

1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because the
3 amount in controversy exceeds \$5,000,000, exclusive of interest and costs, the proposed Class
4 consists of more than 100 members, and this is a class action in which the members of the
5 proposed Class and Defendant are citizens of different states.

6 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because
7 Defendant does substantial business in this district, and a substantial part of the events or
8 omissions giving rise to Plaintiff’s claims took place within this district.

9
10 **INTRODUCTION**

11 3. This action is brought to remedy violations of law in connection with Defendant’s
12 design, manufacture, sales, performance, servicing and warranting of its Frigidaire brand
13 refrigerator/freezers that have French-doors for the upper fresh food or refrigerator compartment,
14 with ice makers mounted in the fresh food compartment, and pull-out drawers for freezer
15 compartments located in the bottom section of the refrigerator/freezers (“Fridge” or “Fridges”).
16 The Fridges’ relevant design, parts, pieces, operation and materials are the same. There are no
17 differences among the Fridges that relate to, arise from, or are relevant to the cause or effect of the
18 Defects (defined below) at issue in this case. The Fridges sell for a retail price of \$1,800 to \$3,000.

19 4. Plaintiff brings this class action on behalf of himself and all others similarly situated
20 in the State of California against Defendant, Electrolux Home Products Incorporated (“Defendant”
21 or “Electrolux” or “EHP”), seeking damages, punitive damages, restitution, and injunctive relief
22 for the proposed Class as defined herein.

23 5. Refrigerator/freezer combinations can generally be configured in four ways: 1) with
24 two doors where the freezer compartment is on one side and the refrigerator compartment is on the
25 other (“side-by-side”); 2) with two doors where the freezer compartment sits above the refrigerator
26 compartment (“top-mount”); 3) with two doors where the freezer compartment sits below the
27 refrigerator compartment (“bottom-mount”); and 4) same as a bottom-mount, but the refrigerator
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1 compartment has two side-by-side doors referred to as French doors (“French-door bottom-
2 mount”).

3 6. The expected “useful life” of any configuration of bottom-mount refrigerator is 17
4 years.

5 7. Historically, the ice maker in a refrigerator/freezer is engineered to be placed within
6 the freezer compartment. Such is the case for all four of the configurations described in the
7 preceding paragraph. However, the exception is where a French-door bottom-mount configuration
8 has an ice-dispenser in the refrigerator door that allows a user to dispense ice without opening any
9 of the refrigerator/freezer’s doors. The door-mounted ice dispenser increases the price of the Fridge
10 over one without the feature by \$400 - \$700.

11 8. Because the Fridges dispense ice from their refrigerator compartment, the ice maker
12 is also located in the refrigerator compartment. The Fridge ice maker requires much colder
13 temperatures than the ambient temperature in the refrigerator compartment to cool water to a
14 temperature at or below 32°F. Since cold air below 32°F exists in the freezer compartment,
15 manufacturers of refrigerators have traditionally channeled the cold freezer compartment air from
16 the freezer to the ice maker, via air ducts or vents in the cabinet walls of the fridge.

17 9. EHP, instead of using air ducts to move freezing air into its ice maker, had
18 attempted to make ice and cool the ice maker by using a liquid refrigerant that is channeled from
19 the compressor compartment to the ice maker through narrow-diameter metal tubing. Once in the
20 ice maker, the refrigerant serves two purposes: it cools the air in the ice maker using a small
21 radiator and is also directed to a series of finger-shaped metal prongs that are submerged into the
22 water of the ice mold to cool the water. By eliminating air ducts to channel freezing air into the ice
23 maker, Electrolux created more storage space in the refrigerator section of its Fridges which
24 allowed EHP to advertise that its Fridges have more refrigerator capacity than its competitors.

25 10. Under EHP’s design, the flow of refrigerant for the ice maker compartment is
26 controlled by an electronic expansion valve using an electronic control panel (“Control Panel”).
27 The Control Panel actuates the electronic expansion valve to allow refrigerant to flow through the
28 ice maker. Then the refrigerant is channeled to the ice maker compartment radiator which is

1 supposed to make the air in the ice maker sufficiently cold to keep the ice cubes frozen. Once the
2 compartment is sufficiently cool, the refrigerant then returns back to the compressor compartment.
3 The ice cubes once made, are ejected from their molds into a bin that must be kept sufficiently cold
4 to prevent the ice cubes from melting, as such the refrigerant must periodically return to the ice
5 maker compartment to maintain a freezing temperature.

6 11. The Control Panel, and other deficiencies within the Fridges, however, fail to direct
7 refrigerant to the ice maker, which causes the ice maker to be too warm to either make or maintain
8 frozen ice, and prevent the Fridges from maintaining proper temperatures for the safe storage of
9 food. Therefore the Fridges' Ice Makers do not produce **“up to 10 lbs. of ice in 24 hours”** or **“9**
10 **pounds of ice every 24 hours,”** or **“fill an ice bin in about eight (8) hours”** which performance
11 is represented and warranted by EHP. Most Fridges make no ice at all. Indeed, in many cases
12 consumers come home to find puddles of water on their floors beneath their Fridges and/or
13 damaged cabinets, flooring or other improvements adjacent to their Fridges as a result of the ice
14 makers malfunctioning as described above.

15 12. Upon complaining to EHP about their defective ice makers, consumers are denied a
16 good faith repair. EHP dispatches service technicians to the consumers' homes, and instructs the
17 technicians to make repairs that it knows will not cause the Fridges to make and maintain ice in the
18 quantity it represented would be made and maintained. This is because EHP has not implemented
19 a solution that keeps the ice maker compartment of the Fridges sufficiently cold to make and
20 maintain ice. Instead, EHP requires each consumer to endure up to three more repair attempts that
21 EHP knows are futile. EHP does this so that Fridge owners are mollified by feigned repairs until
22 their warranties expire. EHP then refuses repairs or replacement on the basis that warranties have
23 expired.

24 13. Following numerous failed attempts at repair, EHP will sometimes offer some, but
25 not all Fridge owners an extended warranty or to replace the Fridges with replacement Fridges that
26 have the same or similar defects to those described above, and which will not make or maintain ice
27 as it represented the Fridges would. For some consumers who manage to exhaust EHP's futile
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1 repair attempts within the warranty period, EHP may sometimes offer some, but not all such Fridge
2 owners, only partial relief (i.e., 30-70% credit toward the purchase of another EHP Fridge), far
3 below its obligations mandated by the Song-Beverly Consumer Warranty Act.

4 14. The Fridges are defective because their Control Panels and related systems fail to
5 adequately direct sufficient refrigerant to the ice makers in order to make and preserve ice. An ice
6 maker that does not make and maintain ice does not perform the function for which it was
7 intended. Similarly, a fridge that does not keep food from spoiling prematurely, is not fit for its
8 ordinary and intended purpose. EHP, despite its numerous attempts, has not been able to conform
9 the Fridges to its express and implied warranties.

10 15. EHP did not disclose either prior to, or at the time of purchase, any information to
11 Plaintiff or Class members regarding the Fridges' defective Control Panels.

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13 **THE PARTIES**

14 16. Electrolux Home Products Incorporated is a Delaware corporation and maintains its
15 principal place of business at 10200 David Taylor Drive, Charlotte, North Carolina 28262.

16 17. EHP is a subsidiary of The Electrolux Group which is the second largest appliance
17 manufacturer in the world and is comprised of approximately 150 companies with operations in
18 over 50 countries. The parent company of the Electrolux Group is AB Electrolux, a public Swedish
19 limited liability company. The company's shares are listed on the Nasdaq OMX Stockholm
20 exchange.

21 18. Plaintiff Robert Bovero is a citizen of California and resides in Jackson, California.

22
23 **FACTUAL BACKGROUND**

24 19. Defendant is in the business of manufacturing, producing, distributing, and/or
25 selling Fridges throughout the United States. The Fridges are identical as to the parts and
26 conditions that form the basis of these claims, and Plaintiff is informed and believes the Fridges
27 are and were manufactured in the same facilities in Juarez, Mexico.

1 20. EHP manufactured, produced, and/or distributed Fridges for sale by its network of
2 authorized dealers in the United States, such as ABT, Best Buy, Lowe's, Pacific Sales, Sears, and
3 other large and medium-sized retail chains, as well as through independently-owned retailers such
4 as Mother Lode Appliances.

5 21. On or about October 19, 2010, Mr. Bovero purchased a Fridge (model number
6 FGHB2869LF; serial number 4A02414773) from Mother Lode Appliance ("MLA") in Jackson,
7 California for approximately \$2,340, plus tax.

8 22. Mr. Bovero physically analyzed the Fridge on the showroom floor at MLA. The
9 MLA salesperson assisting him with his purchase represented to Mr. Bovero what Plaintiff is
10 informed and believes EHP represented to MLA, and which EHP stated in its advertising and
11 marketing of the Fridges and on the labeling and packaging of the Fridges; that the Fridge ice
12 maker would produce **ten pounds of ice every twenty-four hours**.

13 23. EHP regional sales representatives touted the Fridge's ice-making capabilities to
14 MLA and Plaintiff is informed and believes the same fact was touted to all Fridge distributors and
15 resellers.

16 24. EHP represented to MLA that the ice maker would make ten pounds of ice every
17 twenty-four hours. The performance of the ice maker was considered by EHP to be a significant
18 factor in making consumers, distributors and resellers purchase its Fridges.

19 25. Plaintiff is informed and believes that EHP represented to all entities that purchased
20 and resold the Fridges in California that the Fridges would make ten pounds of ice every twenty-
21 four, or similar representations that the Fridges would make more ice than EHP competitors'
22 refrigerators within the same time period. EHP expected and intended that MLA and other
23 distributors and resellers of the Fridges would repeat the representation about the Fridge's ice
24 making properties, characteristics, uses and benefits. EHP expected and intended retail customers
25 to rely on its representation that the Fridges would make ten pounds of ice within twenty-four
26 hours and have the properties, characteristics, uses and benefits of making more ice than EHP's
27 competitors' refrigerators in the same period of time.

1 26. At no point during the process of Fridge owners making claims that their ice makers
2 were malfunctioning or not performing in conformance with EHP's representations did EHP
3 disclose to California Fridge owners that the Fridge Control Panels were defective or that attempts
4 to repair the ice maker were futile.

5 27. After considering all of his options, Mr. Bovero purchased the Frigidaire Fridge
6 because of its ice maker feature and its ability to make and maintain more ice than other
7 manufacturers' refrigerator/freezers. Had he known that the Fridges had defective Control Panels
8 that caused the ice makers not to be able to make as much ice as he expected, he would not have
9 purchased the Fridge or would not have paid as much for it as he did.

10 28. Since the date of installation, the ice maker did not perform as represented. At best,
11 the ice maker would produce up to three to four pounds of ice in 24 hours.

12 29. In February 2011, the ice maker in Mr. Bovero's fridge broke down and ceased
13 producing ice.

14 30. On March 6, 2011, EHP, through its authorized retailer and service provider, MLA,
15 replaced the 7.9 version of the Control Panel on Mr. Bovero's fridge with the 8.1 version of the
16 Control Panel.

17 31. In April 2011, Mr. Bovero's ice maker was still not performing as represented and
18 warranted. MLA once again came to Mr. Bovero's home, inspected his Fridge and attempted to
19 repair the ice maker; this time by installing foam strips near the ice maker.

20 32. Following MLA's April 2011 repair attempt, Mr. Bovero's ice maker continued not
21 to perform. Over the next several months, MLA attempted to fix Mr. Bovero's defective ice maker
22 by replacing the Control Panel on two separate occasions. Mr. Bovero's Fridge presently has
23 installed within it its fourth defective Control Panel. In addition, during one of the service visits,
24 MLA attempted to rebuild and/or reconfigure the ice maker itself.

25 33. Over 20 months have elapsed since EHP first had notice that Mr. Bovero's ice
26 maker was malfunctioning. Mr. Bovero's ice maker continues to be defective and does not
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1 produce ice. EHP has not conformed the Fridge to the Written Warranty, Fact Warranties, or
2 implied warranty of merchantability (Written Warranty and Fact Warranties are defined below).

3 34. Mr. Bovero now brings this class action complaint seeking to recover the full relief
4 afforded to him and those similarly situated under California's consumer protection statutes, and
5 California and federal warranty law.

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7 **Breach of Express and Implied Warranties**

8 35. EHP provides express written warranties for Fridges against defects in materials and
9 workmanship through its Electrolux Major Appliances North America Division. A copy of the
10 Frigidaire brand Fridge warranty is attached hereto as Exhibit 1.

11 36. The express written warranty states: "from one year from your original date of
12 purchase, Electrolux will pay all costs for repairing or replacing any parts of this appliance that
13 prove to be defective in materials and workmanship."

14 37. The Written Warranties warrant that the Fridges will be free of defects in materials
15 and workmanship, as well as component malfunctions. Under the list of 13 exclusions, exclusion
16 number 7 excludes warranty coverage for "[s]ervice calls which do not involve malfunction or
17 defect in materials or workmanship..." Therefore, by positive implication, component
18 malfunctions are covered by the Written Warranties.

19 38. Sometime between 2010 and 2011, EHP stated to MLA that it had extended the
20 warranty on all ice makers for all Fridges for an additional three years ("Extended
21 Warranty")(Exhibit 1 and the Extended Warranty are collectively referred to herein as "Written
22 Warranties").

23 39. Plaintiff relied on the Written Warranty and/or the Written Warranties became part
24 of the basis of the bargain between Plaintiff and Electrolux in that he would not have purchased the
25 Fridge had it not been offered with the Written Warranties.

26 40. EHP has failed to satisfy its obligations under the Written Warranties by: not
27 replacing the Fridges that it knows to have defective Control Panels; not conforming them to the

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1 Fact Warranties; and/or not refunding consumers' purchase prices in amounts sufficient to comply
2 with the Song-Beverly Act.

3 41. The limitations on remedies contained in EHP's Written Warranties fail of their
4 essential purpose and are unenforceable with respect to the defective Control Panel. When Fridge
5 owners notify Electrolux that their Fridges' ice makers have malfunctioned, EHP has futile repairs
6 attempted in order to try to appease Fridge owners long enough for the Written Warranty terms to
7 expire.

8 42. For the same reason described in the preceding paragraph, to the extent there is any
9 notice requirement imposed by law, notice is excused because Defendant has (and had) actual
10 knowledge of defects in the Fridges that result in their failure to make or maintain ice or make the
11 amount of ice Electrolux warranted they would make; therefore notice to it has been, is and will be
12 futile, in that EHP is unable to cure the defective Control Panel.

13 43. EHP also created warranties by affirmation of fact. In the Fridges' User and Care
14 Guides/User Manuals that accompany the Fridges at the time of purchase, such as in the February
15 2010 Edition of the User and Care Guide (the edition accompanying Mr. Bovero's model),
16 Electrolux states that the ice maker **"can completely fill an ice bin in about eight (8) hours"** and
17 **"produces approximately (9) pounds of ice every 24 hours depending on usage conditions"**
18 (See Exhibit 2) (Electrolux's affirmations of fact cited in this paragraph are collectively hereinafter
19 referred to as "Fact Warranties"). EHP has failed to conform the Fridges to the Fact Warranties,
20 thereby breaching the Fact Warranties resulting in damages to Plaintiff Bovero and Class members.

21 44. As part of the sale of each Fridge, Defendant warranted that the Fridges had ice
22 makers of merchantable quality fit for the ordinary purpose for which they are used; i.e., to make
23 and maintain ice and maintain sufficiently cold temperatures to prevent the spoilage of food.
24 However, the ice makers fail their intended purpose and would not pass without objection in the
25 trade because they fail to: produce ice at all, or in sufficient quantity; maintain ice cubes once
26 formed; and/or maintain a proper temperature for the safe storage of food.

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1 45. EHP receives customer service calls regarding its refrigeration products at its call
2 center in Anderson, South Carolina.

3 46. Upon information and belief, approximately fifty percent of the inbound calls to the
4 call center relate to malfunctioning ice makers in the Fridges from consumers across the United
5 States.

6 47. EHP records details conveyed during the calls using a third-party software program
7 called "ServiceBench." ServiceBench allows an EHP representative to store details about a
8 customer such as the date of purchase, serial number, model number, personal contact information,
9 and service history.

10 48. Under the ServiceBench protocol and EHP's internal policies, a customer must first
11 exhaust at least three attempts at repair before an EHP customer service employee may agree to
12 offer a replacement product. In the case of the Fridges, even though EHP knew that the Control
13 Panel was defective and the cause of the malfunctioning ice maker, EHP would attempt futile
14 repairs such as replacing the entire ice maker, replacing miscellaneous irrelevant parts such as the
15 solenoid assembly, resetting the electronic system to factory default settings, and/or "reflashing"
16 the Control Panel by connecting a laptop to an interface on the Fridge.

17 49. Ultimately, when all of these efforts failed (as EHP knew and expected they would)
18 and a consumer continued to complain, EHP would replace the Control Panel. EHP attempted five
19 redesigns of its Control Panel before abandoning the ice maker design that plagued its Fridges.
20 None of the "upgraded" versions of the Control Panel have stopped the ice maker from
21 malfunctioning and enabled it to conform to EHP's Written Warranties, Fact Warranties, or
22 implied warranty of merchantability.

23 50. In some instances, even where EHP has replaced the defective Fridge with another
24 identical Fridge, the replacement Fridge is also defective because it contains the same defective
25 Control Panel that causes the ice maker to malfunction as described above.

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1 **Electrolux's Omissions of Material Fact**

2 51. EHP fails to disclose the material fact that the Fridges have defective Control
3 Panels that cause the ice makers to cease making ice or make less ice than represented.

4 52. Plaintiff now pleads his omission claims with particularity to satisfy Federal Rule of
5 Civil Procedure 9(b) and incorporates by reference all other paragraphs herein.

6 53. **WHO.** EHP is the entity responsible for failing to disclose the material information
7 to consumers who bought the Fridges. Electrolux is also the entity obligated, as alleged herein, to
8 disclose the material information.

9 54. **WHAT.** EHP failed to disclose the material fact that the Control Panel is defective
10 and will cause the ice maker to cease making ice, make less ice than represented, maintain ice
11 cubes, and/or cause refrigerator temperatures to reach unsafe food storage conditions. The omitted
12 material facts are contrary to representations EHP made about the ice maker's performance such
13 as: representing that the Fridges have ice-making capabilities by including through-the-door ice
14 dispensers; and representing that the Fridges can make **"up to 10 lbs of ice every 24 hours."**

15 55. **WHEN.** EHP fails to disclose the material facts at the point of purchase in retail
16 stores throughout California. In the case of Mr. Bovero, Electrolux failed to disclose the material
17 facts on October 19, 2010 through its authorized sales agent, and/or label or placards on the Fridge
18 itself when he physically examined the Fridge.

19 56. **WHERE.** EHP fails to disclose the material fact on the Fridges themselves or at the
20 point of purchase in retail stores where the Fridges are sold. In the case of Plaintiff Bovero, he
21 observed and relied on the omission of material facts on the Fridge at Mother Lode Appliance
22 located in Jackson, California.

23 57. **WHY and HOW.** The fact that the Control Panel is defective is material because a
24 consumer who is paying \$400 - \$700 more for a Fridge with a door-mounted ice dispenser would
25 want to know whether the ice maker's control panel is defective before deciding to buy the Fridge.
26 The omission is misleading because EHP represents that the Fridges have ice-making capabilities
27 and makes a specific and objectively verifiable representations about the performance of the
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1 Fridge's ice maker, but at the same time fails to disclose the fact that the Control Panel is
2 defective, and that it will cause the ice maker to not perform as represented or to cease working
3 altogether.

4 58. EHP was obliged to disclose the material facts that the Control Panel is defective
5 and that it had no solution to make the Fridges' ice makers perform as represented or in a
6 merchantable manner because: a) it had exclusive knowledge of the material facts not known to
7 Plaintiff and Class members, since only Defendant had access to the aggregate data from its
8 retailers, its own tests of Control Panels, and complaints from its customers; b) it actively
9 concealed and suppressed the material facts from Plaintiff by not warning of the defective Control
10 Panel at the time of purchase and by performing warranty and/or repair work that it knew would
11 not cure the malfunctioning ice maker; c) the material facts are contrary to partial representations
12 made about the ice makers at the point of sale such as that the ice makers can produce "**10 pounds**
13 **of ice every 24 hours**" and the presence of an ice dispenser in the doors of the Fridges.

14 59. EHP has gone to significant efforts to promote its ice maker and touted it as a
15 material property, characteristic, use and benefit of the Fridges.

16 60. EHP filed an application to register the trademark "Perfect Ice" on December 22,
17 2009. The "Perfect Ice" trademark was registered on September 7, 2010. EHP describes the goods
18 to be sold with the "Perfect Ice" trademark as "[i]ce machines sold as a component part of
19 refrigerators and freezers; refrigerators; freezers."

20 61. The defective Control Panels present unreasonable safety hazards to consumers. In
21 addition to causing the ice makers to malfunction or cease operating, the defective Control Panels
22 also causes the temperature in the refrigerator and freezer compartments to rise above 40°F and
23 above 0°F, respectively. As a result, food spoils prematurely and/or pathogenic bacteria is allowed
24 to thrive. Upon ingestion of contaminated food, consumers experience foodborne illness and
25 hospitalization. According to the U.S. Department of Health and Human Services, the numbers of
26 bacteria that cause foodborne illness can double every twenty minutes when food is not properly
27 refrigerated.

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1 62. Also, upon failure, the defective Control Panels allow any accumulated ice cubes in
2 the ice makers to melt inside the Fridges. Lacking a seal on the ice chute, the Fridges allow the
3 melted ice to leak from the Fridges onto consumers' floors where it causes walking surfaces to
4 become slick, resulting in falls and injury to consumers.

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6 **EHP's Knowledge and/or Reckless Disregard of the Defective Control Panel**

7 63. EHP's ServiceBench call center warranty records confirm EHP's knowledge that
8 the ice makers in its Fridges are defective.

9 64. EHP has made at least five attempts to redesign the Control Panel.

10 65. EHP abandoned the defective ice maker design used in the Fridges in later models
11 of its French-door bottom-mount refrigerators.

12 66. MLA confirms that it has communicated extensively with EHP about the fact that
13 the Fridge ice makers malfunction and the Control Panels are defective.

14 67. At an appliance trade show in Las Vegas in early 2010, EHP's then CEO, Kevin
15 Scott, admitted during a presentation to appliance dealers that the Fridges' ice maker was "a poor
16 design."

17 68. EHP failed to adequately design, test and manufacture the Fridges to ensure that
18 they are free from defects. Before EHP began selling the Fridges, EHP knew, or was reckless in not
19 knowing, that the Fridges contain defective Control Panels that cause the ice makers to
20 malfunction.

21 69. Despite having repeated notice of the defective Control Panels in its Fridges, EHP
22 has engaged and continues to engage in the following routine, albeit, wrongful course of conduct,
23 whereby it:

- 24 a) Designs, manufactures and sells Fridges with defective Control Panels;
- 25 b) Fails to disclose that the Fridges have defective Control Panels that cause
26 the ice makers to malfunction while representing that the ice makers can make "up to 10 pounds of
27 ice every 24 hrs.";

1 c) Continues to manufacture, market, advertise, distribute, and sell the Fridges
2 to consumers when it knew or should have known the Fridges were not dependable and would not
3 withstand normal operation;

4 d) Fails to disclose to Plaintiff and Class members the substantial risk of ice
5 maker failure;

6 e) Fails to disclose to Plaintiff and Class members the substantial safety risk of
7 foodborne illness resulting from the defective Control Panel;

8 f) Fails to implement a recall or repair program to adequately announce to
9 Plaintiff and Class members the presence of the defective Control Panel and risks associated
10 therewith, including damage to property from water leaks; and

11 g) Fails to disclose that EHP has not engineered a suitable repair for the
12 defective Control Panel that will conform the Fridge to its Written Warranties, Fact Warranties,
13 and implied warranty of merchantability.

14 70. As a result of EHP's deceptive conduct and concealment of material information
15 about its Fridges alleged herein, EHP has caused Plaintiff and Class members to suffer injury as
16 result of the defective Control Panels in the Fridges, including, but not limited to:

17 a) Plaintiff and Class members overpaid for the Fridges because they could
18 have purchased nearly identical Fridges without ice dispensers for \$400-\$700 less, or other brands
19 of refrigerators;

20 b) Plaintiff and Class members overpaid for their Fridges;

21 c) The value of Plaintiff's and Class members' Fridges is less than it would
22 have been, if the Fridges did not have defective Control Panels; and

23 d) Some Class members reasonably spent money for attempted repairs related
24 to the defective Control Panel, which money they would not have spent, but for EHP's
25 concealment of material information about the Fridges and the efficacy of the futile repairs it
26 recommended Class members perform on their Fridges. A replacement Control Panel sells at retail
27 for approximately \$200, plus the cost of installation, which can easily exceed an additional \$100.

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1 **California and to whom Electrolux has not paid a full refund of their purchase**
2 **price, excluding taxes and installation costs.**
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4 76. Excluded from the Class are (i) Defendant, any entity in which Defendant has a
5 controlling interest or which has a controlling interest in Defendant, and Defendant's legal
6 representatives, predecessors, successors and assigns; (ii) governmental entities; (iii) Defendant's
7 employees, officers, directors, agents, and representatives and their family members; (iv) the Judge
8 and staff to whom this case is assigned, and any member of the Judge's immediate family; (v) any
9 purchaser of a Fridge in the State of California who has received a refund for the full purchase
10 price of his/her Fridge, excluding taxes and installation costs; and (vi) any purchaser of a Fridge in
11 the State of California who has received a re-designed replacement Fridge from EHP that conforms
12 to EHP's Written Warranties, Fact Warranties, and implied warranties.

13 77. Plaintiff reserves the right to amend the Class definition if discovery and further
14 investigation reveal the Class should be expanded or otherwise modified.

15 78. This action has been brought and may properly be maintained as a class action,
16 pursuant to Federal Rule of Civil Procedure 23(b)(3), because there is a well-defined community of
17 interest in the litigation in which common issues predominate and the proposed class is easily
18 ascertainable:

19 a) Numerosity. The Fridges were sold and distributed by EHP throughout the
20 United States. Plaintiff is informed and believes that the proposed putative Class is made-up of at
21 least several hundred residents of California.

22 b) Common Issues Predominate. Common questions of law and fact exist as to all
23 members of the Class and predominate over any questions which affect only individual members
24 of the Class. The Fridges are all the same and do not differ in any manner that is relevant to
25 Plaintiff's allegations, and the damage and harm caused thereby. Plaintiff alleges herein that the
26 Fridges all have the same inherent defects (and that they were defective when made, when they left
27 Electrolux's possession and control, and are presently defective as they are now being used by
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1 Plaintiff and Class members). There is a well-defined community of interest in the questions of law
2 and fact involved and that affect consumers who purchased the Fridges, and they all suffer from
3 inherent and common defects. These questions of law and fact predominate over questions that
4 affect only individual class members.

5 The common questions of law and fact include, without limitation:

- 6 (1) Whether the Control Panels are defective;
- 7 (2) Whether EHP knew and/or recklessly disregarded the fact that the Control
8 Panels were and are defective;
- 9 (3) Whether EHP concealed, and failed to disclose material facts in its
10 communications and disclosures to Plaintiff and Class members regarding the defective Control
11 Panels, which are inherent in the Fridges;
- 12 (4) Whether EHP represented that its Fridges would produce up to 10 pounds of
13 ice within twenty-four hours;
- 14 (5) Whether EHP has engaged in unfair methods of competition,
15 unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the
16 sale and warranting of the Fridges;
- 17 (6) Whether EHP breached express Written Warranties and/or Fact Warranties;
- 18 (7) Whether EHP breached its implied warranties;
- 19 (8) Whether, as a result of EHP's conduct, Plaintiff and Class members have
20 suffered damages, and if so, the appropriate amount thereof; and
- 21 (9) Whether, as a result of Defendant's misconduct, Plaintiff and Class
22 members are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

23 These questions of law and fact predominate over questions that affect only individual
24 Class members and there is a well-defined community of interest in the questions of law and fact
25 involved and that affect the Class.

26 c) Typicality. Plaintiff's claims are typical of the claims of the Class members in
27 that Plaintiff and the Class members have the same Fridges, which share the same design, parts,
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1 materials, workmanship and manufacture and about which Defendant repeatedly made the same, or
2 nearly identical, uniform omissions. Therefore, the claims of Plaintiff are and will be typical of
3 Class members.

4 d) The Class is Ascertainable. Plaintiff has adequately and objectively defined the
5 Class, as detailed above, so the Court and Class members will be able to use the definition to
6 determine Class membership.

7 e) Adequacy. Plaintiff will fairly and adequately represent the interests of all Class
8 members. Plaintiff has purchased a Fridge and is an adequate representative of the Class as he has
9 no interests which are adverse to the interests of absent Class members. Plaintiff has retained
10 counsel with substantial experience and success in the prosecution of complex defective product
11 and consumer protection class action litigation.

12 f) Superiority. A class action is superior to other available means for the fair and
13 efficient adjudication of this controversy. Class action treatment will permit a large number of
14 similarly situated persons to prosecute their common claims in a single forum simultaneously,
15 efficiently and without the unnecessary duplication of effort and expense that numerous individual
16 actions would engender. The disposition of their claims in this case and as part of a single class
17 action lawsuit, rather than hundreds of individual lawsuits, will benefit the parties and greatly
18 reduce the aggregate judicial resources that would be spent if this matter were handled as hundreds
19 of separate lawsuits. Furthermore, given the extraordinary expenses and burden in conducting the
20 discovery and presentation of evidence about the inherent defects in the Fridges, the burden of
21 individual litigation would make it extremely difficult, if not impossible for individual members of
22 the Class to redress the wrongs asserted herein, while an important public interest will be served by
23 addressing the matter as a class action. Moreover, separate prosecution by thousands of individual
24 members of the Class would likely establish inconsistent standards of conduct for the Defendant
25 and result in the impairment of, and potential harm to, Class members' rights and the disposition of
26 their interests through actions to which they were not parties. Plaintiff is informed and believes
27 that a great amount of time and expense will be saved by conducting the discovery and
28

1 presentation of evidence about the inherent defects in the Fridges in a single class action lawsuit, in
2 contrast to the repeated discovery and presentation of evidence in hundreds or thousands of
3 separate lawsuits brought on the common questions presented by the allegations of this complaint.
4 Plaintiff knows of no difficulty that will be encountered in the management of this litigation which
5 would preclude its maintenance as a class action.

6
7 **FIRST CAUSE OF ACTION**

8 **(Violations of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

9 79. Plaintiff repeats and re-alleges all prior paragraphs and incorporates them as if fully
10 set forth herein.

11 80. Defendant has engaged in unfair, unlawful, and fraudulent business acts or practices
12 as set forth above.

13 81. Plaintiff brings this cause of action on behalf of himself and the California Class,
14 pursuant to California Business and Professions Code, §17200, *et seq.*

15 82. Defendant's conduct constitutes **unfair** business acts and/or practices because
16 Defendant's practices have caused and are likely to cause substantial injury to Plaintiffs which
17 injury is not reasonably avoidable by Plaintiffs in light of Defendant's exclusive knowledge of the
18 defective Control Panels in the Fridges, and is not outweighed by the acts' and practices' benefits,
19 if any, to Plaintiff and Class members. Such conduct is ongoing and continues to this date.

20 83. The injury to consumers is substantial, particularly because the Fridges are defective
21 at the time of sale and continue to be defective after numerous repair attempts during the warranty
22 period. Plaintiff and Class members paid hundreds of dollars for Fridges that they would not
23 otherwise have spent for Fridges that have defective ice makers. The Fridges are worth
24 substantially less than Plaintiff and Class members paid for them given the defective Control
25 Panels.

26 84. The injury to consumers is not outweighed by any countervailing benefits to
27 consumers or competition. Any purported benefits to consumers from the design of the Fridges is
28

1 negated by the defective Control Panel and ice makers' inability to make ice. Any space that may
2 have been saved inside the refrigerator compartment through Electrolux's ice maker design is
3 negated by the space occupied by an idle ice maker.

4 85. The injury to consumers is not an injury that consumers themselves could not
5 reasonably have avoided because consumers did not know about the defective Control Panels
6 before they bought the Fridges.

7 86. Defendant's acts and practices of selling Fridges while omitting the material fact
8 that the Fridges have defective Control Panels that cause ice makers to malfunction offends an
9 established public policy and are immoral, unethical, oppressive, unscrupulous or substantially
10 injurious to consumers.

11 87. It is unethical and oppressive to charge a premium price for a product that fails of
12 its essential purpose of making ice. Further, as alleged in detail above, Defendant actually knew
13 about the existence of defective Control Panels, which renders Defendant's conduct particularly
14 immoral, unethical, oppressive and unscrupulous.

15 88. Defendant's conduct also offends established public policies concerning consumer
16 protection and class action litigation. The California Supreme Court has found that "[p]rotection
17 of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost
18 priority in contemporary society." *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 808 (1971). Moreover,
19 the public policy at the very core of the class action mechanism is to overcome the problem that
20 relatively small recoveries do not provide the incentive for any individual to bring a solo action
21 prosecuting his or her rights. A class action solves this problem by aggregating the relatively small
22 potential recoveries into something worth someone's time and labor. *Amchem Prods. v. Windsor*,
23 521 U.S. 591, 617 (1997) (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir.
24 1997). California also has established a public policy against allowing manufacturers to escape
25 liability for placing defective consumer products in the stream of commerce by imposing liability
26 on them, and subjecting them to penalties, under the implied warranty of merchantability by
27 operation of law under the Song-Beverly Act, Cal. Civ. Code § 1790 *et seq.*

1 89. Defendant's acts, practices and omissions threaten an incipient violation of antitrust
2 laws and/or consumer protection statutes, or violate the policy and spirit of one of those laws
3 because the effect of the acts and practices are comparable to or the same as a violation of the law
4 or otherwise significantly threaten or harm competition. Indeed, Defendant's acts and practices
5 harm competition by luring consumers to buy its Fridges, instead of the refrigerators manufactured
6 and sold by Defendant's competitors. The free market requires the free flow of information to run
7 effectively. Defendant's failure to disclose the material fact that the Control Panels are defective
8 and cause the ice makers (for which consumers pay a premium price) to malfunction, impedes the
9 free market.

10 90. Furthermore, EHP wrongfully gained money by making the sale of Fridges to
11 Californians, which wrongful gain should be restored to Californians that purchased Defendant's
12 Fridges.

13 91. Defendant's acts and practices are **unlawful** because they violate the Song-Beverly
14 Act, Civil Code §§ 1790 et seq., the Consumer Legal Remedies Act, Civil Code 1750 *et seq.*, Bus.
15 & Prof. Code § 17500, the California Commercial Code, and the Magnuson-Moss Warranty Act
16 ("MMWA").

17 i. Defendant violates Cal. Bus. & Prof. Code § 17500 as alleged throughout this
18 Complaint and in the Second Cause of Action, incorporated hereto by
19 reference.

20 ii. Defendant violates the CLRA, Cal. Civ. §§ 1750 *et seq.*, as alleged throughout
21 this Complaint and the Third cause of action, incorporated by reference hereto.

22 iii. Defendant violates Cal. Civ. Code §§ 1790 *et seq.*, the California Commercial
23 Code, and the MMWA as alleged throughout this Complaint, and in the Fourth,
24 Fifth and Sixth Causes of Action, incorporated hereto by reference.

25 92. Defendant's acts and practices are **fraudulent** in that they have deceived and/or are
26 "likely to deceive" Plaintiff and members of the consuming public. Defendant sold Plaintiff and
27

1 Class members Fridges with defective Control Panels that have rendered the Fridges' ice makers
2 unusable for the purposes for which they were purchased.

3 93. Plaintiff and class members relied on Defendant's unfair, unlawful, and fraudulent
4 business acts and practices to their detriment in that they would not have purchased the Fridges had
5 EHP disclosed that the Control Panels were defective and the Fridges would not make ice or as
6 much ice as Electrolux represented, and for which performance Electrolux demanded and received
7 a premium price. As alleged herein, Mr. Bovero relied on Defendant's omissions and would not
8 have bought the Fridge had EHP disclosed that the defective Control Panel caused the ice maker
9 not to be able to produce the amount of ice it represented it would make.

10 94. Defendant's unfair, unlawful, and fraudulent business acts and practices directly and
11 proximately caused Plaintiff and Class members' injuries in that but for Defendant's failure to
12 disclose that the Fridges had defective Control Panels, Plaintiff and Class members would have
13 paid less for the Fridges, would have bought other less-expensive styles or brands of refrigerators,
14 or would not have purchased the Fridges at all.

15 95. Defendant was obliged to disclose the material facts because: a) Defendant had
16 exclusive knowledge of the material facts not known to Plaintiff and Class members, since only
17 Defendant had access to the aggregate data from its retailers, its own research and tests, and
18 complaints from its customers through its ServiceBench warranty and customer service
19 database(s); and b) Defendant actively concealed and suppressed the material facts from Plaintiff
20 and Class members by not warning of the defective Control Panel at the time of purchase and by
21 performing warranty and/or repair work that it knew would not cure the malfunctioning ice
22 makers, while representing to consumers either expressly or impliedly that the futile repair efforts
23 would fix the malfunctioning ice makers; and (c) EHP made partial representations about the ice-
24 maker's performance while withholding the material fact that the Fridges have defective Control
25 Panels that prevent their ice makers from functioning properly.

26 96. Plaintiff and Class members have suffered injury in fact and have lost money as a
27 result of Defendant's unfair competition in that they have overpaid for the Fridges and/or by that
28

1 fact that their Fridges are worth less than they paid for them because of the defective Control
2 Panels. Plaintiff and Class members seek an order of this Court awarding restitution, injunctive
3 relief and all other relief allowed under Section 17200, *et seq.*, plus interest, attorneys' fees, and
4 costs.

5 **SECOND CAUSE OF ACTION**

6 **(Violations of Cal. Bus. & Prof. Code § 17500 *et seq.*)**

7 97. Plaintiff repeats and re-alleges all prior paragraphs and incorporates them as if fully
8 set forth herein.

9 98. Plaintiff brings this cause of action on behalf of himself and the Class pursuant to
10 California Business and Professions Code, §17500, *et seq.*

11 99. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17506.

12 100. Defendant falsely advertised the Fridges by making partial representations about the
13 ice makers' performance, while omitting the material information that the Control Panel of the ice
14 maker was defective.

15 101. EHP's false advertising through omission of material fact has deceived and is
16 "likely to deceive" Plaintiff and Class members.

17 102. Plaintiff and Class members relied upon Defendant's false advertising to their
18 detriment in that they would not have purchased the Fridges had EHP disclosed that the Control
19 Panels were defective, and therefore their ice makers, for which Electrolux was demanding a
20 premium price, would malfunction.

21 103. Defendant's false advertising directly and proximately caused Plaintiff's and Class
22 members' injuries in that but for Defendant's failure to disclose that the Fridges had defective
23 Control Panels, Plaintiff and Class members would not have overpaid for the Fridges, would have
24 bought other less-expensive styles or brands of refrigerators, or would not have bought the Fridges
25 at all.

1 104. Plaintiff and Class members have suffered injury in fact and have lost money as a
2 result of Defendant's false advertising in that they have overpaid for the Fridges and/or by that fact
3 that their Fridges are worth less than they paid for them because of the defective Control Panels.

4 105. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535, Plaintiff seeks an order 1)
5 requiring Defendant to immediately cease the unlawful, unfair, and or fraudulent business acts
6 and/or practices and false and misleading advertising complained of herein; 2) enjoining Defendant
7 from continuing to falsely advertise the Fridges; and 3) requiring Defendant to repair or replace the
8 Fridges or provide full restitution to Plaintiff and Class members of their full retail purchase price
9 (excluding taxes and installation costs), plus interest and attorneys' fees.

10
11 **THIRD CAUSE OF ACTION**

12 **(Violations of the California Consumers Legal Remedies Act,**
13 **Cal. Civ. Code § 1750 *et seq.* – Seeking Injunctive Relief Only)**

14 106. Plaintiff repeats and re-alleges all prior paragraphs and incorporates them as if fully
15 set forth herein.

16 107. Plaintiff seeks to enjoin Defendant's violation of the California Consumers Legal
17 Remedies Act ("CLRA"), California Civil Code §§ 1750 *et seq.*

18 108. At all times relevant hereto, Plaintiff and Class members were "consumer[s]" as that
19 term is defined in Civ. Code § 1761(d).

20 109. At all times relevant hereto, the Fridges constituted "goods" as that term is defined
21 in Civ. Code § 1761(a).

22 110. At all times relevant hereto, Defendant constituted a "person" as that term is defined
23 in Civ. Code § 1761(c).

24 111. At all times relevant hereto, Plaintiff's and Class members' purchases of
25 Defendant's Fridges and replacement parts constituted a "transaction" as that term is defined in
26 Civ. Code § 1761(e).

27

28

1 112. At all times relevant hereto, Defendant provided "services" to Plaintiffs within the
2 meaning of Civil Code § 1761(b).

3 113. The CLRA provides in relevant part that "[t]he following unfair methods of
4 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
5 intended to result or which results in the sale or lease of goods or services to any consumer are
6 unlawful: (5) Representing that goods . . . have . . . characteristics, uses, benefits . . . which they do
7 not have; ... (7) Representing that goods ... are of a particular standard, quality or grade . . . if they
8 are of another; ... and (9) Advertising goods ... with intent not to sell them as advertised.

9 114. Defendant violated Civ. Code § 1770(a) subsection (5), (7), and (9) by representing
10 that Fridges had ice-making capability when, in fact, the Fridges have defective Control Panels that
11 cause the ice makers to malfunction and prevent the Fridges from keeping a proper temperature for
12 the safe preservation of food. The information Defendant concealed and/or did not disclose to
13 Plaintiff and Class members is material facts in that reasonable consumers expect Fridges with ice
14 dispensers, for which they paid a premium price, to function properly, and thus would have
15 considered the omitted facts important in deciding whether to purchase, or whether to pay the
16 stated price for the Fridges.

17 115. Plaintiff and Class members would have behaved differently by not buying the
18 Fridges, not paying for repairs, and/or paying less for the Fridges, had they been aware that the
19 Control Panels were defective.

20 116. The omissions of material facts, as alleged above, are contrary to representations
21 actually made by Defendant, including but not limited to, that the Fridges would produce "up to 10
22 pounds of ice every 24 hours."

23 117. Defendant was obliged to disclose the material facts because: a) Defendant had
24 exclusive knowledge of the material facts not known to Plaintiff and Class members, since only
25 Defendant had access to the aggregate data from its retailers, its own tests, and complaints from its
26 customers through its ServiceBench warranty and customer service database(s); and b) Defendant
27 actively concealed and suppressed the material facts from Plaintiff and Class members by not
28

1 warning of the defective Control Panel at the time of purchase and by performing warranty and/or
2 repair work that it knew would not cure the malfunctioning ice makers, while representing to
3 consumers either expressly or impliedly that the futile repair efforts would fix the malfunctioning
4 ice makers.

5 118. Plaintiff and Class members justifiably acted or relied to their detriment upon the
6 concealment and/or non-disclosure of material facts as evidenced by their purchases of the
7 defective Fridges. Had defendant disclosed the material fact that the Fridges had defective Control
8 Panels, Plaintiff and Class members would have behaved differently by not buying the Fridges.

9 119. Defendant's omissions of material facts directly and proximately caused Plaintiff's
10 and Class member's injuries in that Plaintiff and Class members would not have paid the extra
11 premium of \$400-\$700 for the in-door ice dispensers or would not have bought the Fridges at all
12 had Defendant disclosed that the ice makers would cease to operate as a result of defective Control
13 Panels. As such, Plaintiffs did not receive the benefit of the bargain.

14 120. Civil Code § 1780 (a)(2) permits any court of competent jurisdiction to enjoin
15 practices that violate Civil Code § 1770.

16 121. Pursuant to Civil Code § 1782(d), Plaintiff seeks only injunctive relief under this
17 cause of action, and will be sending Defendant a demand letter that complies with Civ. Code §
18 1782(a). Should Defendant not satisfy all of the elements of Civ. Code § 1782(c)(1)-(4), Plaintiff
19 will amend this complaint to include a claim for damages under the CLRA.

20
21 **FOURTH CAUSE OF ACTION**

22 **Asserted On Behalf of the California Class**

23 **(Breach of Express Warranty under the Song-Beverly Act,**

24 **Cal. Civ. Code 1790 *et seq.*, and Cal. Comm. Code § 2313)**

25 122. Plaintiff repeats and re-alleges all prior paragraphs and incorporates them as if fully
26 set forth herein.

1 123. Plaintiff seeks recovery for himself and the Class for Defendant's breach of express
2 warranty under the laws of the State of California.

3 124. Under its Written Warranty, Defendant warranted all of the Fridges against
4 "malfunctions or defects in materials or workmanship," and also warranted "Every Electrolux
5 Major Appliance" under its "Platinum Star® Service & Warranty" as "guaranteed to be free of
6 material defects or component malfunctions" at a time when it knew that the Fridges had
7 inoperable ice makers caused by defective Control Panels.

8 125. Under its Fact Warranties, Electrolux warranted that the ice makers "can completely
9 fill an ice bin in about eight (8) hours" and "The ice maker produces approximately (9) pounds of
10 ice every 24 hours depending on usage conditions" at a time when it was selling Fridges with
11 defective Control Panels.

12 126. These affirmations and promises created express warranties that the Fridges would
13 provide the performance described above and were sold without defects and would conform to
14 Defendant's affirmations and promises.

15 127. Defendant is obligated under the terms of its express Warranties to repair and/or
16 replace the defective Control Panels in the Fridges sold to Plaintiffs, and/or to make the Fridges
17 conform to the Written Warranties and Fact Warranties under the Song-Beverly Act, Civil Code §
18 1793.2(b) and (d), Cal. Comm. Code § 2313.

19 128. Defendant breached its Written Warranties and Fact Warranties, as set forth above,
20 by selling and supplying the Fridges with defective Control Panels and by failing to repair the
21 Fridges or replace them with non-defective Fridges so that they conform to the warranties after a
22 reasonable number of repair attempts.

23 129. To the extent any notice is deemed required, Defendant has received sufficient and
24 timely notice of the breaches of warranties alleged herein. Defendant has had notice of Plaintiff's
25 claim as it has attempted to repair Plaintiff's Fridge. Despite this notice and Defendant's
26 knowledge of the defective Control Panels in its Fridges, Defendant has refused to honor its
27 Written Warranties and Fact Warranties.

28

1 130. In addition, Defendant has received thousands of complaints and other notices from
2 its customers throughout the United States, which complaints notified Defendant that the Fridges
3 are malfunctioning.

4 131. Plaintiff has complied with his obligations under the Written Warranty and the law
5 and has given Defendant a reasonable opportunity to cure the breaches of its Warranties and
6 Defendant failed to do so.

7 132. Pursuant to Cal. Civ. Code § 1793.2, EHP had 30 days within which to conform
8 Plaintiff's and Class member's Fridges to the express warranties, however, EHP failed to do so and
9 no conditions beyond its control prevented its compliance.

10 133. Defendant knew of its Warranty obligations to repair or replace the Fridges, because
11 of the defective Control Panels in the Fridges that it could not conform to its express warranties.
12 However, Defendant has willfully refused to replace the Fridges. Therefore, Defendant is liable for
13 damages, as well as civil penalties pursuant to Civil Code § 1794.

14 134. EHP's time limits on its express Warranties are procedurally and substantively
15 unconscionable. The Written Warranties are offered on a take-it-or leave-it basis without any input
16 from consumers in a prolix printed form that are oppressive and surprise consumers because EHP
17 is in a superior bargaining position. The Written Warranties are substantially unconscionable
18 because EHP knowingly and/or recklessly sold a defective product that was defective at the time of
19 sale, without conspicuously informing consumers about the defects in the Fridges which cause
20 them to produce no ice, or less ice than Defendant represented the Fridges would make. The time
21 limits on the express Warranties are grossly inadequate to protect Plaintiff and Class members.
22 The terms of the Written Warranties unreasonably favor Defendant by unreasonably limiting the
23 Warranty to 1 year on a product that is expected to last 17 or more years; a gross disparity in
24 bargaining power existed as between Defendant and Plaintiff and the Class members; Plaintiff and
25 the Class members had no meaningful choice in determining those time limitations; and Defendant
26 knew or should have known that the Fridges were defective at the time of sale and that the Control
27 Panels would fail prematurely in the useful lives of the Fridges, thereby creating overly harsh and

28

1 one-sided results by leaving consumers to pay for the repair of defects that Electrolux knew existed
2 at the time of sale.

3 135. Defendant has been unable to design a repair for the defective Control panel and has
4 abandoned the ice maker design described herein.

5 136. Defendant's affirmations and promises became part of the "basis of the bargains"
6 between Plaintiff and the Class members, on the one hand, and Electrolux, on the other hand.
7 Plaintiff and Class members would not have purchased the Fridges had EHP not warranted the
8 Fridges as it did.

9 137. As a direct and proximate result of Defendant's breach of the Written Warranty and
10 Fact Warranties, Plaintiff and Class members have sustained damages and other losses in an
11 amount to be determined at trial.

12 138. Defendant has made more repair attempts than is reasonable and has still has not
13 conformed the Fridges to its express warranties. Pursuant to Cal. Civ. Code § 1793.2, EHP is
14 required to replace the Fridges with conforming Fridges, or reimburse Plaintiff and Class members
15 their purchase price. Plaintiff is also entitled to recover costs, attorneys' fees, and other relief as the
16 Court deems appropriate.

17 **FIFTH CAUSE OF ACTION**

18 **Asserted On Behalf of the California Class**

19 **(Breach of Implied Warranty of Merchantability under the Song-Beverly Act,**

20 **Cal. Civ. Code 1790 *et seq.*)**

21 139. Plaintiff alleges and incorporates the above allegations by reference as if fully set
22 forth herein.

23 140. Under California's Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1792 *et*
24 *seq.*, every sale of consumer goods is accompanied by both a "manufacturer's and retailer's"
25 implied warranty that the goods are merchantable within the meaning of Cal. Civ. Code §
26 1791.1(a). Therefore, consumers need not be in privity with the manufacturer to bring an implied
27 warranty claim.

28

1 141. Pursuant to Cal. Civ. Code § 1793, EHP's attempt to modify the length of the
2 implied warranty of merchantability in its Written warranty is void.

3 142. The Fridges are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

4 143. Defendant is a "manufacturer" within the meaning of Cal. Civ. Code §§ 1791(j).

5 144. Plaintiff bought the Fridge at retail in the State of California.

6 145. At the time of sale, and currently, Defendant is in the business of manufacturing,
7 marketing, and selling Fridges.

8 146. By operation of law, Defendant impliedly warranted to Plaintiff and Class members
9 that the Fridges, and ice makers, which are an integral part thereof, and for which Plaintiff and
10 Class members paid a premium price, were of merchantable quality and fit for the ordinary
11 purposes for which they are used - making and keeping ice, and preserving food at a safe
12 temperature.

13 147. Defendant knowingly and/or recklessly sold a defective product without
14 conspicuously informing consumers about the defective Control Panels and malfunctioning and
15 defective ice makers.

16 148. The Fridges have an expected useful life of at least 17 years. The control panels are
17 defective and cause the ice makers and temperature controls to malfunction. As a result, the
18 Fridges are substantially certain to fail within their useful life.

19 149. Defendant breached the implied warranty at the time of sale by selling the Fridges
20 with defective Control Panels.

21 150. Plaintiff's and Class members' Fridges do not pass without objection in the trade as
22 they are sold as a premium product, but fail to make and preserve ice.

23 151. Plaintiff's and Class members' Fridges became unfit for their ordinary purpose of
24 making and preserving ice and keeping food safe.

25 152. Plaintiff's and Class members' Fridges were not adequately contained, packaged, or
26 labeled because the ice makers could not perform as expected.

27

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1 153. Plaintiff's and Class member's Fridges do not conform to the promises or
2 affirmations of fact made in the Operating Instructions that the Fridges will make "9 pounds of ice
3 in 24 hours" or "It can completely fill an ice bin in about eight (8) hours."

4 154. Plaintiff and Class members were the intended third-party beneficiaries of the
5 contracts for sale of the Fridges from Electrolux to the retailers who ultimately sold the Fridges to
6 Plaintiff and Class members. In the case of Plaintiff Bovero, Plaintiff is the intended third party
7 beneficiary of a contract for sale of the Fridge from EHP to Mother Lode Appliances. As for Class
8 members, they are the intended third-party beneficiaries of the contracts for sale of the Fridges
9 from EHP to retailers such as Lowes, Home Depot, Sears, Pacific Sales/Best Buy, and/or smaller
10 independent retailers across the State of California.

11 155. Defendant knew that the retailers to whom it sold the Fridges were not going to own
12 the Fridges any longer than it took to sell them to Plaintiff and Class members. Further, Defendant
13 intended that any warranty, whether express or implied, that applied to the Fridges were for the
14 benefit of Plaintiff and Class members; who are the people that own and use the Fridges.

15 156. Defendant knew and intended that Plaintiff and Class members were the ultimate
16 beneficiaries of Defendant's implied warranties as they are the owners of the Fridges.

17 157. Plaintiff and Class members purchased the Fridges from authorized dealers who are
18 agents of Electrolux.

19 158. The dealers were not intended to be the ultimate consumers of the defective Fridges;
20 the warranty agreements were designed for and intended to benefit the ultimate consumers only.

21 159. Defendant, who manufactures and markets the Fridges, and/or sellers/resellers of
22 the Fridges, had knowledge that Plaintiff and Class members were the end users of the Fridges
23 when Defendant entered into any and all sales contracts and subcontracts for the Fridges with
24 retailers and resellers and Defendant's intent to benefit Plaintiff and Class members arises by
25 operation of law pursuant to the implied covenant of good faith and fair dealing contained within
26 any and all sales contracts and subcontracts for the Fridges entered into by Defendant.

27

28

1 Control Panels in the Fridges is unconscionable and any such effort to disclaim, or otherwise limit,
2 liability for its defective Fridges is null and void as alleged above.

3 169. This Court has jurisdiction over this cause of action under 28 U.S.C. 1332.

4 170. EHP has failed to comply with its obligations under its Written Warranties, Fact
5 Warranties and implied warranties. By failing to repair or replace the Fridges under the Written
6 Warranties and conform the Fridges to the Fact Warranties and implied warranties, EHP breached
7 its warranties.

8 171. Plaintiff fulfilled his obligations under the warranties.

9 172. As a direct and proximate result of Defendant's breach of express and implied
10 warranties, Plaintiff and Class members have suffered injury in that their Fridges are worth less
11 than what they paid for them and Plaintiff and Class members are entitled to damages, equitable
12 relief, attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Defendant for the following:

16 1. An order certifying Plaintiff's claims as a class action, appointing Robert Bovero as
17 representative Plaintiff and appointing his counsel, Eppsteiner & Fiorica Attorneys, LLP, and
18 Stuart M. Eppsteiner, Andrew J. Kubik, and Zelekha Amirzada of that firm to be counsel for the
19 Class;

20 2. A constructive trust on and restitution of all amounts obtained by Defendant as a
21 result of its misconduct, together with interest thereon from the date of payment, to the victims of
22 such violations;

23 3. All recoverable compensatory, punitive, and other damages sustained by Plaintiff
24 and Class members;

25 4. Actual and/or statutory damages for injuries suffered by Plaintiff and Class
26 members in the maximum amount permitted by applicable law;

1 5. An order (1) enjoining Defendant's wrongful, unlawful, fraudulent, deceptive, and
2 unfair conduct as set forth above; (2) directing Defendant to engage in a corrective notice
3 campaign; and (3) directing Defendant to repair or replace the Fridges or refund to Plaintiff and
4 Class members the funds paid to Defendant for the defective Fridges;

5 6. Statutory pre-judgment and post-judgment interest on any amounts;

6 7. Payment of reasonable attorneys' fees and costs as may be allowable under
7 applicable law; and

8 8. Such other relief as the Court may deem just and proper.

9
10 Plaintiff individually and on behalf of all others similarly situated, hereby demands a trial
11 by jury on all issues so triable.

12
13 DATED: January 14, 2013 EPPSTEINER & FIORICA ATTORNEYS, LLP

14
15 By: _____



16 Stuart M. Eppsteiner, Esq.
17 Andrew J. Kubik, Esq.
18 Zelekha Armizada, Esq.

EXHIBIT 1

FRIGIDAIRE

All about the

Use & Care

of your Refrigerator

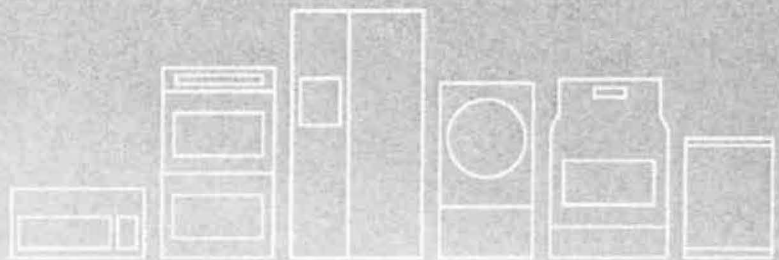


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MAJOR APPLIANCE WARRANTY

Your appliance is covered by a one year limited warranty. For one year from your original date of purchase, Electrolux will pay all costs for repairing or replacing any parts of this appliance that prove to be defective in materials or workmanship when such appliance is installed, used and maintained in accordance with the provided instructions.

Exclusions This warranty does not cover the following:

1. Products with original serial numbers that have been removed, altered or cannot be readily determined.
2. Product that has been transferred from its original owner to another party or removed outside the USA or Canada.
3. Rust on the interior or exterior of the unit.
4. Products purchased "as-is" are not covered by this warranty.
5. Food loss due to any refrigerator or freezer failures.
6. Products used in a commercial setting.
7. Service calls which do not involve malfunction or defects in materials or workmanship, or for appliances not in ordinary household use or used other than in accordance with the provided instructions.
8. Service calls to correct the installation of your appliance or to instruct you how to use your appliance.
9. Expenses for making the appliance accessible for servicing, such as removal of trim, cupboards, shelves, etc., which are not a part of the appliance when it is shipped from the factory.
10. Service calls to repair or replace appliance light bulbs, air filters, water filters, other consumables, or knobs, handles, or other cosmetic parts.
11. Surcharges including, but not limited to, any after hour, weekend, or holiday service calls, tolls, ferry trip charges, or mileage expense for service calls to remote areas, including the state of Alaska.
12. Damages to the finish of appliance or home incurred during installation, including but not limited to floors, cabinets, walls, etc.
13. Damages caused by: services performed by unauthorized service companies; use of parts other than genuine Electrolux parts or parts obtained from persons other than authorized service companies; or external causes such as abuse, misuse, inadequate power supply, accidents, fires, or acts of God.

DISCLAIMER OF IMPLIED WARRANTIES; LIMITATION OF REMEDIES

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE PRODUCT REPAIR OR REPLACEMENT AS PROVIDED HEREIN. CLAIMS BASED ON IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED TO ONE YEAR OR THE SHORTEST PERIOD ALLOWED BY LAW, BUT NOT LESS THAN ONE YEAR. ELECTROLUX SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES SUCH AS PROPERTY DAMAGE AND INCIDENTAL EXPENSES RESULTING FROM ANY BREACH OF THIS WRITTEN LIMITED WARRANTY OR ANY IMPLIED WARRANTY. SOME STATES AND PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, SO THESE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WRITTEN WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

If You Need Service Keep your receipt, delivery slip, or some other appropriate payment record to establish the warranty period should service be required. If service is performed, it is in your best interest to obtain and keep all receipts. Service under this warranty must be obtained by contacting Electrolux at the addresses or phone numbers below.

This warranty only applies in the USA and Canada. In the USA, your appliance is warranted by Electrolux Major Appliances North America, a division of Electrolux Home Products, Inc. In Canada, your appliance is warranted by Electrolux Canada Corp. Electrolux authorizes no person to change or add to any obligations under this warranty. Obligations for service and parts under this warranty must be performed by Electrolux or an authorized service company. Product features or specifications as described or illustrated are subject to change without notice.

USA
1.800.944.9044
Frigidaire
P.O. Box 212378
Augusta, GA 30907

Canada
1.800.265.8352
Electrolux Canada Corp.
5855 Terry Fox Way
Mississauga, Ontario, Canada
L5V 3E4

EXHIBIT 2

FRIGIDAIRE

All about the

Use & Care

of your Refrigerator

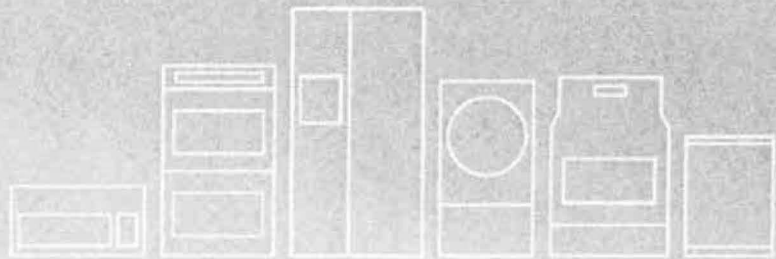


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AUTOMATIC ICE & WATER DISPENSER

Priming the water supply system

CAUTION

For proper dispenser operation, recommended water supply pressure should fall between 30 psi and 100 psi. Excessive pressure may cause water filter to malfunction.

- 1 Begin filling the tank by pressing and holding a drinking glass against the water dispenser paddle.
- 2 Keep the glass in this position until water comes out of the dispenser. **It may take about 1½ minutes.**
- 3 Continue dispensing water for about four (4) minutes to flush the system and plumbing connections of any impurities (stopping to empty the glass as necessary).



NOTE

The water dispenser has a built-in device that shuts off the water flow after three (3) minutes of continuous use. To reset this shutoff device, simply release the dispenser paddle.

Ice maker operation & care

After the refrigerator is installed properly and has cooled for several hours, the ice maker can produce ice within 24 hours. It can completely fill an ice bin in about eight (8) hours.

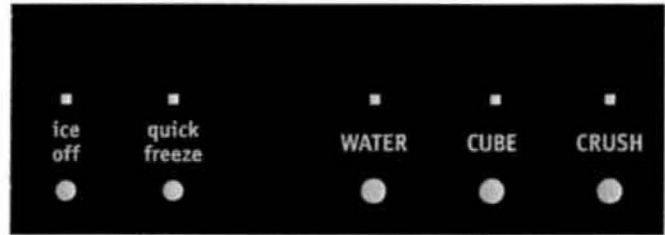
The ice maker produces approximately nine (9) pounds of ice every 24 hours depending on usage conditions.

IMPORTANT

Your ice maker is turned on at the factory so it can work as soon as you install your refrigerator. If you cannot connect a water supply, set the ice maker's On/Off icon to Off and turn off the water supply valve; otherwise, the ice maker's fill valve may make a loud chattering noise when it attempts to operate without water.

Turning the ice maker on and off

Ice production is controlled by the ice maker's **On/Off** icon on the control panel. Press and hold the "Ice Off" icon for three (3) seconds to turn the ice maker "**ON**" or "**OFF**". Where the ice maker is "OFF" the red LED above the icon will be illuminated.



IMPORTANT

Turning off the ice maker will result in existing ice melting in the bin.

IMPORTANT

Turning off the ice maker will disable the ice dispenser. You will still be able to dispense water.

NOTE

The ice maker also has a built-in plastic signal bale arm that automatically stops ice production when the ice bin is full. This signal arm should not be used to manually stop the ice maker.

Using the ice maker after installation

Before making ice for the first time, be sure to prime the water supply system. Air in new plumbing lines can result in two (2) or three (3) empty ice maker cycles. Furthermore, if the system is not flushed, the first ice cubes may be discolored or have an odd flavor.

IMPORTANT

On occasion, unusually small disc-shaped ice may be noticed in the bucket or in dispensed ice. This could occur in normal operation of the ice maker. If you start seeing these more frequently, it may be an indication of low water pressure or the water filter needs to be replaced. As the water filter nears the end of its useful life and becomes clogged with particles, less water is delivered to the ice maker during each cycle. Remember, if it's been six (6) months or longer since you last changed your water filter, replace the water filter with a new one. Poor quality household water may require the filter to be changed more frequently.

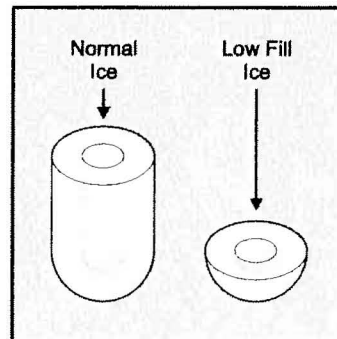


EXHIBIT 3

43

CLASS ACTION COMPLAINT

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5 San Diego, CA 92130
Tel. (858) 350-1500
6 Fax (858) 350-1501

7 Counsel for Plaintiff and the Putative Class
8

9 **IN THE UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11

12 ROBERT BOVERO,

13 PLAINTIFF,

14 vs.
15

16 ELECTROLUX HOME PRODUCTS,
INCORPORATED,

17 DEFENDANT.
18

) Case No.

) **CONSUMERS LEGAL REMEDIES**
) **ACT VENUE DECLARATION**

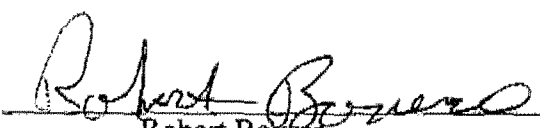
19
20 I, Robert Bovero, declare as follows:
21

- 22 1. I am a named plaintiff in this litigation.
23 2. I have personal knowledge of the matters set forth below except to those matters stated
24 herein which are based on information and belief, which matters I believe to be true.
25 3. If called as a witness I could and would competently testify to the matters included herein.
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4. I am informed and believe that venue is proper in this Court under California Civil Code § 1780(d) based on the fact that the transaction at issue, or a substantial portion thereof, occurred in this district.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on January 4, 2013 in Jackson, California.

By: 
Robert Bovero

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff AMADOR (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant MECKLENBURG (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Eppsteiner & Fiorica Attorneys, LLP 12555 High Bluff Drive, Suite 155, San Diego, California 92130 Tel: (858) 350-1500 Fax: (858) 350-1501

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL INJURY, PERSONAL PROPERTY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Labor, and Bankruptcy.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause: CONSUMER FRAUD AND WARRANTY

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMANDS Over \$5 Million, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/14/2013 SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of attorney

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE