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Page

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JON D. BUI, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

SEARS, ROEBUCK, & CO.,  
SEARS HOLDING CORP., and  
KCD IP, LLC

Defendant.

Case No. 5:18-cv-4121

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

1  
2 Plaintiff Jon D. Bui (“Plaintiff”), individually and on behalf of all  
3 others similarly-situated, brings this action against Sears Holdings Corporation,  
4 KCD IP, LLC, and Sears, Roebuck and Company (collectively “Sears”).  
5 Plaintiffs’ allegations are based upon personal knowledge as to their own  
6 conduct and on information and belief as to the acts of others.  
7

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9 **NATURE OF THE CASE**

10 1. Sears designs, manufactures, sells, and markets a wide range of home  
11 products. One of its key proprietary brands is Kenmore, which sears refers to as  
12 “among the most trusted and preferred brands in the U.S.” *See*  
13 [www.searsholdings.com/about/sears](http://www.searsholdings.com/about/sears).  
14

15 2. Despite Sears’ claim that its Kenmore products are among the most  
16 trusted in the United States, Sears designed, manufactured, marketed, and sold water  
17 heaters that have a material and serious defect. Specifically, gas water heaters  
18 outfitted with Honeywell WV8840 gas valves manufactured from 2010 to 2012  
19 (“Class Water Heaters”) leak due to erosion of the gas valve’s plastic sensors. The  
20 plastic temperature sensors erode or otherwise deteriorate such that a pin-sized hole  
21 (or holes) form in the sensors. As a result, water leaks from an affected water heater’s  
22 sensor to the surrounding premises. The water flow will not stop until the water  
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1 supply is shut off, the water is drained from the water heater, and the sensor is  
2 replaced (hereinafter, “The Defect”).

3 3. As a result of the Defect, which was present at the time the point of  
4 sale, flooding incidents have caused damage to consumers’ water heaters, as well as  
5 causing water damage to homes. Although these incidents have been reported to  
6 Sears, the company did not forewarn consumers, recall the water heaters, or  
7 otherwise notify customers about the Defect.  
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10 4. These water heaters should never have been placed in the stream of  
11 commerce. Sears’ conduct violates the laws of California. On behalf of himself and  
12 the proposed Class, Plaintiff seeks to compel Sears to warn consumers about the  
13 Defect, to bear the expense of replacing the defective water heaters that have not yet  
14 failed, and to pay for property damage that has already resulted from the Defect,  
15 including but not limited to flooding. Additionally, Plaintiff seeks statutory and  
16 compensatory damages, injunctive and declaratory relief, restitution, disgorgement  
17 of profits, attorneys’ fees and costs, and the repair or replacement of the water  
18 heaters.  
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22 **PARTIES**

23 5. Plaintiff Jon D. Bui is a citizen and resident of Monterey  
24 County, California.  
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1           6. Defendant Sears Holdings Corporation is a Delaware corporation with  
2 its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois  
3 60179. Sears Holdings Corporation is the parent company for Sears and Kmart, as  
4 well as other national retailers. Sears Holdings Corporation markets, sells, and  
5 services Kenmore appliances and equipment, including the Lawnmowers, through  
6 its retail establishments throughout the United States. Its stock is traded on  
7 NASDAQ as “SHLD.” Sears Holdings Corporation was engaged in the business of  
8 designing, manufacturing, and distributing the water heaters for sale to consumers  
9 in this jurisdiction and others. Sears Holdings Corporation engages in a continuous  
10 course of business in California, and based upon information and belief, sells  
11 thousands of water heaters in this District every year. California has a significant  
12 relationship to the allegations and events alleged herein.  
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17           7. Defendant KCD IP, LLC is a Delaware limited liability company with  
18 its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois  
19 60179. It is a special purpose entity created by Sears Holdings for securitization  
20 purposes that owns Sears’ house brands, including Kenmore, Craftsman, and  
21 Diehard.  
22

23           8. Defendant Sears, Roebuck and Company is a wholly-owned subsidiary  
24 of Sears Holdings Corporation, with its principal place of business at 3333 Beverly  
25 Road, Hoffman Estates, Illinois 60179. Sears, Roebuck and Company offers its  
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1 products and services through more than 1,320 Sears-branded and affiliated stores  
2 in the United States and Canada, including more than 790 full-line and more than 50  
3 specialty stores in the United States. Sears, Roebuck and Company offers consumers  
4 leading proprietary brands, including Kenmore.  
5

6 **JURISDICTION AND VENUE**

7 9. This Court has jurisdiction over this action under the Class Action  
8 Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed  
9 class, the aggregate claims of the individual class members exceed the sum of  
10 \$5,000,000, exclusive of interests and costs, and this is a class action in which Sears  
11 and more than two-thirds of the proposed plaintiff class are citizens of different  
12 states.  
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15 10. This Court may exercise jurisdiction over Sears because they do  
16 substantial business in this State and within this District, receive substantial  
17 compensation and profits from the marketing, distribution, sales and servicing of  
18 water heaters in this District, and have engaged in the unlawful practices described  
19 in this Complaint in this District, so as to subject himself to personal jurisdiction in  
20 this District, thus rendering the exercise of jurisdiction by this Court proper and  
21 necessary.  
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25 11. Venue is proper in this district under 28 U.S.C. § 1391 because Plaintiff  
26 Bui resides in this District and also purchased a Class Water Heater in this District;  
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1 the Sears defendants are foreign entities; and a substantial part of the events or  
2 omissions giving rise to Plaintiff's claims occurred in this District.

3 **SUBSTANTIVE ALLEGATIONS**

4 **The Gas Valve Defect**

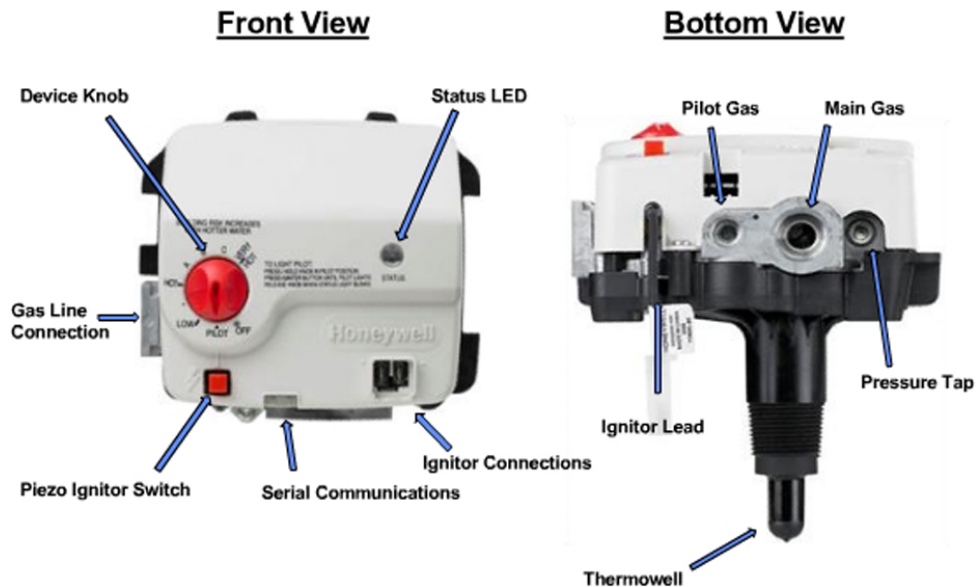
5 12. Every gas water heater has a gas valve control that is mounted outside  
6 of the water heater tank that controls the pilot light for the gas supply and regulates  
7 the water temperature within the water heater. Sears is one of the leading  
8 manufacturers of gas valves for water heaters ("Honeywell Gas Valve" or "Gas  
9 Valve").  
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12 13. The Gas Valve contains a "thermowell" which is a tubular fitting used  
13 to protect the Gas Valve's temperature sensors. A temperature sensor is inserted in  
14 the open end of the thermowell tube.  
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16 14. The thermowell located in the Gas Valves is made of a polymeric  
17 plastic material, as shown below in the "Bottom View" diagram.  
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## WV8840 Product Overview

Honeywell



15. The Gas Valve control comes pre-installed on Kenmore water heaters and several additional brands of water heaters, including but not limited to: Bradford White, American Water Heater, Proline, Whirlpool, U.S. Craftsman, Rheem and A.O. Smith.

16. While the Defect was present at the point of sale, it was unknown to consumers prior to the manifestation of the Defect in their own hot water heaters. However, Sears knew or should have known that the Gas Valves contained the Defect. Specifically, the temperature sensor located inside the water heater contains a defect that allows a pin-sized hole (or holes) to form. As a result, water leaks from water heater and floods the surrounding area.

1 17. Defective Gas Valves utilize polymeric plastic on the tip of the threaded  
2 back plate. As the polymeric plastic is exposed to water, it deteriorates, decreases in  
3 thickness, becomes brittle, and eventually erodes to the point of water leaking from  
4 the water heater. The photographs below show a Gas Valve after the Defect has  
5 manifested.  
6 manifested.







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11 18. Eventually, the fractured plastic polymer allows water under pressure  
12 to flow into the gas control area, causing leakage, damage to the water heater, and  
13 flooding of consumer's homes and personal property.  
14

15 19. Sears knew or should have known that the Gas Valve is defective and  
16 would be prone to fracture and leakage.  
17

18 20. Significantly, Sears utilizes Honeywell gas valves in which metal is  
19 substituted for the defective polymeric plastic. The metal tipped gas valves do not  
20 experience the severe deterioration and/or leakage seen in the plastic Class Water  
21 Heaters. For example, while 2010 through 2012 "WV Model" Honeywell Gas  
22 Valves utilized a polymeric material on the tip, the more recent "WT Model"  
23 Honeywell Gas Valve is manufactured with a metal tip.  
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**Pictured: A side-by-side comparison of the Sears WT Model Gas Valve (left) and the WV Model Gas Valve (right).**



**WT Model valve on the left. WV Model valve on the right.**

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**SEARS' NEGLIGENT AND INTENTIONAL CONDUCT**

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2 21. Sears failed to adequately design, manufacture, and/or test Class Water  
3 Heaters to ensure they were free from the Defect before offering them for sale to  
4 Plaintiff and the Class, despite its duty to do so.

6 22. The Defect poses a serious and immediate safety risk to consumers and  
7 the public and has caused or will cause Plaintiff's and Class Members' Class Water  
8 Heaters to fail during their expected useful lives.

10 23. Sears' Class Gas Valve should have been usable for its intended  
11 purpose during its expected useful life of 6-10 years<sup>1</sup>. The Defect, however, existed  
12 at the time that Class Water Heaters were sold to Plaintiff and the Class, and the  
13 Defect immediately rendered the Class Water Heaters unfit for the ordinary and  
14 intended purpose for which they are marketed and sold.

17 24. If Class Water Heaters did not suffer from the Defect, Plaintiff and the  
18 Class would not have suffered the damages set forth in this Complaint.

20 25. Sears has a duty to protect consumers by warning them that the Defect  
21 poses unreasonable risks of personal injury and/or property damage.

22 26. Nonetheless, even though Sears knew or should have known of the  
23 Defect, they chose to conceal the existence of the Defect, continued to sell Class  
24 Water Heaters, and failed to remove Class Water Heaters from the marketplace.

26 \_\_\_\_\_  
27 <sup>1</sup> <https://www.nachi.org/life-expectancy.htm>

1 Sears took these actions to realize the substantial financial benefits of selling the  
2 defective Class Water Heaters to the unsuspecting public.

3 27. Sears knew or should have known that consumers including Plaintiff  
4 and the Class: (a) were unaware of the Defect and could not reasonably be expected  
5 to discover the Defect until their Class Water Heaters failed; (b) expected to use  
6 Class Water Heaters in their homes without putting their safety and property at risk;  
7 and (c) expected Sears to disclose any Defect that would prevent Class Water  
8 Heaters from safely performing their intended purpose, as such disclosure by Sears  
9 would impact a reasonable consumer's decision whether to purchase a water heater  
10 with the Class Water Heaters.  
11

12 28. As a result of Sears' concealment of the Defect, many Class Members  
13 remain unaware of the existence of the Defect and that the Class Gas Valve poses  
14 an unreasonable safety risk and risk of property damage during normal use.  
15

16 29. Had Plaintiff and Class Members been made aware of the Defect, they  
17 would not have purchased Class Water Heaters.  
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21 **SEARS' KNOWLEDGE OF THE DEFECT**

22 30. Sears knew or should have known when it sold the Class Water Heaters  
23 that these Gas Valves contained the Defect, that the Gas Valves would not hold up  
24 to continuous exposure to hot water, and that as a result of the Defect, the Class Gas  
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1 Valve could leak causing damage to the unit, consumers' homes, and personal  
2 property.

3 31. Sears' knowledge of the Defect is evident from its decision to equip  
4 Kenmore water heaters with thermowells manufactured from metal rather than  
5 polymeric plastic to eliminate deterioration and leakage problems as described  
6 herein. Despite addressing the deterioration and leaking issues through the  
7 implementation of WT Model Gas Valves, Sears did not alert Plaintiff and Class  
8 Members that their Class Water Heaters contained the Defect and that these  
9 defective Class Water Heaters posed a threat of leaking, flooding, and damage to  
10 Plaintiff's and Class Members' real and personal property.  
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14 32. Despite knowing that its Gas Valves were likely to deteriorate and leak  
15 as a result of continuous exposure to hot water in their known and intended  
16 environment during ordinary operation, Sears continued to sell, distribute, and install  
17 Gas Valves that suffered from the Defect.  
18

19 33. As discussed above, Sears was aware that their Class Water Heaters  
20 contained the Defect and that a change in production materials was necessary to  
21 allow the gas valves to function as intended and not fail during normal and intended  
22 use. Sears nevertheless decided to manufacture, distribute, and sell Class Water  
23 Heaters containing the Defect. Sears thus had exclusive and superior knowledge of  
24 the Defect and actively concealed the Defect and corresponding damage from  
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1 consumers who had no way to reasonably discover the problem before buying their  
2 water heaters.

3 34. Had Plaintiff and Class Members been aware of the Defect, they would  
4 not have purchased the Class Water Heaters or would have paid substantially less  
5 for them. Plaintiff and Class Members did not receive the benefit of their bargain as  
6 a result.  
7

8 **PLAINTIFF'S EXPERIENCE**  
9

10 35. Plaintiff purchased his 40-gallon Kenmore water heater in March of  
11 2013 at Orchard (which has since been acquired by Sears), in Sam City, California,  
12 installing it in the garage of his single-family home after reading the User Manual.  
13 Plaintiff has extensive experience in construction and has installed numerous water  
14 heaters in the course of his profession.  
15

16  
17 36. Plaintiff never noticed any problem with the water heater. However, in  
18 April of 2018, Plaintiff's water heater began leaking, flooding his garage.

19 37. After he discovered the flooding in his garage Plaintiff contacted Sears  
20 to repair his Class Water Heater. Sears offered to send out a technician to assess the  
21 problem and said that Plaintiff would have to cover the \$160 cost. If the technician  
22 determined the unit to be defective, Sears offered to cover the cost of the part, but  
23 labor would be paid for by Plaintiff.  
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1 Members relied upon Sears’ representations about the safety and functionality of the  
2 Class Water Heaters when making their purchasing decisions.

3 43. Sears intentionally concealed the Defect—a material omission—from  
4 potential purchasers. Concealment or omission of a material fact in a transaction  
5 constitutes fraud, especially when the fact is known to the manufacturer and is not  
6 readily ascertainable to consumers despite ordinary diligence and reasonable  
7 investigation prior to purchases.  
8

9 44. Sears neither discloses the Defect at the point of sale nor later when the  
10 problems resulting from the Defect become evident. As a result, unwitting  
11 consumers are forced to repeatedly pay for ineffective “repairs.”

12 45. Had Sears disclosed the Defect, Plaintiffs would not have purchased the  
13 Class Water Heaters or would have paid significantly less for them. Plaintiffs were  
14 denied information about the Defect that was material to their purchasing decisions  
15 and willingness to use their Class Water Heaters.  
16

17 46. Plaintiffs and Class Members experienced damages from the Defect  
18 within the warranty period on their Class Water Heaters. Plaintiffs and Class  
19 Members reasonably expected that any and all damage resulting from the Defect  
20 would be covered under Sears’ warranties and that they would not be charged for  
21 such repairs.  
22

23 47. Sears systematically denies warranty coverage with respect to the  
24 Defect. As a result of Sears’ inaction and silence, consumers are unaware that they  
25 purchased or leased Class Water Heaters that had the Defect at the point of sale. In  
26 addition, consumers who experience a manifestation of the Defect and seek repairs  
27



1 are not told that the “repairs” they pay for are ineffective and will have to be  
2 repeated.

3 48. Due to the Defect, the values of the Class Water Heaters at the time of  
4 purchase or lease were less than the amounts Plaintiffs and Class Members paid.

5 49. The Defect causes the Class Water Heaters to lose value, including  
6 reducing re-sale value.

7 50. The Defect causes Class Members to incur repair costs, lose use and  
8 enjoyment of their Class Water Heaters, and to suffer a loss of time and suffering  
9 the burden of arranging and obtaining repairs.

10  
11 **PROPOSED CLASS**

12 51. Plaintiffs bring this case as a class action under Fed. R. Civ. P. 23(b)(2)  
13 and/or 23(b)(3) on behalf of the following Class:

14 *All persons in the state of California who purchased a Kenmore*  
15 *water heater manufactured from 2010 to 2012 containing a*  
16 *Honeywell Gas Valve.*

17  
18 **CLASS CERTIFICATION ALLEGATIONS**

19 52. Numerosity. The Class is comprised of hundreds of Class Water Heater  
20 owners within California, making joinder difficult if not impossible.

21 53. Commonality. Questions of law and fact exist that are common to all  
22 Class Members, and predominate over any questions that affect only individual  
23 Class Members, including (among others):

- 24  
25 a. Whether Class Water Heaters suffer from the Defect;  
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27 b. Whether the Defect causes damage to the Class Water Heaters;

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c. Whether the Defect existed at the time the Class Water Heaters entered the stream of commerce;

d. Whether Sears knew or should have known about the Defect;

e. Whether Sears failed to disclose Defect at the time that Class Members purchased the Class Water Heaters or thereafter;

f. Whether Sears breached its express warranties by failing to permanently repair or refusing to repair the Defect for Class Members;

g. Whether Sears' failure to disclose the Defect constitutes an unfair and deceptive act or practice in violation of the California Consumer Legal Remedies Act and Unfair Competition Law.;

h. Whether Sears acted or refused to act on grounds generally applicable to the Class, thereby making the award of equitable relief appropriate to the Class as a whole;

i. Whether the Defect diminishes the value of the Class Water Heaters.

54. Typicality. Plaintiffs' claims are typical of the claims of Class Members.

55. Adequacy. Plaintiffs are adequate representatives of the proposed classes because their interests do not conflict with the interests of the members of the classes they seek to represent. Plaintiffs retained counsel who are competent and

1 experienced in complex class action litigation, and will prosecute vigorously on  
2 Class Members' behalf.

3 56. Superiority. A class action is superior to other available means for the  
4 fair and efficient adjudication of this dispute. The injury suffered by each Class  
5 Member, while meaningful on an individual basis, is not of such magnitude as to  
6 make the prosecution of individual actions against Sears economically feasible.  
7 Even if Class Members themselves could afford individualized litigation, the court  
8 system could not. In addition to the burden and expense of managing many actions  
9 arising from the Defect, individualized litigation increases the delay and expense to  
10 all parties and the court system presented by the legal and factual issues of the case.  
11 By contrast, a class action presents far fewer management difficulties and provides  
12 the benefits of single adjudication, economy of scale, and comprehensive  
13 supervision by a single court.  
14

15  
16 57. In the alternative, the proposed Class(es) may be certified because:

17 a. the prosecution of separate actions by the individual members of  
18 the proposed classes would create a risk of inconsistent adjudications, which  
19 could establish incompatible standards of conduct for Sears;  
20

21 b. the prosecution of individual actions could result in adjudications  
22 that, as a practical matter, would be dispositive of the interests of non-party  
23 Class Members, or which would substantially impair their ability to protect  
24 their interests; and  
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c. Sears acted or refused to act on grounds generally applicable to the proposed classes, thereby making appropriate final and injunctive relief with respect to members of the proposed classes as a whole.

58. Predominance. This class action is appropriate for certification because questions of law and fact common to Class Members predominate over questions affecting only individual members.

**TOLLING OF STATUTE OF LIMITATIONS**

59. Active Concealment Tolling. Any statutes of limitations are tolled by Sears' knowing and active omission and concealment that the Class Water Heaters suffered from a Defect. Sears had a duty to disclose this Defect and its consequent performance and safety problems to Plaintiffs and Class Members because Sears had superior knowledge of this Defect and the Defect was neither known to, nor easily discoverable by, Plaintiffs and Class Members.

60. Despite its affirmative duty to disclose the nature and existence of this Defect, Sears kept Plaintiffs and Class Members ignorant of vital information essential to the pursuit of their claims, without any fault or lack of diligence on the part of Plaintiffs or Class Members. The details of Sears' efforts to omit its above-described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiffs and the Class Members. Plaintiffs could not reasonably have discovered the fact that the Class Water Heaters suffered from a Defect.

61. Estoppel. Sears was and is under a continuing duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the Defect.

1 At all relevant times, and continuing to this day, Sears knowingly, affirmatively, and  
2 actively misrepresented and omitted the true character, quality, and nature of the  
3 problems caused by this Defect. The details of Sears' knowledge and omissions are  
4 in its possession, custody, and control, to the exclusion of Plaintiffs and Class  
5 Members. Plaintiffs and Class Members reasonably relied upon Sears' knowing  
6 and/or omissions. Based on the foregoing, Sears is estopped from relying upon any  
7 statutes of limitation in defense of this action.  
8

9 62. Equitable Tolling. Sears took active steps to omit the fact that it  
10 wrongfully, improperly, illegally, and repeatedly manufactured, marketed,  
11 distributed, sold, and/or leased the Class Water Heaters with the leaking problems  
12 caused by the Defect. The details of Sears' efforts to conceal the Defect are in its  
13 possession, custody, and control, to the exclusion of Plaintiffs and Class Members.  
14 Sears' failure to disclose and active concealment of the Defect amounts to bad faith  
15 and deception in and of itself. When Plaintiffs learned about this material  
16 information, they exercised due diligence by thoroughly investigating the situation,  
17 retaining counsel, and pursuing their claims. Should it be necessary, therefore, all  
18 applicable statutes of limitation are tolled under the doctrine of equitable tolling.  
19

20 63. Given Sears' active and knowing concealment of the Defect, equitable  
21 tolling of the statutes of limitations applicable to the causes of action brought in this  
22 case is appropriate.  
23

24 64. Plaintiffs and Class Members could not have reasonably discovered the  
25 true reasons for the Defect until the recent investigation which led to the filing of  
26 this Complaint.  
27

**FIRST CLAIM FOR RELIEF**  
**Breach of Express Warranty**  
**Cal. U.C.C. § 2313**

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3 65. Plaintiffs, individually and on behalf of the Class, incorporate all of the  
4 foregoing allegations into this cause of action.

5 66. Sears expressly warranted that Class Water Heaters were free from  
6 defects in materials and workmanship and promised it would cover and/or replace  
7 all defective parts and provide replacement units for those that developed water  
8 leaks.  
9

10 67. Sears materially breached its express warranties by manufacturing,  
11 selling, and leasing Class Water Heaters that contained the Defect, which rendered  
12 them unsafe or unfit for use as warranted.

13 68. Sears was put on notice of the breach by Plaintiffs' efforts to get their  
14 Class Water Heaters repaired by contacting Sears.  
15

16 69. As a result of Sears' breach of warranties, Plaintiffs and Class Members  
17 have sustained damages, including diminished value of their Class Water Heaters.

18 70. Sears' time limits on its warranties are unconscionable because Sears  
19 knew or had reason to know that Plaintiffs and Class Members might not experience  
20 the deterioration of the Gas Valves in the Class Water Heaters and, in many  
21 instances, detection of the Defect would only occur once the Water Heaters leaked  
22 and stopped working properly after the warranty period had expired. By making  
23 misleading representations and/omissions about the Defect, Sears prevented Class  
24 Members from timely exercising their rights under the warranties.  
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1 71. Plaintiffs and Class Members are entitled to recover all damages as a  
2 result of SEARS' breach of warranties in an amount in excess of \$5,000,000.00.

3 **SECOND CLAIM FOR RELIEF**  
4 **Violation of the CLRA**  
5 **Cal. Civ. Code § 1770 *et seq.***

6 72. Plaintiff re-alleges and incorporates each and every allegation set forth  
7 above as if fully written herein.

8 73. Defendants fall within the definition of "person" as defined by the  
9 CLRA. Cal. Civ. Code Sec. 1761(c).

10 74. Plaintiff and Class Members are "consumers" within the meaning of  
11 the CLRA, as defined by Cal. Civ. Code Sec. 1761(d), who purchased one or more  
12 pieces of Class Water Heaters.  
13

14 75. The CLRA prohibits "unfair or deceptive acts or practices undertaken  
15 by any person in a transaction intended to result or which results in the sale or lease  
16 of goods or services to any consumer[.]" Cal. Civ. Code Sec. 1770(a).  
17

18 76. Sears has engaged in unfair or deceptive trade practices that violated  
19 Cal Civ. Code Sec. 1770(a), as described above and below, by, among other things,  
20 failing to disclose the defective nature of Class Water Heaters, representing that  
21 Class Water Heaters were of a particular standard, quality, or grade when they were  
22 of another, and advertising Class Water Heaters with the intent not to sell them as  
23 advertised. *See* Cal. Civ. Code Sections 1770(a)(5), (a)(7), (a)(9).  
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1 77. Sears knew, should have known, or was reckless in not knowing that  
2 its products did not have the qualities, characteristics, and functions it represented,  
3 warranted, and advertised them to have.

4 78. Plaintiff and Class Members are reasonable consumers who expected  
5 that their Class Water Heaters would work as represented.  
6

7 79. As a result of Sears' conduct and unfair or deceptive acts or practices,  
8 Plaintiff and Class Members suffered actual damages in that the Class Water Heaters  
9 do not function as represented and are not worth the amount paid and Sears has  
10 deprived Plaintiff and Class Members the benefit of the bargain.  
11

12 80. Plaintiff and the Class seek an order enjoining Sears' unfair or  
13 deceptive acts or practices, equitable relief, an award of attorneys' fees and costs  
14 under Cal. Civ. Code Sec. 1780(e).  
15

16 81. Pursuant to the Provisions of the CLRA, Plaintiff will give notice of the  
17 defect to Sears and upon the expiration for the period described in Cal. Civ. Code  
18 Section 1782, subd. (d), Plaintiffs will amend this Complaint to state a claim for  
19 damages under the CLRA.  
20  
21

22 **THIRD CLAIM FOR RELIEF**  
23 **Violation of the UCL**  
24 **Cal. Bus. & Prof. Code § 17200 *et seq.***

25 82. Plaintiff re-alleges and incorporates each and every allegation set forth  
26 above as if fully written herein.  
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1 83. California Business & Professions Code § 17200 prohibits acts of  
2 “unfair competition,” including any “unlawful, unfair or fraudulent business act or  
3 practice” and “unfair, deceptive, untrue or misleading advertising.” Sears’ conduct  
4 related to the sale of its defective Class Water Heaters violated each of this statute’s  
5 three prongs.  
6

7 84. Sears committed an unlawful business act or practice in violation of  
8 Cal. Bus. & Prof. Code § 17200, et seq., by their violations of the Consumers Legal  
9 Remedies Act, Cal. Civ. Code § 1750, et seq., as set forth above, by the acts and  
10 practices set forth in this Complaint.  
11

12 85. Sears committed unfair business acts and practices in violation of Cal.  
13 Bus. & Prof. Code § 17200, et seq., when it sold Class Water Heaters that contained  
14 the Defect, and when it represented that the Class Water Heaters were in good  
15 working order and functioned as intended at the point of sale when in fact they did  
16 not.  
17

18 86. Sears committed fraudulent business acts and practices in violation of  
19 Cal. Bus. & Prof. Code § 17200, et seq., when it affirmatively and knowingly  
20 misrepresented that the Class Water Heaters were suitable for installation in the  
21 home and free from any defects. Sears’ representations and concealment of the  
22 defect are likely to mislead the public with regard to the true defective nature of the  
23 Class Water Heaters.  
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1 87. As a direct and proximate result of Sears' unfair and deceptive  
2 practices, Plaintiff and Class Members suffered and will continue to suffer actual  
3 damages.

4 88. As a result of its unfair and deceptive conduct, Sears has been unjustly  
5 enriched and should be required to disgorge its unjust profits and make restitution to  
6 Plaintiff and Class Members pursuant to Cal. Bus. & Prof. Code §§ 17203 and  
7 17204.  
8

9 89. Legal remedy alone will be insufficient to fully redress Plaintiff'  
10 injuries and stop Sears from continuing in its unfair and deceptive conduct.  
11 Therefore, Plaintiff and the Class seek equitable relief, including an order enjoining  
12 Sears' unfair or deceptive acts or practices, and an award of attorneys' fees and costs  
13 under Cal. Code of Civ. Proc. § 1021.5.  
14  
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16  
17 **FOURTH CLAIM FOR RELIEF**  
18 **Breach of Implied Warranty**  
19 **Cal. Civ. Code § 1791.1**

20 90. Plaintiffs, individually and on behalf of the Class, incorporate all of the  
21 foregoing allegations into this cause of action.

22 91. Sears warrantied that Class Water Heaters were of merchantable quality  
23 and fit for their ordinary purpose. Sears warrantied that the Class Water Heaters'  
24 primary components, including the Gas Valves, would operate properly. Sears  
25 breached these implied warranties in that the Class Water Heaters were not  
26 merchantable because parts of the Gas Valves deteriorate, causing Class Water  
27

1 Heaters to develop holes and leak water. The Class Water Heaters' Gas Valves  
2 contained the Defect described herein, such that the water heaters leaked and failed  
3 to function as intended.

4 92. To the extent necessary, Plaintiffs and each Class Member have had  
5 sufficient direct dealings with Sears or its agents (including dealerships) to establish  
6 privity of contract between Sears, on the one hand, and Plaintiffs and each member  
7 of the Class, on the other hand. Nonetheless, privity is not required here because  
8 Plaintiffs and each Class Member are intended third-party beneficiaries of contracts  
9 between Sears and dealers of its Kenmore appliances, and specifically, of Sears'  
10 implied warranties. These dealers were not intended to be the ultimate consumers of  
11 the Class Water Heaters and have no rights under the warranty agreements provided  
12 with the Class Water Heaters; the warranty agreements were designed for and  
13 intended to benefit consumers only.  
14

15  
16 93. As a result of Sears' breaches of implied warranties, Plaintiffs and Class  
17 Members have suffered damages.  
18

19 **FIFTH CLAIM FOR RELIEF**

20 **Negligence**

21 94. Plaintiffs, on behalf of the Class, incorporate all of the foregoing  
22 allegations into this cause of action.  
23

24 95. Sears owed Class Members a duty of reasonable care to ensure that the  
25 Gas Valves within the Class Water Heaters would operate safely and properly for  
26 their reasonably anticipated use.  
27

1 96. Sears breached its duty by failing to ensure that the Gas Valves used in  
2 Class Water Heaters were free from the Defect. Sears also breached its duty by  
3 failing to warn Plaintiffs and Class Members that the Gas Valves used in Class Water  
4 Heaters were not free from the Defect or the safety hazards caused by it.

5 97. As a direct and proximate result of Sears' negligence, holes develop in  
6 the water heaters, causing them to leak and causing Plaintiffs to have to seek  
7 replacement parts or replacement water heaters. As a result, Plaintiffs and Class  
8 Members have suffered damages.  
9

10 **SIXTH CLAIM FOR RELIEF**  
11 **Violation of the Magnuson-Moss Warranty Act**  
12 **15 U.S.C. § 2301, *et seq.***

13 98. Plaintiffs, individually and on behalf of the Class, incorporate all of the  
14 foregoing allegations into this cause of action.

15 99. Under the Magnuson-Moss Warranty Act (the "Act"), Class Members  
16 are "consumers," Sears is a "supplier" and "warrantor," and the Class Water Heaters  
17 are "consumer products."

18 100. Under 15 U.S.C. § 2301(d)(1), the Act provides a cause of action for  
19 any consumer who is damaged by the failure of a warrantor to comply with a written  
20 or implied warranty.  
21

22 101. Sears' express warranties are written warranties within the meaning of  
23 the Act, 15 U.S.C. § 2301(6). The Class Water Heaters' implied warranties are  
24 covered under 15 U.S.C. § 2301(7).  
25

26 102. Sears breached these warranties as described in more detail above in  
27 the First Cause of Action. Without limitation, all Class Water Heaters suffer from a  
28

1 common Defect that manifests in the form of water leaks and the Defect is present  
2 at the point of sale.

3 103. Under the Act, Sears was obligated to disclose to Class Members the  
4 known Defect and was obligated to repair or otherwise remedy the Defect.

5 104. To the extent necessary, Plaintiffs and each Class Member have had  
6 sufficient direct dealings with Sears or its agents to establish privity of contract  
7 between Sears, on the one hand, and Plaintiffs and each Class Member, on the other  
8 hand. Nonetheless, privity is not required here because Plaintiffs and each member  
9 of the Class are intended third-party beneficiaries of contracts between Sears and its  
10 retailers and subsidiaries, and specifically, of Sears' express and/or implied  
11 warranties. These retailers were not intended to be the ultimate consumers of the  
12 Class Water Heaters and have no rights under the warranty agreements provided  
13 with the Class Water Heaters; the warranty agreements were designed for and  
14 intended to benefit consumers only.  
15  
16

17 105. Sears failed to meet its disclosure and remedy obligations, despite  
18 reasonable opportunity to do so.

19 106. Sears' violation of the Act caused damage to Class Members and  
20 entitles them to statutory relief.  
21

22 **SEVENTH CLAIM FOR RELIEF**  
23 **Unjust Enrichment**

24 107. Plaintiffs, on behalf of the Class, incorporate all of the foregoing  
25 allegations into this cause of action.  
26  
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1 108. As described above, Sears sold Class Water Heaters to Class Members  
2 even though the Gas Valves were defective and imposed a safety hazard, and failed  
3 to disclose its knowledge of the Defect and its attendant risks at the point of sale or  
4 otherwise. Furthermore, Sears charges for repairs of the water heaters without  
5 disclosing that the Defect is widespread and that the repairs do not address its root  
6 cause.

7  
8 109. As a result of its fraudulent acts and omissions related to the defective  
9 water heaters, Sears obtained monies which rightfully belong to Plaintiffs and Class  
10 Members to their detriment.

11 110. Sears appreciated, accepted, and retained the non-gratuitous benefits  
12 conferred by Plaintiffs and Class Members, who, without knowledge of the Defect,  
13 paid a higher price for their water heaters than those water heaters were worth. Sears  
14 also received monies for the water heaters that Plaintiffs and Class Members would  
15 not have otherwise paid for the Class Water Heaters had they been aware of the  
16 Defect.  
17

18 111. Sears' retention of these wrongfully-obtained profits violates  
19 fundamental principles of justice, equity, and good conscience.

20 112. Plaintiffs and Class Members are entitled to restitution of the profits  
21 Sears unjustly obtained, plus interest.  
22

23 **PRAYER FOR RELIEF**

24 Therefore, Plaintiffs seek judgment against Sears and relief as follows:

- 25 A. An Order certifying this case as a Class Action;  
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- B. An Order appointing the Plaintiffs as the Class Representatives of the Class;
- C. An Order appointing Plaintiffs' counsel as Class Counsel;
- D. Damages and other relief under statutory or common law;
- E. Attorneys' fees and costs;
- F. Pre- and post-judgment interest;
- G. Declaratory, injunctive, and equitable relief; and
- H. Such other relief as is just and proper.

**JURY DEMAND**

Plaintiffs, on behalf of themselves and the proposed Class, hereby demand a trial by jury as to all matters so triable.

DATED: July 11, 2018

Respectfully submitted,

/s/ Crystal Foley

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JON D. BUI, on behalf of himself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Crystal Foley
Simmons Hanly Conroy LLC - 100 N. Pacific Coast Highway, Suite 1350, El Segundo, CA 90245, (310)322-3555

DEFENDANTS

Sears, Roebuck, & Co., Sears Holding Corp., and KCD IP, LLC

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

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

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)

Brief description of cause: Diversity of Citizenship

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 07/11/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Crystal Foley