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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAURY SMITH, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

LG ELECTRONICS U.S.A., INC. and SEARS
HOLDINGS CORP.,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Laury Smith (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendants LG Electronics U.S.A., Inc. and Sears Holding Corp.
3 (collectively, “Defendants”). Plaintiff makes the following allegations pursuant to the
4 investigation of her counsel and based upon information and belief, except as to the allegations
5 specifically pertaining to herself, which are based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a class action against LG Electronics U.S.C., Inc. (“LG”) and Sears Holding
8 Corp. (“Sears”) related to their design, manufacture, sale, and service of defective top-loading
9 automatic clothes washing machines (collectively the “Defective Washing Machines.”).

10 2. Defendants misrepresented the functionality of the Defective Washing Machines by
11 labeling and advertising them as “High Efficiency” machines featuring “extra high” spin speeds of
12 1050-1100 RPMs.¹ The Defective Washing Machines are built on the same or nearly identical
13 engineering platforms. Moreover, the Defective Washing Machine models featured a system that
14 purportedly prevents or minimizes vibrations for smooth, quiet operation during use. As a result of
15 these similarities, the Defective Washing Machines have the same inherent design defects that
16 cause them to shake and vibrate excessively during use due to unbalanced loads that cause internal
17 parts to come loose.

18 3. On December 18, 2012, the United States Consumer Product Safety Commission
19 “CPSC” recalled the Defective Washing Machines due to the risk of personal injury and property
20 damage as a result of these design defects. The recall announcement (Release #13-073; the
21 “Recall”) states that “[a]n unbalanced load can cause the washing machine to shake excessively
22 and the drum to come loose during use, posing a risk of injury to consumers and property damage
23 to the surrounding area.”²

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26 ¹ Defendants represented that the Kenmore brand Defective Washing Machines had a maximum spin speed of 1050
RPMs, and the LG brand Defective Washing Machines had a maximum spin speed of 1100 RPMs.

27 ² Recall announcement available at [http://www.cpsc.gov/en/Recalls/2013/LG-Recalls-Top-Loading-Washing-
28 Machines-Due-to-Risk-of-Injury/](http://www.cpsc.gov/en/Recalls/2013/LG-Recalls-Top-Loading-Washing-Machines-Due-to-Risk-of-Injury/)

1 4. As a result of the recall, customers were instructed to immediately contact LG or
2 Sears for a free in-home repair. Defendants’ in-home repair consisted of the installation of a
3 software “upgrade” on the Defective Washing Machines. However, the software “upgrade”
4 implemented by Defendants was not an upgrade at all. Rather than fix the problems caused by the
5 design defects, the software modification simply capped the spin speed of the Defective Washing
6 Machines at 700 RPMs and otherwise limited the functionality of the Defective Washing
7 Machines, such that the machines were no longer capable of operating at the advertised “extra
8 high” spin speed setting of 1050-1100 RPMs. By reducing the machines’ functionality,
9 Defendants stopped the violent shaking and movement caused by the design defects. However,
10 this created a different problem for purchasers because the machines were no longer capable of
11 spinning fast enough to remove excess water from clothing at the end of a wash cycle.
12 Importantly, fast spin speed cycles are a desirable feature as they remove excess water from
13 clothing faster (thereby shortening washing machine time), and leave consumers with dryer clothes
14 (thereby shortening the time that laundry spends in the dryer). The Use & Care Guides and
15 Owner’s Manuals for the Defective Washing Machines specifically explain the benefits of the high
16 speed spin cycles advertised by Defendants stating, “Higher spin speeds extract more water from
17 clothes, reducing drying time and saving energy.” After the Recall “repair,” however, customers
18 were left with soaking wet laundry that required additional spin cycles to be successfully wrung
19 out, thereby negating any “high efficiency” or energy saving promises and representations made by
20 Defendants.

21 5. It gets worse. In conjunction with the recall, customers were also provided with
22 supplemental information to be inserted into their owner’s manuals, and a new caution label to be
23 affixed to the Defective Washing Machines. These supplemental materials feature a new list of
24 washables that the Defective Washing Machines are no longer capable of laundering. These items
25 included any water-proof or water-resistant clothing, mattress covers, outdoor gear, and plastic
26 mats. Thus, the defects described in the Recall and Defendants’ “software upgrade” render the
27 Defective Washing Machines unsuitable for the ordinary purpose for which they were advertised,
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1 marketed and sold – i.e., as High Efficiency washing machines. And the machines’ defects are
2 incapable of being repaired in a manner that would enable the Defective Washing Machines to
3 perform as advertised.

4 6. Plaintiff Laury Smith purchased a Kenmore Elite Model No. 29272 in November
5 2011 based on Defendants’ representations that the product was a “High Efficiency” machine,
6 capable of “extra high” spin speed cycles at 1050 RPMs that would help dry her laundry faster than
7 washing machines that do not have high efficiency capabilities. She paid \$579.99 plus sales tax at
8 a Sears store in Hayward, California for her Defective Washing Machine. Since her initial use of
9 the machine, she experienced unbalanced loads that caused the machine to shake violently, make
10 banging noises, rock from side to side, and move or “walk” itself away from the wall which it was
11 positioned against. Ms. Smith requested an in-home repair after learning of Defendants’ recall, and
12 her defective machine was serviced in March 2013. However, due to Defendants’ “repair,”
13 Smith’s machine (a) no longer functions as represented in the product advertising, marketing and
14 Use & Care Guide, (b) fails to wring out her clothing, and (c) can no longer be used to launder
15 certain machine-washable items.

16 7. Plaintiff seeks relief in this action individually, and as a class action on behalf of
17 similarly situated purchasers of the Defective Washing Machines, for violations of the Magnuson-
18 Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (“MMWA”), the California Consumers Legal
19 Remedies Act, Civil Code § 1750, *et seq.* (“CLRA”), California’s Unfair Competition Law, Bus. &
20 Prof. Code § 17200, *et seq.* (“UCL”), California’s False Advertising Law, Bus. & Prof. Code §
21 17500, *et seq.* (“FAL”), for breach of express warranty, breach of implied warranty of
22 merchantability, breach of implied warranty of fitness for a particular purpose, and for unjust
23 enrichment. At all relevant times alleged in this matter, Sears and LG acted in concert with,
24 with the knowledge and approval of and/or as the agent of the other within the course and scope of the
25 agency, regarding the acts and omissions alleged.

1 **THE PARTIES**

2 8. Plaintiff Laury Smith is a citizen of California and a consumer as defined in
3 California Civil Code § 1761(d) in that she purchased a Defective Washing Machine “for personal,
4 family or household purposes.”

5 9. Defendant LG Electronics U.S.A., Inc. is the United States distributor of LG
6 appliances, with its principal place of business located at 1000 Sylvan Avenue, Englewood Cliffs,
7 New Jersey 07632. LG Electronics U.S.A., Inc. is a subsidiary of LG Electronics, Inc., a
8 multinational electronics company incorporated in South Korea. LG manufactures the Kenmore
9 Elite and LG Defective Washing Machines. LG also participated in creating the branding,
10 packaging and design, logistics and distribution, marketing and advertising of the Defective
11 Washing Machines. LG has sold, either directly or indirectly, hundreds of thousands of its
12 Defective Washing Machines nationwide and tens of thousands in the State of California.

13 10. Defendant Sears Holdings Corp. is a Delaware corporation with its principal place
14 of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Sears owns the
15 Kenmore brand and participated in creating the branding, packaging and design, logistics and
16 distribution, marketing, advertising and sale of the Defective Washing Machines. Sears is the
17 parent company of Sears, Roebuck and Co., the nation’s fourth largest broadline retailer with
18 approximately 3,900 full-line and specialty retail stores in the United States and Canada, and
19 claims to be “the leading home appliance retailer.” One of Sears’ key proprietary brands is the
20 Kenmore line of appliances. Certain of the Kenmore appliances, including its line of Kenmore
21 Elite washers, are manufactured by LG. Sears has sold, either directly or indirectly, hundreds of
22 thousands of its Defective Washing Machines nationwide and tens of thousands in the State of
23 California.

24 **JURISDICTION AND VENUE**

25 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)
26 because there are more than 100 class members and the aggregate amount in controversy exceeds
27 \$5,000,000.00, exclusive of the interest and costs, and Plaintiff is a citizen of a state different from
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1 the states of at least one of the Defendants. This Court also has supplemental jurisdiction over state
2 law claims pursuant to 28 U.S.C. § 1367.

3 12. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because
4 the acts and occurrences that are the subject matter of Plaintiff Smith's claims and of many other
5 Class Members occurred in whole or in substantial part in this District, and Defendants extensively
6 sold their goods within the District.

7 13. This Court has personal jurisdiction over Defendants because Defendants advertise
8 and sell or have sold the Defective Washing Machines to consumers in California, including
9 Plaintiff's Defective Washing Machine, and because Defendants purposefully avail themselves of
10 distribution chains likely to lead to the sale of the Defective Washing Machines to California
11 residents.

12 14. Defendants' extensive business and advertising engagements with California
13 residents constitute purposeful availment of this forum sufficient to subject Defendants to suit in
14 this forum. Because of Defendants' significant contacts within this forum, assertion of jurisdiction
15 to remedy Defendants' conduct does not offend traditional notions of fair play and substantial
16 justice.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 **The Defective Washing Machines**

19 15. The Defective Washing Machines include six models of automatic washing
20 machines manufactured by Defendant LG: LG brand WT5001CW, WT5101HV, and WT5101HW,
21 and Kenmore Elite brand models 29002, 29272, and 29278. The washing machines are a top-load
22 style manufactured in beige, white and graphite colors.

23 16. Defendant LG manufactured, produced, and/or distributed the Defective Washing
24 Machines to several leading retailers including Home Depot, Sears, Kmart, and Best Buy.

25 17. Three of the defective models were sold under the Kenmore brand name. Kenmore
26 is a brand of household appliances established by Sears, and sold exclusively at Sears and Kmart.
27 Kenmore products bear the Kenmore brand label, but are produced by various third-party
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1 manufacturers. The three Kenmore brand washing machines that are the subject of this complaint
2 (Kenmore Elite brand models 29002, 29272, and 29278) were manufactured by Defendant LG,
3 although labeled, advertised, and sold by Defendants as Kenmore brand appliances. Defendant
4 Sears participated in creating the branding, packaging and design, logistics and distribution,
5 marketing, advertising and sale of the three Kenmore brand machines.

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7 18. The Defective Washing Machines, pictured below, were sold from April 2010 to
8 December 2012. Typical, non-sale retail prices ranged from \$899 to \$1,099 per unit. The purchase
9 price for each unit included a substantial price premium compared to non-High Efficiency washing
10 machines due to their purported highly efficient characteristics and functions.



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19. Each of the Defective Washing Machines share a common design defect – unbalanced wash loads cause the internal drum to come loose during use thereby causing the machines to vibrate and shake excessively and make loud banging noises.

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20. The Defective Washing Machines were advertised heavily on Defendants’ websites, on Amazon.com, through Home Depot, Best Buy, Sears, Kmart, and through thousands of other in-store and online retailers.

1 21. Defendants labeled and advertised the Defective Washing Machines with similar
2 false and misleading statements on their websites, on in-store and other promotional materials, and
3 on the appliances themselves, including that the Defective Washing Machines were: High
4 Efficiency³, Energy Star® compliant⁴, Highly Energy and Water Efficient, and capable of
5 operating “extra high” spin speed cycles of 1050-1100 RPMs.

6 22. The Defective Washing Machines are built on the same or nearly identical
7 engineering platforms. Moreover, the Defective Washing Machines feature a system that
8 purportedly prevents or minimizes vibration for smooth, quiet operation during use.

9 23. The control panel features on the Defective Washing Machines and their user
10 manuals specifically also list the available spin speeds: “Extra High,” “High,” “Medium,” “Low,”
11 and “No Spin.” The manuals also state that “Higher spin speeds extract more water from clothes,
12 reducing drying time and saving energy.”

13 **The Inherent Design Defects**

14 24. The Defective Washing Machines have the same inherent design defects that cause:
15 (a) unbalanced loads that cause internal parts to come loose; (b) excessive shaking and vibrating
16 during use, which can cause both personal injury and property damage; (c) loud banging noises
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20 ³ High Efficiency washing machines are recognizable by a blue “HE” logo. To carry the “HE” label, appliances must
21 meet strict industry guidelines and use less water, less energy and less detergent. “HE” washers can be either front-
22 loading or top-loading depending on their design, but if they show the “HE” symbol, they have met stringent low
23 energy guidelines. High efficiency washers, which are also Energy Star® compliant, use from 20% to 66% of the water
24 used by traditional agitator washers. A high efficiency top-loader, such as the Defective Washing Machines, has a
shorter agitator that draws the load down into the low water and detergent to effect a cleaning. See American Cleaning
Institute, High Efficiency Washers and Detergents: Working in Harmony to Save Energy and Water, available at
<http://www.cleaninginstitute.org/assets/1/Page/HE.pdf>. The message and promise conveyed by the “HE” logo is that
the appliance complies with and functions as a High Efficiency unit within the meaning of the established industry
guidelines. As such, an “HE” labeled appliance enables purchasers to maximize their water, energy, monetary and
time savings during the use of their product.

25 ⁴ Energy Star® qualified clothes washers use 40 to 50 percent less energy and about 55 percent less water than
26 standard washers. As a result, a consumer can expect to save up to \$50 per year on utility and water bills, with
27 additional savings from using less detergent. Most Energy Star® qualified washers extract more water during the spin
28 cycle, providing further energy savings when using a clothes dryer because drying time will be shorter. Also, owners
will see less wear and tear on clothes from front loading models, which do not need an agitator. See
http://www.energystar.gov/ia/new_homes/features/Appliances_062906.pdf

1 during use; and (d) unsuitability for the residential use for which the Defective Washing Machines
2 were sold.

3 **The Defective Washing Machines Are Recalled**

4 25. The Defective Washing Machines' defective design was confirmed by the CPSC.
5 On December 18, 2012, the CPSC recalled the Defective Washing Machines due to risk of injury.
6 The recall announcement (Release #13-073; the "Recall") states that "[a]n unbalanced load can
7 cause the washing machine to shake excessively and the drum to come loose during use, posing a
8 risk of injury to consumers and property damage to the surrounding area."⁵ As of the recall date,
9 Defendants had received at least 343 reports of the Defective Washing Machines vibrating
10 excessively, at least 187 reports of property damage, and one report of injury. According to the
11 CPSC Recall announcement, Defendants sold approximately 457,000 units of the Defective
12 Washing Machines.

13 **Defendants' Inadequate "Fix"**

14 26. The Recall instructs consumers to immediately contact LG or Sears for a free in-
15 home repair of the machine. Defendants' in-home repair consisted of the installation of a software
16 "upgrade" on the Defective Washing Machines. However, rather than fix the problems caused by
17 the design defects, the software modification simply limits the functionality, efficiency, and speed
18 of the Defective Washing Machines to avoid the excessive vibrations reported in CPSC's Recall
19 announcement.

20 27. After the software "upgrade," the Defective Washing Machines can no longer
21 operate at the advertised "extra high" spin speed of 1050-1100 RPMs. Defendants capped the spin
22 speed of the Defective Washing Machines to 700 RPM to avoid the instability and danger caused
23 by their defective design, rather than fixing the defect itself. This "upgrade" rendered the
24 Defective Washing Machines useless for their advertised purpose. The machines were no longer
25 capable of spinning fast enough to remove excess water from clothing at the end of a wash cycle.
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27 ⁵ Recall announcement available at [http://www.cpsc.gov/en/Recalls/2013/LG-Recalls-Top-Loading-Washing-](http://www.cpsc.gov/en/Recalls/2013/LG-Recalls-Top-Loading-Washing-Machines-Due-to-Risk-of-Injury/)
28 [Machines-Due-to-Risk-of-Injury/](http://www.cpsc.gov/en/Recalls/2013/LG-Recalls-Top-Loading-Washing-Machines-Due-to-Risk-of-Injury/)

1 Customers were left with soaking wet laundry that required additional spin cycles to be
2 successfully wrung out, thereby negating any “high efficiency” or energy saving promises or
3 representations made by Defendants.

4 28. In the Use & Care Guide for the Defective Washing Machines, Defendants also
5 represent that the Defective Washing Machines are “designed and manufactured for years of
6 dependable operation” and that by “follow[ing] the operating and care instructions in this manual”
7 “your washer will provide *many years of reliable service.*”

8 29. In conjunction with each sale, Defendants warranted that the Defective Washing
9 Machines were fit for the ordinary residential use for which such goods are used and were free
10 from defects.

11 30. Defendants are aware of and have publicly acknowledged the defects in their
12 Defective Washing Machines. The product defects, per the CPSC’s Recall, result in unbalanced
13 loads causing the drum inside the Defective Washing Machines to come loose and for the units to
14 shake excessively while in use. This results in a loss of effectiveness concerning the machines’
15 function.

16 31. The defects described in the Recall and Defendants’ software “upgrade” render the
17 Defective Washing Machines unsuitable for the ordinary purpose for which they were advertised,
18 marketed, and sold – i.e, as High Efficiency washing machines. The software “upgrade” renders
19 the Defective Washing Machines incapable of operating at the advertised 1050-1100 RPM “extra
20 high” spin speed cycle. After software “upgrade” installations, additional spin cycles are needed to
21 prevent clothes from coming out of the washer sopping wet. This fact neutralizes the benefits of
22 the advertised “HE” and/or Energy Star® designations on each of the Defective Washing
23 Machines. Moreover, Defendants knew about the defects with the Defective Washing Machines
24 since 2010 from a litany of consumer complaints. Following the Recall upgrade, consumers
25 continued to complain through online forums regarding the Defective Washing Machines’ failure
26 to function as advertised by Defendants. The following is just a small sample of recent consumer
27 reactions regarding the Defective Washing Machines:
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1 Posted by Powrbruh on February 28, 2013

2 *"I had the LG topload washer recall done a few weeks ago and now my washer*
3 *does not spin at 1100rpms. When I select the Extra High spin speed it spins a little*
4 *faster than a gentle spin speed. Clothes are very heavy with water due to slow spin*
5 *speed. Unacceptable especially after spinning for 20 minutes"*

6 *"It takes over an hour to dry one load of clothes. Twice as long as it did before I*
7 *had this recall work done. And to be told by LG that slowing the spin speed that is*
8 *meant for delicates due to the machines not being able to withstand high spin speeds*
9 *is definitely not going to fly with me. The engineers should have designed the*
10 *machines better"*

11 *"[The LG repair technician] performed some test and found out my washer final*
12 *spin is only 700rpms. He called LG and was told that 700rpms was normal for the*
13 *new software. He stated to me that I would have to take up my issues with LG*
14 *because there was nothing else he could do."*

15 Posted by SpringfieldMH on March 20, 2013

16 *"We've experienced this problem with the recall "repair" on our LG*
17 *WT5001CW washer. The "repair" is a firmware (software) reload,*
18 *nothing physical, which appears to primarily slow the washer down to*
19 *avoid the vibration problem...."*

20 Posted by kpholmes on March 2, 2013

21 *"Received a letter from Sears [t]hat [my] washing machine made by LG*
22 *[was] recalled. Sears sent [a] technician to fix [the] problem. [The]*
23 *[u]pgrade [is] done, [but] now the washer times have been extended, 102*
24 *min. to do towels, 110 for heavy duty, 300 min for sanitize, unable to use*
25 *all the features as the wash times are extended. Washer is no longer*
26 *efficient. I never would have bought this product if I knew it would have*
27 *these long cycle times..."*

28 32. In conjunction with the Recall, customers were also provided with supplemental information to be inserted into their owner's manuals, and a new caution label to be affixed to the Defective Washing Machines. These supplemental materials feature a new list of washables that the Defective Washing Machines are no longer capable of laundering. These items included any water-proof or water-resistant clothing, mattress covers, outdoor gear and plastic mats. After a Recall "upgrade," the following warning label is placed on the machine to reflect this change in functionality:

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33. The machines' defects are incapable of being repaired in a manner that would enable the Defective Washing Machines to perform as advertised. Defendants were aware of the CPSC Recall and that none of the proposed solutions they offered Plaintiff Smith and Class Members would adequately remedy the defects.

34. As a result of Defendants' deceptive conduct and material concealments and misrepresentations, as well as Defendants' other misconduct described in the Complaint, Plaintiff and the Class bought hundreds of thousands of the Defective Washing Machines and have suffered – and continue to suffer – injury.

35. As described above, Defendants are aware of the Recall and defect problems at issue in this case, and have been for some time. Plaintiff and many members of the Class have alerted Defendants to the Recall and defect problems by complaining to Defendants directly and/or to Defendants' authorized dealerships and service persons. Indeed, many members of the Class have posted their experiences with the Defective Washing Machines on the Internet, including, but not limited to the following online forums:

- http://www.consumeraffairs.com/homeowners/lg_washing_machine.html
- <http://ths.gardenweb.com/forums/load/laundry/msg0212041523004.html>

- 1 • [https://www.change.org/petitions/lg-electronics-replace-or-completely-fix-a-](https://www.change.org/petitions/lg-electronics-replace-or-completely-fix-a-recalled-washer)
- 2 [recalled-washer](https://www.change.org/petitions/lg-electronics-replace-or-completely-fix-a-recalled-washer)
- 3 • [http://www.consumerreports.org/cro/news/2012/12/lg-recalls-washing-machines-](http://www.consumerreports.org/cro/news/2012/12/lg-recalls-washing-machines-after-reports-of-property-damage/index.htm)
- 4 [after-reports-of-property-damage/index.htm](http://www.consumerreports.org/cro/news/2012/12/lg-recalls-washing-machines-after-reports-of-property-damage/index.htm)
- 5 • [http://www.pissedconsumer.com/reviews-by-company/sears/recalled-kenmore-elite-](http://www.pissedconsumer.com/reviews-by-company/sears/recalled-kenmore-elite-washer-made-by-lg-20130302389454.html)
- 6 [washer-made-by-lg-20130302389454.html](http://www.pissedconsumer.com/reviews-by-company/sears/recalled-kenmore-elite-washer-made-by-lg-20130302389454.html)
- 7 • <http://appliancejunk.com/forums/index.php?topic=11181.0>
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9 36. Upon information and belief, Defendants acknowledge internally that the defects in
10 the Defective Washing Machines could not be effectively repaired. Rather, Defendants have
11 instructed their repair technicians to re-program each Defective Washing Machine with an
12 “upgrade” that actually slows down the Defective Washing Machines.

13 37. Defendants failed to adequately design and/or test the Defective Washing Machines
14 to ensure that they were and are free from material defects. Before these models even reached the
15 market, Defendants knew, or were reckless in not knowing, that the Defective Washing Machines
16 (a) contained inherent defects; and (b) were not of merchantable quality or fit for their ordinary
17 purpose. To this day, Defendants continue to conceal this information from consumers and
18 purchasers of the Defective Washing Machines.

19 38. Defendants have also universally failed to adequately implement an effective
20 remedy for Recall defects in the Defective Washing Machines to ensure that they were and are free
21 from material defects. Due to the unsuccessful implementation of Defendants’ “upgrade,” the
22 Defective Washing Machines do not function as advertised. Plaintiff and Class Members who
23 have had their Defective Washing Machines “upgraded” have actually been deceptively
24 downgraded to a machine that does not function as advertised.

25 39. The defects described in the Recall and Defendants’ software “upgrade” render the
26 Defective Washing Machines unsuitable for the ordinary purpose for which they were advertised,
27 marketed, and sold – i.e., as High Efficiency washing machines.

1 **Plaintiff's Experience**

2 40. On November 25, 2011, Plaintiff Smith purchased a Kenmore Elite High Efficiency
3 Washer, Model No. 29272 from a Sears store in Hayward, California during a so-called "Black
4 Friday" sale. Ms. Smith paid \$579.99 plus sales tax for her unit, which was on sale at the time of
5 purchase. Despite the reduced sale price, Ms. Smith's purchase price included a substantial price
6 premium compared to non-High Efficiency washing machines due to its purported highly efficient
7 characteristics and functions. The machine was delivered to her home in Manteca, California on or
8 about January 13, 2012.

9 41. While shopping for a new washing machine, Plaintiff looked only at High
10 Efficiency models because she valued their water efficiency, energy efficiency, money-saving and
11 time-saving features. She would not have purchased a Kenmore Elite High Efficiency Washer,
12 Model No. 29272 had she known that it was not an effective washing machine, but was rather
13 defective and thus could not perform as a High Efficiency washing machine as advertised. Indeed,
14 had Plaintiff known the truth about the Defective Washing Machines, she would have bought a
15 different High Efficiency washing machine at that time.

16 42. Prior to purchasing the Defective Washing Machine at Sears, Plaintiff examined an
17 in-store floor model and reviewed Defendants' representations about the unit on a placard which
18 sat atop the floor model. Among other things, Defendants made the following misrepresentations
19 on both the floor model and the placard, which Plaintiff Smith read and relied on prior to her
20 purchase: (a) that the unit was a "High Efficiency" washer and "HE" compliant; (b) that the unit
21 was Energy Star® compliant and thus water and energy efficient; (c) that the unit helped dry
22 clothes faster with its "Extra High" spin speed cycle at 1050 RPMs for the duration of the default
23 time for that cycle. Ms. Smith also discussed the machine's features and benefits with a Sears store
24 employee who emphasized these misrepresentations.

25 43. Plaintiff Smith's Defective Washing Machine fits the description of the Defective
26 Washing Machines subject to the CPSC's December 18, 2012 recall announcement. She
27 experienced the problems typically associated with these machines from the very beginning. Loads
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1 of laundry would become unbalanced, and would cause the machine to shake excessively and make
2 a banging noise during use. Smith attempted to correct the problem by carefully loading the
3 machine to evenly distribute the washables. But the even distribution of laundry did not alleviate
4 the excessive shaking or banging noise.

5 44. The violent movement of Smith's defective machine was so severe that the machine
6 would actually shift or "walk itself" away from the wall on which it was positioned. To keep the
7 defective machine from damaging the dryer positioned next to it, Plaintiff Smith used a plastic
8 trash can as a buffer to help absorb to shock of the shaking machine and attempt to keep it in place.

9 45. Smith became aware of the Recall, and promptly scheduled an in-home repair
10 pursuant to Defendants' instructions. Her defective machine was serviced at her home in Manteca,
11 California in March 2013. Due to the Recall repair, however, Smith's Defective Washing Machine
12 (a) can no longer be used to clean certain of her machine-washable items; (b) fails to wring out her
13 clothing; and (c) no longer functions as represented in the product advertising, marketing and
14 owner's manual. Now, Plaintiff Smith's washed loads of laundry take twice as long to dry, and she
15 uses a laundromat to wash certain items that used to be washable in her Defective Washing
16 Machine.

17 46. Plaintiff Smith, and each other purchaser of these appliances, paid a tangible
18 increased cost for the Defective Washing Machine because of Defendants' false representations
19 about its functionality, efficiency, dependability, and fitness for residential use. Moreover,
20 Plaintiff Smith and the other Class Members paid more money in additional energy costs to operate
21 the Defective Washing Machine and her clothes dryer than each would have paid if the washing
22 machine had actually performed as promised. Plaintiff Smith would not have purchased the
23 Defective Washing Machine if she had known that the representations were false. Ultimately,
24 Smith's Defective Washing Machine was worthless (and certainly worth less than its
25 representations suggested).
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27
28

1 **Harm Suffered By Plaintiff And The Class**

2 47. Because Defendants misrepresented the attributes of the Defective Washing
3 Machines, Defendants were able to charge higher prices for these washers in comparison with
4 products that do not purport to offer the supposed speed, durability, or efficiency of the Defective
5 Washing Machines. Plaintiff and Class Members were misled into paying high prices because they
6 believed that Defendants' products were High Efficiency washing machines that functioned as
7 advertised and were not defective.

8 48. In other words, Plaintiff and the Class Members did not get the benefit of their
9 bargains. Plaintiffs and Class Members were misled into purchasing Defective Washing Machines
10 that did not meet their expectations.

11 49. Therefore, Plaintiff and Class Members suffered actual damages as a result of
12 Defendants' actions. Plaintiffs and other Class Members seek either full refund of the purchase
13 prices paid for the Defective Washing Machines or recovery of the difference between the prices
14 paid for the Defective Washing Machines and the prices that the Defective Washing Machines
15 would have commanded in the marketplace if they had been marketed truthfully.

16 **CLASS ACTION ALLEGATIONS**

17 50. Plaintiff seeks to represent a class defined as all persons in the United States who
18 purchased a Defective Washing Machines (the "Class"). Excluded from the Class are persons who
19 made such purchase for purpose of resale.

20 51. Plaintiff also seeks to represent a subclass of all Class Members who have
21 purchased the Defective Washing Machines in California (the "California Subclass").

22 52. Members of the Class and Subclass are so numerous that their individual joinder
23 herein is impracticable. Defendants sold approximately 457,000 units of the Defective Washing
24 Machines between 2010 and 2012. The precise number of Class and Subclass Members and their
25 identities are unknown to Plaintiff Smith at this time but may be determined through discovery.
26 Class members may be notified of the pendency of this action by mail and/or publication through
27 the distribution records of Defendants and third party retailers and vendors.
28

1 53. Common questions of law and fact exist as to all Class Members and predominate
2 over questions affecting only individual Class Members. Common legal and factual questions
3 include, but are not limited to:

- 4 (a) Whether Defendants violated the Magnuson-Moss Act, 15 U.S.C. § 201, *et seq.*;
- 5 (b) Whether Defendants breached an express warranty made to Plaintiff and the Class;
- 6 (c) Whether Defendants breached an implied warranty made to Plaintiff and the Class;
- 7 (d) Whether Defendants were unjustly enriched by their conduct;
- 8 (e) Whether the Defective Washing Machines share a common defect as described
9 herein;
- 10 (f) Whether Defendants advertised or marketed the Defective Washing Machines in a
11 way that was false or misleading;
- 12 (g) Whether Defendants' conduct was false, misleading or reasonably likely to deceive
13 ordinary consumers;
- 14 (h) Whether the Defective Washing Machines fail to conform to the representations,
15 which were published, disseminated and advertised to Plaintiff and the Class;
- 16 (i) Whether Class Members have been injured by Defendants' conduct;
- 17 (j) Whether Class Members suffered an ascertainable loss as a result of the Defendants'
18 misrepresentations; and
- 19 (k) Whether Class Members are entitled to damages, restitution, injunctive and/or
20 monetary relief and, if so, the amount and nature of such relief.

21 54. Plaintiff Smith, and members of the California Subclass have questions of fact and
22 common law to them that predominate over any questions affecting only individual members of the
23 California Subclass. These common questions include:

- 24 (a) Whether Defendants violated California Civil Code § 1750, *et seq.*;
- 25 (b) Whether Defendants violated California Business & Professions Code § 17200, *et*
26 *seq.*;
- 27 (c) Whether Defendants violated the Song-Beverly Consumer Warranty Act;
- 28

- 1 (d) Whether Defendants violated California Business & Professions Code § 17500, and
2 (e) The appropriate measure of damages to be received by Plaintiff and the California
3 Subclass.

4 55. The claims of the named Plaintiff are typical of the claims of the Class in that the
5 named Plaintiff purchased a Defective Washing Machine in reliance on the misrepresentations and
6 warranties described above, and suffered a loss as a result of that purchase.

7 56. Plaintiff is an adequate representative of the Class and Subclass because her
8 interests do not conflict with the interests of the Class Members she seeks to represent, she has
9 retained competent counsel experienced in prosecuting class actions, and she intends to prosecute
10 this action vigorously. The interests of Class Members will be fairly and adequately protected by
11 Plaintiff and her counsel.

12 57. The class mechanism is superior to other available means for the fair and efficient
13 adjudication of the claims of Class and Subclass members. Each individual Class member may
14 lack the resources to undergo the burden and expense of individual prosecution of the complex and
15 extensive litigation necessary to establish Defendants' liability. Individualized litigation increases
16 the delay and expense to all parties and multiplies the burden on the judicial system presented by
17 the complex legal and factual issues of this case. Individualized litigation also presents a potential
18 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
19 management difficulties and provides the benefits of single adjudication, economy of scale, and
20 comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment
21 of the liability issues will ensure that all claims and claimants are before this Court for consistent
22 adjudication of the liability issues.

23
24 **COUNT I**

25 **(Violation Of The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.)**

26 58. Plaintiff hereby incorporates by reference the allegations contained in all preceding
27 paragraphs of this complaint.

1 59. Plaintiff brings this Count I individually and on behalf of the members of the Class
2 against all Defendants.

3 60. The Defective Washing Machines, Kenmore Elite brand washing machine models
4 29002, 29272, and 29278 and LG brand washing machine models WT5001CW, WT5101HV, and
5 WT5101HW, are consumer products as defined in 15 U.S.C. § 2301(1).

6 61. Plaintiff and the Class Members are consumers as defined in 15 U.S.C. § 2301(3).

7 62. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

8 63. In connection with the sale of the Defective Washing Machines, Defendants issued
9 written warranties in 15 U.S.C. § 2301(6), by making express warranties that the Defective
10 Washing Machines: (a) were “High Efficiency” washers and “HE” compliant; (b) were Energy
11 Star® compliant and thus water and energy efficient within the meaning of that program; (c)
12 helped dry clothes faster using its “Extra High” spin speed cycle at 1050-1100 RPMs for the
13 duration of the default time for that cycle; (d) were safe for residential use and fit for everyday
14 laundering needs; (e) “will provide many years of reliable service”; and (f) “[are] designed and
15 manufactured for years of dependable service” (collectively, the “Express Warranties” or
16 “Misrepresentations”).

17 64. In fact, the Defective Washing Machines do not conform to the Express Warranties
18 because each of the Express Warranties is false and misleading. The Defective Washing Machines
19 do not, in fact, provide years of dependable and reliable service because their drums come loose
20 during normal use, causing property damage and physical injury, and because they require extra
21 spin cycles to wring out wash loads after receiving a purported Recall “repair.” The Defective
22 Washing Machines are not capable of operating “extra high” spin speed cycles at the advertised
23 1050-1100 RPMs, and are not Energy Star® or “HE” compliant because inherent defects and
24 Recall “upgrades” have resulted in reduced functionality so as to require numerous wash cycles
25 and reduced efficiency. The Defective Washing Machines are also not safe for residential use and
26 everyday laundering needs, as they have been subject to a recall due to an instability defect and are
27

1 unsuitable for washing water proof or water-resistant clothing, mattress covers, outdoor gear, or
2 plastic mats.

3 65. By reason of Defendants' breach of warranties, Defendants violated the statutory
4 rights due Plaintiff and the Class and Subclass Members pursuant to the Magnuson-Moss Warranty
5 Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiff and the Class and Subclass Members.

6 66. Plaintiff and the Class Members were injured as a direct and proximate result of
7 Defendants' breach because they would not have purchased the Defective Washing Machines if
8 they knew the truth about them, and would not have paid a premium price for a defective washer.

9 67. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff and the Class are entitled to recover the
10 damages caused to them by Defendants' breaches of written and implied warranties, which
11 damages either constitute the full purchase price of the Defective Washing Machines or the
12 difference in value between the Defective Washing Machines as warranted and the Defective
13 Washing Machines as sold. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and the Class
14 are entitled to recover a sum equal to the aggregate amount of costs and expenses (including
15 attorneys' fees based on actual time expended) determined by the Court to have been reasonably
16 incurred by Plaintiff and the Class for and in connection with the commencement and prosecution
17 of this action.

18 **COUNT II**
19 **(Breach Of Express Warranty)**

20 68. Plaintiff hereby incorporates by reference the allegations contained in all preceding
21 paragraphs of this complaint.

22 69. Plaintiff brings this Count II individually and on behalf of the members of the Class
23 against all Defendants.

24 70. In connection with the sale of the Defective Washing Machines, Defendants issued
25 written Express Warranties. Defendants, as the designers, manufacturers, marketers, distributors,
26 or sellers expressly warranted that the Defective Washing Machines were fit for their intended
27 purpose as High Efficiency washing machines by making the Express Warranties to Plaintiff and
28 the Class.

1 71. Defendants' Express Warranties, their affirmations of fact and promises made to
2 Plaintiff and the Class regarding the Defective Washing Machines, and their descriptions of the
3 Defective Washing Machines contained in or on Defendants' washing machines, advertisements,
4 in-store sales materials, Owner's Manual, Use & Care Guide, product packaging, and labeling
5 became part of the basis of the bargain between Defendants and Plaintiff and the Class, thereby
6 creating express warranties that the Defective Washing Machines would conform to those
7 affirmations of fact, representations, promises, and descriptions.

8 72. The Defective Washing Machines do not, in fact, provide years of dependable and
9 reliable service because the drums inside them may come loose during normal use, causing
10 property damage and physical injury, and because they require extra spin cycles to wring out wash
11 loads after receiving a purported Recall "repair." The Defective Washing Machines are not
12 capable of operating "extra high" spin speed cycles at the advertised 1050-1100 RPMs, and are not
13 Energy Star® and/or "HE" compliant because of inherent defects and Recall "upgrades" that have
14 resulted in reduced functionality so as to require numerous wash cycles and reduced efficiency.
15 The Defective Washing Machines are also not safe for residential use and everyday laundering
16 needs, as they have been subject to a recall due to an instability defect and are unsuitable for
17 washing water proof or water-resistant clothing, mattress covers, outdoor gear, or plastic mats.
18 Defendants breached their Express Warranties because the Defective Washing Machines do not
19 perform as expressly warranted.

20 73. Plaintiff and Class Members were injured as a direct and proximate result of
21 Defendants' breach because: (a) they would not have purchased the Defective Washing Machines
22 if the true facts concerning their functionality, safety, and dependability had been known; (b) they
23 paid a price premium for the Defective Washing Machines based on Defendants' representations
24 regarding the machines' functions and efficiencies; (c) the Defective Washing Machines did not
25 have the characteristics, uses, or benefits as promised; and (d) Plaintiff and the Class Members
26 have paid and will continue to pay laundromat costs and higher energy costs for as long as they
27 continue to use the Defective Washing Machines. As a result, Plaintiffs and the Class have been
28

1 damaged either in the full amount of purchase prices of the Defective Washing Machines or in the
2 difference in value between the Defective Washing Machines as warranted and the Defective
3 Washing Machines as actually sold.

4 **COUNT III**

5 **(Breach Of The Implied Warranty Of Merchantability)**

6 74. Plaintiff hereby incorporates by reference the allegations contained in all preceding
7 paragraphs of this complaint.

8 75. Plaintiff brings this Count III individually and on behalf of the members of the Class
9 against all Defendants.

10 76. Defendants are “merchants” as to the Defective Washing Machines within the
11 meaning of the Uniform Commercial Code (“UCC”). Defendants manufactured, distributed and
12 marketed the Defective Washing Machines, which are “goods” within the meaning of the UCC.
13 Consequently, Defendants impliedly warranted that the Defective Washing Machines were
14 merchantable, including that they could pass without objection in the trade under the contract
15 description, that they were fit for the ordinary purposes for which such goods are used, that they
16 were of fair average quality within the description, that they were adequately labeled, and that they
17 would conform to the promises or affirmations of fact made on their containers or labels.
18 However, each of these implied warranties was false.

19 77. In reliance on Defendants’ skill and judgment and the implied warranties of fitness
20 for the purpose, Plaintiff and Class Members purchased the Defective Washing Machines for use
21 as residential washing machines.

22 78. The Defective Washing Machines were not altered by Plaintiff and Class Members.

23 79. The Defective Washing Machines were defective when they left the exclusive
24 control of Defendants.

25 80. Defendants knew the Defective Washing Machines would be purchased and used
26 without additional testing for efficacy by Plaintiff and Class Members.

27 81. The Defective Washing Machines were defectively designed and unfit for their
28 intended purpose, and Plaintiff and Class Members did not receive the goods as warranted.

1 Star® and/or “HE” compliant; and (v) were safe for residential use and fit for everyday laundering
2 needs.

3 99. The Defective Washing Machines do not, in fact, provide years of dependable and
4 reliable service because the drums inside them may come loose, causing property damage and
5 physical injury, and because they require extra spin cycles to wring out wash loads. The Defective
6 Washing Machines are not capable of operating “extra high” spin speed cycles at the advertised
7 1050-1100 RPMs and are not Energy Star® and/or “HE” compliant because inherent defects and
8 Recall “upgrades” have resulted in reduced functionality so as to require numerous wash cycles
9 and reduced efficiency. The Defective Washing Machines are also not safe for residential use and
10 everyday laundering needs, as they have been subject to a recall due to an instability defect and are
11 unsuitable for washing water proof or water-resistant clothing, mattress covers, outdoor gear, or
12 plastic mats.

13 100. In violation of Civil Code section 1750, *et. seq.* (the “CLRA”), Defendants have
14 engaged in unfair and deceptive acts and practices in the course of transactions with Plaintiff Smith
15 and the California Subclass, and such transactions were intended to and did result in the sales of
16 goods or services to Plaintiff Smith and the California Subclass. Plaintiff Smith and the California
17 Subclass are “consumers” as that term is used in the CLRA because they sought or acquired
18 Defendants’ goods or services for personal, family, or household purposes. Defendants’ past acts
19 and practices include, but are not limited to:

- 20 a. Defendants’ misrepresentations that the Defective Washing Machines had
21 characteristics, ingredients, uses, benefits, or quantities which they do not have,
22 in violation of Civil Code § 1770(a)(5);
- 23 b. Defendants’ misrepresentations that the Defective Washing Machines were of a
24 particular standard, quality, and grade when they were of another, in violation of
25 Civil Code § 1770(a)(7); and
- 26 c. Defendants advertising of goods with the intent not to sell them as advertised, in
27 violation of Civil Code § 1770(a)(9).
28

1 106. Defendants are subject to the Unfair Competition Law (“UCL”), Bus. & Prof. Code
2 § 17200, *et seq.* The UCL provides, in pertinent part: “Unfair competition shall mean and include
3 unlawful, unfair, or fraudulent business practices and unfair, deceptive, untrue or misleading
4 advertising....”

5 107. In connection with the sale of the Defective Washing Machines, Defendants
6 warranted that the Defective Washing Machines: (i) “will provide many years of reliable service”;
7 (ii) “[are] designed and manufactured for years of dependable service”; (iii) were capable of
8 operating “extra high” spin speed cycles at the advertised 1050-1100 RPMs; (iv) were Energy
9 Star® and/or “HE” compliant; and (v) were safe for residential use and fit for everyday laundering
10 needs.

11 108. The Defective Washing Machines do not, in fact, provide years of dependable and
12 reliable service because the drums inside them may come loose, causing property damage and
13 physical injury, and because they require extra spin cycles to wring out wash loads. The Defective
14 Washing Machines are not capable of operating “extra high” spin speed cycles at the advertised
15 1050-1100 RPMs and are not Energy Star® and/or “HE” compliant because inherent defects and
16 Recall “upgrades” have resulted in reduced functionality so as to require numerous wash cycles
17 and reduced efficiency. The Defective Washing Machines are also not safe for residential use and
18 everyday laundering needs, as they have been subject to a recall due to an instability defect and are
19 unsuitable for washing water proof or water-resistant clothing, mattress covers, outdoor gear, or
20 plastic mats.

21 109. Defendants’ misrepresentations and other conduct violated the “unlawful” prong of
22 the UCL in part because they violate California Business and Professions Code § 17500, *et seq.*
23 (California’s False Advertising Law) and California Business and Professions Code § 1750
24 (California’s Consumers Legal Remedies Act) as described herein.

25 110. Defendants’ misrepresentations and other conduct, described herein, violated the
26 “unfair” prong of the UCL in that their conduct is substantially injurious to consumers, offends
27

1 public policy, is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct
2 outweighs any alleged benefits.

3 111. Defendants violated the “fraudulent” prong of the UCL by making
4 misrepresentations about the Defective Washing Machines, as described herein.

5 112. Plaintiff and members of the California Subclass were injured as a direct and
6 proximate result of Defendants’ UCL violation because: (a) they would not have purchased the
7 Defective Washing Machines if the true facts concerning their functionality, safety, and
8 dependability had been known; (b) they paid a price premium for the Defective Washing Machines
9 based on Defendants’ representations regarding the machines’ functionalities and efficiencies; and
10 (c) the Defective Washing Machines did not have the characteristics, uses, or benefits as promised.
11 As a result, Plaintiffs and the California Subclass have been damaged either in the full amount of
12 purchase prices of the Defective Washing Machines or in the difference in value between the
13 Defective Washing Machines as advertised and the Defective Washing Machines as actually sold.
14

15 **COUNT VIII**
(Violation Of California’s False Advertising Law,
Cal. Bus. & Prof. Code §§ 17500, *et seq.*

16 113. Plaintiff hereby incorporates by reference the allegations contained in all preceding
17 paragraphs of this complaint.

18 114. Plaintiff brings this Count VIII individually and on behalf of the members of the
19 California Subclass against all Defendants.

20 115. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*
21 (“FAL”), makes it “unlawful for any person to make or disseminate or cause to be made or
22 disseminated before the public in this state, ... in any advertising device ... or in any other manner
23 or means whatever, including over the Internet, any statement, concerning ... personal property or
24 services, professional or otherwise, or performance or disposition thereof, which is untrue or
25 misleading and which is known, or which by the exercise of reasonable care should be known, to
26 be untrue or misleading.”
27
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1 124. Defendants are “manufacturers” of the Defective Washing Machines pursuant to
2 Section 1791(j) of the California Civil Code.

3 125. In connection with the sale of the Defective Washing Machines, Defendants
4 warranted that the Defective Washing Machines: (i) “will provide many years of reliable service”;
5 (ii) “[are] designed and manufactured for years of dependable service”; (iii) were capable of
6 operating “extra high” spin speed cycles at the advertised 1050-1100 RPMs; (iv) were Energy
7 Star® and/or “HE” compliant; and (v) were safe for residential use and fit for everyday laundering
8 needs.

9 126. The Defective Washing Machines do not, in fact, provide years of dependable and
10 reliable service because the drums inside them may come loose, causing property damage and
11 physical injury, and because they require extra spin cycles to wring out wash loads. The Defective
12 Washing Machines are not capable of operating “extra high” spin speed cycles at the advertised
13 1050-1100 RPMs, and are not Energy Star and/or “HE” compliant because inherent defects and
14 Recall “upgrades” have resulted in reduced functionality so as to require numerous wash cycles
15 and reduced efficiency. The Defective Washing Machines are also not safe for residential use and
16 everyday laundering needs, as they have been subject to a recall due to an instability defect and are
17 unsuitable for washing water proof or water-resistant clothing, mattress covers, outdoor gear, or
18 plastic mats.

19 127. As set forth above, Defendants breached both express and implied warranties given
20 to Plaintiff Smith and the California Subclass. Such breaches proximately caused damages to
21 Plaintiff Smith and the California Subclass in the full amount of purchase prices of the Defective
22 Washing Machines or in the difference in value between the Defective Washing Machines as
23 warranted and the Defective Washing Machines as actually sold. In addition, pursuant to
24 California Civil Code § 1794(d), Plaintiff Smith and the California Subclass are entitled to recover
25 a sum equal to the aggregate amount of their costs and expenses, including attorneys’ fees based on
26 actual time expended, determined by the Court to be reasonably incurred by them in connection
27 with their commencement of this action.
28

1 **REQUEST FOR RELIEF**

2 114. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
3 seeks judgment against Defendants, as follows:

- 4 a. For an order certifying the nationwide Class and the California Subclass under Rule
5 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of
6 the Class and California Subclass and Plaintiff's attorneys as Class Counsel to
7 represent the Class and California Subclass Members;
- 8 b. For an order declaring that the Defendants' conduct violates the statutes referenced
9 herein;
- 10 c. For an order finding in favor of Plaintiff, the nationwide Class, and the California
11 Subclass on all counts asserted herein;
- 12 d. For compensatory and punitive damages in amounts to be determined by the Court
13 and/or jury;
- 14 e. For prejudgment interest on all amounts awarded;
- 15 f. For an order of restitution and all other forms of equitable monetary relief;
- 16 g. For injunctive relief as pleaded or as the court may deem proper; and
- 17 h. For an order awarding Plaintiff, the Class, and the California Subclass their
18 reasonable attorneys' fees and expenses and costs of the suit.

19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff demands a trial by jury of all claims and causes of action in this lawsuit.
21
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23
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1 Dated: September 19, 2013

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By: /s/ L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 Sarah N. Westcot (State Bar No. 264916)
6 Annick M. Persinger (State Bar No. 272996)
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14 **THORNTON, DAVIS & FEIN, P.A.**

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21 Email: davis@tdflaw.com
22 adavis@tdflaw.com
23
24
25
26
27
28

1 I, Laury Smith, declare as follows:

2 1. I am a plaintiff in this action and a citizen of the State of California. I have personal
3 knowledge of the facts herein and, if called as a witness, I could and would testify competently
4 thereto.

5 2. The Complaint filed in this action is filed in the proper place for trial under Civil
6 Code Section 1780(d) in that Defendants LG Electronic U.S.A., Inc. and Sears Holdings Corp. do
7 business in Alameda County. I purchased a Kenmore Elite High Efficiency Washer, Model No.
8 29272 at a Sears store in Hayward, California in November 2011. This washing machine was
9 labeled as a "High Efficiency," Energy Star® compliant, top-loading residential washing machine
10 capable of "Extra High" spin speeds. These representations were a substantial factor influencing
11 my decision to purchase this machine. I would not have purchased the washing machine if I had
12 known that it was not an effective washing machine, but was rather defective and did not have the
13 characteristics, functions or efficiencies as advertised. If I had not been exposed to these false
14 representations I would not have purchased this washing machine.

15 I declare under the penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct, executed on September 18, 2013 at Manteca, California.


17
18 
19 _____
20 Laury Smith
21
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EXHIBIT A



888 SEVENTH AVENUE
NEW YORK, NY 10019
www.bursor.com

SCOTT A. BURSOR
Tel: 646.837.7150
Fax: 212.989.9163
scott@bursor.com

August 5, 2013

Via Certified Mail – Return Receipt Requested

LG Electronics USA, Inc.
Legal Department
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632

Sears Holdings Corporation
Legal Department
3333 Beverly Road
Hoffman Estates, IL 60179

Re: *Violation of Magnuson-Moss Act, 15 U.S.C. § 2301, et seq.; Violation of California Civil Code § 1782; Notice Letter Pursuant to Cal. Com. Code § 2-607.*

To Whom It May Concern:

This letter serves as notice and demand for corrective action on behalf of my client, Laury Smith, and all other persons similarly situated, arising from breaches of warranty under the Magnuson-Moss Warranty Act and violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5) and (9). This letter also serves as a preliminary notice and demand for corrective action by LG and Sears pursuant to Cal. Com. Code § 2-607(3)(A).

This notice concerns Kenmore Elite brand washing machine models 29002, 29272, and 29278 and LG brand washing machine models WT5001CW, WT5101HV, and WT101HW (collectively, the “Defective Washing Machines”). LG and Sears sell the Defective Washing Machines as safe, reliable and dependable for in-home use to wash and spin dry clothes, but unbalanced loads cause the drums inside the Defective Washing Machines to come loose and for the units to shake excessively when in use. This defect causes property damage and physical injury, and it results in a loss of effectiveness concerning the machines’ function.

In November 2011, Ms. Smith purchased a Kenmore Elite 29272 washing machine from a Sears store in Hayward, California. Ms. Smith’s washing machine was defective because it shook excessively while in use due to unbalanced loads. In March 2013, Ms. Smith’s defective washing machine received an in-home repair pursuant to a product safety recall notice to address

this issue (the "Recall"). Due to the Recall repair, however, her washing machine (a) can no longer be used to clean certain machine-washable items, (b) fails to wring out her clothing, and (c) no longer functions as represented in the product advertising, marketing and owner's manual.

By misrepresenting and selling the Defective Washing Machines as safe, reliable and dependable for in-home use to wash and spin dry clothes, LG and Sears have violated numerous provisions of California law, including but not limited to Cal. Com. Code §§ 2-313 and 2-314.

We hereby demand that LG and Sears immediately make full restitution to all purchasers of the Defective Washing Machines of all purchase money obtained from the sales thereof.

It is further demanded that LG and Sears preserve all documents and other evidence which refer or relate or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the design, development and manufacture of the Defective Washing Machines;
2. All documents concerning defects or issues with the Defective Washing Machines related to unbalanced loads and/or the spin cycle function;
3. All documents concerning the Recall;
4. All documents concerning the advertisement, marketing or sale of the Defective Washing Machines; and
5. All communications with customers concerning complaints or comments concerning the Defective Washing Machines and/or the Recall.

Please comply with this demand within 30 days from receipt of this letter.

We are willing to negotiate with LG and Sears to attempt to resolve the demands asserted in this letter. If LG and Sears contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter, but in no event later than 30 days from the date of the receipt.

Very truly yours,



Scott A. Bursor
scott@bursor.com