

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TIMOTHY HENNIGAN, individually and  
on behalf of himself and all others similarly  
situated,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,  
SAMSUNG ELECTRONICS AMERICA,  
INC.

Defendants

Case No. \_\_\_\_\_

(JURY TRIAL DEMANDED)

**CLASS ACTION COMPLAINT**

Plaintiff Timothy Hennigan, individually on behalf of himself and all others similarly situated, brings this Complaint against Defendants General Electric Company (“GE”) and Samsung Electronics America, Inc. (“Samsung”) (collectively “Defendants”), and in support alleges as follows:

**NATURE OF THIS ACTION**

1. GE is one of the largest technology, media, and financial services companies in the world. Its Industrial Division produces and sells a variety of technological products, including consumer appliances.
2. Samsung Electronics America, Inc. is one of the largest electronics companies in the world, producing a variety of consumer products, including home appliances.
3. Defendants participated in the manufacturing and/or design of microwave ovens

branded with the “General Electric” name. The microwave ovens contain defects that make them unreasonably dangerous and unsuitable for their intended use. Defendants have known, or reasonably should have known, that these microwaves were defective, since at least 2003.

#### **THE PARTIES**

4. Plaintiff Tim Hennigan is a citizen of the United States of America residing at 330 Winry Drive, Rochester Hills, Michigan 48307. Mr. Hennigan purchased a GE-branded microwave oven, model number JVM1410WC0001, on or about February of 2001. Mr. Hennigan used his microwave oven as it was intended to be used. However, on or about June 5, 2008, Mr. Hennigan’s microwave oven began operating on its own accord. Immediately afterwards, the microwave began emitting smoke and sparks. The control panel on the microwave was inoperable, and could not be used to turn the microwave off. Mr. Hennigan eventually stopped the smoke and sparks by shutting off power to his kitchen. As a result, Mr. Hennigan suffered smoke-related damage and he incurred additional replacement costs for his microwave.

5. Defendant General Electric Company is a New York corporation with its principal place of business at 3135 Easton Turnpike, Fairfield, Connecticut 06828. At all times relevant hereto, Defendant GE has conducted business in Michigan.

6. Defendant Samsung Electronics America, Inc. is a New York corporation with its principal place of business at 105 Challenger Rd., Ridgefield Park, New Jersey 07660. At all times relevant hereto, Defendant Samsung has conducted business in Michigan.

#### **JURISDICTION AND VENUE**

7. This Court has original jurisdiction over this civil action under 28 U.S.C. § 1332(d) because this action is a class action filed under Rule 23 of the Federal Rules of Civil Procedure, the amount in controversy exceeds \$5,000,000, and there are members of the Class who are citizens of a

different state than the Defendants.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to this action occurred, or a substantial part of the property that is the subject of this action is situated, in this District. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) because both GE and Samsung are corporations and subject to personal jurisdiction here since they sell, market, and warrant microwave ovens within the District. Venue is proper in this Division pursuant to Local Rule 83.10.

### **CLASS ACTION ALLEGATIONS**

9. Plaintiff brings this action on behalf of himself and the members of a class comprising of:

All persons residing in the United States of America who owned a GE-branded microwave oven manufactured since January 2000. Excluded from the Class is any entity in which GE or Samsung has a controlling interest or which has a controlling interest in GE or Samsung, and GE or Samsung's legal representatives, assigns, and successors. Also excluded are the judge assigned to this case and any member of the judge's immediate family.

10. Members of the Class are so numerous that joinder is impracticable. While the exact number of Class members is unknown to Plaintiff, it is believed that the Class is comprised of millions of members geographically disbursed throughout the United States. The Class, however, is readily identifiable from information and records in the possession of GE and/or Samsung.

11. Common questions of law and fact exist as to all members of the Class. These questions predominate over questions that may affect only individual Class members because Defendants have acted on grounds generally applicable to the Class. Such common legal or factual questions include:

(a) Whether Defendants' microwave ovens are defective;

- (b) Whether Defendants' microwave ovens are defectively designed and/or manufactured;
- (c) Whether the microwave oven defects resulted from Defendants' negligence;
- (d) Whether Defendants knew or reasonably should have known about the defects prior to distributing the microwave ovens to Plaintiff and the Class;
- (e) Whether Defendants concealed from and/or failed to disclose to Plaintiff and the Class the problems with its microwave ovens;
- (f) Whether Defendants knew or reasonably should have known about the defects after distributing the microwave ovens to Plaintiff and the Class;
- (g) Whether Defendants breached express warranties relating to their microwave ovens;
- (h) Whether Defendants breached the implied warranty of merchantability relating to their microwave ovens;
- (i) Whether Defendants were unjustly enriched by receiving monies in exchange for microwave ovens that were defective;
- (j) Whether Defendants should be ordered to disgorge all or part of the ill-gotten profits they received from the sale of the defective microwave ovens;
- (k) Whether Plaintiff and the Class are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- (l) Whether Defendants should be enjoined from selling and marketing their defective microwave ovens; and
- (m) Whether Defendants engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective microwave ovens.

12. Plaintiff's claims are typical of the members of the Class as all members of the Class are similarly affected by Defendants' actionable conduct. Plaintiff and all members of the Class own GE-branded microwave ovens with defects that make the microwave ovens inherently dangerous. In addition, Defendants' conduct that gave rise to the claims of Plaintiff and members of the Class (*i.e.* delivering a defective microwave oven, concealing the defect, and breaching warranties respecting

the microwave oven) is the same for all members of the Class.

13. Plaintiff will fairly and adequately protect the interests of the Class because Plaintiff has no interests antagonistic to, or in conflict with, the Class that Plaintiff seeks to represent. Furthermore, Plaintiff has retained counsel experienced and competent in the prosecution of complex class action litigation.

14. Class action treatment is a superior method for the fair and efficient adjudication of this controversy, in that, among other things, such treatment will permit a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

15. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

16. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

### **FACTUAL BACKGROUND**

17. Defendants design and manufacture microwave oven models. The models at issue are branded with the “GE” logo and are sold as GE model microwave ovens. GE markets these ovens under various names, such as “Spacemaker” or “Over-the-Range” microwave ovens.

18. Each microwave oven at issue contains a “control panel,” which contains a touchpad

on the outside surface of the microwave oven. A consumer uses the control panel to direct the use of the microwave oven, such as cooking temperature and cooking time.

19. Each microwave oven at issue contains a “cavity magnetron,” which is in turn powered by a high voltage transformer. The cavity magnetron generates the microwaves within the oven.

20. Upon information and belief, each microwave oven at issue contains a “heat sensor” which measures the amount of heat generated within the microwave oven. Upon information and belief, where a microwave oven generates excessive heat, the heat sensor should cause the microwave oven to shut down.

21. The GE-branded microwave ovens contain defects that cause the microwave ovens to begin operation unassisted and result in smoke or fire.

22. Upon information and belief, Samsung participated in the design and/or manufacturing of the GE-branded microwave ovens and/or its parts or components.

23. The defects rendered the microwave ovens unfit for the ordinary purpose for which they are used. As a result, Plaintiff and members of the Class also suffered property damage due to the smoke and/or fire caused by the defective microwave ovens. The defects were the direct, proximate, and foreseeable cause of damages incurred by Plaintiff and members of the Class.

24. Had the microwave ovens been properly manufactured and/or free from design defects, Plaintiff and the Class would not have suffered the damages complained of herein.

25. Defendant GE expressly and impliedly warranted, via user manuals, advertisements, pamphlets, brochures, circulars, samples, and/or models that their microwave ovens are fit for the ordinary purpose in which such goods are used.

26. GE expressly warranted in its user manuals that it would replace and repair, free of

charge, any part of its microwave ovens that failed due to a manufacturing defect within one year from the date of original purchase. GE further expressly warranted that it would provide, free of charge, a replacement magnetron tube, if the magnetron tube fails because of a manufacturing defect, and that such warranty would extend for the second through the tenth year from the date of original purchase.

27. However, GE did not repair or replace the defective parts in the microwave ovens owned by Plaintiffs and members of the Class free of charge; or if it did, GE merely replaced the defective part with a substitute that was also defective.

#### **TOLLING AND ESTOPPEL OF STATUTES OF LIMITATION**

28. On information and belief, Defendants were aware, at least as early as 2002, that GE-branded microwave ovens contained defects that caused the microwave ovens to begin operation unassisted and result in smoke or fire.

29. Although Defendants were aware of the dangerous defects, they took no steps to warn Plaintiff or the Class of such defects and the dangers the defects would pose. Defendants continued to sell the defective microwave ovens to Plaintiff and the Class.

30. The defects in the design and/or manufacture of the microwave ovens were not detectible to Plaintiff and members of the Class until they manifested themselves when the microwave ovens began operation unassisted and resulted in smoke and/or fire.

31. Defendants actively concealed the existence of the defects and/or failed to inform members of the Class of the existence of the defects. As a result of Defendants' active concealment of the defects and/or failure to inform Plaintiff and members of the Class of the defects, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled. Furthermore, Defendants are estopped from relying on any statutes of limitation in light of their

concealment of the defective nature of its microwaves.

**COUNT I  
(Negligence)  
(against GE & Samsung)**

32. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

33. Defendants owed a duty to Plaintiff and the Class to design, manufacture, market and sell its microwave ovens with reasonable care and in a workmanlike fashion.

34. Defendants breached that duty by designing and/or manufacturing the microwave ovens that are defective.

35. Plaintiff and members of the Class suffered damages and injuries due to Defendants' breach.

36. Defendants' breach proximately caused damages to Plaintiff and members of the Class.

**COUNT II  
(Strict Products Liability)  
(against GE & Samsung)**

37. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

38. Defendants designed and/or manufactured the microwave ovens owned by Plaintiff and the Class members.

39. The microwave ovens were defective and/or created an unreasonably dangerous condition.

40. Plaintiff and members of the Class suffered damages and injuries due to the defect and/or unreasonably dangerous condition.



41. The defect and/or unreasonably dangerous condition proximately caused the damages and injuries to Plaintiff and members of the class.

**COUNT III**  
**(Breach of Michigan Statute § 440.2313 *et seq.*: Express Warranty)**  
**(against GE)**

42. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

43. Defendant GE is a “seller” within the meaning of Mich. Stat. § 440.2103(1)(d).

44. Defendant GE’s microwave ovens are “goods” within the meaning of Mich. Stat. § 440.2105(1).

45. Plaintiff and the members of the Class are “buyers” within the meaning of Mich. Stat. § 440.2103(1)(a).

46. Defendant GE expressly warranted via its user manuals, advertisements, pamphlets, brochures, circulars, samples, and models that its microwave ovens are fit for the ordinary purpose in which such goods are used. GE also expressly warranted in its user manuals that it would replace and repair, free of charge, any part of its microwave ovens that failed due to a defect in materials or workmanship within one year from the date of original purchase and any part of its magnetron tube that fails due to a defect in materials or workmanship within ten years of the date of original purchase.

47. GE’s express warranties were part of the basis of the bargain between GE and Plaintiff and members of the Class.

48. GE breached its express warranty because its microwave ovens were not fit for the ordinary purpose in which such goods are used. Specifically, the microwave ovens contained defects that caused them to begin operation unassisted and result in smoke or fire, rendering the microwave

ovens unusable for their ordinary purpose. GE also breached its express warranty by refusing to repair the microwave ovens and/or replace microwave oven parts damaged by the defects.

49. Plaintiff and members of the Class relied upon the representation and/or warranty that they would be supplied a microwave oven free of defects.

50. Plaintiff and members of the Class notified GE of the breach.

51. Plaintiff and members of the Class sustained injuries and damages as a result of the breach.

**COUNT IV**  
**(Breach of Michigan Statute § 440.2314 et seq.: Implied Warranty Of Merchantability)**  
**(against GE & Samsung)**

52. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

53. Defendant GE's microwave ovens are "goods" within the meaning of Mich. Stat. § 440.2105(1).

54. Plaintiff and the members of the Class are "buyers" within the meaning of Mich. Stat. § 440.2103(1)(a).

55. A warranty that goods shall be merchantable and fit for the ordinary purposes for which such goods are used is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

56. GE is a "merchant" within the meaning of Mich. Stat. § 440.2104(1) with respect to microwave ovens.

57. GE's implied warranty that its microwave ovens were merchantable was part of the basis of the bargain between GE and plaintiff and members of the Class.

58. GE breached the implied warranty of merchantability because its microwave ovens

were not fit for the ordinary purpose in which such goods are used. Specifically, the microwave ovens contained defects that caused them to begin operation unassisted and result in smoke or fire, rendering the microwave ovens unusable for their ordinary purpose.

59. Plaintiff and members of the Class notified GE of the breach.

60. Plaintiff and members of the Class sustained injuries and damages as a result of the breach.

**COUNT V**  
**(Violation of 15 U.S.C. § 2301 *et seq.*: The Magnuson-Moss Warranty Act)**  
**(against GE and Samsung)**

61. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

62. Defendants' microwave ovens are "consumer products" within the meaning of 15 U.S.C. § 2301.

63. Plaintiff and members of the Class are "consumers" within the meaning of 15 U.S.C. § 2301.

64. Defendants are "suppliers" of the consumer products to consumers and "warrantors" within the meaning of 15 U.S.C. § 2301.

65. GE made written and implied warranties regarding its microwave ovens to Plaintiff and members of the class within the meaning of 15 U.S.C. § 2301.

66. Samsung made implied warranties regarding its microwave ovens to Plaintiff and members of the class within the meaning of 15 U.S.C. § 2301.

67. GE violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* by failing to comply with the written and implied warranties it made to Plaintiff and members of the Class.

68. Samsung violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* by

failing to comply with the implied warranties it made to Plaintiff and members of the Class

69. Plaintiff and members of the Class sustained injuries and damages as a result of Defendants' violation of their written and/or implied warranties.

**COUNT VI**  
**(Violation of Michigan Statute § 445.901 *et seq.*: The Michigan Consumer Protection Act)**  
**(against GE & Samsung)**

70. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

71. Defendants knew that the GE-branded microwave ovens were defective since at least 2003.

72. Defendants concealed and/or failed to inform Plaintiff and the Class that the microwave ovens were defective.

73. Such concealment and/or failure to inform constitutes an unfair, unconscionable, or deceptive act or practice within the meaning of the Michigan Consumer Protection Act, Mich. Stat. § 445.901 *et seq.*

74. This unfair, unconscionable, or deceptive act or practice caused damages to Plaintiff and the Class.

**COUNT VII**  
**(Unjust Enrichment)**  
**(against GE & Samsung)**

75. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

76. Plaintiff and members of the Class conferred a benefit upon Defendants. Namely, Plaintiff and members of the Class paid money to Defendants for ownership of the GE-branded microwave ovens.

77. Defendants retained that benefit.

78. Defendants, however, retained that benefit under circumstances that make it inequitable for Defendants to retain it without paying the value thereof. Specifically, Defendants retained that benefit despite the fact that its microwave ovens were defective.

**COUNT VII  
(Failure to Warn)  
(against GE & Samsung)**

79. Plaintiff re-alleges and incorporates each and every allegation set forth above as if fully written herein.

80. Defendants had a duty to warn of the foreseeable harm associated with the use of its microwave ovens.

81. Defendants had no reason to believe that consumers of its microwave ovens would be aware of the foreseeable harms associated with the use of Defendants' microwave ovens.

82. Prior to distributing the microwave ovens to Plaintiff and the Class, Defendants failed to provide appropriate instructions for the safe use of its microwave ovens.

83. Defendants had a legal duty to provide appropriate instructions for the safe use of its microwave ovens to Plaintiff and the Class, prior to distribution of its microwave ovens.

84. After distributing the microwave ovens to Plaintiff and the Class, Defendants failed to warn Plaintiff and the Class about the defects in the microwave ovens and the dangers that those defects would pose.

85. After distributing the microwave ovens to Plaintiff and the Class, Defendants had a legal duty to warn Plaintiff and the Class about the defects in the microwave ovens and the dangers that those defects would pose.

86. Plaintiff and members of the Class sustained injuries and damages as a result of Defendants' failure to warn of the foreseeable harm.

**REQUESTS FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, respectfully request that this Court:

- A. Certify the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiff and the Class in an amount to be determined at trial;
- C. Grant restitution to Plaintiff and the Class and require Defendants to disgorge their ill-gotten gains;
- D. Permanently enjoin Defendants from engaging in the wrongful and unlawful conduct alleged herein;
- E. Award Plaintiff and the Class their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;
- F. Award Plaintiff and the Class pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and
- G. Award such further relief as the Court deems appropriate.

Respectfully submitted,

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May 19, 2009

**DEMAND FOR JURY TRIAL**

**Plaintiff hereby demands a trial by jury on all issues so triable.**

Respectfully submitted,

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