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*Attorneys for Defendant Spectrum Brands, Inc.*

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

BRUCE WINKWORTH and MARCIA  
BOTELHO,

*Individually and on behalf of  
themselves and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

SPECTRUM BRANDS, INC.

Defendant.

Case No.

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1332, Defendant Spectrum Brands, Inc. (“Spectrum”) by and through its undersigned attorneys, hereby removes this action from the Pennsylvania Court of Common Pleas, Jefferson County, to the United States District Court for the Western District of Pennsylvania. In support thereof, Spectrum states as follows:

1. On July 2, 2019, Plaintiffs Bruce Winkworth (“Winkworth”) and Marcia Botelho (“Botelho”) and, together with Winkworth, “Plaintiffs”) filed a Complaint against Spectrum in the Pennsylvania Court of Common Pleas, Jefferson County. Attached hereto as Exhibit A, respectively, are true and accurate copies of the Complaint and Notice to Defend.

2. Spectrum was served with the Complaint and Notice to Defend on July 15, 2019.

3. This Notice of Removal is timely because it is being filed within thirty days of service of the Complaint and Notice to Defend.

**I. This Action Is Removable Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(11) (“CAFA”)**

4. This Court has subject matter jurisdiction pursuant to CAFA, 28 U.S.C. § 1332(d), because (1) the putative class consists of at least 100 proposed class members; (2) the citizenship of at least one putative class member is different from the citizenship of the only defendant, Spectrum; and (3) the aggregate amount placed in controversy by the claims of the named Plaintiffs and the proposed class members exceeds the sum or value of \$5,000,000, exclusive of costs and interest.

**A. The Minimal Diversity of Citizenship Requirement Is Satisfied.**

5. Under CAFA, 28 U.S.C. § 1332(d)(2)(A), minimal diversity jurisdiction exists if any member of the purported class is a citizen of a state different from any defendant.

6. As alleged in the Complaint, Winkworth and Botehlo are both residents of Pennsylvania. (Ex. A ¶¶ 18, 19).

7. Spectrum is incorporated in Delaware and has its principal place of business at 3001 Deming Way, Middleton, Wisconsin. As such, for jurisdictional purposes, Spectrum is a citizen of Delaware and Wisconsin.

8. Thus, the minimal diversity of citizenship requirement of 28 U.S.C. § 1332(d)(2)(A) is satisfied because the citizenship of at least one putative class member, Plaintiffs, is different than the citizenship of the only defendant, Spectrum.

**B. The Putative Class Consists of More than 100 Members.**

9. Plaintiffs purport to bring this action pursuant to Pa. R. Civ. P. 1701, *et seq.*, on behalf of two putative classes: a nationwide “Injunctive/Declaratory Relief Class,” and a Pennsylvania “Damages Class.” (Ex. A ¶ 65-67).

10. The nationwide “Injunctive/Declaratory Relief Class” consists of “[a]ll persons in the United States who own a Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H purchased during the four (4) years preceding the filing of this action.” (*Id.* ¶ 66).

11. The Pennsylvania “Damages Class” consists of “[a]ll persons in the Commonwealth of Pennsylvania who purchased a Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H purchased during the four (4) years preceding the filing of this action.” (*Id.* ¶ 67).

12. Plaintiffs allege that the putative classes “are so numerous that the joinder of all members is impracticable” but do not allege the exact or approximate number of putative class members. (*Id.* ¶ 68).

13. During the putative class period (July 2015 to the present (*id.* ¶¶ 66-67)), Spectrum shipped over 400,000 Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H, for sale to consumers throughout the United States.

14. Based on these and other allegations, the aggregate number of class members in Plaintiffs’ proposed classes is at least 100 for the purposes of satisfying 28 U.S.C. § 1332(d)(5).

**C. The Amount in Controversy Requirement under CAFA Is Satisfied.**

15. Plaintiffs alleges that the Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H (the “Hot Rollers”) manufactured by Spectrum allegedly “are sold with latent defects that cause the Hot Rollers to heat to unreasonably unsafe temperatures when operated as

instructed preventing their contact with bare skin or detachment of the plastic end caps from the roller itself, thereby exposing consumers to dangerous skin contact with the hot plastic end, as well as the metal underneath the plastic end cap.” (Ex. A ¶ 5).

16. Plaintiffs contend that the alleged defect renders the Hot Rollers “unfit for use as intended as they expose anyone who contacts them with a substantial risk of permanent and/or serious injury.” (*Id.* ¶ 6).

17. Based on these allegations, Plaintiffs assert claims against Spectrum for breach of the implied warranty of merchantability, breach of express warranty, violation of the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA”), negligence, and negligent failure to warn. (Ex. A at 23-33).

18. Plaintiffs seek, on their own behalf and on behalf of the putative class, the following damages and/or injunctive relief from Spectrum: (1) “compensatory, direct, incidental, and consequential damages, including full refunds or replacement of the Hot Rollers with a non-defective product at least the quality and grade marketed and promised, as well as the shipment at Defendant Spectrum Brands’ expense”; (2) attorneys’ fees, expert fees, costs, and expenses under the MMWA and as otherwise allowable under the applicable law; (3) equitable and injunctive relief including “the remediation of the Defect”; (4) punitive damages; (5) “restitution and/or disgorgement of profits,” and (6) pre- and post-judgment interest. (*Id.* at 34-35 ¶¶ A-H; ¶¶ 17, 95, 118, 134).

19. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Jesmar Energy, Inc. v. Range Res.-Appalachia, LLC*, No. CV 17-928, 2017 WL 4572526, at \*7 (W.D. Pa. Oct. 13, 2017) (internal quotation omitted).

20. The object of Plaintiffs' injunctive/declaratory relief claims, as stated in the Complaint, is to award the Plaintiffs and the nationwide putative class "the remediation of the Defect, and its coverage under the available express and implied warranties." (Ex. A at ¶¶ 95, 119, 133).

21. The Complaint further alleges that, if Spectrum had complied with its express warranty, it would be "obligated to provide Hot Rollers free of the Defect or defects." (*Id.* ¶ 100).

22. As such, the injunctive relief sought by Plaintiffs seeks to require Spectrum to provide replacement Hot Rollers to the nationwide putative class. (*See id.*).

23. Plaintiffs do not allege the price that they paid for their respective Hot Rollers.

24. The manufacturer's suggested retail price for the Hot Rollers is \$24.99.

25. Using only the value of the Hot Rollers that Plaintiffs seek as the measure of damages (\$24.99), the nationwide putative class would need to consist of 200,081 individuals for the amount in controversy to exceed \$5,000,000.<sup>1</sup>

26. Similarly, using only the equitable remedy of restitution sought by the Plaintiffs to determine the amount in controversy, whereby each class member would obtain a refund of the \$24.99 paid for the Hot Rollers, the nationwide putative class would need to consist of 200,081 individuals for the amount in controversy to exceed \$5,000,000.

27. Because Spectrum shipped over 400,000 Hot Rollers for sale throughout the United States from July 2015 to the present, more than 200,081 Hot Rollers were shipped for sale throughout the United States during the putative class period.

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<sup>1</sup> \$5,000,000 divided by \$24.99 equals 200,080.03.

28. Thus, for the reasons set forth above, the amount in controversy exceeds \$5,000,000, even if attorneys' fees are excluded from the calculation.

29. Including attorneys' fees in the amount in controversy reduces the number of members of the putative nationwide class needed to reach the amount in controversy. *See Espinoza v. Atlas R.R. Constr., LLC*, 657 F. App'x 101, 103 n.3 (3d Cir. 2016) (recognizing that, in "calculating the amount in controversy, we must consider potential attorney's fees").

30. To calculate the attorneys' fees for purposes of determining the amount in controversy, courts use the median recovery range for attorneys' fees of approximately 30 percent. *Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 358 n.1 (3d Cir. 2015).

31. If attorneys' fees are included in the amount in controversy, the nationwide putative class would need to consist of 140,057 individuals for the amount in controversy to exceed \$5,000,000 using either the value of the Hot Rollers that the Plaintiffs seek or the amount refunded to the putative class members through the equitable remedy of restitution.<sup>2</sup>

32. Because Spectrum shipped over 400,000 Hot Rollers for sale throughout the United States from July 2015 to the present, more than 140,057 Hot Rollers were shipped for sale throughout the United States during the putative class period.

33. Because there is minimal diversity between the parties and because the \$5,000,000 amount in controversy requirement is satisfied, this case is properly removed pursuant to CAFA, 28 U.S.C. §§ 1332(d) and 1453.

34. A true and correct copy of this Notice of Removal will be filed with the clerk of the Pennsylvania Court of Common Pleas, Jefferson County, and served upon counsel for Plaintiff.

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<sup>2</sup> Attorneys' fees would total 30% of \$5,000,000, which is equal to \$3,500,000. \$3,500,000 divided by \$24.99 equals 140,056.02.

35. In filing this Notice of Removal, Spectrum does not waive, and specifically reserves, all defenses, exceptions, rights, and motions. No statement herein or omission herefrom shall be deemed to constitute an admission by Spectrum of any of the allegations of or damages sought in the Complaint.

WHEREFORE, Spectrum respectfully gives notice of the removal of the state action referenced herein from the Pennsylvania Court of Common Pleas, Jefferson County, to the United States District Court for the Western District of Pennsylvania.

Dated: August 14, 2019

**K&L GATES LLP**

*Attorneys for Defendant Spectrum Brands, Inc.*

By: /s/Michael S. Nelson  
Michael S. Nelson  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Notice of Removal* was served through the ECF system and via e-mail August 14, 2019

/s/ Michael S. Nelson



# **Exhibit A**



## Notice of Service of Process

Transmittal Number: 20094630  
Date Processed: 07/16/2019

**Primary Contact:** Kris Caldwell  
Spectrum Brands, Inc.  
3001 Deming Way  
Middleton, WI 53562-1431

**Electronic copy provided to:** Michael Pfefferkorn  
Marlene Prah  
Nicole Bearce

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<b>Entity:</b>	Spectrum Brands, Inc. Entity ID Number 2914212
<b>Entity Served:</b>	Spectrum Brands, Inc.
<b>Title of Action:</b>	Bruce Winkworth vs. Spectrum Brands, Inc.
<b>Document(s) Type:</b>	Notice and Complaint
<b>Nature of Action:</b>	Class Action
<b>Court/Agency:</b>	Jefferson County Court of Common Pleas, PA
<b>Case/Reference No:</b>	588-2019
<b>Jurisdiction Served:</b>	Pennsylvania
<b>Date Served on CSC:</b>	07/15/2019
<b>Answer or Appearance Due:</b>	20 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Charles J. Kocher 215-575-3985

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

## Supreme Court of Pennsylvania

Court of Common Pleas  
Civil Cover Sheet

JEFFERSON

County

JUL 2 2019 AM 11:39  
JEF CIV PROT & CLERK

For Prothonotary Use Only:

Docket No:

588-2d9

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

## Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition  
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

BRUCE WINKWORTH

Lead Defendant's Name:

SPECTRUM BRANDS, INC.,

Are money damages requested? ☒ Yes ☐ NoDollar Amount Requested:  
(check one)

- ☐ within arbitration limits  
☒ outside arbitration limits

Is this a Class Action Suit? ☒ Yes ☐ NoIs this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: TROY M. FREDERICK

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an 'X' to the left of the ONE case category that most accurately describes your case. If you are making more than one type of claim, check the one that you consider most important.

## TORT (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/Defamation  
☐ Other:

## MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

## PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional:

## CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other

- ☐ Employment Dispute: Discrimination  
☐ Employment Dispute: Other

- ☒ Other: Breach of Implied Warranty of Merchantability

## REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

## CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other

- ☐ Zoning Board  
☐ Other:

## MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:

Updated 1/1/2011

JEF CIV PROT &amp; CLERK

JUL 2 2019 AM 11:39  
JEF CIV PROTH & CLERK

IN THE COURT OF COMMON PLEAS  
JEFFERSON COUNTY, PENNSYLVANIA

BRUCE WINKWORTH and  
MARCIA BOTELHO,  
*Individually, on behalf of themselves  
and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

SPECTRUM BRANDS, INC.,

Defendant.

No. 588-209

CIVIL ACTION – LAW

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Filed on behalf of Plaintiffs by:

SALTZ, MONGELUZZI, BARRETT &  
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and

FREDERICK LAW GROUP, PLLC  
Troy M. Frederick, Esq. (PA ID# 207461)  
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836 Philadelphia Street  
Indiana, PA 15701  
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ATTORNEYS FOR PLAINTIFFS AND  
PROPOSED CLASSES

TRUE COPY TONING & GEIST  
JEF CIV PROTH & CLERK

IN THE COURT OF COMMON PLEAS  
JEFFERSON COUNTY, PENNSYLVANIA

BRUCE WINKWORTH and  
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Plaintiffs,

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SPECTRUM BRANDS, INC.,

Defendant.

No.

588-2019

CIVIL ACTION – LAW

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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**NOTICE TO DEFEND**

TO: SPECTRUM BRANDS, INC., DEFENDANT

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

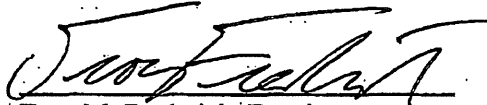
Laurel Legal Services  
231 W. Main Street  
Clarion, PA 15825  
Telephone: 814-226-4340

OR

Laurel Legal Services  
Bilo Plaza  
460 N. 4th Street  
Indiana, PA 15701  
Telephone: 724-349-3440

Respectfully Submitted,

Frederick Law Group, PLLC

A handwritten signature in black ink, appearing to read "Troy M. Frederick", is written over a horizontal line.

Troy M. Frederick, Esquire

Sup. Ct. ID 207461

Beth A. Frederick, Esquire

Sup. Ct. ID 308628

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Indiana, PA 15701

Telephone: (724) 801-8555

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*TMF@FrederickLG.com*

*BAF@FrederickLG.com*

*Counsel for Plaintiffs and Proposed Classes*

IN THE COURT OF COMMON PLEAS  
JEFFERSON COUNTY, PENNSYLVANIA

BRUCE WINKWORTH and  
MARCIA BOTELHO,  
*Individually, on behalf of themselves  
and on behalf of all others  
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v.

SPECTRUM BRANDS, INC.,

Defendant.

No.

588-2019

CIVIL ACTION – LAW

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

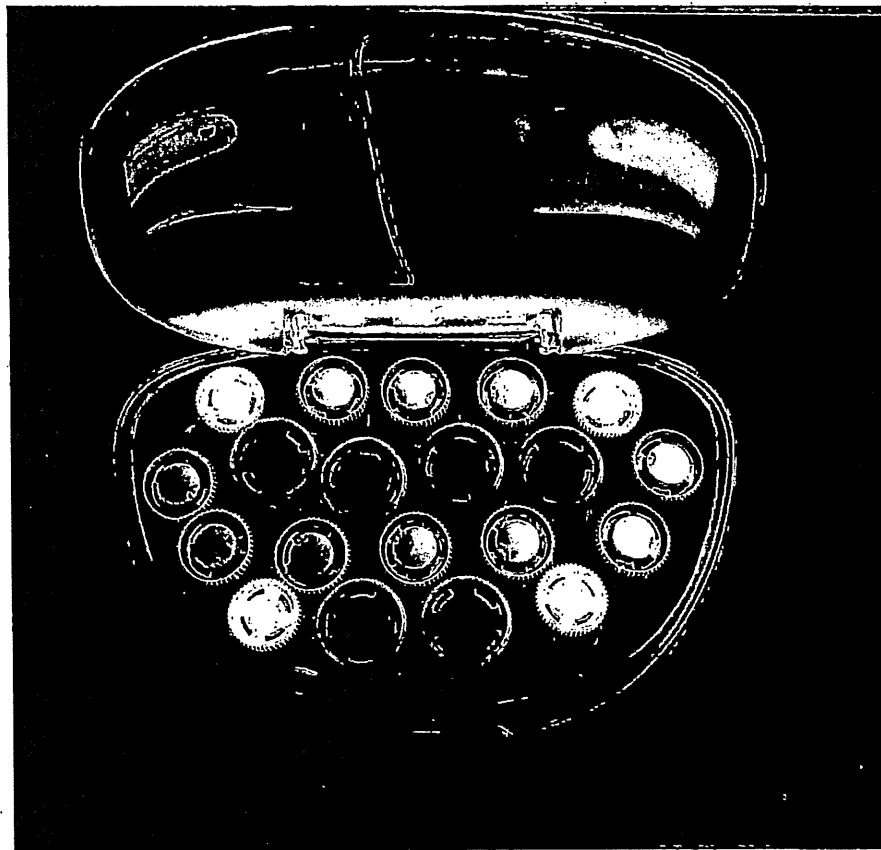
1. This is a Complaint brought by Plaintiffs Bruce Winkworth and Marcia Botelho, on behalf of themselves and those similarly situated, against Defendant Spectrum Brands, Inc. (“Defendant” or “Spectrum Brands”) to redress a defective and dangerous condition present in the Remington® Hot Rollers (“Hot Rollers”) that were warranted, advertised, distributed, and sold by Defendant throughout the United States, including in the Commonwealth of Pennsylvania.

2. According to Defendant Spectrum Brands’ website, the Hot Rollers use “exclusive thermal wax core rollers to create long lasting curls. The wax core allows the roller to retain high heat longer and create long lasting curls and volume. The 20 velvety rollers feature Ionic Conditioning so [the user’s] curls have less frizz and more shine. Three color-coded clip and roller sizes (¾”, 1”, 1¼”) allow [the user] to customize [her] look and cover [the] whole head! The exclusive J-clips are specially designed to securely hold the roller in [the] hair with

less creasing. The ready indicator light lets [the user] know when the rollers are the perfect temperature for styling, and the cool touch ends make these rollers comfortable to use.”

<http://www.remingtonproducts.com/products/womens/hair-care/hair-setters/h5600g-20-piece-ionic-protective-hair-setter.aspx> (last visited on June 21, 2019).

3. The photograph below depicts the Hot Rollers purchased and owned by Plaintiffs and members of the Classes:



**FIG. 1 – THE REMINGTON® HOT ROLLERS AT ISSUE**

4. Touting the plastic “COOL TOUCH ENDS” of the hair setter, Defendant Spectrum Brands represents on its website that the “[t]he rollers are built with cool touch end for safe and comfortable use.” *Id.* These Cool Touch Ends are designed to protect against the heating element in each Hot Roller: the “Thermal Wax Core” that “allows the rollers to retain



high heat longer.” *Id.*

5. In reality, these Hot Rollers are manufactured and sold with latent defects that cause the Hot Rollers to heat to unreasonably unsafe temperatures when operated as instructed preventing their contact with bare skin or detachment of the plastic end caps from the roller itself, thereby exposing consumers to dangerous skin contact with the hot plastic end, as well as to the metal underneath the plastic end cap (“Defect”).

6. As a result of this Defect, the Hot Rollers are unfit for use as intended as they expose anyone who contacts them with a substantial risk of permanent and/or serious injury. As set forth in more detail below, one consumer even cautioned others on Wal-Mart’s website to “Use Mittens!” when using the Hot Rollers because of the Defect.

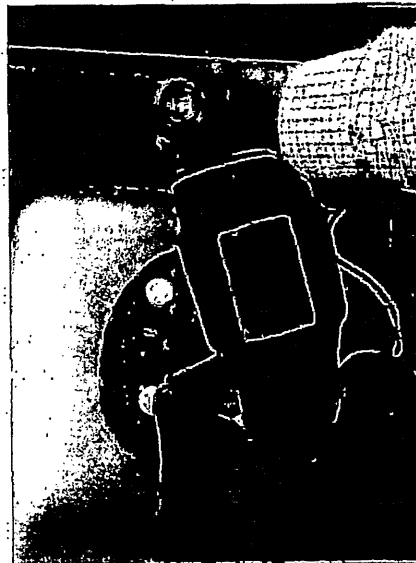
7. The Hot Rollers violate applicable standards regarding surface temperature for consumer goods. The American Society of Testing Materials (“ASTM”) publishes the Standard Guide for Heated System Surface Conditions that Produce Contact Burn Injuries, known as ASTM Standard C1055-03 (Reapproved 2014) (hereinafter “ASTM Standard” or “ASTM C1055-03”). Ex. A. This ASTM Standard defines the human burn hazard for skin contact “to standardize the determination of acceptable surface operating conditions for heated systems.” Ex. A, § 5.2.

8. The ASTM Standard warns against skin contact with any metal that exceeds 44°C or 111°F, and acknowledges that the risk rises exponentially with each degree increase over 44°C. Ex. A, §§ 6.4.2, X1.2.3.3. Skin contact reaching 111°F enters the ASTM Standard’s established pain threshold with the maximum bearable pain established being 133°F, and the beginning of numbness and possible irreversible injury occurs with contact with 140°F. Ex. A, Figure X1.2.

9. The ASTM Standard clearly states that “[i]f the surface temperature exceeds 70°C [158°F] and the surface is metallic, it may present a hazard regardless of the contact duration. Attempts should be made to lower the surface temperature below 70°C.” Ex. A, § 6.4.2.

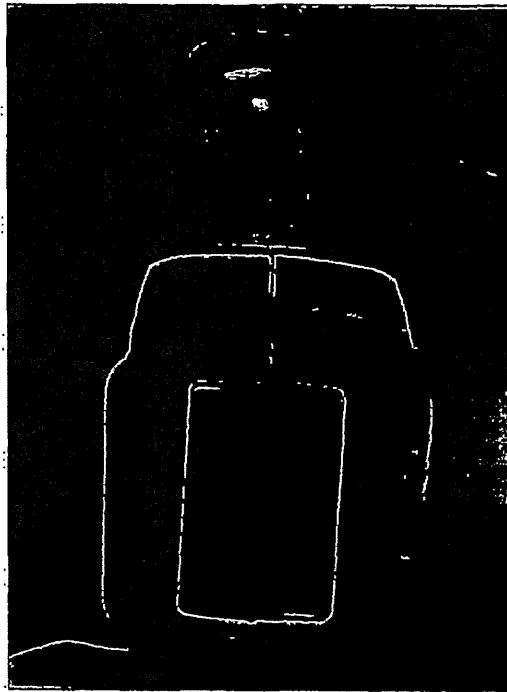
10. In addition, the UL Standard 859 (“Household Electric Personal Grooming Appliances”), which governs the Hot Rollers – as printed on the underside of the product itself, sets the maximum temperature limit for molded material that is intended to be grasped and held by a bare hand at 90°F. This same UL standard sets the upper limit for contact with a non-metallic surface known to be hot at 126°F.

11. Although Defendant affirmatively represents the Hot Rollers comply with these UL Standards, the Hot Rollers violate these standards, including the UL Standards. Here, as set forth in the photograph below, the metallic portion of the roller, underneath the plastic end cap, heats to over 158°F in 10 minutes, which is the period of “set time” for the rollers to heat up prior to use according to the in-box instructions (Ex. C):



12. The so-called plastic “Cool Touch Ends” heat to a temperature of 187°F after the

10-minute set time contained in Defendant Spectrum Brands' instructions.



13. When these purported “Cool Touch Ends” become loose and detach, they too expose consumers to an unreasonable and dangerous risk of burn injury.

14. Critically, Defendant has possessed knowledge of the Defect for several years, and Defendant Spectrum Brands has conceded that knowledge of the Defect in an e-mail to Plaintiff dated May 18, 2018: “Usually what we find when rollers lose their caps is that they have been overheated. The heating time for this setter is 3 minutes.” Ex. B. This false, post-sale statement regarding the 3-minute heating time by Defendant Spectrum Brands, however, directly contradicts the time period set forth in the in-box instructions. *Compare* Ex. C (Use and Care Guide) at “Product Features” *with* Ex. B at p. 3.

15. Defendant has even manufactured and marketed a redesigned product for sale on its website (<http://www.remingtonproducts.com/products/womens/hair-care/hair-setters/h9101-pro-pearl-ceramic-hair-setter.aspx>): the Pro Pearl Ceramic Hair Setter with a “New Design” that

heats up in 90 seconds as opposed to 10 minutes; utilizes a different roller and hair clip design, as well as a different “Cool Touch End” design, as depicted below:

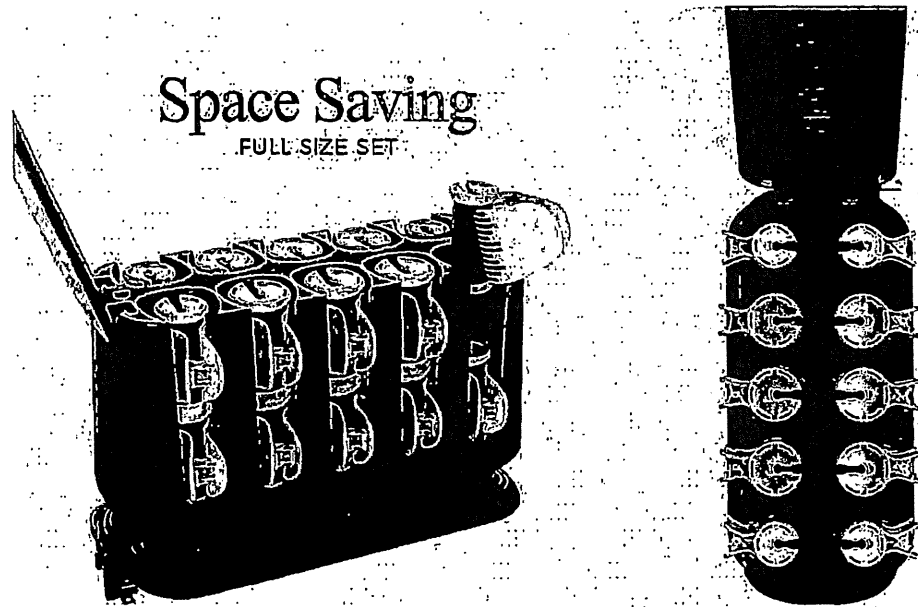


FIG. 2 – DEFENDANT’S REDESIGNED HAIR CURLER PRODUCT

16. The Defect in the Remington® Hot Rollers at issue, depicted in Paragraph 3 above, is unreasonably dangerous and renders the Hot Rollers unfit to use when curling hair with a bare hand – their intended and ordinary purpose. *See* Ex. C (Use and Care Guide).

17. Plaintiffs bring claims for: (i) breach of implied warranty of merchantability; (ii) breach of express warranty; (iii) Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301, *et seq.* (“MMWA”); (iv) negligence; and (v) negligent failure to warn. Plaintiffs bring suit on behalf of all other similarly situated persons, as set forth below, who have purchased the Hot Rollers, for monetary damages, declaratory and equitable relief, and restitution and/or disgorgement of profits.

## II. PARTIES

### PLAINTIFF BRUCE WINKWORTH

18. Plaintiff Bruce Winkworth is an adult individual who is a consumer that resides in Punxsutawney, Jefferson County, Pennsylvania.

19. Plaintiff Bruce Winkworth purchased the Hot Rollers in February 2018 from a Walmart Supercenter located at 21920 Route #119, Punxsutawney, Jefferson County, Pennsylvania 15767, which is a retail location operated by Wal-Mart.

### PLAINTIFF MARCIA BOTELHO

20. Plaintiff Marcia Botelho is an adult individual who is a consumer that resides in Punxsutawney, Jefferson County, Pennsylvania.

21. Plaintiff Botelho is the owner and end user of the Remington® Hot Rollers, Model No. H5600, which has the Defect.

22. On May 17, 2018, Plaintiff placed Defendant on notice of a claim for the Defect under the warranty to Defendant's customer service department: "I sent before that this model is no good, now the end of a curler fell off went down my shirt and burned my chest...." Ex. C at p. 2; Plaintiff Botelho: "Burns hurt and scar." *Id.* at p. 3. She informed Defendant: "I really think it should be taken off the market."

### DEFENDANT SPECTRUM BRANDS, INC.

23. Defendant Spectrum Brands is a Delaware corporation with its corporate office located at 3001 Deming Way, Middleton, Wisconsin 53562.

24. Defendant Spectrum Brands distributes its Home & Personal Care products under a variety of brand names, including Remington®, Black & Decker®, George Forman, among others.

25. Upon information and belief, at all times relevant, Defendant Spectrum Brands

was engaged in the business of distributing the Hot Rollers throughout the United States, including in this jurisdiction.

### III. JURISDICTION AND VENUE

26. This Court has jurisdiction over this litigation pursuant to 42 Pa. Con. Stat. § 931(a).

27. Venue is proper in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006(b) and 2179(a)(3), (4).

### IV. FACTUAL ALLEGATIONS

#### A. The Hot Rollers Are Defective

28. The Hot Rollers are designed, manufactured, and intended to be used on “crown” and “back and sides of the head,” as well as the “nape of the neck.” *See e.g.*, Ex. C (Use and Care Guide).

29. The Hot Rollers have been designed, manufactured, and intended to be used with a metallic base covered by “Cool-touch end rings” also referred to as “Cool Touch Ends.” *See id.*; <http://www.remingtonproducts.com/products/womens/hair-care/hair-setters/h5600g-20-piece-ionic-protective-hair-setter.aspx#sparePartsAndAccessories> (last visited on June 21, 2019). The Hot Roller is designed for use with a bare hand, and a consumer’s reasonable expectation is that the roller can be touched without risk of burning or other serious injury.

30. These plastic end caps, however, detach from the roller itself after normal use of the product, exposing the consumer to dangerous skin contact with the plastic end cap as well as to the hot metal underneath the plastic end cap it is designed to guard against.

31. The Hot Rollers fail to conform to the governing standards in the United States for preventing consumers’ exposure to burn injuries.

32. ASTM C1055-03 is a design guide for the determination of acceptable surface

operating conditions to prevent contact with exposed heated surfaces. *See* Ex. A, §1.1. The ASTM Standard is designed to “establish the maximum operating surface temperature under the worst case conditions.” Ex. A, §6.3.

33. The ASTM Standard describes thermal sensations and tissue effects of skin contact with metallic surfaces. A temperature of 111°F represents a pain threshold, painful to the touch, and maximum bearable pain begins at 133°F.

34. The ASTM Standard is likewise clear that “[i]f the surface temperature exceeds 70°C [158°F] and the surface is metallic, it may present a hazard regardless of the contact duration. Attempts should be made to lower the surface temperature below 70°C.” Ex. A, §6.4.2.

35. This ASTM Standard establishes a range of injury to skin that contacts metallic surfaces at identified temperatures:

Sensation	Skin Color	Tissue Temperature		Process	Injury
		°C	°F		
Numbness	White	68-72	154-162	Protein Coagulation	Irreversible
	Mottled Red & White	60-64	140-147	Thermal Inactivation of Tissue Contents	Possibly Reversible
Maximum Pain	Bright Red	52-56	126-133		Reversible
Severe Pain	Light Red	43	113		
Threshold Pain	Light Red	40-44	104-111	Normal metabolism	None
Hot	Flushed	36-40	97-104		
Warm					

FIG. 3 - ASTM C1055-03 (2014), FIG. X1.2 THERMAL SENSATIONS AND ASSOCIATED EFFECTS THROUGHOUT RANGE OF TEMPERATURES COMPATIBLE WITH TISSUE LIFE

36. The Underwriters' Laboratories, Inc. ("UL") Standard 859, which governs the Hot Rollers, provides that: (i) the maximum temperature for a portion of an appliance constructed of a molded material that is to be grasped for lifting, carrying, or holding cannot

exceed 90°F; (ii) any handle or knob constructed of a molded material that may be contacted, but does not involve lifting carrying or holding of it, during operation cannot exceed 108°F; and (iii) any surface (other than metal) whose function is known to be hot due to proximity to the heating function surface cannot exceed 126°F.

37. When the Hot Rollers are used as instructed, the ends of the rollers reach temperatures that exceed all applicable standards because of the Defect. Testing of an exemplar Hot Roller unit revealed the metallic portion of the roller to be in excess of 158°F after approximately 10 minutes, while the plastic end cap reached in excess of 187°F, again, after approximately 10 minutes.

38. These recorded temperatures exceed the objective temperature standards of the ASTM and UL, set forth above.

39. Knowing that the plastic end caps detach from the rollers, Defendant Spectrum Brands sells small, medium and large replacement rollers for \$3.99, \$4.99 and \$5.99, respectively. <http://www.remingtonproducts.com/products/womens/hair-care/hair-setters/h5600g-20-piece-ionic-protective-hair-setter.aspx#sparePartsAndAccessories> (last visited on June 21, 2019).

40. No warning or instruction in the Hot Roller Use and Care Guide exists to warn a consumer that the plastic end caps may detach from the rollers; that they must use caution when using the rollers if the plastic end caps are loose and/or detached; and/or that the consumer should avoid contact with the plastic end caps when they detach and also the metallic portion of the roller in the event the plastic end caps detach from the roller.

**B. The Defective Hot Rollers Caused Plaintiff's Economic Damages**

41. Plaintiff Bruce Winkworth purchased the Hot Rollers from Wal-Mart at the



Punxsutawney, Pennsylvania location in February 2018.

42. In May 2018, while curling her hair, the Cool Touch End of Plaintiff Botelho's Hot Roller detached and went down Plaintiff's shirt causing a painful burn.

**C. Defendant Has Knowledge of the Defect and/or Recklessly Disregarded the Defect**

43. Shortly after the Hot Rollers burned Plaintiff, on May 17, 2018, Plaintiff Botelho contacted the customer service for Defendant Spectrum Brands to complain about the defective Hot Roller and about the injury she had sustained as a result of the Defect.

44. In response, on May 18, 2018, Ann from Remington Customer Support stated that "[u]sually what we find when rollers lose their caps is that they have been overheated. The heating time for this setter is 3 minutes." *See* Ex. B. This statement was false, as the heating time set forth in the instructions is 10 minutes according to the Use & Care Guide for the Hot Rollers. *Compare* Ex. C at "Product Features" with Ex. B at p. 3.

45. Defendant Spectrum Brands has possessed knowledge of the Defect for years. Numerous complaints about the Defect have been made public, including on the Remington website, a brand within the family of Defendant Spectrum Brands. For example, Ellen<sup>45</sup> complained approximately two (2) years ago that "[t]he heat continually increases to the point that you can't touch the rollers unless you act quickly. The bottoms of the rollers started falling off after six months. The bottoms have also melted because the unit continually increases its heat. I would not recommend this product....I quit using it because of the poor quality." <http://www.remingtonproducts.com/products/womens/hair-care/hair-setters/h5600g-20-piece-ionic-protective-hair-setter.aspx> (last visited on May 30, 2019). In addition, Sunshine<sup>2</sup> complained to Defendant on its website that "[t]he bottom of the rollers frequently melt making it hard to get them in and out of the holes." *See id.* (last visited on May 22, 2019). Jersey

complained on the Remington website “My mom bought me a set of rollers (not sure who made them) and the rollers were one piece. These are awful! [sic] The caps fall off, the tip coatings are coming off the clips, just disappointed!!” *Id.* MichaelaJ complained on the Remington website that “the ends burn the tips of my fingers,” and KWOO also complained that “Ends are blistering hot.” *Id.* DorlLas complained on the Remington website: “[w]ithout a doubt, this was the worst set of hot rollers I’ve ever owned. They fall out of my hair almost as quickly as I can put them in. And...the ends [] of the rollers do not stay cool!” *Id.* Learningtoquilt complained on the Remington website: “the ends get very hot and burns my fingers [sic] as I am putting them in.” *Id.*

46. Numerous consumers also complained about the Hot Roller on Wal-Mart’s website. For example, curliegurly complained on April 22, 2016 that “While using the ends get too hot that my fingertips feel numb. *The curls are lovely but not without pain....*” See <https://www.walmart.com/ip/Remington-Ionic-Conditioning-Hair-Setter-Purple-H5600H/35092471> (last visited on May 20, 2019) (emphasis added). DisappointedCustomer complained on December 15, 2016: “I used this maybe 10-15 times before the plastic ends of the rollers started to fall off. This leaves the burning hot flock covered metal falling out of my hands. (i.e. can burn kids pets rugs etc.) I can try to burn my fingers to make the very hot roller grip my hair but I should not have to burn myself because they made a c r a p p y [sic] item.” *Id.* On August 22, 2014, PKTurtle complained on the Wal-Mart website “my fingers were completely numb and burned to a crisp afterward. They get so hot on the ends that you burn yourself so bad trying to curl your hair, it’s so bad I’ve avoided using it and even though I’ve had it for almost 2 years, I’ve only used it 3 times.” *Id.* MotherOfaBride complained on the Wal-Mart website: “The problem is after a few years the curlers fall apart. The plastic ends come off

and if you still use them, they burn your fingers if you aren't careful. The old unit [that is the same model] I had still was working and heating, but *nearly every curler lost it's [sic] plastic ends.*" *Id.* (emphasis added). On January 22, 2015, tophsgirl also succinctly acknowledged the Defect on Wal-Mart's website: "[t]he set heats up rapidly but do not expect 'cool touch ends'. If left to heat too long the rollers are almost too hot to handle. You will also want to protect exposed skin from the heated end of the rollers." *Id.* Finally, lisamiami, on September 15, 2016, advised to "Use Mittens!" when using the Hot Rollers: "Can get REALLY hot if heated over up 10 minutes. *You will need something thicker than a heat glove. I used mittens* and was very comfortable :-)." *Id.* (emphasis added).

47. Complaints about the Hot Rollers were also made on Amazon.com's website that sells the Hot Rollers. For example, according to "Katie" on September 19, 2017, reviewed the Hot Rollers on Amazon and complained that "[t]he end caps fall off and they will burn your fingers!" and that "after only three months, the end caps are falling off. I've burned my fingers many times." [https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_dp\\_d\\_hist\\_1?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_dp_d_hist_1?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews#reviews-filter-bar). (last visited on May 22, 2019). Consumer, "Renaissance Girl," on June 17, 2018 complained to Amazon that "I couldn't find a way to use these without burning my fingers. The super hot interior metal is exposed on side of the roller, and even the "cool touch" ends get hot enough to burn." [https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_ar\\_p\\_d\\_paging\\_btm\\_next\\_2?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=2#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_ar_p_d_paging_btm_next_2?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=2#reviews-filter-bar). Dakota commented on Amazon's website that "Burned my fingers" on November 17, 2018, and Robudy commented

“Product burned my fingers” and “Curlers get so hot they burned three of my fingers. I notified Remington because the Amazon site said they could not be returned. No reason was given.

[https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_next\\_13?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=13#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_getr_d_paging_btm_next_13?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=13#reviews-filter-bar) &

[https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_next\\_6?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=6#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_getr_d_paging_btm_next_6?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=6#reviews-filter-bar), respectively. On May 11, 2016,

Elizabeth R. complained to Amazon: “BEWARE! My fingers are burned. . . . I just threw my money away.” [https://www.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_ar\\_p\\_d\\_viewopt\\_kywd?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=1&filterByKeyword=%22threw+my+money%22#reviews-filter-bar](https://www.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_ar_p_d_viewopt_kywd?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=1&filterByKeyword=%22threw+my+money%22#reviews-filter-bar) (last visited June 21, 2019). Softball17Mom, on March 27, 2017, complained that

“after a year or so of use, the tops of the curlers come loose and fall off.”

[https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_next\\_18?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=18#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_getr_d_paging_btm_next_18?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=18#reviews-filter-bar). customer “w.w.”

complained on Amazon on June 28, 2018 that “I have had them for only about 18 months, and the ends are coming off the large rollers – I only have one left, and the medium ones are starting to come loose as well. It makes for a really bad experience when they fall apart as you roll them” and “they slip off when they are hot.” Consumer “Andrew Knysh” complained on Amazon on February 24, 2019 that “Curlers burn hands!” and “We have tried to use these curlers several times and every time our hands get burned and we have to stop. We tried to return them

within the first week but were denied by Amazon, even though they were a Prime purchase. No reason for the return refusal was given. Looks like they will be tossed out! Waste of time and \$\$\$!". [https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_next\\_5?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=5#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_getr_d_paging_btm_next_5?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=5#reviews-filter-bar).

*Id.* Finally, consumer Laurel complained on Amazon on February 17, 2018 that "There are about five culers [*sic*] that melted after only having a few weeks and now they don't fit in the box. A couple of the ends came off so they get to hot to put in. Not well made."

[https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_next\\_8?ie=UTF8&filterByStar=one\\_star&reviewerType=all\\_reviews&pageNumber=8#reviews-filter-bar](https://smile.amazon.com/Remington-Ionic-Conditioning-Hair-Setter/product-reviews/B00J8IXT58/ref=cm_cr_getr_d_paging_btm_next_8?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews&pageNumber=8#reviews-filter-bar). There are many additional complaints from verified purchasers on Amazon that were not included herein.

48. Plaintiffs are informed and believe that Defendant acknowledged internally that the Defect caused injuries and burns to consumers.

49. Despite having repeated notice of the Defect, its effects, and consumers' reasonable expectation of (i) contacting the plastic end cap that Defendant Spectrum Brands promotes as "Cool Touch Ends" without a risk of being burned; and (ii) the plastic end caps not detaching from the roller itself thereby exposing consumers to the hazardous portion of the roller, Defendant has engaged and continues to engage in the following wrongful course of conduct, where it:

- a. Markets, sells and warrants the Hot Rollers that possess the Defect;
- b. Failed to disclose at the time of purchase that the Hot Rollers have a Defect that is unreasonably dangerous and renders the product unfit to use when curling hair with a bare hand – its intended and ordinary purpose;

- c. Continues to represent on packaging that the Hot Rollers are of a quality and fitness that they are not;
- d. Continues to represent expressly or by necessary implication that the Hot Rollers are dependable and fit to use in consumers' households when they know these statements are false because the Hot Rollers contains a Defect;
- e. Continues to manufacture, market, advertise, distribute, and sell the Hot Rollers when it knows that the product is defective and unsafe;
- f. Fails to disclose the risk that to a substantial certainty, the Hot Rollers will cause burns or other injuries when used as instructed by its Use and Care Guide;
- g. Fails to disclose to consumers the Defect; and
- h. Fails to implement a recall or repair program to adequately announce to Plaintiffs and Class Members the existence of the Defect, and provide, without charge, a solution to remedy and correct the Defect.

50. Had Plaintiffs known of the Defect and the substantial risk of burns resulting from use of the Hot Rollers, Plaintiffs would not have purchased and/or used the Hot Rollers.

**D. Breach of Express and Implied Warranties**

51. The Use and Care Guide for the Hot Rollers contains the "Limited Two-Year Warranty" on the final page. *See* Ex. C. The product is "Made in China" according to the Use and Care Guide, which is sealed in the box at the point of manufacture in China; imported into the United States; distributed by Defendant; and purchased and operated by Plaintiffs and Class Members without the terms of this document ever being disclosed until the box is opened after purchase.

52. The "Limited Two-Year Warranty that Defendant Spectrum Brands provides guarantees:

Spectrum Brands, Inc. warrants this product against any defects that are due to faulty material or workmanship for a two-year period from the original date of consumer purchase. This warranty does not include damage to the product resulting from accident or misuse. If the product should become defective within the warranty period, we will replace it free of charge.

...

This warranty does not cover products damaged by the following:

- Accident, misuse, abuse or alteration of the product
- Servicing by unauthorized persons
- Use with unauthorized accessories
- Connecting it to incorrect current and voltage.
- Wrapping cord around appliance causing premature wear and breakage
- Any other conditions beyond our control

No responsibility, obligation, or liability is assumed for the installation or maintenance of this product.

**SPECTRUM BRANDS, INC [sic] SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THIS PRODUCT. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY, ARE LIMITED IN DURATION TO TWO YEARS FROM DATE OF ORIGINAL PURCHASE.**

*See Ex. C.*

53. The Hot Rollers are not free from defects in material and workmanship.

54. The language of the disclaimer and limitation of remedies, including the unlawful term purporting to reduce the statute of limitations from four (4) years to two (2) years in violation of 13 Pa. Con. Stat. § 2725(a), is (and was) not available to buyers prior to purchase, including Plaintiffs. There is no disclaimer of any implied warranty visible at the point of sale, as it appears on the last page of the Use and Care Guide sealed within the Hot Roller box. *See Ex. C.*

55. The language of the disclaimer and limitation of remedies, reproduced above, is not clear or conspicuous.

56. The language of the disclaimer and limitation of remedies, reproduced above, is not separately acknowledged by any Plaintiff or Class Member by their signature, and there was no agreement between Defendant and Plaintiffs to reduce the statutory period from four years to two years.

57. No warranty information, or any disclaimer or limitation of any warranty, was printed or displayed on the exterior of the boxes containing the Hot Rollers.

58. The Hot Rollers failed to conform to the express warranty and Defendant Spectrum Brands breached the express warranty by not repairing or replacing the Hot Rollers or the Defect and defective parts therein.

59. The Hot Rollers are not merchantable as consumer goods sold in the United States, including Pennsylvania.

60. Plaintiffs are informed, believe, and thereon allege that the Defect exists in every Hot Roller when it left Defendant's control.

61. To the extent there is any notice requirement imposed by law, Plaintiff Botelho gave notice to Defendant of the Defect and said it should be removed from the market before filing this lawsuit and/or was excused because Defendant had actual knowledge of the Defect that caused the Hot Rollers to create a high risk of burn and injury. Notice to Defendant has been, is, and will be futile, in that Defendant has refused to modify or remanufacture the Hot Rollers to eliminate the dangerous Defect. This is true after the numerous complaints about the Defect, as set forth above.

62. As part of the sale of each Hot Roller, Defendant warranted, marketed, and



advertised that the defective Hot Rollers were of merchantable quality and fit for the ordinary purpose for which they are used.

63. Defendant fell short of its warranty obligations because it failed to remedy and eliminate the Defect in the Hot Roller that causes burns or creates a substantial risk of burns.

64. Despite Defendant's knowledge that its Hot Rollers are defective and Plaintiff Botelho's pre-litigation request that the Hot Rollers be taken off the market, Defendant continues to sell the Hot Rollers with the Defect present; has not modified the Hot Rollers to eliminate the Defect; has not offered to replace all of the defective Hot Rollers; has not replaced or repaired the parts and/or material that cause the Defect; and has not refunded all or part of the monies for the Hot Rollers.

#### V. CLASS ACTION ALLEGATIONS

65. Plaintiffs bring all claims as class claims pursuant to Pa. R. Civ. P. 1701, *et seq.* The requirements of Pa. R. Civ. P. 1702, 1708(a), 1708(b), and 1709 are met with respect to the Classes defined below.

66. The Pa. R. Civ. P. 1708(b) Injunctive/Declaratory Relief Class consists of:

All persons in the United States who own a Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H purchased during the four (4) years preceding the filing of this action. Excluded from the Injunctive/Declaratory Relief Class are officers, representatives, or agents of Defendant, as well as the judge presiding over this case and his or her immediate family members. In addition, notwithstanding the foregoing, all claims for personal injury and wrongful death are excluded from the Injunctive/Declaratory Relief Class.

67. The Pa. R. Civ. P. 1708(a) Damages Class consists of:

All persons in the Commonwealth of Pennsylvania who purchased a Remington® Ionic Conditioning Hair Setter, Model(s) H5600/H5600H purchased during the four (4) years preceding the filing of this action.

Excluded from the Damages Class are officers, representatives, or agents of Defendant, as well as the judge presiding over this case and his or her immediate family members. In addition, notwithstanding the foregoing, all claims for personal injury and wrongful death are excluded from the Damages Class.

Numerosity

68. Although the exact number of Class Members is uncertain, and can only be ascertained through appropriate discovery, the Classes are so numerous that the joinder of all members is impracticable. Pa. R. Civ. P. 1702(1). The Classes are composed of an easily ascertainable, self-identifying set of persons who purchased the Hot Rollers. Each of the Classes includes thousands of consumers who purchased the Hot Rollers.

Commonality

69. There are numerous questions of law and fact common to Plaintiffs and the Classes (*see* Pa. R. Civ. P. 1702(2)), including the following:

- a. Whether Defendant engaged in the conduct as alleged herein;
- b. Whether the Hot Rollers at issue in this lawsuit are defective;
- c. Whether Defendant knew or should have known of the inherent Defect(s) in the Hot Rollers;
- d. Whether Defendant represented that the Hot Rollers were of a particular standard, quality, or grade when they were not and/or when Defendant knew or should have known that they were of another standard, quality, or grade;
- e. Whether Defendant fraudulently concealed from and/or failed to disclose to Plaintiffs and the Classes the inherent problems with the Hot Rollers;
- f. Whether Defendant had a duty to Plaintiffs and the Classes to disclose the inherent Defects in the Hot Rollers;
- g. Whether the facts Defendant misrepresented, concealed, or failed to disclose were material;
- h. Whether as a result of Defendant's concealment of and/or failure to disclose material facts, Plaintiffs and the Classes acted to their detriment

by purchasing the Hot Rollers;

- i. Whether Defendant should be declared financially responsible for notifying all Class Members of the problems with the Hot Rollers, and whether the Court should declare the existence of defects in the Hot Rollers;
- j. Whether the Hot Rollers are covered by express or implied warranties;
- k. Whether the purported limited remedies in the Limited Two-Year Warranty fail of their essential purpose;
- l. Whether Defendant has acted or refused to act on grounds generally applicable to the Injunctive/Declaratory Relief Class and/or the Damages Class;
- m. Whether Plaintiffs and the Damages Classes are entitled to damages, and the amount of such damages; and
- n. Whether Defendant Spectrum Brands' warranty documents are subject to reformation, or declaratory and/or equitable relief.

#### Typicality

70. Plaintiffs' claims are typical of the claims of the Classes in that Plaintiffs, like all Class Members, purchased and/or own a defective Hot Roller set, and have been damaged by Defendant's uniform misconduct. Pa. R. Civ. P. 1702(3).

71. Furthermore, the factual basis of Defendant's misconduct is common to all Class Members and represents a common thread of misconduct resulting in injury to all members of the Classes.

#### Fair and Adequate Representation

72. The Plaintiffs will fairly and adequately assert and protect the interests of the Classes as required by Pa. R. Civ. P. 1709. The undersigned attorneys will vigorously and adequately represent the interests of the Classes. Pa. R. Civ. P. 1709(1). The Plaintiffs have no conflict of interest in maintaining this Class Action. Pa. R. Civ. P. 1709(2). The Plaintiffs, by

and through their counsel, have adequate resources to assure that the interests of the Classes will not be harmed. Pa. R. Civ. P. 1709(3).

The Prerequisites of Pa. R. Civ. 1708(b) are Satisfied

73. The prerequisites to maintaining a class action for injunctive, declaratory, and equitable relief pursuant to Pa. R. Civ. P. 1708(b) are satisfied because Defendant has acted or refused to act on grounds generally applicable to the Class, such that actual controversies exist, including Defendant's failure to acknowledge a defect or defects in the Hot Rollers, and Defendant's failure to provide remedies to consumers, thereby making appropriate injunctive, declaratory, and equitable relief with respect to the Injunctive/Declaratory Relief Class as a whole.

74. Defendant has injected its defective Hot Rollers into the stream of commerce, which are now owned by Plaintiff Botelho and the members of the Injunctive/Declaratory Relief Class. The issues surrounding the existence of a defect and its impact on the governing warranties can be resolved in this action.

The Prerequisites of Pa. R. Civ. P. 1708(a) and 1709 are Satisfied

75. The questions of law and fact common to Class Members predominate over any questions which may affect only individual members. Pa. R. Civ. P. 1708(a)(1).

76. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation. Moreover, absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law.

77. The prosecution of separate actions by the individual Class Members would

create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant. In contrast, a class action presents far fewer management difficulties, conserves judicial as well as the parties' resources, and protects the rights of each Class Member.

78. A class action will provide a fair and efficient method for adjudication of the controversy set forth herein. In particular with respect to Plaintiffs' claims for monetary recovery: (1) common questions of law and fact will predominate over particular questions affecting only individual members; (2) management of this Action as a class action will not create any special difficulties, whereas the filing of multiple individual claims would dramatically and needlessly overburden the court system; (3) the prosecution of separate actions by individual class members would create a risk of either inconsistent adjudications or the disposition or impairment of the interest of others similarly situated; (4) Plaintiffs are unaware of any similar pending class action litigation against Defendant raising the claims to be adjudicated in this action; (5) this forum is appropriate and well-equipped to handle claims of the entire class; and (6) the amounts likely to be recovered by individual class members are adequate to justify the expense and effort of administering the claims as a class action.

## **VI. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Breach of Implied Warranty of Merchantability**

79. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

80. Defendant is a merchant who distributed the Hot Rollers for purchase and use by Plaintiffs and members of the Classes.

81. Defendant impliedly warranted to Plaintiffs and members of the Classes that the

Hot Rollers were free of defects and were merchantable and fit for the ordinary purpose for which such goods are used.

82. The Hot Rollers are consumer goods and the implied warranty of merchantability arises by operation of state law for Plaintiffs and every Class Member.

83. As alleged herein, Defendant breached the implied warranty of merchantability because the Hot Rollers uniformly possess the unsafe Defect or defects. The Hot Rollers are therefore defective, unmerchantable, and unfit for the ordinary, intended purpose at the time of sale.

84. After Plaintiff Botelho was made aware of the Defect, she gave reasonable and adequate notice to Defendant that the Hot Rollers were defective, unmerchantable, and unfit for their intended use or purpose. Plaintiff Botelho told Defendant that they should be removed from the market. Defendant has failed to cure.

85. The statute of limitations is four years as established by state law.

86. The language of the disclaimer and limitation of remedies of the Limited Two-Year Warranty, reproduced above, is not available to buyers prior to purchase. There is no disclaimer of any implied warranty visible at the point of sale, as it only appears on the last page of the Use and Care Guide sealed within the Hot Roller box. *See Ex. C.*

87. The language of the disclaimer and limitation of remedies, reproduced above, is not conspicuous.

88. The language of the disclaimer and limitation of remedies, reproduced above, is not separately acknowledged by any Plaintiff or Class Member by their signature.

89. No warranty information, or any disclaimer or limitation of any warranty, was printed or displayed on the exterior of the boxes containing the Hot Rollers.

90. Plaintiffs did not receive or otherwise have the opportunity to review, at or before the time of sale, the written warranty containing the purported exclusions and limitations of remedies. Accordingly, such exclusions and limitations of remedies are unconscionable and unenforceable, and Plaintiffs are entitled to all remedies available under Article 2 of the Uniform Commercial Code.

91. Defendant's warranty disclaimers, exclusions, and limitations were unconscionable and unenforceable because Defendant disclaimed a defect known but not disclosed to consumers at or before the time of purchase.

92. Any contractual language contained in Defendant's written warranty attempting to limit remedies is unconscionable, fails to conform to the requirements for limiting remedies under applicable law, causes the warranty to fail of its essential purpose, and is unconscionable, unenforceable, and/or void.

93. Neither Plaintiffs, nor any class member, could assent to any portion of the warranty disclaimer or limitations.

94. As a direct and proximate result of the breach of implied warranty, Plaintiffs and Class Members have been injured in an amount to be proven at trial.

95. Additionally, or in the alternative, Plaintiffs and the Injunctive/Declaratory Relief Class seek declaratory relief relating to the Defect, the remediation of the Defect, and its coverage under the available implied warranties.

**SECOND CAUSE OF ACTION**  
**Breach of Express Warranty**

96. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

97. The "Limited Two-Year Warranty" that Defendant Spectrum Brands provides

guarantees:

Spectrum Brands, Inc. warrants this product against any defects that are due to faulty material or workmanship for a two-year period from the original date of consumer purchase. This warranty does not include damage to the product resulting from accident or misuse. If the product should become defective within the warranty period, we will replace it free of charge.

...

This warranty does not cover products damaged by the following:

- Accident, misuse, abuse or alteration of the product
- Servicing by unauthorized persons
- Use with unauthorized accessories
- Connecting it to incorrect current and voltage
- Wrapping cord around appliance causing premature wear and breakage
- Any other conditions beyond our control

No responsibility, obligation, or liability is assumed for the installation or maintenance of this product.

**SPECTRUM BRANDS, INC [sic] SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THIS PRODUCT. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY, ARE LIMITED IN DURATION TO TWO YEARS FROM DATE OF ORIGINAL PURCHASE.**

See Ex. C.

98. The Hot Rollers are not free from defects in material and workmanship.

99. Defendant Spectrum Brands expressly represented and warranted to Plaintiffs and Class Members by and through oral and written statements, descriptions, and affirmations of fact in product advertisements, marketing materials, its web site, and other written materials intended for the general public that the Hot Rollers were safe and fit for its proper and intended use for up to two (2) years, and that the Hot Rollers contained no defects in material or workmanship.

100. Defendant Spectrum Brands was therefore obligated to provide Hot Rollers free



of the Defect or defects.

101. The Limited Two-Year Warranty's express terms was breached by Defendant Spectrum Brands with respect to Plaintiffs and all Class Members who purchased a Hot Roller that was of an inferior quality, and contained the Defect which created a high likelihood of injury to consumers during the two (2) year period of limited warranty coverage.

102. Defendant Spectrum Brands expressly breached the express terms of its Limited Two-Year Warranty by failing to assemble and manufacture the Hot Rollers in such a way that would prevent the plastic end caps from detaching and burning consumers.

103. Defendant Spectrum Brands understood that the nature of the warranty and quality of its design and workmanship were material to Plaintiffs and Class Members.

104. This Limited Two-Year Warranty related to and covered qualities and features of the Hot Rollers, including the material selection of the defective plastic end caps, which were unavoidably material to Plaintiffs and Class Members.

105. Privity is not a required element for breach of express warranty; and to the extent it is applicable, if at all, Defendant Spectrum Brands is the only warrantor and servicer of the warranty terms. Plaintiffs and Class Members are the intended third-party beneficiaries of the Limited Warranty, and Defendant is equitably estopped from asserting privity to defend Plaintiffs' breach of express warranty claim.

106. At the time it made these express warranties, Defendant Spectrum Brands knew the purposes for which the Hot Rollers were intended to be used and warranted the Hot Rollers as safe and fit for such purposes.

107. At the time it made these express warranties, Defendant Spectrum Brands knew that its Hot Rollers did not conform to its express representations, because they contained the

Defect or defects in their design, material, and workmanship.

108. Plaintiffs allege Defendant Spectrum Brands had within its means the knowledge and ability to avoid the Defect in its Hot Rollers, and to provide a product that did not pose an unreasonable risk of injury to consumers when used as directed.

109. Defendant Spectrum Brands is aware that the Defect will continue to place purchasers of its Hot Rollers at risk for both injury and product failure even after the stated warranty period has lapsed. Such conduct by Defendant is patently unconscionable, rendering the warranty's durational limitations unenforceable, since Defendant was uniquely knowledgeable of the Hot Rollers' design defect or defects prior to sale.

110. The express warranties, affirmations, promises, assurances, description, and displays provided by Defendant Spectrum Brands were the basis of the bargain for the purchase or acquisition of the Hot Rollers purchased and/or owned by Plaintiffs and the Class Members.

111. The Hot Rollers purchased and/or owned by Plaintiffs and the Class Members did not conform to Defendant's promises, descriptions, or affirmations of fact because they are defective in material and/or workmanship.

112. Defendant Spectrum Brands breached its express warranties to Plaintiffs and Class Members because the Hot Rollers contain a defect which is substantially certain to manifest itself during the life of the Hot Rollers and harm consumers.

113. Furthermore, the Limited Warranty fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the Class Members whole, and because Defendant Spectrum Brands has failed and/or refused to adequately provide the promised remedies within a reasonable time.

114. Accordingly, Plaintiffs' recovery is not restricted to the Limited Warranty, and

Plaintiffs seek all remedies allowed by law.

115. Defendant Spectrum Brands has been placed on notice of its breach of express warranty by Plaintiffs.

116. Any contractual language contained in Defendant Spectrum Brands' express warranty that attempts to limit or exclude remedies is unconscionable; fails to conform to the requirements for limiting remedies under applicable law; causes the warranty to fail of its essential purpose; and is unconscionable, unenforceable, and/or void.

117. Due to Defendant Spectrum Brands' failures and omissions, Plaintiffs did not receive or otherwise have the opportunity to review at, or before, the time of sale the written warranty containing the purported exclusions and limitations of remedies on which Defendant seems to rely. Accordingly, such exclusions and limitations of remedies are unconscionable and unenforceable, and Plaintiffs are entitled to all remedies available under Article 2 of the Uniform Commercial Code.

118. As a direct and proximate result of Defendant Spectrum Brands' breach, Plaintiffs and the Classes are entitled to compensatory, direct, incidental, and consequential damages, including full refunds or the replacement of the Hot Rollers with a non-defective product at least the quality and grade marketed and promised, as well as the shipment at Defendant Spectrum Brands' expense.

119. Additionally, or in the alternative, Plaintiffs and the Injunctive/Declaratory Relief Class seek declaratory relief relating to the Defect, remediation of the Defect, and its coverage under the available express and implied warranties.

120. Plaintiffs and the Classes are entitled to all remedies under law.

**THIRD CAUSE OF ACTION**

**Violation of Magnuson-Moss Consumer Products Warranties Act,  
15 U.S.C. § 2301, *et seq.* ("MMWA")**

121. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

122. The MMWA provides a private right of action by purchasers of consumer products against manufacturers or retailers who, *inter alia*, fail to comply with the terms of an implied or written warranty. 15 U.S.C. § 2310(d)(1). As alleged above, Defendant has failed to comply with its express and implied warranties with regard to the Hot Rollers.

123. The Hot Rollers are consumer products, as that term is defined in 15 U.S.C. § 2301(a).

124. Defendant is a warrantor, as that term is defined in 15 U.S.C. § 2301(5).

125. Plaintiffs and each member of the Classes are consumers, as that term is defined in 15 U.S.C. § 2301(3).

126. The MMWA provides a cause of action for breach of warranty or other violations of the Act. 15 U.S.C. § 2310(d)(1). Defendant has breached its express warranties as alleged herein. Defendant has also breached the implied warranty of merchantability, as alleged herein, which it cannot disclaim under the MMWA, 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs have suffered damages as a result of Defendant's breach of its express and implied warranties as set forth herein. 15 U.S.C. § 2310(d)(1)-(2).

127. Defendant was provided notice of the breach of warranty claims raised by Plaintiffs, and Defendant was afforded a reasonable opportunity to cure. Until Plaintiffs' representative capacity is determined, notice and opportunity to cure through Plaintiffs, and on behalf of the Class, can be provided under 15 U.S.C. § 2310(e).

128. Due to failures and omissions on Defendant's part, Plaintiffs did not receive or

otherwise have the opportunity to review at, or before, the time of sale the written warranty containing the purported exclusions and limitations of remedies. Accordingly, such exclusions and limitations of remedies are unconscionable and unenforceable, and Plaintiffs are entitled to all remedies available under MMWA and Article 2 of the Uniform Commercial Code.

129. Defendant's acts and omissions in violation of the MMWA are "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce," and they are unlawful. 15 U.S.C. § 2310(b); 15 U.S.C. § 45(a)(1).

130. The limitations placed on the implied warranty of merchantability in the written warranty for the Hot Rollers are invalid, void, and unenforceable per Magnuson-Moss, 15 U.S.C. § 2308(a)(1).

131. Plaintiffs and the Class Members have suffered, and are entitled to recover, damages as a result of Defendant's breaches of warranty and violations of the MMWA.

132. Additionally, or in the alternative, the MMWA provides for "other legal and equitable" relief where there has been a breach of warranty or failure to abide by other obligations imposed by the MMWA. 15 U.S.C. § 2310(d)(1).

133. Plaintiffs and the putative Injunctive/Declaratory Relief Class seek declaratory relief relating to the existence of the Defect alleged herein, the remediation of that Defect and its coverage under available express and implied warranties. In addition, Plaintiffs request that Defendant be enjoined from acting unlawfully as alleged herein, including with respect to practices aimed at discouraging customers who purchased defective Hot Rollers from seeking the full panoply of remedies available to them.

134. Plaintiffs also seek an award of costs and expenses, including attorneys' fees, under the MMWA to prevailing consumers in connection with the commencement and

prosecution of this action. 15 U.S.C. § 2310(d)(2). Plaintiffs and the prospective Classes intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

**FOURTH CAUSE OF ACTION**  
**Negligence**

135. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

136. Plaintiffs assert this claim on behalf of themselves and on behalf of all members of the putative Damages Class.

137. Defendant sold and/or distributed defective Hot Rollers to Plaintiffs and the Damages Class.

138. At all times relevant to this action, Defendant had a duty to exercise reasonable care over the Hot Rollers it sold and/or distributed, including a duty to ensure that its Hot Rollers did not pose a significantly increased or unreasonable risk of injury to consumers.

139. Notwithstanding, Defendant breached this duty by selling and/or distributing the Hot Rollers that present a risk of, and clearly identified, risk of serious personal injury to Plaintiffs and Damages Class Members expressly recognized by the objective ASTM Standard and UL 859 standard governing the Hot Rollers. The Defect causes the Hot Rollers to exceed these temperatures of these Standards under normal operating conditions.

140. Defendant knew or should have known that the Hot Rollers had a propensity to cause serious injuries as set forth herein.

141. Defendant knew or should have known that consumers who purchased the Hot Rollers, including Plaintiffs and Damages Class Members, could foreseeably suffer injuries as to themselves as a result of Defendant's failure to exercise reasonable care as described above.

142. Defendant breached its duty of reasonable care to Plaintiffs and Damages Class Members by failing to exercise due care under the circumstances.

143. As a direct and proximate result of Defendant's acts and omissions, including the failure to exercise reasonable care in the design, manufacture, sale and distribution of its Hot Rollers, Plaintiffs and the Damages Class Members suffered damage.

**FIFTH CAUSE OF ACTION**  
**Negligent Failure to Warn**

144. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

145. Plaintiffs assert this claim on behalf of themselves and all members of the putative Damages Class.

146. Defendant sold and/or distributed the defective Hot Rollers to Plaintiffs and the Classes, and Defendant prepared all warnings for the Hot Rollers.

147. Defendant failed to provide any warning of the danger or instruct Plaintiffs and the Classes on the safe use of the Hot Rollers, rendering the Hot Rollers unreasonably dangerous because of the Defect.

148. Defendant knew or reasonably should have known that the Hot Rollers were defective and dangerous and/or were likely to be dangerous when used in a reasonably foreseeable manner.

149. Defendant knew or reasonably should have known that Plaintiffs and the Classes could not detect or realize the Defect, and that it posed a danger to Plaintiffs and other consumers.

150. A reasonable manufacturer, distributor, assembler, or seller under the same or similar circumstances would have warned of the danger or instructed on the safe use of the

product, including but not limited to, providing detailed instructions for safe use of the Hot Rollers together with warnings regarding the risk of harm from contact with the Hot Rollers.

151. Defendant had a duty to Plaintiffs and the Damages Class to use reasonable care to warn consumers about the risks and dangers regarding the use of the Hot Rollers, or facts that made said Hot Rollers likely to be dangerous, and of which Defendant knew or reasonably should have known.

152. Defendant breached this duty.

153. As a direct and proximate result of Defendant's breach, Plaintiffs and other members of the Damages Class have been injured.

154. Defendant's failure to warn or instruct Plaintiffs and the Damages Class was a substantial factor in causing their harm.

155. As a direct, proximate, and foreseeable result of Defendant's negligence, Plaintiffs and putative Damages Class Members have been damaged in the aggregate, in an amount to be determined at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all others similarly situated, request a judgment against Defendant, as follows:

- A. For an order certifying the Classes, pursuant to Pennsylvania Rules of Civil Procedure 1708(a) and 1708(b), appointing Plaintiffs as representative of the Classes, and designating the undersigned as Class Counsel;
- B. For compensatory damages sustained by Plaintiffs and all Classes;
- C. For equitable and injunctive relief for the Injunctive/Declaratory Relief Class;
- D. For payment of costs of suit herein incurred;
- E. For both pre-judgment and post-judgment interest on any amounts awarded;



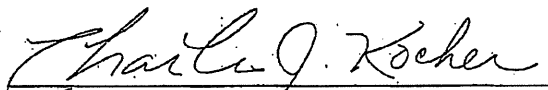
- F. For punitive damages;
- G. For payment of reasonable attorneys' fees, expert fees, and expenses, as may be allowable under applicable law; and
- H. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

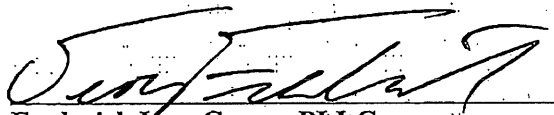
Plaintiffs, both individually and on behalf of the Classes, demand a trial by jury as to all issues so triable.

DATE: July 1, 2019

BY:



Patrick Howard, Esq. (PA ID #88572)  
Charles J. Kocher, Esq. (PA ID #93141)  
**SALTZ, MONGELUZZI, BARRETT  
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**Frederick Law Group, PLLC**  
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Beth A. Frederick, Esq. (PA ID# 308628)  
836 Philadelphia Street  
Indiana, PA 15701  
Email: TMF@FrederickLG.com  
Email: BAF@FrederickLG.com

**Attorneys for Plaintiffs and Proposed Classes**

**VERIFICATION**

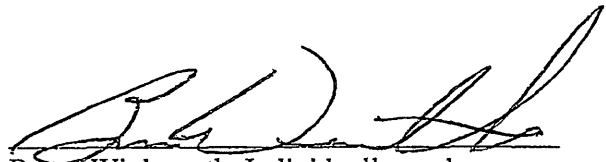
I, Marcia Botelho, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, reading "Marcia Botelho", written over a horizontal line.

Marcia Botelho, Individually, and on  
behalf of all others similarly situated

**VERIFICATION**

I, Bruce Winkworth, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Bruce Winkworth', is written over a horizontal line.

Bruce Winkworth, Individually, and on  
behalf of all others similarly situated

IN THE COURT OF COMMON PLEAS  
JEFFERSON COUNTY, PENNSYLVANIA

BRUCE WINKWORTH and  
MARCIA BOTELHO,  
*Individually, on behalf of themselves  
and on behalf of all others  
similarly situated,*

Plaintiffs,

v.

SPECTRUM BRANDS, INC.,

Defendant.

No.

CIVIL ACTION – LAW

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

By: 

Troy M. Frederick, Esquire  
Sup. Ct. ID 207461

RECEIVED

2019 JUL 12 AM 8:54

DAUPHIN COUNTY  
SHERIFF'S OFFICE  
HARRISBURG, PA 17101

## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**

Bruce Winkworth and Marcia Botelho, Individually on behalf of themselves and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Troy M. Frederick Esquire Patrick Howard Esquire  
Frederick Law Group, PLLC Saltz, Mongeluzzi, Barrett & Bendesky, P.C.  
836 Philadelphia Street 120 Gibraltar Road, Suite 218  
Indiana, PA 15701 Horsham, PA 19044

**DEFENDANTS**

Spectrum Brands, Inc.

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

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

Attorneys (If Known)  
Michael S Nelson  
K&L Gates, LLP  
210 Sixth Avenue  
Pittsburgh, PA 15222

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

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

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

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

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

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

Brief description of cause:  
Breach of Implied Warranty of Merchantability

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_

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

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

08/14/2019

SIGNATURE OF ATTORNEY OF RECORD

/S/Michael S Nelson

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

Print

Save As...

Reset

JS 44A REVISED June, 2009  
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the ( ☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1. ☐ This case is related to Number \_\_\_\_\_. Short Caption \_\_\_\_\_.
2. ☒ This case is not related to a pending or terminated case.

**DEFINITIONS OF RELATED CASES:**

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit  
**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

**I. CIVIL CATEGORY** (Select the applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☐ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☒ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

/S/Michael S Nelson

Date: 08/14/2019

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH ÔŠPRU MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Suit Alleges Remington 'Hot Rollers' Can Heat Up to 'Unreasonably Unsafe' Temperatures, Pose Burn Risk](#)

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