

JS 44 (Rev 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet 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)

<p>I. (a) PLAINTIFFS WAITZ, KEVIN and WAITZ, KAREN, H/W</p> <p>(b) County of Residence of First Listed Plaintiff <u>Monroe</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Richard A. Wolfe, Esquire, Saffren & Weinberg, 815 Greenwood Avenue, Suite 22, Jenkintown, PA 19046 (215) 576-0100</p>	<p>DEFENDANTS DEWALT INDUSTRIAL TOOL COMPANY and HOME DEPOT, USA INC.</p> <p>County of Residence of First Listed Defendant <u>Baltimore</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <i>(For Diversity Cases Only)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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 (Excl. 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	<p>PERSONAL INJURY</p> <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 - Med. Malpractice	<p>PERSONAL INJURY</p> <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS	
			<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <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"/> 490 Cable/Sat TV <input type="checkbox"/> 490 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
			LABOR	
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt 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 Empl Ret Inc Security Act	
			SOCIAL SECURITY	
			<input type="checkbox"/> 861 HIA (1395(f)) <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))	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	
			PRISONER PETITIONS	
			<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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	
			CIVIL RIGHTS	
			<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	
			REAL PROPERTY	
			<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	

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

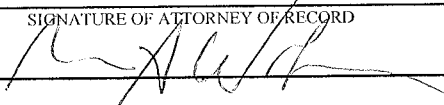
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district *(specify)* 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*.

VI. CAUSE OF ACTION
Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ OVER \$75,000 CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions)* JUDGE _____ DOCKET NUMBER _____

DATE 5/16/12 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPOINTING IFP _____ JUDGE _____ MAG JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 35 East Barren Road, East Stroudsburg, PA 18302

Address of Defendant: 701 East Joppa Rd., Baltimore, MD 21286; 2455 Paces Ferry Road, NJ, Atlanta, Ga

Place of Accident, Incident or Transaction: East Stroudsburg, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [X]

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [] All other Federal Question Cases (Please specify)

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [X] Products Liability
8. [] Products Liability -- Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, RICHARD A. WOLFE, counsel of record do hereby certify: [X] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; [] Relief other than monetary damages is sought.

DATE: 5/16/12

[Signature] Attorney-at-Law

78944 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/16/12

[Signature] Attorney-at-Law

78944 Attorney I.D.#

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 35 East Barren Road, East Stroudsburg, PA 18302

Address of Defendant: 701 East Joppa Rd., Baltimore, MD 21286; 2455 Paces Ferry Road, NJ, Atlanta, Ga

Place of Accident, Incident or Transaction: East Stroudsburg, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
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Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases
(Please specify) _____

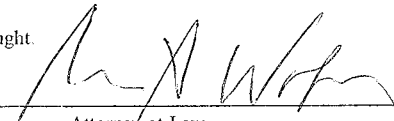
ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, RICHARD A. WOLFE, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
 Relief other than monetary damages is sought.

DATE: 5/16/12



Attorney-at-Law

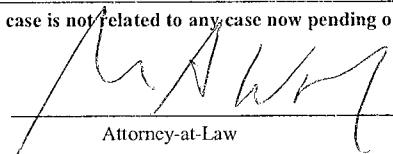
78944

Attorney I.D.#

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I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/16/12



Attorney-at-Law

78944

Attorney I.D.#

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

CASE MANAGEMENT TRACK DESIGNATION FORM

KEVIN WAITZ, ET AL	:	CIVIL ACTION
	:	
	:	
v.	:	
DEWALT INDUSTRIAL TOOL COMPANY, ET AL:	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>5/16/12</u>	<u>Richard A. Wolfe, Esquire</u>	<u>Plaintiffs</u>
Date	Attorney-at-law	Attorney for
<u>215-576-0100</u>	<u>215-576-6288</u>	<u>rwolfe@saffwein.com</u>
Telephone	FAX Number	E-Mail Address

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN WAITZ AND KAREN WAITZ, h/w	:	
35 East Barren Road	:	
East Stroudsburg, PA 18302	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION NO.
	:	
DEWALT INDUSTRIAL TOOL COMPANY	:	
701 East Joppa Road	:	
Baltimore, MD 21286	:	
and	:	
HOME DEPOT, USA INC.	:	
2455 Paces Ferry Road, N.W.	:	
Atlanta, GA 30339	:	
Defendants.	:	

CIVIL ACTION COMPLAINT

Plaintiffs, Kevin Waitz and Karen Waitz, by and through their Attorney, Richard A. Wolfe, Esquire, hereby files this Complaint against Defendants, DeWalt Industrial Tool Company and Home Depot, USA, Inc. and in support thereof, avers as follows:

PARTIES

1. Plaintiff, Kevin Waitz, is an adult individual residing at 35 East Barren Road, East Stroudsburg, Pennsylvania and is the spouse of Plaintiff, Karen Waitz.
2. Plaintiff, Karen Waitz, is an adult individual residing at 35 East Barren Road, East Stroudsburg, Pennsylvania and is the spouse of Plaintiff, Kevin Waitz.
3. Defendant, DeWalt Industrial Tool Company (hereinafter referred to as "DeWalt"). is a Maryland Corporation regularly doing business in te Commonwealth of Pennsylvania engaged in the marketing, manufacturing, distribution, packaging, fabricating, designing and sales of tools and industrial supplies regularly doing business in Philadelphia County, Pennsylvania with an

office for service at 701 East Joppa Road in Baltimore, Maryland.

4. Defendant, Home Depot, USA, Inc. (hereinafter "Home Depot") is a Delaware corporation, existing under the laws of the Commonwealth of Pennsylvania engaged in the retail sale, marketing, distribution, packaging and manufacture of home improvement, tools and construction supplies regularly doing business in the Commonwealth of Pennsylvania with a principal place of business located at 2455 Paces Ferry Road, N.W., Atlanta, GA 30339.

JURISDICTION

5. Jurisdiction is proper in the United States District Court for the Eastern District of Pennsylvania because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

FACTUAL BACKGROUND

6. Based upon information and belief, Defendant, DeWalt, designed, fabricated, modified, marketed, packaged, assembled tested and otherwise placed into the stream of commerce a 3" DeWalt Carbon Crimp Cup Brush.

7. Based upon information and belief, Defendant, Home Depot, marketed, advertised, sold, fabricated, packaged, distributed and otherwise placed into the stream of commerce the 3" DeWalt Carbon Crimp Cup Brush.

8. Defendant, DeWalt, designed, fabricated, modified, assembled tested and otherwise placed into the stream of commerce the metal/carbon wire bristles and mounting unit that comprised the Carbon Crimp Cup Brush.

9. On or about August 24, 2010 Plaintiff purchased the afore-described Carbon Crimp Cup Brush from Home Depot in at 150 Pocono Commons in Stroudsburg, Pennsylvania.

10. On or about September 18, 2010, Plaintiff affixed the Carbon Crimp Cup Brush to a

DeWalt Heavy Duty Small Angle Grinder. Upon properly attaching the Cup Brush to the grinder Plaintiff turned on the machine whereupon one or more of the wire bristles of the Cup Brush dislodged from the cup and struck Plaintiff in the left eye piercing through the eye globe, retina and lens causing severe and permanent injuries to Plaintiff.

11. As a result of the negligence more fully described herein, Plaintiff, Kevin Waitz, suffered grievous and life-threatening injuries including but not limited to the following: loss of vision, damage to his retina and lens and scarring; injuries to the nerves; headaches; physical trauma associated with and flowing from the above referenced injuries; emotional and psychological trauma associated with and flowing from the above-referenced injuries; severe shock to his nerves and nervous system; which injuries have caused him pain and suffering in the past and may continue to do in the future; which injuries have prevented him and may continue to prevent him from attending to his daily and usual duties; which injuries have required him to expend money for medicine and/or medical attention in an attempt to treat, cure and care for himself, injured as aforesaid; all of which has been and continues to be to his great damage and loss.

12. As a result of the injuries aforesaid Plaintiff, Kevin Waitz, has undergone emergency and follow-up hospitalization and surgery for treatment of his injuries and may continue to require periodic hospitalization for an indefinite period of time in the future, to his great detriment and loss.

13. As a result of the injuries aforesaid Plaintiff, Kevin Waitz, has undergone great pain and suffering, disfigurement, limitations of use of bodily movement and functions, limitation of the ability to pursue normal occupational and social activities as well as further manifestations of suffering, some or all of which are not yet apparent.

14. As a result of the injuries aforesaid Plaintiff, Kevin Waitz, has required therapy, both at outpatient facilities and at home and may continue to require said therapy and rehabilitation for an indefinite period of time in the future, to his great detriment and loss.

15. As a result of the injuries aforesaid Plaintiff, Kevin Waitz, has suffered financial setbacks, including loss of income, due to lost time from employment which financial setbacks and income losses will continue for an indefinite period of time in the future, to his great detriment and loss.

16. On the date and at the time of the accident described herein-above, Plaintiff was operating the afore-described Carbon Crimp Cup Brush and grinder in a safe and reasonably foreseeable manner.

COUNT I
Kevin Waitz v. DeWalt Industrial Tool Company
(Strict Liability)

17. Plaintiff incorporates by reference the allegations contained in paragraphs 1. through 16. as though the same were fully set forth herein.

18. Solely as a result of the defective and unreasonably dangerous design and manufacture of the Carbon Crimp Cup Brush and its Component parts as set forth in this Civil Action, the Plaintiff has sustained and will sustain the injuries and damages set forth herein, and is therefore entitled to damages under the Restatement (Second) of Torts, section 402 A and 402 B.

19. Defendant, DeWalt, designed, packaged, fabricated, modeled, remodeled, manufactured and distributed the Carbon Crimp Cup Brush, valves and component parts or were responsible for the manufacture and distribution thereof.

20. Defendant, DeWalt's, Carbon Crimp Cup Brush and component parts contained

design defects at the time it left said Defendants' control, which defects rendered said Unit in an unreasonably dangerous, defective and unsafe condition at the time when it reached the Plaintiff.

21. Defendant, DeWalt's, Carbon Crimp Cup Brush, and component parts contained inadequate warnings at the time it left Defendant, DeWalt's, control, which defects rendered said unit in an unreasonably dangerous, defective and unsafe condition at the time when it reached the Plaintiff.

22. Defendant, DeWalt's, Carbon Crimp Cup Brush and component parts were sold and/or distributed by Defendant, DeWalt, to Plaintiff in a defective condition, which condition created a danger to intended users thereof.

23. The Carbon Crimp Cup Brush and component parts were designed, remodeled, manufactured and sold in a defective and dangerous manner in that it:

- a. Failed to properly affix the bristles onto the mounting unit;
- b. Failed to contain a safety guard so as to prevent the aforesaid accident;
- c. Failed to contain instructions so that it could be used safely in a reasonably foreseeable manner;
- d. Failed to contain conspicuous and adequate warnings;
- e. Failed to contain safety features in that it could not be used in a safe and reasonably foreseeable manner;
- f. Failed to contain adequate packaging and brochures containing warnings on the product, and otherwise warning the Plaintiffs of further actions necessary on their part to insure the safety of the Carbon Crimp Cup Brush; and
- g. Failing to comply with various codes standards, regulations, statutes and industry norms;
- h. Failed to contain a conspicuous warning; and

i. Was sold in defective and dangerous manner in that it was sold with unsecured bristles.

24. Plaintiff, Kevin Waitz, was an intended user of the Carbon Crimp Cup Brush.

25. Plaintiff, Kevin Waitz, was injured while using the Carbon Crimp Cup Brush in a reasonable manner and for a purpose reasonably anticipated and foreseeable by Defendants.

26. The defective condition of the Carbon Crimp Cup Brush and its component parts were the proximate cause of Plaintiff, Kevin Waitz's injuries and losses.

27. The defective condition of the Carbon Crimp Cup Brush was a substantial factor in causing Plaintiffs' injuries and losses.

28. As a result of the tortious activity herein-above described Defendant, DeWalt, is strictly liable to Plaintiff for his injuries.

WHEREFORE, Plaintiff, Kevin Waitz, respectfully prays this Honorable Court to enter judgment in his favor, against Defendant, DeWalt Industrial Tool Company, jointly, severally and/or singularly in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) and requests compensatory damages from each.

COUNT II
Kevin Waitz v. Home Depot, USA, Inc.
(Strict Liability)

29. Plaintiff incorporates by reference the allegations contained in paragraphs 1. through 28. as though the same were fully set forth herein.

30. Solely as a result of the defective and unreasonably dangerous design, manufacture, sale and distribution of the Carbon Crimp Cup Brush and its Component parts as set forth in this Civil Action, the Plaintiff has sustained and will sustain the injuries and damages set forth herein, and is therefore entitled to damages under the Restatement (Second) of Torts, section 402 A and

402 B.

31. Defendant, Home Depot, packaged, displayed, fabricated, marketed, advertised, sold and distributed the Carbon Crimp Cup Brush and component parts or were responsible for the packaging, displaying, marketing, sale, advertisement and distribution thereof.

32. The DeWalt Carbon Crimp Cup Brush and component parts sold by Defendant, Home Depot contained design defects at the time it left said Defendant, Home Depot's control, which defects rendered said Unit in an unreasonably dangerous, defective and unsafe condition at the time when it reached the Plaintiff.

33. The DeWalt Carbon Crimp Cup Brush and component parts sold by Defendant, Home Depot, contained design defects at the time it left Defendant, Home Depot's, control, which defects rendered said Unit in an unreasonably dangerous, defective and unsafe condition at the time when it reached the Plaintiff.

34. Defendant, DeWalt's, Carbon Crimp Cup Brush was sold and/or distributed and/or provided by Defendant, Home Depot, to Plaintiff in a defective condition, which condition created a danger to intended users thereof.

35. The Carbon Crimp Cup Brush was fabricated, displayed, packaged, designed, remodeled, manufactured and sold in a defective and dangerous manner in that it:

- a. Failed to properly affix the bristles onto the mounting unit;
- b. Failed to contain a safety guard so as to prevent the aforesaid accident;
- c. Failed to contain instructions so that it could be used safely in a reasonably foreseeable manner;
- d. Failed to contain conspicuous and adequate warnings;
- e. Failed to contain safety features in that it could not be used in a safe and

reasonably foreseeable manner;

f. Failed to contain adequate packaging and brochures containing warnings on the product, and otherwise warning the Plaintiffs of further actions necessary on their part to insure the safety of the Carbon Crimp Cup Brush; and

g. Failing to comply with various codes standards, regulations, statutes and industry norms;

h. Failed to contain a conspicuous warning; and

i. Was sold in defective and dangerous manner in that it was sold with unsecured bristles.

36. Plaintiff, Kevin Waitz, was an intended user of the Carbon Crimp Cup Brush.

37. Plaintiff, Kevin Waitz, was injured while using the Carbon Crimp Cup Brush in a reasonable manner and for a purpose reasonably anticipated and foreseeable by Defendants.

38. The defective condition of the Carbon Crimp Cup Brush and its component parts were the proximate cause of Plaintiffs' injuries and losses.

39. The defective condition of the Carbon Crimp Cup Brush was a substantial factor in causing Plaintiffs' injuries and losses.

40. As a result of the tortuous activity hereinabove described Defendant, Home Depot, is strictly liable to Plaintiff for his injuries.

WHEREFORE, Plaintiff, Kevin Waitz, respectfully prays this Honorable Court to enter judgment in his favor, against Defendant, Home Depot, USA, Inc., jointly, severally and/or singularly in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) and requests compensatory damages from each.

COUNT III

**Kevin Waitz v. DeWalt Industrial Tool Company
(Breach of Warranty)**

41. Plaintiff incorporates by reference the allegations contained in paragraphs 1. through 40. as though the same were fully set forth herein.

42. Defendant, DeWalt, breached the implied warranty of merchantability and fitness for a particular purpose.

43. Defendant, DeWalt, breached the implied warranty of safety for intended use.

WHEREFORE, Plaintiff, Kevin Waitz, respectfully prays this Honorable Court to enter judgment in his favor, against Defendant, DeWalt Industrial Tool Company, jointly, severally and/or singularly in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) and requests compensatory damages from each.

COUNT IV

**Kevin Waitz v. Home Depot, USA, Inc.
(Breach of Warranty)**

44. Plaintiff incorporates by reference the allegations contained in paragraphs 1. through 43. as though the same were fully set forth herein.

45. Defendant, Home Depot, breached the implied warranty of merchantability and fitness for a particular purpose.

46. Defendant, Home Depot, breached the implied warranty of safety for intended use.

WHEREFORE, Plaintiff, Kevin Waitz, respectfully prays this Honorable Court to enter judgment in his favor, against Defendant, Home Depot, USA, Inc. jointly, severally and/or singularly in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) and requests compensatory damages from each.

COUNT V

**Karen Waitz v. DeWalt Industrial Tool Company and Home Depot, USA, Inc.
(Loss of Consortium)**

47. Plaintiff, Karen Waitz, incorporates by reference the allegations contained in paragraphs 1. through 46. as though the same were fully set forth herein.

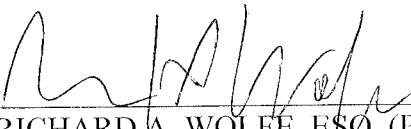
48. At all times relevant hereto, Plaintiff, Karen Waitz, was the wife of Plaintiff, Kevin Waitz, and was lawfully entitled to the society, companionship, services and consortium of Plaintiff, Kevin Waitz.

49. As a direct and proximate result of the breach of Warranty and Strict Liability of Defendants, DeWalt Industrial Tool Company and/or Home Depot, jointly, severally and/or individually Plaintiff Karen Waitz suffered a loss of the society, companionship, services and consortium of Plaintiff, Kevin Waitz.

WHEREFORE, Plaintiff, Karen Waitz, respectfully prays this Honorable Court to enter judgment in her favor, against Defendants, DeWalt Industrial Tool Company and/or Home Depot, USA, Inc. jointly, severally and/or singularly in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) and requests compensatory damages from each.

Respectfully submitted,

SAFFREN & WEINBERG

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Kevin Waitz and Karen Waitz

Dated: May 16, 2012