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Attorney for Defendant Whirlpool Corporation
12

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 JULIE CORZINE, individually and on behalf of
all others similarly situated,

17 Plaintiff,

18 vs.
19

20 MAYTAG CORPORATION, a Delaware
corporation; WHIRLPOOL CORPORATION, a
Delaware corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.
23
24

Case No.:

**DEFENDANT'S NOTICE OF
REMOVAL**

25 Defendant Whirlpool Corporation ("Whirlpool") hereby removes to this Court the state court
26 action described below:

27 1. On November 13, 2015, Plaintiff Julie Corzine ("Plaintiff") filed a putative class
28 action in the Superior Court of the State of California in and for the County of Santa Clara, entitled

1 *Julie Corzine v. Maytag Corporation, Whirlpool Corporation, and Does 1 through 50*, Case No.
2 115CV288083.

3 2. On November 16, 2015, Plaintiff served Whirlpool by personal delivery to
4 Whirlpool's registered agent. This notice of removal is timely filed pursuant to 28 U.S.C. § 1446(b).

5 3. A true and correct copy of the Complaint, together with copies of all "process,
6 pleadings, and orders served upon such defendant or defendants in such action," 28 U.S.C. § 1446
7 (a), are attached hereto as Exhibit 1. To the best of Whirlpool's knowledge and belief, these
8 documents constitute all of the "process, pleadings, and orders" as of this date. *Id.*

9 4. Plaintiff is a resident and citizen of Santa Clara County, California (*see* Compl. ¶ 1.)
10 Whirlpool is a Delaware corporation, (*id.* ¶ 2) with its principal place of business in Michigan.

11 5. Maytag Corporation was purchased by Whirlpool in 2006 and Maytag Corporation
12 was subsequently dissolved. Maytag is now solely a brand of Whirlpool and is not a separate legal
13 entity that can be sued.

14 6. A true and correct copy of this Notice of Removal will be filed with the Clerk of the
15 Santa Clara County, California, Superior Court in accordance with 28 U.S.C. § 1446(d), along with a
16 notice of that filing, a copy of which will be served on Plaintiff.

17 **JURISDICTION**

18 7. Plaintiff's Complaint is removable to this Court, and this Court has jurisdiction,
19 pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332, 1441(a)-(b), and 1453,
20 because this is a putative class action involving more than 100 putative class members who are
21 seeking to recover in excess of \$5,000,000 in the aggregate, and the parties are minimally diverse.
22 *See id.* § 1332(d).

23 **THIS COURT HAS JURISDICTION OVER THIS ACTION UNDER CAFA**

24 8. Plaintiff's Complaint alleges that Defendants "designed, manufactured, sold, and/or
25 distributed" in the State of California, refrigerator-freezers with defective Tube Drains that "become
26 clogged, have impeded flow, have a blocked grommet, and/or have an impeded useful life" and
27 "damage and impede the useful life of other components in Plaintiff's refrigerator-freezers and
28 home." (Compl. ¶¶ 27, 29.)

9. Plaintiff filed this putative class action on behalf of “[a]ll individuals and entities in the state of California who purchased and/or owned Whirlpool manufactured refrigerator-freezer appliances equipped with tube drain parts numbered W10210987, W10210988, W10309238, W10344401, W10344402, W10585186, W10588598, W10604169, PS8691807, and/or 2887289.” (*Id.* ¶ 14) (the “Class Refrigerators”). The Complaint alleges “Exhibit 1 to the Complaint lists the refrigerator-freezer models that were designed . . . with defective Tube Drains and purchased by Plaintiff and the Class Members.” (*Id.* ¶ 27.)

10. The Complaint alleges claims for strict liability failure to warn, strict liability manufacturing defect, strict liability design defect, negligence, breach of express warranty, breach of implied warranty of merchantability and fitness for a particular purpose, and violations of the Song-Beverly Consumer Warranty Act and the California Unfair Competition Law (California Business and Professions Code §17200). The Complaint seeks to recover damages, restitution, attorneys’ fees, costs, expenses, interest, penalties, and punitive damages, as well as injunctive and declaratory relief, on behalf of Plaintiff and the putative class. (Compl. Prayer for Relief ¶¶ 1-11.)

11. CAFA reflects Congress’s intent to have federal courts adjudicate substantial class-action suits brought against out-of-state defendants. *See* S. Rep. No. 109-14 at 43 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 41; H.R. Rep. No. 108-144, at 36-37 (2003). To effectuate this purpose, CAFA provides that putative class actions filed in state court are removable to federal court and expands federal jurisdiction over such class actions by amending 28 U.S.C. § 1332 to grant original jurisdiction where, as here, the putative class contains at least 100 class members, the parties are minimally diverse, and the amount in controversy exceeds \$5,000,000 in the aggregate for the entire class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

12. “Congress intended CAFA to be interpreted expansively.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). When a defendant seeks removal under CAFA, they “must file in the district court a notice of removal ‘containing a short and plain statement of the grounds for removal’” *Id.* (quoting 28 U.S.C. § 1446(a)). By design, this statute “tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553 (2014).

1 13. This putative class action satisfies all the jurisdictional requirements under CAFA.
 2 Specifically, based on the allegations in the Complaint, (1) the proposed class consists of 100 or
 3 more members; (2) the parties are minimally diverse; (3) the amount in controversy exceeds the
 4 \$5,000,000 jurisdictional threshold; and (4) the exceptions to CAFA do not apply here. *See* 28
 5 U.S.C. § 1332(d); *see Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020-21 (9th Cir. 2007).

6 **A. The Putative Class Size Exceeds 100 Members**

7 14. CAFA requires that the putative class consist of at least 100 persons. 28 U.S.C. §
 8 1332(d)(5). In the Complaint, Plaintiff purports to represent “[a]ll individuals and entities in the state
 9 of California who purchased and/or owned Whirlpool manufactured refrigerator-freezer appliances
 10 equipped with tube drain parts numbered W10210987, W10210988, W10309238, W10344401,
 11 W10344402, W10585186, W10588598, W10604169, PS8691807, and/or 2887289.” (Compl. ¶ 14.)
 12 Plaintiff alleges “Exhibit 1 to the Complaint lists the refrigerator-freezer models that were designed .
 13 . . with defective Tube Drains and purchased by Plaintiff and the Class Members.” (*Id.* ¶ 27.) Exhibit
 14 1 to the Complaint lists more than 1400 model numbers, and includes all units of each specific
 15 model and engineering build up to a specified serial number (the “Class Refrigerators”).

16 15. Based on a preliminary analysis of product shipment records maintained by
 17 Whirlpool in the ordinary course of Whirlpool’s business, Whirlpool has sold and shipped
 18 approximately 210,000 Class Refrigerators to its trade customers in California.

19 16. Although some of these refrigerator-freezers may have been sold by Whirlpool’s
 20 trade customers to residents of other states (e.g., consumers who lived in another state, such as
 21 Nevada or Oregon, but who bought their machine from a retailer in California), the vast majority of
 22 these refrigerator-freezers were distributed to California residents.

23 **B. There Is Sufficient Diversity of Citizenship**

24 17. The second CAFA requirement—that the parties be minimally diverse—is readily
 25 satisfied here, because at least one putative class member is a citizen of a different state than at least
 26 one defendant. *See* 28 U.S.C. § 1332(d)(2).

27 18. Plaintiff is a resident and citizen of Santa Clara County, California. (*See* Compl. ¶ 1.)
 28 By definition, Plaintiff’s proposed class consists solely of California residents. (*Id.* ¶ 14.)

19. Whirlpool is a Delaware corporation (*id.* ¶ 7) with its principal place of business in Michigan. Thus, Whirlpool is a foreign corporation and was so at the time this suit was filed. *See* 28 U.S.C. § 1332(c)(1). Maytag Corporation was purchased by Whirlpool in 2006 and Maytag Corporation was subsequently dissolved. Maytag is now a brand of Whirlpool with no separate legal existence. Accordingly, because there is at least minimal diversity between the parties, the second CAFA requirement is satisfied. *See id.* § 1332(d)(2).

C. The Minimum Amount in Controversy Requirement Is Satisfied

20. To confer subject matter jurisdiction on this Court based on diversity of citizenship, the amount in controversy must exceed the sum or value of \$5,000,000, exclusive of interest and costs. *Id.* Under CAFA, the claims of the individuals comprising a putative class are aggregated to determine if the amount in controversy exceeds the \$5,000,000 jurisdictional threshold. *Id.* § 1332(d)(6).

21. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*, 135 S. Ct. at 554; *see Ibarra*, 775 F.3d at 1197-98 (“a defendant can establish the amount in controversy by an unchallenged, plausible assertion of the amount in controversy in its notice of removal” (citing *Dart*, 135 S. Ct. 554-55)).

22. In the Complaint, Plaintiff asserts claims for damages and restitution on behalf of all California residents who purchased or owned Class Refrigerators. (Compl. ¶ 14, Prayer for Relief.)

23. According to Plaintiff, the Class Refrigerators contain Tube Drains that are “defective in that they become clogged, have impeded flow, have a blocked grommet, and/or have an impeded useful life. The Tube Drains also damage and impede the useful life of other components in Plaintiff’s refrigerator-freezers and home, including but not limited to the evaporator coils, panels, and/or home interior near and around the leaking refrigerator-freezer.” (Compl. ¶ 29.) “The repairs for the damages caused by the defective Tube Drains are significant.” (*Id.* ¶ 36.) Plaintiff alleges she “has suffered and/or has been in danger of suffering injury and/or significant property damage due to the defective Tube Drain.” (*Id.* ¶ 35.)

24. Plaintiff alleges that if she and the putative class members had known “that the Class Refrigerators were equipped with defective Tube Drains, they would not have purchased said

1 refrigerator-freezers or would have paid less for them,” (Compl. ¶ 33), and that they have suffered
2 and continue to suffer “harm, damages and economic losses” (*id.* ¶ 46).

3 25. Based on a preliminary analysis of records maintained by Whirlpool in the ordinary
4 course of Whirlpool’s business, the average paid claim for parts and labor to repair a Class
5 Refrigerator by replacing its original drain tube with the part identified in Exhibit 1 to the Complaint
6 is approximately \$85.00. As noted above, Whirlpool has shipped approximately 210,000 Class
7 Refrigerators to customers in California. Using the average cost of repair as a proxy for Plaintiff’s
8 claimed damages, *see, e.g.*, Cal. Civ. Code § 1794(b), the total amount in controversy exceeds
9 approximately \$17,850,000.00.

10 26. If Plaintiff were to prevail on her request for class certification and recover a class-
11 wide judgment on behalf of all California residents who bought Class Refrigerators, then an award
12 of money damages and attorneys’ fees would easily exceed the sum of \$5,000,000. Thus, CAFA’s
13 \$5,000,000 amount-in-controversy requirement is satisfied.

14 **D. The Exceptions to CAFA Do Not Apply**

15 27. Plaintiff bears the burden of establishing any applicable exceptions to CAFA
16 jurisdiction. *See, e.g., Serrano*, 478 F.3d at 1019, 1021-22 (reversing the district court, and joining
17 all sister circuits to have addressed this issue, and holding that the party seeking to remand the case
18 to state court bears the burden of establishing the exceptions to CAFA).

19 28. CAFA provides two mandatory exceptions and one discretionary exception to the
20 application of federal jurisdiction. *See* 28 U.S.C. § 1332(d)(3)-(4); *see also Serrano*, 478 F.3d at
21 1019, 1021-22 (discussing CAFA exceptions).

22 29. Plaintiff’s Complaint makes clear that none of these exceptions applies. Each of the
23 CAFA exceptions requires, as a starting point, an in-state defendant. 28 U.S.C. § 1332(d)(3)-(4)
24 (requiring either “significant relief” to be sought from an in-state defendant (local controversy
25 exception) or requiring the “primary defendant” to be an in-state one (“home state” and discretionary
26 exceptions to CAFA)). Here, the only identified defendants are Maytag and Whirlpool. Whirlpool,
27 which owns the Maytag brand, is a foreign corporation. Therefore, none of the CAFA exceptions
28 apply.

E. Conclusion

30. Because the CAFA jurisdiction requirements are met, and because the exceptions to the Court's exercise of jurisdiction do not apply, this case is properly removed.

INTRADISTRICT ASSIGNMENT

31. Pursuant to Northern District Local Rules 3-5(b) and 3-2(c) and (d), this case is properly removed to this division.

For these reasons, Whirlpool respectfully requests that the Court assume jurisdiction over this action.

Dated: December 16, 2015

GLYNN & FINLEY, LLP

By: /s/ Jonathan A. Eldredge

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Attorneys for Defendant, Whirlpool Corporation

EXHIBIT 1

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MAYTAG CORPORATION, a Delaware corporation; WHIRLPOOL CORPORATION, a Delaware corporation; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JULIE CORZINE, Individually and on behalf of all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2015 NOV 13 A 4:25

2015 NOV 13 A 4:25

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Lo ha estado demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de costas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las costas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahogar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara Superior Court, 191 North First St., San Jose, CA 95113

CASE NUMBER:
(Número del caso)
15CV288083

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Graham B. LippSmith, Kasdan LippSmith Weber Turner LLP, 500 S. Grand Ave. #1310, Los Angeles, CA 90071

(213) 254-4800
DATE:
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify) Whirlpool Corporation, a Delaware Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date): 11/16/15

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Graham B. LippSmith (SBN 221984) Kasdan LippSmith Weber Turner LLP 500 S. Grand Ave., Suite 1310 Los Angeles, CA 90071 TELEPHONE NO.: 213-254-4800 FAX NO.: 213-254-4801		CM-010 FOR COURT USE ONLY 2015 NOV 13 A 4 25 JUDGE: [Signature] DEPT: [Signature]
ATTORNEY FOR (Name): Plaintiff Julie Corzine		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street, San Jose, CA 95113 MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		
CASE NAME: Corzine v. Maytag Corporation, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: 15CV288083		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23) Non-P/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/WD tort (36) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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BY FAX

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Nine (9)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 13, 2015

Graham B. LippSmith
(TYPE OR PRINT NAME)[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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15 Attorneys for Plaintiffs

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SANTA CLARA**

18 JULIE CORZINE, individually and on
19 behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 MAYTAG CORPORATION, a
23 Delaware corporation; WHIRLPOOL
24 CORPORATION, a Delaware
25 corporation; and DOES 1 through 50,
26 inclusive,

27 Defendants.

Case No.: 115CV288083

CLASS ACTION

COMPLAINT FOR DAMAGES

1. **STRICT LIABILITY:
FAILURE TO WARN**
2. **STRICT LIABILITY:
MANUFACTURING DEFECT**
3. **STRICT LIABILITY: DESIGN
DEFECT**
4. **NEGLIGENCE**
5. **BREACH OF EXPRESS
WARRANTY**
6. **BREACH OF IMPLIED
WARRANTY OF FITNESS**
7. **BREACH OF IMPLIED
WARRANTY PURSUANT TO
CIVIL CODE §§ 1791.1 and
1792, et seq.**
8. **BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY**
9. **VIOLATIONS OF CAL. BUS.
& PROF. CODE § 17200, et seq.**

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Julie Corzine, individually and on behalf of all others similarly situated ("the Class" or "Class Members"), (collectively, "Plaintiffs"), bring this action and allege as follows on information and belief:

THE PARTIES

1. Plaintiff Julie Corzine is a resident of the city of San Jose in Santa Clara County, California.

2. Defendants Maytag Corporation ("Maytag") and Whirlpool Corporation ("Whirlpool") are Delaware corporations regularly doing business in Santa Clara County, California.

3. Based on information and belief, Plaintiffs herein allege that Whirlpool is the parent corporation of Maytag.

4. Based on information and belief, Defendants designed, manufactured and sold combination refrigerator-freezers equipped with defective tube-drain parts, including product part nos. W10210987, W10210988, W10309238, W10344401, W10344402, W10585186, W10588598, W10604169, PS8691807, and/or 2887289 ("Tube-Drains"). Defendants designed, created product materials for, designed instructions for, caused the manufacture of, and sold Tube-Drains that were installed in Plaintiffs' refrigerator-freezers that were distributed nationwide ("Class Refrigerators").

5. The Tube-Drains are designed to enable water from the freezer evaporator coils to drain from the Class Refrigerators during the automatic defrost cycle. The original Tube-Drains were elongated, S-shaped tubes with "duck bill" shaped ends that would affix to the Class Refrigerators with a grommet. Because the Tube-Drains are supposed to carry water through the inner workings of the Class Refrigerators during a daily cycle, these Tube-Drains are critical to the daily maintenance and proper function of the Class Refrigerators.

1 6. Due to their faulty, defective, and careless design as described herein,
2 the Tube-Drains are not operating properly in a normal environment. The Tube-
3 Drains have (or, in some cases, will) become clogged and have lost (or will lose)
4 their ability to effectively drain evaporated water from the Class Refrigerators,
5 causing a build-up of ice and excess water to overwhelm the bottoms of the Class
6 Refrigerators, causing leaks. Because the Tube-Drains failed, are failing, and are
7 unreliable, Plaintiff and the Class have faced and are facing costs associated with
8 replacing the Tube-Drains as well as any damage caused by the leaks.

9 7. Defendants designed, created and chose product materials for,
10 designed instructions for, caused the manufacture of, and sold Whirlpool, Maytag
11 and other refrigerator-freezer appliances equipped with the subject Tube-Drains,
12 including Plaintiff's refrigerator-freezer.

13 8. Defendants DOES 1 through 25 inclusive participated in or controlled
14 the design, sale, manufacture, and distribution of said Tube-Drains and/or are
15 Defendants' alter egos. Plaintiff is ignorant of the true names and/or capacities of
16 DOES 1 through 25 and will seek leave to name them in this case if and when
17 Plaintiff ascertains their names and capacities.

18 9. Defendants DOES 26 through 50 inclusive are manufacturers and
19 distributors of Tube-Drains sold and distributed in California. Plaintiff is ignorant
20 of the true names and/or capacities of DOES 26 through 50 and will seek leave to
21 name them in this case if and when Plaintiff ascertains their names and capacities.

22 10. The true names and capacities of Defendants DOES 1 through 50 are
23 unknown to Plaintiff, and Plaintiff will seek leave of court to amend this complaint
24 to allege such names and capacities as soon as they are ascertained. Each of the
25 Defendants herein was the agent, joint venturer, or employee of each of the
26 remaining Defendants, and in doing the things hereinafter alleged, each was acting
27 in the course and scope of said agency, employment or joint venture with advance
28 knowledge of, acquiescence in or subsequent ratification of the acts of each and

every other remaining defendant. Each of Defendants 1 through 50 is responsible, legally, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff and the Class as hereinafter alleged, either through co-defendants' conduct or through the authorized and/or ratified conduct of its agents, servants or employees or in some other manner.

11. Maytag, Whirlpool, DOES 1 through 25, and DOES 26 through 50 are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure § 410.10. Plaintiff seeks damages on behalf of herself and the Class under the laws of the State of California.

13. Venue is proper in this Court pursuant to California Code of Civil Procedure section 392 because Plaintiff resides in this County and pursuant to section 393 because some portion of the causes of action arose in this County.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this case as a class action pursuant to California Code of Civil Procedure § 382 and on behalf of a class defined as follows ("the Class"):

All individuals and entities in the State of California who purchased and/or owned Whirlpool-manufactured refrigerator-freezer appliances equipped with tube drain parts numbered W10210987, W10210988, W10309238, W10344401, W10344402, W10585186, W10588598, W10604169, PS8691807, and/or 2887289.

15. **Exclusions from the Class.** Plaintiff specifically excludes from the Class all Defendants, Defendants' subsidiaries or affiliates, entities in which any

1 Defendant has a controlling interest, and any and all of Defendants' employees,
 2 affiliates, legal representatives, successors or assignees. Plaintiff also excludes
 3 from the Class any judicial officers assigned to this case and their immediate
 4 family members.

5 16. **Ascertainability.** Plaintiff brings this action on behalf of herself and
 6 on behalf the Class, which is comprised of members identified by the class
 7 definition.

8 17. **Numerosity.** The members of the Class are so numerous that their
 9 joinder would be impracticable, and disposition of their claims in a class action
 10 rather than in individual actions would benefit the parties and the courts.

11 18. **Means for Identification.** Reasonably available means of identifying
 12 class members (at the appropriate time following class certification) exist. Class
 13 Members are "consumers" within the meaning of California Civil Code section
 14 1761(d).

15 19. **Community of Interest – Commonality.** There is a well-defined
 16 community of interest amongst the members of the Class in the questions of law.
 17 Questions of fact and law predominate and include but are not limited to the
 18 following:

- 19 • Whether the Tube Drains are defective;
- 20 • Whether the Tube Drains have an impeded useful life;
- 21 • Whether the Tube Drains serve their intended purposes, including
 22 their intended purpose of adequately draining water from refrigerator-
 23 freezer interiors during defrost cycles;
- 24 • Whether the Tube Drains impede the useful lives of the Class
 25 Refrigerators;
- 26 • Whether the Tube Drains cause damage to other components in
 27 Plaintiff's and the Class' homes;
- 28 • Whether Defendants had a duty to disclose the defective nature of the

1 Tube Drains;

- 2 • Whether Defendants are responsible for the costs and expenses of
- 3 repairing and replacing the defective Tube Drains, including
- 4 applicable labor costs;
- 5 • Plaintiff's and the Class' damages;
- 6 • Whether Defendants breached the implied warranty of
- 7 merchantability pursuant to the Song-Beverly Act;
- 8 • Whether Defendants breached their express warranties; and
- 9 • Whether Defendants engaged in unfair, unlawful, and fraudulent acts.

10 20. **Community of Interest – Typicality.** The named Plaintiff's claims
11 are typical of those of the Class.

12 21. **Community of Interest – Adequacy of Class Representatives.** The
13 named Plaintiff can fairly and adequately represent the Class because she is a Class
14 Member, has claims that are typical of the Class, and there is no reason why she
15 cannot adequately represent the Class.

16 22. **Community of Interest – Adequacy of Counsel.** Counsel for
17 Plaintiff are competent, qualified, and experienced in large class actions,
18 multiparty complex cases and product defect cases, and there is no reason why
19 they cannot adequately represent the Class.

20 23. **Impracticability of Joinder.** Joinder of the unnamed Class Members
21 on an individual basis would be impracticable in light of their number and their
22 locations throughout the State of California.

23 24. **No Better Remedy.** There is no plain, speedy, or adequate remedy
24 other than by maintenance of this Class, since the damage to each victim is
25 relatively small, making it economically infeasible to pursue lawful remedies other
26 than by a class action. The Class would be superior to individualized actions for
27 the fair and efficient adjudication of this controversy.

28 25. **No Individualized Defenses.** There are no predominately unique or

1 individualized defenses anticipated in this action that might be asserted against
2 Plaintiff individually, as distinguished from the Class.

3 26. **Fees.** Plaintiff has incurred and, during the pendency of this action,
4 will incur expenses for attorneys' fees and costs herein. Such attorneys' fees and
5 costs are necessary for the prosecution of this action and will result in a benefit to
6 the Class. This action will result in the enforcement of important rights supported
7 by strong public policy affecting the public interest, conferring a significant benefit
8 to the general public and a large class of persons.

9
10 **FACTUAL ALLEGATIONS**

11 27. Exhibit 1 to this Complaint lists the refrigerator-freezer models that
12 were designed, manufactured, sold, and/or distributed with defective Tube Drains
13 and purchased by Plaintiff and the Class Members. Defendants are in possession of
14 part numbers, UPCs, descriptions, and/or representations of additional defective
15 Tube Drains that Plaintiff may use to supplement the list of defective Tube Drains
16 in an amendment to this Complaint.

17 28. The Tube Drains described herein were installed in Plaintiff's
18 combination refrigerator-freezer, purchased in California, as part of its original
19 design and manufacture.

20 29. The Tube Drains are defective in that they become clogged, have
21 impeded flow, have a blocked grommet, and/or have an impeded useful life. The
22 Tube Drains also damage and impede the useful life of other components in
23 Plaintiffs' refrigerator-freezers and home, including but not limited to the
24 evaporator coils, panels, and/or home interior near and around the leaking
25 refrigerator-freezer.

26 30. The Tube Drains fail in performing their intended purposes as a result
27 of their defects. The Tube Drain defects also cause other components in Plaintiffs'
28 refrigerator-freezers, including but not limited to its evaporator coils, interior and

1 exterior panels, and/or defrost function, to fail their intended purposes.

2 31. Defendants knew, or should have known, that the Tube Drains are
3 defective such that the opening of the grommet sticks closed, impeding water flow
4 through the Tube Drain and causing water to accumulate, freeze, and/or leak to
5 other areas of the refrigerator-freezer and/or outside of the refrigerator-freezer,
6 and/or have an impeded useful life. Defendants also knew, or should have known,
7 that the Tube Drains damage and impede the useful life of other components in the
8 Class Refrigerators, including but not limited to evaporator coils, interior and
9 exterior panels, and/or defrost function.

10 32. On information and belief, hundreds of purchasers of Class
11 Refrigerators equipped with Tube Drains have experienced problems with their
12 refrigerator-freezers. Defendants knew about the Tube Drain defect through
13 sources not available to consumers, early consumer complaints about leaks caused
14 by the Tube Drains to Defendants, including warranty reimbursement requests and
15 repair orders, testing conducted in response to complaints and repair orders,
16 replacement part sales data, and consumer complaints on internet forums, among
17 other internal sources of aggregate information about the problem. Complaints
18 about water leaking and ice forming in bottom panels have appeared online since at
19 least 2005.

20 33. The existence of the Tube Drain defect is a material fact that a
21 reasonable consumer would consider when deciding whether to purchase a
22 refrigerator-freezer equipped with the Tube Drain. Had Plaintiff and other Class
23 Members known that the Class Refrigerators were equipped with defective Tube
24 Drains, they would not have purchased said refrigerator-freezers or would have
25 paid less for them.

26 34. Consumers, like Plaintiffs, reasonably expect that a refrigerator-
27 freezer's component parts, including the Tube Drains, are free of defects and will
28 function in a manner that will not cause damage. Plaintiff and Class Members

1 further reasonably expect that Defendants will not manufacture, market, distribute,
2 and/or sell refrigerator-freezers with known defects, such as the defective Tube
3 Drains, and will disclose any such defects when known.

4 35. Plaintiff has suffered and/or has been in danger of suffering injury
5 and/or significant property damage due to the defective Tube Drain.

6 36. The repairs for the damages caused by the defective Tube Drains are
7 significant.

8 **FIRST CAUSE OF ACTION**

9 **STRICT LIABILITY: FAILURE TO WARN**

10 (Against All Defendants by Plaintiff and the Class)

11 37. Plaintiff and the Class hereby reallege and incorporate by reference all
12 previous paragraphs of this complaint as though fully set forth herein.

13 38. Defendants manufactured, distributed, and/or sold the Tube Drains as
14 component parts of the Class Refrigerators.

15 39. The Tube Drains were defective due to inadequate warnings or
16 instruction for use, both prior to marketing and post-marketing.

17 40. The Tube Drains had risks that were known or knowable in light of
18 the scientific knowledge that was generally accepted at the time of manufacture,
19 distribution, and/or sale.

20 41. The risks in the Tube Drains presented a substantial danger when the
21 Tube Drains were used or misused in an intended or reasonably foreseeable way.

22 42. Ordinary consumers would not have recognized the potential risks.

23 43. Defendants knew or should have known that the Tube Drains created
24 significant risks to consumers.

25 44. Defendants failed to adequately warn consumers of such risks.

26 45. Because of Defendants' failure to provide adequate warnings with
27 their products, the Class Refrigerators were purchased, equipped with the Tube
28 Drains, for use in Plaintiff's and Class Members' homes after Defendants

1 manufactured, designed, sold, supplied, marketed or otherwise introduced them
2 into the stream of commerce.

3 46. Plaintiff and the Class suffered harm, damages and economic losses,
4 and Plaintiff and the Class will continue to suffer such harm, damages and
5 economic loss in the future.

6 47. Defendants' misconduct was a substantial factor in causing and
7 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

8 48. Defendants' conduct was gross, reckless, and in bad faith or willful
9 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
10 intentionally, maliciously, and oppressively, with a willful and conscious disregard
11 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
12 malice under the law.

13
14 **SECOND CAUSE OF ACTION**

15 **STRICT LIABILITY: MANUFACTURING DEFECT**

16 (Against All Defendants by Plaintiff and the Class)

17 49. Plaintiff and the Class hereby reallege and incorporate by reference all
18 previous paragraphs of this complaint as though fully set forth herein.

19 50. Defendants manufactured, distributed, and/or sold the Tube Drains as
20 component parts of the Class Refrigerators.

21 51. The Tube Drains contained a manufacturing defect when they left
22 Defendants' possession.

23 52. The Tube Drains had risks that were known or knowable in light of
24 the scientific knowledge that was generally accepted at the time of manufacture,
25 distribution, and/or sale.

26 53. The risks in the Tube Drains presented a substantial danger when the
27 Tube Drains were used or misused in an intended or reasonably foreseeable way.

28 54. Ordinary consumers would not have recognized the potential risks.

1 55. Defendants knew or should have known that the Tube Drains created
2 significant risks to consumers.

3 56. The Class Refrigerators equipped with the Tube Drains were
4 purchased for use in Plaintiff's and the Class' homes after Defendants
5 manufactured, designed, sold, supplied, marketed or otherwise introduced them
6 into the stream of commerce.

7 57. Plaintiff and the Class suffered harm, damages and economic losses,
8 and Plaintiff and the Class will continue to suffer such harm, damages and
9 economic loss in the future.

10 58. Defendants' misconduct was a substantial factor in causing and
11 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

12 59. Defendants' conduct was gross, reckless, and in bad faith or willful
13 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
14 intentionally, maliciously, and oppressively, with a willful and conscious disregard
15 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
16 malice under the law.

17
18 **THIRD CAUSE OF ACTION**

19 **STRICT LIABILITY: DESIGN DEFECT**

20 (Against All Defendants by Plaintiff and the Class)

21 60. Plaintiff and the Class hereby reallege and incorporate by reference all
22 previous paragraphs of this complaint as though fully set forth herein.

23 61. Defendants manufactured, distributed, and/or sold the Class
24 Refrigerators equipped with the Tube Drains.

25 62. The Tube Drains contained a design defect when they left Defendants'
26 possession.

27 63. The Tube Drains had risks that were known or knowable in light of
28 the scientific knowledge that was generally accepted at the time of manufacture,

1 distribution, and/or sale.

2 64. The risks in the Tube Drains presented a substantial danger when the
3 Class Refrigerators were used or misused in an intended or reasonably foreseeable
4 way.

5 65. Ordinary consumers would not have recognized the potential risks.

6 66. Defendants knew or should have known that the Tube Drains created
7 significant risks to consumers.

8 67. Tube Drains were purchased as component parts for use in the Class
9 Refrigerators after Defendants manufactured, designed, sold, supplied, marketed or
10 otherwise introduced them into the stream of commerce.

11 68. Plaintiff and the Class suffered harm, damages and economic losses,
12 and Plaintiff and the Class will continue to suffer such harm, damages and
13 economic loss in the future.

14 69. Defendants' misconduct was a substantial factor in causing and
15 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

16 70. Defendants' conduct was gross, reckless, and in bad faith or willful
17 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
18 intentionally, maliciously, and oppressively, with a willful and conscious disregard
19 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
20 malice under the law.

21
22 **FOURTH CAUSE OF ACTION**

23 **NEGLIGENCE**

24 (Against All Defendants by Plaintiff and the Class)

25 71. Plaintiff and the Class hereby reallege and incorporate by reference all
26 previous paragraphs of this complaint as though fully set forth herein.

27 72. Defendants had a duty to exercise reasonable care in the design,
28 formulation, testing, manufacture, labeling, marketing, sale and/or distribution of

1 the Class Refrigerators equipped with the Tube Drains.

2 73. Defendants were negligent and failed to exercise reasonable care in
3 the design, formulation, manufacture, sale, testing, marketing, or distribution of the
4 Class Refrigerators equipped with Tube Drains in that they knew or should have
5 known that their products could cause significant harm.

6 74. Despite the fact that Defendants knew or should have known that their
7 products posed a serious risk of harm to consumers, Defendants unreasonably
8 continued to manufacture and market their products, and failed to exercise
9 reasonable care with respect to post-sale warnings and instructions for safe use.

10 75. At all relevant times, it was foreseeable to Defendants that
11 homeowners like Plaintiff and the Class would suffer damages as a result of
12 Defendants' failure to exercise ordinary care as described above.

13 76. Plaintiff and the Class suffered harm, damages and economic losses,
14 and Plaintiff and the Class will continue to suffer such harm, damages and
15 economic loss in the future.

16 77. Defendants' misconduct was a substantial factor in causing and
17 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

18 78. Defendants' conduct was gross, reckless, and in bad faith or willful
19 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
20 intentionally, maliciously, and oppressively, with a willful and conscious disregard
21 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
22 malice under the law.

23
24 **FIFTH CAUSE OF ACTION**

25 **BREACH OF EXPRESS WARRANTY**

26 (Against All Defendants by Plaintiff and the Class)

27 79. Plaintiff and the Class hereby reallege and incorporate by reference all
28 previous paragraphs of this complaint as though fully set forth herein.

1 80. Defendants made express warranties concerning the Tube Drains,
2 including but not limited to warranties in their sales materials and website that
3 Defendants' products are warranted to be free of defects in material, manufacturing
4 and design and that the Tube Drains are designed to enable drainage of water
5 evaporated from freezer evaporator coils during automatic defrost cycles.

6 81. Defendants intended that their express warranties extend to and would
7 benefit purchasers of the Class Refrigerators, including but not limited to,
8 warranting that the Tube Drains were free of defects such that they would properly
9 perform as intended.

10 82. Plaintiff and the Class purchased refrigerator-freezers containing the
11 Tube Drains.

12 83. Defendants breached their warranties concerning the Tube Drains.

13 84. Plaintiff and the Class suffered harm, damages and economic losses,
14 and Plaintiff and the Class will continue to suffer such harm, damages and
15 economic loss in the future.

16 85. Defendants' misconduct was a substantial factor in causing and
17 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

18 86. Defendants' conduct was gross, reckless, and in bad faith or willful
19 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
20 intentionally, maliciously, and oppressively, with a willful and conscious disregard
21 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
22 malice under the law.

23
24 **SIXTH CAUSE OF ACTION**

25 **BREACH OF IMPLIED WARRANTY OF FITNESS**

26 (Against All Defendants by Plaintiff and the Class)

27 87. Plaintiff and the Class hereby reallege and incorporate by reference all
28 previous paragraphs of this complaint as though fully set forth herein.

1 88. Defendants made implied warranties concerning the Tube Drains,
2 including but not limited to the warranty of fitness.

3 89. Defendants intended that their implied warranties were extended to
4 and would benefit purchasers of the Class Refrigerators, including but not limited
5 to, warranting that the Tube Drains were free of defects such that they would
6 properly perform as intended.

7 90. Plaintiff and the Class purchased Class Refrigerators equipped with
8 Tube Drains.

9 91. At the time the Class Refrigerators were purchased, Defendants knew
10 or had reason to know that Class Refrigerators containing Tube Drains would be
11 used for a particular purpose in Plaintiff's and the Class' homes and that
12 purchasers and/or installers would justifiably rely on Defendants' skill and
13 judgment in selecting, providing and/or furnishing Tube Drains suitable for that
14 particular purpose.

15 92. The Tube Drains were not suitable for the particular purpose.

16 93. Defendants breached their implied warranty of fitness concerning the
17 Tube Drains used in the Class Refrigerators.

18 94. Plaintiff and the Class suffered harm, damages and economic losses,
19 and Plaintiff and the Class will continue to suffer such harm, damages and
20 economic loss in the future.

21 95. Defendants' misconduct was a substantial factor in causing and
22 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

23 96. Defendants' conduct was gross, reckless, and in bad faith or willful
24 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
25 intentionally, maliciously, and oppressively, with a willful and conscious disregard
26 of the rights of Plaintiff and the Class Members, so as to constitute oppression,
27 fraud, or malice under the law.

28 //

SEVENTH CAUSE OF ACTION

**BREACH OF IMPLIED WARRANTY PURSUANT TO SONG-BEVERLY
CONSUMER WARRANTY ACT, CALIFORNIA CIVIL CODE §§ 1791.1
and 1792, *et seq.***

(Against All Defendants by Plaintiff and the Class)

97. Plaintiff and the Class hereby reallege and incorporate by reference all previous paragraphs of the complaint as though fully set forth herein.

98. Defendants were at all relevant times the manufacturers, distributors, warrantors, and/or sellers of Class Refrigerators equipped with the Tube Drains. Defendants knew or had reason to know of the specific use for which the Class Refrigerators were purchased, and Defendants made implied warranties concerning the Tube Drains, including but not limited to the warranty of fitness.

99. Defendants intended that their implied warranties were extended to and would benefit purchasers of the Class Refrigerators, including but not limited to, warranting that the Tube Drains were free of defects such that they would properly perform as intended.

100. Plaintiff and the Class purchased Class Refrigerators equipped with Tube Drains.

101. At the time the Class Refrigerators were purchased, Defendants knew or had reason to know that Class Refrigerators containing Tube Drains would be used for a particular purpose in Plaintiff's and the Class' homes and that purchasers and/or installers would justifiably rely on Defendants' skill and judgment in selecting, providing and/or furnishing Tube Drains suitable for that particular purpose.

102. Defendants impliedly warranted that the Class Refrigerators, including the Tube Drains and other component parts, were merchantable and fit for the ordinary purposes for which they were sold. This implied warranty included, among other things, (a) a warranty that the Tube Drains were reliable,

1 and (b) a warranty that the Tube Drains would be fit for their intended use while
2 the Class Refrigerators were operating.

3 103. Contrary to the implied warranties, the Tube Drains are not fit for
4 their particular purposes because the Tube Drains suffered from an inherent, latent
5 defect at the time of sale and thereafter are not fit for their intended purpose. Said
6 defects include but are not limited to the defective design and manufacture of the
7 Tube Drains.

8 104. Defendants breached their implied warranty of fitness concerning the
9 Tube Drains used in the Class Refrigerators, and the breach occurred at the time
10 the Class Refrigerators were sold.

11 105. Plaintiff and the Class suffered harm, damages and economic losses,
12 and Plaintiff and the Class will continue to suffer such harm, damages and
13 economic loss in the future. In addition, Plaintiff and the Class are harmed and
14 suffered actual damages in that the Tube Drains are substantially certain to fail
15 before their expected useful life has run.

16 106. Defendants' misconduct was a substantial factor in causing and
17 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

18 107. Defendants' conduct was gross, reckless, and in bad faith or willful
19 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
20 intentionally, maliciously, and oppressively, with a willful and conscious disregard
21 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
22 malice under the law.

23 108. Defendants' actions, as complained of herein, breached the implied
24 warranty that Defendants' Tube Drains were of merchantable quality and fit for
25 such use in violation of California Civil Code sections 1791.1 and 1792.

26 //

27 //

28 //

EIGHTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against All Defendants by Plaintiff and the Class)

109. Plaintiff and the Class hereby reallege and incorporate by reference all previous paragraphs of this complaint as though fully set forth herein.

110. Defendants made implied warranties concerning the Tube Drains, including but not limited to the warranty of merchantability.

111. Defendants intended that their implied warranties were extended to and would benefit purchasers of the Class Refrigerators equipped with the Tube Drains.

112. Plaintiff and the Class purchased Class Refrigerators containing Tube Drains.

113. At the time the Class Refrigerators were purchased, Defendants knew or had reason to know that Class Refrigerators containing Tube Drains would be used for a particular purpose in Plaintiff's and the Class' homes and that purchasers and/or installers would justifiably rely on Defendants' skill and judgment in selecting, providing and/or furnishing Tube Drains suitable for that particular purpose.

114. At the time the Class Refrigerators were purchased, Defendants also knew or had reason to know that purchasers and/or installers would justifiably believe that they were of the same quality as those generally acceptable in the trade, were fit for the ordinary purposes for which such goods are used, were adequately contained, packaged, and labeled, had adequate instructions, and/or measured up to the promises or facts stated about the product.

115. The Tube Drains were not suitable for the particular purpose, and they were not of the same quality as those generally acceptable in the trade, were not fit for the ordinary purposes for which such goods are used, were not adequately contained, packaged, and labeled, had inadequate instructions, and/or did not

1 measure up to the promises or facts stated about the product.

2 116. Defendants breached their implied warranty of merchantability
3 concerning the Tube Drains.

4 117. Plaintiff and the Class suffered harm, damages and economic losses,
5 and Plaintiff and the Class will continue to suffer such harm, damages and
6 economic loss in the future.

7 118. Defendants' misconduct was a substantial factor in causing and
8 proximately caused Plaintiff's and the Class' harm, damages and economic losses.

9 119. Defendants' conduct was gross, reckless, and in bad faith or willful
10 disregard of the rights and interest of Plaintiff and the Class. Defendants acted
11 intentionally, maliciously, and oppressively, with a willful and conscious disregard
12 of the rights of Plaintiff and the Class, so as to constitute oppression, fraud, or
13 malice under the law.

14
15 **NINTH CAUSE OF ACTION**
16 **VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE**
17 **§ 17200 *ET SEQ.***

18 (Against All Defendants by Plaintiff and the Class)

19 120. Plaintiff and the Class hereby reallege and incorporate by reference all
20 previous paragraphs of this complaint as though fully set forth herein.

21 121. Defendants engaged in unlawful, fraudulent, and unfair business
22 practices.

23 122. Defendants' misconduct constituted unlawful business acts or
24 practices within the meaning of California Business & Professions Code § 17200
25 *et seq.*

26 123. Plaintiff and the Class suffered actual harm, damages and economic
27 losses, and Plaintiff and the Class will continue to suffer such harm, damages and
28 economic loss in the future.

9

11 Wherefore, Plaintiff and the Class respectfully request the following and
12 pray for judgment as follows:

- 27

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Class, hereby demands a jury trial for all issues so triable.

Dated: November 13, 2015 KASDAN LIPPSMITH WEBER TURNER LLP

By: 

Kenneth S. Kasdan

Graham B. LippSmith

Celene S. Chan

Jaclyn L. Anderson

Attorneys for Plaintiff and the Class

EXHIBIT 1

TECHNICAL SERVICE POINTER

For Immediate Attention of Your Service Department

Technical Service Pointer #: W10632338A

November, 2013

Supersedes W10632338

☒ Refrigeration Products

Action Required: Informational/Mandatory

Brands Affected



KitchenAid
HOME APPLIANCES

JENN-AIR

MAYTAG

Amana

Amana, Jenn-Air, KitchenAid, Maytag And Whirlpool Refrigerators

Models:

See attached pages.

Serial Numbers: Prior to K333

Concern:

Ice build up on bottom of freezer.

Defrost water does not drain.

Duck bill check valve plugged.

Correction:

A "P Trap" drain tube kit is now available for the models listed on the attached sheets. If the new design "P Trap", see figure 1, has not already been installed, Order and install kit part number W10619951. Follow the detailed instructions supplied with the kit including:
Defrost the evaporator and drip pan completely.
Clean the drip pan drain tube.

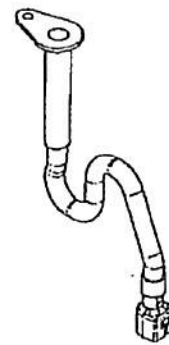


Figure 1

Note: Whirlpool will pay for repair parts and labor to perform this repair up to 2 years from the Date of Purchase. Whirlpool will supply repair parts through the normal Parts distribution channel at no cost to the consumer for this repair on all units that are beyond 2 years from the date of purchase. Charge the repair parts and labor related to this repair to Special project S38211 utilizing the current warranty billing system.

ALL POINTERS ONLINE:
<https://www.servicematters.com/>

To receive pointers by email, or to edit
or delete a current email address, go
to <https://www.servicebench.com/>

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER:

115 CV 288083**PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons and Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Peter Kirwan Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 3/11/16 Time: 10:00am in Department: 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration).

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

CIVIL COVER SHEET

The JS 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 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

Julie Corzine

(b) County of Residence of First Listed Plaintiff Santa Clara

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Kasdan Lippsmith Weber Turner LLP (213) 254-4800
500 S. Grand Avenue, Suite 1310, Los Angeles, CA 90015**DEFENDANTS**

Maytag Corporation, Whirlpool Corporation

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)

Glynn & Finley, LLP, One Walnut Creek Center, 100 Pringle Avenue, Suite 500, Walnut Creek, CA 94596, (925) 210-2800

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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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. 1441, 1453

Brief description of cause:

Removal of case from state court.

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/16/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonathan A. Eldredge

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA