

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

TIMOTHY HENNIGAN, AARON  
MCHENRY, and CHRISTOPHER COCKS,  
individually and on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

GENERAL ELECTRIC COMPANY  
Defendants

Case No. 2:09-cv-11912VAR-MJH

(JURY TRIAL DEMANDED)

**SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Timothy Hennigan, Aaron McHenry, and Christopher Cocks, individually on behalf of themselves and all others similarly situated, bring this Second Amended Complaint against defendant General Electric Company (“GE”) and in support allege 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. GE participated in the marketing, sale, 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. GE has known, or reasonably should have known, that these microwaves were defective, since at least 2002.

## **THE PARTIES**

3. 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 JVM1410WC001, 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.

4. Plaintiff Aaron McHenry is a citizen of the United States of America residing at 5213 New Milford, Apartment B, Ravenna, Ohio 44266. Mr. McHenry acquired a GE-branded microwave oven, model number JES1246BH001, on or about December 2004. Mr. McHenry used his microwave oven as it was intended to be used. However, on or about February 2006, Mr. McHenry's microwave oven began operating on its own volition. Mr. McHenry attempted to deactivate his microwave oven via its control panel, but was unsuccessful because after he turned off the power, it would restart again on its own accord. Mr. McHenry was finally forced to unplug his microwave to stop it from turning on without user direction. Mr. McHenry purchased a new microwave to replace the defective one.

5. Plaintiff Christopher Cocks is a citizen of the United States of America residing at 8575 Alta Mesa Road, Oak Hills, California 92344. Mr. Cocks acquired a GE-branded microwave oven, model number JVM1790WK01, on or about November 2006. Mr. Cocks used his microwave oven as it was intended to be used. However, on or about October 7, 2009, Mr.

Cocks's microwave started operating on its own accord. Immediately afterwards, the microwave began emitting smoke and was hot to the touch so it could not be turned off manually. Thus, Mr. Cocks was forced to unplug the microwave to stop it from running. The microwave is currently inoperable.

6. 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.

### **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 GE is a corporation 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. Plaintiffs bring 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 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 Plaintiffs, 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.

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 GE's microwave ovens are defective;
- (b) Whether GE's microwave ovens are defectively designed and/or manufactured;
- (c) Whether the microwave oven defects resulted from GE's negligence;
- (d) Whether GE knew or reasonably should have known about the defects prior to distributing the microwave ovens to Plaintiffs and the Class;
- (e) Whether GE concealed from and/or failed to disclose to Plaintiffs and the Class the problems with its microwave ovens;
- (f) Whether GE knew or reasonably should have known about the defects after distributing the microwave ovens to Plaintiffs and the Class;
- (g) Whether GE breached express warranties relating to their microwave ovens;
- (h) Whether GE breached the implied warranty of merchantability relating to their microwave ovens;
- (i) Whether GE was unjustly enriched by receiving moneys in exchange for microwave ovens that were defective;

(j) Whether GE should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective microwave ovens;

(k) Whether Plaintiffs and the Class are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;

(l) Whether GE should be enjoined from selling and marketing their defective microwave ovens; and

(m) Whether GE engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective microwave ovens.

12. Plaintiffs' claims are typical of the members of the Class as all members of the Class are similarly affected by GE's actionable conduct. Plaintiffs 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 Plaintiffs 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. Plaintiffs will fairly and adequately protect the interests of the Class because Plaintiffs have no interests antagonistic to, or in conflict with, the Class that Plaintiffs seeks to represent. Furthermore, Plaintiffs have 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. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

16. GE has 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. 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 may result in smoke or fire.

22. The defects rendered the microwave ovens unfit for the ordinary purpose for which they are used and caused Plaintiffs and members of the class to suffer damages, including, but not limited to, 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 Plaintiffs and members of the Class.

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

24. 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.

25. 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.

26. 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**

27. On information and belief, GE was 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.

28. Although GE was aware of the dangerous defects, it took no steps to warn Plaintiffs or the Class of such defects and the dangers the defects would pose. Defendants continued to sell the defective microwave ovens to Plaintiffs and the Class.

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

30. GE 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 GE's active concealment of the defects and/or failure to inform Plaintiffs 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, GE is estopped from relying on any statutes of limitation in light of their concealment of the defective nature of its microwaves.

### **COUNT I (Negligence)**

31. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

32. GE owed a duty to Plaintiffs and the Class to design, manufacture, market and sell its microwave ovens with reasonable care and in a workmanlike fashion.

33. GE breached that duty by designing and/or manufacturing the microwave ovens that are defective.

34. Plaintiffs and members of the Class suffered damages and injuries due to GE's breach.



35. GE's breach proximately caused damages to Plaintiffs and members of the Class.

**COUNT II**  
**(Strict Products Liability)**

36. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

37. GE marketed, sold, designed and/or manufactured the microwave ovens owned by Plaintiffs and the Class members.

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

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

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

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

41. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

42. Defendant GE is a "seller" within the meaning of Mich. Stat. § 440.2103(1)(d).

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

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

45. 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.

46. GE's express warranties were part of the basis of the bargain between GE and Plaintiffs and members of the Class.

47. GE breached its express warranty in violation of Michigan law and the substantially similar laws of all other states in which Defendants do business 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.

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

49. Plaintiffs and members of the Class notified GE of the breach.

50. Plaintiffs 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)**

51. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

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

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

54. 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.

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

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

57. GE breached the implied warranty of merchantability in violation of Michigan law and the substantially similar laws of all other states in which Defendants do business 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.

58. Plaintiffs and members of the Class notified GE of the breach.

59. Plaintiffs 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)**

60. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

61. GE's microwave ovens are "consumer products" within the meaning of 15 U.S.C. § 2301.

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

63. GE is a "supplier" of the consumer products to consumers and a "warrantor" within the meaning of 15 U.S.C. § 2301.

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

65. 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 Plaintiffs and members of the Class.

66. Plaintiffs and members of the Class sustained injuries and damages as a result of GE's violation of their written and/or implied warranties.

#### **COUNT VI**

##### **(Violation of Michigan Statute § 445.901 *et seq.*: The Michigan Consumer Protection Act)**

67. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

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

69. GE concealed and/or failed to inform Plaintiffs and the Class that the microwave ovens were defective.

70. 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.* and the substantially similar laws of all other states in which Defendants do business.

71. This unfair, unconscionable, or deceptive act or practice caused damages to Plaintiffs and the Class.

**COUNT VII  
(Unjust Enrichment)**

72. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

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

74. Defendants retained that benefit.

75. 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 VIII  
(Failure to Warn)**

76. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

77. GE had a duty to warn of the foreseeable harm associated with the use of its

microwave ovens.

78. GE 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.

79. Prior to distributing the microwave ovens to Plaintiffs and the Class, GE failed to provide appropriate instructions for the safe use of its microwave ovens.

80. GE had a legal duty to provide appropriate instructions for the safe use of its microwave ovens to Plaintiffs and the Class, prior to distribution of its microwave ovens.

81. After distributing the microwave ovens to Plaintiffs and the Class, GE failed to warn Plaintiffs and the Class about the defects in the microwave ovens and the dangers that those defects would pose.

82. After distributing the microwave ovens to Plaintiffs and the Class, GE had a legal duty to warn Plaintiffs and the Class about the defects in the microwave ovens and the dangers that those defects would pose.

83. Plaintiffs 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, Plaintiffs, 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 Plaintiffs and the Class and require GE to disgorge its ill-gotten gains;

D. Permanently enjoin GE from engaging in the wrongful and unlawful conduct alleged herein;

E. Award Plaintiffs and the Class their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;

F. Award Plaintiffs 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.

**PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF System which will send such notification to all ECF attorneys of record.

/s/ Darryl Bressack  
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