

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BARRY GARFINKLE, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

WOLF APPLIANCE, INC.,

Defendant.

x

:

:

:

:

:

:

:

:

:

:

:

:

:

x

Civil Action No.

CLASS ACTION

COMPLAINT FOR BREACH OF EXPRESS
AND IMPLIED WARRANTIES,
VIOLATION OF THE MAGNUSON-MOSS
WARRANTY ACT, NEGLIGENT
MISREPRESENTATION AND
VIOLATIONS OF THE PENNSYLVANIA
UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW

DEMAND FOR JURY TRIAL

Plaintiff Barry Garfinkle (“plaintiff”), by and through his undersigned counsel, individually and on behalf of all others similarly situated, brings this action for damages and equitable relief against defendant Wolf Appliance, Inc. (“defendant” or “Wolf”). Plaintiff alleges the following upon information and belief based on the investigation of counsel, except as to those allegations which specifically pertain to plaintiff (which are alleged upon personal knowledge).

INTRODUCTION

1. This action is brought against defendant for the harm it caused to consumers in connection with its design, manufacture, sale, performance, servicing and/or warranting of ovens containing Wolf’s porcelain oven cavity interior, including most notably, its “signature” cobalt blue porcelain cavity (hereinafter collectively referred to as the “Ovens” or the “Wolf Ovens”).

2. Wolf’s E, L and M Series built-in ovens, and “dual fuel” ranges, for example, contain the blue porcelain interior.

3. Wolf’s gas ranges, on the other hand, contain a black porcelain interior.

4. Through this action, plaintiff seeks to represent all purchasers of Wolf’s wall or built-in ovens and ranges, whether single or double oven models, containing porcelain interiors since June 21, 2011.

5. Defendant falsely advertises and markets its Wolf Ovens to consumers. The porcelain interior of the Wolf Ovens will chip and crack through regular use and due to, upon information and belief, the self-clean function of the Ovens.

6. Owners of the Wolf Ovens, therefore, cannot use the Ovens’ self-clean feature without the risk of chipping or cracking the interior porcelain.

7. Wolf is a leading manufacturer of high-end cooking appliances, including ranges and built-in ovens. It competes directly with Viking (defined below) in the luxury kitchen appliance market. Wolf charges a premium price for its top-of-the-line Ovens. Its Ovens retail for

approximately \$5,000 to \$17,000. E Series built-in double ovens, like the one plaintiff purchased, currently retail for approximately \$6,645 - \$6,695. A 60 inch dual fuel range with six burners and a French top retails for \$17,195.

8. Wolf's website highlights its Ovens' "cobalt blue porcelain interior[s]" as part of "Wolf's signature aesthetics [that] enhance the oven's interior, creating a bold cooking backdrop."¹

9. Wolf product webpages promote the cobalt blue porcelain interior in two principal sections of the webpage, including as a central "Product Featur[e]" and as one of the oven's primary "Highlights" under the "Specifications and Downloads" section.²

10. Moreover, each Wolf oven product webpage boasts that Wolf products are "*rigorously tested to ensure dependability*," "[b]uilt with *superior-quality materials*," and "*designed to last a minimum of 20 years under far heavier use than any home cook will ever subject them to*."^{3,4}

11. Wolf also advertises that its Ovens' "convenient features," such as the self-clean function, are "[w]onderfully easy to use."⁵

¹ E.g., <http://www.subzero-wolf.com/wolf/ranges/dual-fuel/48-inch-dual-fuel-range-6-burners-infrared-charbroiler> (last visited June 14, 2017); see also <http://www.subzero-wolf.com/wolf/ovens/l-series/36-inch-built-in-l-series-oven> (last visited June 20, 2017).

² E.g., <http://www.subzero-wolf.com/wolf/ovens/l-series/36-inch-built-in-l-series-oven> (last visited June 20, 2017).

³ E.g., <http://www.subzero-wolf.com/wolf/ovens/l-series/36-inch-built-in-l-series-oven> (last visited June 20, 2017); <http://www.subzero-wolf.com/wolf/ovens/m-series/30-inch-m-series-professional-built-in-double-oven> (last visited June 20, 2017).

⁴ Unless otherwise noted, all emphasis is added.

⁵ E.g., <http://www.subzero-wolf.com/wolf/ovens/l-series/36-inch-built-in-l-series-oven> (last visited June 20, 2017).

12. To back up its reliability claims, Wolf purports to have “the best warranty and service in the cooking business.”⁶ Under its “full two year warranty,” Wolf warrants that: “For two years from the date of original installation, this Wolf Appliance product warranty covers all parts and labor to repair or replace, under normal residential use, any part of the product that proves to be defective in materials or workmanship.”⁷

13. Defendant did not, and does not, provide any information to Class members (defined below) regarding the defective cavities in the Ovens. That information was withheld from plaintiff and like consumers both before and after purchasing the Wolf Ovens.

14. Wolf, upon information and belief, is aware of the pervasiveness of the defect.⁸ Still, it refuses to adhere to its representations and warranties and remedy the defect or compensate owners of the Ovens.

15. As a result of the defect, the Ovens do not satisfy several of the key purposes for which they were purchased, *i.e.*, cooking food without damaging the Ovens’ interior or causing risk of harm or injury to the user, providing an operable and “convenient” self-clean feature and delivering “signature aesthetics.”

16. Plaintiff and Class members purchased the defective Ovens designed, marketed, manufactured, distributed and sold by defendant based on their reasonable expectation that the Ovens would work and be reliable as advertised and warranted, and without knowledge of the

⁶ Internet Archive Wayback Machine, Nov. 21, 2008 search results for “<http://www.subzero.com/wolf/warranty.asp>”, <http://web.archive.org/web/20081121012838/www.subzero.com/wolf/warranty.asp> (last visited June 15, 2017).

⁷ Wolf Appliance Residential Limited Warranty, <http://www.subzero-wolf.com/resources/WolfWarranty.pdf> (last visited June 14, 2017).

⁸ For example, Ivan and Melanie Kail filed a class action complaint against Wolf regarding the defect on June 16, 2015, discussed *infra*.

products' defect. Through the ordinary and/or directed use of the Ovens, consumers throughout the country have experienced cracking, chipping, crazing and/or flaking, and the inability to fully operate their Ovens, including the self-clean function, without damaging the oven cavity and risking injury.

17. Plaintiff and Class members would not have purchased the Ovens and/or paid the premium purchase price for a luxury brand oven if they knew that the porcelain interior, including Wolf's signature blue interior, would deteriorate and cause the Ovens, and their self-clean function, to become inoperable. Absent defendant's actions, and had plaintiff and Class members known of the defective nature of the Ovens, plaintiff and Class members would not have purchased and/or paid the purchase price for defendant's Ovens. And, absent defendant's actions, and had plaintiff and Class members known of the defective nature of the Ovens, plaintiff and Class members would not have used the Ovens in their homes.

18. Plaintiff asserts claims on behalf of himself and a Nationwide Class (defined below) for breach of express and implied warranties, violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.* ("MMWA"), negligent misrepresentation and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. §201-1, *et seq.* ("UTPCPL").

19. In addition, and in the alternative to the Nationwide Class, plaintiff asserts claims on behalf of a Pennsylvania Subclass (defined below) for breach of express and implied warranties, negligent misrepresentation, violation of the MMWA and violations of the UTPCPL. The Nationwide Class and Pennsylvania Subclass are cumulatively hereinafter referred to as the "Classes," and members thereof are referred to herein as "Class members."

THE PARTIES

20. Plaintiff is, and was at all relevant times, a resident of Lansdale, Pennsylvania.

21. In May 2012, plaintiff first purchased a Wolf 30-inch E Series double oven, model number DO30-2FS-TH, from Kieffer's Appliances in Lansdale, Pennsylvania ("Kieffer's"). Within a little over a year of owning and operating the oven under normal household conditions, plaintiff observed that the blue porcelain interior finish of one of the oven cavities began to chip after utilizing the self-clean function. Shortly thereafter, plaintiff noticed chipping in the other oven cavity. Plaintiff complained to Wolf about the defect.

22. Wolf replaced plaintiff's ovens in connection with chipping and cracking porcelain cavities on two separate occasions – in approximately January 2014 and February 2015.

23. Plaintiff received his current E Series Wolf double oven in or about February 2015. This oven, like the others before it, contains the identical defect. Plaintiff cannot use the self-clean function of his current oven without further damaging the interior finish or safely operate the oven without risking injury to himself.

24. Defendant Wolf Appliance, Inc. is a Wisconsin corporation and maintains its principal place of business in Madison, Wisconsin. Wolf manufactures and markets household cooking appliances under the Wolf brand name, including ovens, electric cooktops, outdoor grills, warming drawers, electric chimneys, steamers, fryers and accessories. Wolf is a subsidiary of Sub-Zero, Inc. ("Sub-Zero") and competes directly with rival Viking Range Corp. ("Viking"). Sub-Zero and Wolf market and sell appliances globally through approximately three dozen showrooms nationwide and a network of specialty distributors. Wolf is a direct-to-consumer retailer. Sub-Zero maintains corporate offices in Madison and Fitchburg, Wisconsin, which are the centers of most of the company's production activities, along with plants in Richmond, Kentucky and near Phoenix, Arizona.

JURISDICTION AND VENUE

25. This Court has original jurisdiction under 28 U.S.C. §1332(d) because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and this is a class action of more than 100 potential Class members in which plaintiff is a citizen of Pennsylvania while defendant is a citizen of a different state. The Court also has jurisdiction under 28 U.S.C. §1331 (federal question), and has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. §1367.

26. Venue is proper in this judicial district as the facts and claims at issue in this action are substantially related to *Kail v. Wolf Appliance, Inc.*, No. 2:15-cv-03513 (JS) (GRB) (E.D.N.Y.), which is currently pending in this District, and because judicial economy is furthered by permitting cases involving the same issues and similar parties to be heard in the same district.

FACTUAL ALLEGATIONS

Defendant's Promotion and Sale of Defective Ovens

27. Wolf is a leading manufacturer of premium cooking appliances and is in the business of manufacturing, producing, distributing and/or selling built-in ovens and ranges throughout the United States under the Wolf brand name. Wolf sells both built-in or wall ovens and its signature “dual fuel” ranges, which Wolf purports offer “the best of both cooking worlds” – gas burners on the range top and dual convection electric ovens below.

28. Wolf manufactures, produces, and/or distributes the Ovens for sale through its network of specialty distributors. This, along with the fact that Wolf Ovens retail from \$5,000 to more than \$17,000, allows Wolf to maintain a sense of exclusivity and eliteness within the industry.

29. As part of the sale of each oven, defendant warranted, marketed, and advertised that its Ovens were of merchantable quality fit for the ordinary purpose for which the Ovens are used, *i.e.*, to safely cook food without causing damage to the Ovens, or worse, risk of injury, through

normal use. For example, according to Wolf, its Ovens “are manufactured in the United States *using only premium-quality materials that are proven to stand the test of time.*”⁹

30. Wolf also assures that its Ovens are “*rigorously tested to ensure dependability,*” and represents the following on its website:

Built with superior-quality materials, *Wolf products are designed to last a minimum of 20 years under far heavier use than any home cook will ever subject them to.* To ensure reliability, engineers stress-test our designs under laboratory conditions that simulate years of use. Major components are tested and subjected to extreme stresses prior to going into the final design of the unit, and every major function of every completed product is tested before shipping.¹⁰

As part of its “unflinching quality assurance program,” defendant claims that “*every Wolf will have the performance and longevity our discerning customers expect.*”¹¹

31. Wolf distinguishes its ovens by touting the “cobalt blue porcelain interior” as a key feature and critical attribute of its built-in ovens and dual fuel and induction ranges, and is part of “Wolf’s *signature aesthetics* [that] enhance the oven’s interior, creating a bold cooking backdrop.”¹² A typical Wolf product webpage will promote the cobalt blue porcelain interior in at least two of the three principal sections of the webpage, including as a central “Product Featur[e]” and as one of the oven’s primary “Highlights” under the “Specifications and Downloads” section.¹³ Wolf covets its

⁹ Press Release, *Wolf Appliance Inc. to Introduce M Series Built-In Ovens* (Nov. 17, 2014), available at <http://www.subzero-wolf.com/company/press-releases/wolf-appliance-to-introduce-m-series-built-in-ovens> (last visited June 14, 2017).

¹⁰ E.g., <http://www.subzero-wolf.com/wolf/ranges/dual-fuel/48-inch-dual-fuel-range-6-burners-infrared-charbroiler> (last visited June 14, 2017).

¹¹ <http://www.subzero-wolf.la/worth-it/wolf-quality.php> (last visited June 14, 2017).

¹² E.g., <http://www.subzero-wolf.com/wolf/ranges/dual-fuel/48-inch-dual-fuel-range-6-burners-infrared-charbroiler> (last visited June 14, 2017).

¹³ E.g., <http://www.subzero-wolf.com/wolf/ovens/l-series/36-inch-built-in-l-series-oven> (last visited June 20, 2017).

signature looks, including its distinctive red knobs and blue oven interiors that it markets to homeowners seeking to enhance their upscale kitchens. Wolf's emphasis on design and style is so strong that in 2009 it successfully sued rival Viking for trademark infringement regarding its signature red knobs.¹⁴

32. Wolf's cobalt blue oven interiors are a defining product feature, and have been promoted as such by Wolf and noted as such by several media sources. For example:

- When Wolf first introduced its dual fuel ranges, it noted that the “oven comes complete with Wolf's *striking cobalt blue interior*.”¹⁵
- In its preliminary injunction motion in the trademark action against Viking, Wolf cited an article in Madison Magazine stating: “With its signature red knobs and *cobalt blue oven interiors*, Wolf is a familiar choice for cooktops, ovens and freestanding ranges in upscale kitchens.”¹⁶
- The Daily Mail reported that Wolf's double-oven “*boasts an ‘eye-catching’ cobalt blue interior* (useful for spotting burnt-on food).”¹⁷
- Wolf's U.K. website stated in a blog that Hello Magazine recently reported that the Duke and Duchess of Cambridge personally selected Wolf appliances for their country home (having already been installed in their London home), stating: “According to reports, the Duke and Duchess have furnished it with high-end appliances by US brand, (Sub-Zero) & Wolf, a supplier favoured by professional chefs all over the world. A state-of-the-art oven, with a *trademark cobalt blue interior . . .*”¹⁸

¹⁴ *Wolf Appliance, Inc. v. Viking Range Corp.*, 686 F. Supp. 2d 878 (W.D. Wis. 2010).

¹⁵ <http://www.promptserviceappliance.com/Articles/Brands/Wolf.htm> (last visited June 14, 2017).

¹⁶ *Wolf Appliance*, 686 F. Supp. 2d at 884.

¹⁷ Catherine Ostler, *So that's how Kate is going to iron Wills' trousers! From a fridge with NASA technology to a hands-free iron and taps you turn with your feet, secrets of Kate's super-bling new kitchen* (July 4, 2014), available at <http://www.dailymail.co.uk/femail/article-2681229/So-thats-Kate-going-iron-Wills-trousers-From-fridge-NASA-technology-hands-free-iron-taps-turn-feet-secrets-Kates-super-bling-new-kitchen.html> (last visited June 14, 2017).

¹⁸ <http://www.subzero-wolf.co.uk/westyeblog.aspx?BlogID=58> (last visited June 14, 2017).

33. Wolf also advertises that it has “the best warranty and service in the cooking business.”¹⁹ Defendant provides the same express written warranty (the “Warranty” or “Warranties”) for all of its Ovens, which reads in relevant part:

Wolf Appliance Residential Limited Warranty

FOR RESIDENTIAL USE

FULL TWO YEAR WARRANTY*

For two years from the date of original installation, this Wolf Appliance product warranty covers all parts and labor to repair or replace, under normal residential use, any part of the product that proves to be defective in materials or workmanship. All service provided by Wolf Appliance under the above warranty must be performed by Wolf factory certified service, unless otherwise specified by Wolf Appliance, Inc. Service will be provided during normal business hours.²⁰

34. This 2-year Warranty is a key selling point for Wolf Ovens. Under the Warranty, Wolf is obligated to “repair or replace” Class members’ Ovens when “*any part*” of the oven proves to be defective for a period of two years after the Ovens are installed.

35. Defendant falsely advertises and misrepresents the characteristics, benefits and quality of the Ovens through the forgoing representations, and otherwise breaches its express and implied warranty with plaintiff and Class members, since the Wolf Ovens fail one of their most fundamental intended purposes – safely cooking food. Chipping, cracking, crazing and/or flaking of the porcelain interior occurs under normal use in virtually all of the Wolf Ovens, and operating the self-clean function accelerates this defect.

¹⁹ Internet Archive Wayback Machine, Nov. 21, 2008 search results for “<http://www.subzero.com/wolf/warranty.asp>”, <http://web.archive.org/web/20081121012838/http://www.subzero.com/wolf/warranty.asp> (last visited June 15, 2017).

²⁰ Wolf Appliance Residential Limited Warranty, <http://www.subzero-wolf.com/resources/WolfWarranty.pdf> (last visited June 16, 2017).

36. Aside from aesthetic issues associated with the chipping of the porcelain interiors, chipping of the Ovens' cavities further creates a risk that porcelain flakes can be blown onto food, causing a risk of injury and forcing plaintiff and Class members to forgo the normal operation of the Ovens. In effect, both the self-clean function, and the oven itself, can be rendered useless.

37. While chipping, cracking and crazing is more visually prevalent in Wolf's blue oven cavities due to its color or shading, Wolf's black oven cavities also exhibit the same defect.

38. Wolf's gas ranges, for example, contain black porcelain interiors.

39. Wolf's ranges and/or ovens that contain black porcelain enamel – like Wolf's blue porcelain oven cavities – chip, crack and/or craze through normal use, and use of the self-clean function accelerates the defect.

40. Given the pervasive failure of Wolf's porcelain oven cavities, the Ovens do not have the characteristics, benefits and qualities that defendant represents they have. Furthermore, defendant advertises the Ovens with the intent not to sell them as advertised. Wolf fails to inform users prior to and at the time of purchase, and in its online cleaning instructions and "Use and Care Guide," that even if consumers operate the Ovens as instructed, the blue interior surface is defective, as it will chip, crack, craze and/or flake during normal operation.

41. Defendant was obligated to disclose the defect because defendant had exclusive knowledge of the material facts not known to plaintiff and the Classes, since only defendant had exclusive access to the aggregate data from its retailers, its own tests, and complaints from its customers. Defendant, upon information and belief, actively concealed and suppressed the material facts from plaintiff by failing to warn of the defect at the time of purchase and by performing warranty and/or repair work that it knew would not cure the defect. As consumer complaints (detailed below) indicate, and as defendant itself has acknowledged, Wolf has represented to

complaining customers that the instances of oven cavity chipping and cracking are rare and unusual occurrences, and that repeated instances of such damage are even more scarce.

42. As a result of Wolf’s concealment of the defect, owners of the Ovens were not provided material information before they decided which brand of oven to buy. The Ovens are worth less than the price plaintiff and Class members paid for them, as ownership and operation of the Ovens will cost more and/or require more maintenance than the ownership and operation of comparable ovens and/or will not allow owners of the Ovens to utilize all of their primary functions.

43. Wolf breached its express and implied warranties because operating the Ovens, particularly the self-clean function, causes the oven interior to chip, crack, craze or otherwise flake. Defendant has failed to satisfy each of the obligations under the Warranty by refusing to adequately repair and/or replace the Ovens or their defective parts.

44. Defendant has refused to recall the Ovens or otherwise adequately remedy the defect, and plaintiff is thus left with a defective oven.

Wolf’s Knowledge of and Reckless Disregard for the Defects

45. Wolf is, upon information and belief, aware of the defect in the Ovens. Plaintiff, for example, has repeatedly notified defendant of the blue porcelain chipping by complaining to defendant directly and/or to defendant’s authorized retailers and service representatives.

46. In addition, online references and complaints regarding the Ovens mirror plaintiff’s experience, including the following sampling:

Source	Comments
Houzz (Garden Web) Aug. 22, 2016 http://ths.gardenweb.com/discussions/32429	I just used the oven clean feature on my Wolf oven. Sure enough some <i>blue enamel chipped off near the edge by seal</i> . Not happy. I have only had this oven since June 2016. <i>Used oven just 4 times</i> . Plan to call my salesman.... The model I have is: SO30PMSPH. 30inch Ss Pro Sngl Ele Bltin.

<p>63/wolf-lawsuit-filed-july-9-2015-regarding-blue-porcelain-chipping (last visited June 14, 2017)</p>	<p>\$5149.00!!</p>
<p>Houzz (Garden Web) Aug. 22, 2016 http://ths.gardenweb.com/discussions/3242963/wolf-lawsuit-filed-july-9-2015-regarding-blue-porcelain-chipping (last visited June 14, 2017)</p>	<p>I had an <i>E Series double wall oven that chipped</i> and replaced it with another E Series with the help of my salesman and local Wolf distributor. <i>The second oven also chipped, like yours, after a few times using it.</i> I had Wolf replace with the Pro M series double oven ... <i>If you go with a M series you will pay the price difference.</i> Good luck and come back to tell us the outcome.</p>
<p>Chowhound Jan. 17, 2015 http://chowhound.chow.com/topics/891381 (last visited June 14, 2017)</p>	<p><i>I cleaned the oven and the blue enamel is completely off down to the substrate on the floor of the oven.</i> This has happened to most people who have had the wall oven on Gardenweb. Wolf wants me to pay to have liner (which they would supply) replaced with labor starting at \$800 with no limit to what they will charge and the part will only be guaranteed a year. Nope, not reinvesting in a known Wolf issue.</p>
<p>Houzz (GardenWeb) Dec. 15, 2014 http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens (last visited June 14, 2017)</p>	<p>Argggggg!!!! New wolf E series ovens, purchased and installed July or so. Ran the self clean for the first time today, guess what? I'm upset. <i>I thought they had fixed the chipping issue in the new ovens?</i> The local wolf/sz rep is friends with my builder, so hopefully they'll get it resolved soon. Meanwhile <i>I'm scared to use the oven</i>, so I guess we eat out???</p>
<p>Consumer Affairs Dec. 1, 2014 http://www.consumeraffairs.com/homeowners/wolf-cooking-appliances.html (last</p>	<p>This thanksgiving we turned on the self-cleaning mode after we roasted our thanksgiving meal. Upon inspection of the oven floor there was left a dull marring on the oven floor. Obviously <i>the integrity of the porcelain has been damaged by the high heat of the self cleaning mode as well as crazing of the blue porcelain oven floor</i> where the heating elements are underneath. In researching on the Internet, <i>we are now aware that Wolf has had multiple problems with their blue porcelain oven surfaces crazing, flaking, and peeling.</i> The problems are all over the Internet.</p>

<p>visited June 14, 2017)</p>	<p>Problems with both the ranges and wall oven units. I also believe that <i>the company knew of this problem previous to our purchase, and were still selling their product at the tune of 7,919.00 per range.</i> I have started a paper trail with a certified letter to the CEO of Sub Zero Wolf, and if no satisfaction is received I will start a Class Action lawsuit on behalf of all those that have been ripped off! Buyer BEWARE!</p>
<p>Houzz (GardenWeb) Aug. 5, 2014 http://ths.gardenweb.com/discussions/2301881/wolf-dual-fuel-df366-enamel-failure-what (last visited June 14, 2017)</p>	<p>I found it not nice <i>they tried to say 1) no one else had these repeated problems,</i> 2) the ovens weren't made for the use, although not inappropriate, I gave them, and 3) that this problem is "just cosmetic." <i>I got a bloody finger,</i> too, from a difficult to remove, crumbling glass shard. And <i>who wants to pay top dollar for an oven that looks like heck inside in a matter of months, and is harder to clean, even if there weren't glass flakes to gouge our fingers and possibly blow into our food?</i></p>
<p>Houzz (GardenWeb) Oct. 26, 2013 http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven (last visited June 14, 2017)</p>	<p>Right now the oven is extra storage until I figure out what to do. You <i>can't really use it because there are shards of glass coming off and add to that a convection fan blowing them around.</i></p>
<p>Houzz (GardenWeb) July 5, 2013 http://ths.gardenweb.com/discussions/2301881/wolf-dual-fuel-df366-enamel-failure-what (last visited June 14, 2017)</p>	<p>I have the Wolf 36 inch DF range and the enamel on the floor of <i>the oven cavity has failed.</i> . . . This oven has only been lightly used as it is a second oven and never at high heat. After haggling back and forth, they will give me the part and \$325 towards labor which is estimated to start at \$800 and can be more. . . . My concern other than the eventual degradation of the floor of the oven is the <i>glass shards of enamel finding their way into food or being inhaled.</i></p>
<p>Houzz (GardenWeb) Feb. 24, 2013 http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-</p>	<p>I have a Wolf E series with chipping porcelain. <i>But I don't think it is just the heat of self cleaning that causes it.</i> Otherwise the chipping would be at random places in the oven. <i>It maybe a poor design of the liner</i> and the chipping is at stress points (where the bottom meets the side walls) and that when it heats up the bottom expands and pops causing the crazing and chipping.</p>

new-wolf-oven (last visited June 14, 2017)	
<p>Blogger</p> <p>Jan. 10, 2013</p> <p>http://rhome410.blogspot.com/2013/01/the-oven-saga-continues.html (last visited June 14, 2017)</p>	<p>Sadly, at about 13 months in, I noticed porcelain issues across the bottom and in the corners of both oven cavities. . . .</p> <p>But only 6 months later, <i>I was wiping crumbs out of oven #2 and got a shard of porcelain in my hand.</i> That oven, also, was developing issues with the porcelain at the front corners. I again sent photos and got a quick phone call from Wolf, apologizing that I'd had to deal with this twice, and <i>assured it was unusual for this to happen.</i> Again, there was a pretty quick oven switch. . . .</p> <p>In early November I noticed crazing in the porcelain at those infamous front corners, and by Thanksgiving, I could see <i>bare metal and had the loose shards of blue porcelain again.</i></p> <p>This time Wolf is throwing in the towel. . . If the porcelain was letting go in the corners in the first half year, I have no idea what it will look like a couple years in, or 10 years from now, and wasn't willing to keep it under those circumstances. In addition, <i>I didn't consider it just a cosmetic issue, but also a cleaning and safety issue,</i> so decided they can have it back.</p>
<p>Houzz (GardenWeb)</p> <p>Nov. 30, 2012</p> <p>http://ths.gardenweb.com/discussions/2270633/oven-porcelain-lining-flaking-chippingonly-with-blue (last visited June 14, 2017)</p>	<p>Enter my first Wolf, which had porcelain issues about 10 months in. They promptly replaced it with oven 2, which developed the same problem. The rep was so nice, apologetic, and aghast that I'd had this happen twice. Again, they sent and arranged the replacement right away. . . Well, as I told them now, <i>the 3rd time has not been the charm, because here I am with the porcelain splintering at the front corners</i> (inside, near the door on each side) again . . . just where it started with the other two.</p>
<p>Houzz (GardenWeb)</p> <p>Aug. 31, 2012</p> <p>http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven (last visited June 14, 2017)</p>	<p>I am on my second set of Wolf Wall ovens . . . <i>we now have the same "scraping" (crazing, chipping) in the enamel on the floor of the replacement ovens.</i> The trouble areas are in exactly the same spots on both upper and lower ovens (aligning, I assume, with some portion of the heating elements). . . . I am going to call Wolf but am not optimistic of any real assistance. <i>I am just stunned at quality (of lack thereof) of these ovens.</i> . . . don't run the self-clean cycle EVER.</p>
Houzz (GardenWeb)	I have 2 wolf ovens, and the one that gets very little use has cracked after I

<p>Apr. 2-3, 2012</p> <p>http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven (last visited June 14, 2017)</p>	<p>self-cleaned it last night.</p> <p style="text-align: center;">*****</p> <p>. . . crazy update. Today a guy told me it is just “Cosmetic” and not to worry about it. Let them know if the oven is ‘off’ a little, but it should be fine. IT’S NOT FINE!! . . . <i>I don’t think you should pay 4 grand for an oven that can’t stand its own heat</i></p>
<p>Houzz (GardenWeb)</p> <p>Mar. 31, 2012</p> <p>http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven (last visited June 14, 2017)</p>	<p>Model DF486C - 6 Burners, Charbroiler \$12,885*</p> <p>Hardly used 6 months old , <i>I ran the self clean cycle and noticed scraped cracks in the far back corner</i> of the smaller oven , [sic]</p> <p>Called wold [sic] and ran the larger oven and it splintered</p> <p>Wolf replaced . . . It’s now 3-2012 and I have the same cracks in the back of the small oven Without running the cleaning cycle</p> <p>I am in talks with wolf now, <i>I can’t believe 12’000 gets you dual lemons not dual ovens</i></p>
<p>Houzz (GardenWeb)</p> <p>Jan. 22, 2012</p> <p>http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven (last visited June 14, 2017)</p>	<p>[M]y latest problem is the finish on the floor of the upper oven which has several cracks and chips. At the advise [sic] of my dealer I paid them to come out and take photos. They agreed that it was a defect in the finish so they sent Wolf the photos and their report. A few days later I was called by my dealer who told me that . . . the enamel finish is <i>considered an appearance item and therefore not covered by warranty</i> (which I think is total crap).</p>
<p>Houzz (GardenWeb)</p> <p>Mar. 4, 2008</p> <p>http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven (last visited June 14, 2017)</p>	<p>We noticed recently that on the floor of the upper oven, <i>that beautiful bright blue enamel had what for the world looked like scrape marks</i> (except that NO ONE has scraped it with anything at all, much less something seriously metallic which is what it would take to dig into the enamel) toward the left rear. Sort of a small clump of lines where the enamel is clearly broken. Just ran the self-clean on that oven last night, and found a new area, looking identical, of “scrapes” at the front center. The <i>enamel actually came off in bits when we wiped down the oven</i> with a damp paper towel post-cleaning.</p> <p style="text-align: center;">*****</p> <p>We have the same problem with our Wolf DO. <i>I often wipe out “splinters” of blue paint out of the base of each oven. . .</i></p>

	<p>I like the looks, but <i>I'm not convinced anyone should pay the premium for Wolf wall ovens.</i></p> <p style="text-align: center;">*****</p> <p>So ... on closer inspection, it appears that the exact same problem exists (or will just as soon as the crazing that is showing now blossoms into full-fledged breakthrough of the enamel) on the bottom oven as well. Curiously (and I suspect significantly), the two areas of concern are in EXACTLY (meaning, we measured with a tape measure) the same place in both ovens. . . .</p> <p>Wolf has agreed to replace the entire unit . . . it will cost us out of pocket anywhere from \$300-\$700 for delivery and installation of the new unit.</p>
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

47. Dissatisfied owners of the Ovens also posted pictures exhibiting the damage to their Wolf Ovens. For example, in September 2014 one customer posted the following picture on a discussion board showing damage to the blue porcelain oven interior, virtually identical to the damage to plaintiff's oven:



See <http://ths.gardenweb.com/discussions/2324401/wolf-48-dual-fuel-or-all-gas> (last visited June 14, 2017).

48. In November 2013, another customer posted a similar photo of damage to her Wolf oven:



See <http://rhome410.blogspot.com/2013/11/still-sad-about-wolf-breaking-up-with-me.html> (last visited June 14, 2017).

The November 2013 blog post explained that “the porcelain coating kept coming loose, crazing, then splintering, and chipping, in the front corners of the interior” of her Wolf E Series oven. *Id.*

49. The customer also echoed what many others have experienced in their discussions with Wolf about the issue – that Wolf places the blame on its customers by claiming that their unique use of the Ovens creates an “unusual situation” that causes the defect. *Id.* In this instance, Wolf “decided” the customer “baked more often and at higher heats (for pizzas) than ‘the norm’ who the oven was designed for (even though they agreed and assured me I was doing nothing wrong).” *Id.* She explained on another forum that ***Wolf “promises that this ‘never’ happens, and ‘certainly not to one person twice.’”***²¹ After communicating her experience to others, the poster realized that the problem was widespread and not unique to her “unusual situation,” as “many Wolf oven owners

²¹ See <http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens> (last visited June 14, 2017).

who baked less often and at more ‘normal’ temperatures contacted [her] to say they had the same, exact problem.”²²

50. Another customer, who purchased a new Wolf E series oven in July 2014 and then ran the self-clean function *for the first time*, posted the following picture demonstrating extensive chipping and crazing from wiping down the oven interior:



See <http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens> (last visited June 14, 2017).

The customer, according to the online post, was “scared to use the oven” after the incident and “afraid of the shards blowing into our food at this point.” *Id.*

²² See <http://rhome410.blogspot.com/2013/11/still-sad-about-wolf-breaking-up-with-me.html> (last visited June 14, 2017).

51. Defendant failed to adequately design and/or manufacture the Ovens to ensure that they were and are free from a defect that causes chipping, cracking, crazing and/or flaking of the oven interiors. At the time defendant began selling the Ovens in the United States, defendant knew, or was reckless in not knowing, that they: (a) contained a defect to the Ovens' design, parts, materials and workmanship; and (b) were not of merchantable quality or fit for their ordinary purpose.

52. Despite notice of the defect in the Ovens, and the reasonable expectations of consumers created by defendant's marketing of its Ovens, defendant engaged (and continues to engage) in a wrongful course of conduct by:

(a) designing, manufacturing and selling the Ovens with a defect that causes chipping, cracking, crazing and/or flaking of the oven interiors;

(b) failing to disclose that the Ovens cause chipping, cracking, crazing and/or flaking of the oven interiors;

(c) failing to warn purchasers of the Ovens' inherent defect;

(d) misrepresenting the Ovens as comprising "only premium-quality materials that are proven to stand the test of time," assuring that its Ovens are "rigorously tested to ensure dependability," and representing that its Ovens are "[b]uilt with superior-quality materials . . . [and] are designed to last a minimum of 20 years under far heavier use than any home cook will ever subject them to";

(e) selling the Ovens at a premium price through express misrepresentations regarding the dependability of the Ovens, the cooking performance and, notably, the aesthetic attributes of the Wolf Ovens;

(f) manufacturing, marketing, advertising, distributing, and selling the Ovens to consumers when defendant was on notice that the Ovens could not be used, in normal operation, by consumers without the porcelain oven cavity, and most notably without the blue porcelain oven cavity, chipping or cracking;

(g) failing to implement a recall or repair program to adequately announce to plaintiff and Class members the presence of the defect, and failing to provide to plaintiff and Class members an effective solution and correct the defect in the Ovens;

(h) failing to correct and eliminate the defects in materials and workmanship that cause chipping, cracking, crazing and/or flaking of the Ovens' interiors; and

(i) failing to disclose that ordinary, or recommended, use of the Ovens will cause oven interiors to chip, crack, craze and/or flake, causing the Ovens (or, at a minimum, certain functions of the Ovens) to be useless.

53. Plaintiff and Class members would not have purchased the Ovens at the prices they paid, or would not have purchased the Ovens at all, absent defendant's misrepresentations, concealment of material information and otherwise deceptive conduct.

**New York Consumers Initiate Class Action
Over Wolf's Defective Porcelain Oven Interiors**

54. On June 16, 2015 consumers in New York who purchased a Wolf dual fuel oven in 2006 and had their oven and/or oven cavity replaced repeatedly until Wolf, in 2015, refused to provide any further replacements or otherwise remedy the defect, brought a lawsuit against Wolf for breach of express and implied warranties, negligent misrepresentation, violation of the MMWA and violations of New York General Business Law §§349-350. Plaintiffs in the case, styled *Kail, et al. v. Wolf Appliance, Inc.*, Civil Action No. 2:15-cv-03513 (JS) (GRB) (E.D.N.Y.), seek certification of a

nationwide class and New York subclass of purchasers of residential Wolf ovens containing a blue porcelain oven cavity.

55. As alleged, when plaintiffs in the *Kail* action received their last oven replacement in 2014, they had already had their Wolf ovens or oven cavities replaced due to chipping, cracking and/or crazing on eight separate occasions. When this last oven again exhibited the same defect, it marked the *tenth oven* that developed chipping, cracking and/or crazing of the blue porcelain interior.

56. Publicly available filings from that case reveal that Wolf maintains data and information related to customer contacts with Wolf in a customer service database, including information pertaining to service complaints regarding porcelain chipping or crazing.

57. Additionally, public filings in the *Kail* action reveal that Wolf has confirmed that each replacement oven that it provides comes with a new written warranty.

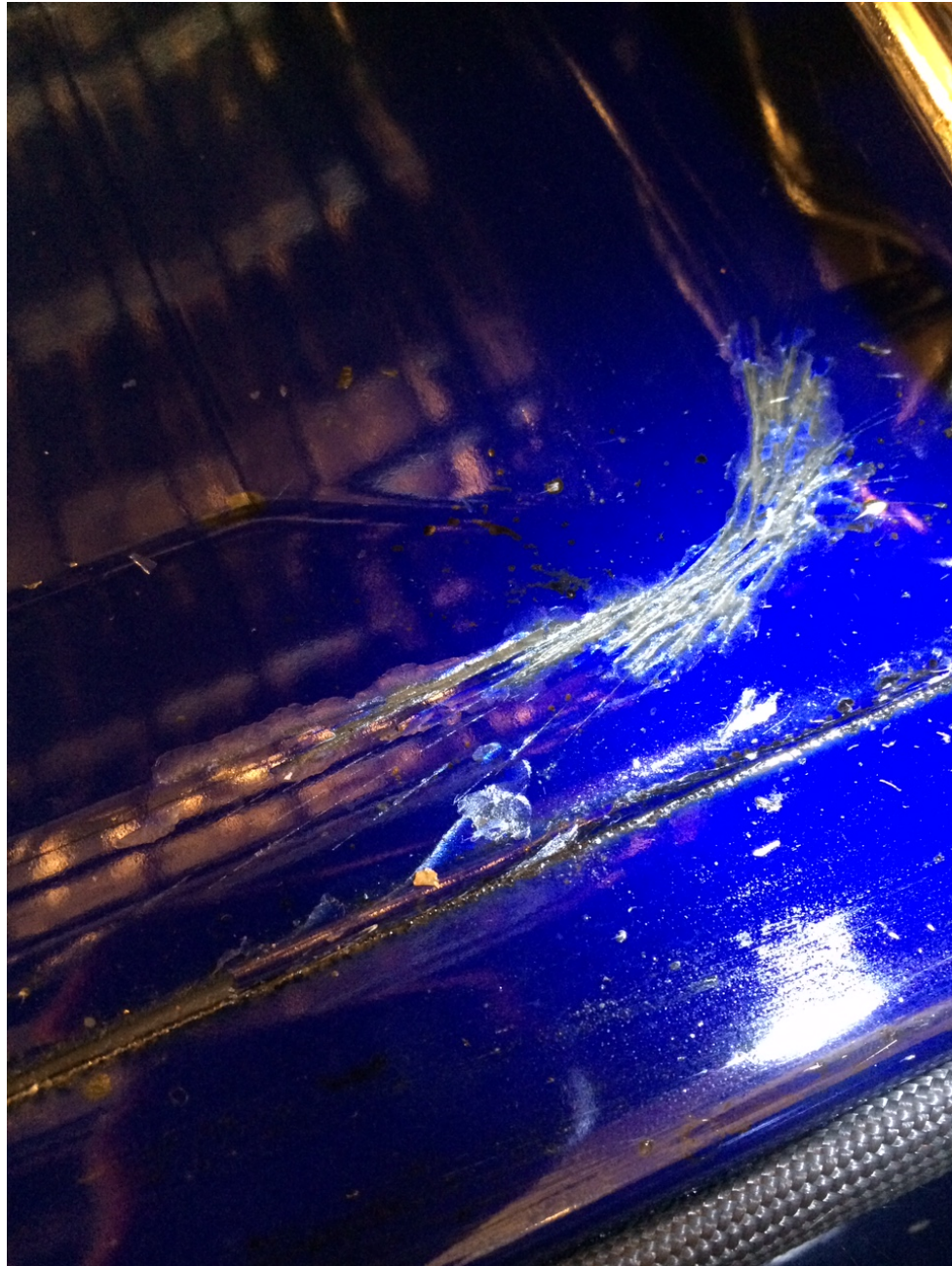
Plaintiff's Experience with Wolf Ovens

58. Plaintiff first purchased a Wolf 30-inch E Series double oven, model number DO30-2FS-TH, from Kieffer's in May 2012. The oven was delivered on June 12, 2012. Based on Wolf's advertising and/or marketing of the Ovens, plaintiff was well aware of the blue porcelain oven interior. In fact, the blue oven interior was one of the driving factors for plaintiff's purchase.

59. After using the oven for a little over a year under normal circumstances, including running the self-clean function on a few occasions, plaintiff ran the self-clean function and observed that the blue porcelain was cracking and splintering off in one of the oven cavities. Shortly thereafter, plaintiff noticed the same problem in the other oven cavity. Eventually, the chipping, cracking and/or crazing manifested at the indentations on the right and/or left sides of the floors of both oven cavities.

60. Plaintiff complained to Kieffer's and eventually to Wolf, and was told the porcelain issue was a one-off issue and would not affect the performance of the oven. After first offering to replace plaintiff's oven cavities, Wolf eventually agreed to replace plaintiff's entire double oven.

61. In January 2014, Aston Black Enterprises, LLC, a home remodeling company based in Lancaster, Pennsylvania, removed plaintiff's original Wolf oven and installed a new E Series double oven, model number DO30-2U/S-TH. In approximately November 2014, plaintiff experienced the same problems with the replacement double oven. The blue porcelain enamel began to chip, crack and/or craze on the sides of his oven cavities. Below are pictures of that oven from around this time period:





62. Plaintiff again reported the damage to the blue porcelain cavities of his replacement oven. Because plaintiff reported the issue after two years from the purchase date of their original oven (*i.e.*, outside the purported warranty period), Wolf ultimately told plaintiff that it would agree to replace the oven as an act of “customer goodwill,” as opposed to pursuant to the warranty. These statements were misleading at best given that Wolf’s two year warranty resets with each oven replacement – a fact that Wolf conveniently chose not to reveal to plaintiff.

63. In approximately February 2015, Appliance Repair Service, a Wolf factory certified servicer, removed plaintiff’s first replacement oven and installed the second replacement oven – another E Series double oven, model number DO30TE/S/TH – plaintiff’s *third* Wolf oven. After approximately a year, like the ovens before it, plaintiff’s second replacement oven too began to chip

and/or crack through regular use of the oven. Both oven cavities – top and bottom – again manifested chipping, cracking and/or crazing of the blue porcelain enamel coating. This marked the third different model E Series oven that developed the same problem.

64. The February 2015 oven came with Wolf’s “best warranty service in the cooking business,” and was backed by Wolf’s claims that its Ovens are comprised of “only premium-quality materials that are proven to stand the test of time,” assurance that its Ovens are “rigorously tested to ensure dependability,” and representation that its Ovens are “[b]uilt with superior-quality materials” and deliver “signature aesthetics.”

65. Plaintiff had two ovens replaced. All three ovens had the same defect to the internal porcelain cavities.

66. Wolf ultimately replaced plaintiff’s first two ovens. Another oven replacement or cavity replacement would not remedy plaintiff’s damage.

67. At a minimum, a refund of the cost and/or cost of replacement of the oven (and associated costs) is the remedy to which plaintiff is entitled.

68. Plaintiff purchased his Wolf oven on the basis that it would cook safely, operate as advertised and maintain its “signature” look through normal operating use. Prior to purchasing the oven, plaintiff was unaware and could not have discovered, even in the exercise of reasonable diligence, that defendant’s Ovens were defective. Had plaintiff known about the defect in the oven, and the chipping, cracking, crazing and/or flaking of the oven interior caused thereby, he would not have purchased the oven and would not have been willing to pay a premium price for a Wolf oven.

69. The Wolf Ovens were and/or are worth less than what plaintiff and Class members paid for them. In fact, plaintiff and Class members paid more for defendant’s Ovens than they otherwise would have had they not been misled by the deceptive conduct complained of herein. As

such, plaintiff and Class members lost money as a result of defendant's actions in that they did not receive what they paid for.

70. As a result of defendant's conduct and concealment of material information about its Ovens, as well as defendant's other acts and omissions described in this Complaint, defendant has caused plaintiff and Class members to suffer injury as a result of the defect in the Ovens, including, but not limited to: (1) a refund of the cost and/or cost of replacement of the oven (and associated costs) (2) overpayment for a defective product, (3) a decrease in value of the Ovens due to the defect, and (4) payment for a product that is effectively inoperable, and other purported remedies.

CLASS ACTION ALLEGATIONS

71. Plaintiff bring this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3) and (c)(4), individually and as a class action on behalf of the following proposed classes:

The Nationwide Class

All persons and entities in the United States who purchased a residential Wolf oven containing a porcelain oven cavity.

The Pennsylvania Subclass

All persons and entities in the State of Pennsylvania who purchased a residential Wolf oven containing a porcelain oven cavity.

72. Excluded from the Classes is defendant, its parents, subsidiaries and affiliates, directors and officers, and members of their immediate families. Also excluded is any entity in which defendant has a controlling interest and any of the legal representatives, heirs, or assigns of defendant. Plaintiff reserves the right to amend the class definitions if discovery and further investigation reveal that the Classes should be expanded or otherwise modified.

73. Numerosity: The Classes are so numerous that joinder of all individual members is impracticable. While the exact number and identities of members of the Classes are unknown to plaintiff at this time and can only be ascertained through appropriate discovery, upon information

and belief, plaintiff alleges that the Classes are comprised of thousands of individual members geographically disbursed throughout the United States. The number of Class members and their geographical disbursement renders joinder of all individual members impracticable if not impossible.

74. Commonality: There are questions of fact and law common to members of the Classes that predominate over any questions affecting solely individual members, including, *inter alia*, the following:

(a) whether defendant misrepresented the quality of the Ovens or otherwise failed to disclose to Class members the hidden and/or concealed design defects of the Ovens although such defects were fully known to defendant;

(b) whether defendant misled Class members into believing that the Ovens operated as advertised and were free from defects;

(c) whether defendant knew or should have known that the Ovens contained a defect that cause the oven cavity to chip, crack, craze and/or flake;

(d) whether defendant breached its warranties to Class members concerning the Ovens;

(e) whether the actions and activities of defendant violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law;

(f) whether defendant's business practices violate Pennsylvania law, for which plaintiff and Class members may recover damages;

(g) whether defendant violated the MMWA, 15 U.S.C. §2301, *et seq.*;

(h) whether plaintiff and members of the Classes are entitled to statutory relief;

(i) whether plaintiff and members of the Classes are entitled to compensatory relief; and

(j) whether plaintiff and members of the Classes have sustained damages, and, if so, what is the proper measure of damages.

75. Typicality: Plaintiff's claims are typical of the members of the Classes he seeks to represent. Plaintiff and all other members of the Classes sustained damages arising out of defendant's common course of conduct as complained herein. The losses of each member of the Classes were caused directly by defendant's wrongful conduct alleged herein. The amount of money at issue is such that proceeding by way of class action is the only economical and sensible manner in which to vindicate the injuries sustained by plaintiff and the members of the Classes.

76. Adequacy: Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff's claims are coextensive with, and not antagonistic to, the claims of the other members of the Classes. Plaintiff is willing and able to vigorously prosecute this action on behalf of the Classes, and plaintiff has retained competent counsel experienced in litigation of this nature.

77. Plaintiff brings this action under Rule 23(b)(3) because common questions of law and fact predominate over questions of law and fact affecting individual members of the Classes. Indeed, the predominant issue in this action is whether defendant sold defective Ovens, misrepresented the quality of the Ovens and failed to disclose a known defect to Class members that caused damages to plaintiff and the members of the Classes. In addition, the expense of litigating each Class member's claim individually would be so cost prohibitive as to deny Class members a viable remedy. Certification under Rule 23(b)(3) is appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and plaintiff envisions no unusual difficulty in the management of this action as a class action.

78. In addition, the Classes may also be certified under Rule 23(b)(2) because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for defendant;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Classes as a whole.

79. Further, the Classes may be certified for specific issues under Rule 23(c)(4).

80. The undersigned counsel for plaintiff and the Classes request that the Court appoint them to serve as Class counsel; first on an interim basis and then on a permanent basis pursuant to Federal Rule of Civil Procedure 23(g). The undersigned counsel will fairly and adequately represent the interests of the Classes, have identified or investigated the Classes' potential claims, are experienced in handling class actions, other complex litigation, and consumer claims of the type asserted in the action, know the applicable law, will commit sufficient resources to represent the Classes, and are best able to represent the Classes.

COUNT I

Breach of Express Warranty

81. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

82. Defendant warranted all of the Ovens against defects in materials or workmanship via the Warranty.

83. Defendant knew, or should have known, that the Ovens were defective, as detailed in ¶¶41-47 and ¶¶50-59, and nevertheless marketed and sold the Wolf Ovens with an express warranty.

84. Defendant warranted that the Ovens would safely cook food, self-clean and maintain their “signature aesthetics.”

85. Plaintiff relied on the warranties at the time of, and after, his purchase of a Wolf oven.

86. Plaintiff would not have purchased a Wolf oven had defendant not offered the express warranty.

87. Plaintiff understood that the warranties made by Wolf were part of the basis of the bargain.

88. Defendant is obligated under the terms of its express Warranty to repair and/or replace the parts or materials that are the defect in the Ovens sold to plaintiff and Class members, and/or to ensure that the Ovens conform to the express warranties.

89. Defendant has breached its express warranties, as set forth above, by selling and supplying the Ovens in a condition which does not meet the warranty obligations undertaken by defendant and by failing to repair or replace the defects, which are inherent in the Ovens, or to cause the Ovens to conform to defendant’s warranties after a reasonable number of attempts at repair.

90. Despite defendant’s knowledge of the defect, defendant refuses to honor its warranties, even though it knows that the defect exists in the Ovens which causes the oven interiors to chip, crack, craze and/or flake.

91. Defendant failed to provide plaintiff and Class members a repair that causes the Ovens to conform to the qualities and characteristics that defendant expressly warranted when it sold the Ovens to plaintiff and Class members, or, in the alternative, provide plaintiff and Class members replacement Ovens that are free from defects.

92. Defendant knew of its obligations under its Warranty to pay for new ovens, as needed, caused by the defect described herein. However, defendant has refused to replace the Ovens as required under its Warranty.

93. As a proximate result of defendant's breach of its express warranty, plaintiff and Class members have sustained damages and other losses in an amount to be determined at trial. Plaintiff and Class members are entitled to recover damages, costs, attorneys' fees, rescission, and other relief as provided by statute or deemed appropriate by the Court.

COUNT II

Breach of Implied Warranty of Merchantability

94. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

95. At the time of sale, on each purchase and installation date and currently, defendant has been or is in the business of manufacturing and selling the Ovens.

96. By operation of law, defendant impliedly warranted to plaintiff and Class members that the Ovens were of merchantable quality and fit for the ordinary purposes for which they are used.

97. Defendant knowingly and/or recklessly sold a defective product without informing consumers about the defect.

98. Defendant possessed actual superior knowledge of the problems with its blue porcelain oven interiors based on, *inter alia*, plaintiff's and Class members' complaints and/or calls to customer care and complaints posted on the internet.

99. Plaintiff's oven became unfit for the ordinary purpose of cooking food, self-cleaning and maintaining Wolf's "signature aesthetics" because it developed chipping, cracking, crazing and/or flaking in the oven interior.

100. Plaintiff cannot use the self-clean function without causing further damage to his Wolf oven.

101. Plaintiff was the intended third-party beneficiary of the implied warranty made by defendant. Defendant knew that the retailers to whom it sold the Ovens were not going to own the Ovens any longer than it took to sell them to plaintiff. Further, defendant intended that any warranties, whether express or implied, that applied to the Ovens were for the benefit of plaintiff and Class members.

102. Defendant knew plaintiff and Class members were, and intended that they be, the ultimate beneficiaries of defendant's implied warranties as they are the owners of the Ovens.

103. Defendant, who manufactures and markets the Ovens, and/or sellers/resellers of the Ovens, knew that plaintiff and Class members were the end users of the Ovens when defendant entered into any and all sales contracts and subcontracts for the Ovens and defendant's intent to benefit plaintiff and Class members arises by operation of law pursuant to the "implied covenant of good faith and fair dealing" contained within any and all sales contracts and subcontracts for the Ovens entered into by defendant.

104. As a proximate result of defendant's breach of implied warranty, plaintiff and Class members have sustained damages and other losses in an amount to be determined at trial. Plaintiff and Class members are entitled to recover damages and attorneys' fees, costs, rescission, and other relief as is as provided by statute or deemed appropriate by the Court.

COUNT III

Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*

105. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

106. The Ovens are “consumer product[s]” as that term is defined under 15 U.S.C. §2301(1).

107. Plaintiff and Class members are “consumers” as that term is defined by 15 U.S.C. §2301(3), and utilized the Ovens for personal and household use and not for resale or commercial purposes.

108. Defendant is a “warrantor” and “supplier” as those terms are defined by 15 U.S.C. §2301(4) and (5).

109. Defendant provided plaintiff with “written warrant[ies]” as that term is defined by 15 U.S.C. §2301(6).

110. Defendant provided plaintiff with “implied warrant[ies]” as that term is defined by 15 U.S.C. §2301(7).

111. In its capacity as a warrantor, and by the conduct described herein, any attempt by defendant to limit the express warranties or implied warranty of merchantability in a manner that would exclude coverage for the defects in the Ovens is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective Ovens is null and void as alleged above.

112. By defendant’s conduct as described herein, including defendant’s knowledge of the defects in the Ovens and its action, and inaction, in the face of that knowledge, defendant has failed to comply with its obligations under its written and implied promises, warranties, and representations.

113. As a result of defendant’s breach of express and implied warranties, plaintiff and Class members are entitled to revoke their acceptance of the Ovens, obtain damages and equitable relief, and obtain attorneys’ fees and costs pursuant to 15 U.S.C. §2310.

COUNT IV

Negligent Misrepresentation

114. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

115. Defendant misrepresented to plaintiff and Class members the defect in the Ovens resulting from the cracking, chipping, crazing and/or flaking of the blue porcelain oven interior resulting in the Ovens' failure.

116. Defendant omitted material facts regarding the defect of the Ovens' porcelain interior.

117. Defendant omitted material information regarding the fact that the porcelain interior of the Ovens would crack through the ordinary use and use of the self-clean function of the Ovens.

118. Defendant owed a duty to plaintiff and Class members to exercise reasonable care when making or issuing statements or disclosures regarding the nature of the Ovens.

119. Upon information and belief, the statements or disclosures regarding the build and aesthetics of the Ovens, and regarding the Ovens' ability to properly operate without damaging the Ovens' interior, were likely to deceive or confuse plaintiff and Class members.

120. The referenced claims have also influenced or are likely to influence future decisions of consumers and the buying public. Plaintiff and Class members, by purchasing the Ovens, reasonably acted in reliance upon the truth of the representations and omissions made by defendant.

121. As a direct and proximate result of the plaintiff's and Class members' reliance upon the representations and omissions made (or not made) by defendant, as described above, plaintiff and Class members have sustained damages and ascertainable loss.

COUNT V

Violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law

122. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

123. UTPCPL §201-3 makes unlawful any “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” in Pennsylvania.

124. Defendant is a manufacturer, marketer, seller and/or distributor of Wolf Ovens.

125. Defendant markets and sells the Ovens with express warranties, including its full two year warranty, and express and implied warranties in the Wolf’s marketing materials regarding the quality, performance, reliability and capabilities of the Ovens.

126. Plaintiff purchased the Ovens for personal, household or family use.

127. The conduct described herein took place throughout the country, including within the Commonwealth of Pennsylvania, and constitutes unfair methods of competition or unfair or deceptive acts or practices under §201-2(4)(v), (vii), (xiv) and (xxi) of the UTPCPL.

128. In violation of the UTPCPL, defendant omitted and/or concealed material facts from plaintiff regarding the quality, characteristics, benefits and/or uses of the Ovens.

129. Defendant knew or should have known that its representations about the Ovens were false, that the Ovens were defectively designed and/or manufactured, and otherwise were not as warranted and represented by defendant.

130. Defendant knew or should have known, at the time the Ovens left its control, that they contained defects making their porcelain oven cavities prone to chipping, cracking, crazing and/or flaking.

131. Defendant deceived and continues to deceive consumers. This conduct constitutes unfair or deceptive acts or practices within the meaning of the UTPCPL. This illegal conduct by defendant is continuing, with no indication that it will cease.

132. Defendant's actions in connection with the manufacture and distribution of the Ovens, as set forth herein, evidence a lack of good faith, honesty in fact, and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of the UTPCPL.

133. Defendant acted willfully, knowingly, intentionally, unconscionably, and with reckless indifference when it committed these acts of consumer fraud.

134. Defendant intended that plaintiff and Class members rely on the acts of concealment, omissions, and misrepresentations regarding the nature of the product, and the scope of its warranties so that plaintiff and Class members would purchase the defective Ovens.

135. Plaintiff and Class members relied on the acts of concealment, omissions, and misrepresentations regarding the nature of the Ovens, and scope of the warranties.

136. Had defendant disclosed to plaintiff and Class members all material information regarding the Ovens, they would have considered the omitted information material to their decision to purchase the Ovens at the price they paid for these units.

137. As a direct and proximate cause of the UTPCPL violations described above, plaintiff and Class members have been injured, in that they have purchased the Ovens based on the nondisclosure of material facts alleged above.

138. The foregoing acts, misrepresentations, omissions, and unconscionable commercial practices caused plaintiff and Class members to suffer an ascertainable loss in the form of monies paid to defendant for defective Ovens that, contrary to defendant's representations, are subject to chipping, cracking, crazing and/or flaking, and otherwise fail to perform as represented and warranted by defendant. Plaintiff and Class members are entitled to recover such damages and appropriate penalties (including attorneys' fees, and costs of suit) permitted under the law.

139. By virtue of the foregoing, defendant has violated the UTPCPL.

PRAYER FOR RELIEF

WHEREFORE, plaintiff on behalf of himself and all others similarly situated, prays for judgment and relief against defendant as follows:

A. An Order determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the Classes, and any other appropriate subclasses, certifying plaintiff as a representative of the Classes and appointing plaintiff's counsel Robbins Geller Rudman & Dowd LLP as Lead Counsel for the Classes;

B. An Order awarding statutory, compensatory and punitive damages in favor of plaintiff and the other Class members against defendant for defendant's violations of law described herein, and for all damages sustained as a result of defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

C. An Order declaring defendant's practices to be improper, unfair, unlawful and/or deceptive and requiring defendant to provide refunds to or otherwise fully compensate plaintiff and members of the Classes;

D. An order enjoining defendant from marketing and selling the Ovens until the defects discussed herein are cured;

E. Disgorgement and restitution;

F. An Order awarding plaintiff and the Classes their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

G. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: June 21, 2017

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
MARK S. REICH
VINCENT M. SERRA

/s/ Mark S. Reich

MARK S. REICH

58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
mreich@rgrdlaw.com
vserra@rgrdlaw.com

Attorneys for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

BARRY GARFINKLE, Individually and on Behalf of All Others Similarly Situated,

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

(c) ~~Attorney's Firm Name, Address, and Telephone Number~~
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747 (631) 367-7100

DEFENDANTS

WOLF APPLIANCE, INC.,

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

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

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)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input 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 checked="" 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 |

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

Click here for: [Nature of Suit Code Descriptions](#)

<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 (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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 - Medical Malpractice	PERSONAL INJURY <input 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 PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management 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 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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"/> 850 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
<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	<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	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <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	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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. §1332, 15 U.S.C. §2301

Brief description of cause:

Breach of express & implied warranties, negligent misrepresentation, violations of 73 Pa. Stat. Ann. §201-1

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Joanna Seybert

DOCKET NUMBER 2:16-cv-03513

DATE 06/21/2017 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Mark S. Reich, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? No

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

BARRY GARFINKLE, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff(s)

v.

WOLF APPLIANCE, INC.,

Defendant(s)

Civil Action No. 17-cv-3753

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Wolf Appliance, Inc.
4717 Hammersley Road
Madison, WI 53711

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robbins Geller Rudman & Dowd LLP
59 South Service Road, Suite 200
Melville, NY 11747

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 17-cv-3753

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Self-Clean Can Harm Porcelain Interior of Wolf Appliance's Ovens](#)
