IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

TRICIA FULLERTON, KARYN SLEPIAN, CLARIBEL GRAU, and JAN SIMON, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CORELLE BRANDS, LLC (previously d/b/a World Kitchen, LLC) and CORELLE BRANDS HOLDINGS, INC. (previously d/b/a World Kitchen Holdings, Inc.), Defendants.	Civil Action No. 1:18-cv-4152 CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs TRICIA FULLERTON, KARYN SLEPIAN, CLARIBEL GRAU, and JAN SIMON, on behalf of themselves and all others similarly situated, through their undersigned counsel, bring this Class Action Complaint ("Complaint") against Defendants CORELLE BRANDS, LLC, previously doing business as World Kitchen, LLC, and CORELLE BRANDS HOLDINGS, INC., previously doing business as World Kitchen Holdings, Inc. ("Corelle Brands" or "Defendants"). The following allegations are based upon personal knowledge as to Plaintiffs' own facts, upon investigation by Plaintiffs' counsel, and upon information and belief where facts are solely in the possession of Defendants.

NATURE OF THE DEFECT

1. Corelle Brands designs, manufactures, markets, and sells a wide range of bakeware, dinnerware, kitchen and household tools, cookware, kitchen storage, and cutlery, touting itself as

"the vanguard in the housewares industry since the 19th century."[1] Until early 2018, Corelle Brands, LLC was named and doing business as World Kitchen, LLC.[2]

2. Corelle Brands sells its products under a number of brand names. One of those brands is Pyrex, a glass company that since 1919 has manufactured, marketed, and sold glass cookware and other glassware items. For decades, Pyrex was known and advertised to consumers as "oven to ice-box" or "ice-box to oven" cookware because of its resistance to extreme changes in temperature. This resistance to extreme temperature changes resulted from Pyrex products being made of borosilicate glass, which has a high thermal shock resistance.[3]

3. In its original patent application dated May 27, 1919, Corning Glass Works (the former parent company and manufacturer of Pyrex glass until the formation of World Kitchen, LLC, which later became Corelle Brands, LLC) specifically stated that its products would be made of borosilicate glass due to its high coefficient for thermal endurance.

4. At some point around 1998, when Corelle Brands, LLC was formed (as World Kitchen, LLC), Pyrex began making its glassware from tempered soda lime silicate glass, rather than with borosilicate glass.

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[1] *About World Kitchen, LLC*, http://www.pwrnewmedia.com/2011/world_kitchen/pyrex/downloads/world_kitchen_fact_sheet.pdf (last viewed June 14, 2018).

[2] PR Newswire, *World Kitchen Changes Name to Corelle Brands* (Feb. 5, 2018, 7:30 ET), http://www.prnewswire.com/news-releases/world-kitchen-changes-name-to-corelle-brands-300593135.html (last viewed June 14, 2018).

[3] *See generally* T.J. Liu & N.A. Fleck, *The Thermal Shock Resistance of Solids*, 46 Acta Materialia 4755 (1998).

5. Borosilicate glass, which prior to roughly 1998 was used to make Pyrex Glassware, has a low "coefficient of thermal expansion."[4] This makes borosilicate glass very resistant to thermal shock—or maximum change in surface temperature which a material can withstand without cracking, breaking, shattering, or exploding.[5] In contrast, soda lime silicate glass, which is the cheapest form of commercial glass to produce[6] and has been used to make Pyrex Glassware since roughly 1998, has a very high coefficient of thermal expansion[7] and a very poor thermal shock resistance.[8] Accordingly, soda lime silicate glass is much more prone to cracking, breaking, shattering, or exploding when exposed to rapid changes in temperature.[9] For this reason, borosilicate glass is "stronger and harder than soda lime [silicate] glass"[10] and is used to make laboratory-grade glass ware and "quality cookware."[11]

6. Soda lime silicate glass can only withstand much smaller changes in temperature before fracturing, as compared to the changes in temperature that "traditional" Pyrex made from borosilicate glass were able to withstand. Nevertheless, Corelle Brands began selling its soda lime

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[4] *Id.* at 4755; *Borosilicate Glass vs. Soda Lime Glass?* Rayotek Scientific, Inc., https://rayotek.com/wpnews/borosilicate-glass-vs-soda-lime-glass (last viewed June 14, 2018).

[5] *Supra*, 46 Acta Materialia 4755, 4755 (1998); *Transparent Materials Comparison*, Rayotek Scientific, Inc., http://rayotek.com/tech-specs/material-comparisons.htm (last viewed June 7, 2018).

[6] *Types Of Glass*, Corning Museum of Glass, http://www.cmog.org/article/types-glass (last viewed June 13, 2018).

[7] *Supra, Borosilicate Glass vs. Soda Lime Glass?*

[8] *Supra, Transparent Materials Comparison*.

[9] *Supra, Borosilicate Glass vs. Soda Lime Glass?*

[10] *Supra, Transparent Materials Comparison*.

[11] *Id.*

silicate glass products under the Pyrex brand name without informing consumers of the change in its glass composition, and without giving consumers notice of the risks and dangers posed by Pyrex products manufactured from heat-tempered soda lime silicate glass.

RESEARCH OF DR. RICHARD BRADT

7. Various studies have demonstrated the significant differences in thermal endurance and resistance to temperature change when comparing borosilicate glass to soda lime silicate glass. For example, Dr. Richard Bradt, a materials scientist and professor emeritus at the University of Alabama whose expertise includes glass, conducted an independent experiment along with another scientist to determine the thermal shock resistance of pure soda lime silicate glass (the material currently used to manufacture Pyrex-brand glass cookware), when compared to borosilicate glass (the material from which traditional Pyrex glass cookware was manufactured). Dr. Bradt's findings demonstrated that borosilicate glass can withstand a 333-degree Fahrenheit change in temperature (hereinafter expressed symbolically, e.g. 333°F) before fracturing while soda lime silicate glass can withstand a temperature change of only 99°F before fracturing.[12]

8. In 2012, Corelle Brands attempted to discredit the findings of Dr. Bradt and his colleagues. Corelle unsuccessfully sued the scientists and a publication for alleged violations of the Illinois Deceptive Trade Practices Act ("DTPA") in the United States District Court for the Northern District of Illinois. *World Kitchen, LLC v. The American Ceramic Society, et al.*, Case No. 12-cv-8626 (N.D. Ill.). In its complaint, Corelle Brands alleged that Dr. Bradt and his colleagues violated the DTPA by publishing an article stating that the thermal shock resistance of the heat-tempered soda lime silicate glass from which Pyrex Glassware is made is only 99°F.

[12] R.C. Bradt & R.L. Martens, *Shattering glass cookware*, American Ceramic Society, Sept. 2012, at 33 (attached as **Exhibit A**).

Corelle alleged that this information was false, deceptive, and misleading to consumers. After a bench trial, in which Corelle Brands presented neither credible testimony nor admissible evidence to prove the falsity or misleading nature of any of Dr. Bradt's findings, the court ruled in favor of Dr. Bradt and his co-defendants. The court found no evidence refuting Dr. Bradt's findings that the thermal shock resistance of Corelle Brands' Pyrex brand soda lime silicate glass cookware is only 99°F, stating that "nothing in the record establishes that this value is false." *World Kitchen, LLC v. The American Ceramic Society, et al.*, Case No. 12-cv-8626, 2016 U.S. Dist. LEXIS 85717, at *20 (N.D. Ill. June 30, 2016).[13] Corelle Brands appealed the court's judgment but later voluntarily dismissed its appeal. *World Kitchen, LLC v. Bradt*, No. 19-3082, 2017 U.S. App. LEXIS 15391 (7th Cir. Feb. 28, 2017).

9. Corelle Brands continued its attempt to discredit the findings of Dr. Bradt's study and similar studies on its website in a section called "The Truth About Pyrex." The stated purpose of that particular section of the website is that Corelle Brands "want[s] you to know about reports mischaracterizing and wrongly disparaging the reliability, durability and excellent safety record of American-made glass cookware made from heat-strengthened soda lime glass."[14]

NATURE OF THE ACTION

10. Corelle Brands designed, manufactured, marketed, and sold its soda lime silicate Pyrex Glassware that suffers from a serious and dangerous defect. Specifically, during ordinary and routine use, Pyrex Glassware products manufactured from partially tempered soda lime silicate glass ("Pyrex Glassware") are prone to abrupt and dangerous shattering when exposed to

[13] Order, ECF No. 259, *World Kitchen, LLC v. The American Ceramic Society, et al.*, No. 1:12-cv-08626 (N.D. Ill. June 30, 2016) (attached as **Exhibit B**).

[14] World Kitchen, LLC, *The Truth About Pyrex* (attached as **Exhibit C**).

temperature changes that reasonable consumers expect Pyrex Glassware to withstand based upon the product's history, advertising, and the company's express claims related to its durability (the "Defect").

11. The defective products included in this case are all Pyrex Glassware products made from partially tempered soda lime silicate glass sold by Corelle Brands (also called World Kitchen, LLC).

12. At all relevant times, Corelle Brands knew or should have known of the Defect but nevertheless marketed, advertised, and sold glass cookware under its Pyrex name without distinguishing between the older borosilicate glass products and the defective soda lime silicate glass products; failed to warn consumers that the type of glass used to manufacture its Pyrex products had changed and that the soda lime silicate glass used for the Pyrex products creates serious safety risks; and failed to recall the dangerously defective Pyrex Glassware despite its knowledge of the risk of significant injuries the Defect poses to consumers as well as the Defect's likelihood of causing a catastrophic failure of the product.

13. As a direct and proximate result of the Defect and the inherent safety risk posed by the Defect, and as a direct and proximate result of Corelle Brands' concealment of the Defect, its failure to warn customers before their purchase of the products' change and Defect, its failure to remove the defective Pyrex Glassware from the stream of commerce, and its failure to recall or remedy the Defect, Plaintiffs and other similarly situated consumers (the "Class" or "Class Members") purchased and used Corelle Brands' defective and unsafe Pyrex Glassware when they otherwise would not have made such purchases, or else would have paid significantly less for the Pyrex Glassware manufactured from soda lime silicate glass.

14. Plaintiffs' and putative Class Members' Pyrex Glassware fails (or faces a substantial risk of failure) when Plaintiffs and Class Members use the product as intended and expose the product to temperature differences that they reasonably expect Pyrex Glassware to withstand. The manifestation of the Defect results in the catastrophic failure of the glassware, the loss of meals prepared in the glassware, and for some Plaintiffs and Class Members, causes significant and painful personal injuries and/or property damage.

15. Plaintiffs' and all putative Class Members' Pyrex Glassware each contain the same Defect at the point the glassware products are placed by Corelle Brands into the stream of commerce, posing the same substantial safety risk to Plaintiffs, Class Members, consumers, and the public. Corelle Brands' Pyrex Glassware cannot be used safely for its intended purpose of preparing meals at home.

PARTIES

16. Plaintiff Tricia Fullerton is a resident and citizen of New York living in Brooklyn, Kings County, New York.

17. Plaintiff Karyn Slepian is a resident and citizen of New York living in Dix Hills, Suffolk County, New York.

18. Plaintiff Claribel Grau is a resident and citizen of Florida living in Tampa, Hillsborough County, Florida.

19. Plaintiff Jan Simon is a resident and citizen of Michigan living in St. Johns, Clinton County, Michigan.

20. Defendant Corelle Brands, LLC is a Delaware limited liability company with its principal place of business located at 9525 West Bryn Mawr Avenue, Rosemont, Illinois 60018. Defendant Corelle Brands, LLC is citizen of the States of Delaware and Illinois.

21. Defendant Corelle Brands Holdings, Inc. is a Delaware corporation with its principal place of business located at 9525 West Bryn Mawr Avenue, Rosemont, Illinois 60018. Corelle Brands Holdings, Inc. is a citizen of the States of Delaware and Illinois.

22. Upon information and belief, the sole member and owner of Corelle Brands, LLC is Corelle Brands Holdings, Inc., a citizen of the States of Delaware and Illinois.

23. Defendant Corelle Brands, LLC designs, manufacturers, markets, and sells Pyrex Glassware online and through third-party retailers throughout the United States.

JURSIDICTION AND VENUE

24. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 and 28 U.S.C. § 1332(d)(2). The amount in controversy in this class action exceeds $5,000,000, exclusive of interest and costs, and Plaintiffs and some Class Members are citizens of states other than where Defendants are incorporated or have their primary places of business.

25. This Court may exercise jurisdiction over Defendants pursuant to 28 U.S.C. § 1332(c)(1) because they are citizens of this State and District and maintain their principal places of business in this District, they have continuous and systematic contacts with this District, they do substantial business in this State and within this District, receive substantial revenues from their marketing, distribution, and sales of Pyrex Glassware in this District, and have engaged in the unlawful practices described in this Complaint in this District, so as to subject themselves to personal jurisdiction in this District, thus rendering the exercise of jurisdiction by this Court proper and necessary.

26. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Defendants have continuous and systematic contacts with this District and maintain their principal places of business within this District. Further, venue is proper in this District under 28 U.S.C. § 1391(b)(2)

because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

COMMON FACTUAL ALLEGATIONS

27. Corelle Brands is engaged in the business of designing, manufacturing, warranting, marketing, advertising, and selling Pyrex Glassware.

28. Pyrex Glassware is used for food preparation through freezing, storing, cooking, baking, or microwaving foods placed in Pyrex Glassware, each of which subjects the glassware to different temperatures. Consumers turn to Pyrex Glassware because of its reputation for sturdiness and versatility in the kitchen. However, when partially heat-tempered soda lime Pyrex Glassware is exposed to a sudden change of temperature of approximately 99 degrees, it is susceptible to fracturing, breaking, shattering, or exploding. For example, a difference in temperature that exceeds 99°F can and does occur by placing a hot Pyrex Glassware item on a room temperature trivet. Further, such a difference in temperature exceeding 99°F can and does occur through the baking process, or by leaving Pyrex Glassware in the oven to cool.

29. Throughout Pyrex Glassware's Owner's Manual and other written documents authored by Corelle Brands and distributed with its products or provided publicly to consumers through its website, Corelle Brands expressly warrants that Pyrex Glassware is free from defects, durable, and suitable for use when cooking at high temperatures.[15]

30. Several publications regarding consumer products, including Consumer Reports and the American Ceramics Bulletin, published studies showing that the partially heat-tempered soda lime silicate Pyrex Glassware has a much lower resistance to temperature change than

[15] *See PYREX Limited Two-Year Warranty*, http://www.pyrexware.com/4.5-qt-oblong-baking-dish/5302470.html#start=2 (last viewed June 14, 2018).

traditional Pyrex Glassware made from borosilicate glass, and thus has a much higher susceptibility to fracturing, breaking, shattering, or exploding.

31. Plaintiffs and Class Members purchased and/or used their Pyrex Glassware reasonably believing it was properly designed and manufactured, free from defects, and safe for its intended use.

32. Plaintiffs and Class Members purchased and/or used their Pyrex Glassware for its intended purpose of preparing meals at home in a manner reasonably foreseeable by Corelle Brands. Plaintiffs, however, are now unable to use their Pyrex Glassware for its intended purpose, or are required to place themselves and their families at risk when using it, because the Defect renders it unsafe as it is unable to properly resist thermal shock for regular changes in temperature of 99°F or higher that occur when used for its intended purpose. The Defect makes the Pyrex Glassware much more susceptible to sudden glass fracturing, breaking, shattering, or exploding during normal and expected household cooking, exposing consumers to glass shards and hot contents contained within the glassware.

33. The Defect poses an unreasonable safety risk and substantial risk of injury during its normal and intended use.

34. Corelle Brands knew or should have known that the Defect exists in the Pyrex Glassware at the point of sale and of the serious safety risk it posed to consumers and the public, but chose to conceal its knowledge from consumers who purchased Pyrex Glassware. In fact, when reports and studies were released explaining that the soda lime silicate Pyrex Glassware was defective and had a significantly lowered its thermal shock resistance, Corelle Brands—as noted above—actively attempted to refute and discredit those reports and studies.

35. Corelle Brands continues to remain silent about the Defect and to sell Pyrex Glassware to unsuspecting consumers, even though it is aware that partially heat-tempered soda lime silicate glass Pyrex can withstand only a 99°F change in temperature whereas the traditional borosilicate Pyrex glass can withstand a temperature change of approximately 333°F. Moreover, reasonable consumers are unable to distinguish between the two types of Pyrex glassware.

36. As a result of Corelle Brands' conduct, Plaintiffs and Class Members have suffered damages, including, without limitation: (a) the purchase price of Pyrex Glassware, as Plaintiffs and Class Members would not have purchased the product had they been informed of the Defect; (b) their failure to receive the benefit of their bargain; (c) their overpayment for Pyrex Glassware; (d) the diminished value of Pyrex Glassware; (e) the costs of replacement of Pyrex Glassware; (f) damages to real and/or personal property; and (g) damages for personal injuries.

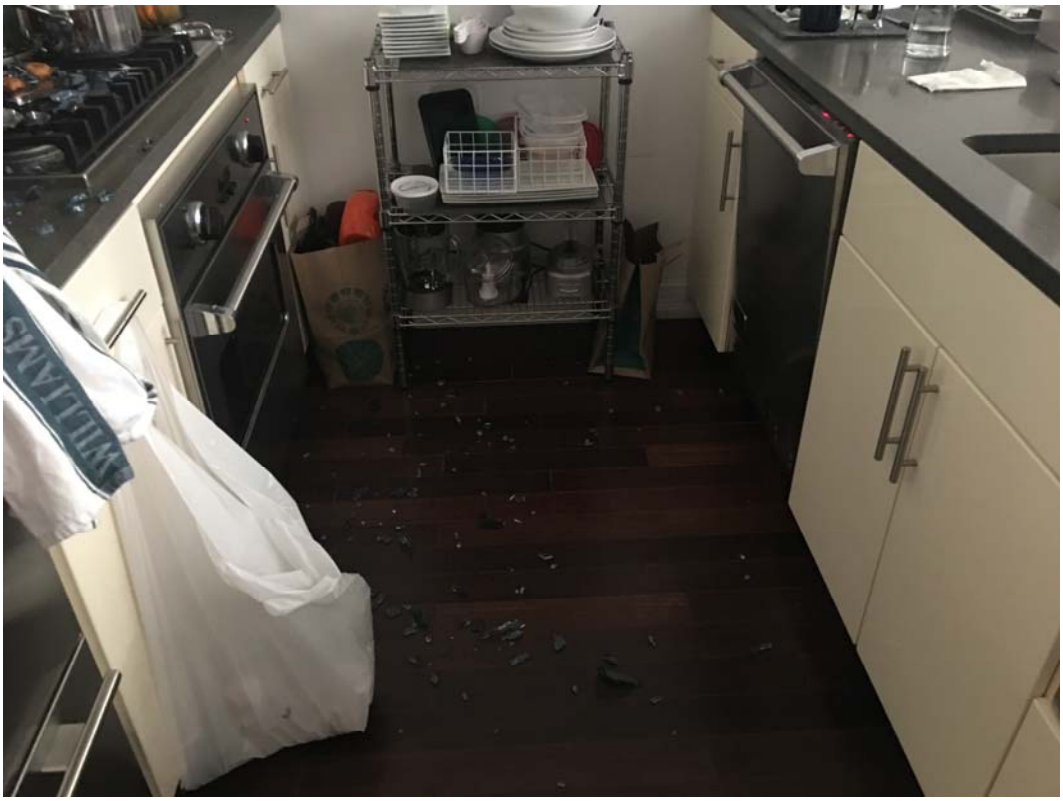
PLAINTIFFS' EXPERIENCES

Plaintiff Tricia Fullerton

37. Plaintiff Tricia Fullerton is a resident of Brooklyn, Kings County, New York. In September of 2017, Plaintiff Fullerton's boyfriend purchased Pyrex Glassware for her. Ms. Fullerton read the safety and usage instructions included on the packaging and used her Pyrex Glassware to cook food in her oven as it was advertised and intended to be used. Her Pyrex Glassware was designed, manufactured, sold, distributed, advertised, marketed, and warranted by Corelle Brands. Ms. Fullerton's Pyrex Glassware was covered by the same two-year Limited Warranty covering all Pyrex Glassware.

38. On February 9, 2018, Plaintiff Fullerton used her Pyrex Glassware to prepare chicken nuggets in her oven. Prior to cooking the chicken nuggets, Ms. Fullerton preheated her oven as required by the food's cooking instructions. After cooking the chicken nuggets for 15-20

minutes at 450°F, wearing a silicone oven mitt, Ms. Fullerton removed the dish from the oven and set it on top of her stove, which was turned off. As she was putting the dish on the stovetop—and while still grasping it with her hand—it shattered, sending the hot food in the dish and glass shards all over her kitchen. Because the oven mitt only covered a portion of her hand, Ms. Fullerton's hand was cut when the dish failed. Glass covered the floor to the extent that Plaintiff had to very cautiously "tip-toe" out of the kitchen to avoid getting cut. Photographs of Plaintiff Fullerton's kitchen and Pyrex dish after it shattered are included:



39. Shortly after her Pyrex Glassware shattered, Plaintiff Fullerton contacted the Customer Service Department of Corelle Brands regarding the incident. They responded by telling her that their glassware products should always be placed on a dry cloth or potholder when being removed from the oven. They also stated that placing their glassware on an 80° cooktop following cooking would likely cause thermal shock which could in turn cause the glassware to shatter. They did not offer Ms. Fullerton any relief to compensate her for the loss of her baking dish.

40. Had Plaintiff Fullerton been aware of the Defect, she would not have used Pyrex Glassware. She did not receive the intended benefit of the bargain for which the product was purchased.

Plaintiff Karyn Slepian

41. Plaintiff Karyn Slepian is a resident of Dix Hills, Suffolk County, New York. In 2013, Plaintiff Slepian purchased a piece of Pyrex Glassware from a local retail store. Ms. Slepian read the safety and usage instructions included on the packaging and used her Pyrex Glassware to cook food in her oven as it was advertised and intended to be used. Her Pyrex Glassware was designed, manufactured, sold, distributed, advertised, marketed, and warranted by Corelle Brands. Ms. Slepian's Pyrex baking dishes were covered by the same two-year Limited Warranty covering all Pyrex Glassware.

42. On February 20, 2018, Plaintiff Slepian cooked pre-marinated meat in her oven after preheating according to the cooking instructions. After cooking the meat for some time, Ms. Slepian reduced the heat from 450°F to 350°F according to the recipe's cooking instructions. After the meat completed cooking, Ms. Slepian lowered the temperature of the oven to its warm setting in order to keep the meat warm. Following that reduction in temperature and while the oven door was still closed, Ms. Slepian heard a loud "bang" while in another room. Upon opening the oven door, she discovered that the Pyrex baking dish had shattered, ejecting the hot contents of the dish and scattering glass shards all about her oven. A photograph of Plaintiff Slepian's oven and her Pyrex dish after it failed is included:

43. After allowing the oven to cool, Plaintiff Slepian cleaned her oven to remove the glass shards. Ms. Slepian suffered minor cuts on her hands as a result of having to pick glass out from the bottom of her oven.

44. Had Plaintiff Slepian been aware of the Defect, she would not have purchased or used her Pyrex Glassware, or else would have paid significantly less for it. She did not receive the benefit of her bargain.

Plaintiff Claribel Grau

45. Plaintiff Claribel Grau is a resident of Tampa, Hillsborough County, Florida. On June 3, 2018, Plaintiff Grau purchased a piece of Pyrex Glassware from her local Target store. Ms. Grau read the safety and usage instructions included on the packaging and used her Pyrex Glassware to cook food in her oven as it was advertised and intended to be used. Her Pyrex Glassware was designed, manufactured, sold, distributed, advertised, marketed, and warranted by Corelle Brands. Ms. Grau's Pyrex Glassware was covered by the same two-year Limited Warranty covering all Pyrex Glassware.

46. On the same day that Plaintiff Grau purchased the Pyrex Glassware, she used it to prepare banana bread in the oven. Prior to baking the banana bread, Ms. Grau preheated her oven as required by the recipe's cooking instructions. After baking the banana bread for about 30 minutes at 320°F, Ms. Grau removed the baking dish from the oven and placed it on a cloth trivet on her countertop. After letting the banana bread cool on the trivet for approximately 5 to 7 minutes, Ms. Grau attempted to cut a piece of the banana bread. As Ms. Grau was cutting the banana bread, her Pyrex dish shattered, showering Plaintiff Grau with shards of glass and scattering glass fragments about her kitchen. Photographs of Plaintiff Grau's countertop and her Pyrex dish after it shattered are included:

47. On June 13, 2018, Plaintiff Grau contacted Corelle Brands' Consumer Care Center to report her exploding Pyrex baking dish incident. After noting the details of Ms. Grau's incident, the Corelle Brands representative offered to send a replacement dish. Ms. Grau questioned whether the replacement dish would have the same Defect.

48. Had Plaintiff Grau been aware of the Defect, she would not have purchased her Pyrex Glassware, or else would have paid significantly less for it. She did not receive the benefit of her bargain.

Plaintiff Jan Simon

49. Plaintiff Jan Simon is a resident of St. Johns, Clinton County, Michigan. In or about September of 2010, Plaintiff Simon received a piece of Pyrex Glassware as a gift. Ms. Simon read the safety and usage instructions included on the packaging and used her Pyrex Glassware to cook food in her oven as it was advertised and intended to be used. Her Pyrex Glassware was designed, manufactured, sold, distributed, advertised, marketed, and warranted by Corelle Brands. Ms. Simon's Pyrex glass baking dish was covered by the same two-year Limited Warranty covering all Pyrex Glassware.

50. On or about September 25, 2014, Plaintiff Simon cooked chicken breasts in her oven after adding broth to the bottom of the 9" x 13" Pyrex glass baking dish while it was still cool and preheating to 350º F according to the cooking instructions. After cooking the chicken for 30 minutes, Ms. Simon opened the oven and removed the sheet of aluminum foil with which she covered the baking dish. As she was removing the aluminum foil, the Pyrex baking dish shattered, ejecting hot liquid and glass shards from her oven and covering her kitchen floor. Photographs of Plaintiff Simon's oven and her Pyrex dish after it shattered are included:

51. On September 26, 2014, Ms. Simon contacted the Consumer Product Safety Commission ("CPSC") via email to report the incident. The CPSC responded the same day and suggested that Ms. Simon file a report via the SaferProducts.gov website. That same day, Ms. Simon filed a report with SaferProducts.gov that was subsequently forwarded to Corelle Brands.

52. On May 12, 2016, a representative of Corelle Brands (then doing business as World Kitchen, LLC) responded by providing Ms. Simon with a survey to fill out. Ms. Simon responded to the survey as requested and returned her responses to the Corelle Brands representative.

53. On May 13, 2016, a representative of Corelle Brands emailed Ms. Simon to inform her that because she did not save what remained of the broken Pyrex baking dish, they could not determine the cause of the explosion. They did, however, offer her a $25.00 credit towards the purchase of a new item manufactured by Corelle Brands. Ms. Simon ordered two baking dishes manufactured by Corelle Brands under their Corningware brand. The dishes subsequently arrived from the manufacturer shattered and unusable on June 2, 2016.

54. Had Plaintiff Simon been aware of the Defect, she would not have used Pyrex Glassware. She did not receive the intended benefit of the bargain for which the product was purchased.

CORELLE BRANDS' CONDUCT

55. Corelle Brands failed to adequately design, manufacture, and/or test Pyrex Glassware to ensure it was free from the Defect before offering it for sale to Plaintiffs and Class Members, despite its duty to do so.

56. The Defect poses a serious and immediate safety risk to consumers and the public and has caused or will cause Plaintiffs' and Class Members' Pyrex Glassware to fail during its expected useful life.

57. Corelle Brands' Pyrex Glassware should have been usable for its intended purpose during its full expected useful life. The Defect, however, existed from the time of manufacture and thus at the time the Pyrex Glassware was sold to Plaintiffs and Class Members, rendering it unfit for the ordinary and intended purpose for which it is designed, manufactured, advertised, marketed, distributed, and sold.

58. If Pyrex Glassware did not suffer from the Defect, Plaintiffs and Class Members would not have suffered the damages set forth in this Complaint.

59. Corelle Brands has a duty to protect consumers by warning them that the Defect poses unreasonable risks of personal injury and/or property damage. Nevertheless, even though Corelle Brands knew or should have known of the Defect, it chose to conceal the existence of the Defect, continued to sell Pyrex Glassware, and failed to remove Pyrex Glassware from the marketplace. Corelle Brands took these actions to attain the substantial financial benefits of selling the defective Pyrex Glassware to the unsuspecting public.

60. Corelle Brands knew or should have known that consumers including Plaintiffs and Class Members: (a) were unaware of the Defect and could not reasonably be expected to discover the Defect until their Pyrex Glassware failed; (b) expected to use Pyrex Glassware in their homes without putting their safety and property at risk; and (c) expected Corelle Brands to disclose any Defect that would prevent Pyrex Glassware from safely performing its intended purpose, as such disclosure by Corelle Brands would impact a reasonable consumer's decision whether to purchase and/or use Pyrex Glassware.

61. As a result of Corelle Brands' concealment of the Defect, many Class Members and consumers remain unaware of the existence of the Defect and that it poses an unreasonable risk of personal injury and/or property damage during normal use.

62. Had Plaintiffs and Class Members been made aware of the Defect, they would not have purchased Pyrex Glassware, or else would have paid significantly less for the Pyrex Glassware, and were deprived of the intended benefit of the bargain for which the product was purchased.

CORELLE BRANDS' KNOWLEDGE OF THE DEFECT

63. Corelle Brands knew or should have known when it sold Pyrex Glassware to the public that it suffered from the Defect and that the Defect causes Pyrex Glassware to function improperly during its expected useful life, represents an unreasonable risk that Pyrex Glassware would crack, break, shatter, or explode when used as advertised and intended, and at times results in significant personal injury and/or property damage to consumers and the public, as well as the catastrophic destruction of the product itself.

64. Corelle Brands' knowledge of these facts is established through civil complaints filed by or against Corelle Brands (previously doing business as World Kitchen, LLC) pertaining

to heat-tempered soda lime glass Pyrex products and online postings complaining that Pyrex Glassware failed during normal use. Despite its knowledge, Corelle Brands did not remedy or eliminate the Defect in Pyrex Glassware or remove its defective products from the stream of commerce.

65. For example, in 2005, a complaint was filed and later removed to the United States District Court for the Northern District of California alleging that, while using Pyrex Glassware, the Pyrex dish broke apart in the plaintiff's hand, causing severe, permanent injuries. *See Nebenzahl v. Corning Incorporated, et al.*, No. 3:06-cv-00778-SC (N.D. Cal. 2006).[16]

66. In 2012, a complaint was filed and later removed to the United States District Court for the District of Maryland alleging that the plaintiff's Pyrex Glassware fractured and spilled hot contents of the dish onto the plaintiff, causing severe, permanent injuries. *See Rusnakova v. World Kitchen, LLC*, No. 12-cv-03650-RDB (D. Md. 2012).

67. In 2013, a complaint was filed and later removed to the United States District Court for the Western District of Pennsylvania alleging that the plaintiff's Pyrex Glassware shattered as he was removing it from the oven, causing lacerations on his wrist. *See Llewellyn v. World Kitchen, LLC*, No. 2:13-cv-00771-LPL (W. D. Pa. 2013).

68. In 2013, a complaint was filed and later removed to the United States District Court for the District of New Jersey alleging that the plaintiff's Pyrex Glassware fragmented, broke, shattered, and exploded, sending shards of glass flying into the air and causing severe, permanent injuries. *See Montagnino v. World Kitchen, LLC, et al.*, No. 2:13-cv-04909-JLL-JAD (D.N.J. 2013).

[16] The plaintiff in *Nebenzahl* additionally sued "World Kitchen, Inc." and "WKI Holding Company, Inc."

69. In 2013, a complaint was filed and later removed to the United States District Court for the Southern District of New York alleging that, while using Pyrex Glassware, the Pyrex baking dish shattered and sent fragments of glass flying in all directions, causing severe, permanent injuries to the plaintiff, including blindness in one eye. The plaintiff further alleged that the Pyrex Glassware that injured her was manufactured with soda lime silicate glass, which was not suitable for its intended and reasonably anticipated use as oven bakeware. *See Chinn v. World Kitchen, LLC*, No. 7:13-cv-06579-CS (S.D.N.Y. 2013).

70. Corelle Brands is aware of the significant difference in thermal shock resistance between borosilicate Pyrex (which can withstand a temperature differential of 333°F) and heat-tempered soda lime Pyrex (which can withstand only a 99°F temperature differential) as evidenced by the lawsuit against Dr. Bradt, which Corelle Brands vigorously prosecuted but for which it ultimately failed to prove any deception by Dr. Bradt and his colleagues.[17]

71. Specifically, Corelle Brands (then doing business as World Kitchen, LLC), in an attempt to downplay and conceal the Defect, alleged that Dr. Bradt misrepresented that the thermal shock resistance of soda lime silicate glass and Pyrex Glassware was only 99°F. They further alleged that in authoring and publishing the findings pertaining to the weak thermal shock resistance of soda lime silicate glass, Dr. Bradt and his co-defendants engaged in conduct creating a likelihood of confusion or misunderstanding about Pyrex glass cookware's resistance to thermal breakage during normal cooking.

72. Corelle Brands also took issue with statements that soda lime silicate glass cookware experienced "sudden, explosion-like failure" and that any heat-strengthening applied to

[17] *Supra*, ¶ 8.

the glass cookware was insufficient to significantly increase strength or thermal shock resistance of the soda lime silicate glassware.

73. In its order, the trial court opined that "[n]othing in the trial record contradicts [Dr. Bradt's] calculations of the [thermal shock resistance] of soda lime silicate glass," and that "nothing in the record establishes that this value is false."[18]

74. Corelle Brands' actual knowledge of this Defect is evidenced by the section of their website entitled "The Truth About Pyrex"[19] wherein Corelle Brands continues to attempt to discredit findings that their soda lime silicate Pyrex Glassware has a significantly lower thermal shock resistance than the borosilicate glassware counterparts, also called "Pyrex."

75. Corelle Brands' lawsuit against Dr. Bradt, et al., and its "The Truth About Pyrex" webpage demonstrate that not only has Corelle Brands been aware of the dangerous and potentially harmful Defect, but that they actively attempt to conceal this dangerous Defect from consumers.

76. Customer complaints reported to the Consumer Product Safety Commission are also indicative of the breadth of this Defect, and further demonstrate that Corelle Brands has long had knowledge of the Defect. These complaints, available online,[20] are all related to Corelle Product's Pyrex Glassware, with some complaints being posted as far back as 2011 and others as recent as the end of 2017.

77. For example, the following complaints, which upon information and belief, are reviewed by and known to Corelle Brands:

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[18] Order, ECF No. 259, at 13, *World Kitchen, LLC v. The American Ceramic Society, et al.*, No. 1:12-cv-08626 (N.D. Ill. June 30, 2016) (attached as **Exhibit B**).

[19] *Supra*, note 14 (attached as **Exhibit C**).

[20] SaferProducts.gov, http://www.saferproducts.gov/Default.aspx (last viewed June 14, 2018).

a. (In November, 2017) I was baking yams in the largest pan. After I took the pan out of the oven and set it on top of the oven, it exploded. Shards of glass scattered all over the kitchen, as far as seven feet away. I am very lucky that I wasn't hurt and especially lucky that a shard of glass didn't end up in my eye! I used the product the way it is supposed to be used.

b. On July 15, 2017, I had an alarming and dangerous incident. I cooked a salmon patty in my Pyrex Glassware dish at 450 degrees for 15 minutes. I removed the dish from the oven, and before I had the chance to put it down, the glassware violently exploded in my hand, sending shards of glass flying toward my face and throughout my kitchen and the adjoining hallway.

   My stove, countertop, kitchen floor, hallway floor were covered in large pieces of shattered glass and small shards of it, everywhere. Fortunately, I was wearing my reading glasses, which I believe protected my eyes from injury.

c. My Pyrex brand glass baking dish shattered spontaneously while sitting in a drawer overnight. While the drawer contained the damage somewhat, chunks of glass sprayed throughout the drawer, ricocheting throughout the cabinet. If this had occurred on a counter, there would have been serious risk.

d. At 1:20am I heard a crashing sound. Upon looking nothing was evident. Later the same day I opened a lower kitchen cabinet and glass spilled everywhere slivers and shards. My 9 x 13 glass Pyrex baking dish exploded on the shelf in the middle of the night! It hadn't been used for weeks and had no damage. I researched and found this is not an uncommon problem. Why is it still being manufactured?

e. The consumer stated that she placed the dish, which contained broccoli and olive oil, in a preheated 375-degree oven. About four minutes later, she heard a pop. She went to the oven and saw that the glass dish had shattered. The contents had spilled and cause a fire in the oven. The consumer turned the oven off and got a fire extinguisher to put the fire out.

f. My 9x13 Pyrex dish exploded 10/8/17 when I attempted to take it out of our dishwasher. It had run its cycle the night before and was no longer hot, my dish had a handle on edge and I just grabbed it and pulled and immediately it exploded shards everywhere spanning a 3-5 foot radius. I screamed for my husband to secure dogs and kids and clean me a way out as I was barefoot and my right arm had 6 bleeding spots and my left hand had a shard centered in the middle superficially but painful.

g. (In September of 2017), I put a large Pyrex measuring cup in my microwave with some stew in it, heated it for less than three minutes, and it shattered when i tried to take it out, burning my hand.

h. (In April of 2011) when taking a Pyrex 9x12 baking dish from the oven, it actually blew up in my wife's hands. The dish had been in the oven for 15 minutes at 400 degrees. It contained 4 pieces of baked fish that had marinated for 20 minutes in the refrigerator. The explosion was so violent that we found pieces of glass over 40 feet away. The dish shattered into thousands of small pieces. There were very few pieces over 6 inches long. My wife was wearing jeans and closed shoes. She did not get injured even though she was hit with many, many pieces of shrapnel. It took over two hours to clean up the mess off of cabinets, appliances, counter tops, and the floor.

i. I made lasagna this past weekend (Friday, April 15, 2011) in a Pyrex 9x13 glass baking dish. I only baked it at 350 F for about 30 minutes. When I took it out of the oven and set it on my stove top, the 9x13 glass baking dish exploded. It cut myself and my fiancé, who was approximately 2 feet away from the pan.

j. (In May of 2011) I was cooking a (half) rack of lamb in a light wine sauce in an 11x13 glass Pyrex dish @ 425 degrees (in a preheated oven) for 15 minutes (not long in my opinion). I removed it from the oven, closed the oven door and it EXPLODED in my hand. Burning hot glass shards and liquids from the lamb and wine marinade went down my shirt and burned and cut me. It sounded just like a small bomb went off and it exploded into a million pieces sending shards in a 6 foot direction. We determined that it indeed was one of our "newer" Pyrex made out of the soda lime glass. Quite frankly, I will never put Pyrex in the oven AGAIN, even at 350 degrees, we believe that it is an unstable product even when the product directions are followed.

k. I was baking a pork roast for dinner on 6/14/11 at 2:00 pm in the afternoon. roast had been in a preheated oven for approximately 1 hr. I was in living room watching a movie when I heard a loud bang come from the kitchen, when I went to kitchen saw nothing out of ordinary decided to check on roast when I opened door of oven, the Pyrex 13x9 baking pan the roast was in had exploded and shards of glass covered the inside of my oven and in my roast. ruined my roast and my pan had to throw dinner away and took me 2 hrs. and a few burns later finally cleaned up the mess

l. On October 16, 2011 about 6:30 pm CST I was cooking marinated portobella mushrooms in my oven that was placed in a Pyrex dish. They had been marinated, then placed in the oven second row down and broiled on the lowest setting. I added cheese to the portobellas and then after

> approximately 3 minutes I took them out and placed them on some hot pads. The PYREX dish, that I had cooked them in, exploded in to several hundred small shards. The explosion was so violent that it spread out to about 100 feet, caused me to have about 7 nicks on my leg area, burns on my legs, and several tiles on my floor have melted spots on them from the incident. As of now I have not received any medical attention to my injuries.

78. In conjunction with Corelle Brands' experience in designing, manufacturing, and selling Pyrex Glassware, these consumer complaints and lawsuits demonstrate that Corelle Brands knew about and actively concealed the Defect from Plaintiffs, Class Members and the general public.

79. Corelle Brands has a duty to disclose the Defect and not to conceal it from Plaintiffs, Class Members, consumers, or the public. Corelle Brands' failure to disclose, or its active concealment of, the Defect places Plaintiffs and Class Members at risk of personal injury and/or property damage.

80. Corelle Brands still in the business of selling the defective Pyrex Glassware, concealing the Defect, failing to notify consumers of the Defect, and failing to recall or replace the defective Pyrex Glassware.

81. Moreover, Corelle Brands continues to falsely represent through express and implied warranties that Pyrex Glassware is free from defects, of merchantable quality, and able to perform its intended use dependably for years.

82. When communicating with customers, Corelle Brands does not disclose that Pyrex Glassware suffers from the Defect. As a result, reasonable consumers, including Plaintiffs and Class Members, purchased and used—and continue to purchase and use—Pyrex Glassware in their homes without knowledge that it is unsafe to do so.

83. Corelle Brands has wrongfully placed the burden, expense, and difficulty involved in discovering the Defect on Plaintiffs and Class Members, forcing the consumers to replace failed Pyrex Glassware and pay for the cost of personal injuries and/or property damage caused by it.

PRODUCT ADVERTISING

84. Corelle Brands advertises its Pyrex Glassware products on its website as versatile and intended for use in a variety of temperatures:

> "Versatility makes it easier for you with these cook-and-serve in one dishes that go from the oven to the table. Use them for dry or refrigerated storage and microwave reheating and enjoy maximum functionality with minimal mess."[21]
>
> "Dishwasher, refrigerator, microwave & pre-heated oven safe."[22]

85. Corelle Brands further advertises that each of its Pyrex Glassware products come with a Limited Two-year Warranty:

> Corelle Brands LLC promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase.[23]

86. Corelle Brands further advertises on product packaging, as shown below, that its Pyrex Glassware products are "Pre-Heated Oven and Microwave Safe":

[21] *E.g.*, *Product Details*, http://www.pyrexware.com/easy-grab-4-pc-oblong-baking-dish-set/1090992.html#start=8 (last viewed June 14, 2018).

[22] *E.g.*, *Product Details*, http://www.pyrexware.com/4.5-qt-oblong-baking-dish/5302470.html#start=2 (last viewed June 14, 2018).

[23] *Id.* at *PYREX Limited Two-Year Warranty* (last viewed June 14, 2018).


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¡Nuevo!
Nouveau!
AVOID
TEMP
HOT
COLD
FREEZER
SAFE
OVEN &
SAFE
DISHWASHER
SAFE
Read Safety and Usage Instructions on back before using
Lea las instrucciones de seguridad y uso en el panel posterior antes de usar
Veuillez lire les consignes de sécurité et d'utilisation au dos avant d'utiliser
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Made in the USA
Hecho en EE UU
Fabriqué aux É-U
Lids
No-Leak
Lids

CLASS ALLEGATIONS

87. Plaintiffs bring this action against Corelle Brands individually and as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of the "Nationwide Class":

> *All persons in the United States who purchased or own Pyrex Glassware manufactured from soda lime silicate glass.*

88. Plaintiffs bring this action against Corelle Brands individually and as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of the "New York Class":

> *All persons who reside in New York who purchased or own Pyrex Glassware manufactured from soda lime silicate glass.*

89. Plaintiffs bring this action against Corelle Brands individually and as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of the "Florida Class":

> *All persons who reside in Florida who purchased or own Pyrex Glassware manufactured from soda lime silicate glass.*

90. Plaintiffs bring this action against Corelle Brands individually and as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of the "Michigan Class":

> *All persons who reside in Michigan who purchased or own Pyrex Glassware manufactured from soda lime silicate glass.*

91. The Nationwide Class and State Classes are collectively referred to herein as the "Class" or "Classes." Excluded from the Classes are: (a) any judge presiding over this action and members of their family; and (b) all officers, directors, and employees of Corelle Brands.

92. Numerosity: The members of each Class are so numerous that joinder of all members is impracticable. While the exact number of Class Members is presently unknown, each Class consists of thousands of people. The exact number of Class Members can be determined by Corelle Brands' sales information and other records. Moreover, joinder of all potential Class Members is not practicable given their numbers and geographic diversity.

93. Commonality: Common questions of law and fact exist as to all members of each Class, including, without limitation:

a. Whether Pyrex Glassware designed and sold by Corelle Brands possesses a material defect;

b. Whether the Defect creates an unreasonable risk that Pyrex Glassware experiences a change in temperature over and above its thermal shock resistance and cause the product to fail;

c. Whether Corelle Brands knew or should have known that Pyrex Glassware possessed the Defect at the time of sale;

d. Whether Corelle Brands fraudulently concealed the Defect;

e. Whether Corelle Brands breached express warranties relating to Pyrex Glassware;

f. Whether Corelle Brands breached implied warranties of merchantability relating to Pyrex Glassware;

g. Whether the Defect resulted from Corelle Brands' negligence;

h. Whether Corelle Brands is strictly liable for selling Pyrex Glassware;

i. Whether Plaintiffs and Class Members are entitled to damages;

j. Whether Plaintiffs and Class Members are entitled to replacement of their defective Pyrex Glassware; and

k. Whether Plaintiffs and Class Members are entitled to equitable relief, including an injunction requiring that Corelle Brands engage in a corrective notice campaign and/or a recall.

94. Typicality: Plaintiffs have the same interest in this matter as all Class Members, and Plaintiffs' claims arise out of the same set of facts and conduct by Corelle Brands as the claims of all Class Members. Plaintiffs' and Class Members' claims all arise out of Corelle Brands' design and sale of the defective Pyrex Glassware that has created a significant safety risk to consumers, and from Corelle Brands' failure to disclose the Defect.

95. Adequacy of Representation: Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in consumer and product liability class action litigation. Accordingly, Plaintiffs and their counsel will fairly and adequately protect the interests of the Class Members.

96. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met. Corelle Brands will continue to commit the unlawful practices alleged herein, and Class Members will remain at an unreasonable and serious safety risk as a result of the Defect. Corelle Brands has acted and refused to act on grounds that apply generally to the Class, such that final injunctive relief and corresponding declaratory relief is appropriate respecting the Class as a whole.

97. Predominance: The elements of Rule 23(b)(3) are met. The common questions of law and fact enumerated above predominate over the questions affecting only individual Class Members, and a class action is the superior method for the fair and efficient adjudication of this controversy. The likelihood that individual Class Members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. Serial adjudication in numerous venues is not efficient, timely, or proper. Judicial resources will be unnecessarily depleted by resolution of individual claims. Joinder on an individual basis of hundreds or thousands of claimants in one suit would be impractical or impossible. Individualized rulings and judgments could result in inconsistent relief for similarly-situated Plaintiffs.

TOLLING OF THE STATUTES OF LIMITATIONS

98. The claims alleged herein accrued upon the discovery of the Defect which manifests itself when Pyrex Glassware fails. Because the Defect is hidden and Corelle Brands failed to disclose the true character, nature, and quality of Pyrex Glassware through concealment, Plaintiffs and the Class Members did not discover, and could not have discovered, the Defect through reasonable and diligent investigation. Thus, any applicable statutes of limitations have been tolled by Corelle Brands' knowledge, misrepresentation, and/or concealment and denial of the facts as alleged herein. Plaintiffs and the Class Members could not have reasonably discovered the Defect before it manifests. As a result of Corelle Brands' active and continuing concealment of the Defect and/or failure to inform Plaintiffs and the Class Members of the Defect, any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

99. Corelle Brands fraudulently concealed material facts from Plaintiffs, Class Members, consumers, and the public. Corelle Brands knew that its soda lime silicate Pyrex Glassware had a significantly lower thermal shock resistance than its borosilicate glassware but concealed those facts such that consumers had no such knowledge of the Pyrex Glassware's Defect. Corelle Brands had a duty to disclose the Defect to Plaintiffs and Class Members, but it failed to do so. Further, Corelle Brands also knew that Plaintiffs and Class Members had no knowledge that Pyrex Glassware was defective and that Plaintiffs and Class Members did not have an equal opportunity to discover the facts regarding the Defect. Corelle Brands was in a superior position than Plaintiffs and Class Members, but fraudulently concealed the Defect in Pyrex Glassware from them. Through this concealment, Corelle Brands intended to induce Plaintiffs and Class Members to purchase the defective Pyrex Glassware, and Corelle Brands benefitted as a result of its fraudulent concealment from sales of the defective Pyrex Glassware. In furtherance of

this concealment: (1) Corelle Brands actively attempted to refute any reports or claims, as discussed herein, that noted that soda lime silicate Pyrex Glassware was defective and weaker than previous borosilicate Pyrex glass products; and (2) when Plaintiffs and Class Members experienced problems with the defective Pyrex Glassware and notified Corelle Brands to make warranty claims, Corelle Brands, as discussed herein, routinely told them that they had failed to use the Pyrex Glassware as instructed. As a result of Corelle Brands' active and continuing fraudulent concealment of the Defect and/or failure to inform Plaintiffs and the Class Members of the Defect, any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

FIRST CLAIM FOR RELIEF
Breach of Written Warranties under the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, et seq.
(On behalf of Plaintiffs and the Nationwide Class)

100. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

101. Plaintiffs and Class Members are "consumers" within the meaning of the MMWA, 15 U.S.C. § 2301(3).

102. Corelle Brands is a "supplier" and "warrantor" within the meaning of the MMWA, 15 U.S.C. § 2301(4)-(5).

103. Pyrex Glassware are "consumer products" within the meaning of the MMWA, 15 U.S.C. § 2301(1).

104. Corelle Brands' Limited Warranty applicable to Pyrex Glassware is a "written warranty" within the meaning of the MMWA, 15 U.S.C. § 2301(6).

105. In connection with its sale of Pyrex Glassware, Corelle Brands expressly warranted that it was free from defects and suitable for cooking at standard cooking temperatures.

106. The Warranty states: "Corelle Brands, LLC promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

107. Pyrex Glassware is defectively designed as a whole unit and is covered by Corelle Brands' Limited Warranty, set forth above.

108. Each Pyrex Glassware product has an identical or substantially identical warranty.

109. Plaintiffs and the Class Members have privity of contract with Corelle Brands through their purchase of Pyrex Glassware, and through the express written and implied warranties that Corelle Brands issued to its customers. Corelle Brands' warranties accompanied Pyrex Glassware and were intended to benefit consumers of Pyrex Glassware. To the extent Class Members purchased Pyrex Glassware from third-party retailers or received Pyrex Glassware as a donee of a purchaser, privity is not required because the Class Members are intended third-party beneficiaries of the contracts between Corelle Brands, third-party retailers, and purchasers.

110. The express written warranties covering Pyrex Glassware were a material part of the bargain between Corelle Brands and consumers. At the time it made these express warranties, Corelle Brands knew of the purpose for which Pyrex Glassware was to be used.

111. Corelle Brands breached its express warranties by selling Pyrex Glassware that was, in actuality, not free of defects, not made for years of dependable use, not made from merchantable material and workmanship, and could not be safely used for the ordinary purpose of preparing meals at home. Corelle Brands breached its express written warranties to Plaintiffs and Class Members in that Pyrex Glassware contains the Defect on the very first day of purchase, creating a serious safety risk to Plaintiffs and Class Members.

112. Pyrex Glassware that Plaintiffs purchased were subject to the Defect and caused each of them damages including loss of the product, loss of the benefit of their bargain, personal injuries, and property damage.

113. Corelle Brands expressly warranted in writing that it "promises to replace any Pyrex glass product *that breaks from oven heat*, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase." (Emphasis added).

114. Plaintiffs Fullerton, Grau, and Simon notified Corelle Brands of its breach of the express warranty shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect. Moreover, Corelle Brands was put on constructive notice about its breach through its review of consumer complaints and media reports described herein, and, upon information and belief, through product testing.

115. Corelle Brands breached its express warranty to replace the defective Pyrex Glassware when it failed to do so despite its knowledge of the Defect, and/or despite its knowledge of alternative designs, materials, and/or options for manufacturing Pyrex Glassware.

116. To the extent that Corelle Brands offered to replace the defective products, the warranty of replacement fails in its essential purpose because it is insufficient to make Plaintiffs and Class Members whole because the warranty covering Pyrex Glassware only "promises to replace any Pyrex glass product that breaks from oven heat." The replacement under the warranty does not apply to all defective Pyrex Glassware—it only applies to Pyrex Glassware that has already manifested the latent Defect and has already failed. The warranty of replacement of failed or broken Pyrex Glassware is insufficient to adequately cover all Pyrex Glassware, or cannot do so within the time period under the warranty (two years).

117. Many of the damages resulting from the defective Pyrex Glassware cannot be resolved through the limited remedy replacement, as incidental and consequential damages have already been suffered due to Corelle Brands' conduct as alleged herein.

118. Accordingly, recovery by Plaintiffs and Class Members is not limited to the limited warranty replacement, and they seek all remedies allowed by law.

119. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing. Corelle Brands also received such notice through Plaintiffs who complained to Corelle Brands about the defective Pyrex Glassware, as described above.

120. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiffs and Class Members, and failed to provide any form of compensation for the damages resulting from the Defect.

121. As a result of Corelle Brands' breach of its express written warranties, Plaintiffs and Class Members have suffered damages and have been deprived of the benefit of their bargain.

122. The amount in controversy of Plaintiffs' and Class Members' claims meet or exceed the sum or value of $50,000.00, and there are more than one hundred Class Members.

123. Corelle Brands has been afforded a reasonable opportunity to cure its breach of written warranties, including, when Plaintiffs contacted Corelle Brands regarding replacement of the defective Pyrex Glassware.

124. As a direct and proximate cause of Corelle Brands' breach of written warranties, Plaintiffs and Class members did not receive the benefit of the bargain and suffered damages at

the point of sale stemming from their overpayment for Pyrex Glassware with the Defect in addition to loss of the Product and its intended benefits. Corelle Brands' conduct damaged Plaintiffs and Class Members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value at the point of sale, costs, including statutory attorneys' fees, and/or other relief as appropriate.

SECOND CLAIM FOR RELIEF
Breach of New York's Express Warranty Statute,
N.Y. U.C.C. Law § 2-313
(On behalf of Plaintiff Fullerton, Plaintiff Slepian, and the New York Class)

125. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

126. In connection with its sale of Pyrex Glassware, Corelle Brands expressly warranted that it was free from defects and suitable for cooking at high temperatures.

127. The Warranty states: "Corelle Brands, LLC promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

128. Pyrex Glassware is defectively designed as a whole unit and is covered by Corelle Brands' Limited Warranty, set forth above.

129. Each Pyrex Glassware product has an identical or substantially identical warranty.

130. The express written warranties covering Pyrex Glassware were a material part of the bargain between Corelle Brands and consumers. At the time it made these express warranties, Corelle Brands knew of the purpose for which Pyrex Glassware was to be used.

131. Corelle Brands breached its express warranties by selling Pyrex Glassware that was, in actuality, not free of defects, not made for years of dependable use, not made from merchantable material and workmanship, and could not be safely used for the ordinary purpose of

preparing meals at home. Corelle Brands breached its express written warranties to Plaintiffs and Class Members in that Pyrex Glassware contains the Defect on the very first day of purchase, creating a serious safety risk to Plaintiffs and Class Members.

132. Pyrex Glassware that Plaintiffs and Class Members purchased were subject to the Defect and caused each of them damages including loss of the product, loss of the benefit of their bargain, personal injuries, and property damage.

133. Corelle Brands expressly warranted in writing that it "promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

134. Plaintiff Fullerton notified Corelle Brands of its breach of the express warranty shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect. Moreover, Corelle Brands was put on constructive notice about its breach through its review of consumer complaints and media reports described herein, and, upon information and belief, through product testing.

135. Corelle Brands breached its express warranty to replace the defective Pyrex Glassware when it failed to do so despite its knowledge of the Defect, and/or despite its knowledge of alternative designs, materials, and/or options for manufacturing Pyrex Glassware.

136. To the extent that Corelle Brands offers to replace the Pyrex Glassware, the warranty of replacement fails in its essential purpose because it is insufficient to make Plaintiffs and Class Members whole because the warranty covers only "promises to replace any Pyrex glass product that *breaks from oven heat*." (Emphasis added). The replacement under the warranty does not apply to all defective Pyrex Glassware—it only applies to Pyrex Glassware that has already manifested the latent Defect and has already failed. The warranty regarding failed or broken Pyrex

Glassware is insufficient to adequately cover all defective Pyrex Glassware, or cannot do so within the time period under the warranty (two years).

137. Many of the damages resulting from the defective Pyrex Glassware cannot be resolved through the limited remedy of replacement, as incidental and consequential damages have already been suffered due to Corelle Brands' conduct as alleged herein.

138. Accordingly, recovery by Plaintiffs and Class Members is not limited to the limited warranty of replacement, and they seek all remedies allowed by law.

139. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing. Corelle Brands also received such notice through Plaintiff Fullerton who complained to Corelle Brands about the defective Pyrex Glassware, as described above.

140. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiffs and Class Members and failed to provide any form of compensation for the damages resulting from the Defect.

141. As a direct and proximate cause of Corelle Brands' breach of its express written warranties, Plaintiffs and Class members did not receive the benefit of the bargain and suffered damages at the point of sale stemming from their overpayment for Pyrex Glassware with the Defect in addition to loss of the Product and its intended benefits.

THIRD CLAIM FOR RELIEF
Breach of Florida's Express Warranty Statute,
Fla. Stat. § 672.313
(On behalf of Plaintiff Grau and the Florida Class)

142. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

143. In connection with its sale of Pyrex Glassware, Corelle Brands expressly warranted that it was free from defects and suitable for cooking at high temperatures.

144. The Warranty states: "Corelle Brands, LLC promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

145. Pyrex Glassware is defectively designed as a whole unit and is covered by Corelle Brands' Limited Warranty, set forth above.

146. Each Pyrex Glassware product has an identical or substantially identical warranty.

147. Plaintiff Grau and the Class Members have privity of contract with Corelle Brands through their purchase of Pyrex Glassware, and through the express written and implied warranties that Corelle Brands issued to its customers. Corelle Brands' warranties accompanied Pyrex Glassware and were intended to benefit consumers of Pyrex Glassware. To the extent Class Members purchased Pyrex Glassware from third-party retailers, privity is not required because the Class Members are intended third-party beneficiaries of the contracts between Corelle Brands and third-party retailers and because the express warranty is intended to benefit purchasers or owners subsequent to the third-party retailer.

148. The express written warranties covering Pyrex Glassware were a material part of the bargain between Corelle Brands and consumers. At the time it made these express warranties, Corelle Brands knew of the purpose for which Pyrex Glassware was to be used.

149. Corelle Brands breached its express warranties by selling Pyrex Glassware that was, in actuality, not free of defects, not made for years of dependable use, not made from merchantable material and workmanship, and could not be safely used for the ordinary purpose of preparing meals at home. Corelle Brands breached its express written warranties to Plaintiffs and Class Members in that Pyrex Glassware contains the Defect on the very first day of purchase, creating a serious safety risk to Plaintiffs and Class Members.

150. Pyrex Glassware that Plaintiff and Class Members purchased was subject to the Defect and caused each of them damages including loss of the product, loss of the benefit of their bargain, personal injuries, and property damage.

151. Corelle Brands expressly warranted in writing that it "promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

152. Plaintiff Grau notified Corelle Brands of its breach of the express warranty shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect. Moreover, Corelle Brands was put on constructive notice about its breach through its review of consumer complaints and media reports described herein, and, upon information and belief, through product testing.

153. Corelle Brands breached its express warranty to replace the defective Pyrex Glassware when it failed to do so despite its knowledge of the Defect, and/or despite its knowledge of alternative designs, materials, and/or options for manufacturing Pyrex Glassware.

154. To the extent that Corelle Brands offered to replace the defective products, the warranty of replacement fails in its essential purpose because it is insufficient to make Plaintiffs and Class Members whole because the warranty covering Pyrex Glassware only "promises to

replace any Pyrex glass product that breaks from oven heat." The replacement under the warranty does not apply to all defective Pyrex Glassware—it only applies to Pyrex Glassware that has already manifested the latent Defect and has already failed. The warranty of replacement of failed or broken Pyrex Glassware is insufficient to adequately cover all Pyrex Glassware, or cannot do so within the time period under the warranty (two years).

155. Many of the damages resulting from the defective Pyrex Glassware cannot be resolved through the limited remedy of replacement, as incidental and consequential damages have already been suffered due to Corelle Brands' conduct as alleged herein.

156. Accordingly, recovery by Plaintiff and Class Members is not limited to the limited warranty of replacement, and they seek all remedies allowed by law.

157. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing. Corelle Brands also received such notice through Plaintiff Fullerton who complained to Corelle Brands about the defective Pyrex Glassware, as described above.

158. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiff and Class Members and failed to provide any form of compensation for the damages resulting from the Defect.

159. As a direct and proximate cause of Corelle Brands' breach of its express written warranties, Plaintiff and Class members did not receive the benefit of the bargain and suffered damages at the point of sale stemming from their overpayment for Pyrex Glassware with the Defect.

FOURTH CLAIM FOR RELIEF
Breach of Michigan's Express Warranty Statute
Mich. Comp. Laws § 440.2313
(On behalf of Plaintiff Simon and the Michigan Class)

160. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

161. In connection with its sale of Pyrex Glassware, Corelle Brands expressly warranted that it was free from defects and suitable for cooking at high temperatures.

162. The Warranty states: "Corelle Brands, LLC promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

163. Pyrex Glassware is defectively designed as a whole unit and is covered by Corelle Brands' Limited Warranty, set forth above.

164. Each Pyrex Glassware product has an identical or substantially identical warranty.

165. Plaintiffs and the Class Members have privity of contract with Corelle Brands through their purchase of Pyrex Glassware, and through the express written and implied warranties that Corelle Brands issued to its customers. Corelle Brands' warranties accompanied Pyrex Glassware and were intended to benefit consumers of Pyrex Glassware. To the extent Class Members purchased Pyrex Glassware from third-party retailers or received Pyrex Glassware as a donee of a purchaser, privity is not required because the Class Members are intended third-party beneficiaries of the contracts between Corelle Brands, third-party retailers, and purchasers.

166. The express written warranties covering Pyrex Glassware were a material part of the bargain between Corelle Brands and consumers. At the time it made these express warranties, Corelle Brands knew of the purpose for which Pyrex Glassware was to be used.

167. Corelle Brands breached its express warranties by selling Pyrex Glassware that was, in actuality, not free of defects, not made for years of dependable use, not made from merchantable material and workmanship, and could not be safely used for the ordinary purpose of preparing meals at home. Corelle Brands breached its express written warranties to Plaintiffs and Class Members in that Pyrex Glassware contains the Defect on the very first day of purchase, creating a serious safety risk to Plaintiffs and Class Members.

168. Pyrex Glassware that Plaintiffs and Class Members purchased were subject to the Defect and caused each of them damages including loss of the product, loss of the benefit of their bargain, personal injuries, and property damage.

169. Corelle Brands expressly warranted in writing that it "promises to replace any Pyrex glass product that breaks from oven heat, and any Pyrex non-glass accessory item with a manufacturing defect, within TWO YEARS from the date of purchase."

170. Plaintiff Simon notified Corelle Brands of its breach of the express warranty shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect. Moreover, Corelle Brands was put on constructive notice about its breach through its review of consumer complaints and media reports described herein, and, upon information and belief, through product testing.

171. Corelle Brands breached its express warranty to replace the defective Pyrex Glassware when it failed to do so despite its knowledge of the Defect, and/or despite its knowledge of alternative designs, materials, and/or options for manufacturing Pyrex Glassware.

172. To the extent that Corelle Brands offered to replace the defective products, the warranty of replacement fails in its essential purpose because it is insufficient to make Plaintiffs and Class Members whole because the warranty covering Pyrex Glassware only "promises to

replace any Pyrex glass product that breaks from oven heat." The replacement under the warranty does not apply to all defective Pyrex Glassware—it only applies to Pyrex Glassware that has already manifested the latent Defect and has already failed. The warranty of replacement of failed or broken Pyrex Glassware is insufficient to adequately cover all Pyrex Glassware, or cannot do so within the time period under the warranty (two years).

173. Many of the damages resulting from the defective Pyrex Glassware cannot be resolved through the limited remedy of replacement, as incidental and consequential damages have already been suffered due to Corelle Brands' conduct as alleged herein.

174. Accordingly, recovery by Plaintiffs and Class Members is not limited to the limited warranty of replacement, and they seek all remedies allowed by law.

175. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing. Corelle Brands also received such notice through Plaintiff Fullerton who complained to Corelle Brands about the defective Pyrex Glassware, as described above.

176. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiffs and Class Members and failed to provide any form of compensation for the damages resulting from the Defect.

177. As a direct and proximate cause of Corelle Brands' breach of its express written warranties, Plaintiffs and Class members did not receive the benefit of the bargain and suffered damages at the point of sale stemming from their overpayment for Pyrex Glassware with the Defect.

FIFTH CLAIM FOR RELIEF
Breach of New York's Implied Warranty of Merchantability Statute, N.Y. U.C.C. § 2-314
(On behalf of Plaintiff Fullerton, Plaintiff Slepian, and the New York Class)

178. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

179. Pyrex Glassware purchased by Plaintiffs Fullerton and Slepian and Class Members was defectively designed and manufactured and posed a serious and immediate safety risk to consumers and the public.

180. All of Pyrex Glassware sold by Corelle Brands left Corelle Brands' facilities and control with a Defect caused by a defective design incorporated into the manufacture of Pyrex Glassware.

181. The Defect placed and/or places Plaintiffs and Class Members at risk of injury and/or property damage through the use of Pyrex Glassware in their homes.

182. The law imposes a duty requiring manufacturers or sellers of a product to ensure that the product is merchantable and reasonably fit for the ordinary purposes for which such a product is used, and that the product is acceptable in trade for the product description. This implied warranty of merchantability is part of the basis of the bargain between Corelle Brands and consumers, including Plaintiffs and the Class Members.

183. Notwithstanding the aforementioned duty, at the time of delivery, Corelle Brands breached the implied warranty of merchantability in that Pyrex Glassware is defective and poses a serious safety risk, was not fit for the ordinary purposes for which it was used, would not pass without objection, and failed to conform to the standard performance of like products.

184. Corelle Brands knew, or should have known, that Pyrex Glassware posed a safety risk and was defective, and that it breached the implied warranties at the time it sold Pyrex Glassware to Plaintiffs and Class Members or otherwise placed them into the stream of commerce.

185. Plaintiff Simon and the Class Members have privity of contract with Corelle Brands through their purchase of Pyrex Glassware, and through the express written and implied warranties that Corelle Brands issued to its customers. Corelle Brands' warranties accompanied Pyrex Glassware and were intended to benefit consumers of Pyrex Glassware. To the extent Class Members purchased Pyrex Glassware from third-party retailers, privity is not required because the Class Members are intended third-party beneficiaries of the contracts between Corelle Brands and third-party retailers.

186. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiffs and Class Members bought Pyrex Glassware without knowledge of the Defect or the serious safety risks.

187. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiffs and Class Members purchased unsafe Pyrex Glassware products that were not fit to be used for their intended purpose of preparing food in a residential setting.

188. Plaintiff Fullerton notified Corelle Brands of its breach of the implied warranties shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect.

189. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing.

Corelle Brands also received notice through Plaintiff Fullerton who complained to Corelle Brands about the Defect as described above.

190. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiffs and Class Members and failed to provide any form of compensation for the damages resulting from the Defect.

191. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiffs and Class Members have suffered damages.

SIXTH CLAIM FOR RELIEF
Breach of Florida's Implied Warranty of Merchantability Statute,
Fla. Stat. § 672.314
(On behalf of Plaintiff Grau and the Florida Class)

192. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

193. Pyrex Glassware purchased by Plaintiff Grau and Class Members was defectively designed and manufactured and posed a serious and immediate safety risk to consumers and the public.

194. All of Pyrex Glassware sold by Corelle Brands left Corelle Brands' facilities and control with a Defect caused by a defective design incorporated into the manufacture of Pyrex Glassware.

195. The Defect placed and/or places Plaintiff and Class Members at risk of injury and/or property damage through the use of Pyrex Glassware in their homes.

196. The law imposes a duty requiring manufacturers or sellers of a product to ensure that the product is merchantable and reasonably fit for the ordinary purposes for which such a product is used, and that the product is acceptable in trade for the product description. This implied

warranty of merchantability is part of the basis of the bargain between Corelle Brands and consumers, including Plaintiffs and the Class Members.

197. Notwithstanding the aforementioned duty, at the time of delivery, Corelle Brands breached the implied warranty of merchantability in that Pyrex Glassware is defective and poses a serious safety risk, was not fit for the ordinary purposes for which it was used, would not pass without objection, and failed to conform to the standard performance of like products.

198. Corelle Brands knew, or should have known, that Pyrex Glassware posed a safety risk and was defective, and that it breached the implied warranties at the time it sold Pyrex Glassware to Plaintiffs and Class Members or otherwise placed them into the stream of commerce.

199. Plaintiff and Class Members have privity of contract with Corelle Brands through their purchase of Pyrex Glassware from Corelle Brands, and through the express written and implied warranties that Corelle Brands issued to its customers. Corelle Brands' warranties accompanied Pyrex Glassware and were intended to benefit the ultimate consumers. To the extent that Class Members purchased Pyrex Glassware from third-party retailers, privity is not required because Plaintiffs and Class Members are intended third-party beneficiaries of the contracts between Corelle Brands and the third-party retailers.

200. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiff and Class Members bought Pyrex Glassware without knowledge of the Defect or the serious safety risks.

201. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiff and Class Members purchased unsafe Pyrex Glassware products that were not fit to be used for their intended purpose of preparing food in a residential setting.

202. Plaintiff Grau notified Corelle Brands of its breach of the implied warranties shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect.

203. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing. Corelle Brands also received notice through Plaintiff Grau who complained to Corelle Brands about the Defect as described above.

204. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiff and Class Members and failed to provide any form of compensation for the damages resulting from the Defect.

205. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiff and Class Members have suffered damages.

SEVENTH CLAIM FOR RELIEF
Breach of Michigan's Implied Warranty of Merchantability Statute
Mich. Comp. Laws § 440.2314
(On behalf of Plaintiff Simon and the Michigan Class)

206. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

207. Pyrex Glassware purchased by Plaintiff Simon and Class Members was defectively designed and manufactured and posed a serious and immediate safety risk to consumers and the public.

208. All of Pyrex Glassware sold by Corelle Brands left Corelle Brands' facilities and control with a Defect caused by a defective design incorporated into the manufacture of Pyrex Glassware.

209. The Defect placed and/or places Plaintiffs and Class Members at risk of injury and/or property damage through the use of Pyrex Glassware in their homes.

210. The law imposes a duty requiring manufacturers or sellers of a product to ensure that the product is merchantable and reasonably fit for the ordinary purposes for which such a product is used, and that the product is acceptable in trade for the product description. This implied warranty of merchantability is part of the basis of the bargain between Corelle Brands and consumers, including Plaintiffs and the Class Members.

211. Notwithstanding the aforementioned duty, at the time of delivery, Corelle Brands breached the implied warranty of merchantability in that Pyrex Glassware is defective and poses a serious safety risk, was not fit for the ordinary purposes for which it was used, would not pass without objection, and failed to conform to the standard performance of like products.

212. Corelle Brands knew, or should have known, that Pyrex Glassware posed a safety risk and was defective, and that it breached the implied warranties at the time it sold Pyrex Glassware to Plaintiffs and Class Members or otherwise placed them into the stream of commerce.

213. Plaintiff Simon and the Class Members have privity of contract with Corelle Brands through their purchase of Pyrex Glassware, and through the express written and implied warranties that Corelle Brands issued to its customers. Corelle Brands' warranties accompanied Pyrex Glassware and were intended to benefit consumers of Pyrex Glassware. To the extent Class Members purchased Pyrex Glassware from third-party retailers, privity is not required because the Class Members are intended third-party beneficiaries of the contracts between Corelle Brands and third-party retailers.

214. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiffs and Class Members bought Pyrex Glassware without knowledge of the Defect or the serious safety risks.

215. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiffs and Class Members purchased unsafe Pyrex Glassware products that were not fit to be used for their intended purpose of preparing food in a residential setting.

216. Plaintiff Simon notified Corelle Brands of its breach of the implied warranties shortly after their Pyrex Glassware failed to perform as warranted as a result of the Defect.

217. Upon information and belief, Corelle Brands received further notice and has been on notice of the Defect and of its breaches of warranties through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing. Corelle Brands also received notice through Plaintiff Simon who complained to Corelle Brands about the Defect as described above.

218. Despite having notice and knowledge of the Defect, Corelle Brands failed to provide Defect-free Pyrex Glassware to Plaintiffs and Class Members and failed to provide any form of compensation for the damages resulting from the Defect.

219. As a direct and proximate result of Corelle Brands' breach of the implied warranties, Plaintiffs and Class Members have suffered damages.

EIGHTH CLAIM FOR RELIEF
Unjust Enrichment
(On behalf of Plaintiffs and all Classes)

220. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.

221. This alternative claim is asserted on behalf of Plaintiffs and Class Members to the extent there is any determination that any contracts between Class Members and Corelle Brands do not govern the subject matter of the disputes with Corelle Brands, or that Plaintiffs do not have standing to assert any contractual claims against Corelle Brands.

222. Plaintiffs and Class Members conferred a benefit on Corelle Brands, and Corelle Brands had knowledge of this benefit. By its wrongful acts and omissions described herein, including selling the defective Pyrex Glassware, Corelle Brands was unjustly enriched at the expense of Plaintiffs and Class Members.

223. Plaintiffs' and Class Members' detriment and Corelle Brands' enrichment were related to and flowed from the wrongful conduct alleged in this Complaint.

224. It would be inequitable for Corelle Brands to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling Pyrex Glassware.

225. Plaintiffs and Class Members seek restitution from Corelle Brands and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Corelle Brands from its wrongful conduct and establishing a constructive trust from which Plaintiffs and Class Members may seek restitution.

NINTH CLAIM FOR RELIEF
Negligence
(On behalf of Plaintiffs and all Classes)

226. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

227. Corelle Brands owed a duty to Plaintiffs and Class Members to design, manufacture, market, and sell its Pyrex Glassware with reasonable care and in workmanlike fashion.

228. Corelle Brands breached that duty by designing and/or manufacturing Pyrex Glassware that is defective.

229. Plaintiffs and Class Members suffered damages as a result of this breach.

230. Corelle Brands' breach proximately caused damages to Plaintiffs and Class Members.

TENTH CLAIM FOR RELIEF
Violation of New York's Unfair and Deceptive Trade Practices Law,
N.Y. Gen. Bus. Law § 349, et seq.
(On behalf of Plaintiff Fullerton, Plaintiff Slepian, and the New York Class)

231. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

232. The sale and distribution of Pyrex Glassware in New York was a consumer-oriented act and therefore falls under the New York deceptive acts and practices statute, N.Y. Gen. Bus. Law § 349.

233. Corelle Brands violated General Business Law Section 349 by representing that Pyrex Glassware products had characteristics, uses, or benefits that they did not have, or that Pyrex Glassware products were of a particular standard, quality, or grade that they were not.

234. Corelle Brands' scheme and concealment of the true characteristics of the Defect were material to Plaintiffs and New York Class members, as Corelle Brands intended. Had they known the truth, Plaintiffs and New York Class members would not have purchased Pyrex Glassware products, or, if the products' true nature had been disclosed and mitigated, would have paid significantly less for them.

235. Due to the latent nature of the Defect, Plaintiffs Fullerton and Slepian and New York Class members had no way of discerning or otherwise learning that Corelle Brands' representations were false and misleading and that Corelle Brands had concealed or failed to disclose facts relevant to the Defect in their Pyrex Glassware products. New York Class members did not, and could not, unravel Corelle Brands' deception on their own.

236. Upon information and belief, Corelle Brands received notice and has been on notice of the Defect through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing.

237. Corelle Brands had an ongoing duty to Plaintiffs and New York Class members to refrain from unfair and deceptive practices under General Business Law Section 349 in the course of their business. Specifically, Corelle Brands owed Plaintiffs and New York Class members a duty to disclose all material facts concerning the Defect because they possessed exclusive knowledge, they intentionally concealed it from Plaintiffs and New York Class members, and/or they made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

238. Corelle Brands' violations present a continuing risk to Plaintiffs and New York Class members, as well as to the general public. Corelle Brands' unlawful acts and practices complained of herein affect the public interest.

239. As a result of Corelle Brands' statutory violations, Plaintiffs and New York Class members sustained injuries and are entitled to relief under the Act.

ELEVENTH CLAIM FOR RELIEF
Violation of New York's False Advertising Law,
N.Y. Gen. Bus. Law § 350, et seq.
(On behalf of Plaintiff Fullerton, Plaintiff Slepian, and the New York Class)

240. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

241. Corelle Brands was engaged in the "conduct of business, trade or commerce." N.Y. Gen. Bus. § 350. False advertising includes "advertising, including labeling, of a commodity . . . if such advertising fails to reveal facts material in light of . . . representations [made] with respect to the commodity." N.Y. Gen. Bus. Law § 350-a.

242. Corelle Brands caused to be made or disseminated through New York—via advertising, marketing, and other publications—statements and omissions that were untrue or misleading to Plaintiffs Fullerton and Slepian and New York Class members.

243. Corelle Brands made numerous material misrepresentations and omissions of fact with intent to mislead and deceive New York Class members concerning Pyrex Glassware, particularly with regard to the Defect. Specifically, Corelle Brands intentionally concealed and suppressed material facts concerning the quality of Pyrex Glassware in order to intentionally and grossly defraud and mislead Plaintiffs and New York Class members concerning the Defect.

244. The misrepresentations and omissions set forth above were material and likely to deceive a reasonable consumer. The inherent Defect was undetectable to the ordinary consumer.

245. Corelle Brands intentionally and knowingly misrepresented material facts regarding Pyrex Glassware with intent to mislead Plaintiffs and New York Class members.

246. Corelle Brands' false advertising was likely to and, in fact, did deceive reasonable consumers including Plaintiffs and New York Class members about the true characteristics of the Defect.

247. Upon information and belief, Corelle Brands received notice and has been on notice of the Defect through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing.

248. Corelle Brands' violations of General Business Law Section 350 present a continuing risk to Plaintiffs and to the general public. Corelle Brands' deceptive acts and practices affect the public interest.

249. Pyrex Glassware products do not perform as advertised and make them far less valuable than advertised.

250. Plaintiffs and New York Class members who purchased Pyrex Glassware either would not have purchased the Glassware at all or else paid less for Pyrex Glassware but for Corelle Brands' false advertising in violation of General Business Law Section 350.

251. Plaintiffs and New York Class members have suffered injury-in-fact and/or actual damages and ascertainable loss as a direct and proximate result of Corelle Brands' false advertising in violation of General Business Law Section 350, including, but not limited to, purchasing or leasing a diminished value or complete lost value for Pyrex Glassware purchased or leased.

252. Plaintiffs and New York Class members have suffered lost or diminished use, enjoyment, and utility of their Pyrex Glassware along with suffering annoyance, aggravation, and inconvenience resulting from Corelle Brands' violations of General Business Law Section 350.

253. Plaintiffs and New York Class members seek monetary relief against Corelle Brands measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500.00 each for New York Class member. N.Y. Gen. Bus.

Law § 350-e. Because Corelle Brands' conduct was committed willingly and knowingly, Plaintiff and New York Class Members are entitled to recover three times actual damages, up to $10,000.00.

254. Plaintiffs and New York Class Members also seek an order enjoining Corelle Brands' false advertising and further seeks attorneys' fees and any other just and proper relief under General Business Law Section 350.

TWELFTH CLAIM FOR RELIEF
Violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA")
Fla. Stat. Ann. § 501.201, *et seq.*
(On Behalf of Plaintiff Grau and the Florida Class)

255. Plaintiffs re-allege and incorporate each and incorporate each and every allegation set forth above as if fully written herein.

256. FDUTPA states in pertinent part that "Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Fla. Stat. Ann. § 501.204(1)

257. Corelle Brands engaged in unfair and deceptive acts in violation of FDUTPA, Fla. Stat. Ann. § 501.204, when Corelle Brands failed to disclose that their Pyrex Glassware demonstrated inadequate thermal shock resistance for use in cooking and baking and that their Pyrex Glassware was susceptible to shattering when exposed to temperature changes commonly experienced when removing glassware from an oven. Corelle Brands further engaged in unfair and deceptive acts for purposes of FDUTPA when, in response to requests for replacement products after a shattering event, they responded by simply referring Pyrex owners to care and use instructions and implying that owners were at fault.

258. Upon information and belief, Corelle Brands received notice and has been on notice of the Defect through customer warranty claims reporting problems with Pyrex Glassware,

consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing.

259. Plaintiff Grau and Florida Class members relied on Corelle Brands' misrepresentations when purchasing their Pyrex Glassware. Had they known that those representations were false, she and class members would not have purchased Pyrex Glassware, or else would have paid significantly less for the Pyrex Glassware.

260. Plaintiffs and the class seek all damages permitted by law in an amount to be determined at trial.

THIRTEENTH CLAIM FOR RELIEF
Violation of Michigan's Consumer Protection Act,
Mich. Comp. Laws § 445.901, et seq.
(On behalf of Plaintiff Simon and the Michigan Class)

261. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

262. Plaintiff Simon, the Michigan Class members, and Corelle Brands are persons as defined by Michigan's Consumer Protection Act. Mich. Comp. Laws § 445.902(d).

263. Corelle Brands engaged in trade or commerce as defined by Michigan's Consumer Protection Act by advertising, providing, offering, or distributing Pyrex Glassware in the State of Michigan. Mich. Comp. Laws § 445.902(g).

264. Corelle Brands' scheme to conceal the true characteristics of the Defect was material to Plaintiffs and Michigan Class members, as Corelle Brands intended. Had they known the truth, Plaintiffs and Michigan Class members would not have purchased Pyrex Glassware products, or, if the products' true nature had been disclosed and mitigated, would have paid significantly less for them.

265. Due to the latent nature of the Defect, Plaintiff Simon and the Michigan Class members had no way of discerning or otherwise learning that Corelle Brands' representations were false and misleading and that Corelle Brands had concealed or failed to disclose facts relevant to the Defect in their Pyrex Glassware products. Michigan Class members did not, and could not, unravel Corelle Brands' deception on their own.

266. Upon information and belief, Corelle Brands received notice and has been on notice of the Defect through customer warranty claims reporting problems with Pyrex Glassware, consumer complaints at various sources, numerous lawsuits filed against it over failures of Pyrex Glassware, and its own internal and external testing.

267. Corelle Brands' violations present a continuing risk to Plaintiff and Michigan Class members, as well as to the general public. Corelle Brands' unfair, unconscionable, or deceptive methods, acts, or practices complained of herein affect the public interest.

268. As a result of Corelle Brands' conduct, Plaintiff and the Michigan Class members were harmed and suffered actual damages as a result of Corelle Brands' unfair, unconscionable, or deceptive methods, acts, or practices. Had Corelle Brands disclosed the Defect to consumers, Plaintiff and the Michigan Class members would not have purchased the Pyrex Glassware products, or else would have paid significantly less for them.

269. As a result of Corelle Brands' statutory violations, Plaintiff and the Michigan Class members sustained injuries and are entitled to relief under the Act.

270. Plaintiff and the Michigan Class members seek damages, as well as declarative and injunctive relief prohibiting Corelle Brands from continuing these unlawful practices, pursuant to Mich. Comp. Laws § 445.911.

271. Plaintiff and the Michigan Class members seek an award for the actual damages caused by Corelle Brands' unfair, unconscionable, or deceptive methods, acts, or practices and any other relief the Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following judgment:

A. An Order certifying this action as a class action on behalf of the Nationwide Class and the State Classes;

B. An Order appointing Plaintiffs as Class representatives, and appointing the undersigned counsel as Class Counsel;

C. A Declaration that Pyrex Glassware is defective;

D. An Order awarding injunctive relief by requiring Corelle Brands, at its own expense, to issue corrective actions, including notification, recall, inspection, and, as necessary, replacement of Pyrex Glassware;

E. Payment to Plaintiffs and all Class Members of all damages associated with or caused by the defective Pyrex Glassware, in an amount to be proven at trial;

F. An award of attorneys' fees and costs, as provided by law and/or as would be reasonable from any recovery of monies recovered for or benefits bestowed on the Class;

G. Interest as provided by law, including, but not limited to, pre-judgment and post-judgment interest as provided by rule or statute; and

H. Such other and further relief as this Court may deem just, equitable, or proper.

JURY TRIAL DEMAND

Plaintiffs respectfully request a trial by jury on all causes of action so triable.

Dated: June 14, 2018

RESPECTFULLY SUBMITTED,

s/Gregory F. Coleman
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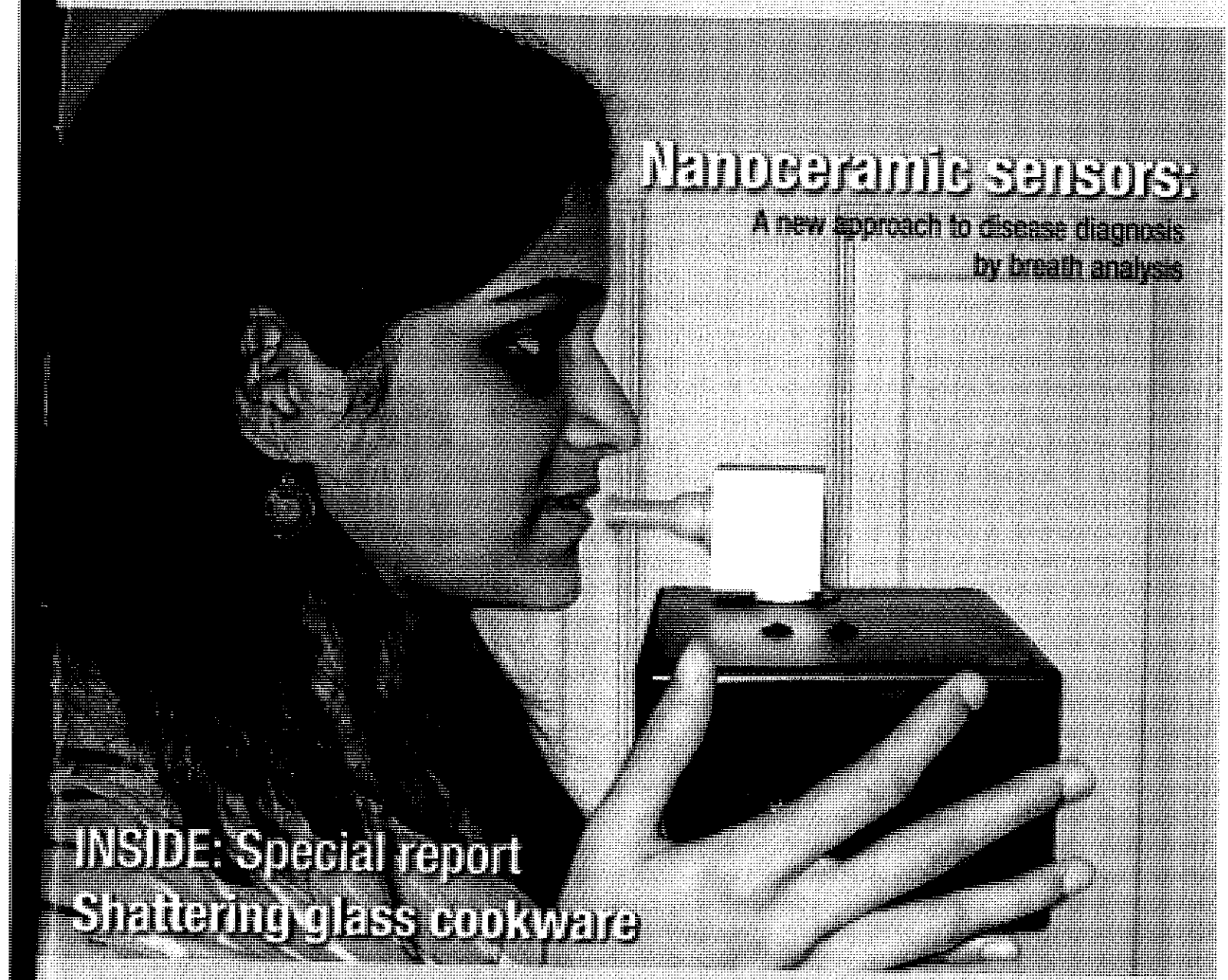
EXHIBIT A

AMERICAN CERAMIC SOCIETY

bulletin

SEPTEMBER 2012



Nanoceramic sensors:

A new approach to disease diagnosis by breath analysis

INSIDE: Special report
Shattering glass cookware

Remnants of soda lime silicate glass cookware failure, from *Consumer Reports* testing.

(Credit: Consumer Reports)

Shattering glass cookware

R.C. Bradt and R.L. Martens

The shattering of glass cookware in household kitchens has been reported in *Consumer Reports* articles,[1,2] television documentaries, complaints to the United States Consumer Products Safety Commission[3] and Internet postings.[4] This article examines the issue from a three fold technical perspective: (i) reviewing the reported scenarios of the incidents, which are suggestive of thermal stress fracture; (ii) comparing the thermal shock resistance of borosilicate glass with soda lime silicate glass; and (iii) examining new and broken glass cookware. Together, these related perspectives suggest the thermal stresses that develop during temperature changes are the primary cause of the explosion-like breakages. The substitution of higher thermal expansion soda lime silicate glass for borosilicate glass in the manufacturing is a contributing factor.

Exploding† or shattering glass cookware surfaced as an issue of concern during the past two decades, and reports of problems have been chronicled in several news stories. Collectively, the accumulated complaints suggest that there may be a fracture problem with some glass cookware products. However, none of the coverage has specifically addressed the scientific aspects of the reported failures. This article examines the technical aspects of the sudden, explosion-like failure of glass cookware products.

Background

Corning Inc. pioneered the development and market for glass cookware. The glass cookware products originally manufactured by Corning were made of a low thermal expansion borosilicate glass eventually marketed as Pyrex.[5] (Many glass scientists also associate the name Pyrex with the original borosilicate glass products. Even today, Corning still produces high-quality borosilicate laboratory glassware under the name and trademark of Pyrex.)

The original Pyrex cookware was promored as "oven to icebox" or "icebox to oven" cookware,[6] presumably because the low coefficient of thermal expansion of the borosilicate glass made it highly resistant to the thermal stresses that develop during these types of temperature changes.

Corning retains the Pyrex registered trademark, but, in 1994, the company began licensing other companies to manufacture products under the Pyrex brand (see "From battery jars to kitchens: A short history of glass cookware," page 35). Today, the Pyrex brand is manufactured for consumer markets in the US, North America, South America and Asia by World Kitchens LLC (Rosemont, Ill.)[7] under a license from Corning. A separate company, Arc International (Arques, France),[8] manufactures and markets Pyrex brand cookware for the European, Middle East and African consumer markets. Independently, the Anchor Hocking Glass Company[9] (Lancaster, Ohio) makes its own line of glass cookware, and has been doing so for many decades under its own brand names.

Compositions of glass cookware

According to the World Kitchens website,[10] Corning changed to a soda lime silicate composition for the glass cookware, and this is the Pyrex tech-

†Exploding and shattering have been applied interchangeably in reports describing cookware fractures because of accounts of glass shards being propelled for some distance.[1-4] The term "explosion" as applied here is not the same as the pressure explosion of a carbonated beverage container.

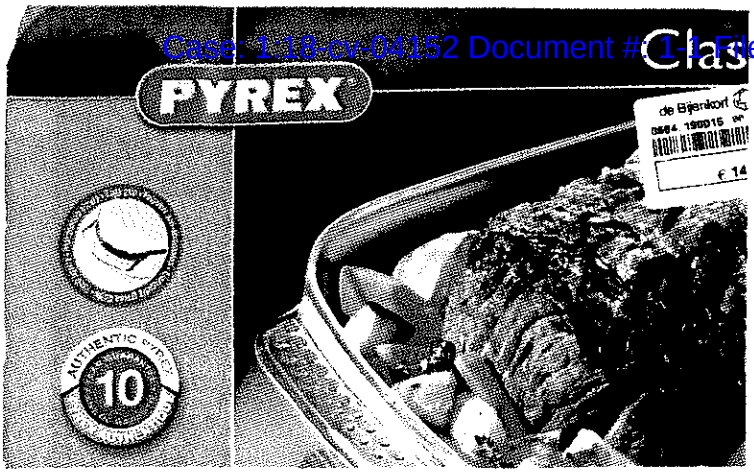


Figure 1. An Arc International label for its Pyrex glass cookware products, from cookware purchased in Europe.

nology that World Kitchens (then Borden) bought from Corning in 1998. World Kitchens acknowledges that the glass cookware ir markets under the Pyrex brand name is made from a soda lime silicate glass composition.

On its own, Anchor Hocking developed a "me too" line of cookware that also is based on a soda lime silicate glass.

These soda lime silicate glass cookware products appear to be commercial successes. However, they are not made of a low thermal expansion, thermal stress resistant borosilicate glass as originally developed by Corning.

Arc International produces a line of glass cookware products. These are of a borosilicate glass composition, which ir markets with the phrase "Authentic Pyrex" on the label (Figure 1). [††]

The three companies that currently manufacture glass cookware—World Kitchens, Anchor Hocking and Arc International—use different silicate glass chemistry formulations. The authors confirmed this by examining the glass chemistry formulations used in the products from each of the three companies using energy dispersive spectroscopy on a FEI Quanta 200 3D scanning electron microscope equipped with an X-ray analyzer Model Apollo XVF from EDAX. The Arc Internarional cookware was determined to be a borosilicate glass with a distinctive, readily identifiable boron peak. It evidently is the original Corning Pyrex composition.[5] The tests confirmed, as expected, that neither the World Kitchens nor the Anchor Hocking products are borosilicate glasses, but are soda lime silicate glasses of slightly different compositions. The chemical spectra clearly show the boron peak in the Arc International glassware, but the World Kitchens and Anchor Hocking glassware are free of boron. They are distinguishable by their calcium and magnesium peaks.

Indications of thermal stress fracture of glass cookware

Before going further, two things should be noted. First, the manufacturers of soda lime silicate glass cookware claim that it has superior mechanical strength and is less likely to fracture on impact, for example by dropping it, a not unreasonable concern in kitchen settings. Second, because of the extensive handling of glass cookware, it is expected that surfaces will become damaged or scratched over time. With these provisos noted, the focus of the authors has been to isolate the effects resulting from thermal stress. What follows below focuses only on the thermal shock properties of the two glass types.

Generally speaking, thermal stress fracture of glass is not an uncommon event. For example, impingement of bright sunlight on a portion of large windows can cause them to crack from the shady cold edge, and cold water splashing on hot glass marine light covers frequently fractures them. Much is known and understood about thermal stresses and thermal shock fracture.[11] The nature of the published reports of the shattering incidents with the soda lime silicate glass cookware suggests a thorough consideration of thermal stresses because the failure incidents are often associated with significant temperature changes.[1–4]

The documented and reported glass cookware incidents[1–4] suggest that the thermal stress resistance of present day soda lime silicate glass cookware is less than that of low-expansion borosilicate glass, such as the original Pyrex. For example, some of the glass cookware items have been reported to fracture immediately on a change in temperature, while other cookware fractures occur during a short time after removing the cookware with its contents from a hot oven. (See *Consumer Reports* example, Figure 2.) Fractures that occur at a time interval after a temperature change, such as after removal of the cookware from a hot oven, are characteristic of thermal stress failures. However, there also are reports of failure while the cookware with its contents is inside the oven. These thermal gradients may have different origins, such as might develop

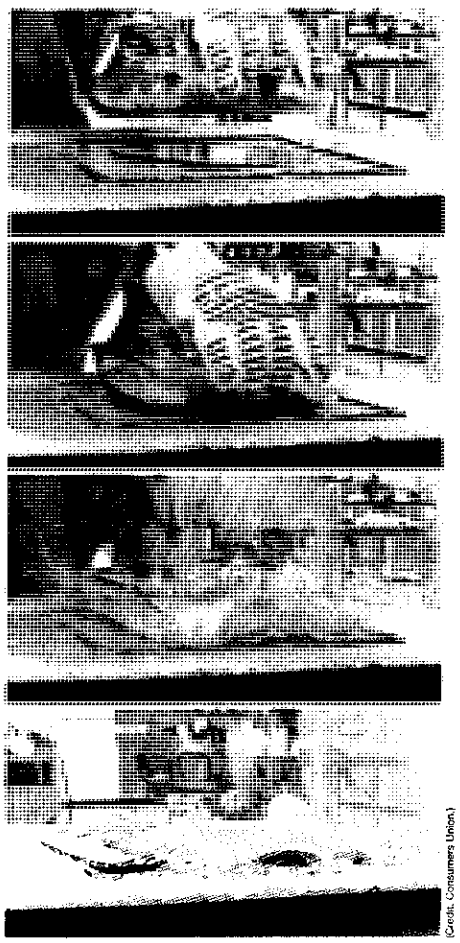


Figure 2. Heat test: Frames from video of tests conducted by *Consumer Reports*[1] shows bakeware made of soda lime silicate glass shattering after being heated in a 450°F degree oven and placed on a wet countertop.

[††]The authors were not able to find any reports of Arc International Pyrex cookware failing in an explosive manner.

if frozen contents are placed in the cookware before being inserted into a hot oven.

As described in *Introduction to Ceramics*, by Kingery, Bowen and Uhlmann,[12] delayed thermal stress fractures will often occur after temperature changes. This is because the maximum thermal stress is achieved only as a temperature gradient develops after the temperature change. That delay time for thermal stress fracture depends on the heat transfer conditions of the cookware and the heat capacity of the contents within. For example, preparing a roast, a chicken or a ham in a glass cookware dish would each have different heat capacities and present different heat transfer conditions, and the cooking temperatures of their surroundings would be different as well. Therefore, time delay intervals to fracture are expected to vary. The reports that the soda lime silicate glass cookware experiences these delayed shattering fractures suggests that the thermal stresses that develop exceed its strength.

The time dependence of thermal stresses is a function of the heat transfer conditions during the temperature change. These factors determine the magnitude of the temperature gradients and cause the thermal stresses. For example, transferring a hot dish containing a roast directly from the oven to a cold wet stone countertop would be a much more severe thermal shock than putting the same dish on an insulating pad surface.

Because it is impossible to consider all of the possible variations that might occur in household kitchens, a simple, linear elastic approach to a sudden temperature change is applied to estimate and compare the thermal stress resistance of the two glasses.

As noted in Kingery, Bowen and Uhlmann,[12] the simple formula for the fully restrained development of a linear elastic thermal stress, σ_{ts}, from temperature change is

$$\sigma_{ts} = \alpha E \Delta T \qquad (1)$$

where α is the coefficient of thermal expansion, E the elastic modulus and ΔT the temperature differential over which the thermal stress or thermal expansion restraint is generated. The ΔT may occur during either heating or cooling. Note that this simple estimate does not include the heat transfer factors, nor time factors, nor does it account for the size and shape of the glass cookware pieces in question. Equation (1) is applicable to an instantaneous, rapid temperature change.

To compare the thermal shock fracture resistance of borosilicate and soda lime silicate glasses, Equation (1) is rearranged to express the ΔT values required to achieve fracture by the thermal stresses generated in the glass cookware during a temperature change. These ΔT values can be compared with typical cooking temperatures and other temperature changes that are regularly encountered in a household kitchen. Equating σ_{ts} to the fracture stress of the glass, σ_f, then rearranging Equation (1) yields

$$\Delta T = \sigma_f / \alpha E \qquad (2)$$

where the thermal stress, σ_{ts}, is now σ_f, the failure strength of the glass object.

A typically used benchmark value for glass strength, as noted by Mould[13] and also by Kurkjian[14] is about 5,000 pounds per square inch (about 30 megapascals). The elastic moduli of the two glasses are slightly different, but similar—about 10,200,000 psi (about 68 gigapascals) for soda lime silicate glass and about 9,100,000 psi (about 62 gigapascals) for borosilicate glass.[15] Their coefficients of thermal expansions are very different. The α of borosilicate is about 3×10^{-6}°C^{-1}. The α of soda lime silicate glass is abour 9×10^{-6}°C^{-1}, about three times greater.[15]

Substituting these values into Equation (2) yields the ΔT values of the rapid temperature change necessary to initiate thermal shock fracture. For borosilicate glass, the calculated temperature difference is about 183°C (about 330°F), but it is only about 55°C (about 99°F) for the soda lime silicate glass. This is a substantial difference.

Carter and Norton,[16] in their text *Ceramic Materials, Science and Engineering*, use a somewhat more complicated

From battery jars to kitchens: A short history of glass cookware

Today, glass cookware is found in virtually every household kitchen, giving the impression that it has been around a very long time. Many older consumers still associate the Pyrex brand with the Corning company, and most consumers are unaware that the manufacturers of Pyrex and the glass formulation have changed over several decades.

Glass cookware is a commercial product of the early 20th Century. Present-day glass cookware appears to have originated from research at what was then known as the Corning Glass Works to improve the thermal shock resistance of battery jars. Corning developed a low-thermal-expansion borosilicate glass that vastly improved the longevity of the battery jar glasses by reducing their thermal shock fracture in service.[6]

It is an interesting scenario how this glass found its way into household kitchens.[6] During the research studies, one of the Corning scientists, Jesse Littleton, took the bottoms of several of Corning's borosilicate glass jars home for his wife to bake her pies. Her successful culinary endeavors led to the development of a line of cookware and laboratory glassware by Corning that became known as Pyrex.

It was initially called "Py-right," with an obvious "pie" to "py" phonetic association. The glass, itself, was originally called Nonex (NON-EXpanding). This glass appears to have evolved into the famous low-expansion Corning 7740 (tradename Pyrex)[5] and other Corning borosilicate glasses.

In 1997, the company sold its consumer products business, including Pyrex-branded consumer products, to Borden Inc. (now KKR Borden), which changed its name to World Kitchens in 2006.

Corning still owns the Pryex trademark, and it still manufactures Pyrex-branded high-quality laboratory borosilicate glassware. However, most glass cookware in the United States is not the same borosilicate composition as the original Corning Pyrex.

form of Equation (1) that includes heat transfer terms. They address many ceramics as well as glasses. Their results will be compared with the calculations of this simple approach. The $\alpha E \Delta T$ term is common to all mathematical models.

Carter and Norton[13] provide an example (which includes heat transfer terms), estimating thermal stress ΔT values for fracture that are about 270°C (about 486°F) for the borosilicate Pyrex and about 80°C (about 144°F) for soda lime silicate glass. Based on these two independenr results, it is evident that the temperature differential—the ΔT for fracture initiation by severe thermal stress—is much larger for the borosilicate glass.

A brochure posted on Corning's website[17] presents thermal stress resistance estimates of several glasses of various compositions, including its 7740 borosilicate glass and a soda lime silicate glass (Corning 0080). The reported thermal stress resistance value for the borosilicate glass is 54°C (97°F), whereas that of the soda lime silicate glass is 16°C (29°F)—a factor of about three. Thermal stress resistance is defined for this calculation as "the temperature differential between two surfaces of a tube or constrained place that will cause a tensile stress of 0.7 kg/mm (1000 psi) on the cooler surface."

It is important to note that, according to this brochure, the primary use of 0080 is Petri dishes, not household cookware. Also, it must be noted that soda lime silicate glass compositions vary widely, and values of thermal properties will vary, too. However, these data illustrate the magnitude of the difference in thermal srress resistance that is possible between the two categories of glasses. The superior thermal stress resistance of borosilicate glass for cookware was confirmed in empirical tests performed on glass cookware objects by *Consumer Reports*.[1,2]

It is informative to compare the ΔT values that have been determined to achieve the fracture stress from the three calculations. Table 1 lists those for the soda lime silicate glass and for Pyrex borosilicate. This tabulation shows that in every instance the ΔT for the soda lime silicate glass is much lower than that for the borosilicate. The difference is about a factor of three times for each despite the differences in the calculations. This is because the thermal expansion of the soda lime silicate glass is about three times that of the borosilicate. Clearly, soda lime glass is much more susceptible to thermal shock than the borosilicate glass because of its higher thermal expansion of coefficient.

Table 1 Calculations of thermal differential, ΔT, for soda lime silicate and borosilicate glass.

Source	ΔT Soda lime silicate	ΔT Pyrex borosilicate
This paper	~55°C (99°F)	~183°C (330°F)
Carter and Norton[16]	~80°C (144°F)	~270°C (436°F)
Corning brochure[17]	~16°C (29°F)	~54°C (97°F)

From the perspective of kitchen applications, a good calibration point is that of boiling water, 100°C (212°F) ar sea level. None of the calculations suggest the soda lime silicate glass would be likely to survive a rapid exposure to boiling water. Consistent with these calculations, the October 2011 *Consumer Reports* article describes a boiling water incident that led to explosive fracture of a measuring cup and an accompanying injury.[2]

Based on recipes in the famous cookbook, *The Joy of Cooking*, by Rombauer, Becker and Becker,[18] these calculated ΔT values of concern are well within the temperature ranges of kitchen cooking endeavors. For example, their recommended oven temperatures are 350°F for a pork loin or rib eye roast (after 450°F preheat) and 325°F for a turkey (after 450°F preheat). Relative to room temperature, these cooking temperatures could easily exceed the expected ΔT values for the thermal stress fracture of soda lime silicate glass and could cause thermal shock fracture.

The ΔT value alone does not guarantee thermal fracture of glass cookware. However, because of the low ΔT for soda lime silcate glass, one must exercise extreme caution when using cookware made of this glass. Even at modest kitchen temperatures, there is a definite possibility of thermal shock fracture.

Heat strengthening of soda lime silicate glass caakware

In Consumer Product Safety Commission correspondence,[3] CPSC's SaverProducts.gov website[3] and literature relative to shattering glass cookware, manufacturers have responded that during manufacturing they have taken steps to strengthen the soda lime silicate glass cookware by applying a heat strengthening or a thermal tempering process. The manufacturers assert that the process increases the strength of the glass, its impact resistance and its resistance to thermal stress fracture.[19]

This strengthening approach is discussed by Mencik.[20] In a related publication, Gardon[21] extensively reviews the annealing and tempering processes, of which heat strengthening is a variant. In principle, this approach has technical merit, because increasing the glass cookware strength would be expected to increase the ΔT values for thermal shock fracture initiation. (Recall that the glass strength, σ_f, is in the numerator of Equation (2) for ΔT.)

It is possible to detect residual stresses in glass via photoelasticity. Thus, to test this heat-strengthening issue, the authors bought a half dozen new, unused soda lime silicate cookware pieces, which were then examined in the photoelasticity laboratory at the University of Alabama. The authors observed no strong fringe patterns, which would be indicative of residual stresses, in any of the cookware. Although this could be the result of low-stress optic coefficients of the soda lime silicate glasses, it also suggests that the efficacy of heat strengthening that may have been applied to the cookware during manufacturing was minimal and was not sufficient to significantly increase strength or thermal stress resistance of the soda lime silica cookware.

It is well documented that thermally strengthened glasses also have a characteristic cracking pattern when they fracrure. Tempered glass breaks into small equiaxed pieces in a fracture process known as dicing. Automobile glass, for

example, fractures by dicing into small fragments. McMaster, Shetterly and Bueno[22] depict this form of fragmentation in their review, and creation of these dicing fragments has been analyzed in detail by Warren.[23]

The authors' examination of fracture pieces of several dishes, including some that were intentionally broken by thermal stress and some by impact, revealed no dicing fragmentation. The soda lime silicate cookware consistently fractured into exrended glass shards.

The large shards produced by the fracture of the soda lime silicate cookware imply that the thermal or heat strengthening of the soda lime silicate cookware was not substantive. Figure 3 illustrates a reconstructed "Pyrex" bowl that was purchased new and intentionally thermal shocked in a household kitchen. There is no evidence of dicing fracture. The occurrence of long sharp glass shards is also described in numerous reports on the Internet and in the CPSC literature.

Another tool for evaluating whether there is significant heat strengthening of soda lime silicate glass is fractography, which can reveal information about the stress state of a fractured piece. When a glass object with surface compressive stresses fractures, the propagating crack front in the glass proceeds ahead of the crack at the object surface because the near-surface advance is inhibited by the surface compressive stresses.[24]

Indeed, the crack growth pattern on the fracture surface of shards of soda lime silicate glass cookware, as shown in Figure 4, indicates that the soda lime silicate glass has been heat strengthened. Note the Wallner line ripples on the cross section clearly are trailing at the glass surfaces, indicative of surface compressive stresses. (Wallner lines are slight ripples on a fracture surface that are indicative of the direction of crack propagation and the state of stress.)

Thus, although the cookware definitely has been heat strengthened as stated by the manufacturer,[19] it does not appear to be sufficient to increase substantially the thermal stress fracture resistance of the cookware, nor is it sufficient to create a desirable dicing fracture pattern for the glass cookware.

Extensive, in-depth fractography of the fracture surfaces of shards from a large number or series of different reconstructed broken soda lime silicate cookware pieces would make it possible to identify the causes of individual failure events. Such studies, as described by Quinn[25] in *Fractography of Ceramics and Glasses*, are recommended, but are beyond the scope of this article.

Conclusions about shattering glass cookware

The above analyses of shattering soda lime silicate glass cookware indicate that the phenomenological cause of these fractures is thermal stress fracture that develops from temperature changes to which the glass cookware is subjected in the household kitchen. This conclusion is substantiated by three observations: (i) occurrence of the shattering incidents during temperature changes; (ii) the frequent presence of a time

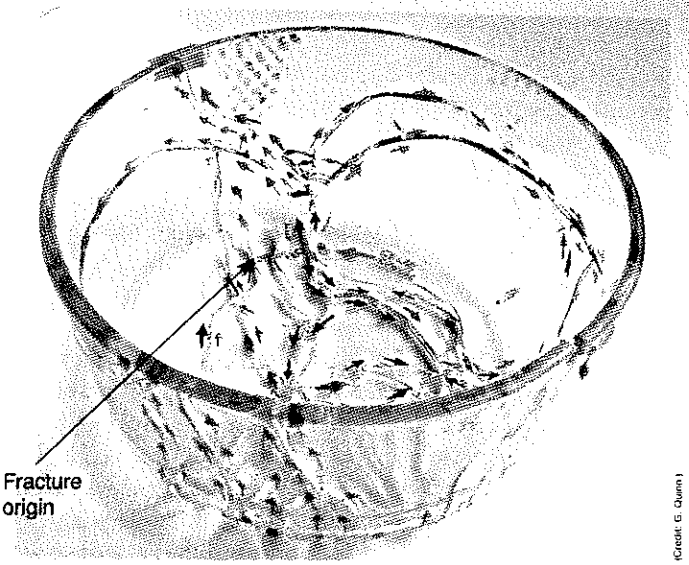


Figure 3. A reconstructed soda lime silicate Pyrex bowl fractured by thermal shock. Arrows outline the crack paths.

delay to fracture initiation after a temperature change; and (iii) calculared temperature differentials, the ΔT values for the initiation of thermal shock fracture during temperature changes of soda lime silicate and borosilicate glasses. In addition, the creation of fracture shards instead of desired dicing of broken pieces of cookware suggests that manufacturers' heat strengthening is insufficient.

Fracture-initiating temperature differentials can be exceeded during household kitchen cooking. However, not all kitchen procedures create ΔT values that are sufficient to cause thermal stress fracture of the soda lime silicate glass cookware. Time-dependent heat transfer conditions also will affect the magnitude of the thermal stresses that develop.

The original Corning Pyrex borosilicate glass is considerably more resistant to thermal stress fracture than the soda lime silicate glasses that currently are used for most glass cookware products in the US. The estimated ΔT values for

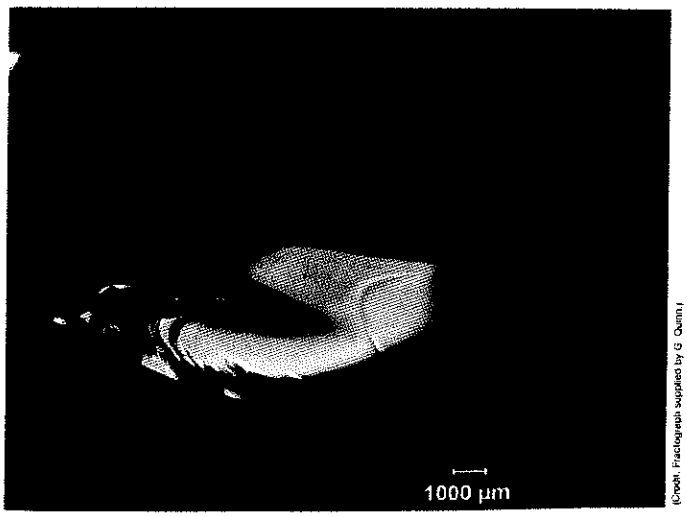


Figure 4. The fracture surface of a soda lime silicate glass cookware bowl (from bowl in Figure 3) as it formed during thermal shock failure. Note the Wallner lines trailing along the surfaces, inside and out, are indicative of heat strengthening of the glass during manufacturing.[22]

thermal stress fracture of that borosilicate glass suggest that normal kitchen cooking temperatures are unlikely to cause thermal stress failures. However, the estimated ΔT values for thermal srress fracture of soda lime silicate glass cookware are well within the range of kitchen temperatures.

Estimates of the ΔT temperature differentials indicate that soda lime silicate glass cookware can be expected to survive moderate temperature changes that are experienced in a household kitchen. However, documented reports of incidents of dramatic shattering failures during what most kitchen cooks would consider normal use suggests that the margin of safety for avoiding thermal stress failures of soda lime silicate cookware is borderline. It does not appear to be adequate for all household cooking. Caution is in order when using soda lime silicate cookware in applications that may involve temperature changes, as print warnings on the product labels indicate.

Acknowlegements

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A 1936 advertisement for the original Pyrex borosilicate glass cookware.

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EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WORLD KITCHEN, LLC, Plaintiff, v. THE AMERICAN CERAMIC SOCIETY, RICHARD C. BRADT, RICHARD L. MARTENS, and PETER WRAY, Defendants.	)	Case No. 12-cv-8626 Judge John W. Darrah

MEMORANDUM OPINION AND ORDER

On October 29, 2012, Plaintiff World Kitchen, LLC filed a Complaint, alleging violations of the Illinois Uniform Deceptive Trade Practices Act ("DTPA") against Defendants, The American Ceramic Society ("ACS"), Richard C. Bradt, Richard L. Martens, and Peter Wray (collectively, "Defendants"). Plaintiff alleges that Defendants violated the DTPA by: (i) misrepresenting the thermal stress resistance value of World Kitchen's American-made heat-strengthened soda lime Pyrex glass cookware ("Pyrex glass cookware") to be 99°F; (ii) making false or misleading representations that the thermal stress resistance value of Pyrex glass cookware is 99°F; and (iii) engaging in conduct creating a likelihood of confusion or misunderstanding about Pyrex glass cookware's resistance to thermal breakage during normal kitchen cooking. (FAC.)

A bench trial was held on December 7 and 8, 2015, and January 7, 2016. The trial included the testimony of ten witnesses, as well as the admission of various exhibits into evidence. In addition to live testimony at trial, World Kitchen submitted the deposition testimony of Defendants Bradt and Wray and ACS Executive Director Charles Spahr to be

considered by the Court in support of its case in chief. The parties submitted written closing arguments, written responses to those arguments, written responses addressing any pending evidentiary issues, and proposed findings of fact and conclusions of law.

This matter now comes before the Court following the presentation of evidence. The Court has considered the evidence, particularly including careful attention to the testimony of witnesses. The Court, in weighing the testimony of the witnesses, has considered: (1) the witnesses' intelligence; (2) the witnesses' memory; (3) the witnesses' abilities and opportunities to see, hear, or know the things that they testified about; (4) the witnesses' manner while testifying; (5) any interest, bias, or prejudice the witnesses may have; and (6) the reasonableness of the witnesses' testimony when considered in light of all the evidence in the case. *See* Fed. Civ. Jury Instr. 7th Cir. § 1.13 (2009). The Court has further considered the written arguments submitted by counsel for the parties and the authority cited therein.

Pursuant to Fed. R. Civ. P. 52, the Court enters the following written Findings of Fact and Conclusions of Law, which are based upon consideration of all the admissible evidence and this Court's own assessment of the credibility of the trial witnesses. To the extent, if any, that Findings of Fact, as stated, may be considered Conclusions of Law, they shall be deemed Conclusions of Law. Similarly, to the extent, if any, that Conclusions of Law, as stated, may be considered Findings of Fact, they shall be deemed Findings of Fact. The Analysis section of this Opinion and Order, for purposes of organization and clarity, contains some reference to law and facts. To the extent, if any, that any part of the Analysis may be considered Findings of Fact or Conclusions of Law, it shall be so deemed.

For the following reasons, Plaintiff failed to meet its burden of proof that Defendants violated 815 ILCS § 510/2(a)(7), (8), and (12) of the Illinois Uniform Deceptive Trade Practices Act; and judgment is entered in favor of the Defendants.

FINDINGS OF FACT

Plaintiff World Kitchen is a Delaware limited-liability company with its principal place of business in Illinois. (Dkt. 98 ¶ 1.) World Kitchen is one of the leading manufacturers and distributors of kitchen products, including the Pyrex brand glass cookware. (Trial Tr. 22:24-25, 23:13-15; Dkt. 245 ¶ 9.) Defendant American Ceramic Society ("ACS") is an Ohio corporation located in Westerville, Ohio. It is a membership organization that has approximately 6,000 members comprised of professionals, consultants, and members of academia, government, and industry that focuses on information and developments relating to the ceramics and glass industries. (Trial Tr. 259:22-260:1; Dkt. 249 at 2; Dkt. 245 ¶ 10.) Defendant Peter Wray was employed by ACS as the editor of one of its publications, the *American Society Bulletin* ("*Bulletin*"), at all times relevant to this case and is a resident of Ohio. (Dkt. 245 ¶ 11.) Defendant Richard C. Bradt is a materials scientist and professor emeritus at the University of Alabama. (Trial Tr. 508:16-18, 511:2-3.) He is a member of ACS and is a resident of Alabama. (Dkt. 245 ¶ 12.) Defendant Richard L. Martens is also an ACS member and works at the University of Alabama. (FAC ¶ 16.) Defendant Martens is a resident of Alabama. (Dkt. 245 ¶ 13.) Defendant Bradt has acted as a paid consultant on three occasions in lawsuits involving injuries allegedly caused by shattering glass cookware. (Trial Tr. 518:18-529:18.) Defendant Martens assisted Defendant Bradt with the creation of reports prepared on behalf of plaintiffs in two of those cases. (Pl. Ex. 17; Trial Tr. 529:16-18.)

In 1998, World Kitchen was granted a license from Corning Inc. ("Corning") to produce its heat-strengthened soda lime Pyrex glass cookware. (Trial Tr. 21:19-23, 105:12-15.) World Kitchen produces Pyrex glass cookware at its Charleroi, Pennsylvania manufacturing facility, which it also purchased from Corning in 1998. (Trial Tr. 22:22-23:1, 23:6-15, 23:21-25.) World Kitchen is licensed by Corning to distribute and sell its Pyrex glass cookware in the United States, Latin America, and certain other countries through major retailers, online sources, and direct sales through World Kitchen's website and factory stores. (Trial Tr. 21:19-24, 24:8-16, 85:16-21, 89:14-17.)

ACS produces print and online publications, including the *Bulletin* and a blog, *Ceramic Tech Today*. (Trial Tr. 261: 20-23; FAC ¶ 14.) In the September 2012 issue of the *Bulletin*, ACS published an article written by Defendants Bradt and Martens, titled "Shattering Glass Cookware" (the "Article"). (Def. Ex. 1; Pl. Ex. 1.) ACS announced publication of the Article on its *Ceramic Tech Today* blog in a post called "Hell's Kitchen: Thermal Stress and Glass Cookware that Shatters" (the "Blogpost"). (FAC ¶ 6; Pl. Ex. 2.) ACS also issued a press release on September 11, 2012, titled "New paper addresses cause of shattering glass cookware" (the "Press Release"). (FAC ¶ 5; Pl. Ex. 3.) The Blogpost and the Press Release included links and references to the Article.

The Article discusses "the technical aspects of the sudden, explosion-like failure of glass cookware products." (Pl. Ex. 1 at 33.) The word "cookware" is used more than 75 times in the story. It also refers to Plaintiff and identifies Plaintiff as the manufacturer of American-made Pyrex glass cookware. (Dkt. 249 ¶ 26.) The Article identifies the thermal stress resistance value (ΔT value) for two glass types: borosilicate glass and soda lime silicate glass. (Pl. Ex. 1 at 35.) It states that the ΔT values of the rapid temperature change necessary to initiate thermal shock

fracture "[f]or borosilicate glass, the calculated temperature difference is about 183°C (about 333°F), but it is only about 55°C (about 99°F) for soda lime silicate glass." (*Id.*) It also states that textbook authors Carter and Norton estimate thermal stress ΔT values for fracture as 270°C (436°F) for borosilicate glass and 80°C (144°F) for soda lime silicate glass, and that Corning estimates thermal stress ΔT values as 54°C (97°F) for borosilicate glass and 16°C (29°F) for soda lime silicate glass. (*Id.* at 36.)

The Article also discusses heat strengthening of soda lime silicate glass cookware. (Pl. Ex. 1 at 36.) The Article states that the authors bought new, unused soda lime silicate cookware pieces and studied them using fractography and photoelasticity to evaluate whether the pieces had been heat strengthened. (*Id.* at 36, 37.) The Article further states that "although the cookware definitely has been heat strengthened . . . it does not appear to be sufficient to increase substantially the thermal stress fracture resistance of the cookware." (*Id.* at 37.)

None of the authors were paid for the Article or received any sponsorship for the Article from any producer, seller or manufacturer of glass cookware or from any outside company or organization. (Trial Tr. 530:6-10, 265:3-9.) Defendant Bradt did not engage in any expert consultant work in any lawsuits involving glass cookware after publication of the Article and did not receive any money for any work as an expert consultant in any lawsuits involving glass cookware as a result of or after publication of the Article. (Trial Tr. 529:23-25, 530:1-3, 531:1-9, 590:21-23, 591:13-14.)

CONCLUSIONS OF LAW

Jurisdiction

This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because the parties are citizens of different states and the value of injunctive relief at issue exceeds $75,000, exclusive

of interests and costs. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a)(2) and (b)(2).

Illinois Uniform Deceptive Trade Practices Act

To prevail on its DTPA claim, Plaintiff must prove, by a preponderance of the evidence, that Defendant, in the course of its business, vocation, or occupation: (i) represented that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another; (ii) disparaged the goods, services, or business of another by false or misleading representation of fact; and (iii) engaged in any other conduct which similarly creates a likelihood of confusion or misunderstanding. 815 ILCS § 510/2(a)(7), (8), (12). Illinois state courts have held that, in effect, the DTPA codified the common-law tort of commercial disparagement. *See Conditioned Ocular Enhancement, Inc. v. Bonaventura*, 458 F. Supp. 2d 704, 710 (N.D. Ill. 2006) (citing *Crinkley v. Dow Jones & Co.*, 385 N.E.2d 714, 719 (1978)). To state a claim under the DTPA alleging commercial disparagement, Plaintiff must show that Defendants' statements "disparage[d] . . . the quality of [his] goods or services." *Conditioned Ocular*, 458 F. Supp. 2d at 710.

The DTPA is a constitutionally permissible "regulation prohibiting false, misleading or deceptive commercial speech." *Flentye v. Kathrein*, 485 F. Supp. 2d 903, 919 (N.D. Ill. 2007) (quoting *People ex. rel. Hartigan v. Maclean Hunter Publ'g Corp.*, 457 N.E.2d 480, 488 (1983)). The Seventh Circuit has held that "other communications also may constitute commercial speech notwithstanding the fact that they contain discussions of important public issues." *Jordan v. Jewel Food Stores, Inc.*, 743 F.3d 509, 516 (7th Cir. 2014). Relevant considerations include "whether: (1) the speech is an advertisement; (2) the speech refers to a specific product; and

(3) the speaker has an economic motivation for the speech." *See United States v. Benson*, 561 F.3d 718, 725 (7th Cir.2009) (citing *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66-67 (1983)). No one factor is sufficient, and not all are necessary. *Jordan*, 743 F.3d at 517.

RULINGS

Admissibility of Exhibits

The Court reserved ruling on the admission of several exhibits introduced at trial. Objections to the admission of Plaintiff's Exhibits 8, 9, 13, 14, 15, 16, 10 and 11 were taken under advisement. Plaintiff's Exhibit 8 is an article, titled "Corning Watch: Pyrex to be celebrated with an exhibit," dated May 27, 2015. This exhibit was admitted solely for the purpose of determining potential injury to Plaintiff. The parties were instructed to brief the Court on whether this exhibit was disclosed during discovery and, if so, whether it should be excluded from evidence. (Trial Tr. 84:16-19.) As Plaintiff's Exhibit 8 was disclosed to Defendants on December 4, 2015, and Defendants have not shown prejudice as a result of its disclosure a few days prior to trial, it is admitted for the purpose of determining potential injury to Plaintiff.

Plaintiff's Exhibit 9 is the Pyrex ACS Bulletin Article Tracker. Defendants objected to this exhibit because they assert that it was prepared in anticipation of litigation and cannot be admitted as a business record under Federal Rule of Evidence 803(6). Rule 803(6) allows the admission of records prepared and kept in the ordinary course of business. However, these records are only admissible if the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. Fed. R. Evid. 803(6)(E). "The opponent . . . is not necessarily required to introduce affirmative evidence of untrustworthiness. For example, the opponent might argue that a record was prepared in

anticipation of litigation and is favorable to the preparing party without needing to introduce evidence on the point." Fed. R. Evid. 803(6) Advisory Committee's Note.

Grant Deady, the managing director of the Chicago office of Zeno Group Public Relations ("Zeno Group"), testified that Zeno Group began media tracking regarding the Article shortly after it was published in September of 2012, that Zeno Group had a professional relationship with Plaintiff prior to publication, and that Plaintiff did not establish that relationship in connection with the Pyrex ACS Bulletin Article Tracker. (Trial Tr. 109:4-11, 118:3-18, 122:20-24, 123:3-11.) Deady also testified that the Pyrex ACS Bulletin Article Tracker is an example of the routine media monitoring tracking service that Zeno Group would provide to any client. (Trial Tr. 123:12-17.) The evidence at trial establishes that this exhibit was not created in anticipation of litigation and therefore is admissible as a business record under Federal Rule of Evidence 803(6).

Plaintiff's Exhibits 13 and 14 are documents generated by CED Technologies, Inc. ("CED"), containing information collected and recorded by CED regarding the thermal shock resistance of Pyrex glass cookware. Plaintiff argues that these documents are records of a regularly conducted business activity and admissible pursuant to Rule 803(6) and represented that they would be authenticated by a fact witness, Dr. Marcus Zupan. Defendant objects to these records and any supporting testimony from Dr. Zupan, arguing that this evidence is inadmissible because of Plaintiff's failure to timely disclose it as expert testimony and that the CED test reports do not meet the standard of trustworthiness required for them to be admitted as business records under Rule 803(6). Expert discovery in this case closed on June 5, 2015. At that time, Plaintiff failed to disclose any expert witnesses or expert reports to support their case and made no attempt to do so prior to trial.

As noted above, records are only admissible as business records under Rule 803(6) if the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness, i.e., documents prepared in anticipation of litigation. Fed. R. Evid. 803(6)(E). Dr. Zupan, a representative of CED, testified that as a consultant to CED, he was hired to conduct experiments on Pyrex glass cookware. (Trial Tr. 221:18-222:5.) After he agreed to conduct the testing, he spoke with Plaintiff's counsel to determine what kind of testing she wanted him to perform. Dr. Zupan testified that Plaintiff's counsel then asked him to perform a second round of testing, that some of the samples he used to perform the test were provided by Plaintiff's counsel, that this type of testing is not something he conducts in the ordinary course of his business, and that Plaintiff's counsel also instructed him on what standard testing to use. (Trial. Tr. 222:12-224:5; 225:9-13.) Thus, these records were created at the direction of counsel and not in the ordinary course of CED's business. The evidence at trial establishes that these documents were created in anticipation of litigation and are not admissible as business records under Rule 803(6).

Plaintiff's Exhibit 15 is a declaration of a Glass Technology Services Ltd. ("GTS") representative, Catherine Robinson, certifying the authenticity of test reports generated by GTS. Plaintiff's Exhibit 16 consists of reports generated by GTS regarding the thermal shock resistance of Pyrex glass cookware. This Court previously ruled that Exhibit 15 is admissible under Federal Rule of Evidence 902(12) as to authentication but specifically reserved judgment on whether Exhibit 16 is admissible under Rule 803(6). The reports submitted by Plaintiff detail the results of thermal shock testing of Pyrex glass cookware conducted by GTS. These reports were created for Plaintiff's counsel, were distributed to Plaintiff's counsel, and the samples used for testing were provided by Plaintiff's counsel. (Pl. Ex. 16.) As with Plaintiff's Exhibits 13 and

14, these reports were clearly created in anticipation of litigation and cannot be admitted into evidence under Rule 803(6).

Plaintiff also argues that Plaintiff's Exhibits 13, 14, 15, and 16 be admitted under the residual exception to hearsay pursuant to Federal Rule of Evidence 807. Rule 807 states:

> A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Fed. R. Evid. 807. As noted above, these exhibits do not have the "equivalent circumstantial guarantees of trustworthiness" required by Rule 807, as they were prepared in anticipation of litigation and at the direction of Plaintiff's counsel. These exhibits do not qualify under the residual exception to hearsay.

Plaintiff's Exhibits 10 and 11 are the British/European standard specifying safety and performance requirements for cookware-ovenware used in traditional ovens, and the British/European standard for assessing thermal shock endurance of glass cookware to be used in the home, respectively. Defendants objected to the admission of these exhibits as hearsay. Plaintiff argues that these exhibits are admissible by judicial notice under Federal Rule of Evidence 201 or, in the alternative, under the residual exception under Federal Rule of Evidence 807. Pursuant to Rule 201, the Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201. Plaintiff offered these exhibits as standards used by GTS and CED Technologies to quantify the thermal shock resistance of glass cookware used in

consumers' ovens. (Trial Tr. 188: 3-189:5; 192:24-193:8; 195:18-21.) The CED Technologies and GTS reports submitted by Plaintiff were not admitted; therefore, these exhibits are not relevant or probative and are not admissible.

Exhibits Under Seal

Plaintiff requests that Plaintiff's Exhibits 13, 14, 16, 18, and 19 remain under seal after the completion of these proceedings. Defendants did not object to Plaintiff's motions to file Exhibits 13, 14, 18 and 19 under seal but submitted a response in opposition to Plaintiff's Motion for Leave to File Exhibit 16 Under Seal [202, 206]. Defendants argue that a seal on this exhibit would "affect third parties, the public and the press that have an interest in the conduct and outcome of judicial proceedings." Defendants also argue that Plaintiff requests that these documents be sealed because they will be of interest to potential plaintiffs in products liability cases involving "explosions and shattering of soda lime silicate cookware." Defendants do not provide any argument as to why these documents are different from the exhibits they did not oppose and why these documents are of particular public interest. Their assertions are unsubstantiated; thus, Plaintiff's Motion to Seal Plaintiff's Exhibits 13, 14, 16, 18, and 19 [202] is granted.

ANALYSIS

As set out above, in order to find Defendants guilty of a DTPA violation, it must be proven, by a preponderance of the evidence, that: (1) Defendants made statements regarding the quality of Plaintiff's goods, in this case, Pyrex glass cookware, that were false or misleading; (2) Defendants disparaged the quality of Pyrex glass cookware in making the false or misleading statements; (3) Defendants published the statements; and (4) Defendants made the statements in the course of their business, vocation, or occupation. 2-48 Illinois Forms of Jury Instructions

§ 48.41. It is undisputed that Defendants made the statements at issue in the course of its business, vocation, or occupation and that Defendants published the statements in the Article, Blogpost, and Press Release. (Def. Ex. 1; Pl. Exs. 1, 2, and 3; Dkt. 245 ¶ 54.) At issue is whether Defendants made statements regarding the quality of Pyrex glass cookware that were false or misleading and whether Defendants disparaged the quality of Pyrex glass cookware in making those statements.

As Plaintiff's Exhibits 13, 14, and 16 are deemed hearsay and inadmissible, Plaintiff failed to offer any testimony or any admissible competent evidence to prove the falsity or misleading nature of any statements made by Defendants. Similarly, Plaintiff has failed to offer any competent evidence that the statements in question were misleading. Plaintiff concedes that the only material fact in dispute concerning the merits of its claim is the truth or falsity of Defendants' representations as alleged in Plaintiff's Complaint. (Dkt. 247 at 2.) The Article gives ΔT values for borosilicate glass and soda lime silicate glass. It then discusses heat-strengthened soda lime silicate cookware and the results of the authors' studies of that cookware. Nothing in the trial record contradicts Defendants' calculation of the ΔT value of soda lime silicate glass. Based on these analyses, the authors made conclusions regarding the "phenomenological cause" of fractures in soda lime silicate glass cookware and how "normal kitchen cooking temperatures" may affect this cookware. Plaintiff argues extensively that these conclusions are false or misleading but provides no argument based on admissible evidence.

Plaintiff notes that Defendants' legal argument that the Article, Blogpost, and Press Release do not specifically discuss the thermal stress resistance of glass cookware is in itself misleading because the Article, Blogpost, and Press Release mention the term "cookware," include an image of broken glass cookware, and includes the word "cookware" in the titles of the

publications. All three of these publications also discuss the thermal stress resistance of different types of glass. At best, this is an argument that Defendants' legal posture in this case is misleading but does not provide convincing argument why the conclusions and statements in the article are misleading to the reader. Further, Plaintiff failed to submit any admissible evidence that the statements in question were false and failed to explain how the inclusion of those statements, which were not proven to be false, in publications that mention Pyrex cookware could be misleading. The article clearly states that it is examining the issue of the shattering of glass cookware. That statement is obvious and does not mislead the reader. However, it does not make specific statements regarding the thermal stress resistance of that glass cookware. Even if the article implied that Pyrex glass cookware had a ΔT value of 99°F, nothing in the record establishes that this value is false. Plaintiff provides no other argument supporting its allegation that the speech at issue was misleading. Therefore, Plaintiff has failed to prove by a preponderance of the evidence that Defendants violated the DTPA.

Even if Plaintiff did establish that Defendants violated the DTPA, the evidence at trial established that the speech at issue is noncommercial speech and, thus, is not prohibited by the DTPA. Relevant considerations include "whether: (1) the speech is an advertisement; (2) the speech refers to a specific product; and (3) the speaker has an economic motivation for the speech." *See United States v. Benson*, 561 F.3d 718, 725 (7th Cir. 2009) (citing *Bolger*, 463 U.S. at 66-67). As noted in the Memorandum Opinion and Order, dated September 15, 2015, denying Defendants' Motion for Summary Judgment [Dkt. 161], it is clear that the speech at issue is not an advertisement; and while the *Bulletin* article referred to American-made, heat-strengthened soda lime glass cookware, it did not refer to a specific product, or a specific producer's product, when discussing the ΔT values of borosilicate glass and soda lime silicate glass. The speech also

does not fall within the traditional definition of commercial speech: it does not propose a business transaction between the speaker and a specific customer.[1]

At the time of the September 15, 2015 Order, this Court concluded that Plaintiff had not provided sufficient evidence that Defendants had an economic motivation for the speech at issue. The evidence elicited at trial shows that none of the authors were paid for the Article or received any sponsorship for the Article from any producer, seller or manufacturer of glass cookware or from any outside company or organization. (Trial Tr. 530:6-10, 265:3-9.) Defendant Bradt did not engage in any expert consultant work in any lawsuits involving glass cookware after publication of the Article and did not receive any money for any work as an expert consultant in any lawsuits involving glass cookware as a result of or after publication of the Article. (Trial Tr. 529:23-25, 530:1-3, 531:1-9, 590:21-23, 591:13-14.) Plaintiff offered no new evidence that Defendants Bradt and Wray had an economic motivation for writing the Article. After consideration of all of the evidence in the record, this conclusion has not changed. Even if Plaintiff established that Defendants had an economic motivation for the speech at issue, "no one factor is sufficient" to conclude that the Article, Blogpost, and Press Release are commercial speech.

[1] *See Commodity Trend Serv., Inc. v. Commodity Futures Trading Comm'n*, 149 F.3d 679, 684-686 (7th Cir. 1998).

CONCLUSION

For all the reasons discussed above, Plaintiff has failed to meet its burden of proof that Defendants violated 815 ILCS § 510/2(a)(7), (8), (12) of the Illinois Uniform Deceptive Trade Practices Act. Plaintiff's Motion to Seal Plaintiff's Exhibits 13, 14, 16, 18, and 19 [202] is granted. Judgment is entered against the Plaintiff and in favor of the Defendants.

Date: June 30, 2016

JOHN W. DARRAH
United States District Court Judge

EXHIBIT C

WORLD KITCHEN

YOU NEED TO KNOW THE PLAIN TRUTH ABOUT CONSUMER REPORTS' AND THE AMERICAN CERAMIC SOCIETY'S FLAWED

AND INACCURATE GLASS COOKWARE ARTICLES.

THESE INTERNET RUMORS ARE FALSE AND HAVE BEEN REFUTED BY "MYTH-BUSTING" WEBSITES SUCH AS Snopes.com AND STATS.org

World Kitchen is deeply committed to its consumers' safety and satisfaction and believes that consumers deserve accurate information about the safety of the products they purchase and use, including Pyrex glassware. That is why we want you to know about reports mischaracterizing and wrongly disparaging the reliability, durability and excellent safety record of American-made glass cookware made from heat-strengthened soda lime glass, including Pyrex glass cookware. In fact, generations of cooks have safely and reliably used billions of pieces of Pyrex glassware in American kitchens for decades. On behalf of our consumers and our dedicated men and women who are proud to make one of the precious few products still made in the USA, we are vigilant to ensure that consumers, the media and anyone who wants to know about Pyrex glassware has easy access to accurate information.

As part of our unwavering commitment to insist on truthful and accurate reporting about Pyrex glassware and to set the record straight about the serious errors and flaws in these articles, World Kitchen transparently has brought to the attention of Consumer Reports, the American Ceramic Society (ACS) and the U.S. Consumer Product Safety Commission, the egregious inaccuracies, errors, highly misleading statements, and alarming misinformation in these articles. We want you to know what Consumer Reports and ACS aren't telling you. Click an article below to get important facts and information about American-made Pyrex glassware's reliability, durability and excellent safety record that these publications did not tell you.

December 6, 2010 Letter from WK CEO to Consumer Reports

Dec. 17, 2010 WK Response to Consumer Reports January 2011 Glass Bakeware Article

January 6, 2011 WK Further Response to Consumer Reports January 2011 Glass Bakeware Article

September 8, 2011 Letter from WK CEO to Consumer Reports

September 22, 2012 WK Notice to ACS and Request for Retraction of September 2012 Glass Cookware Feature Story

PYREX GLASSWARE: STILL MADE IN AMERICA

PAST AND PRESENT

Since 1915, experienced cooks and beginners alike have reached for Pyrex® glassware products. It all started with our glass bakeware – loved for generations because it's affordable, durable, odor and stain proof, and great for cooking, serving and storing. Since then, new favorites have joined old standbys. The Pyrex line now includes products for the entire kitchen, including pots and pans, metal bakeware, and kitchen tools and gadgets. They're all designed and proven to make cooking a little easier. Today, approximately 80% of U.S. homes have Pyrex glass products, with many cooks passing them down from generation to generation – which we think is pretty neat.

HISTORY

The idea for Pyrex Glassware came from the industrious wife of a Corning Glass Works scientist who was frustrated with her unreliable casserole dish. Knowing the strength of the railroad signal lantern glass her husband worked with, she begged him to bring home something she could use in the kitchen. Voilà, the Pyrex baking dish was born. Two years later, Boston department store Jordan Marsh placed the first order for Pyrex Glassware. The rest, as they say, is history.

PYREX® GLASSWARE: STILL MADE IN AMERICA

World Kitchen is proud to design and manufacture our iconic Pyrex® glassware products right here in the USA. Since 1915, Pyrex glassware has been manufactured in America, including at our facility in Charleroi, Pennsylvania since the 1940s. While many companies have abandoned domestic manufacturing, we remain a longstanding member of the community, employing more than 700 employees in Pennsylvania across two unionized facilities, and about 2500 men and women across our US manufacturing and distribution facilities. Keeping the faith with our consumers, employees and vision for the future, we have expanded our US manufacturing operations, demonstrating our strong commitment to American manufacturing and jobs.

Over the last century, experienced cooks and beginners alike have reached for Pyrex glassware, making our products a staple in approximately 80 percent of American homes. Many consumers have told us that our products are passed on for generations, and some of their favorite memories in the kitchen involve cooking with our iconic brand. We value our made in the USA heritage and are working hard to ensure we remain a mainstay in American kitchens for generations to come.

NEWSLETTER

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