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12 *Attorneys for Plaintiffs*
JAMES BODLEY AND KYLE MATSON

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 JAMES BODLEY AND KYLE MATSON, on
behalf of themselves and all others similarly
17 situated,

18 Plaintiff,

19 v.

20 WHIRLPOOL CORPORATION and DOES 1
through 10, inclusive,

21 Defendants.
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CASE NO. 3:17-cv-05436-JST
FIRST AMENDED COMPLAINT
FOR DAMAGES
CLASS ACTION
JURY TRIAL DEMANDED

BIRKA-WHITE
LAW OFFICES

1 Plaintiffs James Bodley and Kyle Matson (“Plaintiffs”), on behalf of themselves and all
2 others similarly situated, allege as follows:

3 I. INTRODUCTION

4 1. This case arises out of the manufacture and sale of KitchenAid brand dishwashers
5 designed, manufactured and sold by Defendant Whirlpool Corporation (“Defendant” or
6 “Whirlpool”) which are equipped with a defective upper rack assembly depicted in Exhibit A
7 hereto, including but not limited to part numbers W10350375 and W10350376.

8 2. Defendant designed, manufactured, distributed and sold the dishwashers, including
9 but not limited to model KUDS30FXSS5, from approximately 2011 to at least 2016, according to
10 proof, to Plaintiffs and the Class.

11 3. At the time of sale, the dishwashers contained a defect in the upper rack assembly.
12 The upper rack assemblies in the dishwashers are defective and fail as the heat generated by the
13 dishwasher causes the plastic components to become brittle and break, which in turn causes the top
14 rack to suddenly and unexpectedly collapse.

15 4. The failure of the upper rack assembly results in property damage and creates an
16 unreasonable risk of personal injury because the upper rack assembly fails without warning causing
17 dishware and glassware to shatter and break.

18 5. The dishwasher will not operate without a functional upper rack assembly.
19 Moreover, the component part cannot be repaired and must be replaced, an expense Whirlpool
20 refuses to pay and must be incurred by Plaintiffs and the Class as alleged herein.

21 6. Defendant has known that the upper rack assembly was defective and not fit for
22 their intended purpose as alleged herein since shortly after they were first sold, at least 2011.
23 Nevertheless, Defendant actively concealed and failed to disclose the defect to Plaintiffs and the
24 Class at the time of purchase continued selling the dishwashers containing the defective upper rack
25 assembly. On information and belief, Whirlpool continued selling the dishwashers containing the
26 defective upper rack assembly until approximately 2016, according to proof.

27 7. Defendant had a duty to disclose the defect in the dishwashers to all prospective
28 purchasers particularly because of the unreasonable risk of serious physical injury posed by the

1 defect in the upper rack assembly. Had Plaintiffs and the Class been aware of the defect, they
2 would not have purchased a KitchenAid dishwasher but instead would have purchased a
3 dishwasher manufactured by others.

4 8. Despite having notice of the defect, Defendant has not recalled the dishwashers to
5 repair the defect and when asked, has refused to pay for the parts and labor associated with
6 removing and replacing the defective rack assembly.

7 9. As a result of the defect in the dishwashers, Plaintiffs and members of the Class
8 have suffered actual damages.

9 10. Plaintiffs seek recovery on behalf of themselves and all persons who purchased the
10 dishwashers or properties in which the dishwashers were installed (the “Class”) for breach of
11 express and implied warranties, fraudulent concealment, and for violation of the provisions of the
12 California consumer protection and unfair business practice statutes.

13 II. PARTIES

14 11. Plaintiff James Bodley (“Bodley”) is a resident of Dublin, California, County of
15 Alameda. On or about November 6, 2012, Bodley became the first purchaser of a newly
16 constructed home in which a KitchenAid dishwasher bearing model number KUDS30FXSS5 was
17 installed.

18 12. Plaintiff Kyle Matson (“Maston”) is a resident of Martinez, California, County of
19 Contra Costa. On or about November 22, 2013, Matson purchased a home in which a KitchenAid
20 dishwasher bearing model number KUDS30FXSS5 was installed.

21 13. Defendant Whirlpool Corporation is a Delaware corporation with its principal place
22 of business in Benton Harbor, Michigan. Whirlpool is the number one major appliance
23 manufacturer in the world. Whirlpool sells appliances to its trade customers under a variety of
24 brand names for re-sale to consumers including, but not limited to, Kenmore, KitchenAid and
25 Whirlpool. At all times relevant herein, Whirlpool distributed, advertised, marketed, manufactured,
26 warranted, and sold KitchenAid dishwashers equipped with a defective upper rack assembly.

27 14. Plaintiff is informed and believed and thereupon alleges that Whirlpool has engaged
28 in substantial business within California over the past two decades, including specifically the sale

1 of the dishwashers in question. Whirlpool has distribution centers and sales offices within
2 California. Plaintiff further is informed and believed that the volume of sales by Whirlpool in
3 California exceeds any other state within the United States and that the application of California
4 law would be appropriate. Plaintiff further alleges that a choice of law decision at the pleading
5 stage is premature prior to discovery and a development of the factual record.

6 15. Plaintiffs are unaware of the true names and capacities of the Defendants sued
7 herein as DOES 1 through 10, and therefore sue these Defendants by such fictitious names.
8 Plaintiffs will amend this complaint to allege their true names and capacities when they are
9 ascertained. Plaintiffs are informed and believe that each of the fictitiously named Defendants is
10 responsible in some manner for the occurrences herein alleged and that the damages suffered by
11 Plaintiffs and the class, were proximately caused by their conduct.

12 16. Plaintiffs are informed and believe that all Defendants, including the fictitious Doe
13 Defendants 1 through 10, were at all relevant times acting as actual or ostensible agents,
14 conspirators, partners, joint venturers or employees of all other Defendants and that all acts alleged
15 herein occurred within the course and scope of that agency, employment, partnership, or enterprise,
16 and with the express or implied permission, knowledge, consent, authorization and ratification of
17 their co-Defendants.

18 **III. JURISDICTION AND VENUE**

19 17. This Court has jurisdiction over this action pursuant to the Class Action Fairness
20 Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are at least 100 class
21 members in the proposed class; (2) the combined claims of the proposed class members exceed
22 \$5,000,000 exclusive of interests and costs; and (3) there is minimal diversity as Plaintiffs and
23 certain members of the proposed class are citizens of California and Defendant is a citizen of other
24 states including Delaware and Michigan.

25 18. This Court has personal jurisdiction over Defendant because Defendant purposefully
26 availed itself of the privilege of conducting business activities within the State of California by
27 advertising, selling, and warranting the dishwashers to Plaintiffs and the proposed class, and
28 maintained systematic and continuous business contacts with the State of California, to render the

1 exercise of jurisdiction by this Court permissible under traditional notions of fair play and
2 substantial justice.

3 19. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(a)(2) because a
4 substantial part of the events, misrepresentations and/or omissions giving rise to Plaintiffs' claims
5 alleged herein occurred in the Northern District when Defendant advertised, sold, marketed, and/or
6 warranted the dishwashers to Plaintiffs and the proposed class.

7 IV. INTRADISTRICT ASSIGNMENT

8 20. Venue in this Division of the Northern District is proper under Local Rule 3-2(c)
9 and (d) because a substantial part of the events or omissions which give rise to Plaintiffs' claims
10 occurred in Alameda County and Contra Costa County and the dishwashers that are the subject of
11 this action are located in Alameda and Contra Costa counties.

12 V. FACTUAL ALLEGATIONS

13 A. The Latent Defect in the Dishwashers

14 21. The dishwashers designed, manufactured, marketed, and sold by Defendant contain
15 defective rack assemblies that fail and cause the dishwasher to be substantially inoperable.

16 22. The dishwashers utilize plastic parts in the top rack slide mechanism. These parts
17 prematurely fail without warning because the plastic hooks that retain the wheel to the rack break.
18 Once these hooks break, it allows the wheel to detach from the wheel hub causing the rack to fall.
19 The loaded top rack falls onto the open door or lower rack, causing dishware and glassware to
20 shatter and break, which in turn causes property damage and exposing consumers to an
21 unreasonable risk of personal injury. The design of the rack assembly cannot withstand normal or
22 intended use.

23 23. Owners of the dishwashers cannot and do not cause the rack assembly failures nor
24 can they prevent them.

25 24. Because of the defect in the rack assemblies, all KitchenAid dishwashers relevant to
26 this litigation have upper rack assemblies that have failed or will fail before the end of their
27 expected useful life.

28 25. The defect in the dishwasher is latent and not discoverable until the upper rack

1 assembly fails, at which point the dishwasher is no longer operable and remains substantially
2 inoperable until the defective rack assembly is replaced.

3 26. Plaintiff is informed and believes that the dishwashers were manufactured and sold
4 between 2011 to the present and 2016, according to proof.

5 27. Notwithstanding their knowledge of the defect as alleged herein, Defendant
6 continued the sale of the dishwashers without disclosing the defect or safety risk to consumers. Had
7 Defendant disclosed the known facts Plaintiffs and the proposed Class would not have purchased
8 the dishwashers or would have requested that they be replaced in homes purchased by Plaintiffs
9 and the Class.

10 28. Plaintiffs were not aware of the defect in their dishwashers until the upper rack
11 assemblies suddenly and unexpectedly failed.

12 B. Cost and Installation of Repair Assembly

13 29. When the upper rack assembly fails, Plaintiffs and members of the Class are
14 required to purchase replacement rack assemblies at a cost of \$35 plus labor costs associated with
15 installation of the rack assemblies of approximately \$100-\$150.

16 30. Defendant could have avoided damaging Plaintiffs and the proposed Class by
17 disclosing the nature of the defect and paying for the replacement of the defective rack assembly
18 with a redesigned rack assembly. Defendant continues to refuse to do so as alleged herein.

19 31. As a result of the Defect, Plaintiffs and the putative class have experienced, or are
20 substantially certain to experience, premature failure of their dishwashers and have incurred
21 damages as alleged herein.

22 C. Defendant's Knowledge and Suppression of the Defect

23 Plaintiffs are informed and believe that:

24 32. As early as 2011, numerous customers reported failures of the dishwashers to
25 Defendant through its KitchenAid Customer Service Center. Failures were also reported to
26 Defendant's distributors and retailers, who in turn reported them to Defendant.

27 33. Between 2011 and 2016, the reports of failures went to Defendant's engineers who
28 inspected, researched, analyzed, tested and prepared reports concluding that the upper rack

1 assembly was defective and unfit for its intended purpose.

2 34. Defendant's engineers opined that the design was inadequate and there was no way
3 to repair the defect.

4 35. The engineers recommended that the upper rack assembly be replaced with a new
5 design. During or about 2016, according to proof, the defective plastic upper rack assembly was
6 abandoned and replaced with a stainless-steel design.¹

7 36. Although Defendant knew that the latent defect in the upper rack assembly posed an
8 unreasonable safety risk and rendered the dishwasher unmerchantable, Whirlpool did not disclose
9 the defect to its distributors, sellers, or others in the chain of distribution, including the end user.
10 Instead, Whirlpool actively concealed the defect and continued to sell the dishwashers.

11 37. At all times relevant hereto, Defendant was under a continuous duty to disclose to
12 distributors, sellers, installers and end users: (1) the defect in the upper rack assembly, (2) the
13 safety issues related thereto, including the risk of property damage and physical injury; and (3) the
14 existence of numerous reports of the failures of the upper rack assembly, including reports of
15 property damage.

16 38. Whirlpool had this duty because the facts it failed to disclose: (1) are contrary to
17 representations made by Defendant that the dishwashers were manufactured with the highest
18 quality, provided premium performance, were dependable and reliable; (2) relate to a safety issue;
19 (3) were material facts in the exclusive knowledge of Whirlpool; and (4) were material and actively
20 concealed by Whirlpool; and (5) constituted information omitted from statements made by
21 Whirlpool concerning the safety and reliability of the dishwashers.

22 39. Whirlpool continues to deny that there is a defect thereby actively concealing and
23 denying the defect, notwithstanding the fact that it abandoned the use of the defective plastic rack
24
25

26 ¹ For a period of time, Whirlpool continued to sell the same part known to be defective to members
27 of the Class. The replacement rack assemblies were offered for sale by Whirlpool online and at
28 retail stores.

1 assembly and replaced it with a metal assembly.²

2 D. Defendant's Misrepresentations and Omissions Concerning the
3 Dishwashers

4 40. Defendant issued a written warranty (the "Warranty") for the KitchenAid
5 dishwasher.

6 41. The Warranty provides that: "For one year from the date of purchase, when this
7 major appliance is operated and maintained according to instructions attached to or furnished with
8 the product, KitchenAid brand of Whirlpool Corporation or Whirlpool Canada LP (hereafter
9 "KitchenAid") *will pay for factory specified parts and repair labor to correct defects in materials*
10 and workmanship that existed when this major appliance was purchased." (Emphasis added.) A
11 copy of the Warranty is attached hereto as Exhibit B.

12 42. The Warranty further provides, "In the second through fifth year from the date of
13 purchase, when this major appliance is operated and maintained according to instructions attached
14 to or furnished with the product, KitchenAid *will pay for factory specified parts for the following*
15 *components to correct defects in materials* or workmanship that existed when this major appliance
16 was purchased: nylon dish racks and electrical controls." (Emphasis added.)

17 43. The Warranty can be found on the KitchenAid website and in the User Manual for
18 the dishwasher. Both documents have been displayed on the KitchenAid and Sears websites from
19 approximately 2011 to the present.

20 44. Plaintiffs have provided Defendant with notice of breach of the Warranty and a
21 reasonable opportunity to cure the breach. *See* Exhibit C attached hereto. Defendant has failed to
22 remedy the breach of its obligations to Plaintiffs and the proposed Class under the Warranty.

23 45. The Warranty purports to limit the rights and remedies of purchasers of the
24 dishwashers as follows:

25
26 ² *See Burch v. Whirlpool Corporation*, U.S. District Court, Western District of Michigan, Case No.
27 1:17-cv-00018, *Defendant Whirlpool Corporation's Answer to Plaintiff's Amended Class Action*
28 *Complaint*, Docket No. 23, ¶¶ 3, 15, 16 (Whirlpool denies that its dishwashers are defective, that its
dishwashers contained defective rack adjusters, or the existence of any defect.)

- 1 a. Defendant purports to disclaim any implied warranties, including the
2 warranties of merchantability and fitness for a particular use;
- 3 b. Defendant purports to disclaim responsibility for any “incidental,
4 consequential damages” arising from the use or loss of use of or failure of
5 the dishwasher to perform as warranted; and
- 6 c. The Warranty purports to provide that, “YOUR SOLE AND EXCLUSIVE
7 REMEDY UNDER THIS LIMITED WARRANTY SHALL BE PRODUCT
8 REPAIR AS PROVIDED HEREIN.”

9 46. Each of these purported limitations and exclusions (the “Warranty Exclusions”) is
10 unenforceable against Plaintiffs and the Class. The Warranty Exclusions were not bargained for by
11 Defendant and its customers but were imposed unilaterally by Defendant. The Warranty Exclusions
12 are unfair in that they are outside the reasonable expectations of the parties thereto, deny consumers
13 an effective remedy and purport to limit the rights of consumers in ways that are unenforceable
14 under relevant state and federal law including, without limitation, the Song-Beverly Consumer
15 Warranty Act and Magnuson-Moss Warranty Act.

16 47. The unfairness of these limitations in remedy are reinforced by unenforceable
17 provisions of the Warranty stating that it is the “sole” and “exclusive remedy” for breach of
18 warranty or for manufacturing or design defects and the purported exclusion of implied warranties.
19 In fact, Plaintiffs and the proposed Class have substantial rights and remedies available to them
20 both for breach of implied and express warranty and for redress arising from the defective nature of
21 the dishwashers which Defendant cannot lawfully preclude them from asserting.

22 48. The provisions described in Paragraph 45 above, both individually and in
23 combination, if enforced as Whirlpool unlawfully asserts, would deprive Plaintiffs and the Class of
24 any effective remedy for breach of Defendant’s obligations to them.

25 49. In addition to the representations contained in the Warranty, Defendant engaged in a
26 marketing campaign for their “premium” dishwashers which are manufactured using “the highest
27 quality standards.” During the relevant time period, the KitchenAid website asserted that: (1) “All
28 large KitchenAid® appliances come with outstanding warranties that back up the premium quality

1 of our appliances;” and (2) “You chose quality and dependability when you chose a KitchenAid
2 brand appliance.” Whirlpool markets its KitchenAid products as high-performance appliances.
3 Defendant knew by at least 2011 that there was a defect in the upper rack assembly that would
4 cause the dishwashers to fail prematurely.

5 50. The representations and warranties made by Defendant concerning the dishwashers
6 were false because the upper rack assemblies are defective and prematurely fail due to a defect in
7 the plastic components. The defect causes the upper rack assembly to collapse, creating a serious
8 risk of physical injury and property damage. The defect also renders the dishwashers substantially
9 inoperable until the defective rack assembly is replaced with the redesigned metal assembly.
10 Further, members of the Class have stated that Defendant has represented that the defective rack
11 assembly is not covered under the terms of the Warranty.

12 51. Complaints submitted online to www.consumeraffairs.com by members of the Class
13 demonstrates that Defendant is refusing to warranty the defective upper rack assembly.

14 On August 4, 2014, John H. of Cincinnati, OH wrote:

15 We have owned a KitchenAid Dishwasher, Model KUDS35FXSS8 for
16 16 months. The wheels on the upper dish rack have already come off,
17 rendering it unusable. This happened because the plastic tabs that hold the
18 wheels in place have become brittle and cracked off in this short time. Kitchen
19 Aid’s warranty states that the dish rack is warranted for 5 years. However,
20 Kitchen Aid customer service tells us that the wheel assembly on the dish
21 rack is not covered by this warranty. Wheel assembly W10350376 is poorly
22 designed and quickly fails. Do not buy a Kitchen Aid or Whirlpool dishwasher
23 that uses this wheel assembly.

24 On June 11, 2013, Jerri of Valley Park, MO wrote:

25 The Plastic wheels on my \$800 KitchenAid dishwasher Model KUDS30IX
26 failed after a little over a year. My manual states that the rack is under warranty
27 for 5 years... KitchenAid says the warranty only applies to the nylon coating
28 on the rack, not the wheels. They gave me a one-time replacement part that
failed again after 6 months.

Additional complaints submitted to the third-party website as well as the KitchenAid website are
attached hereto as Exhibit D.

52. Defendant was obligated to disclose that: (1) the upper rack assemblies in the
dishwasher have failed; (2) the only effective remedy for the defect is to replace the upper rack
assembly with a non-defective replacement part or replace the dishwasher, which Whirlpool now

1 concedes; and (3) the rack assembly is purportedly not covered under the five-year warranty.

2 53. Defendant was obligated to disclose these facts to Plaintiffs and the Class because:
3 (1) the defect in the dishwashers poses an unreasonable safety risk due to its sudden collapse which
4 results in broken dishware and glassware; (2) disclosure was necessary to qualify affirmative
5 representations made concerning the dishwashers in order to make such representations non-
6 misleading; and (3) Defendant was uniquely in possession of the facts it did not disclose, knew that
7 such facts were not available to Plaintiffs and the Class and knew that such facts would be highly
8 material to any prospective purchaser or owner of a dishwasher.

9 54. Instead of disclosing these facts, since at least 2011 Whirlpool has engaged in a
10 practice of deceptive material misrepresentations and omissions in connection with the marketing,
11 advertising, and sale of the dishwashers. Had Whirlpool disclosed the known history of upper rack
12 failures and the risks and consequences of such failures, including the risk of serious laceration
13 injuries due to broken glassware and dishware upon failure, Plaintiffs and the Class would not have
14 purchased any dishwashers containing the defective upper rack assembly and would have
15 purchased an alternative dishwasher from another manufacturer.

16 55. Defendant knew or should have known with testing that the upper rack assembly
17 was defective and would fail prematurely.

18 56. Further, Defendant had actual knowledge of the defect in the upper rack assembly
19 based upon calls to their warranty department, consumer complaints concerning the defect that
20 were posted on the KitchenAid website as well as third party websites, and the. The large volume
21 of orders for a replacement upper rack assembly through Whirlpool and its distributors also reflects
22 Defendant's knowledge of the defect.

23 E. Reasonable Interpretation of Warranty Language

24 57. Whirlpool devised a warranty that employed language that would lead a normal
25 consumer to believe that all defects in materials and workmanship are covered for one year; and the
26 upper rack assembly, which is integrated into the upper rack, is covered for up to five years.

27 58. The Magnuson-Moss Act requires that when a written warranty is provided, the
28 warrant shall "fully and conspicuously disclose in simple and readily understood language the

1 terms and conditions of such warranty.” 15 U.S.C. Code § 2302(a). Such full and conspicuous
2 disclosure “may require inclusion in the written warranty of (5) [e]xceptions and exclusions from
3 the terms of the warranty.”

4 59. Federal regulations enacted pursuant to the provisions of the Magnuson-Moss Act
5 require that a Defendant “shall clearly and conspicuously disclose in a single document in simple
6 and readily understood language, the following items of information:...(2) A clear description and
7 identification of products, or parts, or characteristics, or components or properties covered by *and*
8 *where necessary for clarification, excluded from the warranty.*” 16 CFR Section 701.3 (emphasis
9 added).

10 60. The Song-Beverly Act require that express warranties be set forth “in simple and
11 readily understood language” and “shall conform to the federal standards for disclosure of warranty
12 terms and conditions” set forth in the Magnuson-Moss Act and federal regulations. Civil Code
13 § 1793.1(a).

14 61. The written warranty at issue in this case is on a standard pre-printed form drafted
15 by Defendant. The written warranty was provided on a take it or leave it basis. Neither Plaintiffs
16 nor class members participated in the drafting of the written warranty or had an opportunity to
17 negotiate the specific terms of the written warranty. The written warranty is a contract of adhesion
18 that should be construed against Defendant.

19 62. The express written warranty in this case provides, *inter alia*, that “defects in
20 materials” are covered by the warranty.

21 63. It is not be readily understood by the average consumer that a written warranty that
22 expressly asserts that it covers “defects in materials” would purportedly not provide coverage for
23 defects that occurred because the materials selected were not suitable for their intended purpose in
24 the dishwasher. If Defendant intended to exclude from the warranty coverage for materials
25 selected that were not suitable for their intended purpose, Defendant was under an affirmative
26 obligation to state this exclusion in readily understood language in its written warranty - a simple
27 task. It did not do so because it intended to deceive the purchasers of its product, according to
28 proof.

1 64. The written warranty also expressly provides that “nylon dish racks” are covered by
2 the warranty through the fifth year after the date of purchase. The average consumer would quite
3 appropriately be led to believe that coverage of the nylon dish racks would include all components
4 integrated into the dish racks and necessary for the dish racks to function properly. The written
5 warranty does not define “nylon dish racks” and does not state that the warranty allegedly does not
6 cover the wheels that are integrated into the rack and which are required to allow the rack to
7 function. Unknown to the purchaser, the rack assembly can only be deconstructed from the upper
8 rack with professional assistance or by someone who happens to possess a professional level of
9 maintenance proficiency. If Defendant intended to exclude discreet components integrated into the
10 dish racks, from the warranty coverage, it could have easily done so. Defendant was under an
11 affirmative obligation to state this exclusion in readily understood language in its written warranty.
12 It did not do so.

13 65. Under “Items Excluded from Warranty”, the written warranty specifically sets forth
14 several exclusions. It does not state that “design defects” are excluded. It does not state that the
15 wheel assembly integrated into the dish racks are excluded. It does not state that the suitability of
16 the materials for their intended use is excluded. If Defendant intended to exclude any of the
17 foregoing from the warranty coverage, Defendant was under an affirmative obligation to state this
18 exclusion in readily understood language in its written warranty. Again, Whirlpool chose not to
19 do so.

20 66. The written warranty does not state in readily understood language that “materials
21 and workmanship” allegedly only provides coverage for “manufacturing defects,” and cannot now
22 belatedly be unfairly and unlawfully enforced against its purchasers.

23 F. Reliance by Consumers on Representations and Omissions Made
24 by Defendant to the Distribution Chain and End Users

25 67. Almost all purchasers of dishwashers rely on builders, contractors, major appliance
26 dealers and others (collectively, “Advisors”) to advise them concerning the advantages and
27 disadvantages of purchasing a particular type and brand of dishwasher.
28

1 68. Whirlpool knows Advisors will recommend the KitchenAid dishwashers only if
2 they are convinced it is reliable and safe. Whirlpool's advertising campaign convinced Advisors
3 that the dishwashers were of manufactured using the highest quality standards, were dependable,
4 and come with outstanding warranties as alleged in paragraph 49 herein. As alleged herein,
5 Whirlpool was aware that the dishwashers were not of the highest quality, safe or reliable.

6 69. Whirlpool intended that all statements it made concerning the premium quality and
7 reliability of the product as well as the terms of the product warranty, would be communicated
8 down the distribution chain from Advisors to consumers. The Advisors are professionals who, as a
9 matter of ordinary professional practice, reply on representations made to them by Whirlpool
10 regarding the products they recommend and the terms of the warranties for such products. The
11 Advisors convey those representations to members of the Class.

12 70. In or about May 2010, Whirlpool entered into an agreement to supply appliances to
13 a large number of home builders, including Toll Brothers, the builder of Plaintiff Bodley's home.³
14 Whirlpool provides marketing materials and training to the these "Trade Partners" in order to
15 convey information regarding the quality, dependability, and reliability of the product to end users
16 like Plaintiff Bodley and members of the Class.

17 71. Whirlpool's material omissions persuaded Advisors to promote their sale to end-
18 users like Plaintiffs and the Class. This reliance pervaded all transactions throughout the period
19 relating to the KitchenAid dishwashers containing the defective upper racks.

20 72. If the Advisors had been aware of either (1) the falsity of Whirlpool's
21 representations concerning the quality and reliability of the dishwashers or (2) that the dishwashers
22 had failed causing property damage and creating an unreasonable safety risk, the Advisors would
23 have recommended that Plaintiff Bodley and the Class not purchase the KitchenAid dishwashers.⁴

24 _____
25 ³ See, http://www.builderonline.com/products/appliances/whirlpool-gains-big-builder-business_o.

26 ⁴ Plaintiffs are not required to plead that the advisors who were exposed to the misrepresentations
27 or omissions repeated them to Plaintiffs. *E.g., Thrifty-Tel, Inc. v. Bezenek*, 46 Cal.App.4th 1559
28 (1996); *see also City of Industry v. City of Fillmore*, 198 Cal.App.4th 191 (2011).

1 73. If the Advisors had recommended against purchasing the dishwashers, Plaintiff
2 Bodley and the Class would not have purchased them. The reliance by Plaintiff Bodley and the
3 Class on the Advisors was reasonable because the Advisors are in the business of advising
4 consumers concerning the purchase of major appliances.

5 G. Defendant's Breach of the Implied Warranty of Merchantability

6 74. "[E]very sale of consumer goods that are sold at retail in this state shall be
7 accompanied by the manufacturer's and the retail seller's implied warranty that the goods are
8 merchantable." Civ. Code § 1792. This statutory warranty does not require vertical privity between
9 the plaintiff and the manufacturer or seller.⁵ The Legislature intended that Plaintiffs and the Class
10 could enforce Whirlpool's implied warranty of merchantability whether or not they were in privity
11 with Whirlpool.

12 75. Defendant does not sell directly to end users. Defendant knew and intended that the
13 dishwashers would be purchased by builders, developers, and individual owners from distributors
14 and/or retailers for installation in properties throughout California.

15 76. The dishwashers are sold to end users through distributors and retailers like Sears
16 Roebuck & Co. ("Sears"), The Home Depot, and Lowes. In certain instances, the dishwashers
17 were sold to initial purchasers who were builders and developers for installation in newly built
18 homes ("Initial Buyers"). The dishwashers purchased by Initial Buyers were ultimately installed in
19 properties owned by Plaintiffs and other members of the Class.

20 77. Defendant represented to Initial Buyers and members of the Class that the
21 KitchenAid dishwashers were top of the line appliances that came with outstanding warranties for
22 the premium quality appliance as alleged in Paragraph 49 above. Plaintiff Bodley and members of
23 the Class paid a premium price for the KitchenAid dishwasher based upon the representations and
24 warranty as alleged herein.

25
26
27 ⁵ *E.g., Keegan v. American Honda Motor Co., Inc.*, 838 F.Supp.2d 929, 946-47 (C.D. Cal. 2012).

28

1 customers. Had Plaintiffs and the Class been aware of the defect, they would not have been
2 damaged as alleged herein.

3 83. Plaintiffs and members of the Class do not know the dishwasher is defective until
4 the upper rack assembly collapses and breaks. This fact, combined with Defendant's refusal to
5 provide reasonable and adequate notice to members of the Class regarding the safety-related
6 defects in the dishwashers severely compromises the rights of class members to be apprised of the
7 latent defect and related safety risk in order to make legitimate claims against Defendant. This
8 unfair, unlawful and fraudulent practice by Defendant has required members of the Class to incur
9 out of pocket costs for the materials and labor to replace the defective rack assembly or placed class
10 members at risk to do so.

11 VI. PLAINTIFF'S INDIVIDUAL ALLEGATIONS

12 A. Plaintiff James Bodley

13 84. Plaintiff James Bodley purchased a brand-new luxury home in November 2012 built
14 by Toll Brothers. Toll Brothers has an established reputation as a luxury home builder who installs
15 high-quality brand name products. Whirlpool Corporation is a "vendor partner" of Toll Brothers.

16 85. As part of their home purchase, Mr. Bodley and his wife went to the Toll Brothers
17 Design Center to meet with a design specialist to select additional amenities and finishes for
18 installation in their new home including, but not limited to, kitchen appliances, flooring, and
19 bathroom fixtures. The Bodleys spent approximately four hours meeting with the design specialist
20 who discussed and reviewed their options with them. They were not shown actual appliances.
21 Instead, Mr. Bodley and his wife relied on the representations and warranties made by the design
22 specialist who told them the KitchenAid appliances were top of the line, of good quality, reliable
23 and superior to the alternative brand. After meeting with the design specialist, Mr. Bodley was left
24 with the impression that KitchenAid provided the highest quality appliances with the highest
25 warranties. Based on these representations and warranties, Mr. Bodley purchased the KitchenAid
26 package from Toll Brothers which included a stainless-steel KitchenAid dishwasher, Model No.
27 KUDS30FXSS5, stove and microwave. Mr. Bodley paid substantially more for his KitchenAid
28 dishwasher compared to the alternative brand offered by Toll Brothers.

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1 86. The upper rack assembly in Mr. Bodley’s dishwasher failed on or about
2 April 11, 2017, as he was pulling out the top rack to load dishes. Attached hereto as Exhibit E are
3 photographs of the failed rack assembly. Mr. Bodley purchased a replacement upper rack assembly
4 to repair his dishwasher online from Sears. When the replacement parts arrived, he found the
5 installation instructions to be too difficult to follow. Accordingly, Mr. Bodley paid a Sears
6 technician to install the replacement parts. It took the Sears technician approximately one hour to
7 install the replacement parts. Mr. Bodley paid approximately \$120 for the materials and labor to
8 repair his dishwasher. Mr. Bodley was without a fully functioning dishwasher for several weeks
9 until the dishwasher was repaired.

10 87. Upon purchasing his home, Mr. Bodley received an instruction manual for his
11 KitchenAid dishwasher which included a copy of the KitchenAid warranty. A copy of the
12 warranty Mr. Bodley received is attached hereto as Exhibit B. Mr. Bodley relied on the
13 representations and warranties stated in Paragraphs 41-42 and 85. Were it not for these
14 representations and warranties, Mr. Bodley would not have purchased the KitchenAid dishwasher.
15 Had Defendant informed Toll Brothers of the defect with the upper rack assembly and attendant
16 safety risk, the design specialist would not have recommended that Mr. Bodley purchase the
17 KitchenAid dishwasher for installation in his new home and Mr. Bodley would have purchased an
18 alternative dishwasher. Further, Mr. Bodley recommended the KitchenAid dishwasher to his
19 daughter whose upper rack assembly also failed.

20 88. On June 12, 2017, Mr. Bodley’s counsel provided Defendant with notice of its
21 breach of warranty and CLRA violations and demanded that Defendant (1) pay all costs to
22 investigate, repair, and replace all of the defective upper assembly rack systems utilized in
23 dishwashers owned by Plaintiffs and members of the Class; and (2) provide notice to consumers of
24 the defect. A copy of the notice is attached hereto as Exhibit C.

25 89. Defendant failed to provide or offer to provide remedies for its breach of warranty
26 and CLRA violations.

27 ///

28 ///

1 B. Plaintiff Kyle Matson

2 90. Plaintiff Kyle Matson purchased a home in late November 2013 which was
3 equipped with a KitchenAid dishwasher, Model No. KUDS30FXSS5. The home was built in
4 November 2012 and purchased by the original owner on or about November 1, 2012. Had
5 Ms. Matson been aware of the defects with the dishwasher she would have sought an adjustment of
6 the purchase price to account for the replacement of the defective dishwasher.

7 91. The upper rack assembly in Ms. Matson's dishwasher failed in or about June or July
8 2016 as she was loading the top rack with dishes. She placed a rectangular size glass Pyrex dish
9 onto the top rack and continued loading. Without warning, the right side of the upper rack suddenly
10 failed sending the glass dish crashing down onto the stainless-steel dishwasher door. The glass dish
11 shattered into dozens of pieces and sent shards of glass not only onto the lower rack of the
12 dishwasher but onto the kitchen floor and countertop. The force of the impact turned the shattered
13 glass into small projectiles which scratched the inside of the dishwasher as well as the wall of the
14 kitchen island directly in front of the dishwasher. The impact of the glass against the kitchen island
15 was so great that it scratched and chipped the custom blue paint on the island. It was necessary for
16 Ms. Matson to spend a considerable amount of time picking up the shattered glass from inside the
17 dishwasher and the many pieces of glass that had scattered over the kitchen floor.

18 92. Ms. Matson purchased replacement parts online from Sears at a cost of
19 approximately \$50.00. For several weeks Ms. Matson's dishwasher was substantially inoperable
20 while she waited for the replacement parts to arrive. When the replacement parts did arrive,
21 Ms. Matson and her husband found the replacement instructions to be too difficult to follow. She
22 paid a repairman \$100.00 to install the replacement parts. Ms. Matson paid approximately \$20 to
23 replace her broken dish and will incur additional costs to repair the damage to her kitchen island,
24 according to proof.

25 93. On June 12, 2017, Ms. Matson's counsel provided Defendant with notice of its
26 breach of warranty and demanded that Defendant (1) pay all costs to investigate, repair, and replace
27 all of the defective upper assembly rack systems utilized in KitchenAid dishwashers; and
28 (2) provide notice to consumers of the defect. A copy of the notice is attached hereto as Exhibit C.

1 94. Defendant failed to provide or offer to provide remedies for its breach of warranty
2 violations.

3 VII. CLASS ALLEGATIONS

4 95. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
5 Procedure 23, on behalf of themselves and all others similarly situated (the “Class”).

6 96. The Class which Plaintiffs seek to represent in this action is composed of four
7 classes defined as follows:

8 Nationwide Purchaser Class: All persons in the United States who purchased a
9 KitchenAid dishwasher for installation in a private residence with an upper rack assembly
10 bearing part number W10350375 or W10350376, as depicted in Exhibit A hereto.

11 Nationwide Subsequent Purchaser Consumer Subclass: All persons who purchased
12 private residences in which a KitchenAid dishwasher with an upper rack assembly bearing
13 part number W10350375 or W10350376, as depicted in Exhibit A hereto is installed.

14 California Consumer Subclass: All persons who purchased a KitchenAid dishwasher for
15 installation in a private residence in California with an upper rack assembly bearing part
16 number W10350375 or W10350376, as depicted in Exhibit A.

17 California Subsequent Purchaser Subclass: All persons who purchased private residences
18 in California in which a KitchenAid dishwasher with an upper rack assembly bearing part
19 number W10350375 or W10350376, as depicted in Exhibit A hereto.

20 97. The California Consumer Subclass, California Subsequent Purchaser Subclass and
21 the Nationwide Subsequent Purchaser Consumer Subclass are referred to herein collectively as the
22 “Consumer Subclasses.”

23 98. The following persons are excluded from the Class: (1) all Defendant and their
24 subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the
25 Class; and (3) the judge(s) to whom this case is assigned and any immediate family members
26 thereof.

27 99. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate.
28

1 100. Certification of Plaintiffs' claims for class wide treatment is appropriate because
2 Plaintiffs can prove the elements of their claims on a class-wide basis and because this case meets
3 the requirements of Federal Rule of Civil Procedure 23.

4 101. Numerosity (Rule 23(a)(1)). The members of the Class are so numerous that
5 individual joinder of all the members is impracticable. Plaintiffs are informed and believe, and
6 thereon allege, that there are at least thousands of purchasers who have been damaged by the
7 conduct alleged herein.

8 102. Commonality and Predominance (Rule 23(a)(2) and (b)(3)). This action involves
9 common questions of law and fact which predominate over any questions affecting individual class
10 members including, without limitation, the following:

- 11 a. Whether Defendant violated California's Unfair Competition Law, Bus. & Prof.
12 Code § 17200 *et seq.*, by, among other things, engaging in unfair, unlawful, or
13 fraudulent practices;
- 14 b. Whether Defendant violated California's Consumer Legal Remedies Act, Civ. Code
15 §1750 *et seq.*, by falsely advertising the dishwashers were of a certain quality when
16 in fact, they were not;
- 17 c. Whether Defendant breached its express warranties to Plaintiffs and the Class;
- 18 d. Whether Defendant breached its implied warranties to Plaintiffs and the Class;
- 19 e. Whether Defendant fraudulently concealed the defect; and
- 20 f. Whether Plaintiffs and the Class are entitled to compensatory damages, and the
21 amount of such damages.

22 103. Typicality (Rule 23(a)(3)). Plaintiffs' claims are typical of the claims of the Class
23 because Plaintiffs, like all members of the Class, have been damaged by Defendants' unlawful
24 conduct, in that Plaintiffs have and will incur the cost of repairing and/or replacing the dishwashers.
25 The factual bases and causes of action for Plaintiffs' claims are common to all members of the
26 Class and represent a common course of misconduct resulting in injury to all Class members.

27 104. Adequacy of Representation (Rule 23(a)(4)). Plaintiffs are adequate
28 representatives of the Class because their interests do not conflict with the interests of the Class and

1 they have retained counsel competent and experienced in complex class action litigation and who
2 specialize in class actions involving defective construction products. Plaintiffs intend to prosecute
3 this action vigorously and the interests of the Class will be fairly and adequately protected by
4 Plaintiffs and their counsel.

5 105. Superiority (Rule 23(b)(3)). A class action is superior to all other available means
6 for the fair and efficient adjudication of this controversy in that:

- 7 a. The prosecution of separate actions by individual members of the Class would
8 create a foreseeable risk of inconsistent or varying adjudications which would
9 establish incompatible results and standards for Defendants;
- 10 b. Adjudications with respect to individual members of the Class would, as a practical
11 matter, be dispositive of the interests of the other members not parties to the
12 individual adjudications or would substantially impair or impede their ability to
13 protect their own separate interests;
- 14 c. Class action treatment avoids the waste and duplication inherent in potentially
15 thousands of individual actions, and conserves the resources of the courts; and
- 16 d. The claims of individual class members are not large when compared to the cost
17 required to litigate such claims. The individual Class members' claims are on
18 average approximately \$35-\$150 representing out-of pocket costs associated with
19 the materials and labor to repair the defect. Given the high cost of litigation, it
20 would be impracticable for the members of the Class to seek individual redress for
21 Defendant's wrongful conduct. The class action device provides the benefits of
22 single adjudication, economies of scale, and comprehensive supervision by a single
23 court. The case presents no significant management difficulties which outweigh
24 these benefits.

25 106. Notice. Plaintiff cannot be certain of the form and manner of class notice it will
26 propose until the Class is finally defined and some discovery concerning the identity of Class
27 members is undertaken. Based on the experience of its counsel in previous cases, however, Plaintiff
28 anticipates that direct notice by mail will be given to all Class members whose addresses can be

1 identified and additional notice by publication in periodicals, on the Internet and by press releases
2 and similar communications to relevant industry and trade groups.

3 VIII. DAMAGES

4 107. As a result of the facts alleged herein, Plaintiffs and the Class have been damaged in
5 one or more of the following amounts:

6 a. The difference in market value between the dishwashers and dishwashers
7 that are not defective.

8 b. The cost of repairing and/or replacing the dishwasher, and any other amounts
9 necessary to return Plaintiffs and the Class to the position they would have enjoyed had they not
10 purchased the dishwashers.

11 c. The cost of hiring a third party to install the replacement parts.

12 IX. STATUTE OF LIMITATIONS

13 108. Discovery Rule. The defective nature of the dishwasher is latent and not
14 perceptible to Plaintiffs and the Class. Plaintiffs and the Class did not become aware that they had
15 suffered losses caused by the defective dishwashers until the rack assembly failed.

16 109. Fraudulent Concealment Tolling. Any applicable statutes of limitation have been
17 tolled by Whirlpool's knowing and active concealment of facts as alleged herein. Without any
18 fault or lack of diligence on their part, Plaintiffs and the Class have been kept ignorant of vital
19 information essential to the pursuit of these claims. Plaintiffs and the Class could not reasonably
20 have discovered the problems associated with the dishwasher on their own until the failure
21 occurred.

22 110. Estoppel. Defendant is estopped from relying on any statutes of limitation in
23 defense of this action. For the reasons described herein, including but not limited to paragraphs 27,
24 36, 37, 38, 54, and 83, Defendant was under a continuous duty to disclose to Plaintiffs and the
25 Class the true character, quality and nature of the dishwashers, especially because the problems
26 associated with the dishwashers pose unreasonable safety risks due to breakage of glass and other
27 items when the rack assembly fails. Defendant failed to disclose the true character, quality, and
28 nature of the dishwashers. Plaintiffs and the Class reasonably relied upon Defendant's active

1 concealment of these facts. Had the true facts been disclosed, Plaintiffs and the Class would not
2 have purchased the dishwashers.

3 FIRST CLAIM FOR RELIEF

4 (For Violation of Unfair Competition Law)

5 (By Plaintiff Bodley and the Class Against Defendant)

6 111. Plaintiffs incorporate by reference each allegation set forth in the preceding
7 paragraphs.

8 112. Pursuant to Bus. & Prof. Code § 17200, “unfair competition shall mean and include
9 any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
10 misleading advertising.”

11 113. Defendant’s actions, as alleged herein, constitute deceptive, unfair, fraudulent, and
12 unlawful practices committed in violation of the Bus. & Prof. Code § 17200, *et seq.*

13 114. All of the conduct and representations alleged herein occurred in the course of
14 Defendant’s business and were part of a pattern or generalized course of conduct.

15 115. Defendant’s conduct was *unlawful* because it was fraudulent and violated the
16 Consumer Legal Remedies Act, Song-Beverly Consumer Warranty Act, Magnuson-Moss Warranty
17 Act as previously alleged.

18 116. The Warranty Exclusions and nondisclosure of the safety risk and property damage
19 resulting from the failure of the dishwashers are *unfair* in that they: (1) violate public policy as
20 expressed in the Consumer Legal Remedies Act, the Song-Beverly Consumer Warranty action, and
21 the Magnuson-Moss Warranty Act; (2) are unethical, oppressive, unscrupulous and substantially
22 injurious to consumers and these factors are not offset by the utility of Defendant’s conduct since
23 the conduct is intended to and only provides impediments to the assertion of valid claims for
24 recovery and limit the damages which Defendant is legally obligated to compensate; and (3) inflict
25 injury on consumers which is not outweighed by any countervailing benefits to consumers or
26 competition and the injury to consumers is one consumers could reasonably have avoided.

27 117. Defendant’s conduct was unfair because Whirlpool acted unscrupulously in a
28 manner that is substantially injurious to consumers. In particular: (1) Whirlpool concealed

1 information concerning the unreasonable safety risk posed by its defective product and continued to
2 sell the product even after it was made aware of the danger; and (2) Whirlpool asserts the term
3 “nylon rack” does not include the rack assembly, requiring Plaintiff Bodley and the Class to install
4 a replacement assembly at their own expense.

5 118. All of this conduct of Whirlpool has no utility or countervailing benefit, other than
6 to attempt to avoid liability.

7 119. Plaintiff Bodley and the Class could not reasonably have avoided injury as a result
8 of Whirlpool’s unfair conduct.

9 120. Defendant’s conduct was *fraudulent* because Whirlpool failed to disclose the safety
10 risks associated with the sudden collapse of the upper rack assembly and related risks to safety and
11 property. A reasonable consumer would not expect the upper rack in their dishwasher to suddenly
12 collapse causing glassware and dishware to shatter and break damaging property and creating a risk
13 of serious personal injury. Plaintiff Bodley and members of the Class would not have purchased
14 the dishwashers but for the fraudulent, deceptive and unlawful conduct of Whirlpool.

15 121. Defendant’s deceptive, unfair, fraudulent, and unlawful conduct alleged herein was
16 specifically designed to and did induce Plaintiff Bodley and members of the Class to purchase the
17 dishwashers.

18 122. Plaintiff Bodley and the Class reasonably and justifiably relied on Defendant’s
19 deceptive, unfair, and unlawful conduct alleged herein. But for such conduct, Plaintiff Bodley and
20 members of the Class would not have purchased the dishwashers.

21 123. As a result of Defendant’s unfair methods of competition and unfair or deceptive
22 acts or practices, Plaintiff Bodley and the Class have suffered injury-in-fact, lost money, and lost
23 property, in that they have incurred actual costs to repair and/or replace their dishwashers. Plaintiff
24 Bodley incurred approximately \$120 in out-of-pocket costs to repair his dishwasher.

25 124. Plaintiff Bodley and the Class seek to recover from Defendant restitution of
26 earnings, profits, compensation and benefit obtained as a result of the practices that are unlawful
27 under Bus. & Prof. Code § 17200 *et seq.*, according to proof.

28

SECOND CLAIM FOR RELIEF

(For Violation of the California Consumer Legal Remedies Act)

(Plaintiff Bodley and the California Consumer Subclass Against Defendant)

125. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

126. The dishwashers are “goods” as defined by Civil Code § 1761(a).

127. Whirlpool is a “person” as defined by Civil Code § 1761(c).

128. Plaintiff Bodley and members of the California Consumer Subclass are “consumers” as defined by Civil Code § 1761(d) who purchased the dishwashers for personal, family, and household purposes.

129. The purchase by Plaintiff Bodley and members of the California Consumer Subclass of the dishwashers are “transactions” as defined by Civil Code § 1761(e) and 1770.

130. Under the Consumers Legal Remedies Act (“CLRA”), Civil Code § 1770, *et seq.*, the following methods of competition and unlawful when any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer:

- a. Representing that goods “... have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.” Civil Code § 1770(a)(5).
- b. Representing that goods “... are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” Civil Code § 1770(a)(7).
- c. Inserting an unconscionable provision in the contract. Civil Code § 1770(a)(19).

131. Defendant violated Civil Code §§ 1770(a)(5) and (a)(7) by failing to disclose at the point of sale, or otherwise, that the dishwasher’s upper rack assembly was defective and posed an unreasonable risk of personal injury and property damage. Instead, Defendant represented, through advertising and other express representations that the dishwashers were manufactured using the highest quality standards, provided premium performance, were safe and reliable as alleged in

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1 paragraph 49 herein.

2 132. For the reasons stated in paragraphs 37-38, Whirlpool owed a duty to Plaintiff
3 Bodley and the California Consumer Subclass to disclose the defects in, and the unreasonable
4 safety risks associated with, the dishwashers.

5 133. The falsity of the representations and unreasonable safety risk concealed by
6 Whirlpool are material, because a reasonable consumer would consider them to be important in
7 deciding whether or not to purchase a KitchenAid dishwasher. A reasonable consumer would not
8 expect the upper rack in their dishwasher to prematurely fail nor would they expect the dishwasher
9 to expose them to unreasonable risks of injury.

10 134. Defendant violated Civil Code § 1770(a)(19) by including in the Warranty the
11 unconscionable Warranty Exclusions referenced in paragraph 45 herein.

12 135. Had Plaintiff Bodley and members of the California Consumer Subclass known that
13 the representations and warranties made by Defendant concerning the dishwashers were false or
14 had they been aware of the facts Defendant were obligated to disclose, Plaintiff Bodley and
15 members of the California Consumer Subclass would not have purchased the dishwashers or would
16 have required that the dishwasher be replaced in properties in which the dishwashers were already
17 installed. Plaintiff Bodley and members of the California Consumer Subclass would not have made
18 these purchases because: (1) if Initial Buyers, builders, distributors, retailers and sellers had known
19 of the falsity of Defendant's representations and warranties, or had Defendant disclosed the facts it
20 was obligated to disclose, they would have recommended against the purchase of the KitchenAid
21 dishwashers and/or would have installed dishwashers manufactured by others in newly constructed
22 single-family homes; and (2) irrespective of such recommendations, if Plaintiff Bodley and the
23 California Consumer Subclass had been aware of the falsity of Defendant's representations and
24 warranties or become aware of the facts Defendant was obligated to disclose, they would not have
25 purchased the dishwashers or would have insisted that the dishwashers be removed and replaced.

26 136. Defendant was aware of the defect in the upper rack assembly at the time of sale to
27 Plaintiff Bodley and the California Consumer Subclass.

28

1 137. Plaintiff Bodley served Defendant with notice of their violations of the CLRA
2 pursuant to Civil Code § 1782 (the “Notice”) by certified mail on June 12, 2017. A copy of the
3 Notice is attached hereto as Exhibit C. Defendant failed to provide or offer to provide remedies for
4 its violations of the CLRA within 30 days of the date of the Notice or at all.

5 138. Venue is proper pursuant to Civil Code § 1780(c) because Defendant does business
6 in Alameda County and the actions giving rise to this complaint arose in this jurisdiction and the
7 KitchenAid dishwasher is installed in Alameda County. Attached hereto as Exhibit F is the
8 Declaration of James Bodley establishing this Court as the proper venue for this action.

9 139. As a result of Defendant’s unfair and deceptive acts and practices, Plaintiff Bodley
10 and members of the California Consumer Subclass has been harmed and seek actual damages
11 according to proof, attorneys’ fees and costs and such other relief as the court deems proper.

12 **THIRD CLAIM FOR RELIEF**

13 (Fraudulent Concealment)

14 (By Plaintiff Bodley and the Nationwide Purchaser Class Against Defendant)

15 140. Plaintiffs incorporate by reference each allegation set forth in the preceding
16 paragraphs.

17 141. Absent discovery, Plaintiff Bodley and the Nationwide Purchaser Class are unaware
18 of, and unable through reasonable investigation to obtain, the true names and identities of those
19 individuals associated with Whirlpool responsible for disseminating false and misleading
20 representations and warranties regarding the KitchenAid dishwashers. Whirlpool is necessarily in
21 possession of all of this information.

22 142. Defendant falsely represented that the dishwashers were manufactured with the
23 highest quality standards, reliable, and came with outstanding warranties as alleged in paragraph 49
24 above. Defendant knew that this representation was false at the time it was made.

25 143. At all relevant times, Defendant knowingly concealed and intentionally failed to
26 disclose to Plaintiff Bodley and the Nationwide Purchaser Class that the upper rack assembly in the
27 dishwasher was defective and would fail prematurely under ordinary use and conditions and expose
28 the consumer/owner and other individuals to an unreasonable safety risk.

1 144. The concealed information is material in that a reasonable consumer would find
2 information important when deciding whether to buy the dishwasher and, if so, how much to pay.
3 All of the misrepresentations alleged herein are connected to and dependent upon a functioning
4 upper rack assembly without which the dishwasher cannot operate.

5 145. Defendant was and continues to be under a duty to Plaintiff Bodley and the
6 Nationwide Purchaser Class to disclose these facts because:

- 7 a. Defendant had exclusive knowledge of material facts not known to Plaintiff
8 Bodley and the Nationwide Purchaser Class;
- 9 b. Defendant withheld and actively concealed from Plaintiff Bodley and the
10 Nationwide Purchaser Class the fact that the dishwashers were and are
11 defective and substantially likely to fail prematurely; and
- 12 c. The dishwashers pose an unreasonable safety risk due to the sudden collapse
13 of the upper rack assembly which results in broken dishware and glassware.

14 146. Defendant fraudulently and intentionally concealed from and/or failed to disclose to
15 Plaintiff Bodley and the Nationwide Purchaser Class the facts described above with the intent to
16 defraud Plaintiff Bodley and the Nationwide Purchaser Class and for the purpose of inducing
17 Plaintiff Bodley and the Nationwide Purchaser Class to rely on such misrepresentations and
18 omissions by purchasing more expensive KitchenAid dishwashers to the exclusion less expensive
19 dishwashers manufactured by others.

20 147. Plaintiff Bodley and the Nationwide Purchaser Class were unaware the dishwashers
21 were prone to premature failure because upper rack assembly was defective. Had Defendant
22 disclosed the defective nature of the dishwashers, Plaintiff Bodley and the Nationwide Purchaser
23 Class would not have purchased the dishwashers containing the defective upper rack assembly.

24 148. As a direct and proximate cause of Defendant's misconduct, Plaintiff Bodley and the
25 Nationwide Purchaser Class have suffered actual damages as alleged herein.
26 Plaintiff Bodley and the Nationwide Purchaser Class demand judgment against Defendant for
27 damages as detailed in Paragraph 107 in an amount to be proven at trial.

28

FOURTH CLAIM FOR RELIEF

(For Breach of Express Warranty)

(By Plaintiffs and the Consumer Subclasses against Defendant)

149. Plaintiffs incorporate by reference each allegation set forth in the preceding paragraphs.

150. Whirlpool expressly made the representation and agreed that it would “pay for factory specified parts...to correct *defects in material* or workmanship that existed when this [dishwasher] was purchased: “*nylon dish racks*...”

151. The upper rack assembly is integrated into the nylon dish racks.

152. The “nylon dish racks” are expressly included in the warranty which promises future performance for five years. The “nylon racks” fail because of “*defects in material*” and which is specifically covered under the terms of the Warranty.

153. Mr. Bodley’s rack assembly failed on or about April 11, 2017, which was within the five-year warranty period.

154. Ms. Maton’s rack assembly failed in or about June or July 2016, which was within the five-year warranty period.

155. Plaintiffs have notified Defendant of its breach of the Warranty. The Notice attached hereto as Exhibit C provided Defendant with timely notice on behalf of the Class of the breach of the Warranty and the invalidity of the Warranty Exclusions alleged herein.

156. Defendant has failed to remedy the breach of its obligations to Plaintiffs and the Class. Further, while the Warranty provides that Defendant will repair or replace defects which existed at the time of purchase, complaints submitted by members of the Class demonstrate that Defendant is refusing to honor its warranty regarding the defective upper rack assembly as alleged in paragraphs 50-51.

157. The express written warranty provides coverage for the racks for five years from the date of purchase. As such, the written warranty explicitly extends to future performance beyond one year. An assessment of whether the warranty had been breached necessarily would need to extend through five years, absent prior discovery of the defect by Plaintiffs. Plaintiffs did not

1 discover the defects until their respective dishwashers failed as alleged in paragraphs 86 and 91
2 herein. Therefore, the four-year statute of limitations breach of express written warranty began to
3 run on the date of such discovery and the Plaintiffs claims are timely.

4 158. Defendant is not entitled to enforce the Warranty Exclusions described in Paragraph
5 45 because they are unconscionable and violate the provisions of applicable law including, without
6 limitation, the Song-Beverly Consumer Warranty Act and the Magnuson – Moss Warranty Act.

7 159. As a result of Defendant’s breach of the Warranty and the warranties detailed herein
8 Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

9 FIFTH CLAIM FOR RELIEF

10 (Breach of Express Warranty under Song-Beverly Consumer Warranty Act)

11 (By Plaintiffs and the Consumer Subclasses against Defendant)

12 160. Plaintiffs incorporate by reference each allegation set forth in the preceding
13 paragraphs.

14 161. The allegations of this Claim for Relief are based on the breaches of warranty
15 addressed fully in the Fourth Claim for Relief. The specific allegations of the Complaint relevant to
16 that claim are detailed therein.

17 162. The dishwashers are consumer goods within the meaning of California’s Song-
18 Beverly Consumer Warranty Act.

19 163. Defendant Whirlpool is a “manufacturer” within the meaning of the statute.

20 164. Plaintiffs and members of the Consumer Subclasses purchased dishwashers within
21 the State of California.

22 165. Whirlpool expressly made the representation and agreed that it would “pay for
23 factory specified parts...to correct *defects in material* or workmanship that existed when this
24 [dishwasher] was purchased: “*nylon dish racks...*”

25 166. The upper rack assembly is integrated into the nylon dish racks.

26 167. The “nylon dish racks” are expressly included in the warranty which promises future
27 performance for five years. The “nylon racks” fail because of “*defects in material*” and which is
28 specifically covered under the terms of the Warranty.

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1 168. Mr. Bodley's rack assembly failed on or about April 11, 2017, which was within the
2 five-year warranty period.

3 169. Plaintiffs have provided Defendant with notice of breach of the Warranty and a
4 reasonable opportunity to cure the breach. In addition, the Notice afforded Defendant notice on
5 behalf of the Consumer Subclasses of its breach of the warranty and a reasonable opportunity to
6 remedy the breach. Defendant has failed to remedy the breach of its obligations to the Consumer
7 Subclasses under the Warranty.

8 170. The California Supreme Court has ruled that there is no privity requirement on a
9 claim for express warranty.⁶

10 171. The express written warranty provides coverage for the racks for five years from the
11 date of purchase. As such, the written warranty explicitly extends to future performance beyond
12 one year. An assessment of whether the warranty had been breached necessarily would need to
13 extend through five years, absent prior discovery of the defect by Plaintiffs. Plaintiffs did not
14 discover the defects until their respective dishwashers failed as alleged in paragraphs 86 and 91
15 herein. Therefore, the four-year statute of limitations breach of express written warranty began to
16 run on the date of such discovery and the Plaintiffs claims are timely.

17 172. As a result of Defendant's breach of the warranty, Plaintiffs and the Consumer
18 Subclasses have been damaged as detailed in Paragraph 107 in an amount to be proven at trial.

19 SIXTH CLAIM FOR RELIEF

20 (Breach of Express Warranty - Magnuson-Moss Warranty Act)

21 (By Plaintiffs and the Consumer Subclasses against Defendant)

22 173. Plaintiffs incorporate by reference each allegation set forth in the preceding
23 paragraphs.

24 174. The allegations of this Claim for Relief are based on the breaches of warranty
25 addressed fully in the Fourth Claim for Relief. The specific allegations of the Complaint relevant to
26

27 ⁶ *Seely v White Motor Co.*, (1965) 63 Cal.2d 9, 14.
28

1 that claim are detailed therein.

2 175. The dishwashers are a consumer product as defined in 15 U.S.C. § 2301(1).

3 176. Plaintiffs and the members of the Consumer Subclasses are consumers as defined in
4 15 U.S.C. § 2301(3).

5 177. Defendant Whirlpool is a “supplier” and “warrantor” as defined in
6 15 U.S.C. § 2301(4) and (5).

7 178. The express warranties pertaining to the dishwashers are “written warranties” within
8 the meaning of 15 U.S.C. § 2301(6).

9 179. Additionally, pursuant to 15 U.S.C. § 2304(d)(1), Defendant may not assess
10 Plaintiffs or the Consumer Subclasses any costs the warrantor or his representatives incur in
11 connection with the required remedy of a warranted product...[I]f any incidental expenses are
12 incurred because the remedy is not made within a reasonable time or because the warrantor
13 imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the
14 consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any
15 action against the warrantor.” Defendant has unreasonably refused to pay the material and labor
16 costs associated with the repair of the defects in the dishwashers.

17 180. Plaintiffs have provided Defendant with notice of breach of the Warranty and a
18 reasonable opportunity to cure the breach. In addition, the Notice afforded Defendant notice on
19 behalf of the Consumer Subclasses of its breach of the Warranty and a reasonable opportunity to
20 remedy the breach. Defendant has failed to remedy the breach of its obligations to the Consumer
21 Subclasses under the Warranty.

22 181. The California Supreme Court has ruled that there is no privity requirement on a
23 claim for express warranty.

24 182. The express written warranty provides coverage for the racks for five years from the
25 date of purchase. As such, the written warranty explicitly extends to future performance beyond
26 one year. An assessment of whether the warranty had been breached necessarily would need to
27 extend through five years, absent prior discovery of the defect by Plaintiffs. Plaintiffs did not
28 discover the defects until their respective dishwashers failed as alleged in paragraphs 86 and 91

1 herein. Therefore, the four-year statute of limitations breach of express written warranty began to
2 run on the date of such discovery and the Plaintiffs claims are timely.

3 183. As a direct and proximate result of the acts and omissions of Defendant as set forth
4 herein, Plaintiffs and the Consumer Subclasses have been damaged as detailed in Paragraph 107 in
5 an amount to be proven at trial.

6 SEVENTH CLAIM FOR RELIEF

7 (Breach of Implied Warranty)

8 (By Plaintiffs and the Consumer Subclasses Against Defendant)

9 184. Plaintiffs incorporate by reference each allegation set forth in the preceding
10 paragraphs.

11 185. The sale by Defendant of the dishwashers was accompanied by implied warranties
12 that the dishwashers were merchantable and fit for the ordinary purpose for which such products
13 were sold (the “Implied Warranties”).

14 186. The dishwashers manufactured and sold by Defendant were defectively designed
15 and manufactured and contained latent defects at the time of manufacture and sale.

16 187. At all times, Plaintiffs have used their dishwashers in a foreseeable manner and in
17 the manner in which they were intended to be used. The defect, which existed at the time the
18 dishwashers were sold to Plaintiffs or their agents, rendered them unfit for the ordinary purpose for
19 which dishwashers are used and not merchantable.

20 188. Due to the defect alleged herein, the dishwashers were not of the same quality as
21 those generally acceptable in the trade and were not fit for the ordinary purposes for which the
22 goods are used. When the defect caused the rack to fall and drop onto the lower rack, the
23 dishwasher was not capable of being operated at all. The failure of the upper racks drastically
24 undermine the ordinary operation of the dishwashers and presents an unreasonable safety risk.

25 189. Defendant issued the Warranty to Plaintiff Bodley and the Consumer Subclasses.
26 Defendant also extended the benefit of the Warranty to members of the Subsequent Purchaser
27 Subclass because the Warranty only requires that the original purchase date for the dishwasher be
28 supplied. Defendant is therefore in direct privity with each Plaintiff and all members of the

1 Consumer Subclasses.

2 190. Further, the Implied Warranties incorporated into the transaction between
3 Defendant and Initial Buyers were intended solely to benefit Plaintiffs and the Class. Defendant
4 does not sell directly to end users. Plaintiffs and the Consumer Subclasses are therefore entitled to
5 enforce the Implied Warranties against Defendant.

6 191. The vertical privity is not require pursuant to Civil Code section 1792, Plaintiffs and
7 the Consumer Subclasses were the intended beneficiaries of the purchase of the dishwashers from
8 Whirlpool. The Initial Buyers are not the owners of the dishwashers. The implied warranties made
9 by Defendant to Initial Buyers and others in the distribution chain would be of no economic value
10 to them unless Plaintiffs and the Class received the benefit of such warranties. Under *Gilbert*
11 *Financial Corp. v. Steelform Contracting Co.* (1978) 82 Cal. App. 3d 65, the Implied Warranties
12 made by Defendant to the Initial Buyers are enforceable by Plaintiffs and the Consumer
13 Subclasses.

14 192. Defendant breached the Implied Warranties by manufacturing and selling
15 dishwashers which, at the time of sale, were: (1) not fit for their intended use, and (2) not of a
16 merchantable quality. The dishwashers are neither merchantable nor fit for their intended use
17 because: (1) the latent defect in the dishwashers insures that they will fail prematurely and therefore
18 fail to clean dishes; and (2) the dishwashers are defective and dangerous in that the upper rack
19 assembly suddenly and unexpectedly collapses, causing glassware and other dishes to fall and
20 shatter, which exposes consumers to an unreasonable risk of personal injury and can result in
21 property damage. Purchasers of the dishwashers would not accept the safety risk posed by broken
22 glass and dishware resulting from the failure of the rack assemblies in the dishwashers when there
23 are other products for sale which do not present this risk.

24 193. Defendant has received timely notice of the breach of warranty alleged herein by
25 reason of its own knowledge of the defect in the dishwashers.

26 194. Further, Plaintiffs have provided Defendant with notice of breach of the Implied
27 Warranties and a reasonable opportunity to cure the breach. In addition, the Notices attached
28 hereto as Exhibit B afforded Defendant notice on behalf of the Class of its breach of the Implied

1 Warranties and a reasonable opportunity to remedy the breach. Defendant has failed to remedy the
2 breach of its obligations to the Consumer Subclasses under the Implied Warranties.

3 195. Because the dishwashers either have failed or are certain to fail prematurely,
4 Defendant is in breach of the Implied Warranties.

5 196. Defendants have failed to remedy the breach of the Warranty for either Plaintiffs or
6 the Consumer Subclasses.

7 197. The express written warranty provides coverage for the racks for five years from the
8 date of purchase. As such, the written warranty explicitly extends to future performance beyond
9 one year and thereby extends the implied warranty. An assessment of whether the warranty had
10 been breached necessarily would need to extend through five years, absent prior discovery of the
11 defect by Plaintiffs. A latent defect existed at the time of the sale of the dishwashers but Plaintiffs
12 did not discover the defects until their respective dishwashers failed as alleged above, in paragraphs
13 86 and 91. Therefore, the four-year statute of limitations breach of implied warranty began to run
14 on the date of such discovery and the Plaintiffs claims are timely. Further, the statute of limitations
15 for implied warranty is tolled by fraudulent concealment. *E.g.*, *Philips v. Ford Motor Co.*, No. 14-
16 CV-02989-LHK, 2016 WL 1745948, at *14 (N.D. Cal. May 3, 2016).

17 198. As a direct and proximate result of Defendant's breach of the Implied Warranties,
18 Plaintiffs and members of the Class have been damaged as alleged in paragraph 107 herein in an
19 amount to be proven at trial.

20 EIGHTH CLAIM FOR RELIEF

21 (Breach of Implied Warranty under Song-Beverly Consumer Warranty Act)

22 (By Plaintiffs and the Consumer Subclasses against Defendant)

23 199. Plaintiffs incorporate by reference each allegation set forth in the preceding
24 paragraphs.

25 200. The allegations of this Claim for Relief are based on the breaches of warranty
26 addressed fully in the Seventh Claim for Relief. The specific allegations of the Complaint relevant
27 to that claim are detailed therein.

28 201. Under the Song-Beverly Consumer Warranty Act, Civ. Code § 1792, *et seq.*, every

1 sale of consumer goods in the State of California is accompanied by both a manufacturer's and
2 retail seller's implied warranty that the goods are merchantable.

3 202. The dishwashers are consumer goods within the meaning of the statute.

4 203. Defendant Whirlpool is a "manufacturer" within the meaning of the statute.

5 204. Plaintiffs and members of the Consumer Subclasses purchased dishwashers in the
6 State of California.

7 205. By operation of law, the Defendant made the Implied Warranties to Plaintiffs and
8 the Consumer Subclasses concerning the dishwashers.

9 206. Defendant has breached the Implied Warranties by selling dishwashers which were
10 not of merchantable quality and which failed to perform the tasks for which they were intended.

11 207. Plaintiffs and all other Consumer Subclasses Members do not have to be in privity
12 with Defendant in order to enforce the Implied Warranties. Civil Code § 1792, which provides that
13 "[u]nless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that
14 are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's
15 implied warranty that the goods are merchantable," has no privity requirement.

16 208. The vertical privity is not require pursuant to Civil Code section 1792, moreover,
17 Plaintiffs and class members were the intended beneficiaries of the purchase of the dishwashers
18 from Whirlpool. The Initial Buyers are not the owners of the dishwashers. The implied warranties
19 made by Defendant to Initial Buyers and others in the distribution chain would be of no economic
20 value to them unless Plaintiffs and the Class received the benefit of such warranties. Under *Gilbert*
21 *Financial Corp. v. Steelform Contracting Co.* (1978) 82 Cal. App. 3d 65, the Implied Warranties
22 made by Defendant to the Initial Buyers are enforceable by Plaintiffs and the Class.

23 209. Plaintiffs have provided Defendant with notice of breach of the Implied Warranties
24 and a reasonable opportunity to cure the breach. In addition, the Notice afforded Defendant notice
25 on behalf of the Consumer Subclasses of its breach of the Implied Warranties and a reasonable
26 opportunity to remedy the breach. Defendant has failed to remedy the breach of its obligations to
27 the Consumer Subclasses under the Implied Warranties.

28 210. The express written warranty provides coverage for the racks for five years from the

1 date of purchase. As such, the written warranty explicitly extends to future performance beyond
2 one year and thereby extends the implied warranty. An assessment of whether the warranty had
3 been breached necessarily would need to extend through five years, absent prior discovery of the
4 defect by Plaintiffs. A latent defect existed at the time of the sale of the dishwashers but Plaintiffs
5 did not discover the defects until their respective dishwashers failed as alleged above, in paragraphs
6 86 and 91. Therefore, the four-year statute of limitations breach of implied warranty began to run
7 on the date of such discovery and the Plaintiffs claims are timely. Further, the statute of limitations
8 for implied warranty is tolled by fraudulent concealment. *E.g.*, *Philips v. Ford Motor Co.*, No. 14-
9 CV-02989-LHK, 2016 WL 1745948, at *14 (N.D. Cal. May 3, 2016).

10 211. As a result of Defendant's breaches of the Implied Warranties, Plaintiffs and
11 Consumer Subclasses Members have been damaged as detailed in Paragraph 107 in an amount to
12 be proven at trial.

13 NINTH CLAIM FOR RELIEF

14 (Breach of Implied Warranty - Magnuson-Moss Warranty Act)

15 (By Plaintiffs and the Consumer Subclasses against Defendant)

16 212. Plaintiffs incorporate by reference each allegation set forth in the preceding
17 paragraphs.

18 213. The allegations of this Claim for Relief are based on the breaches of warranty
19 addressed fully in the Seventh Claim for Relief. The specific allegations of the Complaint relevant
20 to that claim are detailed therein.

21 214. Plaintiffs and the Consumer Subclasses are consumers as defined in 15 U.S.C.
22 § 2301(3).

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

25 216. The dishwashers are consumer products as defined in 15 U.S.C. § 2301(1).

26 217. Under 15 U.S.C. §2301(7), Defendant extended the Implied Warranties to Plaintiffs
27 and the Consumer Subclasses.

28 218. Defendant breached the Implied Warranties by selling dishwashers that were neither

1 merchantable nor fit for their intended purpose.

2 219. Under 15 U.S.C. §2310(e), notice of breach of warranty need not be provided until
3 after Plaintiffs have been appointed Consumer Subclasses Representatives.

4 220. Plaintiffs have provided Defendant with notice of breach of the Implied Warranties
5 and a reasonable opportunity to cure the breach. In addition, the Notice afforded Defendant notice
6 on behalf of the Consumer Subclasses of its breach of the Implied Warranties and a reasonable
7 opportunity to remedy the breach. Defendant has failed to remedy the breach of its obligations to
8 the Consumer Subclasses under the Implied Warranties.

9 221. The vertical privity is not require pursuant to Civil Code section 1792, moreover,
10 Plaintiffs and class members were the intended beneficiaries of the purchase of the dishwashers
11 from Whirlpool. The Initial Buyers are not the owners of the dishwashers. The implied warranties
12 made by Defendant to Initial Buyers and others in the distribution chain would be of no economic
13 value to them unless Plaintiffs and the Class received the benefit of such warranties. Under *Gilbert*
14 *Financial Corp. v. Steelform Contracting Co.* (1978) 82 Cal. App. 3d 65, the Implied Warranties
15 made by Defendant to the Initial Buyers are enforceable by Plaintiffs and the Class.

16 222. The express written warranty provides coverage for the racks for five years from the
17 date of purchase. As such, the written warranty explicitly extends to future performance beyond
18 one year and thereby extends the implied warranty. An assessment of whether the warranty had
19 been breached necessarily would need to extend through five years, absent prior discovery of the
20 defect by Plaintiffs. A latent defect existed at the time of the sale of the dishwashers but Plaintiffs
21 did not discover the defects until their respective dishwashers failed as alleged above, in paragraphs
22 86 and 91. Therefore, the four-year statute of limitations breach of implied warranty began to run
23 on the date of such discovery and the Plaintiffs claims are timely. Further, the statute of limitations
24 for implied warranty is tolled by fraudulent concealment. *E.g.*, *Philips v. Ford Motor Co.*, No. 14-
25 CV-02989-LHK, 2016 WL 1745948, at *14 (N.D. Cal. May 3, 2016).

26 223. As a result of Defendant's breach of the Implied Warranties, Plaintiffs and the
27 Consumer Subclasses have been damaged as detailed in Paragraph 107 in an amount to be proven
28 at trial.

PRAYER FOR RELIEF

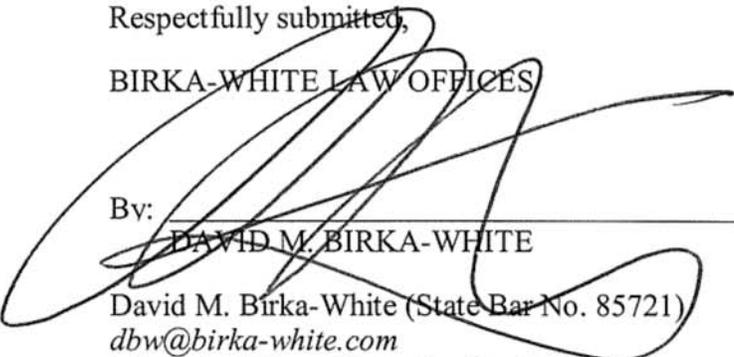
WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays the Court to certify the Class as defined hereinabove, to enter judgment against Defendant and in favor of the Class, and to award the following relief:

1. For Certification of the proposed Class and each Subclass thereof;
2. For compensatory damages as alleged herein, according to proof;
3. For restitution and/or disgorgement of revenues, earnings, profits, compensation, and benefits which were received by Defendant as a result of unlawful business acts or practices, according to proof;
4. For an order requiring Defendant to engage in a notice and/or recall campaign.
5. For exemplary and punitive damages according to proof;
6. For costs and attorneys' fees, as allowed by law; and
7. For such other further legal or equitable relief as this Court may deem appropriate under the circumstances.

DATED: November 6, 2017

Respectfully submitted,

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BIRKA-WHITE
ATTORNEYS

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs James Bodley and Kyle Matson, individually and on behalf of all others similarly situated, hereby demand a jury trial.

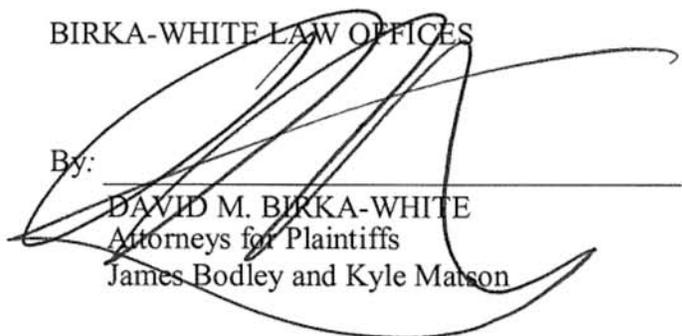
Dated: November 6, 2017

Respectfully submitted,

BIRKA-WHITE LAW OFFICES

By: _____

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Attorneys for Plaintiffs
James Bodley and Kyle Matson



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From: ECF-CAND@cand.uscourts.gov
To: efiling@cand.uscourts.gov
Subject: Activity in Case 3:17-cv-05436-JST Bodley et al v. KitchenAid, Inc. Amended Complaint
Date: Monday, November 6, 2017 5:23:23 PM

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**U.S. District Court
California Northern District**

Notice of Electronic Filing

The following transaction was entered by Birka-White, David on 11/6/2017 at 5:23 PM PST and filed on 11/6/2017

Case Name: Bodley et al v. KitchenAid, Inc.

Case Number: [3:17-cv-05436-JST](#)

Filer: James Bodley
Kyle Matson

Document Number: [24](#)

Docket Text:

[AMENDED COMPLAINT](#) against Whirlpool Corporation. Filed by James Bodley, Kyle Matson. (Attachments: # (1) Exhibit Exhibits A-F, # (2) Summons Amended Summons)(Birka-White, David) (Filed on 11/6/2017)

3:17-cv-05436-JST Notice has been electronically mailed to:

David Michael Birka-White dbw@birka-white.com, sandra@birka-white.com

Galen Driscoll Bellamy bellamy@wtotrial.com, carpenter@wtotrial.com,
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3:17-cv-05436-JST Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\FINAL Whirlpool Complaint 11-6-17.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=11/6/2017] [FileNumber=14247129-0]
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Document description:Exhibit Exhibits A-F

Original filename:C:\fakepath\Whirlpool Exhibits.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=11/6/2017] [FileNumber=14247129-1]
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Document description:Summons Amended Summons

Original filename:C:\fakepath\Whirlpool Summons.pdf

Electronic document Stamp:

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