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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13) Case No. 1:16-CV-00331-DAD-SAB
14 EDWINA PINON, individually and on)
15 behalf of all persons similarly situated,) [Assigned for all purposes to Hon.
16) Dale A. Drozd]
17 Plaintiff,)
18) **PLAINTIFF’S FIRST AMENDED**
19 -vs-) **CLASS ACTION COMPLAINT**
20) **FOR BREACH OF WARRANTY,**
21 TRISTAR PRODUCTS, INC., DOES) **AND UNFAIR BUSINESS**
22 1-10, inclusive,) **PRACTICES**
23)
24 Defendant(s).)
25)
26)
27)
28)

29 **INTRODUCTION**

30 1. Plaintiff brings this action against defendants Tristar Products, Inc.
31 (Defendant) on behalf of all persons who purchased a 2015 Power Pressure
32 Cooker XL (collectively the “Pressure Cookers”). The Pressure Cookers
33 are defectively designed, and the faulty seals cause the pressure cookers to
34 explode, causing serious injury and burns to the class members. In short,
35 they cannot be operated in the method which Tristar promises that it could.

1 Defendants manufacture, design, test, recall, distribute and sell the Pressure
2 Cookers.

3 **JURISDICTION AND VENUE**

- 4 2. This Court has jurisdiction over this matter pursuant to the Class Action
5 Fairness Act (CAFA) because the matter in controversy in this matter
6 exceeds the sum or value of \$5,000,000 as to all putative Class members,
7 exclusive of attorneys' fees and costs. 28 U.S.C. Sections 1332(d), 1453, and
8 1711-1715.
- 9 3. This Court also has diversity jurisdiction over this matter pursuant to 28
10 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of
11 California while Defendant is a corporation incorporated under the laws of
12 the State of Delaware.
- 13 4. This Court has personal jurisdiction over Defendant because Defendant
14 conducts business in the County of Fresno, State of California. Therefore,
15 Defendant has sufficient minimum contacts with this state, and otherwise
16 purposely avails itself of the markets in this state through the promotion, sale,
17 and marketing of its products in this state, to render the exercise of jurisdiction
18 by this Court permissible under traditional notions of fair play and substantial
19 justice.
- 20 5. Venue is proper in the United States District Court for the Eastern District of
21 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff
22 resides in the County of Fresno State of California which is within this judicial
23 district; (ii) the conduct complained of herein occurred within this judicial
24 district; and, (iii) many of the acts and transactions giving rise to this action
25 occurred in this district because Defendant:
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- 1 (a) is authorized to conduct business in this district and has
- 2 intentionally availed itself of the laws and markets within this
- 3 district;
- 4 (b) does substantial business within this district;
- 5 (c) is subject to personal jurisdiction in this district because it has
- 6 availed itself of the laws and markets within this district; and,
- 7 (d) the harm to Plaintiff occurred within this district.

8 **PARTIES**

- 9 6. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the
- 10 County of Fresno, State of California. Plaintiff purchased a Power Pressure
- 11 Cooker XL on December 17, 2015 for \$209.92.
- 12 7. Plaintiff is informed and believes and thereon alleges that Defendant is, and at
- 13 all times mentioned herein was, a corporation incorporated under the laws of
- 14 the State of Pennsylvania, headquartered in New Jersey. Plaintiff further
- 15 alleges that all times relevant herein Defendant conducted business in the State
- 16 of California and in the County of Fresno, and within this judicial district.
- 17 8. The true names and capacities of the Defendants sued herein as Does 1-10
- 18 inclusive are currently unknown to Plaintiffs, who therein sued Defendants by
- 19 such fictitious names. Each of the Defendant's designated herein as a Doe is
- 20 legally responsible for the unlawful acts alleged herein. Plaintiff will seek
- 21 leave of court to amend the Complaint to reflect the true names and capacities
- 22 of the Doe defendants when such identities become known.
- 23 9. At all times herein mentioned, each and every defendant was the owner, agent,
- 24 servant, joint venturer and employee, each of the other and each was acting
- 25 within the course and scope of its ownership, agency, service, joint venture
- 26 and employment.
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1 10. At all times mentioned herein, each and every defendant was the successor of
2 the other and each assumes the responsibility for the defective products.
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4 **FACTUAL ALLEGATIONS**

5 11. Plaintiff realleges and incorporates by reference all of the above paragraphs of
6 this Complaint as though fully stated herein.
7

8 **POWER PRESSURE COOKER XL**

9 12. A Power Pressure Cooker XL is a trademark owned by Tristar Products Inc.
10 According to the US Patent and Trademark Office, this trademark includes
11 “Domestic kitchen appliance, namely, an electric combination sauce pan,
12 steamer, slow cooker, cooking pot, rice cooker, dutch oven, pressure cooker,
13 braiser, and stock pot.”

14 13. The Power Pressure Cooker XL is sold in major retail stores throughout the
15 united states, including Bed, Bath and Beyond, Walmart, Target, Sears, and
16 numerous other retailers nationwide.

17 14. Tristar Products, Inc. describes the Power Pressure Cooker XL as having built-
18 in safety features including a “Lid Safety Device” which “prevents pressure
19 buildup,”; Pressure and Temperature Sensor Controls that maintain even heat
20 and pressure; and a Spring Loaded Safety Pressure Release that, “should all
21 safety features listed above fail,” the Spring Loaded safety feature will cause
22 the inner pot to separate from the rubber gasket to allow the steam and pressure
23 to escape around the pot lid to “avoid a dangerous situation.” All of this
24 information is reflected in the manual for the Power Pressure Cooker XL. ¹
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28 ¹ See
http://www.powerpressurecooker.com/downloads/PPC_770_6QT_IB_TP_ENG_V5_140721_notrim.pdf

- 1 15. The Power Pressure Cooker XL is sold at market value for anywhere between
2 \$200-\$300 dollars.
- 3 16. Because of the faulty safety features, consumers who purchased the Power
4 Pressure Cooker XL are unable to use their Pressure Cookers in circumstances
5 that Tristar expressly claimed they could be used. The claims are evidenced
6 by the hundreds (if not thousands) of consumer complaints on the Internet.
- 7 17. In Plaintiff's case, Plaintiff utilized the Pressure Cooker in accordance with
8 the rules laid out in the instruction manual.
- 9 18. While utilizing the Pressure Cooker, plaintiff's pressure cooker exploded;
10 causing Plaintiff to suffer severe burns all over her body as the boiling liquid
11 inside sprayed all over her.
- 12 19. The boiling juice from the meat Plaintiff had been cooking, and the boiling
13 water inside the pressure cooker, exploded in Plaintiff's face. The liquid went
14 all over Plaintiff's face, shoulder, and stomach, even burning Plaintiff's
15 clothes onto her body. Plaintiff suffered many second degree burns and had to
16 be rushed to the hospital. To date, Plaintiff has painful scars resulting from this
17 incident.
- 18 20. Plaintiff was forced to incur monetary damages in the form of medical bills
19 which were a direct result of her injuries caused by Defendant's faulty and
20 flawed products, that were unsafe, and dangerous.
- 21 21. Plaintiff is likely to purchase another Pressure Cooker in the future, and thus,
22 is likely to be similarly misled by Defendant's claims unless the product is
23 recalled and the design and safety defects as stated herein, remedied.

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25 **CLASS ACTION ALLEGATIONS**

- 26 22. Plaintiff brings this action, on behalf of herself and all others similarly situated
27 ("the Class") pursuant to Fed.R.Civ.P Rule 23(a) and (b)(3), or pursuant to
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1 Fed.R.Civ.P. Rule 23(a) and (b)(2), on their own behalf and on behalf of all
2 others who purchased a 2014, 2015, and 2016 Power Pressure Cooker XL.

3 23. Defendant and its employees or agents are excluded from the Class. Plaintiff
4 does not know the number of members in the Class, but believes the Class
5 members number in the hundreds of thousands, if not more. Thus, this matter
6 should be certified as a Class action to assist in the expeditious litigation of
7 this matter.

8 24. There is a well-defined community of interest in the litigation, the proposed
9 class is easily ascertainable, and Plaintiff is a proper representative of the Class
10 because:

11 a. **Numerosity:** The potential members of the Class as defined are so
12 numerous and so diversely located throughout California and nationwide,
13 that joinder of all the members of the Class impracticable. The class
14 members are dispersed throughout California and nationwide. Joinder of
15 all members of the proposed class is therefore not practicable.

16 b. **Commonality:** There are questions of law and fact common to Plaintiff
17 and the Class that predominate over any questions affecting only
18 individual members of the Class. These common questions of law and
19 fact include, without limitation:

20
21 i) whether Defendants have breached implied warranties;
22 ii) whether Defendants have breached express warranties;
23 iii) whether Defendants have breached common law
24 warranties/contract;

25 iv) whether Defendants have violated the Magnuson-Moss
26 Warranty Act, 15 U.S.C. §§ 2301, et seq.;

1 v) whether Defendants knew or should have known the Class
2 Rangers were defective prior to selling or placing them into the stream of
3 commerce; and

4 vi) The nature and extent of damages, restitution, equitable
5 relief

6 vii) and/or other relief to which the Defendants' conduct
7 entitles the Class members.

8 viii) The proper formula(s) for calculating and/or restitution
9 owed to Class members.

10 c. **Typicality:** Plaintiff's claims are typical of the claims of the Class.
11 Plaintiff and Class members were deprived of property rightly belonging
12 to them, arising out of and caused by Defendant's common course of
13 conduct in violation of law as alleged herein, in similar ways.

14 d. **Adequacy of Representation:** Plaintiff is a member of the Class and will
15 fairly and adequately represent and protect the interests of the class
16 members. Plaintiff's interests do not conflict with those of class members.
17 Counsel who represent Plaintiff are competent and experienced in
18 litigating large class actions, and will devote sufficient time and resources
19 to the case and otherwise adequately represent the Class.

20 e. **Superiority of Class Action:** A class action is superior to other
21 available methods for the fair and efficient adjudication of this litigation,
22 because individual joinder of all Class members would be impracticable.
23 Many such persons' losses are modest in relation to the expense and burden
24 of individual prosecution of the litigation necessitated by Defendants'
25 wrongful conduct. Even if all Class members could afford such individual
26 litigation, the court system would benefit from a class action. The
27 prosecution of separate claims by individual members of the Class would
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1 create a risk of inconsistent or varying adjudications concerning individual
2 members of the Class which would establish incompatible standards of
3 conduct for the party opposing the Class, as well as create the potential for
4 inconsistent or contradictory judgments. Furthermore, the prosecution of
5 separate claims by individual members of the Class would create a risk of
6 adjudications concerning individual members of the Class which would, as a
7 practical matter, be dispositive of the interests of other members of the Class
8 who are not parties to the adjudications, or substantially impair or impede the
9 ability of other members of the Class who are not parties to the adjudications
10 to protect their interests. Individualized litigation would also magnify the
11 delay and expense to all parties and to the court system presented by the
12 issues of the case. By contrast, the class action device presents far fewer
13 management difficulties and provides the benefit of comprehensive
14 supervision by a single court, as well as economy of scale and expense.

COUNT I

BREACH OF EXPRESS WARRANTIES

- 18 25. Plaintiff hereby incorporates by this reference as if fully set further herein,
19 each and every allegation set forth in the preceding paragraphs of this
20 complaint.
- 21 26. Defendant is and was at all relevant times a merchant with respect to Power
22 Pressure Cooker XL under California law.
- 23 27. In the course of selling the Power Pressure Cooker XL, Defendant expressly
24 represented in writing that the Power Pressure Cooker XL was covered by a
25 warranty against defects in material or workmanship, and that the warranty
26 covered parts and labor charges for the repair or replacement of such
27 defective parts.
- 28 28. Defendant breached the express warranty to repair and adjust to correct

1 defects in materials and workmanship of any part supplied by Defendant.

2 29. The warranties were breached because the Power Pressure Cooker XL are
3 not operational, safe, or reliable, nor did they comply with the warranties
4 expressly made to purchasers. Defendant did not provide at the time of sale,
5 and has not provided since then, products conforming to these express
6 warranties.

7 30. Accordingly, Plaintiff seeks all remedies as allowed by law.

8 31. Also, as alleged in more detail herein, at the time that Defendant warranted
9 and sold the products to consumers, it knew that the products did not
10 conform to the warranties and were inherently defective, and Defendants
11 wrongfully and fraudulently misrepresented and/or concealed material facts
12 regarding the products' inability to be used in standard conditions. Plaintiff
13 and the Class were therefore induced to purchase the Pressure Cookers
14 under false and/or fraudulent pretenses. The enforcement under these
15 circumstances of any limitations whatsoever precluding the recovery of
16 incidental and/or consequential damages is unenforceable as a matter of law.
17

18 32. Defendant's actions, as set forth above, constitute breach of express
19 warranties in violation of the laws of California.

20 33. Defendant was provided adequate legal notice of these issues by numerous
21 claims, including numerous individual letters and communications sent by
22 Plaintiff and other members of the Class before or within a reasonable
23 amount of time after Plaintiff and the Class members purchased their
24 pressure cookers.

25 34. As a direct and proximate result of Defendant's breach of express
26 warranties, Plaintiff and the Class have been damaged in an amount to be
27 determined at trial.
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COUNT II

BREACH OF IMPLIED WARRANTIES

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3 35. Plaintiff hereby incorporates by this reference as if fully set further herein,
4 each and every allegation set forth in the preceding paragraphs of this
5 complaint.

6 36. A warranty that the Pressure Cookers were in merchantable condition was
7 implied in law in the transactions, pursuant to California law.

8 37. The Pressure Cookers, when sold and at all times thereafter, were not in
9 merchantable condition and are not fit for the ordinary purpose for which
10 pressure cookers are used. Specifically, the pressure cookers are inherently
11 defective in that they do not properly seal, resulting in the covers coming off
12 and steam and liquids burning the consumer, like the named Plaintiff herein.
13 The result is that Pressure Cookers are inoperable as sold and are a safety
14 danger to all consumers.

15 38. Defendant was provided notice of these issues by the numerous claims,
16 individual letters and communications sent by Plaintiff and members of the
17 Class before or within a reasonable amount of time of purchasing the
18 pressure cookers. Plaintiff and Class members have had sufficient direct
19 dealings with Defendant or its agents (retailers) to establish privity of
20 contract. Notwithstanding this, privity is not required in this matter because
21 Plaintiff and Class members are intended third party beneficiaries of
22 contracts between Defendant and its dealers; specifically, they are the
23 intended beneficiaries of Defendant's implied warranties. Finally, privity is
24 also not required because Plaintiff's and Class members' pressure cookers
25 are dangerous instrumentalities due to the aforementioned defects and
26 nonconformities.
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1 39. As a direct and proximate result of Defendant’s breaches of the implied
2 warranties of merchantability and fitness for a particular purpose, pursuant
3 to the laws of California, Plaintiff and the Class members have been
4 damaged in an amount to be determined at trial.

5 40. Plaintiff and Class members are entitled to recover damages as provided by
6 statute, costs, attorneys’ fees, rescission and other relief as is deemed
7 appropriate pursuant to the laws of California.

8 **COUNT III**

9 **BREACH OF WARRANTY UNDER THE MAGNUSON-MOSS ACT, 15 U.S.C. §§**
10 **2301, ET SEQ.**

11 41. Plaintiff hereby incorporates by this reference as if fully set forth herein,
12 each and every allegation set forth in the preceding paragraphs of this
13 complaint.

14 42. The defective pressure cookers at issue are “consumer products” within the
15 meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(1).

16 43. Plaintiff and Class members are “consumers” within the meaning of the
17 Magnuson-Moss Act, 15 U.S.C. § 2301(3)

18 44. Each Defendant is a “supplier” and “warrantor” within the meaning of the
19 Magnuson-Moss Act, 15 U.S.C. § 2301(4)-(5).

20 45. Defendant impliedly warranted to Plaintiff and Class members that the
21 Pressure Cookers were of merchantable quality and fit for the ordinary
22 purposes for which they are used.

23 46. Defendant refuses to recognize or honor its implied warranties. Defendants
24 breached their implied warranties, as the defective Pressure Cookers were
25 not of merchantable quality and failed to perform in the ordinary purposes
26 for which they were used.

27 47. Defendants warranted to Plaintiff and Class members that the Pressure
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1 Cookers were safe, and had built in safety features that would protect
2 consumers against danger. In fact, the Pressure Cookers are not safe to
3 operate, and the failsafe safety mechanisms did not protect Plaintiff and
4 other class members from the dangerous condition of their defective
5 products.

6 48. The amount in controversy of Plaintiff's and Class members' individual
7 claims meets or exceeds the sum or value of \$25. In addition, the amount in
8 controversy meets or exceeds the sum or value of \$75,000 (exclusive of
9 interest and costs), computed on the basis of all claims to be determined in
10 this suit.

11 49. Resorting to any further informal dispute settlement procedure or affording
12 Defendant another opportunity to cure their breach of implied warranties is
13 unnecessary or futile. Defendant knew, reasonably should have known, or
14 were reckless in not knowing of the defective pressure cookers and their
15 inability to perform as warranted, but nevertheless failed to rectify the
16 situation. Therefore, any remedies available through informal dispute
17 settlement procedures would be inadequate under the circumstances.
18 Accordingly, any requirement under the Magnuson-Moss Act or otherwise
19 that Plaintiff resorts to informal dispute settlement procedures or afford
20 Defendants a reasonable opportunity to cure their breaches of implied
21 warranties is excused or has been satisfied.

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23 50. As a proximate result of Defendant's breaches of implied warranties,
24 Plaintiff and Class members have sustained damages and other losses in an
25 amount to be determined at trial. Plaintiff and Class members are entitled to
26 recover damages, costs, attorneys' fees, rescission, restitution and other
27 relief as is deemed appropriate.
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COUNT IV.

VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.

[CALIFORNIA’S UNFAIR COMPETITION LAW]

51. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

52. Plaintiff and Defendant are each “person[s]” as defined by California Business & Professions Code § 17201. California Bus. & Prof. Code § 17204 authorizes a private right of action on both an individual and representative basis.

53. “Unfair competition” is defined by Business and Professions Code Section § 17200 as encompassing several types of business “wrongs,” two of which are at issue here: (1) an “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The definitions in § 17200 are drafted in the disjunctive, meaning that each of these “wrongs” operates independently from the others.

54. By and through Defendant’s conduct alleged in further detail above and herein, Defendant engaged in conduct which constitutes (a) unlawful and (b) unfair business practices prohibited by Bus. & Prof. Code § 17200 et seq.

(a) Unlawful” Prong

55. As a result of Defendant’s acts and practices in violation of California’s Automatic Renewal Statute, California’s Bus. & Prof. Code § 17600, et seq., Defendant has violated California’s Unfair Competition Law, Business & Professions Code §§ 17200 et seq., which provides a cause of action for an “unlawful” business act or practice perpetrated on members of the California public.

1 56. Defendant had other reasonably available alternatives to further its legitimate
2 business interest, other than the conduct described herein, such as adequately
3 disclosing the terms of Defendant’s automatic renewal offers and continuous
4 service offers, as set forth by Cal. Bus. & Prof. Code § 17600, et seq.

5 57. Plaintiff and the putative class members reserve the right to allege other
6 violations of law, which constitute other unlawful business practices or acts,
7 as such conduct is ongoing and continues to this date.
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10 ***(b) “Unfair” Prong***

11 58. Defendant’s actions and representations constitute an “unfair” business act or
12 practice under § 17200 in that Defendant’s conduct is substantially injurious
13 to consumers, offends public policy, and is immoral, unethical, oppressive, and
14 unscrupulous as the gravity of the conduct outweighs any alleged benefits
15 attributable to such conduct. Without limitation, it is an unfair business act or
16 practice for Defendant to knowingly or negligently fail to adequately disclose
17 the terms of Defendant’s automatic renewal offers and continuous service
18 offers, as set forth by Cal. Bus. & Prof. Code §§ 17600, et seq.

19 59. At a date presently unknown to Plaintiff, but at least four years prior to the
20 filing of this action, and as set forth above, Defendant has committed acts of
21 unfair competition as defined by Cal. Bus. & Prof. Code §§ 17200 et seq., as
22 alleged further detail above and herein.

23 60. Plaintiff and other members of the Class could not have reasonably avoided
24 the injury suffered by each of them. Plaintiff reserves the right to allege further
25 conduct that constitutes other unfair business acts or practices. Such conduct
26 is ongoing and continues to this date, as Defendant continues to make
27 automatic renewal offers and continuous service offers in the manner
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1 described above in herein, in violation of Cal. Bus. & Prof. Code §§ 17600, et
2 seq. and Cal. Bus. & Prof. Code §§ 17200, et seq.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and
5 the Class members damages against Defendant and relief as follows:

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff and all Class members pray that this
8 Court issue:

- 9
- 10 • An order certifying this action as a class action and appointing
11 Plaintiff as Class Representatives and their counsel as Class Counsel;
 - 12 • An order requiring Defendants to pay Plaintiff and Class members an
13 amount of actual, direct, incidental and consequential damages in an
14 amount to be determined at trial;
 - 15 • An order awarding restitution as to all causes of action where
16 restitution is available;
 - 17 • An order awarding revocation as to all causes of action where
18 revocation is available;
 - 19 • An order granting preliminary and permanent injunctive relief
20 requiring Defendants to recall and replace or repair the defective
21 Pressure Cookers, and prohibiting any further misleading or deceptive
22 advertising campaigns for Pressure Cookers;
 - 23 • An order awarding pre- and post-judgment interest;
 - 24 • An award of reasonable attorney's fees and costs of suit as permitted
25 by law; and
 - 26 • For such other and further relief this Court may deem just and proper.

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TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Law Offices of Todd M. Friedman, P.C.

Dated: May 24, 2016

By: /s/ Todd M. Friedman

Todd M. Friedman, Esq.
Meghan E. George, Esq.
Attorneys for Plaintiffs and the Proposed Class

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business Address is 324 S. Beverly Dr., #725, Beverly Hills, CA 90212.

On May 24, 2016, I served the following document(s) described as:
PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT FOR BREACH OF WARRANTY, AND UNFAIR BUSINESS PRACTICES
on all interested parties in this action by placing:

A true copy

CM/ECF - by transmitting electronically the document(s) listed above to the electronic case filing system on this date before 11:59 p.m. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record who are registered with the Court's CM/ECF system

STATE – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 24, 2016, at BEVERLY HILLS, California.

By: /s Todd M. Friedman

Todd M. Friedman