

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KEVIN McCABE, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

-against-

NATIONAL PRESTO INDUSTRIES, INC.,

Defendant.

1:24-cv-6552

**CLASS-ACTION
COMPLAINT**

INTRODUCTION

1. Plaintiff brings this action individually and intends to maintain it on behalf of all other persons who, during the statute-of-limitations period governing their respective claims asserted herein, purchased, through amazon.com, a “Presto Stainless-Steel Electric Coffee Percolator, 12-Cups, Black” (Stock No. 02811) (the “Coffee Percolator”) (hereinafter, Plaintiff and the other persons described in this paragraph will be referred to collectively as the “Class,” and each as a “Class Member”).

PARTIES

2. Plaintiff, Kevin McCabe (“McCabe”), is a natural person and a resident of the Eastern District of New York.

3. Defendant, National Presto Industries, Inc. (“Presto”), is a corporation organized and existing under the laws of Wisconsin, and has a principal place of business in Eau Claire, Wisconsin.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under 28 U.S.C. Section 1332(d)(2).

5. There are at least one hundred Class Members.

6. The matter in controversy exceeds the sum or value of \$5,000,000, exclusive of

interest and costs.

7. Venue is proper in this District under 28 U.S.C. Section 1391(b)(2).

8. This Court has personal jurisdiction over Presto under N.Y. C.P.L.R. Section 302(a)(1) because Presto submitted, pursuant to a contract between Presto and Amazon.com Services, Inc., or a subsidiary thereof (“Amazon”), a listing for the Coffee Percolator (the “Coffee Percolator Product Listing” or “Product Listing”), which, thereby, appeared in various formats of amazon.com and placed the Coffee Percolator on sale throughout the United States, including New York, which resulted in McCabe’s purchase, in New York, of the Coffee Percolator and therefore caused McCabe’s harm to occur in New York.

9. This Court has personal jurisdiction over Presto under N.Y. C.P.L.R. Section 302(a)(3)(i) because: (i) Presto, while outside of New York, submitted the Product Listing to Amazon, which resulted in McCabe’s purchase, in New York, of the Coffee Percolator and therefore caused McCabe’s harm to occur in New York; and (ii) Presto derives substantial revenue from goods that are used in New York.

10. This Court has personal jurisdiction over Presto under N.Y. C.P.L.R. Section 302(a)(3)(ii) because: (i) Presto, while outside of New York, submitted the Product Listing to Amazon, which resulted in McCabe’s purchase, in New York, of the Coffee Percolator and therefore caused McCabe’s harm to occur in New York; (ii) Presto expected, or should reasonably have expected, the Product Listing to have consequences in New York; and (iii) Presto derives substantial revenue from interstate and international commerce.

FACTS

11. At all relevant times, Presto has distributed the Coffee Percolator through the Product Listing.

12. On July 12, 2024, McCabe, while in this District, accessed the Product Listing on the

amazon.com desktop website (the “Desktop Version”) and thereupon purchased a Coffee Percolator.

13. Many Class Members, including many Reasonable Belief Class Members (as defined below), purchased their Coffee Percolator through the Product Listing on the amazon.com mobile website or through the Product Listing in an amazon.com smart-phone application, each of which, with respect to the allegations set forth herein, were identical to the Desktop Version.

14. The Product Listing was geared toward personal, household use of the Coffee Percolator, as reflected by the Product Listing’s hyperlinked user manual, which, in its warranty section, states: “[t]his quality Presto® appliance is designed and built to provide many years of satisfactory performance under normal household use.”

15. McCabe and the other Class Members purchased the Coffee Percolators for personal, household use.

16. The Class Members, prior to making their purchases, saw, in the Product Listing, the name of the Coffee Percolator, *i.e.*, “Presto Stainless-Steel Electric Coffee Percolator, 12-Cups, Black” (the “Coffee Percolator Title”).

17. The term “12-Cups” in the Coffee Percolator Title referred to the quantitative capacity of the Coffee Percolator.

18. Based upon the common understanding of the word “cup” with respect to quantity, *i.e.*, an eight-fluid-ounce cup (a “Standard Cup”), McCabe and at least a significant portion of the other Class Members reasonably believed, prior to and up to the point of their purchase of the Coffee Percolator, that the “Cups” in “12-Cups” (the “Coffee Percolator Cups”) were Standard Cups and that, therefore, the capacity of the Coffee Percolator (the “Coffee Percolator Capacity”) was 12 Standard Cups (these Class Members will be referred to as the “Reasonable Belief Class Members”).

19. Presto intended that the Class Members would believe that the Coffee Percolator Cups were Standard Cups.

20. Presto knew that at least a significant portion of the Class Members would be Reasonable Belief Class Members.

21. Presto knew, and intended, that the Reasonable Belief Class Members would rely upon their belief regarding the Coffee Percolator Capacity in deciding whether to purchase a Coffee Percolator.

22. Presto knew that the Reasonable Belief Class Members would, based upon their belief regarding the Coffee Percolator Capacity, be more likely to purchase a Coffee Percolator than they would have been if they had known of the actual Coffee Percolator Capacity.

23. The actual Coffee Percolator Capacity was approximately 64 fluid ounces or eight Standard Cups, which is materially less 12 Standard Cups.

24. The actual Coffee Percolator Capacity was based upon five-fluid-ounce cups per coffee-cup marking on the Coffee Percolator plus the amount of fluid that fit into the space above the 12-cup marking.

25. The Product Listing contained hyperlinks to the Coffee Percolator's "Installation Manual," "User Guide," "Instructions for Use," and "User Manual" (the "Hyperlinked Documents") (the last two of which were identical), the second page of each of which stated: "[t]he numbers indicate the quantity of cups brewed.* . . . * One cup is approximately 5 ounces brewed coffee." (hereinafter, the latter sentence will be referred to as the "Document Disclaimer").

26. The Reasonable Belief Class Members did not see the Document Disclaimer.

27. Nothing regarding the hyperlinks to, or the names of, the Hyperlinked Documents made it seem important to the Reasonable Belief Class Members to access the Hyperlinked Documents, much less search them for the Document Disclaimer; indeed, the Product Listing stated: "[p]lease refer to user guide or user manual or user guide [sic] (provided below in PDF) *before first use*" (emphasis added).

28. McCabe and the Reasonable Belief Class Members were materially misled by the term “12-Cups” in the Coffee Percolator Title.

29. If the Product Listing had conspicuously and accurately represented the Coffee Percolator Capacity, the price of the Coffee Percolator would have been less than what it actually was, and, therefore, the Class Members would have paid that lower amount.

CLASS ALLEGATIONS

30. McCabe brings this action individually, and intends to maintain this action, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), on behalf of all other persons who, during the statute-of-limitations period governing their respective claims asserted herein, purchased a Coffee Percolator through the Product Listing.

31. There are thousands of persons who are similarly situated to McCabe and would therefore be Class Members.

32. Excluded from the Class are Presto, any subsidiary or affiliate of Presto, and the directors, officers, and employees of Presto or of Presto’s subsidiaries and affiliates.

33. McCabe’s individual claims are, both factually and legally, typical of the putative claims of the other Class Members.

34. McCabe would fairly and adequately protect the interests of the other Class Members. McCabe has no interests that are antagonistic to, or in conflict with, the other Class Members. Indeed, McCabe’s interests are, for purposes of this litigation, coincident with the interests of the other Class Members.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the Class is so numerous that joinder of all Class Members is impracticable, and because the damages suffered by most of the individual Class Members are too small to render prosecution of the claims asserted herein economically feasible on an individual basis,

the expense and burden of individual litigation make it impractical for Class Members to adequately address the wrongs complained of herein. McCabe knows of no impediments to the effective management of this action as a class action.

36. Common questions of law and fact predominate over questions that affect only individual Class Members. Among these questions are:

- (i) whether the Coffee Percolator Product Listing conspicuously and accurately represented the true quantitative capacity of the Coffee Percolator;
- (ii) whether a significant portion of the Class reasonably believed that the Coffee Percolator Cups were Standard Cups and that, therefore, the Coffee Maker Capacity was 12 Standard Cups;
- (iii) whether the difference between a Coffee Percolator Capacity of 12 Standard Cups and a Coffee Percolator Capacity of approximately eight Standard Cups is material;
- (iv) whether Presto intended that the Class Members would believe that the Coffee Percolator Cups were Standard Cups;
- (v) whether Presto knew that at least a significant portion of the Class Members would believe that the Coffee Percolator Cups were Standard Cups;
- (vi) whether Presto knew, and intended, that the Reasonable Belief Class Members would rely upon their belief regarding the Coffee Percolator Capacity in deciding whether to purchase the Coffee Percolator;
- (vii) whether Presto knew that the Reasonable Belief Class Members would, based upon their belief regarding the Coffee Percolator Capacity, be more likely to purchase a Coffee Percolator than they would have been if they had known of the actual Coffee Percolator Capacity; and
- (viii) whether, if the Coffee Percolator Product Listing had not conspicuously and accurately represented the Coffee Percolator Capacity, the price of the Coffee Percolator was higher than it would otherwise have been.

[continued on next page]

CAUSES OF ACTION

37. With respect to each of the causes of action asserted below, McCabe repeats and re-alleges, and incorporates herein, each and every allegation contained in paragraphs “1” through “36” inclusive of this Complaint as if fully set forth herein.

**ALABAMA DECEPTIVE TRADE PRACTICES ACT
(Ala. Code §§ 8-19-1 - 8-19-15)**

38. Presto violated the Alabama Deceptive Trade Practices Act, Ala. Code §§ 8-19-1 - 8-19-15, with respect to those Class Members who, during the one-year period preceding the commencement of the instant lawsuit (the “Action”) and through the resolution of this Action, were in Alabama when they purchased a Coffee Percolator (the “Alabama Class Members”); specifically, Presto violated Ala. Code § 8-19-5(27).

39. The Alabama Class Members are entitled to statutory damages of \$100 pursuant to Ala. Code § 8-19-10(a)(1).

40. The Alabama Class Members are entitled to reasonable legal fees pursuant to Ala. Code § 8-19-10(a)(3).

**ALASKA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION ACT
(Alaska Stat. §§ 45.50.471 - 45.50.561)**

41. Presto violated the Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§ 45.50.471 - 45.50.561, with respect to those Class Members who, during the two-year period preceding the commencement of this Action and through the resolution of this Action, were in Alaska when they purchased a Coffee Percolator (the “Alaska Class Members”); specifically, Presto violated Alaska Stat. § 45.50.471(a) for the reasons stated in Alaska Stat. § 45.50.471(b)(11).

42. The Alaska Class Members are entitled to statutory damages of \$500 pursuant to Alaska Stat. § 45.50.531(a).

43. The Alaska Class Members are entitled to reasonable legal fees pursuant to Alaska Stat. § 45.50.537(a).

**DISTRICT OF COLUMBIA CONSUMER
PROTECTION PROCEDURES ACT
(D.C. Code §§ 28-3901 - 3913)**

44. Presto violated the District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901 - 3913, with respect to those Class Members who, during the three-year period preceding the commencement of this Action and through the resolution of this Action, were in District of Columbia when they purchased a Coffee Percolator (the “District of Columbia Class Members”); specifically, Presto violated D.C. Code §§ 28-3904(e).

45. The District of Columbia Class Members are entitled to statutory damages of \$1,500 pursuant to D.C. Code § 28-3905(k)(1)(A).

46. The District of Columbia Class Members are entitled to reasonable legal fees pursuant to D.C. Code § 28-3905(k)(1)(B).

**HAWAII UNFAIR AND DECEPTIVE ACTS OR TRADE PRACTICES ACT
(Haw. Rev. Stat. §§ 480-1 - 480-24)**

47. Presto violated Hawaii Unfair and Deceptive Acts or Trade Practices Act, Haw. Rev. Stat. §§ 480-1 - 480-24, with respect to those Class Members who, during the four-year period preceding the commencement of this Action and through the resolution of this Action, were in Hawaii when they purchased a Coffee Percolator (the “Hawaii Class Members”); specifically, Presto violated Haw. Rev. Stat. § 480-2(a).

48. The Hawaii Class Members are entitled to statutory damages of \$1,000 pursuant to Haw. Rev. Stat. § 480-13(a)(1).

49. The Hawaii Class Members are entitled to reasonable legal fees pursuant to Haw. Rev. Stat. § 480-13(a)(1).

**IDAHO CONSUMER PROTECTION ACT
(Idaho Code §§ 48-601 - 48-619)**

50. Presto violated the Idaho Consumer Protection Act, Idaho Code §§ 48-601 - 48-619, with respect to those Class Members who, during the two-year period preceding the commencement of this Action and through the resolution of this Action, were in Idaho when they purchased a Coffee Percolator (the “Idaho Class Members”); specifically, Presto violated Idaho Code 48-603(17).

51. The Idaho Class Members are entitled to statutory damages of \$1,000 pursuant to Idaho Code 48-608(1).

52. The Idaho Class Members are entitled to reasonable legal fees pursuant to Idaho Code § 48-608(5).

**MASSACHUSETTS CONSUMER PROTECTION ACT
(Mass. Gen. Laws Ch. 93A, §§ 1-11)**

53. Presto violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93a, §§ 1-11, with respect to those Class Members who, during the four-year period preceding the commencement of this Action and through the resolution of this Action, were in Massachusetts when they purchased a Coffee Percolator (the “Massachusetts Class Members”); specifically, Presto violated Mass. Gen. Laws Ch. 93A, § 2(a).

54. The Massachusetts Class Members are entitled to statutory damages of \$25 pursuant to Mass. Gen. Laws Ch. 93A, § 9(3), or, if the Court finds that Presto’s violation of Mass. Gen. Laws Ch. 93A, § 2(a) was willful or knowing, statutory damages of \$50 to \$75 pursuant to Mass. Gen. Laws Ch. 93A, § 9(3).

55. The Massachusetts Class Members are entitled to reasonable legal fees pursuant to Mass. Gen. Laws Ch. 93A, § 9(4).

[continued on next page]

NEW HAMPSHIRE CONSUMER PROTECTION ACT
(N.H. Rev. Stat. Ann. §§ 358-A:1 - 358-A:13)

56. Presto violated the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. §§ 358-A:1 - 358-A:13, with respect to those Class Members who, during the three-year period preceding the commencement of this Action and through the resolution of this Action, were in New Hampshire when they purchased a Coffee Percolator (the “New Hampshire Class Members”); specifically, Presto violated N.H. Rev. Stat. Ann. § 358-A:2.

57. The New Hampshire Class Members are entitled to statutory damages of \$1,000 pursuant to N.H. Rev. Stat. Ann. § 358-A:10(I).

58. The New Hampshire Class Members are entitled to reasonable legal fees pursuant to N.H. Rev. Stat. Ann. § 358-A:10(I).

NEW MEXICO UNFAIR PRACTICES ACT
(N.M. Stat. Ann. §§ 57-12-1- 57-12-26)

59. Presto violated the New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1-57-12-26, with respect to those Class Members who, during the four-year period preceding the commencement of this Action and through the resolution of this Action, were in New Mexico when they purchased a Coffee Percolator (the “New Mexico Class Members”); specifically, Presto violated N.M. Stat. Ann. § 57-12-3.

60. The New Mexico Class Members are entitled to statutory damages of \$100 pursuant to N.M. Stat. Ann. § 57-12-10(B).

61. The New Mexico Class Members are entitled to reasonable legal fees pursuant to N.M. Stat. Ann. § 57-12-10(C).

[continued on next page]

**NEW YORK CONSUMER PROTECTION FROM
DECEPTIVE ACTS AND PRACTICES ACT
(N.Y. Gen. Bus. Law §§ 349 - 350-f-1)**

62. Presto violated the New York Consumer Protection from Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349 - 350-f-1, with respect to those Class Members who, during the three-year period preceding the commencement of this Action and through the resolution of this Action, were in New York when they purchased a Coffee Percolator (the “New York Class Members”); specifically, Presto violated N.Y. Gen. Bus. Law §§ 349(a) and 350.

63. The New York Class Members are entitled to statutory damages of \$50 pursuant to N.Y. Gen. Bus. Law § 349(h) and statutory damages \$500 pursuant to N.Y. Gen. Bus. Law § 350-e(3).

64. The New York Class Members are entitled to seek reasonable legal fees pursuant to N.Y. Gen. Bus. Law §§ 349(h) and 350-e(3).

**OREGON UNLAWFUL TRADE PRACTICES ACT
(Ore. Rev. Stat. §§ 646.605 - 646.700)**

65. Presto violated the Oregon Unlawful Trade Practices Act, Ore. Rev. Stat. §§ 646.605 - 646.700, with respect to those Class Members who, during the one-year period preceding the commencement of this Action and through the resolution of this Action, were in Oregon when they purchased a Coffee Percolator (the “Oregon Class Members”); specifically, Presto violated Ore. Rev. Stat. § 646.608(1)(u).

66. The Oregon Class Members are entitled to statutory damages of \$200 pursuant to Ore. Rev. Stat. § 646.638(1).

67. The Oregon Class Members are entitled to reasonable legal fees pursuant to Ore. Rev. Stat. § 646.638(3).

[continued on next page]

RHODE ISLAND DECEPTIVE TRADE PRACTICES ACT
(R.I. Gen. Laws §§ 6-13.1-1 - 6-13.1-30)

68. Presto violated the Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws §§ 6-13.1-1 - 6-13.1-30, with respect to those Class Members who, during the three-year period preceding the commencement of this Action and through the resolution of this Action, were in Rhode Island when they purchased a Coffee Percolator (the “Rhode Island Class Members”); specifically, Presto violated R.I. Gen. Laws § 6-13.1-2.

69. The Rhode Island Class Members are entitled to statutory damages of \$200 pursuant to R.I. Gen. Laws § 6-13.1-5(2)(a).

70. The Rhode Island Class Members are entitled to seek reasonable legal fees pursuant to R.I. Gen. Laws § 6-13.1-5.2(d).

UTAH CONSUMER SALES PRACTICES ACT
(Utah Code Ann. §§ 13-11-1 - 13-11-23)

71. Presto violated the Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1 - 13-11-23, with respect to those Class Members who, during the two-year period preceding the commencement of this Action and through the resolution of this Action, were in Utah when they purchased a Coffee Percolator (the “Utah Class Members”); specifically, Presto violated Utah Code Ann. §§ 13-11-4(1).

72. The Utah Class Members are entitled to statutory damages of \$2,000 pursuant to Utah Code Ann. § 13-11-19(2).

73. The Utah Class Members are entitled to reasonable legal fees pursuant to Utah Code Ann. § 13-11-19(5)(b).

[continued on next page]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a judgment against Defendant:

- (a) Awarding, to Plaintiff and the other Class Members, the relief available under the Class Members' respective causes of action set forth herein; and
- (b) Awarding, to Plaintiff and the other Class Members, such other and further relief as the Court finds lawful and proper.

Dated: September 18, 2024

Respectfully submitted,

s/ **Todd C. Bank**
TODD C. BANK,
ATTORNEY AT LAW, P.C.
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
(718) 520-7125
By Todd C. Bank

Counsel to Plaintiff