

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ELLEN CHEPIGA, JACKIE EISENBERG,
DEBRA HALL, ROBERT BEDELL,
MILCAH HINES, and SUSAN GOODMAN

on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

CONAIR CORPORATION,

Defendant.

No. 3:17-cv-01090-BRM-LHG

DEMAND FOR JURY TRIAL

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Ellen Chepiga, Jackie Eisenberg, Debra Hall, Robert Bedell, Milcah Hines, and Susan Goodman (“Plaintiffs”), by and through their undersigned attorneys, bring this action on behalf of themselves and all others similarly situated, on personal knowledge of their activities and on information and belief as to all other matters against Defendant Conair Corp. (“Defendant”), and allege as follows

NATURE OF THE ACTION

1. This is a consumer class action on behalf of all owners of Cuisinart brand food processors who have been denied the full use and value of their machines for months, and continuing, due to a recall of and failure to replace the primary chopping blade included with the machine.
2. All of the claims asserted herein arise out of Cuisinart’s advertising, promoting, marketing, distributing, selling, and warranting of Cuisinart brand food processors.

3. On December 13, 2016, Conair announced a recall and instructed the owners of 8 million Cuisinart brand food processors to stop using the primary chopping blade included with the machine immediately. Owners were instructed to contact the company for replacement blades, but months later – long after when many owners would have used the machines to prepare holiday meals – Cuisinart owners are still waiting for replacement blades. Cuisinart has informed consumers that it may not be until mid-2017 that replacement blades begin to be shipped.

4. These 8 million machines were purchased based on Defendant's affirmative misrepresentations that the blades included with the machines would be usable as described on the packaging and in advertising. Instead, consumers have been denied the use of their machines for months, rendering the machines useless for many key tasks during the busy holiday cooking season and beyond.

5. Defendant's misrepresentations as to the usability of the machines has deceived and harmed consumers. Consumers relied on Defendant's representation that their Cuisinart food processors would include usable chopping blades. Instead, Defendant has instructed consumers *not* to use their product, leaving consumers with a machine useless for key tasks and far less valuable than one with functional blades. Had consumers known that, without warning, they would be instructed to shelve their Cuisinart food processors for six or more months, consumers would have paid far less for those machines. As a consequence, Plaintiffs and all other members of the Class (as defined below) have suffered an ascertainable loss and thus have a private right of action against Defendant for damages.

JURISDICTION AND VENUE

6. This court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The aggregate claims of Plaintiffs and the proposed Class members exceed \$5,000,000, exclusive of

interest and cost, and there is a diversity of citizenship between at least one member of the proposed Class and Defendant.

7. This Court has personal jurisdiction over Defendant because Defendant maintains their principal place of business in East Windsor, New Jersey.

8. Venue is proper in the Court pursuant to 28 U.S.C. § 1391 because many of the acts and transactions giving rise to this action occurred in this District and because Defendant maintains its principal place of business with the District.

PARTIES

9. Plaintiff Ellen Chepiga is an individual residing in the state of New Jersey. Plaintiff owns one of the Cuisinart brand food processor subject to the blade recall and as a result of Defendant's misrepresentations, suffered injury in fact and suffered an ascertainable loss in the form of a prohibition on using her machine with the primary chopping blade and a diminution in the overall value of her machine. Plaintiff registered for a new blade on the www.recallcuisinart.com website but, as of the date of this complaint, has not received a replacement blade. On December 13, 2016, Defendant instructed her to cease using her machine with the chopping blade, rendering it useless for many key tasks.

10. Plaintiff Jackie Eisenberg is an individual residing in the state of Illinois. Plaintiff owns one of the Cuisinart brand food processor subject to the blade recall and as a result of Defendant's misrepresentations, suffered injury in fact and suffered an ascertainable loss in the form of a prohibition on using her machine with the primary chopping blade and a diminution in the overall value of her machine. Plaintiff registered for a new blade on the www.recallcuisinart.com website but, as of the date of this complaint, has not received a replacement blade. On December 13, 2016, Defendant instructed her to cease using her machine with the chopping blade, rendering it useless for many key tasks.

11. Plaintiff Debra Hall is an individual residing in the state of New York. Plaintiff owns one of the Cuisinart brand food processor subject to the blade recall and as a result of Defendant's misrepresentations, suffered injury in fact and suffered an ascertainable loss in the form of a prohibition on using her machine with the primary chopping blade and a diminution in the overall value of her machine. Plaintiff registered for a new blade on the www.recallcuisinart.com website but, as of the date of this complaint, has not received a replacement blade. On December 13, 2016, Defendant instructed her to cease using her machine with the chopping blade, rendering it useless for many key tasks.

12. Plaintiff Robert Bedell is an individual residing in the state of Minnesota. Plaintiff owns one of the Cuisinart brand food processor subject to the blade recall and as a result of Defendant's misrepresentations, suffered injury in fact and suffered an ascertainable loss in the form of a prohibition on using his machine with the primary chopping blade and a diminution in the overall value of his machine. Plaintiff registered for a new blade on the www.recallcuisinart.com website but, as of the date of this complaint, has not received a replacement blade. On December 13, 2016, Defendant instructed him to cease using his machine with the chopping blade, rendering it useless for many key tasks.

13. Plaintiff Milcah Hines is an individual residing in the state of Colorado. Plaintiff owns two of the Cuisinart brand food processors subject to the blade recall and as a result of Defendant's misrepresentations, suffered injury in fact and suffered an ascertainable loss in the form of a prohibition on using her machines with the primary chopping blade and a diminution in the overall value of her machines. Plaintiff registered for new blades on the www.recallcuisinart.com website but, as of the date of this complaint, has not received

replacement blades. On December 13, 2016, Defendant instructed her to cease using her machines with the chopping blade, rendering them useless for many key tasks.

14. Plaintiff Susan Goodman is an individual residing in the state of New Jersey. Plaintiff owns one of the Cuisinart brand food processor subject to the blade recall and as a result of Defendant's misrepresentations, suffered injury in fact and suffered an ascertainable loss in the form of a prohibition on using her machine with the primary chopping blade and a diminution in the overall value of her machine. Plaintiff registered for a new blade on the www.recallcuisinart.com website but, as of the date of this complaint, has not received a replacement blade. On December 13, 2016, Defendant instructed her to cease using her machine with the chopping blade, rendering it useless for many key tasks.

15. Defendant Conair Corporation is a New Jersey corporation with its principal place of business at 150 Milford Road, East Windsor, NJ 08520. Cuisinart is a wholly-owned subsidiary of Conair Corporation with its principal place of business at 150 Milford Road, East Windsor, NJ 08520.

FACTUAL ALLEGATIONS

Background

16. Cuisinart food processors are, according to the *New York Times*, an "expensive but beloved piece of equipment among epicures."¹ Inspired by French professional cooking tools, Cuisinart introduced the food processor to American home kitchens in the 1970s.

¹ Kim Severson, "Cuisinart Recall 'Just Screwed Up the Holidays for a Lot of People,'" *New York Times*, Dec. 15, 2016, available at https://www.nytimes.com/2016/12/15/dining/cuisinart-recall.html?_r=1.

Defendants market machines in their food processor lines as “designed to perform any food prep task your recipe calls for.”²

17. While some models perform other functions, the primary task of a Cuisinart food processor is to chop foods automatically, saving the chef the need to chop food by hand and doing so in a uniform and predictable manner. The machines generally have a detachable blade located at the bottom of a container and attached to a motor which rotates the blade at high speeds, thus chopping the food.



² See https://www.cuisinart.com/products/food_processors/fp-13dgm.html.

18. Though some models of the machines come with multiple blades, the primary blade used for most chopping functions is referred to as the “riveted blade.” These blades have four rivets, are silver-colored stainless steel, and have a beige plastic center hub.



19. Cuisinart has touted the strength and dependability of its riveted chopping blade as a primary attractive feature of its food processors. *See, e.g.*, “Cuisinart Elite Collection 14-Cup Food Processor (FP-14DC) Demo Video,” available at Cuisinart’s YouTube Channel at https://youtu.be/t_0n40lZKiQ. For example, the CD-ROM packaged with Plaintiff Bedell’s machine, Model No. DLC-8S and purchased in 2011, includes eleven recipes as suggested uses of the machine for consumers. All eleven of those recipes use the riveted chopping blade.

20. For many years, Cuisinart has repeatedly emphasized in advertising that its food processor will “make all your favorites.”

Home > Products > Food Processors > Pro Classic™ Food Processor > DLC-10S

Pro Classic™ Food Processor

DLC-10S

\$99.95

Buy Now

\$ FIND A RETAILER


COLORS


 DOWNLOAD MANUAL


 PARTS AND ACCESSORIES

 SEND TO FRIEND

 FIND RECIPES

 PRINT THIS PAGE

 ADD TO WISHLIST

 Recommend



Product Description

The Cuisinart® Pro Classic™ Food Processor makes all your favorites, from stir-fries and main course salads, to peanut butter and home-made bread.

Product Dimensions: 7.00" x 11.25" x 14.50"

Product Features

- 7-cup Lexan® work bowl
- Extra-large feed tube holds whole fruits and vegetables
- Powerful enough to knead bread dough with ease
- Easy to use and clean
- Additional accessories included for even more versatility
- Stainless steel medium slicing disc (4 mm)
- Stainless steel shredding disc
- Chopping/mixing blade
- Dough blade
- Small and large pushers
- Detachable disc stem
- Compact flat cover
- Spatula
- How-to video
- Instruction/Recipe book
- Full 5-year motor warranty
- Limited 3-year warranty on entire unit

See, e.g., https://web.archive.org/web/20120208195402/http://www.cuisinart.com/products/food_processors/dlc-10s.html; https://web.archive.org/web/20110607233820/http://www.cuisinart.com/products/food_processors/dlc-10s.html.

21. Consumers of Conair food processors reasonably and legitimately expect that those machines will properly function for many years. For example, as of the date of this complaint, a still-working 1979 Cuisinart food processor was available for sale or auction on eBay. See www.ebay.com/itm/Vintage-Cuisinart-CFP-9-Robot-Coupe-France-Food-Processor-GREAT-LOOK-/272572668064?hash=item3f7698d8a0:VKUAAOSw2gxYtcog.

22. Consumers of Conair food processors reasonably and legitimately expect their food processors to be reliable and operate in accordance with all of their intended purposes—including to chop food items.

Recall of Cuisinart Blades ‘Just Screwed Up the Holidays for a Lot of People’

23. On December 13, 2016, Defendant and the U.S. Consumer Product Safety Commission (CPSC) announced that consumers who owned certain models of Cuisinart food processors should cease using the riveted blade immediately. A press release from Conair instructed affected consumers to “stop using the riveted blades immediately unless otherwise instructed.” The CPSC and Cuisinart were reacting to reports dating back to 2011 that metal shards would break off the blade and get into the food being chopped.

24. The recall covered twenty-two models of Cuisinart food processors sold between 1996 and 2015. The affected models included the following: CFP-9, CFP-11, DFP-7, DFP-11, DFP-14, DLC-5, DLC-7, DLC-8, DLC-10, DLC-XP, DLC-2007, DLC-2009, DLC-2011, DLC-2014, DLC-3011, DLC-3014, EV-7, EV-10, EV-11, EV-14, KFP-7, and MP-14 (“Covered Models”).

25. The Covered Models were manufactured in China and retailed for between \$100 and \$350 per unit.

26. Cuisinart issued warranties for each of the Covered Models for three years, with some models including an additional five or ten year warranty on the motors. For example, covered model DLC-XP includes a three year warranty on the entire machine:

WARRANTY
LIMITED THREE-YEAR WARRANTY
ON THE ENTIRE MACHINE
FULL FIVE-YEAR WARRANTY
ON MOTOR

This warranty supersedes all previous warranties on Cuisinart® DLC-X Plus Food Processor.

This warranty is available to consumers only. You are a consumer if you own a Cuisinart® DLC-X Plus Food Processor that was purchased at retail for personal, family or household use. Except as otherwise required under applicable state law, this warranty is not available to retailers or other commercial purchasers or owners.

We warrant that your Cuisinart® DLC-X Plus Food Processor will be free of defects in material or workmanship under normal home use for three years from the date of original purchase.

Available at <https://www.cuisinart.com/share/pdf/manuals/dlc-xpn.pdf> (excerpt on page 48).

Covered model DFP-14 also includes three year warranty on the entire machine:

WARRANTY
LIMITED THREE-YEAR WARRANTY

This warranty supersedes all previous warranties on the Custom 14" Food Processor. This warranty is available to consumers only. You are a consumer if you own a Custom 14" Food Processor that was purchased at retail for personal, family or household use. Except as otherwise required under applicable state law, this warranty is not available to retailers or other commercial purchasers or owners. We warrant that your Custom 14" Food Processor will be free of defects in material or workmanship under normal home use for three years from the date of original purchase.

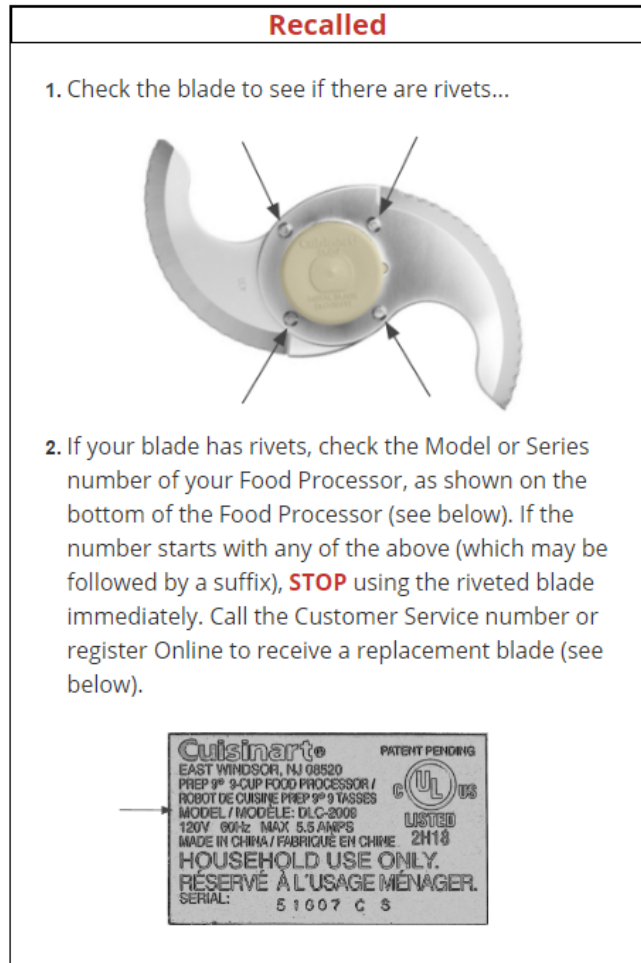
Available at <https://www.cuisinart.com/share/pdf/manuals/dfp-14bcn.pdf> (excerpt on page 13).

27. As the Covered Models included machines sold as late as 2015, many of these machines were still within the warranty period on December 13, 2016. Thus, the breach of these warranties manifested within the express warranty period for those machines.

28. In all, approximately 8 million units were subject to the recall, making the Cuisinart recall one of the three largest appliance recalls in U.S. consumer protection history.

29. A press release from Conair instructed affected consumers to “stop using the riveted blades immediately unless otherwise instructed.”

30. Consumers were directed to a website, www.recallcuisinart.com, to submit a request for a replacement blade. Upon entering information to verify that their machine was subject to the recall, consumers were directed to “STOP using the riveted blade immediately.”



31. As shown in the below figure, when impacted consumers like Plaintiffs and the Class entered their information into Defendant’s recall website they were instructed in no uncertain terms to “STOP using the riveted blade immediately”:

Cuisinart Blade Recall Form

Your food processor is one of the items designated for the voluntary recall. Please STOP using the riveted blade immediately.

32. As the riveted blade is the primary chopping blade for the machine, instructions to cease using it means that the machine is essentially useless for key tasks.

33. Many consumers were dismayed that their machines were unusable as a result of the recall. “Cuisinart just screwed up the holidays for a lot of people,” one consumer stated in a *New York Times* article.³

Months Later, No New Blades

34. Despite assurances that they would be shipped replacement blades, more than two months after the recall was issued, consumers are still awaiting new blades.

35. On or about February 4, 2017, Defendant sent registered affected users an email stating that replacement blades were not yet manufactured nor ready for shipping. Moreover, Defendant offered no date certain as to when the replacement blades would be shipped. Instead, affected consumers were provided an interactive recipe book for download – which included recipes that required food to be chopped, which consumers would have to do by hand because the machines they had purchased for that purpose were unusable.

³ Kim Severson, “Cuisinart Recall ‘Just Screwed Up the Holidays for a Lot of People,’” *New York Times*, Dec. 15, 2016, available at https://www.nytimes.com/2016/12/15/dining/cuisinart-recall.html?_r=1.

36. Another email on or about February 17, 2017, was sent by Defendant to registered affected users stating that overwhelming demand for replacement blades had delayed their shipment, and new blades may not be shipped until as late as June 15, 2017.

37. Upon information and belief, some consumers who were mentioned in news articles about the recall received their blades promptly. This action by Conair – to quickly replace the blades of consumers featured in news articles – is an implicit admission by Conair that there is value to receiving the replacement blades in a timely fashion, as well as the corollary that *not* receiving the blades for many months is a loss in value for consumers.

38. Upon information and belief, some consumers who called Conair’s customer help line for the recall were told that as of early February 2017, no replacement blades had been manufactured and that replacement blades would be manufactured by model number, not by the date the consumer submitted their recall claim. Despite years of knowledge of issues with the riveted blades, Conair undertook one of the largest consumer recalls in history, covering over 8 million units, without manufacturing replacement blades in advance, guaranteeing that consumers would face a lengthy delay and loss of use of their food processors for a substantial period of time.

39. Since December 13, 2016, Defendant has continued to sell new food processors with chopping blades not subject to the recall. Defendant has also continued to sell replacement blades for its machines through the “Parts” section of its website. Defendant decided to prioritize its own profits by selling the new chopping blades instead of providing them to their loyal customers subject to the recall.

40. Despite having had complaints about the defective blades dating back as far as 2011, Cuisinart did not manufacture replacement blades to have available for consumers when

the recall was issued. Instead consumers have been unable to use their machines for months, a situation that will continue until at least mid-2017.

41. Many consumers expressed dismay over the continued unusability of their Cuisinart machines. “My patience is running out . . . I am currently looking for a non-Cuisinart and non-Conair alternative for my kitchen.”⁴

42. Consumers possess machines purchased for \$100 to \$350 that have been unusable for chopping and related tasks for more than three months and counting. This has significantly diminished the value of those machines. Had consumers known that they would have lost the use of the key chopping functionality of their food processor without advance warning, for an extended period, and spanning the December and January holiday season, consumers would have paid less for Defendant’s Cuisinart food processors. Plaintiffs did not receive the benefit-of-the bargain that they thought they were getting when they purchased Defendant’s Cuisinart food processors based on Defendant’s advertising. Plaintiffs have lost the ascertainable value of the use of their machines for key chopping tasks during the time period from December 13, 2016 to the present, and continuing. This demonstrable loss of value is quantifiable and measurable. Additionally, the recall likely negatively impacted the resale value of the machines.

43. Conair also breached the express and implied warranties associated with the machines

CLASS ALLEGATIONS

44. Plaintiffs brings this action on behalf of themselves and members of a Class defined as follows:

⁴ Sophia Tewa, “After massive Cuisinart recall, consumer patience ‘running out’,” *Stamford Advocate*, Feb. 8, 2017, available at <http://www.stamfordadvocate.com/news/article/After-massive-Cuisinart-recall-consumer-patience-10904335.php>.

All person or entities who own a Cuisinart food processor covered by the December 13, 2016 recall who lost use of the machine's chopping blade within six years of the date of this Complaint.

45. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of Federal Rule of Civil Procedure 23 ("Rule 23"), as the Class meets all of the requirements of Rule 23:

a. Numerosity: The members of the Class are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe that the proposed Class contains millions of customers who have been damaged by Defendant's misrepresentations as alleged herein. The precise number of Class members is unknown to Plaintiffs. The true number of Class members is known by Defendant, however, and thus potential class members may be notified of the pendency of this action by first class mail, electronic mail, and/or published notice.

b. Existence and Predominance of Common Questions of Law and Fact: This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. Common questions of law and fact include, but are not limited to, the following:

- i.* Whether Defendant's actions constitute misrepresentations and consumer fraud;
- ii.* Whether Plaintiffs and Class members had their machines rendered unuseable for months and suffered a loss during the affected period and beyond;
- iii.* Whether Plaintiffs and Class members were damaged as a result of Defendant's misrepresentations and consumer fraud, the amount of their monetary loss, and the proper measure of those damages.

c. Typicality: Plaintiffs' claims are typical of the claims of the other members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the Class.

d. Adequacy of Representation: Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel experienced in complex class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs has no adverse or antagonistic interests to those of the Class.

e. Superiority: A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them by Defendant. Furthermore, individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding and presents no unusual management difficulties under the circumstances here.

NOTICE TO N.J. ATTORNEY GENERAL OF ACTION

46. Pursuant to N.J. Stat. Ann. § 56:8-20, a copy of this Complaint will be mailed to the Attorney General within ten days of the filing of this Complaint.

COUNT I

Violation of New Jersey's Consumer Fraud Act § 56-8:1 *et seq.*

47. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 43 above, as if set forth fully herein.

48. New Jersey's Consumer Fraud Act ("CFA") prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby . . .

N.J.S.A. § 56-8:2.

49. Defendant's incorporation, headquarters and principal place of business is New Jersey and is a person under the meaning of the CFA.

50. In the conduct of its business, Defendant engaged in fraudulent acts and practices by offering Cuisinart food processor machines as functional chopping machines, while the affected machines were not in fact functional as claimed.

51. Defendant's fraudulent acts alleged above concealed information that had a tendency or capacity to mislead, tended to create a false impression in consumers, and were likely to (and did in fact) deceive reasonable consumers, including Plaintiffs and the other members of the Class.

52. Plaintiffs and the other members of the Class suffered ascertainable losses, caused by Defendant's conduct, by suffering the loss of the key functionality of Cuisinart food processors caused by Defendant's instruction on December 13, 2016, to stop using the chopping blade, resulting in a measurable, quantifiable diminution in value of the food processors. Thus, Plaintiffs and the other members of the Class were injured by Defendants' conduct when the recall was issued and the machines were rendered unusable.

53. As a direct and proximate result of Defendant's violations of the CFA, Plaintiffs and the other Class members have suffered injury-in-fact or actual damage.

54. Because Defendant's conduct caused injury to Plaintiffs and the other members of the Class, they seek recovery of their actual damages, discretionary treble damages, punitive damages, reasonable attorneys' fees and costs, and any other just and proper relief available under the CFA.

COUNT II

Breach of Express Warranty

55. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 43 above, as if fully set forth herein.

56. Conair provided all owners of the Covered Models with express warranties as described herein, which became part of the basis of the bargain.

57. Accordingly, Conair warranties are express under state law.

58. The chopping blades that must be replaced subject to the recall, as well as other damages caused as a result of the recall, are covered by the express warranties Conair provided.

59. Plaintiffs and the other members of the class have complied with all obligations and requirements under these express warranties, or are otherwise excused from performance of said obligations and requirements.

60. Conair breached those warranties by selling food processor which they knew, or reasonably should have known, included defective chopping blades that required repair or replacement within the applicable warranty periods.

61. Plaintiffs who notified Conair of the breach within a reasonable time and/or were not required to do so because affording Conair a reasonable opportunity to cure its breach of written warranty would have been futile. Conair also knew of the breach long before issuing the recall and yet chose to conceal it and not comply with their warranty obligations.

62. As a direct and proximate result of Conair's breach of their express warranties, Plaintiffs and other members of the class were damaged by, among other things, the diminution in value of their food processors.

63. The time limits contained in Conair's warranty period were unconscionable and inadequate to protect Plaintiffs and other members of this class. Among other things, Plaintiffs and members of the class had no meaningful choice in determining those time limitations, the terms of which unreasonably favor Conair. A gross disparity in bargaining power existed between Conair and the class members, and Conair knew or should have known that the food processors were defective at the time of sale and would fail well before their otherwise useful lives.

64. Plaintiffs and other class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligation as a result of Land Rover's conduct described herein.

COUNT III

Breach of Implied Warranty

65. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 43 above, as if fully set forth herein.

66. Conair was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the food processors. Conair knew, or reasonably should have known, of the specific use for which the food processors were purchased.

67. Conair provided Plaintiffs and other members of the class with an implied warranty of merchantability that the food processors, and any component thereof, are merchantable and fit for the purposes for which they were sold.

68. Defendants impliedly warranted that the food processors were of merchantable quality and fit for such use. This implied warranty of merchantability included, among other

things, that the primary chopping blade of the machine would be usable and would not cause metal shards to be deposited into food.

69. Contrary to the applicable implied warranties of merchantability, the food processors were not fit for their ordinary and intended purpose of chopping food.

70. Defendant breached the food processors' implied warranty by selling Plaintiffs and members of the class food processors that are not fit for the ordinary purpose of chopping food because the primary chopping blade is unusable.

71.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment:

- A. Certifying the Class as requested herein;
- B. Appointing Plaintiffs as Class representatives and their undersigned counsel as Class counsel;
- C. Awarding Plaintiffs and the proposed Class members damages;
- D. Awarding attorneys' fees and costs; and
- E. Providing such further relief as may be just and proper.

JURY TRIAL DEMANDED

Plaintiffs and the Class hereby request a jury trial on all claims so triable.

Dated: March 31, 2017

Respectfully submitted,

/s/ John D. Radice

John D. Radice
April D. Lambert (*pro hac vice* forthcoming)
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Attorneys for Plaintiffs and Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing and all attachments were served via ECF upon all counsel of record.

s/ John D. Radice
John D. Radice

Dated: March 31, 2017