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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KELLY FARMER, Individually and on :  
behalf all others similarly situated, :

Plaintiff, :

v. :

SAMSUNG ELECTRONICS :  
AMERICA, INC. :

Defendant. :

Case No. *3:17-CV-564*

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff, Kelly Farmer (“Plaintiff”) brings this action against Defendant, Samsung Electronics America, Inc. (“Defendant” or “Samsung”), by and through her attorneys, individually and on behalf of all others similarly situated, and alleges as follows:

**I. INTRODUCTION**

1. This is a Class Action lawsuit brought by Plaintiff on behalf of herself and a Class of persons and entities (“Consumers”) who purchased or financed a Samsung Galaxy Note 7 smartphone (“Note 7”).

2. Consumer complaints with the Note 7 began to surface after the sale with regard to overheating and exploding and/or catching fire.

3. On or around September 2, 2016, Samsung recalled the defective Note 7 devices, and notified Consumers that they should immediately discontinue using the smartphone.

4. Even though it issued a recall, Samsung did not have replacement smartphones available.

5. In spite of the recall and Defendant’s failure to provide Consumers with adequate replacement phones, Consumers continued to incur costs from their cellular carriers.

6. As a result of Samsung's actions, Plaintiff and members of the Proposed Class have suffered injuries.

7. Plaintiff brings this Class Action on behalf of herself and all Members of the Proposed Class to seek recovery for Defendant's strict liability, negligence, negligent misrepresentation, breach of implied warranty, and violation of the Magnuson Moss Warranty Act.

## **II. PARTIES**

8. Plaintiff, Kelly Farmer, is a citizen of Pennsylvania and resides at 27 Trailing Pine Road, Shickshinny, PA 18655.

9. On or about December 2015, Plaintiff purchased a Note 7 in the Commonwealth of Pennsylvania and suffered damages as a result of Defendant's wrongful conduct.

10. Defendant, Samsung Electronics America, Inc., is a New York corporation with its principal place of business in Ridgefield Park, New Jersey.

11. Samsung is a wholly-owned subsidiary of Samsung Electronics Co., Ltd., which is a Korean company headquartered in Suwon, South Korea.

12. Defendant has been, and still is, engaged in the business of distributing, marketing and selling smartphones and other products throughout the United States and this District.

## **III. JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because the claims of individual Plaintiff and Members of the Proposed Class exceed the sum of \$5 million, exclusive of interests and costs, there are more than 100 putative Class members defined below, and the Class Members are citizens of a state different than Defendant.

14. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391 because Plaintiff resides in this District, and all activity giving rise to the allegations in this Complaint occurred in this District.

15. This Court has personal jurisdiction over Defendant because Samsung has conducted substantial business in this Judicial District, and it purposely availed itself of jurisdiction in the United States District Court for the Western District of Pennsylvania.

#### **IV. FACTS**

16. On August 19, 2016, Samsung released the Galaxy Note 7 which sold for \$850.00.

17. After the Note 7's release, reports started surfacing that the smartphone would overheat and explode.

18. In August, Samsung discontinued shipments of the Note 7.

19. Finally, on September 2, 2016, after numerous incidents of overheating of smartphones, Samsung suspended the sales of the Note 7.

20. Samsung then instituted a replacement program where it estimated one million phones in the United States needed to be replaced.

21. In its announcement, Samsung stated that the battery cell issued in the Note 7 was defective.

22. On September 9, 2016, the United States Consumer Product Safety Commission and Samsung issued advisories urging consumers to immediately stop using the Note 7.

23. Samsung directed Consumers to contact the place of purchase to exchange their device for a new Note 7.

24. The replacement devices were of lesser quality and offered less advanced technology than the Note 7 and were not always available.

25. By September 21, 2016, only 500,000 replacement devices had arrived to the United States.

26. By September 27, 2016, only 40% of the devices had been replaced.

27. On October 11, 2016, just as Consumers were finally starting to receive their replacement phones, Samsung announced it was discontinuing the Note 7 entirely. This is because Samsung learned that the replacement devices were also exploding.

28. On October 14, 2016, the U.S. Department of Transportation (“DOT”) issued an emergency order to ban all Note 7 smartphone devices from air transportation in the United States.

29. The DOT then announced that if a passenger attempted to travel by air with a Note 7 the phone may be confiscated and the passenger may face fines.

30. On November 3, 2016, Plaintiff began experiencing problems with her phone.

31. On November 4, 2016, the phone overheated and injured Plaintiff’s daughter.

32. Plaintiff has notified Samsung and purchased a new charger, which does not hold the same charge as the old battery and is of lesser quality.

33. As a result of her injuries, Plaintiff’s daughter received medical care, which cost Plaintiff \$550.20.

## V. CLASS ALLEGATIONS

### Class Definitions

34. All United States residents who purchased a Note 7, who are not being reimbursed costs as a result of the recall and suffered damages.

### Numerosity

35. It is estimated that there are thousands of Members of the Class proposed above who have purchased defective phones, which makes joinder of all its Members impracticable.

**Common Questions of Law and Fact**

36. Virtually all the issues of law and fact of this case are common to the Class and include at least one of the following:

- a) Whether the Defendant should be declared financially responsible for notifying all Class Members of their right to damages for the costs related to the recall of their phones;
- b) Whether the Defendant knew or was aware that when it recalled the phones, Plaintiff and Members of the Class were going to incur substantial costs as a result thereof;
- c) Whether Plaintiff and Members of the Proposed Class are entitled to reimbursement for the costs of the phones; and,
- d) Whether Plaintiff and Members of the Proposed Class suffered damages to their property.

**Typicality**

37. The claims of Representative Plaintiff are typical of the claims of the Proposed Class in that Plaintiff, like all other members of the Class, purchased the defective phones manufactured by the Defendant.

38. The defective phones failed and continue to fail.

39. Plaintiff and Class Members have been damaged by Defendant's conduct and have incurred costs by paying for phone plans when their phones were not able to be used.

40. Consumers also suffered personal injuries and/or property damage from the Note 7, thus entitling them to damages.

41. Defendant's claims and defenses are typical of Plaintiff and Members of the Class.

42. No conflicts of interests between Plaintiff and Class Members exist.

43. Plaintiff and Members of the Proposed Class all have sustained damages.

44. Plaintiff can fairly and adequately represent and protect the interest of the Class.

45. Plaintiff has retained attorneys competent and experienced in Class Action litigation, consumer products, and mass injury actions.

**Superiority**

46. A Class Action is superior to any other available method for the fair and efficient adjudication of this controversy, as common questions of law and fact overwhelmingly predominate over any individual questions that may arise.

- a. The prosecution of separate actions by individual Members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class. This would establish incompatible standards of conduct for the Defendant.
- b. Adjudications with respect to individual Members of the Class would, as a practical matter, be dispositive of the interests of other members and impede the interest of all Members.
- c. The Defendant has acted or refused to act on grounds generally applicable to all Members of the Class, thereby making appropriate, final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.
- d. The Class is so numerous as to make joinder impracticable. However, the Class is not so numerous as to create manageability problems. There are no unusual legal or factual issues which would create manageability problems.
- e. The claims of the individual Class Members are small in relation to the expenses of litigation, making a Class Action the only procedure in which Class Members can, as a practical matter, recover. However, the claims of individual Class Members are large enough to justify the expense and effort of maintaining a Class Action.

**VI. CAUSES OF ACTION**

**Count I**  
**STRICT LIABILITY**

47. Plaintiff incorporates, by reference, all preceding allegations of this Complaint, as fully set forth herein.

48. This claim is asserted on behalf of the Plaintiff and the Proposed Class.

49. The Defendant is engaged in the business of designing, manufacturing, producing, testing, inspecting, marketing, and selling Note 7 smartphones.

50. The Note 7 was expected to, and did, reach Plaintiff and members of the Proposed Class without substantial change in the condition in which they were designed, manufactured, produced, tested, inspected, marketed, and sold.

51. The Note 7's were in a defective condition under normal conditions, usage, and applications when they left Defendant's possession or control.

52. Plaintiff and the Members of the Proposed Class used the Note 7's in a manner and for a purpose for which they were intended and which was foreseeable by the Defendant.

53. The Note 7's were defective in that they were incapable of being made safe for their ordinary and intended uses.

54. As a direct and proximate result of the Defendant's negligence, Plaintiff and the Proposed Class Members suffered, and will continue to suffer, losses as alleged herein, in amounts to be determined at trial.

**Count II**  
**NEGLIGENCE**

55. Plaintiff incorporates, by reference, all preceding allegations of this Complaint, as fully set forth herein.

56. This claim is asserted on behalf of the Plaintiff and Proposed Class.

57. The Defendant knew, or should have known, that the Note 7's, in its ordinary and foreseeable uses, were defective.

58. The Defendant knew, or should have known, that the Note 7's it designed, manufactured, treated, produced, tested, inspected, marketed and/or sold, in ordinary and foreseeable use, would fail to perform as intended.

59. Due to its superior knowledge of the defects in the Note 7's, the Defendant had a duty to disclose to the public the defective nature of the Note 7's.

60. The Defendant failed to exercise reasonable care with respect to the design, development, manufacture, production, testing, inspection, marketing and/or sale of the Note 7's by, among other things, failing to design and/or manufacture the Note 7's in a manner to ensure that under normal usage, conditions, and applications, Consumers would not suffer damages.

61. The Defendant's negligence, as set forth above, directly and proximately caused the harm suffered and/or being suffered by Plaintiff and members of the Proposed Class.

62. As a direct and proximate result of the Defendant's negligence, Plaintiff and the Proposed Class Members suffered, and will continue to suffer, losses as alleged herein, in amounts to be determined at trial.

**Count III**  
**NEGLIGENT MISREPRESENTATION**

63. Plaintiff incorporates, by reference, all preceding allegations of this Complaint, as fully set forth herein.

64. This claim is asserted on behalf of the Plaintiff and Proposed Class.

65. Defendant made the misrepresentations and omissions described above.

66. Defendant made these misrepresentations and omissions without a reasonable basis for believing the misrepresentations to be true, and without a reasonable basis for believing the omitted information need not have been disclosed.

67. As a direct and proximate cause of Defendant's negligence, Plaintiff and each Member of the Proposed Class have suffered actual damages.

68. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for compensatory damages for herself and each Member of the Proposed Class

in an amount to be proven at trial, plus attorneys' fees, interest and costs.

69. As a direct and proximate result of the Defendant's negligence, Plaintiff and the Proposed Class Members suffered, and will continue to suffer, losses as alleged herein, in amounts to be determined at trial.

**Count IV**  
**BREACH OF IMPLIED WARRANTY**

70. Plaintiff incorporates, by reference, all preceding allegations of this Complaint, as fully set forth herein.

71. This claim is asserted on behalf of the Plaintiff and Proposed Class.

72. The Note 7's are goods, and Defendant is a merchant with respect thereto, within the meaning of the Uniform Commercial Code, as adopted in Pennsylvania.

73. Defendant designed, developed, manufactured, distributed, marketed, advertised, and/or sold the Note 7's directly to or for the purpose of its eventual sale to end users.

74. Defendant impliedly warranted to Plaintiff and Proposed Class Members, prior to their purchase of Note 7's, that the Note 7's were merchantable and fit for the use and ordinary purposes for which Note 7's are intended.

75. At all times relevant hereto, there was a duty imposed on the Defendant by law which requires that a manufacturer or seller's product be merchantable, reasonably fit for the purposes for which such products are used, and be acceptable in trade for the product description.

76. Plaintiff and Proposed Class Members relied on Defendant's skill and judgment in selecting Defendant's product to purchase. Moreover, Plaintiff and Proposed Class Members relied on the statements made in Defendant's Limited Warranty that the Note 7's were free from defects in workmanship and materials and were fit for the ordinary purposes for which such Note 7's are used.

77. Defendant breached its duty by selling to Plaintiff and Proposed Class Members Note 7's that were not merchantable.

78. In fact, the Note 7's were unfit for their intended use and not of merchantable quality, in that they were prone to overheat and explode, causing the Note 7's to break down and cause personal injuries and damage to property.

79. The Note 7's were also unfit for their ordinary purpose and were of non-merchantable quality because they overheated and exploded causing damage to other property.

80. Defendant breached its implied warranties in that the Note 7's were defective in design and manufacture.

81. Defendant's limitations on the duration of its implied warranties are unconscionable and fail of their essential purpose. The Note 7's were defective at the time they were acquired by Plaintiff and the Class Members.

82. Plaintiff, as well as the Members of the Proposed Class relied on Defendant's implied warranties concerning the Note 7 and sustained an ascertainable loss, financial injury, and bodily injury resulting from Defendant's breach of those warranties.

83. After Plaintiff sustained damages as a result of the aforesaid product, notice was duly given to Defendant of the breach of said warranty.

84. Any purported disclaimer or limitation of these implied warranties of merchantability on the part of Defendant is unconscionable and unenforceable because Defendant possessed actual, exclusive knowledge of the Note 7's defects at all times relevant hereto by virtue of complaints made by purchasers of the Note 7.

85. Upon information and belief, Defendant has received scores of claims, complaints, and other notices from consumers advising Defendant of the Note 7's defects.

86. As a direct and proximate result of the Defendant's breach of implied warranties, Plaintiff and the Proposed Class Members suffered, and will continue to suffer, losses as alleged herein, in amounts to be determined at trial.

**Count V**  
**VIOLATION OF MAGNUSON MOSS WARRANTY ACT**

87. Plaintiff incorporates, by reference, all preceding allegations of this Complaint, as fully set forth herein.

88. This claim is asserted on behalf of the Plaintiff and Proposed Class.

89. As set forth above, Defendant implicitly warranted the Note 7's to be merchantable and fit for their ordinary use, not otherwise injurious to consumers or property, and would come with adequate safety warnings.

90. Because of their undisclosed propensity to overheat and explode, the Note 7's are unsafe, non-merchantable, and unfit for their ordinary purpose.

91. Due to this, the Plaintiff and Proposed Class have suffered injuries.

92. Defendant has therefore breached the implied warranty of merchantability.

93. Defendant's express warranty attempts to disclaim and/or modify the implied warranties that were made to Consumers.

94. Any such disclaim or modification violates the Magnuson Moss Warranty Act, 15 U.S.C.A. § 2308.

95. As a direct and proximate result of the Defendant's violation of the Magnuson Moss Warranty Act, Plaintiff and the Proposed Class Members suffered, and will continue to suffer, losses as alleged herein, in amounts to be determined at trial.

96. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for compensatory damages for herself and each Member of the Proposed Class, and for the establishment of the common fund, plus attorney's fees, interest and costs.

**VII. JURY DEMAND**

97. The Plaintiff hereby demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Kelly Farmer, on behalf of herself and all others similarly situated, prays the Court to enter judgment against the Defendant and in favor of Plaintiff, on behalf of herself and the Members of the Proposed Class, and to award the following relief:

- a. Certifying this action as a Class Action pursuant to Rule 23, *et. seq.*;
- b. Declaring any limitations of remedies and the disclaimer of Defendant's implied warranties to be unlawful and unconscionable and unenforceable;
- c. Declaring that Samsung has breached the implied warranties given with the purchase of the Note 7;
- d. Awarding each Class Member compensatory damages for the acts complained of herein;
- e. Awarding the Class costs and attorneys' fees against the Defendant, as allowed by law, and/or awarding counsel for the Class attorneys' fees; and,
- f. Granting such other or further relief as may be appropriate under the circumstances.

Respectfully submitted:

Date: March 30, 2017

/s/ D. Aaron Rihn

D. Aaron Rihn, Esquire

PA ID: 85752

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CIVIL COVER SHEET

3:17-CV-564

The JS 44 civil cover sheet 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.)

I. (a) PLAINTIFFS

Kelly Farmer, Individually and on behalf of all others similarly situated,

DEFENDANTS

Samsung Electronics America, Inc.

(b) County of Residence of First Listed Plaintiff Luzerne (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Bergen (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) D. Aaron Rihn, Esquire, Robert Peirce & Associates, P.C. 707 Grant Street, Suite 2500, Pittsburgh, PA 15219 412-281-7229

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns for various suit types: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise, PERSONAL INJURY, PERSONAL INJURY, PERSONAL PROPERTY, 625 Drug Related Seizure of Property 21 USC 881, 690 Other, 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act, 822 Appeal 28 USC 158, 823 Withdrawal 28 USC 157, 820 Copyrights, 830 Patent, 840 Trademark, 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)), 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609, 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C Section 1332(d)

Brief description of cause: Five counts stemming from negligent actions and breach of contractual duties

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.01 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 03/30/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ D. Aaron Rihn

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Samsung Hit with Another Exploding Smartphone Lawsuit](#)

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