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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

ERIN HAIGHT,
individually and on behalf of herself
and all others similarly situated,

Plaintiff,

v.

**SHARP ELECTRONICS
CORPORATION,**

Defendant.

Case No.: 3:19-CV-371 [MAD/DEP]

Jury Trial Demanded

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

Plaintiff Erin Haight (“Plaintiff”), by and through undersigned counsel, on behalf of herself and all others similarly situated, brings this Class Action Complaint against Sharp Electronics Corporation (“Defendant” or “Sharp”) and in support alleges, upon information and belief and based on the investigation to date of counsel, as follows:

NATURE OF ACTION

1
2 1. Sharp is one of the largest technology companies in the world. It designs,
3 manufactures and sells a variety of technological products, including kitchen appliances such as
4 microwaves.

5 2. Sharp’s kitchen appliance portfolio includes multiple different types of microwaves,
6 including microwave drawers (the “Microwaves” or the “Products”), which are the subject of this
7 action. On its website, Sharp boasts that it “has been innovating microwave cooking for decades
8 and holds 11 patents on the Microwave Drawer platform alone. Engineered for consistency and
9 built with the finest quality materials, great cooks trust the Microwave Drawer to deliver great
10 results every time.”¹ Over the course of several decades, Sharp has gained the trust of consumers,
11 who reasonably believe that Sharp products are made with quality materials, and that the Sharp
12 products can be used safely, as intended.

13 3. Microwave drawers, as described by Sharp, “offer[] flexible placement options so
14 you can focus on the design elements you prefer by maximizing sight-lines and enabling more
15 design versatility than typical built-in, over-the-range or countertop microwaves.”²

16 4. Sharp’s microwave drawers are intended by Sharp to be installed within cabinets,
17 under countertops, or adjacent to wall ovens.³

18 5. Sharp has offered six models for its microwave drawers, and currently offers five of
19 those six: SMD2470AH, SMD2470AS, SMD3070AS, SMD2480CS, KB6524PS, and KB6525PS
20 (collectively, the “Microwaves”). The designs of these Microwaves are substantially similar and
21 each model is the subject of this class action lawsuit.

22 6. The price of the Microwaves is between \$1,000.00 and \$1,700.00.
23

24 ¹<http://www.sharppusa.com/ForHome/HomeAppliances/Microwaves/MicrowaveDrawer.aspx> (last
25 accessed Mar. 12, 2019).

26 ²<http://www.sharppusa.com/ForHome/HomeAppliances/Microwaves/MicrowaveDrawerDark.aspx>
(last accessed Mar. 12, 2019).

27 ³[http://files.sharppusa.com/Downloads/ForHome/HomeAppliances/MicrowaveOvens/BuildersGu
28 ides/2017-Builders%20Guide_3-20-17.pdf](http://files.sharppusa.com/Downloads/ForHome/HomeAppliances/MicrowaveOvens/BuildersGuides/2017-Builders%20Guide_3-20-17.pdf) (last accessed Mar. 12, 2019).

1 7. The Microwaves all contain a defect that makes them unreasonably dangerous, as
2 they are susceptible to catching fire, and unsuitable for their intended use. More specifically, the
3 Microwaves are defectively designed and/or manufactured such that, under normal and intended
4 use, the electromagnetic waves generated by the magnetron tube are unable to properly move
5 through the waveguide into the cooking cavity, resulting in buzzing, smoking, overheating, and
6 eventual destruction of the magnetron, leading to scorching of the waveguide.

7 8. Accordingly, the Microwaves are unreasonably dangerous and not fit for household
8 use.

9 9. The manifestation of the defect and damage to the Microwaves are not a result of
10 overcooking or prolonged heating by the owner. It can take less than 30 seconds for the magnetron
11 tube to overheat, scorch the back panel of the Microwaves, produce smoke, and fail altogether.

12 10. Sharp has undertaken a deliberate and willful pattern of conduct (including taking
13 active measures) aimed at concealing the Microwave defect from its consumers, including the
14 Plaintiff.

15 11. At all relevant times, Sharp knew or should have known about the defect but
16 nevertheless marketed, advertised, and sold the Microwaves without warning consumers that the
17 Microwaves are likely to overheat and could result in buzzing, overheating of the magnetron,
18 scorching of the waveguide, smoking, and ultimate failure.

19 12. Indeed, rather than providing consumers with new, non-defective Microwaves after
20 their Microwaves overheated, Sharp either replaced each defective Microwave with another
21 defective Microwave, improperly denied the warranty claim, and/or forced the consumer to sign a
22 waiver or buy an extended warranty as a remedy. Sharp failed to disclose the known defect or
23 provide the customer with a non-defective replacement product.

24 13. The replacement Microwaves also fail, or are likely to fail in the same manner,
25 leaving consumers fearful of additional smoke and fire caused by the Microwaves, and to contend
26 with Microwaves that do not function as intended

27 14. As a direct and proximate result of Sharp's concealment of the defect, its failure to
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1 warn customers about the defect before their purchase of the Microwaves, and its failure to recall
2 the Product or remedy the defect, Plaintiff and other similarly situated customers (“Class” or “Class
3 Members”) purchased and used Sharp’s defective Microwaves when they otherwise would not have
4 made such purchases or would not have paid as much for the defective Microwaves.

5 15. Plaintiff’s and putative Class Members’ Microwaves have failed (or are likely to
6 fail) as a result of the defect when Plaintiff and Class Members use the Products as intended,
7 resulting in damage to the Microwaves and other property, including smoke damage to cabinetry,
8 kitchen islands and peninsulas, and other interior parts of their homes, and the loss of meals
9 prepared in the Microwaves.

10 16. Plaintiff and all putative Class Members’ Microwaves contain the same defect at the
11 point of sale, pose substantially the same safety risk to Plaintiff, Class Members, consumers, and
12 the public. Sharp’s Microwaves cannot be used safely for their intended purpose of preparing
13 meals at home.

14 **PARTIES**

15 17. Plaintiff Haight is a resident and citizen of Delhi, Delaware County, New York.

16 18. Defendant Sharp Electronics Corporation is a New Jersey corporation with its
17 principal place of business located in Montvale, New Jersey.

18 19. Sharp distributes and markets and directs the marketing of the Microwaves in New
19 York, and throughout the United States.

20 **JURISDICTION AND VENUE**

21 20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
22 § 1332(d) because: (1) there are one hundred or more (named or unnamed) class members, (2) there
23 is an aggregate amount in controversy exceeding \$5,000,000.00, exclusive of interest and costs,
24 and (3) there is minimal diversity because Plaintiff and Defendant are citizens of different States.
25 This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §
26 1367.

1 28. Microwaves are high voltage appliances that are a considerable electrical hazard if
2 they are defectively designed or manufactured.

3 29. Each Microwave contains a magnetron, which is powered by a high voltage
4 transformer, generating the electromagnetic energy waves (“electromagnetic energy” or “waves”)
5 in the Microwaves. The magnetron is a vacuum tube device that generates the energy needed to
6 heat food within the microwave. In other words, when a consumer cooks food in a microwave oven,
7 the magnetron takes electricity from the power outlet and converts it into high-powered radio waves
8 that are transmitted down a waveguide.

9 30. The waveguide directs the radio waves generated by the magnetron from one end of
10 the waveguide to the other end and into the cooking cavity. The waves enter the cooking cavity and
11 are directed and distributed throughout the cooking cavity by a mode stirrer. The purpose of the
12 mode stirrer is to ensure the waves are distributed throughout the cooking cavity so that the food is
13 evenly cooked. A mode stirrer is utilized in microwaves that do not have a carousel to move the
14 waves throughout the food.

15 31. Each of the Sharp-branded Microwaves contains a defect that prevents the waves
16 from properly moving through the waveguide into the cooking cavity. More specifically, the
17 electromagnetic energy that originates from the magnetron tube becomes obstructed or disturbed
18 while moving through the waveguide. This obstruction or disturbance prevents a substantial portion
19 of the energy from being properly guided into the cooking cavity.

20 32. The obstruction or disturbance in the electromagnetic energy’s movement down the
21 waveguide causes the energy that is not transmitted to the cooking cavity to arc and otherwise
22 concentrate near the magnetron, burning the waveguide and causing the magnetron tube to overheat.
23 As a result of the overheating, the magnetron tube anode terminal (the top of the magnetron tube)
24 melts and the waveguide is scorched.

25 33. Expert investigation has revealed evidence of a localized hot spot on the waveguide,
26 which was observed several inches from the magnetron during normal operation.

1 34. The hot spot is consistent with a faulty design by Sharp, in which the magnetron, the
2 waveguide, and its load (the food) are not properly matched to one another in size and/or ratio,
3 resulting in premature failure of the magnetron tube.

4 35. Customers' experience and technicians' reports, including burn patterns in the
5 Microwaves, are consistent with premature failure of the magnetron and an increased Voltage
6 Standing Wave Ratio ("VSWR").

7 36. Waveguide problems, such as localized energy disturbances, are consistent with an
8 increased VSWR. The manufacturer's data sheets for magnetron tubes indicate that an increase in
9 the VSWR reduces magnetron life.

10 37. Further, the Microwaves are designed and marketed as having 950 watts cooking
11 capacity; however, due to the obstruction or disturbance in the transmission of the energy to the
12 cooking cavity, the Microwaves operate at a maximum of only 750 watts.

13 38. While microwave drawers have only been on the market for approximately 20 years,
14 successful alternative designs for the manufacture of microwaves that utilize
15 magnetron/waveguide/mode stirrer technology have existed since the 1970s.

16 39. The Microwaves also lack an appropriate safety mechanism to prevent the
17 magnetron from overheating, and causing smoke, burning, and premature failure.

18 40. Sharp expressly and impliedly warranted, via user manuals, advertisements,
19 pamphlets, brochures, circulars, samples, and/or models, that the Microwaves are fit for the
20 ordinary purpose for which such goods are sold.

21 41. Sharp expressly warrants in its user manuals that the Microwaves are free from
22 defects in workmanship and materials.

23 42. Specifically, Sharp claims that the magnetron tube is warranted for a period of five
24 years, while all other parts and labor receive a one-year warranty.

25 43. The defect renders the Microwaves unfit for the ordinary purpose for which they are
26 used.

1 44. As a result of the defect, the Microwaves pose an unreasonable risk of harm to
2 consumers and their property.

3 45. Had Plaintiff, Class Members, and the consuming public known that the
4 Microwaves were defective, posed an unreasonable risk of harm to themselves and their property,
5 and would cause damage, they would not have purchased the Microwaves.

6 46. As a direct, proximate, and foreseeable result of the defect, Plaintiff and Class
7 Members suffered damages, including but not limited to: (a) the difference in value of the
8 Microwaves as warranted and the Microwaves received; (b) loss of use of the Microwaves; (c)
9 property damage; and (d) consequential damage.

10
11 **PLAINTIFF'S FACTS**

12 47. In or around March of 2016, Plaintiff paid \$998.92 for a Sharp-branded Microwave
13 Oven Drawer, Model Number SMD2470AS-Y, for her new home.

14 48. In May of 2016, the Microwave was delivered and installed in Plaintiff's kitchen.
15 Plaintiff moved into the home in October of 2016, and she began to use the Microwave as it was
16 intended to be used. From the time of purchase until the incident described below, Plaintiff used
17 the Microwave as intended, cleaning it appropriately, and maintaining it in a reasonable manner as
18 an owner of an appliance.

19 49. In or around July of 2017, Plaintiff was heating food when the Microwave sparked
20 and began to emit smoke. As Plaintiff believed that the Microwave posed a fire and safety risk, she
21 unplugged it, and notified Sharp of the problem. Sharp opened a case file, and the following month
22 provided Plaintiff with a replacement Microwave, Model Number SMD2470AS-Y.

23 50. Because Sharp fraudulently concealed the defect from her before her purchase as
24 well as after the Microwave was installed in her home and being used, Plaintiff did not suspect (and
25 had no reason to suspect) that there was anything wrong with her Microwave until the defect
26 manifested in or around July of 2017.
27

1 51. The replacement Microwave was installed in Plaintiff's kitchen in late July or early
2 August of 2017, and she began to use it as it was intended to be used. From the time of installation
3 until the incident described below, Plaintiff used the Microwave as intended, cleaning it
4 appropriately, and maintaining it in a reasonable manner as an owner of an appliance.

5 52. In or around July of 2018, Plaintiff was heating food when the replacement
6 Microwave began to spark and emit smoke. Again, fearing that the Microwave posed a fire and
7 safety risk, she unplugged it, and notified Sharp of the problem.

8 53. Sharp opened a second case file related to the replacement Microwave, and
9 requested Plaintiff send photographs of the labels, which she did. Initially, Sharp apologized and
10 asked Plaintiff if she would consider purchasing the extended warranty on the replacement
11 Microwave. Plaintiff declined that offer. Subsequently, Plaintiff received a call from someone
12 located in the "Office of the President," offering to replace the Microwave again with an "upgrade
13 model" in exchange for signing a "resolve" letter releasing Sharp of any liability associated with
14 the Microwave. The Sharp representative further stated that the "inner workings" of the
15 Microwaves had been fixed and the replacement would not have the same issue. As Plaintiff had
16 already experienced failure in both her original and replacement Microwaves, Plaintiff had no
17 reason to believe Sharp had actually fixed the defect with the Microwave, and she did not wish to
18 waive her rights based on Sharp's unfounded representations about fixing the "inner workings" of
19 the Microwave. Thus, she did not respond to the offer.

20 54. Because Sharp fraudulently concealed the defect from her during her initial warranty
21 claim, as well as after the replacement Microwave was installed in her home and being used,
22 Plaintiff did not suspect (and had no reason to suspect) that the Microwave are uniformly defective
23 until the defect manifested in her replacement Microwave, in or around July of 2018.

24 55. Plaintiff's original Microwave and replacement Microwave did not operate safely for
25 their life expectancy. Had Plaintiff known of the defect, she would have either not purchased the
26 Microwave, or would have paid less than she did for the Microwave. Therefore, she did not receive
27 the benefit of her bargain.

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**SHARP'S ACTUAL OR
CONSTRUCTIVE KNOWLEDGE OF THE DEFECT**

56. Sharp knew or should have known when it sold the Microwaves to the public that the Microwaves suffered from the defect, and that the defect caused the Microwaves to function improperly during their expected useful life, represented an unreasonable risk that the Microwaves would overheat, and might result in significant personal injury and/or property damage to consumers and the public.

57. Sharp's knowledge of these facts is established through consumer complaints, including several years of public Internet posts complaining that the Microwaves failed during normal use, and warranty claims. Despite its knowledge, Sharp did not remedy or eliminate the defect in the Microwaves or remove them from the stream of commerce.

58. Instead, Sharp replaced the defective Microwaves with equally defective Microwaves, improperly denied warranty claims, and often tried to force consumers into signing releases and waivers of their rights if the consumer sought relief from the manufacturer.

59. Sharp's actual knowledge of the defect is evidenced by its responses to consumer complaints submitted to <https://www.saferproducts.gov>, cited *infra*, wherein Sharp continues to attempt to discredit reports of the defect in the Microwaves.

60. Sharp's response to numerous customer complaints demonstrate that not only is Sharp aware of the dangerous and potentially harmful defect, it attempts to actively conceal the dangerous defect from consumers.

61. Customer complaints are also available online regarding the Microwaves. For example, one consumer noted:⁶

Sharp Microwave oven model KB6524PS caused much smoke during normal use. The unit is 3 years old and I had called Sharp within 4 months of purchasing to report loud humming that would happen randomly. I was advised that this happens from time to time and that it was normal and not a warrantable condition.

⁶ <https://www.saferproducts.gov/ViewIncident/1664034> (last accessed Dec. 27, 2018).

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The noise has been becoming more frequent and recently the noise is present with smoke now that fills my kitchen. I called the help line and they said that this happens from time to time and that it is not something to worry about.

62. Another consumer noted:⁷

I want Sharp to acknowledge and provide support for all consumers claiming any sparks, melting or smoke with these microwaves- apparently this is frequent and needs to be addressed in order to prevent death or harm to children and adults. I would also like a full reimbursement to re-purchase a microwave that is not a fire-hazard for my family, a new replacement of the existing microwave, or a different microwave that will not pose any safety risks to my children and will fit in the kitchen cabinet built specifically for this model. Sharp needs to be held accountable and stand up for their name and products. They should not wait for a fatality or lawsuit to stop them from concealing consumers complaints of a safety hazard in their homes and knowingly misguiding consumers.

63. Another consumer noted:⁸

We own two Sharp Microwave Drawers - model smd2470AS. Both were manufactured in September 2015, installed in a new home in January 2016 and not used until we moved in in March 2016. Each unit is on its own independent electrical circuit, with no other appliances on either circuit.

On Saturday, May 7th around noon, while cooking a sausage, one of the units (serial number 128968) had an electrical "event" - significant smoke pouring out of the unit accompanied by loud cracking electrical noise. The circuit breaker did not trip. I called Sharp immediately and reported this event (Sharp case number [REDACTED]). As it was a Saturday, the[y] asked that I call back on Monday.

On Sunday, May 8th, while i was using the other unit (serial number 128862) to cook a potato, it also had an identical electrical "event" - significant smoke pouring out of the unit accompanied by loud cracking electrical noise. Again, the circuit breaker did not trip. On Monday, May 9th I called Sharp and added this information (Sharp case number [REDACTED]).

I told the Sharp personnel that had I not been in the kitchen there could have been a major, house-threatening electrical fire. I offered to have them remove the units to analyze what is happening. The Sharp "Safety Department" seems not to be interested in this.

⁷ <https://www.saferproducts.gov/ViewIncident/1581834> (last accessed Dec. 27, 2018).

⁸ <https://www.saferproducts.gov/ViewIncident/1571856> (last accessed Dec. 27, 2018).

1 64. Another consumer noted on an Amazon page selling the Microwave:⁹

2 Why is Amazon still selling this Microwave on their website with the
3 significant problems reported? All you need to do is look at the feedback
4 with a rating of 1 and you can see there is a manufacturing defect. This
5 Microwave is just 6 months installed and it melted down like
6 Chernobyl.....sounded more like a garbage disposal then a microwave.
7 Smoke started pouring out of the unit and got so hot I can't believe it didn't
8 start a fire.... Very concerned based on what others have noted that replacing
9 this unit under warranty still results in same issues and this problem has not
10 been addressed by Sharp. I have to imag[in]e it won't be long before
11 someone decides to start a Class Action lawsuit, or there is a major recall.

8 65. Another consumer reported as follows:¹⁰

9 After one week of use we heard buzzing sound and there was lots of smoke.
10 Took one week to get repair person here, see photos of burnt area under the
11 chassis frame. Product has a defect that causes the painted area to burn.
12 Repairman indicated mine was the third unit he had seen with this issue,
13 knew right where to look. The unit is under warranty, and so I will be getting
14 a replacement. Sharp assures me the new unit is free of any issue, which
15 means they know of this. No other manufacturers make a drawer microwave
16 (all use Sharp as the base model). I am stuck as the cabinet was built for this
17 unit.

15 66. In conjunction with Sharp's experience designing and selling the Microwaves, these
16 facts and complaints illustrate that Sharp knew or should have known of the defect.

17 67. Sharp has a duty to disclose the defect and to not conceal the defect from Plaintiff
18 and Class Members. Sharp's failure to disclose, or active concealment of, the serious safety defect
19 places Plaintiff and Class members at risk of personal injury and/or property damage.

20 68. Sharp is currently still selling the defective Microwaves, concealing the defect,
21 failing to notify consumers of the safety defect, and failing to recall the Microwaves.

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25 ⁹<https://www.amazon.com/Sharp-SMD2470AS-Microwave-24-Inch-Stainless/dp/B00U6YFOZ6?th=1> (last accessed Dec. 27, 2018).

26 ¹⁰https://www.amazon.com/Sharp-SMD2470AS-Microwave-24-Inch-Stainless/product-reviews/B00U6YFOZ6/ref=cm_cr_getr_d_paging_btm_next_9?sortBy=recent&pageNumber=9
27 (last accessed Dec. 27, 2018).
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1 69. Moreover, Sharp continues to falsely represent through written warranties that the
2 Microwaves are free from defect, are of merchantable quality, and will perform dependably for
3 years.

4 70. When corresponding with customers, Sharp does not disclose that the Microwaves
5 suffer from the defect. As a result, reasonable consumers, including Plaintiff and Class members,
6 purchased and used, and continue to purchase and use, the Microwaves in their homes even though
7 it is unsafe to do so.

8 71. When Sharp replaces units, it fails to disclose known defects and it replaces the
9 defective Microwaves with equally defective Microwaves. Some consumers, including Plaintiff
10 Haight, have received replacement Microwaves, which have failed or will fail in the same manner.

11 72. Had Plaintiff, Class Members, and the consuming public known that the
12 Microwaves were defective, posed an unreasonable risk of harm to themselves and their property,
13 and would cause damage, they would not have purchased the Microwaves.

14 73. Sharp has wrongfully placed on Plaintiff and Class members the burden, expense,
15 and difficulty involved in discovering the defect, repairing and replacing the Microwaves
16 (potentially multiple times), and paying for the cost of damages caused by the defect.

17
18 **TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

19 74. Sharp had actual awareness for years that the Microwaves contain a defect that
20 causes the magnetron to overheat and the unit to burn and prematurely fail.

21 75. Although Sharp was aware of the dangerous defect, it took no steps to warn Plaintiff
22 or the Class of such defect and the dangers the defect would pose.

23 76. At least by 2015, if not earlier, Sharp had received numerous reports from consumers
24 of incidents of loud noises, foul odors, smoke, and fire associated with the Microwaves.

25 77. Sharp has purportedly changed its manufacturing process in its attempt to correct the
26 problem for newly manufactured Sharp-branded microwave ovens, without notifying consumers of
27

1 these changes.

2 78. Sharp did not, however, issue a recall, warn consumers, or take any other affirmative
3 steps to correct the problem in the Microwaves already in the field with the defective magnetron,
4 nor did Sharp take steps to alert members of the Class about the problem.

5 79. Despite its knowledge, Sharp concealed the fact that the Microwaves were defective,
6 even though it had a duty to disclose the defect.

7 80. Sharp made affirmative misrepresentations to consumers during the sale of the
8 Microwaves, including that the Microwaves were free of defects and that the Microwaves would
9 be repaired or replaced within the first five (5) years after purchase if the magnetron tube failed to
10 operate.

11 81. In fact, Sharp's Warranty provides:

12 One (1) year parts and labor including in-home service. The warranty period
13 continues for an additional four (4) years, for a total of five (5) years, with respect
14 to the magnetron tube in the Product for parts only; labor and service are not
15 provided free of charge for this additional period.

16 82. Sharp made affirmative misrepresentations to Plaintiff and consumers during
17 warranty claims and other correspondence with consumers lodging complaints, including that, their
18 Microwave failures were anomalous; problems with the Microwaves have been resolved in an effort
19 to persuade consumers to accept replacement Microwaves; Microwaves more than one (1) year old
20 were out of warranty; and in other ways to be discovered.

21 83. At all times, Sharp concealed that the Microwaves and any replacements were
22 defective.

23 84. Sharp's concealment was material to Plaintiff and Class Members' decision to
24 purchase the Microwaves. Sharp's concealment was knowing, and Sharp intended to mislead
25 Plaintiff and Class Members into relying upon it. Accordingly, Plaintiff and Class Members relied
26 upon Sharp's concealment of these material facts and suffered injury as a proximate result of that
27 justifiable reliance.

28 85. The defect in the design and/or manufacture of the Microwaves was not detectible

1 to Plaintiff and members of the Class.

2 86. Sharp actively and intentionally concealed the existence of the defect and failed to
3 inform Plaintiff or Class Members of the existence of the defect at all times, including when they
4 contacted Sharp about the problems. Accordingly, Plaintiff and Class Members' lack of awareness
5 was not attributable to lack of diligence on their part.

6 87. Sharp's statements, words, and acts were made for the purpose of suppressing the
7 truth that the Microwaves, including the replacement Microwaves, were defective.

8 88. Sharp concealed the defect for the purpose of delaying Plaintiff and Class Members
9 from filing a complaint on their causes of action.

10 89. As a result of Sharp's active concealment of the defect and/or failure to inform
11 Plaintiff and members of the Class of the defect, any and all applicable statutes of limitations
12 otherwise applicable to the allegations herein have been tolled. Furthermore, Sharp is estopped from
13 relying on any statutes of limitations in light of its active concealment of the defective nature of the
14 Microwaves.

15 **CLASS ACTION ALLEGATIONS**

16 90. Plaintiff brings this action individually and as a class action pursuant to Fed. R. Civ.
17 P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following Class:

18
19 All persons residing in the State of New York who purchased a Sharp Microwave
20 Drawer, model numbers SMD2470AH, SMD2470AS, SMD3070AS,
SMD2480CS, KB6524PS, and KB6525PS.

21 91. Plaintiff reserves the right to modify the class definition if necessary to include
22 additional Sharp Microwave Drawer models with the same defect and/or other Microwave Drawers
23 manufactured by Sharp with the common defect but bearing different brand names.

24 92. Numerosity: The members of the Class are so numerous that joinder of all members
25 is impracticable. While the exact number of Class members is presently unknown, it consists of
26 thousands of people geographically disbursed throughout New York. The number of Class
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1 members can be determined by sales information and other records. Moreover, joinder of all
2 potential Class members is not practicable given their numbers and geographic diversity. The Class
3 is readily identifiable from information and records in the possession of Sharp and its third-party
4 distributors.

5 93. Commonality: Common questions of law and fact exist as to all members of the
6 Class. These questions predominate over questions that may affect only individual Class Members
7 because Sharp has acted on grounds generally applicable to the Class. Such common legal or factual
8 questions include, *inter alia*:

- 9
- 10 (a) Whether the Microwaves are defective;
 - 11 (b) Whether the Microwaves are defectively designed and/or manufactured;
 - 12 (c) Whether Sharp knew or reasonably should have known about the defect prior to
13 distributing the Microwaves to Plaintiff and the Class;
 - 14 (d) Whether Sharp concealed from and/or failed to disclose to Plaintiff and the Class
15 the problems with the Microwaves;
 - 16 (e) Whether Sharp knew or reasonably should have known about the defect after
17 distributing the Microwaves to Plaintiff and the Class;
 - 18 (f) Whether Sharp breached express warranties relating to the Microwaves;
 - 19 (g) Whether Sharp was unjustly enriched by receiving moneys in exchange for
20 Microwaves that were defective;
 - 21 (h) Whether Sharp should be ordered to disgorge all or part of the ill-gotten profits it
22 received from the sale of the defective Microwaves;
 - 23 (i) Whether Plaintiff and the Class are entitled to damages, including compensatory,
24 exemplary, and statutory damages, and the amount of such damages;
 - 25 (j) Whether Sharp should be enjoined from selling and marketing its defective
26 Microwaves;
 - 27 (k) Whether Sharp engaged in unfair, unconscionable, or deceptive trade practices by
28 selling and/or marketing defective Microwaves; and
 - (l) Whether Sharp negligently designed or manufactured the defective Microwaves.

94. Typicality: Plaintiff's claims are typical of the members of the Class as all members
of the Class are similarly affected by the same defect and Sharp's actionable conduct. Plaintiff and

1 all members of the Class purchased the Microwaves with a defect that makes the Microwaves
2 inherently dangerous. In addition, Sharp's conduct that gave rise to the claims of Plaintiff and
3 members of the Class (*i.e.* delivering a defective microwave drawer, concealing the defect, and
4 breaching warranties respecting the microwave drawer) is the same for all members of the Class.

5 95. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests
6 of the Class because she has no interests antagonistic to, or in conflict with, the Class that Plaintiff
7 seeks to represent. Furthermore, Plaintiff has retained counsel experienced and competent in the
8 prosecution of complex class action litigation.

9 96. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met. Sharp will
10 continue to commit the unlawful practices alleged herein, and Class Members will remain at an
11 unreasonable and serious safety risk as a result of the Defect. Sharp has acted and refused to act on
12 grounds that apply generally to the Class, such that final injunctive relief and corresponding
13 declaratory relief is appropriate respecting the Class as a whole.

14 97. Predominance: The elements of Rule 23(b)(3) are met. The common questions of
15 law and fact enumerated above predominate over the questions affecting only individual Class
16 Members, and a class action is the superior method for the fair and efficient adjudication of this
17 controversy. The likelihood that individual Class Members will prosecute separate actions is remote
18 due to the time and expense necessary to conduct such litigation. Serial adjudication in numerous
19 venues is not efficient, timely, or proper. Judicial resources will be unnecessarily depleted by
20 resolution of individual claims. Joinder on an individual basis of hundreds or thousands of claimants
21 in one suit would be impractical or impossible. Individualized rulings and judgments could result
22 in inconsistent relief for similarly-situated plaintiffs.

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

25 99. Sharp has acted or refused to act on grounds generally applicable to the Class, thereby
26 making appropriate final injunctive relief or corresponding declaratory relief with respect to the
27 Class as a whole.

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FIRST CLAIM FOR RELIEF
Strict Products Liability – Defective Design & Manufacture
(Plaintiff Individually and on Behalf of All Others Similarly Situated)

100. Plaintiff re-alleges and incorporates by reference each of the preceding paragraphs as though fully set forth herein.

101. The Microwaves were designed, manufactured, marketed, promoted, sold, and introduced into the stream of commerce by Sharp.

102. When it left the control of Sharp, the Microwaves were expected to and did reach Plaintiff and Class Members without substantial change from the condition in which it left Sharp’s control.

103. The Microwaves were defective when they left Sharp’s control and were placed in the stream of commerce, in that there were foreseeable defects in the design and/or manufacture of the product.

104. The Microwaves were in an unreasonably dangerous condition at the time they left Sharp’s control and were placed in the stream of commerce, and at the time they were purchased by Plaintiff and Class Members.

105. The Microwaves were unfit for their intended use, and in a defective condition which caused the product to buzz, smoke, and scorch the back panel of the Microwaves, causing damages to the Microwaves and other property in Plaintiff’s home, including smoke damage to cabinetry, kitchen islands, and other portions of the kitchen, as well as damage to the food intended to have been cooked.

106. Plaintiff and the Class Members used the Microwaves in substantially the same condition they were in when they left the control of Sharp, and in the manner intended.

107. Had Sharp altered its design and manufacturing process utilizing viable alternatives, the Microwaves would not buzz, smoke, catch fire, and cause damage to the Microwaves and smoke damage to Plaintiff’s and Class Members’ homes.

1 108. Better and safer methods of design and manufacturing of microwave oven drawers
2 were available and utilized by other manufacturers in the same industry.

3 109. As a direct and proximate result of Sharp's defective design and/or manufacture of
4 the Microwaves, Plaintiff and Class Members suffered damages and economic loss as set forth
5 herein.

6 110. Sharp is strictly liable to Plaintiff and Class Members for all damages and economic
7 losses resulting from its defective design and/or manufacture of the Microwaves.

8 111. As a direct and proximate result of the foregoing, Plaintiff and the Class Members
9 suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in
10 addition to costs, interest and fees, including attorneys' fees, as allowed by law.

11
12 **SECOND CLAIM FOR RELIEF**
13 **Breach of Implied Warranties**
(Plaintiff Individually and on Behalf of All Others Similarly Situated)

14 112. Plaintiff hereby re-alleges and incorporates all allegations raised in the preceding
15 Paragraphs into this cause of action and claim for relief as if fully set forth herein.

16 113. Plaintiff brings this cause of action individually and on behalf of the Class.

17 114. Sharp was at all relevant times the manufacturer, distributor, warrantor, and/or seller
18 of the Microwaves. Sharp knew or had reason to know of the specific use for which the Microwaves
19 were purchased.

20 115. Sharp provided Plaintiff and Class Members with implied warranties that the
21 Microwaves were merchantable and fit for the ordinary purposes for which they were sold.

22 116. However, the Microwaves are not fit for their ordinary purpose of providing
23 reasonably reliable and safe heating of food because, *inter alia*, the Microwaves contained a defect
24 preventing the Microwaves from safely heating food without electrical arcing, smoking, melting
25 the magnetron tube and potentially catching fire, as well as preventing the Microwaves from
26 cooking food at the represented wattage. Therefore, the Microwaves are not fit for their particular
27 purpose of safely heating and/or cooking food.

1 124. Further, the Warranty Period for the Microwaves is: “One (1) year parts and labor
2 including in-home service. The warranty period continues for an additional four (4) years, for a
3 total of five (5) years, with respect to the magnetron tube in the Product for parts only; labor and
4 service are not provided free of charge for this additional period.”

5 125. The defectively designed Microwaves are subject to and otherwise covered by
6 Sharp’s Consumer Limited Warranty.

7 126. Each of the Microwave models has an identical or substantially identical warranty.

8 127. Plaintiff and the Class Members have privity of contract with Sharp through their
9 purchase of the Microwaves, and through the express written and implied warranties that Sharp
10 issued to its customers. Sharp’s warranties accompanied the Microwaves and were intended to
11 benefit end-users of the Microwaves. To the extent Class Members purchased the Microwaves from
12 third-party retailers or via the purchase of their homes, privity is not required because the Class
13 Members are intended third-party beneficiaries of the contracts between Sharp and third-party
14 retailers and because the express warranty is intended to benefit purchasers or owners subsequent
15 to the third-party retailer; in other words, the contracts are intended to benefit the ultimate consumer
16 or user of the Microwaves.

17 128. The express written warranties covering the Microwaves were a material part of the
18 bargain between Sharp and consumers. At the time it made these express warranties, Sharp knew
19 of the purpose for which Microwaves were to be used.

20 129. Sharp breached its express warranties by selling Microwaves that were, in actuality,
21 not free of defects, not made for years of dependable use, not made from merchantable material and
22 workmanship, were unsafe for use, and could not be used for the ordinary purpose of heating food.
23 Sharp breached its express written warranties to Plaintiff and Class Members in that the
24 Microwaves are defective at the time they leave the manufacturing plant, and on the first day of
25 purchase, creating a serious safety risk to Plaintiff and Class Members.

1 130. Microwaves that the Plaintiff and Class Members purchased contained a defect that
2 caused each of them damages including loss of the product, loss of the benefit of their bargain, and
3 property damage.

4 131. Plaintiff and Class Members notified Sharp of its breach of the express warranty
5 shortly after their Microwaves failed to perform as warranted due to the defect.

6 132. Moreover, Sharp was put on constructive notice about its breach through its review
7 of consumer complaints and media reports described herein, and, upon information and belief,
8 through product testing.

9 133. Sharp breached its express warranty to adequately repair or replace the Microwave
10 despite its knowledge of the defect, and/or despite its knowledge of alternative designs, materials,
11 and/or options for manufacturing the Microwaves.

12 134. To the extent that Sharp offered to replace the defective Microwaves, the warranty
13 of replacement fails in its essential purpose given it is insufficient to make Plaintiff Haight and
14 Class Members whole because the warranty covering the Microwaves gives Sharp the option to
15 repair or replace the Microwave, where neither is sufficient. Specifically, Sharp often opts to
16 provide a replacement Microwave; however, the replacement Microwave likewise contains the
17 defect, resulting in the same safety risks to the owners, and the same or similar damages occur to
18 the replacement and the owner's personal property.

19 135. Further, the repair or replacement under the Consumer Limited Warranty does not
20 apply to all Microwaves—it necessarily only applies to the Microwaves that have manifested the
21 latent defect and have already failed. The warranty of repair or replacement of failed Microwaves
22 is insufficient to adequately cover all defective Microwaves, or cannot do so within the time period
23 under either the one-year or five-year warranty periods, or within the reasonable expected service
24 life of a Microwave at ten (10) years.

25 136. Many of the damages resulting from the defective Microwaves cannot be resolved
26 through the limited remedy of replacement, as incidental and consequential damages have already
27 been suffered due to Sharp's conduct as alleged herein.

1 137. Accordingly, recovery by Plaintiff and Class Members is not limited to the limited
2 warranty of replacement, and they seek all remedies allowed by law.

3 138. Upon information and belief, Sharp received further notice and has been on notice
4 of the defective nature of the Microwaves and of its breaches of warranties through customer
5 warranty claims reporting problems with Sharp, consumer complaints at various sources, and its
6 own internal and external testing. Sharp also received such notice through Plaintiff who twice
7 complained to Sharp about the defective Microwave and resulting damage.

8 139. Despite having notice and knowledge of the defective nature of the Microwaves,
9 Sharp failed to provide any relief to Class Members with Microwaves more than one (1) year old,
10 failed to provide a non-defective replacement Microwave to Plaintiff and Class Members, and
11 otherwise failed to offer any appropriate compensation from the resulting damages.

12 140. Had Plaintiff, Class Members, and the consuming public known that the
13 Microwaves were defective, posed an unreasonable risk of harm to themselves and their property,
14 would cause damage, or that Sharp would not properly honor its warranty, they would not have
15 purchased the Microwaves.

16 141. As a direct and proximate result of Sharp's breach of its express written warranties,
17 Plaintiff and Class Members did not receive the benefit of the bargain and suffered damages at the
18 point of sale stemming from their overpayment of the defective Microwaves, in addition to loss of
19 the product and its intended benefits.

20
21 **FOURTH CLAIM FOR RELIEF**
(IN THE ALTERNATIVE)

22 **Breach of Contract**
(Plaintiff Individually and Behalf of All Others Similarly Situated)

23 142. Plaintiff hereby re-alleges and incorporates all allegations raised in the preceding
24 Paragraphs into this cause of action and claim for relief as if fully set forth herein.

25 143. To the extent Sharp's commitment is deemed not to be a warranty under New York's
26 Uniform Commercial Code, Plaintiff pleads in the alternative under common law warranty and
27 contract law.

1 144. Plaintiff and Class Members purchased the Microwaves from Sharp or through
2 retailers such as Home Depot, Lowe's, Amazon, and other appliance stores.

3 145. Sharp expressly warranted that the Microwaves were fit for their intended purpose
4 and that they were free of defects, suitable for safe heating of food, and heat food at 950 watts.

5 146. Sharp made the foregoing express representations and warranties to all consumers,
6 which became the basis of the bargain between Plaintiff, Class Members, and Sharp.

7 147. Defendant breached the warranties and/or contract obligations by placing the
8 defective Microwaves into the stream of commerce and selling them to consumers, when they knew
9 the Microwaves contained defects, were prone to premature failure, did not safely heat food, and
10 did not heat food at 950 watts. These deficiencies substantially and/or completely impair the use
11 and value of the Microwaves.

12 148. The deficiencies described existed when the Microwaves left Sharp's possession or
13 control and were sold to Plaintiff and Class Members. The deficiencies and impairment of the use
14 and value of the Microwaves was not discoverable by Plaintiff or Class Members at the time of the
15 purchase of the Microwaves.

16 149. As a direct and proximate cause of Sharp's breach of contract, Plaintiff and Class
17 Members were harmed because they would not have purchased the Microwaves if they knew the
18 truth about the defective condition of the Microwaves.

19
20 **FIFTH CLAIM FOR RELIEF**
(IN THE ALTERNATIVE)

21 **Unjust Enrichment**
(Plaintiff Individually and Behalf of All Others Similarly Situated)

22 150. Plaintiff hereby re-alleges and incorporates all allegations raised in the preceding
23 Paragraphs into this cause of action and claim for relief as if fully set forth herein.

24 151. This alternative claim is asserted on behalf of Plaintiff and Class Members to the
25 extent there is any determination that any contracts between Class Members and Sharp do not
26 govern the subject matter of the disputes with Sharp, or that Plaintiff does not have standing to
27 assert any contractual claims against Sharp.

1 152. Plaintiff and Class Members conferred a monetary benefit on Sharp, and Sharp had
2 knowledge of this benefit. The average price paid by Plaintiff and Class Members for the
3 Microwaves was more than \$900.00.

4 153. By its wrongful acts and omissions described herein, including selling the defective
5 Microwaves, Sharp was unjustly enriched at the expense of Plaintiff and Class Members.

6 154. Plaintiff and Class Members' detriment and Sharp's enrichment were related to and
7 flowed from the wrongful conduct alleged in this Complaint.

8 155. It would be inequitable for Sharp to retain the profits, benefits, and other
9 compensation obtained from its wrongful conduct as described herein in connection with selling
10 the defective Microwaves.

11 156. Plaintiff and Class Members seek restitution from Sharp and an order of this Court
12 proportionally disgorging all profits, benefits, and other compensation obtained by Sharp from their
13 wrongful conduct and establishing a constructive trust from which Plaintiff and Class Members
14 may seek restitution.

15 **SIXTH CLAIM OF ACTION**
16 **Violation Of the New York Unfair and Deceptive Trade Practices Act**
17 **New York General Business Law § 349, *et seq.***
18 **(Plaintiff Individually and Behalf of All Others Similarly Situated)**

19 157. Plaintiff hereby re-alleges and incorporates all allegations raised in the preceding
20 Paragraphs into this cause of action and claim for relief as if fully set forth herein.

21 158. The conduct described herein took place within the State of New York and
22 constitutes deceptive acts and practices, which were directed at consumers.

23 159. Sharp's foregoing deceptive acts and practices, including their omissions, were
24 material, in part, because they concerned an essential part of the safety, durability, and functionality
25 of the Microwaves. Sharp, when it marketed, advertised and sold the Microwaves, represented to
26 Plaintiff and Class Members that the Microwaves were free of defects, despite the fact that the
27 Microwaves were defective and prone to failure. The defective condition was a material fact that
28 Sharp omitted during its packaging, sale, and subsequent warranty communications with Plaintiff
and Class Members.

1 160. At the time of its misrepresentations, Sharp was either aware that the Microwaves
2 were defective or was aware that it lacked the information and/or knowledge required to make such
3 a representation truthfully. Sharp concealed, omitted and failed to disclose this information to
4 Plaintiff and Class Members.

5 161. Rather than disclose its knowledge of defects, Sharp engaged in and continued a
6 widespread uniform, marketing, and advertising campaign that misrepresented the Microwaves as
7 being free of defects and suitable for safe heating of food.

8 162. Sharp’s descriptions and advertisements of the Microwaves were false, misleading,
9 and likely to deceive Plaintiff and other reasonable consumers.

10 163. Sharp’s foregoing deceptive acts and practices, including their omissions were and
11 are deceptive acts or practices in violation of New York’s General Business Law § 349, in that
12 Sharp manufactured, labeled, packaged, advertised, distributed, and/or sold the Microwaves as
13 being free of defect, when they knew or should have known, that the Microwaves were defective,
14 prone to failure, and posed a safety hazard to Plaintiff and Class Members. More specifically,
15 Sharp’s website and brochures contained the numerous false and misleading statements regarding
16 the quality, durability, and reliability of the Microwaves. These include, *inter alia*, the following:
17 misrepresentations:

18 “SHARP ELECTRONICS CORPORATION warrants to the first consumer
19 purchaser that this Sharp brand product (the “Product”), when shipped in its original
20 container, will be free from defective workmanship and materials”

21 The Warranty includes “One (1) year parts and labor including in-home service.
22 The warranty period continues for an additional four (4) years, for a total of five (5)
23 years, with respect to the magnetron tube in the Product for parts only; labor and
24 service are not provided free of charge for this additional period.”

25 “Cooking Performance You Can Trust”

26 “COOKING PERFORMANCE FROM ONE OF THE MOST TRUSTED
27 BRANDS IN MICROWAVES”

28 “Sharp has been innovating microwave cooking for decades and holds eleven
patents on the Microwave Drawer alone. You can trust that the Microwave Drawer

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will deliver the performance you need because it is engineered for great cooking results and is built with the finest quality materials.”

The Microwaves heat food at “950 watts.”

“Sharp has been innovating microwave cooking for decades and holds 11 patents on the Microwave Drawer platform alone. Engineered for consistency and built with the finest quality materials, great cooks trust the Microwave Drawer to deliver great results every time.”

“The Sharp Microwave Drawer Oven has been designed to complement the widest range of kitchen styles and appliances. The sleek low profile design and a stainless steel finish beautifully compliment any kitchen.”

164. Had Sharp disclosed the true defective nature of the Microwaves, Plaintiff and Class Members would not have purchased the Microwaves or would have paid substantially less for them.

165. Plaintiff and the Class Members suffered damages when they purchased the Microwaves. Sharp’s unconscionable, deceptive and/or unfair practices caused damages to Plaintiffs and Class Members who were unaware that the Microwaves contained inherent defects and were prone to premature failure.

SEVENTH CLAIM OF ACTION
Violation Of the New York Deceptive Sales Practices Act
New York General Business Law § 350, *et seq.*
(Plaintiff Individually and Behalf of All Others Similarly Situated)

166. Plaintiff hereby re-alleges and incorporates all allegations raised in the preceding Paragraphs into this cause of action and claim for relief as if fully set forth herein.

167. New York General Business Law § 350 declares unlawful “[f]alse advertising in the conduct of any business, trade or commerce...” The term “false advertising” includes “labeling, of a commodity,...if such advertising is misleading in a material respect.” N. Y. Gen. Bus. L. § 350-a(1). In determining whether advertising is misleading, the law takes into account not only representations made by statement, word, design, or any combination thereof, but also the “extent to which the advertising fails to reveal facts material in light of such representations...” N.Y. Gen. Bus. L. § 350-a(1).

1 168. As more fully set forth above, Sharp's conduct described herein violates New York
2 General Business Law § 350. Sharp, while engaged in the conduct of business, trade and
3 commerce, did attempt to directly and/or indirectly induce consumers to purchase the Microwaves
4 by its labeling. In doing so, Sharp utilized false labeling which did not represent the true nature
5 and quality of the Microwaves, but rather misled consumers into believing that the product was free
6 of defects, was suitable and safe for heating food, heated food at 950 watts, and in other ways
7 described herein. The false labeling was materially misleading and materially deceiving to
8 reasonable consumers at large acting reasonably under the circumstances.
9

10 169. Sharp's conduct caused and continues to cause injury to consumers, including
11 Plaintiff and Class Members, who were misled to believe that they were purchasing a superior,
12 durable, and safe product, when they were not.
13

14 170. In making and disseminating the false labeling, Sharp knew or should have known
15 that its practices were materially deceptive and misleading. Plaintiff and Class Members based
16 their decision to purchase the Microwaves, in substantial part, on Sharp's labeling, advertisements,
17 material representations, and omitted facts. The revenue to Sharp attributable to the sale of the
18 Microwaves likely amounts to millions of dollars.
19

20 171. Based on all of the foregoing, Sharp has violated New York General Business Law
21 § 350, causing Plaintiff and Class Members to sustain injury in fact – the loss of monies paid for
22 the Microwaves and other damage associated with the Microwave failure.
23

EIGHTH CLAIM OF ACTION

Negligence

(Plaintiff Individually and Behalf of All Others Similarly Situated)

24 172. Plaintiff hereby re-alleges and incorporates all allegations raised in the preceding
25 Paragraphs into this cause of action and claim for relief as if fully set forth herein.
26

27 173. At all times material hereto, Sharp designed and manufactured the Microwaves.
28

1 174. Sharp had a duty to Plaintiff and to Class Members to design and manufacture
2 Microwaves that were free of latent defects, which would not overheat the magnetron, scorch the
3 back of the unit, cause damage to the food being cooked, cause smoke damage to other parts of the
4 home, including kitchen islands and cabinetry, and that presents serious safety risks as a result of a
5 malfunctioning electrical appliance.

6 175. Sharp had a duty to design and manufacture the Microwaves such that there was a
7 mechanism to prevent arcing, or otherwise prevent the Microwave from further functioning and
8 overheating the magnetron once arcing occurred.

9 176. Sharp had a duty to Plaintiff and to Class Members to test the Microwaves to ensure
10 adequate performance of the Microwaves for a reasonable period of use, and to ensure they would
11 not be subject to premature failure, or would cause damage to food or smoke damage to the home.

12 177. Sharp had a duty to Plaintiff and to Class Members to ensure that the magnetron
13 tube, waveguide, and other components were suitable, either by testing or by verifying third-party
14 test results.

15 178. Sharp had a duty to Plaintiff and to Class Members to ensure that the Microwaves
16 complied with industry standards, testing, and safety guidelines.

17 179. Sharp had a duty to Plaintiff and Class Members to forewarn purchasers, installers,
18 and users regarding the known risk of product failures.

19 180. Sharp failed to exercise ordinary and reasonable care in the design and manufacture
20 of the Microwaves and in determining whether the Microwaves that it sold, and continued to sell,
21 contained a latent defect that would result in the failure of the Microwaves to perform as reasonably
22 expected.

23 181. Sharp failed to exercise ordinary and reasonable care in the design and manufacture
24 of the Microwaves and breached the foregoing duties.

25 182. Sharp breached its duty to the Plaintiff and Class Members to test the Microwaves
26 to ensure adequate performance of the Microwaves for a reasonable period of use.

27 183. Sharp breached its duty to Plaintiff and to Class Members to ensure that the
28

1 Microwave components were suitable, either by testing or by verifying third-party test results.

2 184. Sharp breached its duty to Plaintiff and to Class Members to ensure that the
3 Microwaves complied with industry standards, safety guidelines, and testing standards.

4 185. Sharp breached its duty to Plaintiff and to Class Members to forewarn purchasers,
5 installers, and users regarding the known risk of product failures.

6 186. The negligence of Sharp, its agents, servants, and/or employees, include the
7 foregoing, as well as the following acts and/or omissions:

- 8
- 9 (a) designing, manufacturing, processing, distributing, delivering, supplying,
10 inspecting, marketing and/or selling Microwaves without adequately and
thoroughly testing them to all applicable standards and safety guidelines;
 - 11 (b) designing, manufacturing, processing, distributing, delivering, supplying,
12 inspecting, marketing and/or selling Microwaves without adequately testing
long term performance;
 - 13 (c) negligently failing to ensure that the Microwaves conformed to all applicable
industry standards, safety guidelines, and testing standards; and
 - 14 (d) concealing information concerning the defect inherent in the Microwaves from
15 Plaintiff and the Class Members, while knowing that Sharp's Microwaves were
16 defective and non-conforming with accepted industry standards and safety
guidelines.

17 187. Plaintiff and the Class Members have been damaged because the defective
18 Microwaves do not perform the ordinary purpose of heating food safely.

19 188. Plaintiff and Class Members have also been damaged as a direct and proximate
20 result of the negligence, carelessness, recklessness, willfulness, and wanton behavior of Sharp as
21 aforesaid, including, but not limited to, damage to the Product, loss of the food being cooked, smoke
22 damage to kitchen islands and cabinetry, and related safety risks.

23 189. As Sharp's conduct was grossly negligent, reckless, willful, wanton, intentional,
24 fraudulent, or the like, Plaintiff and Class Members are entitled to an award of punitive damages
25 against Sharp.

PRAYER FOR RELIEF

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

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

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: March 27, 2019.

Respectfully submitted,

/s/ Jonathan K. Tycko

Jonathan K. Tycko
Hassan A. Zavareei*
Andrea Gold*

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*Will seek admission *pro hac vice*

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

Erin Haight, individually and on behalf of herself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Tycko & Zavareei LLP, 1828 L Street NW - Suite 1000, Washington, DC 20036, 202-973-0900

DEFENDANTS

Sharp Electronics Corporation

County of Residence of First Listed Defendant (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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. 1367. Brief description of cause: Breach of warranty; strict products liability; negligence; violation of New York General Business Law

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 DOCKET NUMBER

DATE 03/27/2019 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # 4693771 AMOUNT \$400.00 APPLYING IFP JUDGE MAD MAG. JUDGE DEP

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sharp Microwave Drawers Prone to Catching Fire, Class Action Says](#)
