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BY _____

1 Jerome L. Ringler (State Bar No. 59918)
2 Catherine Burke Schmidt (State Bar No. 212827)
3 RINGLER & ASSOCIATES
233 Wilshire Blvd., Suite 900
4 Santa Monica, CA 90401
Tel: 310-955-4105
5 Fax: 310-955-4106
E-mail: jlr@ringlerandassociates.com
cbs@ringlerandassociates.com

6 Michael S. Rapkin (State Bar No. 67220)
7 Scott B. Rapkin (State Bar No. 261867)
8 LAW OFFICES OF MICHAEL S. RAPKIN
233 Wilshire Boulevard, Suite 700
9 Santa Monica, CA 90401
Tel: 310-319-5465
10 Fax: 310-319-5355
E-mail: msrapkin@gmail.com
scottrapkin@rapkinesq.com

FILE BY FAX

11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14 SPARKS LANDEN, individually and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 ELECTROLUX HOME PRODUCTS,
19 INC., a Delaware Corporation;
20 CARLSONS APPLIANCES, INC., a
California Corporation; and DOES 1
through 20, inclusive,

21 Defendant

Case No.: CV13-01033-DSF (SHX)

FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES

- 1. Unfair Competition Law [Cal. Bus. & Prof. Code § 17200 et seq.]
- 2. Fraudulent Concealment; and
- 3. Breach of Implied Warranty

Demand for Jury Trial

22 Plaintiff SPARKS LANDEN ("Plaintiff"), on behalf of himself and a class of all
23 other similarly situated persons defined below, demands a trial by jury and hereby
24 complains and alleges upon information and belief, except for paragraphs that pertain to
25 Plaintiff or Plaintiff's attorneys, as follows:

26 **NATURE OF ACTION**

- 27 1. For decades, Electrolux Home Products, Inc. ("Electrolux") has distributed,
- 28

COPY

1 manufactured, and/or sold top-loading washing machine and laundry centers including
2 General Electric (GE), Kenmore, and Frigidaire branded appliances that share a common
3 water level pressure system design (collectively, “Washing Machines”).

4 2. The Washing Machines have a common defect that causes Washing Machines to
5 overflow and flood due to the disconnection of an air hose that occurs under normal and
6 reasonably expected appliance use during the typical lifetime of the appliance (“Design
7 Defect”). More specifically, the Washing Machines contain an inadequate length and/or
8 inadequate strain relief of the air hose where the air hose connects to the air dome. The
9 design fails to account for motion of the Washing Machine tub that occurs during normal
10 and reasonably expected operation and/or use. The inadequate length and/or inadequate
11 strain relief of the air hose causes an increase in tension on the connection of the air hose
12 to the air dome during operation of the Washing Machine. Over time, the repeated
13 tension loading events cause the air hose to disconnect from the air dome. Once the air
14 hose is disconnected, the water level pressure switch can no longer sense the water level
15 (water pressure) within the Washing Machine tub. Consequently, disconnection of the
16 air hose results in overflow, leak and/or water-loss. The appliance design should have
17 been implemented such that it can withstand normal and expected consumer uses and
18 scenarios without resulting in catastrophic water-loss failures.

19 3. This case seeks the cost to repair the Design Defect. This case is based on
20 Electrolux’s breach of an implied warranty of fitness by its distribution, manufacture,
21 and/or placement into the stream of commerce the Washing Machines in a condition that
22 created an unreasonable risk of harm and constituted a danger to the public including
23 Plaintiff and the Class, defined below. The Washing Machines had the potential to
24 overflow and indeed did overflow in certain instances due to the Design Defect.
25 Moreover, when the Washing Machines did indeed overflow, they caused property
26 damage and personal injury. With the design defect left unrepaired, the Washing
27 Machines have the potential at all times to overflow, which can lead to catastrophic
28 injury and enormous property damage.

1 4. Electrolux’s failure to disclose the Design Defect constitutes a violation of, *inter*
2 *alia*, common law fraud, and the Unfair Competition Law (“UCL”), Cal. Bus. & Prof.
3 Code § 17200 et seq. *See In Re Toyota Motor Corp. Unintended Acceleration Mktg,*
4 *Sales Practices of Prod. Liab. Litig.*, 754 F. Supp. 2d 1145 (C.D. Cal. 2010)

5 5. Electrolux advertised, *inter alia*, the Washing Machines to be safe, of good quality
6 free from defects, and that they would perform in their reasonably expected operation
7 and/or use for their full useful lives.

8 6. According to a 2007 study by the National Association of Homebuilders and Bank
9 of America Home Equity, the useful expected life of a washing machine is 10 years. On
10 information and belief, Washing Machines manufactured by Electrolux fail years before
11 their useful expected life due to the Design Defect. For example, Plaintiff is informed
12 and thereon believes that a single expert has inspected approximately 40 Washing
13 Machines that failed within 7 years of purchase.

14 7. The damages each and every member of the Class, defined below, has sustained is
15 easily quantifiable - it is the cost of repair to eliminate the Design Defect and thereby
16 eliminate the hazard and potential risk of harm each Washing Machine creates each and
17 every time the Washing Machine is operated. This cost is essentially uniform for each
18 Washing Machine. Importantly, in the instant case, the harm caused by the Design
19 Defect occurs during the normal and intended use of the Washing Machine and indeed
20 without any improper or inappropriate usage of the Washing Machine. The nature of the
21 Design Defect causes the harm herein described.

22 **JURISDICTION AND VENUE**

23 8. Plaintiff brings this action to seek equitable relief, restitution, and other relief
24 available at law or in equity on behalf of Plaintiff, the members of Class (defined below).
25 Plaintiff and the Class assert no claims under federal law. The amount in controversy for
26 each named class representative is less than \$75,000.00.

PARTIES

1
2 9. Plaintiff is a citizen and a resident of Los Angeles County, California, and has
3 previously purchased a number of Washing Machines manufactured, distributed, or sold
4 by Electrolux as more particularly described below.

5 10. Plaintiff is informed and believes and thereon alleges that at least two-thirds of the
6 members of the Class (defined below) are citizens of California.

7 11. Electrolux is a Delaware corporation, maintains its principal place of business at
8 10200 David Taylor Drive, Charlotte, North Carolina 28262, and does business in Los
9 Angeles, California and elsewhere in California. Electrolux markets, designs,
10 manufactures, distributes, and/or sells its products, including Washing Machines,
11 throughout the United States, including California.

12 12. The acts that this Complaint alleges were done by Electrolux and/or were
13 authorized, ordered, or done by duly authorized officers, agents, employees, or
14 representatives, while actively engaged in the management, direction, or control of such
15 defendant's business or affairs.

BACKGROUND FACTS

16
17 13. Electrolux holds itself out to the public as a manufacturer of safe consumer
18 products including Washing Machines. Electrolux is in the business of manufacturing,
19 distributing and/or selling Washing Machines throughout the United States. Indeed, it
20 touts itself as a "global leader" in home appliances, selling more than 40 million
21 products to customers in 150 countries on an annual basis. By 2010, Electrolux was the
22 world's second largest home appliance maker by market share. Electrolux's core design
23 message is "thinking of you", a pledge to Electrolux's customers that it pays a great deal
24 of attention to detail when designing new products.

25 14. Electrolux manufactured, produced and/or distributed Washing Machines for sale
26 by its network of stores and authorized dealers, including several leading retailers and/or
27 appliance brands in the United States, such as GE, Kenmore, and Frigidaire.

1 15. In all of their advertising, Defendants failed to warn Plaintiff or any member of the
2 Class (defined below) of the Washing Machines' Design Defect (described above).

3 16. Electrolux knew or should have known of the Washing Machines' Design Defect
4 prior to distributing and/or selling them or placing them in the stream of commerce.
5 Electrolux should have performed some form of expected failure analysis and/or failure
6 consequence study in order to evaluate the Washing Machine's design. Any type of
7 reasonable potential or actual failure-mode-analysis of the Washing Machine would have
8 identified numerous potential component failures in the Washing Machine that would
9 result in water leaks, overflow, water-loss, and/or floods. It is the responsibility of the
10 manufacturer, through their design, testing, manufacturing, and prior equivalent design
11 failure-mode analysis processes to design identified hazards out of the system and/or to
12 implement an engineering safety device to prevent any and all of these reasonably
13 foreseeable events.

14 17. Moreover, Electrolux knew or should have known of the Washing Machines'
15 Design Defect prior to distributing and/or selling them or placing them in the stream of
16 commerce due to the fact that the other end of the air hose that is the subject of the
17 Design Defect contemplates adequate air hose strain relief. More specifically, the upper
18 connection of the air hose to the pressure switch contains additional length to the air hose
19 in the form of a service loop, as well as a hose clip/clamp to prevent tension at the air
20 hose connection to the pressure switch. The fact that Electrolux contemplated an
21 adequate air hose strain relief design at the upper connection in the very Washing
22 Machine containing the Design Defect supports the fact that Electrolux knew and/or
23 should have known that the lower connection from the air hose to the air dome failed to
24 allow for sufficient strain relief and/or air hose length because it failed to include a
25 service loop and/or hose clip/clamp in sufficient proximity to the air dome.

26 18. Moreover, Plaintiff is informed and believes that Electrolux has been aware of the
27 Design Defect since at least 1990 due to the fact that Electrolux designed and applied for
28 a patented safety device to prevent overflowing. Plaintiff is informed and thereon

1 believes, the patented safety device is meant to prevent overflow when water level
2 monitoring devices could no longer detect water level, the very failure created by the
3 Design Defect. Plaintiff is informed and thereon believes that Electrolux received
4 approval for its patent in 1992, yet never implemented the device, never informed its
5 consumers of the availability of the device, and never informed consumers of the Design
6 Defect that created a need for the device.

7 19. Moreover, Plaintiff is informed and thereon believes that Defendants were alerted
8 to the Design Defect through various customer complaints and expert reports detailing
9 the Design Defect and resultant personal injury (including, but not limited to a slip and
10 fall) and property damage. Plaintiff is informed and thereon believes that Defendants
11 have been made aware of many reported instances of the Design Defect that resulted in
12 overflow and water loss from 2005 manufactured Washing Machines, including the very
13 model purchased and owned by Plaintiff.

14 20. Despite its knowledge and/or constructive knowledge, Defendants: a) failed to
15 notify consumers and/or complainants of the occasions of failure and/or Design Defect;
16 b) failed to recall the Washing Machines; and c) failed to offer to replace the Washing
17 Machines and/or the Washing Machine's defective parts. Moreover, despite its
18 knowledge and/or constructive knowledge of the Design Defect, Defendants have failed
19 to accept responsibility.

20 21. Plaintiff owns a 4 unit apartment building in Venice, California and purchased
21 Washing Machines and/or was the intended beneficiary of the Washing Machines
22 purchased for the units in the building from Carlsons Appliances, Inc. Plaintiff owns
23 two Washing Machines manufactured in 2005. He purchased another Washing Machine
24 in February of 2012.

25 22. The Design Defects contained in Electrolux's Washing Machines place Plaintiff
26 and the Class in unreasonable risk of harm. Failure of the Washing Machine caused by
27 the Design Defect can lead to the continuous flow of water into the appliance, resulting
28 in overflow and increase risk of a potential for a slip/fall, electrocution, as well as the

1 potential to cause substantial damage to the property in which the Washing Machine is
2 installed. Because the Washing Machine is estimated to deliver approximately 6 gallons
3 of water per minute, in just 20 minutes, after a failure caused by the Design Defect, the
4 Washing Machine can deliver up to 120 gallons of water.

5 23. The risk of harm to Plaintiff and the Class caused by the Design Defect, described
6 above, is significant, recognizable, real, and demonstrable. The Design Defect, if not
7 remedied, can result in enormous property damage caused by flooding, and the
8 consequences of standing water, which indeed can affect all aspects of completed
9 construction, from electrical work to the structural integrity of any given home or
10 condominium. Moreover, this same Design Defect, if not remedied, can result in
11 catastrophic personal injury, including significant orthopedic injuries and head injuries,
12 caused by falls.

13 24. Upon learning of the Design Defect, Plaintiff fears his Washing Machines will fail
14 and may cause severe personal injury and/or property damage. Plaintiff is forced to
15 either repair his Washing Machines, replace his Washing Machines prior to realizing
16 their full typical lives, or risk having multiple catastrophic water overflow events. The
17 Design Defect of the Washing Machines prevented(s) Plaintiff and the Class from the
18 enjoyment of the Washing Machines for the full typical life of the machine.

19 25. Plaintiff and the Class have been damaged, including but not limited, in an amount
20 equal to the cost of repair to eliminate the unreasonable risk of harm.

21 26. Had Plaintiff and the Class known that the Washing Machines contain a Design
22 Defect, they would not have purchased them at the price they paid.

23
24 **TOLLING AND ESTOPPEL OF STATUTES OF LIMITATIONS**

25 27. Plaintiff did not discover, and did not know of and did not have any suspicions of,
26 facts that would have caused a reasonable person to suspect that he had suffered harm by
27 Defendants' practice and policy of marketing, manufacturing, designing, and/or selling
28 Washing Machines that contain a Design Defect. No reasonable consumer would even

1 suspect that the Washing Machines were prone to overflow with water. Even if a
2 consumer learned that a Washing Machine overflowed with water, a reasonable and
3 diligent investigation would not disclose the fact that the overflow was due to the Design
4 Defect. Due to the complexity of the design, the information concealed by Electrolux,
5 and the expertise required for analyzing information, a determination that the overflow
6 was due to a defect in design, rather than misuse or user error, was beyond any
7 reasonable and/or diligent investigation. The claims alleged herein accrued upon
8 discovery of the latent defect of the Washing Machines and the Design Defect contained
9 therein. Because the defect alleged herein is latent and because Defendants took steps to
10 actively misrepresent and conceal the true character, nature, and quality of the Washing
11 Machines, among other reasons, Plaintiff and the Class did not discover and could not
12 have discovered the problems and defects alleged herein through a reasonable and
13 diligent investigation.

14 28. Any applicable statutes of limitations have been tolled by Defendants' knowledge
15 and actual misrepresentation, concealment, non-disclosure, and/or denial of the facts as
16 alleged herein, a concealment that is ongoing. Plaintiff and the Class could not have
17 reasonably discovered the true, latently defective nature of the Washing Machines. As a
18 result of Defendants' active concealment of the defects and/or failure to inform Plaintiff
19 and the Class of the defects, any and all statute of limitations otherwise applicable to the
20 allegations herein have been tolled.

21 29. Alternatively, the facts alleged above give rise to an estoppel. Defendants have
22 actively concealed the defective nature of the Washing Machines. Defendants were and
23 are under a continuous duty to disclose to Plaintiff and the Class the true character,
24 quality, and nature of the Washing Machines, particularly that they posed a serious water
25 overflow hazard and risk of failure. At all relevant times, and continuing to this day,
26 Defendants knowingly, affirmatively, and actively misrepresented, concealed and failed
27 to disclose the true character, quality, and nature of the Washing Machines. Given
28 Defendants' failure to disclose this non-public information about the defective nature

1 of the Washing Machines – information over which Defendants have exclusive control –
2 and because Plaintiff and the Class could not reasonably have known that the Washing
3 Machines were thereby defective, Plaintiff and the Class reasonably relied on
4 Defendants’ knowing affirmative and/or ongoing concealment. Based on the foregoing,
5 Defendants are estopped from prevailing on any statute of limitations defense in this
6 action.

7 30. In October of 2012, Plaintiff discovered the latent Design Defect through a
8 conversation with one of his tenants, who fortuitously happened to be in position to
9 know of the Design Defect. Plaintiff’s tenant is an attorney whose client owned a
10 Washing Machine that overflowed and flooded causing significant damage. Prior to this
11 conversation with his tenant, Plaintiff had no knowledge of the Washing Machine’s
12 propensity for overflowing and flooding; he had no knowledge of any problems with the
13 air hose’s connection to the air dome; and he had no knowledge that he paid more than
14 he should have paid for his Washing Machines with the Design Defect. In fact, because
15 he had no knowledge of the Washing Machine’s propensity to overflow and flood,
16 approximately seven months prior to the conversation, he purchased his 2012 Washing
17 Machine with the same Design Defect. Moreover and more importantly, at no time prior
18 to the above referenced conversation, wherein Plaintiff was provided for the first time
19 notice of the Design Defect, could Plaintiff had reasonably or otherwise been expected to
20 discover the Design Defect. This is true, for absent experiencing overflow neither this
21 Plaintiff nor any plaintiff would ever be on notice and able to ascertain the Design
22 Defect in the Washing Machine. Plaintiff had no suspicion that he was injured, let alone
23 knowledge of facts that would have lead him, upon reasonable diligence, to discover the
24 Design Defect. It was only until a serendipitous conversation with his tenant that
25 Plaintiff became aware of the Design Defect.

CLASS ACTION ALLEGATIONS

1
2 31. In addition to prosecuting this action pursuant to California Business &
3 Professions Code section 17204, Plaintiff brings this class action pursuant to the
4 provisions of Federal Rule of Civil Procedure 23.

5 32. Plaintiff brings this action on behalf of the following Class: All persons, sole
6 proprietorships, partnerships, corporations, or any other entity located within California
7 who own a washing machine or laundry center manufactured by Electrolux that contains
8 the identical air hose routing and strain-relief features as the GE Model WSM2700 and
9 Frigidaire Model FGX831CSI. Excluded from the Class are those who own Washing
10 Machines that have already been repaired to correct the air hose routing and strain-relief
11 features at Electrolux’s expense. Also excluded from the class are those who own
12 Washing Machines that have overflowed prior to four years from the filing of this
13 complaint. Also excluded from the class are governmental entities, Electrolux,
14 Electrolux’s authorized dealers, and their parents, subsidiaries, affiliates, employees,
15 officers, directors, and co-conspirators. Also excluded is any judge, justice or judicial
16 officer presiding over this matter and the members of their immediate families and
17 judicial staffs (the “Class”).

18 33. Plaintiff reserves the right to amend or otherwise alter the class definitions
19 presented to the Court or to propose sub-Classes.

20 34. Plaintiff does not know the exact number of Class members, because such
21 information is in the exclusive control of Defendants. Due to the nature of the trade and
22 commerce involved however, Plaintiff believes that the total number of class members is
23 so numerous and geographically dispersed within the State of California that joinder of
24 all class members is impracticable.

25 35. The proposed Class are ascertainable in that the members can be identified using
26 information contained in Electrolux’s records. The definition of the Class is sufficiently
27 precise to allow Defendants to identify all brands and models that contain the Design
28 Defect. While the precise names and addresses of the members of the Class are

1 presently unknown to Plaintiff, members of the Class can be notified of the pendency of
2 this action through advertisements, Internet postings, electronic mail, and/or published
3 notice. Through such notice, each member of the Class can determine their membership
4 in the Class.

5 36. Defendants have acted with respect to the Class in a manner generally applicable
6 to each member of the Class. There is a well-defined community of interest in the
7 questions of law and fact involved in the action. The questions of law or fact common to
8 the Class predominate over any questions affecting only individual members, including,
9 but not limited to the following:

- 10 a. whether the Washing Machines overflow due to a Design Defect;
- 11 b. whether Defendants actually or constructively knew that the Washing
12 Machines contained the Design Defect;
- 13 c. whether Defendants had a duty to Plaintiff and the Class to disclose the
14 Design Defect to Plaintiff and the Class before they purchased one or more
15 Washing Machines;
- 16 d. whether Defendants concealed and/or failed to disclose material facts
17 concerning the nature and existence of the Design Defect to Plaintiff and the
18 Class before they purchased one or more Washing Machines;
- 19 e. whether Defendants' concealment, suppression and omissions had and have
20 had a tendency to deceive, by either failing to disclose the existence of the
21 defect exclusively known to Defendants, and unknown to Plaintiff and
22 others or by misleading Plaintiff and the Class that the Washing Machines
23 were safe and reliable and contained no serious defects;
- 24 f. whether the Design Defect causes an unreasonable risk to the Class;
- 25 g. whether Plaintiff and the Class have been damaged by the wrongs
26 complained of herein and if so the measure of the cost of repair and the
27 nature and extent of other relief that should be afforded.

1 37. The claims of Plaintiff are typical of the claims of the other members of the Class
2 in that all members of the Class have been harmed in substantially the same way by
3 Defendants' actions and their claims are based on the same legal theories surrounding
4 the Design Defect.

5 38. Plaintiff is committed to prosecuting this action and has retained competent
6 counsel experienced in litigation of this nature. Plaintiff is an adequate representative of
7 the Class.

8 39. A class action is superior to other available methods for the fair and efficient
9 adjudication of the controversy. The prosecution of separate actions by individual
10 members of the Class would create the risk of inconsistent or varying adjudications with
11 respect to individual members of the Class which would establish incompatible standards
12 of conduct for defendants, or adjudications with respect to individual members of the
13 Class which would, as a practical matter, be dispositive of the interests of the other
14 members not parties to the adjudications or substantially impair or impede their ability to
15 protect their interests.

16 40. In view of the complexity of the issues and the expense that an individual plaintiff
17 would incur if he or she attempted to obtain relief from a large, transnational corporation
18 such as Electrolux, the separate claims of individual class members are monetarily
19 insufficient to support separate actions. Because of the size of the individual class
20 members' claims, few if any, class members could afford to seek legal redress for the
21 wrongs complained of in this Complaint.

22 41. In the alternative, the Class should be certified because:

- 23 a. The prosecution of separate actions by individual members of the Class
24 would create a risk of inconsistent or varying adjudications with respect to
25 individual Class members which would establish incompatible standards of
26 conduct for Defendants;
- 27 b. The prosecution of separate actions by individual members of the Class
28 would create a risk of adjudication with respect to them, which would, as a

1 practical matter, be dispositive of the interests of the other Class members
2 not parties to the adjudications, or substantially impair or impede their
3 ability to protect their interest; and

4 c. Defendants have acted or refused to act on grounds generally applicable to
5 the class, and /or the general public, thereby making appropriate final and
6 injunctive relief with respect to the class as a whole.

7 42. The proposed Class fulfills the certification criteria of Federal Rule of Civil
8 Procedure 23, and California Code of Civil Procedure section 382.

9 **FIRST CAUSE OF ACTION**
10 (Violation of the Unfair Competition Law,
11 Cal. Bus. & Prof. Code § 17200 et seq.
against Electrolux)

12 43. Plaintiff incorporates each and every paragraph hereinabove alleged as though it
13 were set fully forth in full here and now and to the extent necessary pleads this cause of
14 action in the alternative.

15 44. Plaintiff brings this cause of action on behalf the Class pursuant to California
16 Business & Professions Code section 17204.

17 Fraudulent Prong

18 45. Electrolux's actions described herein constitute fraud within the meaning of
19 California Business and Professions Code section 17200 et seq. in that Electrolux has
20 failed to disclose that the Washing Machines contain the Design Defect. Electrolux's
21 failure to disclose the Design Defect was likely to mislead Plaintiff and the Class into
22 believing that the Washing Machines were free from defect and safe to use.

23 Unlawful Prong

24 46. In addition, Electrolux's actions were unlawful and in violation of the implied
25 warranty of merchantability, Cal. Civ. Code § 1792 et seq., California Civil Code
26 sections 1572 (Actual Fraud-Omissions), 1573 (Constructive Fraud by Omission), 1710
27 (Deceit), along with the warranty provisions of the California Commercial Code, namely
28

1 California Commercial Code section 2314; implied warranties, and other California
2 statutory and common law, including fraudulent concealment.

3 Unfair Prong

4 47. Electrolux's failure to disclose and concealment, as well as Electrolux's unlawful
5 conduct as specified in paragraph 46, constitute unfair business practices under the
6 Unfair Competition Law, and said actions violate the policy or spirit of the law or
7 otherwise significantly threatens or harms consumers.

8 48. The unlawful, unfair, deceptive and/or fraudulent business acts and practices of
9 Electrolux, as fully described herein, present a continuing threat to members of the
10 public to be misled and/or deceived by Electrolux as alleged herein, and/or be
11 substantially injured by the Washing Machines. Pursuant to California Business and
12 Professions Code section 17203, Plaintiff and the Class seek an order of this Court
13 enjoining Electrolux from continuing to engage in unlawful, unfair, or deceptive
14 business practices and any other act prohibited by law, including those acts set forth
15 herein. Plaintiff and other members of the general public have no other remedy of law
16 that will prevent Electrolux's misconduct as alleged herein from occurring and/or
17 reoccurring in the future.

18 49. Plaintiff and the Class also seek an order requiring Electrolux to make full
19 restitution of all moneys it wrongfully obtained from Plaintiff and the Class with regard
20 to its sales of its Washing Machines. At a minimum Plaintiff and the Class are entitled to
21 the cost of repair so that the Design Defect is removed and the potential for harm is
22 eliminated.

23 50. Plaintiff suffered injury in fact by purchasing and/or paying substantially more for
24 a Washing Machine and will now be required to remedy the Design Defect, described
25 above, so as to avoid the distinct likelihood that he may suffer personal injury and/or
26 property damage as a result of such Design Defect.

SECOND CAUSE OF ACTION
(Fraudulent Concealment,
against Electrolux)

1
2
3 51.Plaintiff incorporates each and every paragraph hereinabove alleged as though it
4 were set fully forth in full here and now and to the extent necessary pleads this cause of
5 action in the alternative.

6 52.Electrolux advertised and/or marketed its Washing Machines to be safe, of good
7 quality free from defects, and that they would perform in their reasonably expected
8 operation and/or use for their full useful lives. Electrolux failed to disclose that its
9 Washing Machines contained a Design Defect, as described above, and that the Design
10 Defect posed a serious risk of personal injury. These facts were not known to Plaintiff
11 and the Class.

12 53.Alternatively, Electrolux intentionally failed to disclose the fact that its Washing
13 Machines contained a Design Defect, a fact that was only known to Electrolux, and
14 Plaintiff and the Class could not have discovered it. Plaintiff is informed and thereon
15 believes that Electrolux knew of the Design Defect from its performance of standard
16 testing prior to placing the Washing Machines into the stream of commerce. In addition
17 and/or alternatively, Plaintiff is informed and thereon believes that Electrolux knew of
18 the Design Defect due to the fact that it designed the air hose connection to the pressure
19 switch without the Design Defect. In addition and/or alternatively, Plaintiff is informed
20 and thereon believes that Electrolux knew of the Design Defect due to its receipt of
21 customer complaints and expert reports that described the Design Defect and resulting
22 harm caused by the Washing Machine's failure.

23 54.Plaintiff and the Class reasonably relied and continue to rely upon Defendants to
24 sell Washing Machines without a Design Defect that causes an unreasonable risk of
25 harm, as described above. Electrolux knew or ought to have known that Plaintiff and the
26 Class relied and/or continues to rely upon Electrolux to sell Washing Machines in which
27 the entire lifetime of the appliance could be fully used without an unreasonable risk of
28 harm.

1 55. Electrolux's knowledge that its Washing Machines contain a Design Defect
2 combined with Electrolux's knowledge that Plaintiff and the Class relied or relies upon
3 Electrolux to communicate the true state of facts relating to its Washing Machines
4 creates a legal obligation on Electrolux's part to disclose to Plaintiff and the Class these
5 facts. Electrolux is in a superior position to know the truth about, and the nature of, the
6 Washing Machines.

7 56. Electrolux intended and intends to deceive Plaintiff and the Class by failing to
8 disclose that the Washing Machines contain a Design Defect and are likely to fail in
9 advance of their reasonably expected useful life and will result in significant water
10 overflow with risk of personal injury.

11 57. Electrolux's failure to disclose the Design Defect and risk of harm was material.
12 Plaintiff and the Class would not have purchased the Washing Machines had they known
13 of the Design Defect and risk of harm, which is significant, recognizable, real, and
14 demonstrable. The Design Defect if not remedied can result in enormous property
15 damage caused by flooding, and the consequences of standing water, which indeed can
16 affect all aspects of completed construction from electrical work to the structural
17 integrity of any given home or condominium. Moreover, this same Design Defect, if not
18 remedied, can result in catastrophic personal injury, including significant orthopedic
19 injuries and head injuries, caused by falls.

20 58. Electrolux not only fraudulently concealed the fact that the Washing Machines
21 contain a Design Defect, but it provided erroneous information regarding the expected
22 lifetime of the Washing Machines. Had Plaintiff and the Class known that they were
23 purchasing only half the typical life of a Washing Machine, they would never have paid
24 the price they paid for the Washing Machines or they would have never paid for the
25 Washing Machines in the first place.

26 59. Plaintiff and the Class were harmed. As a proximate result of Electrolux's conduct
27 as set forth in this cause of action, Plaintiff and the Class will now be required to remedy
28 the Design Defect, described above, so as to avoid the distinct likelihood that they may

1 suffer personal injury and/or property damage as a result of such Design Defect. In
2 addition, Plaintiff and the Class members have suffered damages, which include, but are
3 not limited to the cost to repair the Design Defect.

4 60. Electrolux's concealment was a substantial factor in causing that harm.

5 61. The wrongful conduct of Electrolux, as alleged herein, was willful, oppressive,
6 immoral, unethical, unscrupulous, substantially injurious, malicious, and/or in conscious
7 disregard for the well being of Plaintiff and the Class along with other members of the
8 public that may be personally injured by a failure of the Washing Machines caused by
9 the Design Defect. Defendants intended to cause injury to the Plaintiff and the Class
10 placing profits over safety. Defendants engaged and continue to engage in despicable
11 conduct with a willful and conscious disregard of the rights or safety of others.
12 Defendants subjected, and continue to subject, Plaintiff and the Class to cruel and unjust
13 hardship. Accordingly, Plaintiff and Class members are entitled to an award of punitive
14 damages against Defendants in an amount to deter it from similar conduct in the future.

15 **THIRD CAUSE OF ACTION**
16 (Breach of Implied Warranty
17 against Electrolux)

18 62. Plaintiff incorporates each and every paragraph hereinabove alleged as though it
19 were set fully forth in full here and now and to the extent necessary pleads this cause of
20 action in the alternative.

21 63. Electrolux is in the business of selling Washing Machines and other home
22 appliances.

23 64. Privity exists between Plaintiff and the Class and Electrolux due to the fact that
24 Plaintiff and the Class were intended beneficiaries of the contract between the Electrolux
25 and its distributors, retailers, and/or other parties that purchased the Washing Machines
26 from Electrolux. Electrolux's distributors, retailers, and/or other parties that purchased
27 the Washing Machines from Electrolux were not intended to be the ultimate consumers
28 of the Washing Machines.

65. Electrolux impliedly warranted that the Washing Machines were reasonably safe

1 for their intended use by placing them into the stream of commerce.

2 66.The Washing Machine is not merchantable due to its Design Defect, as set forth
3 above, and is in breach of the implied warranty of merchantability and fitness for a
4 particular purpose.

5 67.The Washing Machine was not reasonably safe for its intended use when it left
6 Electrolux's control and entered the market.

7 68.The Washing Machine's Design Defect was not apparent and obvious to Plaintiff
8 and the Class. Electrolux has not validly disclaimed, excluded, or modified the implied
9 warranties and/or duties described herein, and/or any attempted disclaimer or exclusion
10 of the same was and is ineffectual.

11 69.The Design Defect was known or should have been known to Electrolux at the
12 time Plaintiff and the Class purchased their Washing Machines.

13 70.The presence of the Design Defect and Electrolux's failure to warn consumers of
14 it constitutes a breach of both implied and express warranties.

15 71.Defendants have had opportunities, as set forth above, to remedy the Design
16 Defects and have failed to do so.

17 72.As a result, Plaintiff and the Class have been damaged in an amount to be proven
18 at trial, including attorney fees and expenses. The Design Defect, if not remedied, has
19 resulted in enormous property damage caused by flooding, and the consequences of
20 standing water, which indeed can affect all aspects of completed construction, from
21 electrical work to the structural integrity of any given home or other abode. Moreover,
22 this same Design Defect, if not remedied, can result in catastrophic personal injury,
23 including significant orthopedic injuries and head injuries, caused by falls. As a
24 proximate result of Electrolux's conduct as set forth in this cause of action, Plaintiff and
25 the Class will now be required to remedy the Design Defect, described above, so as to
26 avoid the distinct likelihood that they may suffer personal injury and/or property damage
27 as a result of such Design Defect. The cost to remedy the Design Defect, which is in
28

1 effect the cost of repair, is the cost Plaintiff and the Class will incur so as to remedy the
2 Design Defect, described above.

3 **WHEREFORE**, Plaintiff, individually and on behalf of all those similarly situated,
4 respectfully requests that this Court enter judgment as follows:

- 5 1. An order certifying this case as a class action;
- 6 2. Appointment of plaintiff as the Class representative and his counsel as counsel for
7 the class;
- 8 3. For equitable relief;
- 9 4. For restitution;
- 10 5. For restitutionary disgorgement;
- 11 6. For declaratory relief;
- 12 7. For injunctive relief,
- 13 8. For compensatory damages;
- 14 9. For actual damages;
- 15 10. For consequential damages;
- 16 11. For unjust enrichment including legal restitution;
- 17 12. For pre- and post-judgment interest as allowed by law;
- 18 13. For reasonable attorneys' fees and costs of suit; and
- 19 14. For such other and further relief that this Court may deem just and proper.

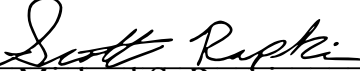
20 Dated: May 20, 2013

RINGLER & ASSOCIATES

21 By: 
22 _____
23 Jerome L. Ringler
Catherine Burke Schmidt
Attorneys for Plaintiff

24 Dated: May 20, 2013

LAW OFFICES OF MICHAEL S. RAPKIN

25 By: 
26 _____
27 Michael S. Rapkin
28 Scott B. Rapkin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

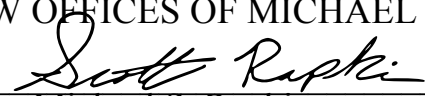
Dated: May 20, 2013

RINGLER & ASSOCIATES

By: 
Jerome L. Ringler
Catherine Burke Schmidt
Attorneys for Plaintiff

Dated: May 20, 2013

LAW OFFICES OF MICHAEL S. RAPKIN

By: 
Michael S. Rapkin
Scott B. Rapkin
Attorneys for Plaintiff

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