

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CAMERON WATTERS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

ELECTROLUX HOME PRODUCTS, INC.

Defendant.

Case No.

JURY TRIAL DEMANDED

FILED ELECTRONICALLY

CLASS ACTION COMPLAINT

Plaintiff Cameron Watters, on behalf of herself and on behalf of the Class defined below, by and through her undersigned counsel, makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff and her counsel, which are based on personal knowledge. Plaintiff brings this action for damages, restitution, and injunctive relief against Defendant, demanding a trial by jury.

NATURE OF THE ACTION

1. This is a proposed class action brought by Plaintiff on behalf of herself and other Class Members against Electrolux Home Products, Inc. (“Electrolux” or “Defendant”) to obtain relief, including damages, restitution, and injunctive relief. This action is brought to remedy violations of law in connection with Electrolux’s design, manufacture, marketing, advertising, selling, warranting, and servicing of its Electrolux French Door and Side-by-Side model refrigerators (the “Refrigerators”), including but not limited to EI23BC56ISO, EI23BC561B, EI27BS26JS4, EI28BS56IS, EW28BS71IS, EI23BC56IS, EW23BC71IS, and E23BC78IPS.

2. Plaintiff and the members of the proposed Class are or were owners of Electrolux Refrigerators, all of which contain an inherent defect (“the Defect”) that causes the ice maker to fail to produce ice and makes the Refrigerators prone to leaking (“the Problems”), resulting in damage to the Refrigerator and surrounding property such as the flooring, ceiling, and walls of Plaintiff’s and the Class’s structures where the Refrigerators are or were located.

3. On information and belief, the Defect was known, or should have been known, to Electrolux when it marketed the refrigerators in question as superior to other refrigerators because of their purported ability to make ice much faster than a normal refrigerator, which, in turn, permitted Electrolux to charge a premium for these supposedly “advanced” products.

4. Electrolux’s acts and omissions in connection with its design, manufacture, marketing, advertising, selling, warranting, and servicing of these defective Refrigerators violate Pennsylvania’s unfair competition and false advertising laws, and also constitute breaches of implied and express warranties, and breaches of the implied covenants of good faith and fair dealing.

THE PARTIES

5. Plaintiff Cameron Watters is a Pennsylvania citizen residing in Pittsburgh, Allegheny County, PA.

6. Defendant Electrolux is a Delaware corporation doing business in Pennsylvania. Electrolux’s corporate headquarters are located at 10200 David Taylor Drive, Charlotte, North Carolina 28262.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332(d)(2). Jurisdiction is proper because (1) the amount in controversy in this proposed Class action exceeds five million dollars, exclusive of interest and costs; and (2) some members of the proposed Class, including Plaintiff Watters, are citizens of a state different from that of Defendant Electrolux. Personal jurisdiction is proper as Electrolux has purposefully availed itself of the privilege of conducting business activities within the State of Pennsylvania and has continuing and systemic contacts with the State of Pennsylvania.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims asserted occurred in the Western District of Pennsylvania and because, at all relevant times, Electrolux marketed, advertised, distributed, and sold products, including the Refrigerators, in the Western District of Pennsylvania.

FACTUAL BACKGROUND

Facts Common to All Members of the Class

9. Electrolux is a well-known, multi-national manufacturer of home appliances and claims that it is “a global leader in household appliances...selling more than 40 million products to customers in more than 150 markets every year.”

10. Electrolux also claims to be a market leader in innovation with regard to the products it sells, claiming that it “focuses on innovations that are thoughtfully designed, based on extensive consumer insight, to meet the real needs of consumers and professionals.”

11. One of Electrolux’s purported innovations, which was installed and marketed in connection with all of the Refrigerators, is what Electrolux calls a “Fast Ice” option, which, according to Electrolux’s advertising, allows the Refrigerators to “make[] ice up to 50% faster.”

By putting a separate cooling control system on the portion of the freezer dedicated to ice-making in each Refrigerator, Electrolux claimed that that small portion of the freezer could be cooled to temperatures below that of the rest of the freezer compartment, resulting in faster ice production. Each of the Refrigerators at issue came with the “Fast Ice” option, though the Refrigerators themselves were designed and sold in various styles: French door with the freezer on the bottom, and a side-by-side configuration. The Refrigerators are sold at major national and regional retail stores, including but not limited to Sears, Best Buy, and Lowe’s, at prices ranging from \$1,900 to over \$4,000.

12. Plaintiff and members of the Class purchased the Refrigerators in part because the Refrigerators had the “Fast Ice” ice-maker.

13. Each Refrigerator was sold with an express one-year factory warranty which reads as follows:

Your appliance is covered by a one year limited warranty. For one year from your original date of purchase, Electrolux will repair or replace any parts of this appliance that prove to be defective in materials or workmanship when such appliance is installed, used, and maintained in accordance with the provided instructions. In addition, the cabinet liner and sealed refrigeration system (compressor, condenser, evaporator, dryer or tubing) of your appliance is covered by a two through five year limited warranty. During the 2nd through 5th years from your original date of purchase, Electrolux will repair or replace any parts in the cabinet liner and sealed refrigeration system which prove to be defective in materials or workmanship when such appliance is installed, used, and maintained in accordance with the provided instructions.

14. In conjunction with each Refrigerator sale, Electrolux warranted that the Refrigerator was of merchantable quality fit for the ordinary purpose for which such goods were used and was free from defects, or at a minimum would produce ice and not leak.

15. Despite Electrolux’s express representations about the quality and usefulness of its Refrigerators, the Refrigerators are not suitable for the purpose for which they are used, are not

free of defects, and they do *not* consistently “make ice up to 50% faster.” Specifically, the Refrigerators were sold with defective ice makers that often fail to produce ice, requiring multiple repairs, and, eventually, cause leaks, which damage other parts of the Refrigerator and the surrounding floors, walls, ceilings, structures, and substructures. The Defect is believed to exist in all Electrolux Refrigerators subject to this suit, and possibly more.

16. The Defect typically manifests only months after the Refrigerator is installed in a consumer’s home, resulting in the cessation of ice production and/or the leaking water in and around the Refrigerator. During the one-year warranty, Electrolux will repair the Refrigerator. However, because the Defect is irreparable, Electrolux’s repair is only temporary and the Defect eventually reveals itself again, resulting in further lack of ice production and additional leaks, preventing the Refrigerators from being used as intended and as advertised by Defendant. Furthermore, when the Defect recurs outside of the one-year warranty, the cost of repair is placed solely on the shoulders of the purchasing consumer. The one-year warranty never covers the collateral damage to the floors, ceilings, and other parts of the home in the vicinity of the leaking Refrigerator.

17. Electrolux knew, or should have known, that the “Fast Ice” icemaker was defective and that there was a substantial certainty that the Refrigerators would develop leaks or fail to make ice, and that (a) the Defect might not exhibit itself until after the warranty period expired, that (b) if the latent Defect did not exhibit itself until after the warranty expired, Electrolux was not committed to repair or replace it; or (c) even if the Defect manifested itself before the warranty expired it would continue to manifest itself after the warranty period, excusing Electrolux from the responsibility of repeated repairs or replacement of the Refrigerator.

18. Electrolux failed to adequately design, manufacture, and/or test the Refrigerators to ensure they were free from the Defect.

19. Electrolux had exclusive knowledge that the Refrigerators have the Defect, which causes the Refrigerators to not make ice and to leak. Electrolux's exclusive knowledge gave rise to a duty to disclose such facts, which Electrolux failed to perform.

20. Because of the Defect, Plaintiff's Refrigerator failed to make ice and has leaked causing damage to Plaintiff and the Class in the amount it will cost, or they paid, to repair or replace the Refrigerators and to repair damage to the surrounding structures/substructures.

21. By withholding material information regarding the Defect and by advertising the Refrigerators as containing innovative features and being suitable for the ordinary purpose for which the Refrigerators were sold, Electrolux made uniform and material misrepresentations and uniformly omitted material information in its marketing, advertising, and sale of the Refrigerators, depriving consumers of the opportunity to negotiate additional warranty coverage, negotiate a lower price to reflect the risk, or simply avoid the risk altogether by purchasing a different manufacturer's refrigerator that did not contain similar material defects.

22. Consumers reasonably expect that refrigerators that come with an ice maker will produce ice and will not leak due to defective design and manufacturing processes, and Class Members had no expectation that Electrolux's Refrigerators would be defective. In purchasing the Refrigerators, Plaintiff and other Class Members expected the Refrigerators to operate in accordance with all of their intended purposes, such as the production of ice, and to not require extensive repairs.

23. Not surprisingly, Electrolux Refrigerators have caused widespread disappointment and frustration from consumers around the country, as evidenced by the numerous online postings regarding the Defect. Typical comments on these websites include:

- “This was the worst, most expensive purchase mistake we have ever made. Within a VERY short time the icemaker stopped working. We had purchased a 4 year extended warranty from Lowes (we normally don't get the extended warranty, but thank goodness we did for this lemon). The service person, sent from Lowes, stated ALL of these frigs had to be fixed, and he personally wouldn't have it if someone gave it to him.” – J. Donald of Mississippi, Dec. 20, 2012
- “I did not buy this Electrolux 28 cu. Ft. French door refrige from Amazon, but I'm posting a review of my experiences to warn you off. I've had nothing but trouble with this refrige. I've had repairmen to the house now seven times to fix the icemaker, and it still doesn't work. On its best day it may make two cups of ice, but most of the time it doesn't work at all. What little ice there is melts in the bin, and it leaks water down the inside of the refrige. Water from the dispenser in the door is often warm. I've contact Electrolux numerous times, but now that the warranty has expired, they say, "Sorry, it's your problem." The refrige cost over \$2500, and it's nothing but trouble. Don't buy it!” – Charles O. Sylling of Seattle, Washington, June 4, 2012
- “[D]on't buy one. while this couldn't make an ice cube, it did expelled water internally and all over the floor. internal ice sheets, and water all over the floor. #17 documented service calls for our expensive Edsel, without any resolve. electrolux could have cared less. after one year with no end in sight, replaced unit with another brand.” – Marsha Ann Springer, Chesterfield, Missouri, Oct. 20, 2011
- “Of the 8 or 9 months we've owned this refrigerator, the ice maker has worked maybe 4 or 5 weeks tops. it works for 5 days then nothing for a month, then 2 days of ice, then it stops again. Another problem is the freezer drawer freezes shut. You have to yank and tug to pull it open. The drawer rollers become bound up with ice and it takes a very strong person to pull the freezer open. THIS REFRIGERATOR IS ONE SOUR LEMON.” – Paula Fontana of Florida, Nov. 27, 2011

See Customer Reviews, Electrolux: EI28BS56IS 27.8 cu. ft. French-Door Refrigerator *available at* <http://www.amazon.com/Electrolux-EI28BS56IS-French-Door-Refrigerator-Stainless/product-reviews/B002OBTC20> (last accessed Dec. 4, 2013).

24. Electrolux knew, or but for its negligence or reckless indifference would have known, that it was receiving and was going to continue to receive reports of the Defect with the

Refrigerators. Based on its experience with the Defect, Electrolux also knew, or should have known, that for the indefinite future: (a) the risk of the Defect was substantial; (b) Electrolux's customers were unaware of that substantial risk of the Defect; and (c) consumers had a reasonable expectation that Electrolux would disclose that risk and cure the Defect, even if the Defect did not exhibit itself until after the warranty period had expired.

25. Any limitations on remedies contained in Electrolux's express warranties fail of their essential purpose and are unenforceable with respect to the Defects at issue here. When Electrolux is notified of the Defects, it fails to provide any repairs, replacement of parts, or any other remedy that adequately address the Defects.

26. When Plaintiff and other Class Members contacted Electrolux and/or their certified retailers, Electrolux sent repairmen to attempt to repair the Defect. However, the attempted repairs did not resolve the Defect, and the Refrigerators continue to experience problems related to the Defect.

27. Plaintiff and other Class Members experienced, and continue to experience, problems with their Refrigerators even though they followed the instructions and recommendations by Electrolux in its manuals and elsewhere.

Plaintiff's Experience with her Refrigerator

28. Plaintiff Watters ("Watters") purchased an Electrolux French Door Refrigerator, Model Number: EI23BC56ISO in February 2010 at Voss Appliance in Jefferson Hills, Pennsylvania. Within approximately two months of purchase, Watters' refrigerator stopped making ice and the freezer was not keeping food frozen. Watters contacted the retailer, Voss Appliance, who directed Watters to Action Appliance, a third-party repair service. Action Appliance replaced the unit's door seal and other parts.

29. Approximately two months later, the ice maker stopped functioning again.

Watters arranged for repair from Action Appliance in August 2010. The repair technician warned Watters that the failure of the ice maker was known to be widespread among similar Electrolux models and that even with repair, the issue would likely recur. The repair technician installed an updated control board unit for the ice maker, which was covered by warranty.

30. The ice maker failed again within one month. In October 2010, the Action Appliance repair technician returned. He reiterated his warning that the ice maker failure was a common problem with similar Electrolux models and that any repairs he could make would only temporarily solve the problem. He replaced the ice maker control board unit again, which was covered by warranty.

31. By February 2011, the ice maker failed for a fourth time within a year of purchase. In March 2011, Watters contacted Action Appliance, who noted that the one-year warranty had recently expired and that Watters would have to contact Electrolux to ask if they would cover the repair. Plaintiff did so, and Electrolux agreed to replace the control board for the ice maker again.

32. Within two months, the ice maker failed for a fifth time. Plaintiff Watters stopped attempting to use the ice maker for several months and made ice using another refrigerator in her basement. In January 2012, Watters contacted Action Appliance and paid for another repair out of pocket.

33. Within several months, the ice maker failed for a sixth time. Again, Watters stopped attempting to use the ice maker for several months and used her basement refrigerator to make ice. Watters contacted Action Appliance in November 2012 and paid for another repair out of pocket.

34. During 2012, Watters contacted Electrolux directly to complain. Electrolux offered a partial rebate of her purchase price, which she did not believe was adequate and did not accept.

35. In the spring of 2013, the ice maker failed for a seventh time. Again Watters stopped attempting to use the ice maker. At this time, Watters noticed that water was leaking onto the floor beneath her Electrolux refrigerator. Watters pulled the refrigerator away from the wall to investigate. She noticed that the pipe connecting the water supply to the ice maker (a part of the Refrigerator unit) had ruptured and was leaking a steady mist of water onto the hardwood floors beneath and around her refrigerator. Watters disconnected the water supply to the refrigerator to stop the leak. The damage to her wood floor was extensive, and Watters has received an estimate of \$2,300 to repair her floor.

36. As of the date of this filing, Watters' ice maker is not making ice. To avoid leaking and further damage to her floor, Watters has disconnected the water supply and shut off the ice maker. Watters refuses to pay any more money to get the ice maker repaired.

CLASS ACTION ALLEGATIONS

37. The Class that Plaintiff seeks to represent is defined as follows:

All persons who purchased a Refrigerator in the state of Pennsylvania for primarily personal, family or household purposes, and not for resale.

Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

38. Plaintiff reserves the right to modify the Class definition based on the results of discovery.

39. Plaintiff and the Class bring this action for damages, and equitable and injunctive relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of Rule 23 of the Federal Rules of Civil Procedure.

40. Numerosity: The proposed Class is so numerous that individual joinder of all its members is impracticable. The total number of Class Members is at least in the hundreds (likely thousands) and members of the Class are geographically dispersed across Pennsylvania. While the exact number and identities of the Class Members are unknown at this time, such information can be ascertained through appropriate investigation and discovery, and that information is within the custody and control of Defendant. The disposition of the claims of the Class Members in a single class action will provide substantial benefits and efficiencies to all parties and to the Court.

41. Common Questions of Law and Fact Predominate: There are questions of law and fact common to the representative Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class Members. Common questions of fact and law include, but are not limited to, the following:

- a. Whether the Refrigerators are materially defective, and the nature of the defects;
- b. Whether Electrolux knew, or should have known, that the Refrigerators contain material defects;
- c. Whether the Refrigerators were defectively designed and manufactured;
- d. Whether Electrolux omitted and concealed material facts from its communications and disclosures to Plaintiff and the Class regarding the Defects in the Refrigerators;

- e. Whether Electrolux engaged in unfair methods of competition, unconscionable acts or practices, and/or unfair or deceptive acts or practices in connection with the sale of the Refrigerators;
- g. Whether Electrolux breached the express warranties and/or extended warranties made to Plaintiff and the Class with respect to the Refrigerators;
- h. Whether Electrolux breached implied warranties with respect to the Refrigerators;
- i. Whether Electrolux has been unjustly enriched;
- j. Whether Electrolux breached its duty of good faith and fair dealing;
- k. The nature and amount of damages to Plaintiff and the Class as a result of Electrolux's improper conduct; and
- l. Whether Plaintiff and the Class are entitled to equitable relief and/or any other relief as a result of Electrolux's improper conduct.

42. Typicality: Plaintiff's claims are typical of the claims of the members of the Class.

Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct.

43. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex and class action litigation, including cases involving defective products and/or false and misleading advertising. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel have any interests adverse to those of the Class.

44. Superiority of a Class Action: Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy because individual joinder of all Class Members is impractical and because, while the aggregate damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by each Class Member are too small to warrant the expense of individual suits. Moreover, even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the court(s) in which the individual litigation(s) would proceed. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, class members, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

45. Adjudication of individual Class Members' claims with respect to Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class Members to protect their interests.

46. Plaintiff and her counsel do not anticipate any difficulty in the management of this litigation.

47. Electrolux has, or has access to, address information for the Class Members, which may be used for the purpose of providing notice of the pendency of this action.

FIRST CAUSE OF ACTION
VIOLATION OF PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW
73 Pa. Stat. Ann. § 201-1, et seq.

48. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

49. Plaintiff and members of the Class are “persons” within the meaning of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”).

50. At all relevant times material hereto, Electrolux conducted trade and commerce in Pennsylvania and elsewhere within the meaning of the UTPCPL.

51. The UTPCPL defines “[u]nfair methods of competition” and “unfair or deceptive acts or practices” to include: “(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;” “(vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;” and “(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.”

52. The UTPCPL is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes and/or common law remedies.

53. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Electrolux’s actions. Plaintiff and Class Members paid a premium price for their Electrolux Refrigerators, expecting a high quality and functioning machine. Nevertheless, the Refrigerators failed to produce ice and leaked, causing damages to the rest of the Refrigerator

and to the surrounding structures/substructures. Plaintiff and Class Members thus did not obtain the value of the products for which they paid.

54. As detailed more fully in the following paragraphs, the acts and practices alleged herein were intended to and did result in the sale of Refrigerators in violation of the UTPCPL. Defendant's conduct further constitutes breach of warranty, breach of the implied covenant of good faith and fair dealing, and unjust enrichment.

55. By violating these legal duties, Defendant has engaged in unlawful business acts and practices which constitute unfair competition within the meaning of 73 Pa. Stat. Ann. § 201-1, *et seq.*

56. Electrolux actively and extensively advertises, markets and promotes the Refrigerators based on promises that the Refrigerators are high-end and contain a "Fast-Ice" feature that produces ice up to 50% faster than other refrigerators. Throughout the class period, Electrolux has maintained a website and published marketing materials that are the primary tools for advertising and marketing the Refrigerators.

57. Plaintiff and Class Members each purchased an Electrolux Refrigerator. When doing so, Plaintiff reviewed and relied on the representations as detailed above. Electrolux advertised that their Refrigerators were top quality and that the machines produced ice "50% faster," and Plaintiff and the Class Members relied on these representations when purchasing the Refrigerators. Nevertheless, the Refrigerators developed the ice maker Problems because of the Defects and were unable to be used as intended. In addition, the warranty repairs done by Electrolux were ineffective and merely delayed the ultimate manifestation of the Defects to Plaintiff and the Class.

58. Electrolux omitted any information about the high likelihood of the ice maker Problems. Plaintiff and Class Members contacted Electrolux and/or authorized dealers to request repairs. Plaintiff and many members of the Class exhausted their warranties and paid for repairs out of pocket while attempting to fix the ice maker Problems, but none of the repairs fixed the Defect, and the Refrigerators continued to experience ice maker Problems.

59. Electrolux intended that Plaintiff and Class Members would rely on Electrolux's omissions in purchasing their Refrigerators, and that they would remain unaware of the material facts described above. This conduct constitutes consumer fraud, an unfair business practice, and violation of the UTPCPL. Had Plaintiff and the Class Members known that the Refrigerators were defective and would develop ice maker Problems, they would either not have purchased the Refrigerators or would have negotiated a better price based on this knowledge.

59. Electrolux's failure to disclose the Refrigerators' propensity to develop the ice maker Problems, along with its futile repairs of the Refrigerators, is likely to deceive the Class. Electrolux has thus committed deceptive acts or practices within the meaning of the UTPCPL by engaging in the acts and practices alleged herein.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

**SECOND CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY
13. Pa. Stat. Ann. § 2314**

60. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

61. Plaintiff seeks to recover for the Class based on Electrolux's breach of implied warranty under Pennsylvania statutory and common law.

62. Electrolux marketed and sold the Refrigerators, touting the ice makers, which it placed into the stream of commerce. Electrolux knew or had reason to know of the specific use for which the Refrigerators with ice makers were purchased, and it impliedly warranted that the Refrigerators were of merchantable quality and fit for such use.

63. Plaintiff and the other Class Members relied on Electrolux's representations and omissions as described above and relied upon Electrolux's implied warranty in purchasing the Refrigerators.

64. Plaintiff's and the Class Members' Refrigerators were not of merchantable quality and became unfit for their ordinary purpose because Electrolux's design and/or manufacturing Defects discussed above render the Refrigerators incapable of producing ice and preventing water leakage.

65. Plaintiff's and other Class Members' Refrigerators do not conform to the promises or affirmations of fact made in advertising and marketing materials, including making ice "50% faster" and having a "luxury" design.

66. Electrolux's waiver and/or limits on implied warranties are unconscionable, unenforceable, and/or illegal for many reasons: (1) Plaintiff had no meaningful choice in determining those time limitations; (2) the warranties were written by Defendant without input from Plaintiff; (3) the Warranty overwhelmingly favors Defendant by unreasonably limiting the warranty to 1 year on a product that could reasonably be expected to last 10 or more years; (4) a gross disparity in bargaining power existed as between Defendant and Plaintiff and Class Members; (5) Electrolux knew or should have known that its Refrigerators were defective at the time of sale and would develop the ice maker Problems before the end of their useful lives; and (6)

Plaintiff was unfairly surprised by the time limitation upon discovering that Electrolux knew the Refrigerators have the ice maker Problems.

67. Plaintiff's and the Class Members' Refrigerators became unfit for their ordinary purpose of making ice and providing refrigeration within the implied warranty period because the ice maker failed to work and the Refrigerators leaked causing damage to other parts of the Refrigerator and Plaintiff's houses.

68. Plaintiff and the other Class Members have been damaged as described herein as a direct and proximate result of the failure of Electrolux to honor its implied warranty as Plaintiff and Class Members would not have purchased the Refrigerators or would have paid less for them had they known about the Defect and the ice maker Problems.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

**THIRD CAUSE OF ACTION
BREACH OF EXPRESS WARRANTIES
13 Pa. Stat. Ann § 2314**

69. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

70. Plaintiff seeks to recover for the Class based on Electrolux's breach of express warranty under the Pennsylvania statutory and common law.

71. Electrolux warranted that all Refrigerators were free from defects in material and workmanship, and further warranted by affirmation of fact that the Refrigerators would produce ice.

72. Furthermore, Electrolux's warranty provides that within the one year warranty, it will "repair or replace any parts of this appliance that prove to be defective." Plaintiff's and Class Members' Refrigerators contained the Defect at the time of purchase and despite often

multiple repair visits by Electrolux and/or its authorized retailers, the Defect is not fixed and the Refrigerators continue to experience ice maker Problems.

73. These warranties became part of the basis of the bargains between Plaintiff and the Class Members and Electrolux.

74. Defendant has breached these express warranties, as the Refrigerators are defective and have ice maker Problems, fail to produce ice, and are prone to leaking.

75. Despite receiving numerous complaints and other notices from its customers advising it of Class Members experiencing ice maker Problems, Electrolux refuses to honor its warranties, even though it knows that the irreparable Defect existed in the Refrigerators prior to sale.

76. Electrolux's waiver and/or limits on express warranties are unconscionable, unenforceable, and/or illegal for several reasons: (1) Plaintiff had no meaningful choice in determining those time limitations; (2) the warranties were written by Electrolux without input from Plaintiff; (3) the Warranty overwhelmingly favors Electrolux by unreasonably limiting the warranty to one year on a product that could reasonably be expected to last ten or more years; (4) a gross disparity in bargaining power existed as between Electrolux and Plaintiff and Class Members; (5) Electrolux knew or should have known that its Refrigerators were defective at the time of sale and would develop ice maker Problems before the end of their useful lives; and (6) Plaintiff was unfairly surprised by the time limitation upon discovering that Electrolux knew the Refrigerators have the ice maker Problems.

77. As a direct and proximate result of Defendant's breach of express warranties, Plaintiff and Class Members have sustained damages and other losses in an amount to be

determined at trial. Plaintiff and Class Members are entitled to recover damages, costs, attorneys' fees, rescission, and other relief as provided by statute or deemed appropriate by the Court.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

**FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT**

78. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

79. Plaintiff asserts this claim in the alternative on behalf of Plaintiff and Class Members to the extent that the warranties do not govern all of Plaintiff's and Class Members' claims or to the extent that there is any determination that Plaintiff and Class Members do not have standing to assert any contractual claims asserted against Electrolux or because of any alleged absence of contractual privity or otherwise.

80. Plaintiff and Class Members conferred a benefit on Electrolux, of which benefit Electrolux had knowledge. By its wrongful acts and omissions described herein, including selling the Refrigerators, Electrolux was unjustly enriched at the expense of Plaintiff and Class Members.

81. The detriment to Plaintiff and Class Members and Electrolux's enrichment were related to and flowed from the wrongful conduct challenged in this Complaint.

82. It would be inequitable for Electrolux to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the Refrigerators.

83. Plaintiff and Class Members seek restitution from Electrolux and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by

Electrolux from its wrongful conduct and the establishment of a constructive trust from which Plaintiff and the Class Members may seek restitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order of judgment against Electrolux as follows:

1. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(1), (b)(2), and (b)(3), and certifying the proposed class with costs of notice to the Class to be paid by Electrolux;
2. Designating Plaintiff as representative of the Class and her undersigned counsel as Class counsel;
3. Awarding Plaintiff and Class Members their individual damages, attorneys' fees, and costs, including interest thereon, and/or awarding restitution and equitable relief.
4. Entering an injunction ordering Electrolux to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. Compelling Electrolux to establish a program to provide Plaintiff and Class Members repairs and/or replacements for their Refrigerators;
6. Awarding special damages according to proof on certain causes of action;
7. Awarding both pre- and post-judgment interest at the maximum allowable rate on any amounts awarded; and
8. Providing any and all such other and further relief that this Court may deem just and proper.

Respectfully submitted,

/s/ R. Bruce Carlson

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