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THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**SPATT, J.**

-----X		
RICHARD WOLFSON, On Behalf of Himself and	:	Case No.
All Other Persons Similarly Situated,	:	<b>WALL, M.J.</b>
	:	
Plaintiff,	:	Class Action
	:	Complaint
	:	
vs.	:	
	:	
WHIRLPOOL CORPORATION	:	
	:	
Defendant.	:	
-----X		

**INTRODUCTION**

1. Plaintiff brings this class action on behalf of himself and all others similarly situated against Defendant Whirlpool Corporation (“Defendant” or “Whirlpool”), seeking damages and injunctive relief for the proposed Class as defined herein.

2. This action is brought to remedy violations of applicable law in connection with Defendant’s design, manufacture, sale and servicing of its self-cleaning ovens sold under the brand “KitchenAid” (“Ovens” or “Oven”). As a result of a design defect and/or a defect in material or workmanship: (a) use of the self-cleaning cycle as few as one or two times renders the Ovens unusable without costly repairs; and (b) use of the self-cleaning cycle five or six times

damages the Ovens beyond repair.

3. Plaintiff asserts claims on behalf of himself and a New York class under the New York General Business Law, § 349 ("NY GBL §349") and for breach of warranty.

### **THE PARTIES**

4. Plaintiff Wolfson is a citizen of New York and resides in Garden City, New York. On or about August 9, 2009, Plaintiff purchased a KitchenAid Electric Range Architect Series II oven from a P.C. Richard & Son store in New York and took delivery of the Oven on or about August 10, 2009. After the first time he used the self-cleaning system in May 2011, his Oven no longer functioned and needed to be repaired. The repair cost Plaintiff Wolfson \$217.25.

5. KitchenAid is a wholly-owned subsidiary of the Whirlpool Corporation and maintains its principal place of business at 553 Benson Road, Benton Harbor, MI 49022-2692.

6. Whirlpool Corporation is a Delaware corporation with its principal place of business also in Michigan at 2000 N. M-63 Benton Harbor, MI 49022-2692.

7. Whirlpool sells Ovens under the "KitchenAid" brand.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which the Class members and Defendant are citizens of different states.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because the Lead Plaintiff is a resident of this judicial district and does business throughout this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims took place within this district.

## FACTUAL BACKGROUND

10. Defendant Whirlpool holds itself out to the public as a manufacturer of gas and electric ovens that deliver “exceptional results,” as advertised prominently on Defendant’s KitchenAid website. Each of these Ovens has a self-cleaning capability that allows the consumer, with the touch of a button, to clean heavily soiled spots in the Oven. In conjunction with each sale, Defendant warranted that the defective Ovens were free from defects.

11. Defendant has manufactured, produced, and/or distributed Ovens for several leading retailers in the United States, such as Home Depot, Sears, and P.C. Richard & Son. Whirlpool provided Plaintiff and each owner of the subject Ovens with a one-year factory warranty for parts and labor and a five-year warranty for specified parts if they become defective because of workmanship.

12. The Ovens feature a self-cleaning capability that, upon the first or second use, damages the control panel as a result of excessive heat, requiring costly repairs in order to begin reusing the Oven. After the fifth or sixth use of the self-cleaning cycle, the heat from the self-cleaning cycle damages the control panel beyond repair.

13. The damage resulting from the self-cleaning cycle is not covered by the 5-year warranty. However, like Plaintiff Wolfson, consumers often do not use the self-cleaning feature during the first year, since the Oven has not yet been heavily used and dirtied.

14. Whirlpool intended for customers to believe its Ovens were and are of first-rate quality (compared with other ovens) and listed its self-cleaning as one of its notable features, despite Whirlpool’s knowledge that these statements were misleading due to its omission of material facts about defects in its Ovens.

15. The self-cleaning cycle begins by pressing a button on the control panel, which is directly above the Oven door. The Oven door then locks automatically and the Oven heats to extremely high temperatures. The self-cleaning cycle lasts from two to over four hours. Some Oven models have the additional ability to self-clean at different levels, and thus for longer period of times or at higher temperatures, depending on the level of cleaning desired.

16. This extreme heat from the self-cleaning cycle ultimately damages the control panel, without which the Oven cannot operate, beyond repair after only five to six uses.

17. Whirlpool has concealed material information regarding the Ovens, including the design defects and/or defects in material or workmanship which cause the Ovens to become unusable after one or two uses of the self-cleaning cycle and beyond repair after five or six uses. These defects deny customers use of the self-cleaning feature of the Ovens.

18. Whirlpool has been aware of these defects since well before the class period but continues to manufacture and sell these Ovens with a self-cleaning feature.

19. In light of Whirlpool's knowledge of the problems associated with, and the serious nature of the defects at issue, Whirlpool knew, or should have known, that it was selling the Ovens to consumers with a value that was substantially diminished.

20. Plaintiff and Class members reasonably expected that the Ovens would not contain design defects, and/or defects in material or workmanship, that would substantially impair the Ovens' performance and use. Plaintiff and Class members also reasonably expected that the Ovens would not require extensive and expensive repairs (or the purchase of extended or third party warranties to continuously attempt to fix problems inherent in the Ovens) as a result of the defects, which defects were known to Whirlpool at the time of sale. If Whirlpool had not misrepresented and concealed material information regarding the defective nature of the Ovens,

Plaintiff and other members of the Class would not have purchased the Ovens at premium prices, and on the terms offered.

21. As described above, Whirlpool is aware of the defects in the self-cleaning cycle that require costly repairs and ultimately result in the destruction of the Ovens. Plaintiff and many members of the Class have alerted Defendant to the defects with the self-cleaning cycle. Indeed, many members of the Class have posted their experiences with the defective Ovens on the Internet, including, but not limited to, postings appearing in on-line forums:

<http://ths.gardenweb.com/forums/load/app1/msg091303016942.html> and

[http://www.consumeraffairs.com/homeowners/kit\\_stoves.html](http://www.consumeraffairs.com/homeowners/kit_stoves.html).

22. To this day, Defendant continues to conceal material information from users, consumers, and the public.

#### **CLASS ACTION ALLEGATIONS**

23. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all purchasers who, on or after June 3, 2008, purchased, at retail price and for personal use, an Oven (the "Class") in the State of New York.

24. **Numerosity/Impracticability of Joinder**: The members of the Class are so numerous that joinder of all members would be impracticable. The proposed Class includes thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendant's possession, custody, and control.

25. **Commonality and Predominance**: There are common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions include, but are not limited to the following:

- (a) Whether the Ovens are defective;

- (b) Whether Whirlpool knew that the Ovens were and are defective;
- (c) Whether Whirlpool concealed material facts from its communications and disclosures to Plaintiff and the Class regarding the defects inherent in the Ovens;
- (d) Whether Whirlpool has engaged in deceptive acts or practices in connection with the sale of the Ovens;
- (e) Whether Whirlpool breached its warranty and/or extended warranties; and
- (f) Whether, as a result of Whirlpool's conduct, Plaintiff and the Class have suffered damages; and if so the appropriate amount thereof.

26. **Typicality**: The representative Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all Class members have been injured by the same wrongful practices in which Whirlpool has engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of all Class members and are based on the same legal theories.

27. **Adequacy**: Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained class counsel who is experienced and qualified in prosecuting class actions. Neither Plaintiff nor his attorneys have any interests which are contrary to or conflicting with the Class.

28. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each Class member resulting from Whirlpool's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every Class member could afford individual litigation, the

court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Whirlpool has acted or refused to act on grounds generally applicable to the Class and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

29. Plaintiff and the Class do not anticipate any difficulty in the management of this litigation.

**FIRST CAUSE OF ACTION**  
**Violations of Section 349 Of New York**  
**General Business Law: Deceptive Acts And Practices**

30. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

31. Plaintiff and the members of the Class are consumers who purchased KitchenAid Ovens for personal use. Plaintiff brings this action pursuant to New York General Business Law Section 349.

32. Whirlpool has engaged in deceptive practices in the sale of its Ovens for: (1) selling Ovens with a design flaw that damaged the Oven beyond repair after only five or six uses of the self-cleaning feature; and (2) failing to disclose and/or concealing this known defect and risk.

33. Whirlpool warranted that Ovens were free from defects, although it knew that the self-cleaning functions did not operate properly.

34. The unfair and deceptive trade acts of Whirlpool have caused damages and injury to Plaintiff and the Class.

**SECOND CAUSE OF ACTION**  
**Asserted On Behalf Of The Class Against Whirlpool**  
**(Breach Of Express Warranty)**

35. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

36. Whirlpool warranted that all of the Ovens were free from defects in material or workmanship at a time when it knew that these Ovens suffered from a serious defect and, nevertheless, continued to market and sell these Ovens with this express warranty.

37. Whirlpool also sold extended warranties to Plaintiff and some members of the Class even though it had no intention of remedying the serious defects in material and workmanship inherent in the Ovens and has continued to market and sell extended warranties with respect to the Ovens despite the serious defects in the Ovens.

38. Whirlpool has breached its express warranties, as set forth above, including its extended warranties, by supplying the Ovens in a condition which does not meet the warranty obligations undertaken by Whirlpool and by failing to repair or replace the defect and/or defective parts inherent in the Ovens.

39. Whirlpool has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and Whirlpool's knowledge, Whirlpool refuses to honor its warranty, even though it knows of the inherent defect in the Ovens.

40. In addition, Whirlpool has received, upon information and belief, thousands of

complaints and other notices from its customers nationwide advising it of the defects in the Ovens.

41. Plaintiff has given Defendant a reasonable opportunity to cure its failures with respect to its warranties, and Defendant failed to do so.

42. Whirlpool has failed to provide to Plaintiff or the Class members, as a warranty replacement, a product that conforms to the qualities and characteristics that Whirlpool expressly warranted when it sold the Ovens to Plaintiff and members of the Class.

43. As a result of Whirlpool's breach of warranty, Plaintiff and the Class have suffered damages in an amount to be determined at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Class pray for judgment against Defendant granting the following relief:

- a. An order certifying this case as a class action and appointing Plaintiff's counsel to represent the Class;
- b. All recoverable compensatory and other damages sustained by Plaintiff and the Class;
- c. Actual, treble, and/or statutory damages for injuries suffered by Plaintiff and the Class in the maximum amount permitted by applicable law;
- d. An order (1) requiring Whirlpool to immediately cease its wrongful conduct as set forth above; (2) enjoining Whirlpool from continuing to conceal material information about the defect; and (3) requiring Whirlpool to refund to Plaintiff and all members of the Class the funds paid to Whirlpool for the defective Ovens, and/or repairs resulting from the defect;
- e. Payment of reasonable attorneys' fees and costs as may be allowable under

applicable law; and

- f. Such other relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all causes of action so triable.

Date: June 3, 2011  
New York, New York

Respectfully submitted,



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