

Todd M. Friedman (216752)  
Meghan E. George (274525)  
Law Offices of Todd M. Friedman, P.C.  
21550 Oxnard Street, Suite 780  
Woodland Hills CA 91367  
Phone: 323-306-4234  
Fax: 866-633-0228  
tfriedman@toddfllaw.com  
mgeorge@toddfllaw.com  
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARK AGUILAR, individually and on ) Case No.  
behalf of all persons similarly situated, )  
 ) **PLAINTIFF’S CLASS ACTION**  
Plaintiff, ) **COMPLAINT FOR DAMAGES**  
 )  
-vs- )  
 )  
SPECTRUM BRANDS, INC.; )  
DOES 1-10, inclusive, )  
 )  
Defendant(s). )  
 )

**INTRODUCTION**

1. Plaintiff brings this action against Defendant SPECTRUM BRANDS, INC. (“Defendant”) on behalf of all persons who purchased a Repel Insect Repellant Citronella Candle (collectively the “Class Products”). The Class Products are defectively manufactured, and the resulting defects cause the candles to explode, causing serious injury and burns, and threat of serious damage, to the class members. In short, they cannot be operated in the method which a reasonable consumer would

1 expect a candle to operate. Defendants manufacture, test, recall, distribute and sell  
2 the Class Products.

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over this matter pursuant to the Class Action  
5 Fairness Act (CAFA) because the matter in controversy in this matter exceeds the  
6 sum or value of \$5,000,000 as to all putative Class members, exclusive of attorneys'  
7 fees and costs. 28 U.S.C. Sections 1332(d), 1453, and 1711-1715.

8 3. This Court also has diversity jurisdiction over this matter pursuant to 28  
9 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of California  
10 while Defendant is a corporation incorporated under the laws of the State of  
11 Wisconsin.

12 4. Venue is proper in the United States District Court for the Eastern District of  
13 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff  
14 resides in the County of Kern, State of California which is within this judicial  
15 district; (ii) the conduct complained of herein occurred within this judicial district;  
16 and, (iii) many of the acts and transactions giving rise to this action occurred in this  
17 district because Defendant:  
18

- 19 (a) is authorized to conduct business in this district and has  
20 intentionally availed itself of the laws and markets within this  
21 district;  
22 (b) does substantial business within this district;  
23 (c) is subject to personal jurisdiction in this district because it has  
24 availed itself of the laws and markets within this district; and,  
25 (d) the harm to Plaintiff occurred within this district.

26 **PARTIES**

27 5. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the  
28

1 County of Kern, State of California. Plaintiff purchased a Repel Insect Repellant  
2 Candle in 2020, in Bakersfield, California.

3 6. Plaintiff is informed and believes and thereon alleges that Defendant is, and at  
4 all times mentioned herein was, a corporation incorporated under the laws of the  
5 State of Delaware. Plaintiff further alleges that all times relevant herein Defendant  
6 conducted business in the State of California and in within this judicial district,  
7 where Defendant marketed and sold its products.

8 7. The true names and capacities of the Defendants sued herein as Does 1-10  
9 inclusive are currently unknown to Plaintiffs, who therein sued Defendants by such  
10 fictitious names. Each of the Defendant's designated herein as a Doe is legally  
11 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of court to  
12 amend the Complaint to reflect the true names and capacities of the Doe defendants  
13 when such identities become known.

14 8. At all times herein mentioned, each and every defendant was the owner, agent,  
15 servant, joint venturer and employee, each of the other and each was acting within  
16 the course and scope of its ownership, agency, service, joint venture and  
17 employment.

18 9. At all times mentioned herein, each and every defendant was the successor of  
19 the other and each assumes the responsibility for the defective products.

20  
21 **FACTUAL ALLEGATIONS**

22 10. Plaintiff realleges and incorporates by reference all of the above paragraphs of  
23 this Complaint as though fully stated herein.

24 **REPEL INSECT REPELLANT CITRONELLA CANDLE**

25 11. A Repel Insect Repellant Citronella Candle is a trademark owned by Spectrum  
26 Brands, Inc.

27 12. The Repel Insect Repellant Citronella candle is sold in major retail stores  
28

1 throughout the united states, including Walmart, Target, Home Depot, and numerous  
2 other retailers nationwide.

3 13. The Repel Insect Citronella Candle is sold at market value for anywhere  
4 between \$5-\$7 dollars.

5 14. Because of the faulty safety features, consumers who have purchased the Class  
6 Products are in possession of a very dangerous candle that can explode and cause  
7 injury when extinguished. The claims are evidenced by the hundreds (if not  
8 thousands) of consumer complaints on the Internet.

9 15. In Plaintiff's case, Plaintiff utilized the Repel Insect Repellant Citronella  
10 Candle in accordance with the way in which a reasonable consumer would expect to  
11 utilize a candle.

12 16. When ultimately extinguishing the Class Product, in a way in which a  
13 reasonable consumer using a candle would extinguish one, plaintiff's candle  
14 exploded; causing Plaintiff to suffer burns all over his face as the hot wax and  
15 chemicals sprayed all over him.

16 17. Plaintiff was forced to incur monetary damages in the form of medical bills  
17 which were a direct result of his injuries caused by Defendant's faulty and flawed  
18 products, that were unsafe, and dangerous.

19 18. Plaintiff, an avid camper, is likely to purchase another Repel Insect Repellant  
20 Citronella Candle in the future, and thus, is likely to be similarly misled by  
21 Defendant's claims unless the product is recalled and the design and safety defects  
22 as stated herein, remedied.  
23

24 **CLASS ACTION ALLEGATIONS**

25 19. Plaintiff brings this action, on behalf of himself and all others similarly situated  
26 ("the Class") pursuant to Fed.R.Civ.P Rule 23(a) and (b)(3), or pursuant to  
27 Fed.R.Civ.P. Rule 23(a) and (b)(2), on their own behalf and on behalf of all others  
28 who purchased a REPEL Insect Repellant Citronella Candle.

1 20. Defendant and its employees or agents are excluded from the Class. Plaintiff  
2 does not know the number of members in the Class, but believes the Class members  
3 number in the hundreds of thousands, if not more. Thus, this matter should be  
4 certified as a Class action to assist in the expeditious litigation of this matter.

5 21. There is a well-defined community of interest in the litigation, the proposed  
6 class is easily ascertainable, and Plaintiff is a proper representative of the Class  
7 because:

8 a. **Numerosity:** The potential members of the Class as defined are so  
9 numerous and so diversely located throughout California and nationwide,  
10 that joinder of all the members of the Class impracticable. The class  
11 members are dispersed throughout California and nationwide. Joinder of  
12 all members of the proposed class is therefore not practicable.

13 b. **Commonality:** There are questions of law and fact common to Plaintiff  
14 and the Class that predominate over any questions affecting only  
15 individual members of the Class. These common questions of law and  
16 fact include, without limitation:

17 i) whether Defendants have breached implied warranties;

18 ii) whether Defendants have breached common law  
19 warranties/contract;

20 iii) whether Defendants have violated the Magnuson-Moss  
21 Warranty Act, 15 U.S.C. §§ 2301, et seq.;

22 iv) whether Defendants knew or should have known the Class  
23 Products were defective prior to selling or placing them into the stream of  
24 commerce; and  
25

26 v) The nature and extent of damages, restitution, equitable  
27 relief  
28

1                   vi)           and/or other relief to which the Defendants' conduct  
2                   entitles the Class members.

3                   vii)           The proper formula(s) for calculating and/or restitution  
4                   owed to Class members.

5           c.    **Typicality:** Plaintiff's claims are typical of the claims of the Class.  
6    Plaintiff and Class members were deprived of property rightly belonging to them,  
7    arising out of and caused by Defendant's common course of conduct in violation of  
8    law as alleged herein, in similar ways.

9           d.    **Adequacy of Representation:** Plaintiff is a member of the Class and will  
10   fairly and adequately represent and protect the interests of the class members.  
11   Plaintiff's interests do not conflict with those of class members. Counsel who  
12   represent Plaintiff are competent and experienced in litigating large class actions,  
13   and will devote sufficient time and resources to the case and otherwise adequately  
14   represent the Class.

15           e.    **Superiority of Class Action:** A class action is superior to other  
16   available methods for the fair and efficient adjudication of this litigation, because  
17   individual joinder of all Class members would be impracticable. Many such  
18   persons' losses are modest in relation to the expense and burden of individual  
19   prosecution of the litigation necessitated by Defendants' wrongful conduct. Even  
20   if all Class members could afford such individual litigation, the court system would  
21   benefit from a class action. The prosecution of separate claims by individual  
22   members of the Class would create a risk of inconsistent or varying adjudications  
23   concerning individual members of the Class which would establish incompatible  
24   standards of conduct for the party opposing the Class, as well as create the potential  
25   for inconsistent or contradictory judgments. Furthermore, the prosecution of  
26   separate claims by individual members of the Class would create a risk of  
27   adjudications concerning individual members of the Class which would, as a  
28

1 practical matter, be dispositive of the interests of other members of the Class who  
2 are not parties to the adjudications, or substantially impair or impede the ability of  
3 other members of the Class who are not parties to the adjudications to protect their  
4 interests. Individualized litigation would also magnify the delay and expense to all  
5 parties and to the court system presented by the issues of the case. By contrast, the  
6 class action device presents far fewer management difficulties and provides the  
7 benefit of comprehensive supervision by a single court, as well as economy of scale  
8 and expense.

9  
10 **COUNT I**

11 **BREACH OF IMPLIED WARRANTIES**

12 22. Plaintiff hereby incorporates by this reference as if fully set further herein,  
13 each and every allegation set forth in the preceding paragraphs of this complaint.

14 23. A warranty that the Class products were in merchantable condition was  
15 implied in law in the transactions, pursuant to California law.

16 24. The Class Products, when sold and at all times thereafter, were not in  
17 merchantable condition and are not fit for the ordinary purpose for which citronella  
18 candles are used. Specifically, the citronella candles are inherently defective in their  
19 manufacturing, in that they are highly flammable, which when extinguished can  
20 result in burning the consumer, like the named Plaintiff herein. The result is that  
21 Class Products are dangerous as sold and are a safety danger to all consumers.

22 25. Plaintiff and Class members have had sufficient direct dealings with  
23 Defendant or its agents (retailers) to establish privity of contract. Notwithstanding  
24 this, privity is not required in this matter because Plaintiff and Class members are  
25 intended third party beneficiaries of contracts between Defendant and its dealers;  
26 specifically, they are the intended beneficiaries of Defendant's implied warranties.  
27 Finally, privity is also not required because Plaintiff's and Class members' pressure  
28 cookers are dangerous instrumentalities due to the aforementioned defects and

1 nonconformities.

2 26. As a direct and proximate result of Defendant’s breaches of the implied  
3 warranties of merchantability and fitness for a particular purpose, pursuant to the  
4 laws of California, Plaintiff and the Class members have been damaged in an amount  
5 to be determined at trial.

6 27. Plaintiff and Class members are entitled to recover damages as provided by  
7 statute, costs, attorneys’ fees, rescission and other relief as is deemed appropriate  
8 pursuant to the laws of California.

9 **COUNT II**

10 **BREACH OF WARRANTY UNDER THE MAGNUSON-MOSS ACT, 15 U.S.C. §§**  
11 **2301, ET SEQ.**

12 28. Plaintiff hereby incorporates by this reference as if fully set forth herein, each  
13 and every allegation set forth in the preceding paragraphs of this complaint.

14 29. The defective class products at issue are “consumer products” within the  
15 meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(1).

16 30. Plaintiff and Class members are “consumers” within the meaning of the  
17 Magnuson-Moss Act, 15 U.S.C. § 2301(3)

18 31. Each Defendant is a “supplier” and “warrantor” within the meaning of the  
19 Magnuson-Moss Act, 15 U.S.C. § 2301(4)-(5).

20 32. Defendant impliedly warranted to Plaintiff and Class members that the  
21 Class Products were of merchantable quality and fit for the ordinary purposes for  
22 which they are used.

23 33. Defendant refuses to recognize or honor its implied warranties. Defendants  
24 breached their implied warranties, as the defective Class Products were not of  
25 merchantable quality and failed to perform in the ordinary purposes for which they  
26 were used.

27 34. Defendants warranted to Plaintiff and Class members that the Class Products  
28



1 were safe, and suitable to be used in the normal course and purpose for which it was  
2 purchased. In fact, the Class Products are not safe to extinguish as a normal candle  
3 would be extinguished, and subjects Plaintiff and other class members to the  
4 dangerous condition of these defective products.

5 35. The amount in controversy of Plaintiff's and Class members' individual  
6 claims meets or exceeds the sum or value of \$25. In addition, the amount in  
7 controversy meets or exceeds the sum or value of \$75,000 (exclusive of interest and  
8 costs), computed on the basis of all claims to be determined in this suit.

9 36. Resorting to any further informal dispute settlement procedure or affording  
10 Defendant another opportunity to cure their breach of implied warranties is  
11 unnecessary or futile. Defendant knew, reasonably should have known, or were  
12 reckless in not knowing of the defective class products and their inability to perform  
13 as warranted, but nevertheless failed to rectify the situation. Therefore, any remedies  
14 available through informal dispute settlement procedures would be inadequate under  
15 the circumstances. Accordingly, any requirement under the Magnuson-Moss Act or  
16 otherwise that Plaintiff resorts to informal dispute settlement procedures or afford  
17 Defendants a reasonable opportunity to cure their breaches of implied warranties is  
18 excused or has been satisfied.

19 37. As a proximate result of Defendant's breaches of implied warranties,  
20 Plaintiff and Class members have sustained damages and other losses in an amount  
21 to be determined at trial. Plaintiff and Class members are entitled to recover  
22 damages, costs, attorneys' fees, rescission, restitution and other relief as is deemed  
23 appropriate.  
24

25 **COUNT III.**

26 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

27 **[CALIFORNIA'S UNFAIR COMPETITION LAW]**

28 38. Plaintiff incorporates by reference all of the above paragraphs of this

1 Complaint as though fully stated herein.

2 39. Plaintiff and Defendant are each “person[s]” as defined by California Business  
3 & Professions Code § 17201. California Bus. & Prof. Code § 17204 authorizes a  
4 private right of action on both an individual and representative basis.

5 40. “Unfair competition” is defined by Business and Professions Code Section §  
6 17200 as encompassing several types of business “wrongs,” two of which are at issue  
7 here: (1) an “unlawful” business act or practice, (2) an “unfair” business act or  
8 practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue  
9 or misleading advertising.” The definitions in § 17200 are drafted in the  
10 disjunctive, meaning that each of these “wrongs” operates independently from the  
11 others.

12 41. By and through Defendant’s conduct alleged in further detail above and  
13 herein, Defendant engaged in conduct which constitutes (a) unlawful and (b) unfair  
14 business practices prohibited by Bus. & Prof. Code § 17200 et seq.

15  
16 ***(a) Unlawful” Prong***

17 42. As a result of Defendant’s acts and practices in violation of California’s  
18 Automatic Renewal Statute, California’s Bus. & Prof. Code § 17600, et seq.,  
19 Defendant has violated California’s Unfair Competition Law, Business &  
20 Professions Code §§ 17200 et seq., which provides a cause of action for an  
21 “unlawful” business act or practice perpetrated on members of the California public.

22 43. Defendant had other reasonably available alternatives to further its legitimate  
23 business interest, other than the conduct described herein, such as adequately  
24 disclosing the terms of Defendant’s automatic renewal offers and continuous service  
25 offers, as set forth by Cal. Bus. & Prof. Code § 17600, et seq.

26 44. Plaintiff and the putative class members reserve the right to allege other  
27 violations of law, which constitute other unlawful business practices or acts, as such  
28 conduct is ongoing and continues to this date.

**(b) “Unfair” Prong**

1  
2 45. Defendant’s actions and representations constitute an “unfair” business act or  
3 practice under § 17200 in that Defendant’s conduct is substantially injurious to  
4 consumers, offends public policy, and is immoral, unethical, oppressive, and  
5 unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable  
6 to such conduct. Without limitation, it is an unfair business act or practice for  
7 Defendant to knowingly or negligently fail to adequately disclose the terms of  
8 Defendant’s automatic renewal offers and continuous service offers, as set forth by  
9 Cal. Bus. & Prof. Code §§ 17600, et seq.

10 46. At a date presently unknown to Plaintiff, but at least four years prior to the  
11 filing of this action, and as set forth above, Defendant has committed acts of unfair  
12 competition as defined by Cal. Bus. & Prof. Code §§ 17200 et seq., as alleged further  
13 detail above and herein.

14 47. Plaintiff and other members of the Class could not have reasonably avoided  
15 the injury suffered by each of them. Plaintiff reserves the right to allege further  
16 conduct that constitutes other unfair business acts or practices. Such conduct is  
17 ongoing and continues to this date, as Defendant continues to make automatic  
18 renewal offers and continuous service offers in the manner described above in herein,  
19 in violation of Cal. Bus. & Prof. Code §§ 17600, et seq. and Cal. Bus. & Prof. Code  
20 §§ 17200, et seq.

**PRAYER FOR RELIEF**

21  
22  
23 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and  
24 the Class members damages against Defendant and relief as follows:

- 25 • An order certifying this action as a class action and appointing  
26 Plaintiff as Class Representatives and their counsel as Class Counsel;

- An order requiring Defendants to pay Plaintiff and Class members an amount of actual, direct, incidental and consequential damages in an amount to be determined at trial;
- An order awarding restitution as to all causes of action where restitution is available;
- An order awarding revocation as to all causes of action where revocation is available;
- An order granting preliminary and permanent injunctive relief requiring Defendants to recall and replace or repair the defective Pressure Cookers, and prohibiting any further misleading or deceptive advertising campaigns for Pressure Cookers;
- An order awarding pre- and post-judgment interest;
- An award of reasonable attorney’s fees and costs of suit as permitted by law; and
- For such other and further relief this Court may deem just and proper.

**TRIAL BY JURY**

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Law Offices of Todd M. Friedman, P.C.

Dated: November 3, 2020  
Friedman

By:           /s/                                  Todd                  M.

Todd M. Friedman, Esq.  
Meghan E. George, Esq.  
Attorneys for Plaintiffs and the Proposed Class

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Repel Insect Repellant Citronella Candles Can Explode When Put Out Due to 'Defects'](#)

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