

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

DEANNA McEACHERN, Individually  
and on Behalf of All Others Similarly  
Situated,

Plaintiff,

v.

WHIRLPOOL CORPORATION,

Defendant.

Civil Action No.:

(Case No. 2019-176683-CK in the  
Circuit Court for the County of Oakland,  
Michigan)

**DEFENDANT’S NOTICE OF REMOVAL**

Defendant Whirlpool Corporation (“Whirlpool”) removes to this Court the state court action described below:

1. Shortly after this Court denied class certification in *Schechner v. Whirlpool Corp.*, No. 2:16-cv-12409-SJM-RSW (E.D. Mich.) (“*Schechner*”), Plaintiff Deanna McEachern (“Plaintiff”) filed a related, follow-on action on September 18, 2019, in the Circuit Court for the County of Oakland, Michigan, captioned *Deanna McEachern v. Whirlpool Corporation*, Case No. 2019-176683-CK (“*McEachern*”).

2. *McEachern* is the fourth successive class action filed by the same Plaintiffs’ lawyers who already sued Whirlpool three separate times in Michigan federal court based on nearly identical allegations regarding Whirlpool’s ovens with AquaLift Self-Clean Technology: first in *Schechner*, filed on June 27, 2016

(ECF No. 1, PgID 1); second in *Danielkiewicz v. Whirlpool Corp.*, No. 2:18-cv-13599-SJM-RSW (E.D. Mich.) (“*Danielkiewicz*”), filed on November 19, 2018 (ECF No. 1, PgID 1); and third in *Angerman v. Whirlpool Corp.*, No. 2:18-cv-13832-JEL-SDD (E.D. Mich.) (“*Angerman*”), filed on December 11, 2018 (ECF No. 1, PgID 1). All three earlier-filed cases are pending before the Honorable Stephen J. Murphy III.<sup>1</sup>

3. In *Schechner*, Plaintiffs originally brought their claims on behalf of a putative nationwide class (*Schechner*, ECF No. 5, PgID 110), but they ultimately sought certification of six statewide classes comprising “all persons who purchased a Whirlpool, Maytag, KitchenAid, or Jenn-Air oven with AquaLift in” Michigan, Florida, New Jersey, Arizona, Idaho, and New Mexico (*Schechner*, ECF No. 176, PgID 26885).<sup>2</sup> On August 13, 2019, the Court denied certification, finding Plaintiffs failed to establish Rule 23(a)’s commonality and typicality requirements, Rule 23(b)(3)’s predominance requirement, and Rule 23(b)(2)’s requirements for an injunctive relief class. (*Id.* at PgID 26886-26898.)

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<sup>1</sup> Judge Murphy accepted reassignment of *Danielkiewicz* and *Angerman*, ruling that they are “nearly identical” to *Schechner* (*Danielkiewicz*, ECF No. 7, PgID 226), and then consolidated *Danielkiewicz* and *Angerman* because they involved “substantially similar claims” (*Angerman*, ECF No. 10, PgID 233).

<sup>2</sup> *Danielkiewicz* alleges claims on behalf of nine individual plaintiffs, three new putative state classes (Missouri, New York, and California), and two repeat putative state classes (Michigan, Florida). *Angerman* asserts claims on behalf of three new individual plaintiffs and three new putative state classes (Minnesota, Washington, Georgia).

4. *McEachern* represents Plaintiff's lawyers' newest tactic. Instead of filing another class action in Michigan federal court, they attempted to avoid federal court altogether, presumably hoping that their duplicative Michigan claims and class certification arguments would gain more traction in state court.

5. As detailed below, Plaintiff's Complaint is removable to this Court. This Court has jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332, 28 U.S.C. § 1441(a) and (b), and 28 U.S.C. § 1453, because this is a putative class action involving more than 100 putative class members who are seeking to recover in excess of \$5,000,000, and minimal diversity exists. *See* 28 U.S.C. § 1332(d).

6. On September 23, 2019, Plaintiff *McEachern* served Whirlpool with her Complaint and Summons by certified mail. On October 21, 2019, Whirlpool filed Defendant Whirlpool Corporation's Answer to Class Action Complaint and Jury Demand ("Answer"). This Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b).

7. A true and correct copy of the Complaint, together with copies of all other process, pleadings, and orders served in this case, including Whirlpool's Answer, are attached as Exhibits A through I. To the best of Whirlpool's knowledge and belief, these documents comprise all process, pleadings, and orders as of this date. *See* 28 U.S.C. § 1446.

8. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Circuit Court for the County of Oakland, Michigan, in accordance with 28 U.S.C. § 1446(d), along with a notice of that filing, a copy of which will be served on all parties.

**THIS COURT HAS CAFA JURISDICTION**

9. Plaintiff is a resident of Birmingham, Michigan, which is located in Oakland County, Michigan. (Ex. A, Class Action Compl. & Jury Demand (“Compl.”) ¶ 17.)

10. Whirlpool is a Delaware corporation with its principal place of business in Benton Harbor, Michigan. (Ex. J, Decl. of Pamela R. Klyn in Supp. of Def.’s Notice of Removal (“Klyn Decl.”) ¶ 4.)

11. Plaintiff’s Complaint alleges that Whirlpool “designs, manufactures, advertises, and sells a line of gas and electric stoves, ranges, and ovens featuring its proprietary ‘AquaLift® Self-Cleaning Technology,’” and that “Whirlpool’s marketing and advertising . . . are false, deceptive, and misleading to reasonable consumers because AquaLift—a key product feature—does not ‘self-clean’ as advertised.” (Ex. A, Compl. ¶ 1.) The Complaint asserts that this allegedly deceptive marketing and advertising occurred “nationwide.” (*Id.* ¶ 3.)

12. Plaintiff filed this putative class action on behalf of “[a]ll persons who purchased a Whirlpool, Maytag, KitchenAid, or Jenn-Air oven equipped with

AquaLift in the state of Michigan.” (*Id.* ¶ 70.) The putative class definition is *not* limited to Michigan citizens or residents. (*Id.*)

13. The Complaint alleges claims for violation of the Michigan Consumer Protection Act and for breach of contract. (*Id.* ¶¶ 9, 79-92.) Plaintiff seeks damages (*id.* ¶¶ 8, 74(n), 84-85, 92; *see also id.* at p. 30), including damages for “payment for a falsely advertised product” (*id.* ¶ 8); “overpayment” damages (*id.*); damages for “a decrease in value of their Ovens” (*id.*); “out-of-pocket money spent in connection with servicing AquaLift” (*id.*); statutory damages (*id.* at p. 30); and punitive damages (*id.* ¶ 74(o))—as well as “disgorgement of Whirlpool’s revenues” (*id.* at p. 30), restitution (*id.*), injunctive and declaratory relief (*id.* ¶¶ 74(p), 85; *see also id.* at p. 30 (seeking an injunction enjoining Whirlpool from continuing its nationwide “advertising campaign”)), and attorney fees (*id.* at p. 30).

14. The allegations in the Complaint are nearly identical to those in *Schechner, Danielkiewicz, and Angerman*.

15. CAFA reflects Congress’s intent to have federal courts adjudicate substantial class actions. *See* S. Rep. 109-14, at 43 (2005), reprinted in 2005 U.S.C.C.A.N. 3, 41; H. Rep. 108-144, at 36-37 (2005). To effectuate this purpose, CAFA provides that putative class actions filed in state court are removable to federal court, and it expands federal jurisdiction over such cases by amending 28 U.S.C. § 1332 to grant original jurisdiction where, as here, the putative class

contains at least 100 class members, there is minimal diversity, and the amount in controversy exceeds \$5,000,000 in the aggregate for the proposed class, exclusive of interest and costs. 28 U.S.C. § 1332(d).

16. This case satisfies all of CAFA’s jurisdictional requirements. Specifically, based on the allegations in the Complaint, (1) the proposed class consists of 100 or more members, (2) there is sufficient diversity of citizenship, and (3) the amount in controversy exceeds \$5,000,000. *See* 28 U.S.C. § 1332(d).

**A. The Putative Class Size Exceeds 100 Members**

17. CAFA requires that the putative class comprise at least 100 persons. 28 U.S.C. § 1332(d)(5)(B). In the Complaint, Plaintiff represents the following putative class: “All persons who purchased a Whirlpool, Maytag, KitchenAid, or Jenn-Air oven equipped with AquaLift in the state of Michigan.” (Ex. A, Compl. ¶ 70.)

18. Whirlpool first began manufacturing and selling ovens with AquaLift Self-Clean Technology (“Ovens”) in 2012. (Ex. J, Klyn Decl. ¶ 8.)

19. Based on sales and shipping information maintained by Whirlpool in the ordinary course of business, Whirlpool has shipped approximately 65,233 Ovens to trade customer locations, including retailers, in Michigan since 2012. (*Id.*) Thus, the number of persons who bought Ovens in Michigan easily exceeds

100. (*See id.* ¶¶ 6-11; *see also* Ex. A, Compl. ¶ 73 (alleging that “the Class includes *thousands of members*” (emphasis added)).)

**B. There Is Sufficient Diversity of Citizenship**

20. The second CAFA requirement—minimal diversity—is readily satisfied here. At least one putative class member is a citizen of a state different from Whirlpool. 28 U.S.C. § 1332(d)(2).

21. Whirlpool is a Delaware corporation with its principal place of business in Michigan. (Ex. J, Klyn Decl. ¶ 4.)

22. Plaintiff was a citizen of Michigan and a resident of Birmingham, Michigan at the time she filed her Complaint. (Ex. A, Compl. ¶ 17.)

23. Plaintiff seeks to represent a proposed class of persons who bought Ovens in Michigan, but she does not limit her putative class to Michigan citizens. Instead, citizens and residents of foreign states who bought Ovens “in the state of Michigan” are included. (*Id.* ¶ 70.) Similarly, the proposed class includes former Michigan residents who bought Ovens in Michigan but have since left the state. (*Id.*)

24. As noted above, since 2012 Whirlpool has shipped approximately 65,233 Ovens to trade customer locations in Michigan. (Ex. J, Klyn Decl. ¶ 8.) Trade customers sell the Ovens to end-user consumers. (*Id.* ¶ 7.) Consumers may provide their contact information, including their state of residence, to Whirlpool

by registering their Oven (through owner-warranty registration paths), by contacting Whirlpool customer service with a question or concern (which may manually enter consumer data and contact information), or by making requests for product service. (*Id.*) Whirlpool maintains this consumer contact information in Whirlpool's computerized databases. (*Id.*)

25. Based on the shipping information and consumer contact information maintained by Whirlpool in the ordinary course of business, there are many consumers who bought Ovens from trade customers in Michigan, but who reported to Whirlpool their state of residence as other than Michigan, including many consumers in the neighboring states of Illinois, Indiana, Ohio, and Wisconsin. (*Id.* ¶ 9.) Thus, minimal diversity is satisfied because at least one putative class member is a citizen of a state different from Whirlpool. *See* 28 U.S.C. § 1332(d)(2).

26. In addition, Whirlpool's shipping and consumer data do not (and cannot) account for all consumers who either (i) bought an Oven in Michigan and reside outside of Michigan, but who have not reported their state of residence to Whirlpool; or (ii) bought an Oven in Michigan and resided in Michigan at the time of purchase, but have since moved to another state or country during the putative seven-year class period and have not reported to Whirlpool their new state or country of residence. (Ex. J, Klyn Decl. ¶ 10.)



27. Whirlpool also sells Ovens directly to consumers through Whirlpool's Employee Purchase Program, which allows Whirlpool employees and their family members to buy appliances from Whirlpool. (*Id.* ¶ 11.) Further, Whirlpool sells Ovens directly to consumers through Whirlpool's Inside Pass program, which allows employees of Whirlpool's third-party vendors to buy appliances from Whirlpool. (*Id.*) These are Internet sales, accomplished through Whirlpool websites. (*Id.*) Whirlpool maintains its websites and direct-to-consumer sales operations in Michigan, but consumers who buy appliances through these two programs reside nationwide. (*Id.*)

28. For all these reasons, minimal diversity is satisfied because at least one putative class member is a citizen of a state different from Whirlpool. *See* 28 U.S.C. § 1332(d)(2).

**C. The Minimum Amount in Controversy Requirement Is Satisfied**

29. To confer subject matter jurisdiction on this Court based on diversity of citizenship, the amount in controversy must exceed the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individuals comprising a putative class are aggregated to determine if the amount in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2); *see also Dart Cherokee Basin Operating Co., LLC v. Owens*, 574

U.S. 81 (2014) (a “defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

30. Under Local Rule 81.1, in “actions removed on the basis of diversity of citizenship in which the complaint does not plead a specific amount in controversy in excess of the jurisdiction amount,” a “removing defendant must . . . allege in the notice of removal that the amount in controversy exceeds the required jurisdictional amount,” and “set forth the facts or other reasons that the removing defendant possesses that support that allegation or state that the removing defendant has no such facts at that time.”

31. Plaintiff claims that she and the proposed class suffered “damages, including, but not limited to: (a) payment for a falsely advertised product; (b) overpayment for a product advertised to include a self-cleaning function that the product allegedly did not have; (c) a decrease in value of their Ovens due to the false advertising; and (d) out-of-pocket money spent in connection with servicing AquaLift [or] manually cleaning the Oven.” (Ex. A, Compl. ¶ 8.)

32. As noted above, since 2012, Whirlpool has shipped approximately 65,233 Ovens to trade customer locations in Michigan (omitting the Ovens Whirlpool sold directly to consumers through the Employee Purchase and Inside Pass programs). (Ex. J, Klyn Decl. ¶ 12; *see also id.* ¶ 11.) During that time, for the vast majority of retail sales, the range of reported retail prices for new, unused

Ovens was approximately \$400 to \$3,500, depending on the brand, model, and feature set of the Oven, the identity of the reseller, and any sale or promotional offer. (*Id.* ¶ 12.) Simply taking Plaintiff’s first sub-category of damages—“payment for a falsely advertised product”—and in light of the approximate purchase-price reimbursement cost of such Ovens, the potential classwide damages award for that sub-category alone easily would exceed approximately \$26,000,000, even using the low end of the range of retail prices to perform this damages calculation. (*Id.*)

33. The Complaint also seeks an order “[a]warding disgorgement of Whirlpool’s revenues” from the sale of the Ovens. (Ex. A, Compl. at 30.). During the time Whirlpool sold the 65,233 Ovens to trade customers in Michigan, the average amount of revenue that Whirlpool received per Oven substantially exceeded \$76.65. (Ex. J, Klyn Decl. ¶ 13.) Thus, Whirlpool’s revenue from the sale of Ovens in Michigan necessarily exceeded \$5,000,000 ( $65,233 \times \$76.65 = \$5,000,109.45$ ), meaning the Complaint’s demand seeking “disgorgement of Whirlpool’s revenues” likewise meets the amount in controversy. (*See id.*)

34. The Complaint also seeks other categories of monetary relief, including “overpayment” damages (Ex. A, Compl. ¶ 8), damages for “a decrease in value of their Ovens” (*id.*), “out-of-pocket money spent in connection with servicing AquaLift” (*id.*), statutory damages (*id.* at p. 30), punitive damages (*id.*

¶ 74(o)), and attorney fees (*id.* at p. 30), increasing the amount in controversy even further beyond the \$5,000,000 jurisdictional threshold.

35. Finally, the Complaint seeks declaratory and injunctive relief, including relief “enjoining Whirlpool from continuing its false, deceptive, and misleading advertising campaign for AquaLift,” and an order requiring “Whirlpool to engage in a corrective advertising campaign.” (*Id.* at p. 30.) Plaintiff’s request for injunctive relief, if granted, would further inflate the amount in controversy because Whirlpool potentially could be ordered to pay for a “corrective” nationwide ad campaign and change its business practices.

36. If Plaintiff were to prevail on her request for class certification and recover a classwide judgment on behalf of persons who bought Ovens in Michigan, then an award of damages, disgorgement, restitution, injunctive relief, and attorney fees would substantially exceed—likely by several tens of millions of dollars—the sum of \$5,000,000. Thus, CAFA’s \$5,000,000 amount-in-controversy requirement is satisfied here. *See Dart Cherokee Basin Operating Co.*, 574 U.S. 81.

### **CONCLUSION**

For these reasons, Whirlpool requests that the Court assume jurisdiction over this action.

Dated: October 21, 2019

Respectfully submitted,

*s/ Michael T. Williams*

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Attorneys for Defendant,  
Whirlpool Corporation

**CERTIFICATE OF SERVICE (CM/ECF)**

I certify that, on October 21, 2019, I electronically filed the foregoing **Defendant's Notice of Removal** with the Clerk of Court using the ECF system, and by email and U.S. Mail, postage prepaid, on Stuart A. Davidson, Christopher C. Gold, and Bradley Beall at Robbins Geller Rudman & Dowd, 120 East Palmetto Park Road, Suite 500, Boca Raton, Florida 33432, and on Samuel H. Rudman and Mark S. Reich at Robbins Geller Rudman & Dowd, 58 South Service Road, Suite 200, Melville, NY 11747.

*s/Michael T. Williams*

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**Defendant's Index of Exhibits**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
A	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Class Action Complaint and Demand for Jury Trial
B	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Summons Issued to Whirlpool Corporation
C	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Email Proof of Service
D	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Summons [Filed Copy]
E	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Appearance of E. Powell
F	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Email Proof of Service

<u>Exhibit No.</u>	<u>Description</u>
G	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Affidavit of Service on Whirlpool Corporation
H	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Email Proof of Service
I	<i>Deanna McEachern v. Whirlpool Corporation,</i> No. 2019-176683-CK  Whirlpool Corporation's Answer to Class Action Complaint
J	Declaration of Pamela R. Klyn



# **Exhibit A**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEANNA McEACHERN, Individually and on  
Behalf of All Others Similarly Situated,  
  
Plaintiff,

Case No. 2019-  
  
Hon.

-CK

vs.

CLASS ACTION

WHIRLPOOL CORPORATION,  
  
Defendant.

COMPLAINT AND DEMAND FOR JURY  
TRIAL

\_\_\_\_\_ /

*There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge. MCR1.109 (D)(2) On June 27, 2016, a related putative class action was filed in the United States District Court for the Eastern District of Michigan, Schechner v. Whirlpool Corp., No. 2:16-cv-12409. On November 19, 2018, a related putative class action was filed in the United States District Court for the Eastern District of Michigan, Danielkiewicz v. Whirlpool Corp., No. 2:18-cv-13599. And on December 11, 2018, a third related putative class action was filed in the United States District Court for the Eastern District of Michigan, Angerman v. Whirlpool Corp., No. 2:18-cv-13832, which was subsequently consolidated with Danielkiewicz. See Danielkiewicz v. Whirlpool Corp., No. 2:18-cv-13599, Order Consolidating Cases (E.D. Mich. Dec. 21, 2018), ECF No. 12.*

**CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiff Deanna McEachern (“Plaintiff”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, bring this class action complaint for damages and equitable relief against Defendant Whirlpool Corporation (“Defendant” or “Whirlpool”). Plaintiff alleges the following upon information and belief based on the investigation of counsel, except as to those allegations that specifically pertain to Plaintiff, which are alleged upon personal knowledge:

**SUMMARY OF THE ACTION**

1. Whirlpool designs, manufactures, advertises, and sells a line of gas and electric stoves, ranges, and ovens featuring its proprietary “AquaLift® Self-Cleaning Technology” (“AquaLift”), an attribute that Defendant purports to, inter alia, “self-clean” the interior of a dirty oven in less than one hour using only water and low heat. Whirlpool’s marketing and advertising for its ovens containing AquaLift (“AquaLift Ovens” or “Ovens”) are false, deceptive, and misleading to reasonable consumers because AquaLift – a key product feature – does not “self-

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clean” as advertised. Hundreds, if not thousands, of consumers nationwide have complained publicly and to Whirlpool directly, and Whirlpool and its authorized sellers have admitted that AquaLift does not work.

2. Whirlpool describes AquaLift as “oven cleaning redefined,” “innovation nearly 50 years in the making,” and a “first-of-its kind cleaning solution.” According to Whirlpool, AquaLift uses an “exclusive coating on the interior [that] activates with water and heat, allowing moisture to release soils from underneath so food and debris easily wipe away.” Whirlpool emphasizes that consumers “can use AquaLift<sup>TM</sup> self-clean technology frequently to clean tough baked-on soils,” and that the cleaning process takes only 40 to 50 minutes. Further, Whirlpool represents that after a “self-clean” cycle is complete, users of the Ovens can simply “remove residual water and loosened soils with a sponge or dry cloth.”

3. In Whirlpool’s nationwide advertising and marketing campaign for AquaLift, Whirlpool does not set forth any limitations to the performance of the Ovens’ “self-cleaning” technology and does not inform consumers that AquaLift only works on certain parts of the Ovens.

4. Contrary to Whirlpool’s representations in its advertising and marketing, AquaLift does not “self-clean” the Ovens or otherwise perform as advertised to consumers. Indeed, the Internet is teeming with consumer complaints that describe the extent of Whirlpool’s falsely advertised AquaLift technology. Consumers complain, by way of example, that AquaLift “is totally useless” and “doesn’t work AT ALL.” These putative class members have called AquaLift “a waste of money,” “worthless,” “junk,” “a joke,” “the biggest ripoff,” and “fraud plain and simple,” and these consumers have asked, “[H]ow can the company get away with advertising [a] self-cleaning oven when it absolutely does not clean one bit?!”

5. Whirlpool knew, prior to launching the ovens in February 2012, that its AquaLift feature cannot “self-clean” and does not function as advertised. Once the AquaLift Ovens were placed into the stream of commerce, Whirlpool received additional direct knowledge of AquaLift’s hidden limitations. Indeed, in some instances, dissatisfied consumers, including Plaintiff, have voiced their complaints directly to Whirlpool. In response, Plaintiff was largely advised by representatives of Whirlpool or its agents that if the AquaLift feature does not work, consumers

should purchase cleaning supplies to manually clean the oven. This advice contravenes Whirlpool's advertising of AquaLift's ability "to clean tough baked-on soils" and the ability for a consumer to "remove residual water and loosened soils with a sponge or dry cloth" after the AquaLift feature is activated. This advice is also contrary to the AquaLift "Quick Reference Guide" which instructs consumers to avoid using "commercial oven cleaners" to manually clean the Ovens because it will damage the Oven's interior.

6. Plaintiff and the Class (defined below) did not receive any of the "self-cleaning" benefits of the AquaLift Ovens or observe the feature to work as advertised. Instead, Plaintiff and the Class have been forced to either endure futile and inconvenient service attempts and/or complain to Whirlpool about the "self-clean" feature that does not work as advertised.

7. Plaintiff and members of the putative Class have no choice but to manually clean virtually all surfaces of their Ovens, due to AquaLift's inability to "self-clean" and work as advertised, or tolerate a perpetually dirty oven cavity. Whirlpool, in response to consumers' complaints, has sent "cleaning kits" and instructed some consumers to manually clean the oven.

8. At all times, AquaLift has failed to work and operate as advertised for Plaintiff and the members of the putative Class resulting in damages including, but not limited to: (a) payment for a falsely advertised product; (b) overpayment for a product advertised to include a self-cleaning function, but did not; (c) a decrease in value of their Ovens due to the false advertising; and (d) out-of-pocket money spent in connection with servicing AquaLift and/or manually cleaning the Oven.

9. Plaintiff asserts claims on behalf of a Class of Michigan consumers for violations of the Michigan Consumer Protection Act ("MCPA"), MICH. COMP. LAW §445.901, *et seq.*, and for breach of contract.

10. As alleged herein, Plaintiff and other reasonable consumers ("Class members") purchased AquaLift Ovens which were designed, manufactured, advertised, marketed, and sold by Whirlpool, its subsidiaries, and its authorized sellers. Plaintiff and Class members purchased the Ovens after Whirlpool and its representatives and agents represented to them that AquaLift would "self-clean" their Ovens.

11. Contrary to Whirlpool's advertising, marketing, and express and implied promises, as well as information Whirlpool knew prior to placing the Ovens into the stream of commerce, AquaLift does not and cannot "self-clean" the inside of an Oven. Therefore, Plaintiff and Class members were damaged by Whirlpool's false, deceptive, and misleading advertising campaign at the point of sale.

12. Plaintiff and Class members would not have purchased the Ovens had they known they would not self-clean as promised. Plaintiff and Class members would not have purchased the Ovens – certainly not at the prices they paid – were it not for Whirlpool's false, deceptive, and misleading advertising and/or Whirlpool's failure to disclose to consumers the material fact that AquaLift "self-clean" is incapable of performing according to Whirlpool's advertising, marketing, and express and implied warranties.

#### **JURISDICTION AND VENUE**

13. This Court has jurisdiction pursuant to Mich. Const. Art. VI, §1 and MICH. COMP. LAWS §600.605. The case involves an amount in controversy that exceeds \$25,000. MICH. COMP. LAWS §600.8301.

14. The Court has jurisdiction over Whirlpool because its principal place of business is located in the State of Michigan; it carries on a continuous and systematic part of its general business within the state; and it transacts business within the state. MICH. COMP. LAWS §§600.711; 600.715.

15. Further, this Court has personal jurisdiction over Whirlpool because the claims and allegations asserted herein arise from conduct and actions taken by Whirlpool within the state of Michigan, including advertising, marketing, and selling the Ovens in the jurisdiction of this Court.

16. Venue is proper because Whirlpool conducted substantial business, offered for sale, and advertised (falsely) its Ovens, including to Plaintiff, in part in this County. MICH. COMP. LAWS §§600.1621; 600.1627.

## PARTIES

### Plaintiff

17. Plaintiff Deanna McEachern is a citizen of Michigan and, at all relevant times, was a resident of Birmingham, Michigan. On or about April 26, 2015, Plaintiff purchased a Whirlpool-manufactured KitchenAid AquaLift Oven (Serial Number: R50810442) from Witbeck Home Appliance Mart, Inc., a retail store in West Bloomfield, Michigan. One year later, on June 24, 2016, prior to using the AquaLift feature on her KitchenAid AquaLift Oven, Plaintiff purchased a Whirlpool-manufactured Maytag AquaLift Oven (Model No. MGR8700DS) from The Home Depot's website for her rental property, which she made from her home in Birmingham, Michigan.

18. Plaintiff purchased the KitchenAid Oven to replace an existing oven and expected the AquaLift feature to self-clean the Oven as represented and advertised.

19. When Plaintiff activated the AquaLift feature on the KitchenAid for the first time, she followed the user instructions.

20. Plaintiff tried the AquaLift cycle several times. It did not clean the KitchenAid Oven.

21. Plaintiff was forced to manually clean the KitchenAid Oven.

22. Shortly after finding that the AquaLift feature did not self-clean, Plaintiff contacted Whirlpool and spoke with a customer service representative who, Plaintiff recalls, told Plaintiff "that's how it works."

23. When an appliance repairman came to Plaintiff's home to service other appliances in her home, the repairman volunteered that AquaLift does not work to clean the Ovens.

24. At all times since her purchase of the KitchenAid AquaLift Oven, Plaintiff's Oven has not performed as advertised and has not "self-cleaned" her Oven, thereby causing her damages. Plaintiff's Maytag AquaLift Oven, as with every AquaLift Oven, suffers from the same "cleaning" limitations as described more fully throughout this Complaint.

25. To the extent even necessary, under *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), and its progeny, the statutes of limitation on Plaintiff's claims were tolled between June 27, 2016 and August 13, 2019, based on the pendency of the class-action lawsuit styled

*Schechner v. Whirlpool Corp.*, No. 2:16-cv-12409 (E.D. Mich.), and, in fact, also remain tolled based on the pendency of the class-action lawsuit styled *Danielkiewicz v. Whirlpool Corp.*, No. 2:18-cv-13599 (E.D. Mich.).

### **Defendant**

26. Whirlpool Corporation is a Delaware corporation headquartered in Benton Harbor, Michigan. Whirlpool describes itself as the world's leading manufacturer and marketer of household appliances. Ovens equipped with the AquaLift feature are sold and distributed under the Whirlpool brand name and its wholly-owned subsidiaries including Maytag Corporation ("Maytag"), KitchenAid, Inc. ("KitchenAid"), and the Jenn-Air Products Company ("Jenn-Air"). At all relevant times, Whirlpool designed, manufactured, distributed, advertised, marketed, promoted, and sold the Ovens equipped with the falsely advertised AquaLift feature.

### **FACTUAL ALLEGATIONS**

#### **Whirlpool Extensively Advertises AquaLift's Purported Ability to "Self-Clean" the Interior of Its Ovens**

27. Whirlpool describes itself as the world's leading manufacturer and marketer of household appliances. Whirlpool sells household appliances, such as kitchen ovens, under various brand names, including, Whirlpool, Maytag, KitchenAid, and Jenn-Air.

28. Whirlpool designed, manufactured, advertised, and sold throughout the United States at least 87 models of kitchen Ovens featuring AquaLift "self-cleaning" technology. AquaLift is available on gas or electric Ovens of different sizes.

29. Whirlpool advertises its AquaLift technology as a key feature to distinguish the Ovens from competitors. Indeed, through its website, in-store point-of-sale displays, and product information labels on the appliances themselves, Whirlpool touts AquaLift as "*oven cleaning redefined*," "*innovation nearly 50 years in the making*," and a "*first-of-its kind cleaning solution* that is activated with heat and water to release *tough baked-on soils* from the oven interior in less than 1 hour."

30. Whirlpool even dedicates an independent page of its website solely to showcase AquaLift. On that page, under a large bold heading that reads, “*Cleaning your oven just got faster, cooler, and easier,*” Whirlpool shares a video demonstration of the purported superiority of its AquaLift self-clean technology over traditional self-cleaning ovens:



31. A voiceover in the video states that “it’s time for something new. Time for AquaLift technology.”:



32. “The baked on stains may be the same, but now you can have your oven back in less than one hour. All with less heat and no odor.”:





33. “AquaLift technology, *an innovation* from Whirlpool Corporation. *Redefines oven cleaning.*”:



34. “Simply remove the oven racks . . .”:



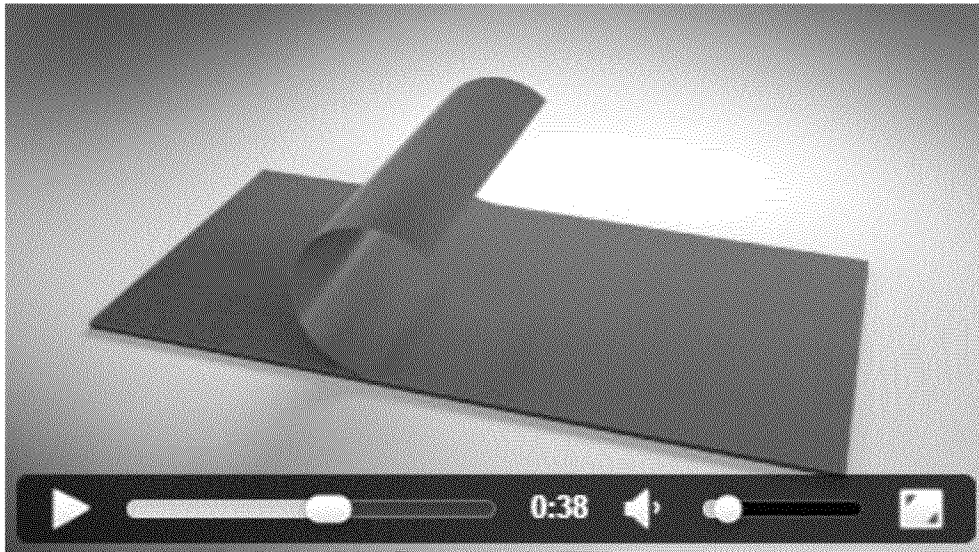
35. "... and wipe out the excess soil.":



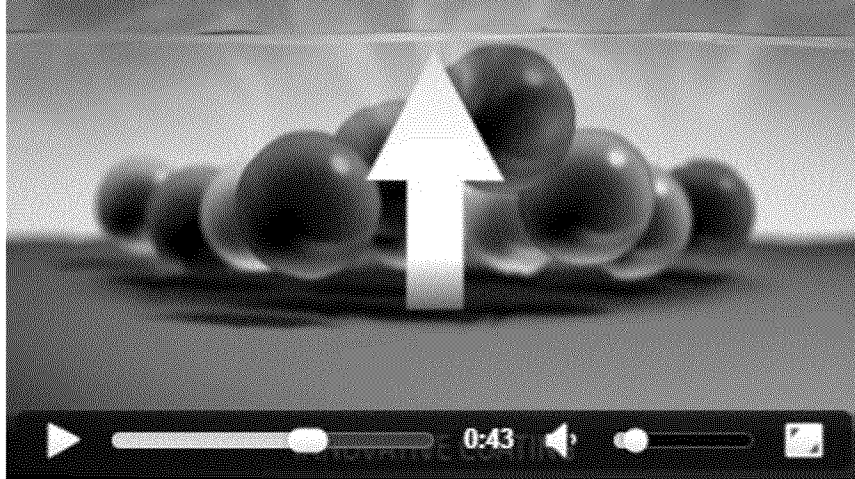
36. "Pour two cups of water in the bottom of the oven, and *let AquaLift technology do the work.*":



37. “This *innovative coating* is activated by water and heat.”:



38. “It lifts tough baked-on soils from underneath, making oven cleaning a snap.”:



39. “In under an hour, the oven is ready for a final wipe down to remove the soil.”:



40. “All done in less time, with no odor, and no extreme heat like traditional, high-temperature self-clean ovens. AquaLift technology is *oven cleaning redefined*.”:



41. On the AquaLift “frequently asked questions” (“FAQ”) page, Whirlpool describes AquaLift as “a *first-of-its kind cleaning solution* that is activated with heat and water to release *tough baked-on soils* from the oven interior in less than 1 hour.”






42. Whirlpool’s FAQ page represents that AquaLift works through an “exclusive coating on the interior [that] activates with water and heat, *allowing moisture to release soils from underneath so food and debris easily wipe away.*”

43. *After purchase*, Whirlpool offers consumers an AquaLift “Quick Reference Guide” which sets forth five steps to make the AquaLift perform as advertised stressing that consumers should not attempt to manually clean the Oven with “commercial” cleaners or any other cleansers, that the “residual water and loosened soils” can be removed by a sponge or dry cloth *immediately after the cycle is complete*, that the “cleaning action loosens baked-on residue *from the oven bottom,*” and that consumers must “clean the oven door and wall” themselves “to *avoid baked-on soil.*”

44. The “Quick Reference Guide” also has a “Helpful Tips” section. This section states in pertinent part that “[h]eavily soiled ovens may require a second cleaning cycle.” While this language implies that AquaLift, if at least used multiple times, will remove heavy soil from all parts of the Oven cavity, Whirlpool fails to mention that AquaLift cannot clean the Oven walls and the Oven door.

**AquaLift™ technology** **Oven Cleaning Quick Reference Guide**

AquaLift™ Technology is an innovative cleaning solution that is activated with heat and water to release baked-on spills from the oven interior in less than 1 hour. This new cleaning technology is a low-heat, odor free alternative to traditional self-cleaning options.

<p><b>STEP 1</b></p> <p><b>REMOVE</b> all racks and accessories from the oven cavity and wipe excess soil. Use the scraper to remove additional easily-removed soils.</p> 	<p><b>STEP 2</b></p> <p><b>POUR</b> 2 cups (16 oz) of distilled or filtered water onto the bottom of the empty oven and close the oven door. <b>IMPORTANT:</b> Do not use cleansers, chemicals or other additives with the water.</p> 	<p><b>STEP 3</b></p> <p><b>PRESS CLEAN</b> then press <b>START</b>. Cleaning action loosens baked-on residue from the oven bottom. Allow 40 minutes for cleaning and cool down. Some condensation will form on the window. When the cleaning cycle is complete, a beep will sound. Press <b>CANCEL</b> to end.</p> 	<p><b>STEP 4</b></p> <p><b>REMOVE</b> the residual water and loosened soils with a sponge or soft dry cloth immediately after the cycle is complete. Remove remaining soils with a non-scratch scrubbing sponge or plastic scraper. Additional cleaning cycles may be run to help remove stubborn soils.</p> 	<p><b>STEP 5</b></p> <p><b>CLEAN</b> the oven door and walls to avoid baked-on soil. Refer to the User Instructions for additional information. <b>IMPORTANT:</b> The use of chemicals, including abrasives and commercial oven cleaners, or metal scouring pads may damage the oven interior.</p> 
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**Use regularly to clean oven spills**  
 For additional information, refer to the User Instructions.  
 For assistance with AquaLift™ Technology, call 1-877-258-0808, or visit our website at <http://whr.pl/aqualift>.

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**Helpful Tips**

**Cleaning Your Ceramic Glass Cooktop**  
 Clean your cooktop after each use with ceramic glass cooktop cleaner and apply with approved cooktop cleaning pads. Scrape off sugary spills while the cooktop is still warm. You may want to wear oven mitts while cleaning the cooktop. Remove stubborn stains with Cooktop Cleaner, Scraper and Cleaning Pads available in the Cooktop Care Kit (not included). Do not allow spills and stains to remain on the cooktop over night. Do not clean with steel wool, abrasive powder cleaners, chlorine bleach, rust remover, or ammonia as they will damage the glass. Razor scraper edges will not scratch the glass when used properly at a 45 degree angle to the surface.


**Cooktop Glass**  
 The surface cooking area will glow red when an element is on. It may cycle on and off to maintain the selected heat level. Portions of the element may cycle on and off at different times on some elements. This is normal. The Warm Zone element area will not glow red when cycling on.

**Oven Odor**  
 There may be some odors the first few times you use your range. This will go away after the oven is used a few times. To eliminate these odors, it is recommended that you run the Bake cycle at 400°F (204°C) for 30 minutes prior to cooking for the first time.

**Oven Preheat Time**  
 The standard time necessary to preheat your oven to 350° (177°C) is 10 to 15 minutes. Factors that have an impact on preheat times are: room temperature, starting oven temperature, and the number of oven racks. Unused oven racks can be removed prior to preheating your oven to reduce the preheat time.

**Convection**  
 During convection cooking, the bake, broil and convection elements cycle on and off in intervals to maintain the oven temperature, while the fan circulates the hot air. If the oven door is opened during convection cooking, the fan will turn off immediately. It will come back on when the oven door is closed.

**AquaLift™ Technology Cleaning**  
 Some condensation will form on the oven window during the cleaning cycle. This condensation will evaporate within 30 minutes. During the AquaLift™ Technology cleaning cycle, some steam will come out of the bottom of the console. This is normal and part of the cleaning cycle. Make sure that the oven is level to ensure water is evenly distributed on the bottom of the oven cavity. Adjust the leveling feet as instructed in the Installation Instructions. Remove heavy spills before starting the cleaning cycle. Heavily soiled ovens may require a second cleaning cycle. For assistance with AquaLift™ Technology, call 1-877-258-0808, or visit our website at <http://whr.pl/aqualift>.



For additional information, refer to the User Instructions.

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- Press “Clean” then “Start” to begin the 40 minute cycle. . . . When the cycle is complete, a beep will sound. Press “Cancel” to end.
- Immediately after the cycle is complete, remove residual water and loosened soils with a sponge or dry cloth.

47. Whirlpool further represents that AquaLift was “developed to directly address *consumer dissatisfaction with traditional high-temperature self-clean ovens* and to provide them an alternative cleaning solution.”

48. According to Whirlpool, the “key benefits of using AquaLift™ self-clean technology” include that it “SAVES TIME: The cleaning process takes under one hour compared to the average 3-6 hours of traditional self-cleaning ovens” and “NO ODOR: Since AquaLift™ self-clean technology uses water to clean, it avoids the traditional chemical odors associated with traditional oven cleaning.”

49. Whirlpool further represents that AquaLift can be used “frequently to clean *tough baked-on soils*.”

50. A “Glossary” section of the Whirlpool website contains the following entry for AquaLift: “AquaLift® Self-Clean Technology. Get your oven clean in less than an hour with odor-free, low temperature AquaLift® technology. This *exclusive coating* on the interior activates with water and heat, *allowing moisture to detach soils from underneath* so food and debris *easily wipe away*.”

51. Whirlpool also advertises the AquaLift feature on individual product webpages. For example, the webpage for Whirlpool’s 6.4 Cu. Ft. Freestanding Electric Range model number, WFE540H0ES, with AquaLift® Self-Cleaning Technology, states that: “[a]t the end of the meal, this large oven’s easy wipe ceramic glass cooktop offers hassle-free cleanup, while AquaLift® self-cleaning technology delivers *odor-free oven cleaning without chemicals in only 50 minutes*.”

52. Similarly, the webpage for Whirlpool’s 5.8 cu. ft. Front-Control Gas Stove with Fan Convection, model number WEG730H0DB states that “[w]hen it’s time for cleanup, AquaLift™ self-cleaning technology helps you *wipe away messes* in your slide-in gas stove without harsh chemicals or odors.”

53. The webpages for Whirlpool’s various other models of the Ovens include similar misrepresentations regarding AquaLift’s purported ability to “self-clean[]” ovens in less than one hour.

54. Whirlpool echoes these misrepresentations directly on the product label of each Whirlpool oven equipped with AquaLift.

**Whirlpool’s Nationwide Advertising Campaign for AquaLift Is  
False Deceptive and Misleading to Reasonable Consumers**

55. Whirlpool’s entire advertising campaign for AquaLift – a key product feature – is false, deceptive, and misleading to reasonable consumers, including in Michigan, because, contrary to Whirlpool’s representations, AquaLift does not “self-clean” the interior of the Ovens and, instead, requires consumers to manually clean their Ovens with cleaning products – *defeating the purpose of a “self-cleaning” oven.*

56. To be sure, the Internet is teeming with consumer complaints regarding AquaLift’s inability to “self-clean.” For example, on February 8, 2013, one consumer posted the following complaint on Consumerist.com:

I have a 30 day old Kitchen Aid convection gas range. Love how it cooks. HOWEVER, their *“Aqualift” cleaning technology is a rip AND entirely misleading.* . . . So... every time you want to clean your cool new oven, *you’ll be scrubbing it yourself!!!*

57. This dissatisfied consumer also posted the following photograph of the final results of Whirlpool’s AquaLift “self-clean” technology:





58. In November 2015, another dissatisfied consumer posted a photograph of an Oven that had “self-cleaned” with AquaLift:



59. Countless other complaints from putative Class members can be found on the Internet. Online references and complaints regarding the Ovens mirror Plaintiff’s experience, including the following sampling:

Source	Comments
<p>Consumer Affairs 4/18/16 <a href="https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html">https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html</a></p>	<p>Purchased the oven in summer 2015. Very disappointed in the AquaLift Self-Cleaning oven. Absolutely useless. <b><i>Does absolutely nothing and I end up cleaning the oven by hand.</i></b> As a senior citizen, this is uncomfortable; I have injured my leg in the process and now feel I must wipe the oven down after each use. I was so looking forward to having a nice clean oven at all times and it's not happening. This is of no value to me.</p>
<p>Consumer Affairs 4/7/16 <a href="https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html">https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html</a></p>	<p>I HATE, HATE, HATE the aqua lift clean feature. It's awful. The bottom came somewhat clean but cook bacon and the sides and top are filthy and the aqua lift can't clean that. I don't know how this ever made it past the thought process stage to become a "thing" but it needs to go away. I'm quite cranky right now as <b><i>I've just spent two hours scrubbing my oven while reaching past the oven door that doesn't come off because it's a "self-clean oven."</i></b> This is what I have to look forward to for the next 10 years until it dies and I can get a new oven? What a joke!!</p>
<p>Consumer Affairs 4/1/16 <a href="https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html">https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html</a></p>	<p>We bought a new stove from Lowe's in 2015 which is a Whirlpool with an AquaLift self-cleaning function. <b><i>This function is totally useless.</i></b> We have tried it several times and it does not remove the grime from the oven. We did not even have a very dirty oven. It doesn't clean the sides at all and the bottom is still dirty. I complained to the store and they told me the AquaLift function should be used every time the oven has been used. They recommend that I use a spray for the oven (which is porcelain) and scrub off the dirt. Give me back my old self-cleaning oven with the high heat. This new technology doesn't work.</p>
<p>Consumer Affairs 3/4/16 <a href="https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=2">https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=2</a></p>	<p>Whirlpool Gold Series gas oven with Aqua Lift. Very unhappy with this oven. Cons: <b><i>Aqua Lift technology doesn't work AT ALL</i></b> (manual cleaning required); stove top hard to clean; 2 front gas burners are "super" burners which is fine for boiling water, but too hot for regular cooking. Would be better to have one super burner in the middle or back but two upfront is way too hot for regular cooking, even on lowest setting. Was going to use spray cleaner but cannot on convection ovens. In a bind what to do except scrub with Brillo. Anyone used Brillo?</p>
<p>Consumer Affairs 2/23/16 <a href="https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=2">https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=2</a></p>	<p>Whirlpool gas range Model#wfg10h0ah1 with aqua lift technology. This is the biggest ripoff that was ever done to me. It say self clean, not it cleans and then you clean. <b><i>This is fraud plain and simple.</i></b> I am handicapped and made it very clear to the salesperson that it had to be self cleaning. 4 times I did the clean cycle and I was in shock, I called repair, I thought the self clean was broken. However this is the line they give you over and over, that it's not broken. "This is working the way it was designed to work." So they made a range that is self cleaning, but no it doesn't do that. For 899.99, I did not deserve to get duped like this.</p>
<p>Consumer Affairs 9/24/15 <a href="https://www.consumeraffairs.com/homeowners/kit_stoves.html?page=2">https://www.consumeraffairs.com/homeowners/kit_stoves.html?page=2</a></p>	<p>Like so many other reviewers I am totally dissatisfied with my KitchenAid Gas Range Model KGRS202BSS. I second the reviews by Gary of Tonawanda, NY on May 20, 2015 (and others) that the AquaLift Self Clean is not effective and that the black stove top stains, but primarily I totally agree with his comment about how the heat vents out and heats up the handles. This was also the comment of Sharyn of Pearl River, NY on July 2, 2015 (who I would like to thank for the tip about requesting the black knobs which I intend to do).</p>

Source	Comments
	<p><b><i>This range is TERRIBLE. It becomes a literal sauna in my kitchen</i></b> when I try to cook using the stove top and/or the oven. Everyone who comes to my home comments on it. And this is despite the fact that I have a fan above the oven which is vented to the outside. I take care of my 2 year old grandson, and I live in fear of him burning himself since the knobs are obviously within his reach. He has definitely learned about the concept of HOT. <b><i>I purchased this range from PC Richards, and they have sent 3 different servicemen out, only to tell me that's the way it is!</i></b> Unbelievable. I just visited my friend who has a kitchen much smaller than mine, and her new Maytag slide in gas range did not produce the sauna effect that my KitchenAid range does. <b>DON'T BUY KITCHENAID. YOU'LL REGRET IT.</b></p>
<p>Consumerist 9/28/14 <a href="https://consumerist.com/2013/02/08/my-advanced-new-self-cleaning-oven-needs-a-lot-of-help-to-clean-itself/">https://consumerist.com/2013/02/08/my-advanced-new-self-cleaning-oven-needs-a-lot-of-help-to-clean-itself/</a></p>	<p>Whirlpool's Aqualift self-cleaning system seemed to be a technological advance comparable to see-through dishwashers, but she reports that her oven only cleans the bottom center, and not the sides or the corners. You know, the parts that you want your self-cleaning oven to take care of for you.</p>
<p>Houzz (GardenWeb) 9/19/2012 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a></p>	<p><b><i>Get ready for rubber gloves and oven cleaner. It does not work.</i></b> Consumer reports says it doesn't work, but I bought before reading reviews. I want to get rid of mine. They are sending me a special oven cleaner for this piece of junk so what good is this self cleaning oven that needs a special oven cleaner? I will never again buy American.</p>
<p>Houzz (GardenWeb) 1/29/13 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a></p>	<p>I bought A Whirlpool range convection, self cleaning and I'm very furious too because the self cleaning, after several time of cleaning, which the last one <b><i>I let it go for 4 hours, it didn't clean anything at all.</i></b> My old GE of 30 years used to come out spotless. It has been over a year already, twice the technician came out and there was nothing he could do. We bought 5 years extended warranty and Sears told us there is nothing they can do. I still have to try calling the manufacturer, hoping they'll give me some satisfaction. It really sucks. We should be more further ahead with technology. Now I don't know who to trust anymore.</p>
<p>Houzz (GardenWeb) 2/11/2013 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a></p>	<p>I, too, unfortunately purchased this awful oven. <b><i>It is uncleanable!</i></b> I bake frequently, and any form of grease splatter is not removable from the sides and back. Wrote to the company and all they did was tell me to follow the instructions that came with the range! Do they think I'm stupid? I am very angry. Any advice that can be passed along regarding how I can clean it, or how to make the company responsible for this lousy oven, would be greatly appreciated.</p>

Source	Comments
<p>Houzz (GardenWeb) 2/13/2013 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>)</p>	<p>I was also dumb enough to buy this range. I've had it one year. Have written complaints to Maytag and Whirlpool. I received phone calls from some underpaid know nothing who treated me as if I'd never cleaned an oven before.</p> <p><b><i>For Whirlpool/Maytag to call this "self-cleaning" is false advertising and they need to make it right with me or I will not purchase another product from them ever again!</i></b></p>
<p>Houzz (GardenWeb) 1/18/2014 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>)</p>	<p>I have this horrible range and it is a piece of garbage. It might as well not even have a self cleaning feature. It does not work. Cleaning the glass top of the stove is also very difficult. <b><i>It was a total waste of money, Maytag doesn't care and won't do anything about it. DO NOT PURCHASE ONE.</i></b> There is also little to no storage space in the drawer. There is not one good thing I can say about this stove. Not one.</p>
<p>Houzz (GardenWeb) 5/11/2015 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>)</p>	<p>I bought this range WYMER888BW the 25th Jan. 2014. <b><i>What a waste of money, self clean not at all. Would never buy a Maytag or Whirlpool product again. Takes a lot of hard scrubbing &amp; scraping not to mention time to do repeated steam clean cycles and trying to clean this trash.</i></b> Biggest mistake in a purchase we have made in our 50 years of marriage. Would not recommend!!!</p>
<p>Houzz (GardenWeb) 9/13/2015 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>)</p>	<p>Does not work at all! My wife and I bought it 2 years ago from Lowes (on sale). We have tried the self cleaning feature multiple times, even have run it twice (simultaneously) to see if double the cleaning time would help. Each time, we end up using gloves and other cleaning products to scrape out the mess. I don't know how Maytag tested this before it was marketed, but it does not clean anything.</p>
<p>Houzz (GardenWeb) 9/14/2015 <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>)</p>	<p>i gave up fighting with maytag/whirlpool..after a year of owning the same oven, it was junk. I sold it for 500\$, (loss 200\$)and bought a regular GE stove which has the old fashion kind of self cleaning oven cleaning feature...and i LOVE it. Never will i purchase a whirlpool or Maytag product again. They are throw away appliances in more ways than one. Good luck on your junk. Sell it , take the loss and get rid of your headache.</p>
<p>Houzz (GardenWeb) 11/27/2015</p>	<p>Whoever invented Aquaift to clean ovens obviously never cleaned an oven ever!! Today, a day after Thanksgiving I spent all morning "cleaning" my oven only to have it look as bad as it did before I started. <b><i>The AquaLift did nothing for the sides and the stains on the bottom</i></b></p>

Source	Comments
<a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>	<p><i>after two cleaning cycles!!!</i> Whatever can be done other than getting a new oven?</p>
<p>Houzz (GardenWeb) 12/16/2015</p> <p><a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a></p>	<p>This is so frustrating. I too do not read the reviews before purchasing. I saw that it was self-cleaning that was all I thought I needed to know. How can this be considered new technology and how can the company get away with advertising self-cleaning oven when it absolutely does not clean one bit?! Very frustrated!</p>
<p>Houzz (GardenWeb) 12/30/2015</p> <p><a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a></p>	<p>We had the Whirlpool recommended technician from Appliance Mechanics (425-212-9076) out on 12/29 and he verified that the Aqua-Lift is working as designed (meaning what??). However that doesn't solve the problem with the promises that were made regarding how well this technology is supposed to work. <b><i>It can't be cleaned with conventional cleaners and the bottom is stained from food that never came up after the cleaning and scrubbing per Whirlpool's instructions.</i></b> I have sent 4 emails to Whirlpool customer service and never heard back. What we are requesting is that since that Whirlpool is promoting this as the next best thing and not performing up to our (and anyone on the internet who has this technology) expectations, we are requesting that Whirlpool replace the oven with one comparably priced that has conventional cleaning capabilities</p> <p>Follow-up: I finally got in touch with Whirlpool after 4 emails and posting on Facebook. It seems that they respond when you post on social media. I was requesting a replacement oven with conventional self cleaning and and after much back-and-forth I was informed that because the technician reported that the oven was functioning correctly that they could not give me a replacement. Their reason being that a continually dirty oven had nothing to do with function but was a cosmetic issue. The CS rep was "kind" enough to offer me a bottle of the Affresh cleaner. Don't fall for the AquaLift hype.</p>
<p>Houzz (GardenWeb) 1/31/2016</p> <p><a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a></p>	<p>Yes. <b><i>This oven aqua clean is a joke!</i></b> I wish I could have my old oven than got VERY hot and stinky back. Would rather clean up a little ash than scrub my fingers off!</p>
<p>Houzz (GardenWeb) 2/20/2016</p>	<p>I just tried the Aqualift feature and am on the thrid cycle now. So far only the bottom part has gotten clean and the sides are still greasy. Hate this feature. <b><i>Had I known how horrible it was I would have</i></b></p>

Source	Comments
<a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>	<p><i>never bought it. I am also not happy with the glass top as that too is difficult to keep clean.</i> This is the first time I have used the Aqualift feature and it was right after grease was spilled from a meatloaf pan. If anyone is looking to buy a stove with this feature don't.</p>
<p>Houzz (GardenWeb) 3/18/2016</p> <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>	<p>The aqualift does not clean at all! I finally go disgusted and used oven cleaner and it took the finish off the sides of oven, so now my oven is ruined. Looks dirty all the time, so dissatisfied. As I used the oven cleaner I know I will have no prayer with Whirlpool. I bought this stove without reading reviews. My mistake, never again! <b><i>With all these complaints and a product that obviously does not do it's job, there has to be a class action maybe?</i></b></p>
<p>Houzz (GardenWeb) 4/30/2016</p> <a href="http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning">http://ths.gardenweb.com/discussions/2293510/aqualift-technology-on-maytag-ranges-oven-cleaning</a>	<p>Welcome to the crappy Aqualift club! I finally put some foil on the bottom rack to help catch any drips. This was suggested from the dealer who agrees it's worthless!! Evidently our govt regulations at work!! I also bought some Easy off with a blue top as it was suggested it works well. I haven't used it yet but I will when needed!! Good luck.</p>

### **Whirlpool's Knowledge Prior to Launching AquaLift that It Was Not "Self-Cleaning"**

60. Whirlpool had direct knowledge prior to launching the Ovens to the consuming public that the AquaLift "self-cleaning" feature of its Ovens could not clean as advertised and represented to consumers.

61. Indeed, one Court has already concluded that, prior to bringing its AquaLift Ovens to market, Whirlpool understood that its AquaLift Ovens required manual cleaning—as do traditional self-cleaning ovens—but still emphasized the feature in its marketing campaign.

62. Whirlpool's pre-sale knowledge is further demonstrated by the fact that Whirlpool conducted its own *pre-launch* consumer research, which, in connection with its planned AquaLift advertising campaign, allegedly tested the common meaning of the term "self-clean."<sup>1</sup>

63. The consumer research firms Whirlpool retained prior to launching the Ovens also provided Whirlpool with overwhelmingly negative consumer feedback about AquaLift's ability to clean an oven cavity.<sup>2</sup>

64. Further, during the development and pre-launch stage of AquaLift (2004-2012), Whirlpool allegedly tested the efficacy, scope, and/or completeness of the AquaLift Ovens' cleaning technology.<sup>3</sup> AquaLift performed poorly in the comparative cleanability testing against pyrolytic ovens.<sup>4</sup>

#### **Whirlpool's Acknowledgement AquaLift Does Not Work as Advertised**

65. From June 2018 to the present, the *Wisconsin State Journal* has reported that Whirlpool, in direct response to complaints about AquaLift's inability to "self-clean" as advertised, is initiating "buy backs" (*i.e.*, refunds of AquaLift Ovens).

66. The *Wisconsin State Journal* has published several articles about Whirlpool's "buyback" initiative.<sup>5</sup> First on June 4, 2018, the *Wisconsin State Journal* reported that Whirlpool ovens with a low heat "self-cleaning" feature called "AquaLift" does not, and cannot, work as advertised. The article specifically featured the experience of consumers who complained to

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<sup>1</sup> *Schechner v. Whirlpool Corp.*, No. 2:16-cv-12409-SJM-RSW (E.D. Mich. July 16, 2018), ECF No. 109 at 5 n.20 & Ex. 17.

<sup>2</sup> *Schechner v. Whirlpool Corp.*, No. 2:16-cv-12409-SJM-RSW (E.D. Mich. Mar. 26, 2018), ECF No. 71 at 6.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 6.

<sup>5</sup> Whirlpool has publicly confirmed the existence of this program to the *Wisconsin State Journal* through its media representative, Cean Burgeson.

Whirlpool about the ovens' inability to self-clean. One consumer Barbara Behnke, for example, performed "five consecutive cleanings" with the AquaLift cycle and found it did not (at all) remove baked on grime from the oven. What's more, Ms. Behnke told the *Wisconsin State Journal* she "had numerous phone calls and emails to Maytag" and "multiple visits from Maytag service techs" to try, in vain, to get AquaLift to work.

67. On behalf of Ms. Behnke, the *Wisconsin State Journal* wrote to Whirlpool and attached fifteen photos it had received from Ms. Behnke of her oven, showing AquaLift's inability to clean. In response, Whirlpool refunded her the full cost of her AquaLift oven (\$894.64).

68. This was not an isolated transaction. In other articles from July to September, the *Wisconsin State Journal* reported that over 20 consumers had received refunds or exchanges or would receive them as part of the "buy back" initiative. Jan Rohde, of Madison Wisconsin, for example, complained that she had spoken to multiple Whirlpool customer care representatives about AquaLift's inability to "self-clean" and "was told the stains are cosmetic and that Whirlpool would send a me a free cleaning kit! This is not acceptable!" In response to her complaint, Whirlpool refunded the full cost of her oven (\$1,410).

69. Whirlpool continues to offer consumers refunds and exchanges on an *ad hoc* basis in response to complaints about AquaLift's "self-cleaning." Yet, Whirlpool has made no effort, and undertaken no steps, to compensate all consumers who were duped into purchasing AquaLift Ovens. Regardless, not only is Whirlpool aware of the scores of complaints about AquaLift, it has acknowledged, through these refunds, that AquaLift's advertising has deceived, or can deceive consumers who believed they were purchasing a "self-cleaning" oven when the oven is incapable of doing so.



### CLASS ACTION ALLEGATIONS

70. Plaintiff brings this action individually and as a class action on behalf of the following proposed Class: *All persons who purchased a Whirlpool, Maytag, KitchenAid, or Jenn-Air oven equipped with AquaLift in the state of Michigan.*

71. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment, amended complaint, or in Plaintiff's motion for class certification.

72. Specifically excluded from the Class are Whirlpool, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers or entities controlled by Whirlpool, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Whirlpool and/or its officers and/or directors, the judge assigned to this action, and any member of the judge's immediate family.

73. *Numerosity.* The members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Class includes thousands of members who are geographically dispersed throughout the state of Michigan. The precise number of Class members are unknown to Plaintiff. The true number of Class members is known by Whirlpool, however, and thus can be ascertained through appropriate investigation and discovery and may be notified of the pendency of this action by first class mail, electronic mail, or published notice.

74. *Existence and predominance of common questions of law and fact.* Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Whirlpool represented the Ovens to be "self-cleaning;"

- (b) whether Whirlpool's advertising campaign for AquaLift was false, deceptive, or misleading to a reasonable consumer;
- (c) whether Whirlpool knew that AquaLift could not perform as advertised;
- (d) whether Whirlpool had a duty to disclose that AquaLift is incapable of self-cleaning;
- (e) whether the purported ability of AquaLift to "self-clean" tough baked-on soils from the interior of an oven in under one hour is a material fact to consumers;
- (f) whether Whirlpool breached a contract with Plaintiff and Class members;
- (g) whether Whirlpool represented that the AquaLift Ovens have characteristics, uses, and benefits, that they do not have;
- (h) whether Whirlpool advertised the AquaLift Ovens with the intent not to sell them as advertised;
- (i) whether Whirlpool failed to reveal a material fact regarding AquaLift, the omission of which would tend to mislead or deceive consumers, and which fact could not reasonably be known by consumers;
- (j) whether Whirlpool made a representation of fact or statement of fact material to its sale of AquaLift Ovens such that a person could reasonably believe the represented or suggested state of affairs to be other than it actually is;
- (k) whether Whirlpool failed to reveal facts that were material to its sale of AquaLift Ovens in light of representations of fact made in a positive manner;
- (l) whether Whirlpool violated the MCPA;
- (m) whether Whirlpool acted willfully and in wanton disregard of the consequences of its actions to consumers;

(n) whether Plaintiff and Class members are entitled to damages and the amount of such damages;

(o) whether Plaintiff and Class members are entitled to an award of punitive damages; and

(p) whether Plaintiff and Class members are entitled to equitable relief, including an injunction enjoining Whirlpool from engaging in the wrongful and unlawful conduct alleged herein and ordering Whirlpool to engage in a corrective advertising campaign.

75. **Typicality.** Plaintiff's claims are typical of the claims of other Class members in that Plaintiff and Class members were injured by the same wrongful conduct and scheme of Whirlpool alleged herein.

76. **Adequacy of representation.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to vigorously prosecute this action. Further, Plaintiff has no interests that are antagonistic to those of other Class members.

77. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be involved in individual litigation of their claims against Whirlpool. It would, thus, be virtually impossible for Class members, on an individual basis, to obtain effective redress for the wrongs committed against them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these

issues in a single proceeding, economies of scale, and comprehensive supervision by a single Michigan court, and presents no unusual management difficulties under the circumstances presented in this case.

78. In the alternative, the Class may also be certified 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 Whirlpool;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individuals 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

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

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Violation of the Michigan Consumer Protection Act**

79. Plaintiff realleges and incorporates the allegations above as though fully set forth herein.

80. Plaintiff and the Class are “persons” and Whirlpool’s conduct complained of herein constitutes “trade or commerce” as defined by the MCPA. MICH. COMP. LAWS. §445.902.

81. The MCPA provides that “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful[.]” MICH. COMP. LAWS §445.903(1)

82. Whirlpool's false and misleading advertising campaign, as described more fully herein, is an unfair, unconscionable, and/or deceptive method, act, or practice in the conduct of trade, which violates the MCPA in the following ways:

(a) Representing that AquaLift Ovens have characteristics, uses, and benefits, that they do not have. MICH. COMP. LAWS §445.903(1)(c);

(b) Advertising AquaLift Ovens with the intent not to sell them as advertised. MICH. COMP. LAWS §445.903(1)(g);

(c) Failing to reveal a material fact – that AquaLift does not function as advertised – the omission of which tends to mislead or deceive consumers, and which fact could not reasonably be known by consumers. MICH. COMP. LAWS §445.903(1)(s);

(d) Making a representation of fact or statement of fact material to the transaction – *i.e.*, that AquaLift has the capability to “self-clean” the inside of a Whirlpool oven in less than one hour – such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is. MICH. COMP. LAWS §445.903(1)(bb); and

(e) Failing to reveal facts that are material to the transaction – *i.e.*, that AquaLift does not perform as advertised – in light of representations of fact made in a positive manner. MICH. COMP. LAWS §445.903(1)(cc).

83. Plaintiff and Class members have been substantially injured by Whirlpool's unfair and deceptive practices. A reasonable consumer would have relied on Whirlpool's pattern of misrepresentations of material fact regarding the AquaLift feature, including that AquaLift would “self-clean” heavy baked-on soils from the inside of an oven in less than one hour. Based on the fact that a reasonable person would have relied on Whirlpool's pattern of misrepresentations, Plaintiff and Class members purchased the Ovens that did not possess the capabilities that Whirlpool represented and were injured thereby.

84. The damages suffered by Plaintiff and Class members were directly and proximately caused by the deceptive, misleading, and unfair practices of Whirlpool, as more fully described herein. Indeed, Plaintiff and Class members would not have purchased the AquaLift Ovens, or would not have paid as much as they did, but for Whirlpool's pattern of false and misleading advertising.

85. Pursuant to MICH. COMP. LAWS §445.911(1) & (3), Plaintiff and Class members seek damages and a declaratory judgment and Court Order enjoining the above-described wrongful acts and practices of Whirlpool and for restitution and disgorgement.

86. Additionally, pursuant to MICH. COMP. LAWS §445.911(5), Plaintiff and Class members request that Whirlpool be ordered to bear the costs of Class notice.

## **SECOND CAUSE OF ACTION**

### **Breach of Contract**

87. Plaintiff realleges and incorporates by reference each allegation above as though fully set forth herein.

88. Whirlpool offered to sell the AquaLift Ovens that would "self-clean" heavy baked-on soils from the interior of an AquaLift Oven in under one hour.

89. Plaintiff and Class members accepted Whirlpool's offer by tendering the asking price for each Oven, thereby creating a valid and enforceable contract, supported by valuable consideration, for the sale of a Whirlpool AquaLift Oven that would "self-clean" heavy baked-on soils from the interior of the Oven in under one hour.

90. Whirlpool breached this contract with Plaintiff and Class members by delivering a Whirlpool oven equipped with AquaLift that, contrary to the terms of the contract between Whirlpool on the one hand and Plaintiffs and Class members on the other, was incapable of "self-cleaning."

91. Further, to the extent that direct privity of contract is required, which Plaintiff alleges it is not, Plaintiff and Class members were intended third-party beneficiaries of all contracts between Whirlpool and its authorized retailers of AquaLift Ovens, and Plaintiff is therefore entitled to enforce said contracts in the event of a breach, as here.

92. As a result of Whirlpool's breach of contract, Plaintiff and Class members suffered damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for a judgment in their favor and in favor of the Class as follows:

A. Determining that this action is a proper class action, certifying Plaintiff as Class representative and appointing Robbins Geller Rudman & Dowd LLP and The Miller Law Firm, P.C. as Class Counsel;

B. Awarding temporary, preliminary, and permanent declaratory, injunctive, and other equitable relief, including, but not limited to, enjoining Whirlpool from continuing its false, deceptive, and misleading advertising campaign for AquaLift;

C. Ordering Whirlpool to engage in a corrective advertising campaign;

D. Awarding Plaintiff and the Class damages, including statutory damages, and interest thereon;

E. Awarding disgorgement of Whirlpool's revenues to Plaintiff and other Class members;

F. Directing Whirlpool to identify, with this Court's supervision, victims of its conduct and to pay them restitution;

G. Awarding Plaintiff attorneys' fees and costs; and

H. Providing any and all further legal and equitable relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff respectfully demands trial by jury on all issues so triable.

DATED: September 18, 2019

Respectfully submitted,

/s/ E. Powell Miller

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Class*



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Whirlpool Ovens AquaLift 'Self-Cleaning' Feature Simply 'Does Not Work,' Class Action Claims](#)

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