money from the purchase price
15 and increased repair costs over the life of the Ovens.

16 68. Plaintiff and Class members suffered a loss of money as a result of Defendant's false
17 information because: (a) they would not have purchased the Ovens on the same terms if the truth
18 concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due to the
19 High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the Self-
20 Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay money to
21 diagnose, repair, or replace the Ovens' electrical and other internal components damaged as a result
22 of the Self-Cleaning Defect.

23 **COUNT VI**
24 **Fraudulent Concealment / Nondisclosure**

25 69. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
26 forth herein.

27 70. Plaintiff brings this claim individually and on behalf of the members of the Class and
28 Subclass against Defendant.

1 71. Defendant represented that the Ovens would function properly after the use of the
2 High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would
3 effectively clean the Oven without the use of chemicals or cleansers. Defendant knew at the time of
4 sale that this representation was false because Defendant issued service bulletins to remedy the
5 issues associated with the High-Temperature Self-Cleaning Cycle and the Self-Cleaning Defect
6 since at least 2011.

7 72. Defendant fraudulently concealed from and/or intentionally failed to disclose to
8 Plaintiff and the Class that use of the Ovens' High-Temperature Self-Cleaning Cycle could damage
9 or otherwise impair the functionality of the Ovens due to the Self-Cleaning defect.

10 73. Defendant had exclusive knowledge of the Self-Cleaning Defect at the time of sale.
11 The Self-Cleaning Defect is latent and not something that Plaintiff or Class members, in the
12 exercise of reasonable diligence, could have discovered independently prior to purchase, because it
13 is not feasible for individual consumers to test the Ovens' internal components prior to purchase.
14 The Self-Cleaning Defect would not be disclosed by careful, reasonable inspection by the
15 purchaser.

16 74. Defendant had the capacity to, and did, deceive Plaintiff and Class members into
17 believing that the Ovens would function properly after the use of the High-Temperature Self-
18 Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the
19 Oven without the use of chemicals or cleansers.

20 75. Defendant undertook active and ongoing steps to conceal the Self-Cleaning Defect.
21 Plaintiff is aware of nothing in Defendant's advertising, publicity, or marketing materials that
22 discloses the truth about the Self-Cleaning Defect, despite Defendant's awareness of the problem.

23 76. The facts concealed and/or not disclosed by Defendant to Plaintiff and the Class are
24 material facts in that a reasonable person would have considered them important in deciding
25 whether to purchase (or to pay the same price for) an Oven.

26 77. Defendant had a duty to disclose the presence of the Self-Cleaning Defect at the time
27 of sale.

78. Defendant intentionally concealed and/or failed to disclose that use of the High-Temperature Self-Cleaning Cycle in the manner advertised was ineffective for cleaning the Ovens and that use of High-Temperature Self-Cleaning Cycle could damage or otherwise impair the functionality of the Ovens.

79. Plaintiff and the Class justifiably acted or relied upon the concealed and/or non-disclosed facts to their detriment, as evidenced by their purchase of the Ovens.

80. Plaintiff and Class members suffered a loss of money as a result of Defendant's false information because: (a) they would not have purchased the Ovens on the same terms if the truth concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due to the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay money to diagnose, repair, or replace the Ovens' electrical and other internal components damaged as a result of the Self-Cleaning Defect.

COUNT VII
Intentional Misrepresentation

81. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

82. Plaintiff brings this claim individually and on behalf of the Class and Subclass against Defendant.

83. Defendant willfully, falsely, and knowingly misrepresented that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers.

84. Defendant knew at the time of sale that this representation was false because Defendant issued service bulletins to remedy the issues associated with the High-Temperature Self-Cleaning Cycle and the Self-Cleaning Defect since at least 2011.

1 85. Defendant's misrepresentation was made with the intent that the general public,
2 including Plaintiff and Class members, would rely upon it. Defendant's misrepresentation was
3 made with knowledge of the Self-Cleaning Defect, or in reckless disregard of the truth thereof.

4 86. In actual and reasonable reliance upon the misrepresentation, Plaintiff and Class
5 members purchased the Ovens for their intended and reasonably foreseeable purposes. Plaintiff and
6 Class members were unaware of the true facts concerning the High-Temperature Self-Cleaning
7 Cycle and the Self-Cleaning Defect, which Defendant suppressed and failed to disclose.
8 Defendant's misrepresentation was material, in that if Plaintiff and Class members had been aware
9 of the suppressed facts, Plaintiff and Class members would not have purchased the Ovens for the
10 same price, if at all.

11 87. Plaintiff and Class members are informed and believe, and thereon allege, that
12 Defendant misrepresented that the Ovens would function properly after the use of the High-
13 Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would
14 effectively clean the Oven without the use of chemicals or cleansers with the intent to defraud
15 Plaintiff and Class members. Plaintiff and Class members were unaware of Defendant's intent and
16 relied upon Defendant's misrepresentation of the High-Temperature Self-Cleaning Cycle in
17 deciding to purchase the Ovens.

18 88. Plaintiff's and Class members' reliance upon Defendant's misrepresentation was
19 reasonable. The Self-Cleaning Defect is latent and not something that Plaintiff or Class members,
20 in the exercise of reasonable diligence, could have discovered independently prior to purchase,
21 because it is not feasible for individual consumers to test the Ovens' internal components prior to
22 purchase. The Self-Cleaning Defect would not be disclosed by careful, reasonable inspection by the
23 purchaser.

24 89. In actual and reasonable reliance upon Defendant's misrepresentation, Plaintiff and
25 Class members purchased the Ovens, the direct and proximate result of which was injury and harm
26 to Plaintiff and Class members because: (a) they would not have purchased the Ovens on the same
27 terms if the truth concerning the Self-Cleaning Defect had been known; (b) they paid a price
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1 premium due to the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as
2 promised due to the Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will
3 continue to pay money to diagnose, repair, or replace the Ovens' electrical and other internal
4 components damaged as a result of the Self-Cleaning Defect.

5 **COUNT VIII**
6 **Fraud**

7 90. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
8 forth herein.

9 91. Plaintiff brings this claim individually and on behalf of the Class and Subclass
10 against Defendant.

11 92. As discussed above, Defendant provided Plaintiff and Class members with false or
12 misleading material information and failed to disclose material facts about the Ovens, including but
13 not limited to the fact that the Ovens' High-Temperature Self-Cleaning Cycle was plagued by the
14 Self-Cleaning Defect.

15 93. The misrepresentation made by Defendant, upon which Plaintiff and Class members
16 reasonably and justifiably relied, was intended to induce and actually induced Plaintiff and Class
17 members to purchase the Ovens.

18 94. The fraudulent actions of Defendant caused damage to Plaintiff and Class members,
19 who are entitled to damages and other legal and equitable relief as a result.

20 95. Plaintiff and Class members suffered a loss of money as a result of Defendant's
21 fraudulent conduct because: (a) they would not have purchased the Ovens on the same terms if the
22 truth concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due to
23 the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the
24 Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay
25 money to diagnose, repair, or replace the Ovens' electrical and other internal components damaged
26 as a result of the Self-Cleaning Defect.

COUNT IX

**Violation of the Consumers Legal Remedies Act (“CLRA”),
Civil Code §§ 1750, *et seq.***

96. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

97. Plaintiff brings this claim individually and on behalf of the members of the California Subclass against Defendant.

98. CLRA § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” Defendant violated this provision by representing that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers.

99. CLRA § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” Defendant violated this provision by representing that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers.

100. CLRA § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to sell them as advertised.” Defendant violated this provision by representing that the Ovens would function properly after the use of the High-Temperature Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the Oven without the use of chemicals or cleansers. At the time they made sales to Plaintiff and the Subclass members, Defendant was aware of the Self-Cleaning Defect because Defendant issued service bulletins to remedy the issues associated with the High-Temperature Self-Cleaning Cycle and the Self-Cleaning Defect since at least 2011.

101. Plaintiff and the California Subclass members suffered injuries caused by Defendant’s conduct because: (a) they would not have purchased the Ovens on the same terms if the truth concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due

1 to the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the
2 Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay
3 money to diagnose, repair, or replace the Ovens' electrical and other internal components damaged
4 as a result of the Self-Cleaning Defect.

5 102. On January 11, 2017, prior to the filing of this Complaint, a CLRA notice letter was
6 served on Defendant which complies in all respects with California Civil Code § 1782(a). Plaintiff
7 sent Defendant a letter via certified mail, return receipt requested, advising Defendant that it was in
8 violation of the CLRA and must correct, repair, replace or otherwise rectify the goods alleged to be
9 in violation of § 1770. A true and correct copy of Plaintiff's CLRA letter is attached hereto as
10 Exhibit A.

11 103. Wherefore, Plaintiff seeks damages, restitution, and injunctive relief for this
12 violation of the CLRA.

13 **COUNT X**
14 **Violation of the Unfair Competition Law ("UCL"),**
15 **Bus. & Prof. Code §§ 17200 *et seq.***

16 104. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
17 forth herein.

18 105. Plaintiff brings this claim individually and on behalf of the California Subclass
19 against Defendant.

20 106. Defendant is subject to the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§
21 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and include
22 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
23 advertising"

24 107. Defendant's conduct, described herein, violated the "unlawful" prong of the UCL by
25 violating the CLRA and FAL.

26 108. Defendant's conduct, described herein, violated the "unfair" prong of the UCL by
27 misrepresenting that the Ovens would function properly after the use of the High-Temperature Self-
28

1 Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean the
2 Oven without the use of chemicals or cleansers.

3 109. Defendant's conduct, described herein, violated the "fraudulent" prong of the UCL
4 by misrepresenting that the Ovens would function properly after the use of the High-Temperature
5 Self-Cleaning Cycle and that the High-Temperature Self-Cleaning Cycle would effectively clean
6 the Oven without the use of chemicals or cleansers.

7 110. Plaintiff and California Subclass members suffered lost money or property as a result
8 of Defendant's UCL violations because: (a) they would not have purchased the Ovens on the same
9 terms if the truth concerning the Self-Cleaning Defect had been known; (b) they paid a price
10 premium due to the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as
11 promised due to the Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will
12 continue to pay money to diagnose, repair, or replace the Ovens' electrical and other internal
13 components damaged as a result of the Self-Cleaning Defect.

14 **COUNT XI**
15 **False Advertising Law ("FAL"),**
16 **Business & Professions Code § 17500 *et seq.***

17 111. Plaintiff repeats the allegations contained in the above paragraphs as if fully set forth
18 herein.

19 112. Plaintiff brings this claim individually and on behalf of the California Subclass
20 against Defendant.

21 113. California's False Advertising Law (*Bus. & Prof. Code* § 17500, *et seq.*) makes it
22 "unlawful for any person to make or disseminate or cause to be made or disseminated before the
23 public in this state, ... in any advertising device ... or in any other manner or means whatever,
24 including over the Internet, any statement, concerning ... personal property or services, professional
25 or otherwise, or performance or disposition thereof, which is untrue or misleading and which is
26 known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

27 114. Defendant committed acts of false advertising, as defined by §17500, by using false
28 and misleading statements to promote the sale of the Ovens, as described above.

115. Defendant knew or should have known, through the exercise of reasonable care that the statements were untrue and misleading.

116. Defendant's actions in violation of § 17500 were false and misleading such that the general public is and was likely to be deceived.

117. Plaintiff and California Subclass members suffered lost money or property as a result of Defendant's FAL violations because: (a) they would not have purchased the Ovens on the same terms if the truth concerning the Self-Cleaning Defect had been known; (b) they paid a price premium due to the High-Temperature Self-Cleaning Cycle; (c) the Ovens did not perform as promised due to the Self-Cleaning Defect; and (d) Plaintiff and Class members have paid and will continue to pay money to diagnose, repair, or replace the Ovens' electrical and other internal components damaged as a result of the Self-Cleaning Defect.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a. For an order certifying the nationwide Class and the California Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as a representative of the Class and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and Subclass members;
- b. For an order declaring that the Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff, the nationwide Class, and the California Subclass on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and

- h. For an order awarding Plaintiff and the Class and the California Subclass their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of all issues so triable.

Dated: March 3, 2017

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
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E-Mail: scott@bursor.com

Attorneys for Plaintiff

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

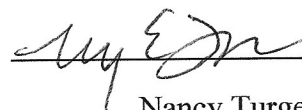
I, Nancy Turgeon, declare as follows:

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

2. Defendants conduct substantial business throughout this District, and I purchased a Whirlpool Oven with the High Temp Self-Cleaning Cycle, model WOS51EC0AS02 (the "Oven") in this District. Therefore, the complaint filed in this action is filed in the proper place pursuant to Cal. Civ. Code. 1780(d).

3. I purchased my Oven based on the representation that it featured a High Temp Self-Cleaning Cycle. I understood that the High Temp Self-Cleaning feature would function properly and that my Oven would function properly after using the High Temp Self-Cleaning Cycle. I would not have purchased the Oven had I known that use of the High Temp Self-Cleaning Cycle would cause my Oven to not function properly.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on February 25, 2017 at Sacramento, California.



Nancy Turgeon

EXHIBIT A



1990 N. CALIFORNIA BLVD.
SUITE 940
WALNUT CREEK, CA 94596
www.bursor.com

L. TIMOTHY FISHER
Tel: 925.300.4455
Fax: 925.407.2700
ltfisher@bursor.com

January 11, 2017

Via Certified Mail - Return Receipt Requested

Whirlpool Corporation
2000 N. M-63
Benton Harbor, MI 49022-2692

Re: *Demand Letter Pursuant to California Civil Code § 1782 and Violation of U.C.C.
§ 2-314*

To Whom It May Concern:

This letter serves as a notice and demand to Whirlpool Corporation ("Whirlpool") for corrective action to on behalf of my client, Nancy Turgeon, and all other persons similarly situated, arising from violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5), (7), and (9). This letter also serves as notice pursuant to U.C.C. § 2-607(3)(A) concerning the breaches of warranty described herein.

This notice concerns Whirlpool and KitchenAid brand Vision II ovens that purportedly have a self-cleaning feature (collectively, the "Defective Ovens"). Whirlpool represents that the self-cleaning feature, when "[u]sed periodically to clean light spills on the bottom of the oven, ... keeps the oven clean and reduces the need for frequent self-clean cycles." However, use of this self-cleaning feature renders the Defective Ovens locked and inoperable due to a defect that causes the ovens to overheat and destroy the internal control board. Despite knowing of this problem, Whirlpool fails to disclose to purchasers that use of the Defective Ovens' self-cleaning feature may damage the ovens, and that the only way to avoid such damage is to not use the self-cleaning feature.

Since 2015, Ms. Turgeon has owned a Defective Oven, a self-cleaning Whirlpool oven, model number WOS51EC0AS02. Ms. Turgeon purchased her Defective Oven based on the understanding that it offered a self-cleaning feature that would clean her oven for its life. However, her oven stopped functioning after she used its self-cleaning feature. Had she known the truth about her Defective Oven's defective self-cleaning feature, she would not have purchased the oven.

By misrepresenting, mislabeling and selling the Defective Ovens, Whirlpool has violated numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5), (7), and (9).

To cure these defects, we hereby demand that Whirlpool immediately (1) cease and desist from further illegal sales of the Defective Ovens, (2) issue an immediate recall of the Defective Ovens; (3) make full restitution to all purchasers of the Defective Ovens of all purchase money obtained from sales thereof; and (4) compensate all purchasers for any repair costs incurred as a result of the Defective Ovens self-cleaning feature.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the design, development, and/or testing of the self-cleaning feature on Whirlpool or KitchenAid ovens;
2. All documents concerning the advertisement, marketing, or sale of Whirlpool or KitchenAid ovens with the self-cleaning feature; and
4. All documents concerning communications with purchasers of Whirlpool or KitchenAid self-cleaning ovens, including but not limited to customer complaints.

This letter also serves as a thirty (30) day notice and demand under California Civil Code § 1782 for damages. Accordingly, should you fail to rectify the situation on a class-wide basis within 30 days of receipt of this letter, we will seek actual damages, plus punitive damages, interest, attorneys' fees and costs.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Very truly yours,



L. Timothy Fisher

CIVIL COVER SHEET

Case 2:17-cv-00473-MCE-AC Document 1-1 Filed 03/03/17 Page 1 of 1

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

NANCY TURGEON, individually and on behalf of all others similarly situated.

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

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

L. Timothy Fisher, Bursor & Fisher, P.A.
1990 North California Boulevard, Suite 940, Walnut Creek, CA 94596
925-300-4455

DEFENDANTS

WHIRLPOOL CORP.,

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

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

Attorneys (If Known)

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 U.S.C. 1332(d)(2)(A)

Brief description of cause:

Plaintiff alleges that Defendant mislabels its Whirlpool Ovens

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 St. Eve (S.D. Ill.); Carney (C.D. Cal.) DOCKET NUMBER 15-cv-05980; 16-cv-1704

DATE

03/03/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ L. Timothy Fisher

FOR OFFICE USE ONLY

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