

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JAMES M. ROSENBAUM individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

THE WHIRLPOOL CORPORATION,
KITCHENAID, INC., JENN-AIR CORP,

Defendants.

Civil Action No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff James M. Rosenbaum (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Defendants The Whirlpool Corporation, KitchenAid, Inc., and Jenn-Air Corp (collectively, “Whirlpool”) arising from their manufacture, distribution, marketing, and sale of Defective Cooktops. Plaintiff’s allegations are based upon personal knowledge as to himself, and on information and belief as to the acts of others.

NATURE OF THE ACTION

1. Whirlpool Corporation is the world’s leading major home appliance company, with approximately \$21 billion in annual sales. *See*, Whirlpool Corporation, Form 10-K at p. 3 (Fiscal Year Ended December 31, 2017). Whirlpool’s products are advertised and sold worldwide under the primary trademarks of Whirlpool®,

KitchenAid®, Maytag®, Consul®, Brastemp®, Amana®, Bauknecht®, Jenn-Air®, Indesit®, and other major brand names in nearly every country around the world. *Id.*

2. Whirlpool represents that the company is committed to delivering significant, long-term value to consumers through innovative, high-quality products that solve everyday problems. *See* Whirlpool Corporation, Form 10-K at p. 3 (Fiscal Year Ended December 31, 2017). Whirlpool also represents in its Electric Cooktop User Instructions that its electric cooktops touch controls offer a variety of heat settings and that, to use, the consumer must touch the ON/OFF control for the desired element, affirming that users should follow basic precautions to reduce the risk of fire. *See* Whirlpool Electric Cooktop User Instructions.

3. Despite these representations, Whirlpool has designed, manufactured, distributed, and sold “Defective Cooktops”¹ that present a serious safety risk to its consumers, and an accompanying risk of property loss.

4. Whirlpool is well aware of a fire hazard that exists with respect to its Defective Cooktops. Indeed, on August 28, 2019, Whirlpool recalled tens of thousands of stovetops, namely glass cooktops sold under Whirlpool, Kitchen Aid, and Jenn-Air brands after reports surfaced suggesting that the glass cooktops could switch on by themselves, posing burn and fire hazards.

¹ These cooktops with a glass cooking surface, touch controls, radiant and downdraft radiant models are defective because its surface elements turn on by themselves, often when unattended, causing serious fire hazard.

5. That recall is entirely inadequate in that it does not alone sufficiently provide reasonable notice to Whirlpool's purchasers of its Defective Cooktops and the safety hazards they present. The Defective Cooktops' fire hazards described herein are collectively referenced as the "Defects."

6. Whirlpool has noticeably failed to account for the fact that purchasers of Whirlpool's Defective Cooktops are at grave risk of personal injury and property damage, including, but not limited to, the destruction of their homes. Through this action, Plaintiff seeks to hold Whirlpool accountable for its manufacture, distribution, advertising and sale of its dangerously faulty Defective Cooktops. Whirlpool is fully aware of the fire risk presented by the Defective Cooktops but has failed to adequately address that risk.

7. On August 28, 2019, Whirlpool announced a recall of a series of its Whirlpool, KitchenAid, and Jenn-Air brands Electric Glass Cooktops. *See* <https://www.cpsc.gov/Recalls/2019/Whirlpool-Recalls-Glass-Cooktops-with-Touch-Controls-Due-to-Burn-and-Fire-Hazards>. The fire hazard was attributed to the fact that the "cooktop surface elements can turn on by themselves, posing burn and fire hazards." *Id.* Approximately 26,300 Defective Cooktops were recalled, in addition to 2,800 units in Canada and 128 units in Mexico. *Id.* The affected models are black glass cooking surfaces manufactured from December 2016 to July 2019, sold at Lowe's, The Home

Depot, Best Buy and other home improvement, home appliance and other stores and online from March 2017 through August 2019, including the following models:

MODEL NUMBERS*	
Radiant Model Numbers Begin With:	Downdraft Radiant Model Numbers Begin With:
KCES950HSS	JED4430GB
KCES956HSS	JED4536GB
KCES950HBL	JED4430GS
KCES956HBL	JED4536GS
WCE97US0HS	
WCE97US0HB	
WCE97US6HS	* The model numbers beginning with K are KitchenAid models, the model numbers beginning with J are Jenn-Air models, and the model numbers beginning with W are Whirlpool models
WCE97US6HB	
JEC4430HS	
JEC4430HB	
JEC4536HS	

8. The retail price of one recalled Defective Cooktop is approximately \$2,500, which equals a total of \$65,750,000 worth of recalled Defective Cooktops in the United States alone. Consumers were warned through the Consumer Product Safety Commission's website, and through Whirlpool social Media announcement, that consumers should immediately contact Whirlpool for a free installation of a replacement cooktop, advising Consumers to turn the unit circuit breaker off in the meantime. *See* <https://www.cpsc.gov/Recalls/2019/Whirlpool-Recalls-Glass-Cooktops-with-Touch-Controls-Due-to-Burn-and-Fire-Hazards>.

9. The Defective Cooktops that Plaintiff and Class members purchased have serious material safety defects that cause or will cause the Defective Cooktops to malfunction during the expected and foreseeable useful life of the Defective Cooktops. The defects represent an unreasonable risk of spontaneous ignition and fire, resulting in property damage and loss, personal injury, and/or death. The defects include, at minimum, a negligent design that allows the Defective Cooktops to turn on by themselves, creating a fire hazard.

10. Upon information and belief, Whirlpool has been on notice of its Defective Cooktops but delayed instituting a recall, further refusing to properly notify Defective Cooktops' owners of its fire hazard defects, until recently. Ultimately, the decision to recall and notify Defective Cooktop owners only took place after Whirlpool received 133 incident reports involving the Defective Cooktop surfaces switching on without

human help. Among these reports, 14 resulted in “heat damage to nearby items and four reports of items catching on fire.” There was one report of property damage and two reports of burn injuries.

11. The fire hazard Defects existed at the point of sale of the Defective Cooktops, and, the Defects are a fire hazard that present a serious safety risk to Class members.

12. At all relevant times, Whirlpool knew or should have known of the Defects but nevertheless sold the Defective Cooktops to Class members, failed to warn consumers of the serious safety risks that the Defects posed, and failed to adequately recall these dangerously Defective Cooktops despite the risks to life and property that they pose.

13. After the recall on August 28, 2019, Whirlpool instructed Plaintiff and Class members to turn off the defective cooktops at the circuit breaker when not in use, and to contact Whirlpool for a replacement. *See* <https://www.cpsc.gov/Recalls/2019/Whirlpool-Recalls-Glass-Cooktops-with-Touch-Controls-Due-to-Burn-and-Fire-Hazards>. However, to date, Whirlpool has failed to replace the Defective Cooktops.



14. Plaintiff has contacted the company multiple times to request a replacement, expressing his safety concerns about the product, yet Whirlpool has failed to replace Plaintiff's Defective Cooktop. Upon information and belief, Plaintiff and Class members continue to incur unnecessary costs in attempts to mitigate the safety concerns imposed by Whirlpool's failure to promptly replace the Defective Cooktops.

15. As a direct and proximate result of Whirlpool's concealment of the Defects, failure to warn its customers of the Defects and of the inherent safety risks posed by the Defective Cooktops, failure to remove the Defective Cooktops from the stream of commerce, failure to recall or remedy the defective designs, and failure to

replace the Defective Cooktops, Plaintiff and Class members purchased and used Whirlpool's defective and unsafe Cooktops.

16. As discussed in detail below, as a result of the Defects, the cooktop surface elements of Plaintiff's and Class members' Defective Cooktops have turned on and are at risk of turning on by themselves, igniting or at risk of igniting, and caused their damages.

17. Plaintiff's and the Class members' Defective Cooktops contain the same Defects that pose the same considerable safety risk to consumers and the public. The Defective Cooktops cannot be used safely for their intended purpose. They have been carelessly and/or negligently designed and manufactured by Whirlpool. The Defects latently manifest through the Defective Cooktops' surface elements turning on by themselves, thus creating a fire hazard.

PARTIES

18. Plaintiff James M. Rosenbaum is an individual citizen and resident of Hopkins, Minnesota. On or about May 4, 2019, Plaintiff Rosenbaum purchased, for the approximate amount of \$2,786.99, a new Jenn-Aire Electric Glass Cooktop, Model No. JED4430GB, that was designed, manufactured, advertised, and sold by Whirlpool. Since on or about September 6, 2019, Plaintiff has contacted Whirlpool multiple times to request a safe replacement to his defective cooktop, but, to date, the Company has failed to provide a safe comparable cooktop.

19. The Whirlpool Corporation is a Delaware corporation with its principal executive offices located at 2000 North M-63, Benton Charter Township, Michigan. Whirlpool engages in a continuous course of business in Michigan and nationwide.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). The matter in controversy in this class action exceeds \$5,000,000, exclusive of interest and costs, and is a class action in which there are more than 100 Class members. Plaintiff and members of the Class are citizens of states other than the state in which Whirlpool is incorporated and are citizens of states other than where Whirlpool maintains its principal place of business.

21. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (d) because a substantial part of the events or omissions giving rise to the claim occurred in this District, and Whirlpool has continuous and systematic contacts with the State of Minnesota through the sale of Whirlpool's products in Minnesota.

COMMON FACTUAL ALLEGATIONS

22. Whirlpool is engaged in the business of designing, manufacturing, warranting, marketing, advertising, and selling home appliances, including laundry appliances, refrigerators and freezers, cooking appliances, dishwashers, mixers and other small domestic appliances. In the United States, the Company markets and distributes products primarily under the Whirlpool®, KitchenAid®, Maytag®,

Bauknecht®, Jenn-Air®, and other brand names primarily to retailers, distributors and builders.

23. The Defective Cooktops are marketed by Whirlpool under the Whirlpool, KitchenAid, and Jenn-Aire were made in accordance with Whirlpool's specifications.

24. Like all Class members (as defined below), Plaintiff purchased his Defective Cooktop reasonably believing that it was properly designed and manufactured, was free from defects, and was safe for its intended use.

25. Plaintiff's and Class members' Defective Cooktops were used for their intended purpose of applying heat to the base of pans or pots during cooking activities in a manner reasonably foreseeable by Whirlpool. However, Plaintiff and Class members are now unable to use their Defective Cooktops for their intended purposes, given that they are at risk of being destroyed by fire. Even if Plaintiff was able to use his Defective Cooktop for its intended purpose, he would place himself, others, and his property at significant risk of harm because uniform material safety Defects render it unsafe.

26. Like Plaintiff, Class members purchased Defective Cooktops designed, manufactured, and sold into the stream of commerce by Whirlpool and its network of authorized dealers. Class members used the Defective Cooktops for their intended purpose of applying heat to the base of pans or pots during cooking activities in a manner reasonably foreseeable by Whirlpool.

27. Like Plaintiff, Class members' Defective Cooktops have the same Defects that pose unreasonable risks of fire, property damage, personal injury and/or death during normal use.

28. Like Plaintiff, Class members did not receive the benefit of their bargain when they purchased Defective Cooktops which contain a material safety Defect at the point of sale.

29. Like Plaintiff, Class members did not receive a safe comparable cooktop to replace the Defective Cooktop, and incurred costs in mitigating the fire hazard posed by the Defective Cooktops.

30. Whirlpool knew or should have known of the Defect and of the serious safety risks it posed to consumers, but chose to remain silent while concealing its knowledge of the Defects from consumers and members of the public who purchased the Defective Cooktop, while selling them to unsuspecting consumers for a profit.

31. Had Plaintiff and Class members known of the serious Defects, they either would not have purchased the Defective Cooktops or would have paid significantly less for the Defective Cooktops. As a result of Whirlpool's unconscionable conduct, and the Defects existing in the Defective Cooktops, Plaintiff and the Class members have been damaged. Such damages include, but are not limited to: the failure to receive the benefit of the bargain; the overpayment for the Defective Cooktops; the costs of repairs or replacement of the Defective Cooktops; and damages incurred in mitigating the risks

imposed by the defective cooktops. Damages for personal injuries are not being sought in this action.

The Defects

32. The Defective Cooktops have serious material safety Defects that have caused or will cause the Defective Cooktops to malfunction during the expected and foreseeable useful life of the Defective Cooktops. The Defects represent an unreasonable risk of spontaneous ignition and fire, resulting in property damage and loss, personal injury, and/or death.

33. The Defects include, at minimum, a negligent design that allows the Defective Cooktops to turn on by themselves, creating a fire hazard.

34. The Defects exist at the point of sale of the Defective Cooktops, and manifests themselves during the useful life of the Defective Cooktops, within and outside the warranty periods, is substantially likely to prevent the Defective Cooktops from being used as intended during their expected useful life, and pose unreasonable risks of property damage, personal injury and/or death.

Whirlpool's Conduct

35. Whirlpool failed to adequately design, manufacture, and/or test the Defective Cooktops to ensure that they were free from Defects before offering them for sale to Plaintiff and Class members, despite its duty to do so.

36. The Defects pose a serious and immediate safety risk to consumers and the public and has caused or will cause the Defective Cooktops to fail during their expected useful lives.

37. The Defects existed at the time that the Defective Cooktops were sold to Plaintiff and Class members, and the existence of the Defects immediately rendered the Defective Cooktops unfit for the ordinary and intended purpose for which they were marketed and sold. If Plaintiff and Class members had been aware of the existence of the Defects, they either would not have purchased the Defective Cooktops or would have paid significantly less for the Defective Cooktops. Thus, had the Defective Cooktops been free from the Defects, Plaintiff and Class members would not have suffered the economic damages complained of herein.

38. Whirlpool also had a duty to protect consumers by timely warning them that the Defects pose unreasonable risks of property damage, personal injury and/or death. This is particularly so, given its knowledge of the Defective Cooktops' propensity for spontaneous ignition and catching fire.

39. Nonetheless, even though Whirlpool knew or should have known of the Defects existing in its Defective Cooktops, it has: (i) concealed the existence of the Defects; (ii) failed to prevent the use of the Defective Cooktops by Class Members; (iii) failed to institute a timely recall of the Defective Cooktops; and (iv) failed to timely provide a safe comparable cooktop to Plaintiff and Class members after the recall.

40. Whirlpool knew or should have known that consumers like Plaintiff and Class members would be unaware of the Defects and could not reasonably be expected to discover the Defects.

41. Whirlpool knew or should have known that consumers like Plaintiff and Class members expected the Defective Cooktops to be usable without putting consumers' lives and property at risk and expected that the Defective Cooktops were safe to use and store in their homes.

42. Whirlpool knew or should have known that consumers expected Whirlpool to disclose any Defects that would prevent the Defective Cooktops from safely performing their function prior to the end of their expected useful lives, or Defects that would seriously threaten Plaintiff's and Class members' safety, as such disclosure by Whirlpool would impact a reasonable customer's decision whether to purchase one of the Defective Cooktops.

43. As a result of Whirlpool's concealment of the Defects, many Class members remain unaware of the existence of the Defects and the fact that it poses unreasonable risks of property damage, personal injury and/or death during normal use.


44. Had Plaintiff and Class members been made aware of the serious safety Defects within the Defective Cooktops, they would not have purchased the Defective Cooktops or would have paid substantially less for the Defective Cooktops.


45. Whirlpool's conduct has harmed Plaintiff and Class members and has left consumers throughout the United States with a serious safety risk to themselves and their property.

Whirlpool's Actual or Constructive Knowledge of the Defects

46. Whirlpool either knew or should have known at the time that it sold the Defective Cooktops to the public that they contained Defects, and that the Defects caused the Defective Cooktops to function improperly during their expected useful life, represented an unreasonable risk of igniting, and could cause property damage, personal injury, and death to consumers and the public.


47. As described herein, Whirlpool was aware that its Defective Cooktops were defective, and that the Defects posed unreasonable risks of property damage, personal injury, and/or death during normal use. Whirlpool's knowledge of such facts is established through, customers' postings and complaints relating to their Defective Cooktops causing fire damages after the cooktop surface elements turned on by themselves.




 **B of Madison, FL** ✓ **Verified Reviewer**


Original review: Jan. 28, 2019

We purchased an electric range model WFE371LVQ O in June 2010. This range is only used during the winter months in our vacation home. In January 2016 the oven turned on by itself. The control panel was replace. It happened again on 1/25/19. IT IS A FIRE HAZARD!! Thankfully we were home both times. The only way we got it to turn off was to flip the circuit breaker. If this would have happened when we weren't home and a fire started and it killed our dogs I have no idea what I would do. I'm not even attempting to have the control panel replaced again. We'll be buying another brand. I DO NOT RECOMMEND THIS TO ANYONE. The company must have known about the issue because when we called the first time it happened, which was several years PAST the warranty period, they didn't hesitate to do the repair free of charge.

 **HELPFUL** | 14 people found this review helpful


Source: Consumer Affairs- Whirlpool Ranges & Oven Reviews. Available at https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=18



 **Linda of Runnemede, NJ** ✓ **Verified Reviewer**

Original review: June 29, 2016

New range and the faceplate keeps melting. Had it fixed once and it is melting again. I have been trying to contact Whirlpool but to no avail. What is my next step and is anyone else having a problem with this.

 **HELPFUL** | 10 people found this review helpful

Source: Consumer Affairs- Whirlpool Ranges & Oven Reviews. Available at https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=18

★ ★ ★ ★ ★

 **Sherrie of Winterhaven, FL** ✓ **Verified Reviewer**

Original review: Feb. 22, 2017

I purchased a range top from Lowe's and a month and half my burners go out. I call Whirlpool and a service technician came out. Said that he can't repair the stove because a bug had burned out the burners and he can't repair the stove. I call Whirlpool and they told me that voids my warranty with them even though my stove is not even two months old that will not repair it and I will have to pay for it to be repaired. I asked Lowe's and they told me that they only take back big appliances back before 30 days. Now I am stuck with a stove that I paid 700.00 for that does not work and I have 4 children to feed. I am sickened on how Whirlpool can do this to a hard working family that just wants a good stove. I hope this helps another hard working family. Do your research before buying from Whirlpool. I wish I would have.

 **HELPFUL** | 32 people found this review helpful

Source: Consumer Affairs- Whirlpool Ranges & Oven Reviews. Available at https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=18

★ ★ ★ ★ ★

 **Megan of Fredericksburg, VA** ✓ **Verified Reviewer**

Original review: May 29, 2019


Our KitchenAid 30 inch electric cooktop burst into flames, from every knob, while the unit was not even being used. All knobs were turned off, the cooktop hadn't even been used that day, and fire just started bursting through the knobs. KitchenAid sent a technician to diagnose the issue. The technician could not determine a cause of fire, but did say this is an ongoing problem with the Whirlpool brands and he has seen this same problem many times before. I called KitchenAid to discuss a resolution, and they became rude when I asked for a refund on the unit.

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 **HELPFUL** | 5 people found this review helpful

Source: Consumer Affairs- KitchenAid Cooktops Reviews. Available at https://www.consumeraffairs.com/homeowners/kit_cooktops.html?page=4#sort=recent&filter=none

★ ★ ☆ ☆ ☆


 **DOC of Anderson, SC** ✓ **Verified Reviewer**

Original review: May 25, 2019

Black Range Cooktop impossible to keep clean!! Even the cleaners streak and look awful. Secondly, there is no indicator lights to tell you which burner is hot or turned on. There is merely one back-lit indicator that tells you that somewhere on the Cooktop there is a hot burner. This has caused two of us to burn our hands as we did not realize that a burner was hot. Stupid design!! Thirdly, overall quality is just not good. The oven pops and rattles as it heats. The Ceran Cooktop is showing distortion in the glass above the heating element. The Maytag Range that this Range replaced had NONE of these problems, and it was also made by Whirlpool.


Advice...We bought a set of Whirlpool Appliances, this Range, a French Door Refrigerator and a Microwave oven (both have separate reviews). Since we bought this set at a rather small H.D. box store we could only view the Microwave on display. NEVER do that!! We have learned our lesson. We probably would have noticed at least some of the cost-cutting manufacturing and design issues.

[VIEW LESS ^](#)

 **HELPFUL** | 9 people found this review helpful


Source: Consumer Affairs- Whirlpool Ranges & Oven Reviews. Available at https://www.consumeraffairs.com/homeowners/whirlpool_ranges.html?page=18

★ ☆ ☆ ☆ ☆

 **Joan of Independence, LA**

Original review: Dec. 31, 2011

I put a pot of water on and just had walked away when there was an explosion; the cooktop had exploded . Glass was everywhere. I am very fortunate no one was close by. I have to replace the cooktop at my expense as I cannot get any response from KitchenAid.

 **HELPFUL** | 12 people found this review helpful

Source: Consumer Affairs- KitchenAid Cooktops Reviews. Available at https://www.consumeraffairs.com/homeowners/kit_cooktops.html?page=4#sort=recent&filter=none



Source: Consumer Affairs- KitchenAid Cooktops Reviews. Available at https://www.consumeraffairs.com/homeowners/kit_cooktops.html?page=4#sort=recent&filter=none

48. Despite its knowledge, Whirlpool did not remedy or eliminate the Defects in its Defective Cooktops or remove them from the stream of commerce.

49. Based upon the above facts, as well as the fact that Whirlpool has extensive experience in designing and selling Cooktops, Whirlpool knew or should have known that its Defective Cooktops contained material safety Defects which make them prone to turn on by themselves and cause damage.

50. Whirlpool has a duty to consumers and the public to disclose the defective nature of its Defective Cooktops and to not conceal and suppress the defective nature of its Defective Cooktops from Plaintiff and Class members, thereby placing Plaintiff and Class members at risk of personal injury and property damage.

51. As a result, reasonable consumers, including Plaintiff and Class members, purchased and continue to purchase the Defective Cooktops for residential use, and continue to store the Defective Cooktops in their homes, despite it being unsafe to do so.

52. Whirlpool has wrongfully placed on Plaintiff and Class members the burden, expense, and difficulties involved in diagnosing potential problems with their Defective Cooktops, repairing and replacing the Defective Cooktops, as well as paying for the cost of damages the Defect has caused.

CLASS ACTION ALLEGATIONS

53. Plaintiff bring this action individually and as a class action under the provisions of Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the members of the following Class:

During the fullest period allowed by law, all persons who purchased or otherwise acquired a glass cooking surface, radiant and downdraft radiant models sold under the Whirlpool, KitchenAid, and Jenn-Aire brands, primarily for personal, family, or household purposes. (Hereinafter, the "Class").

54. Excluded from the Class are: (a) any Judge or Magistrate presiding over this action, and members of their families; (b) Whirlpool and any entity in which Whirlpool has a controlling interest, or which has a controlling interest in Whirlpool; (c) the officers, directors or employees of Whirlpool; (d) Whirlpool's legal

representatives, assigns and successors; and (e) all persons who properly execute and file a timely request for exclusion from any Court-approved class.

55. Plaintiff reserves the right to narrow or expand the foregoing Class definition, or to create subclasses as the Court deems necessary.

56. Plaintiff meets the prerequisites of Rule 23(a) to bring this action on behalf of the Class.

57. **Numerosity:** While the exact number of Class members cannot be determined without discovery, the Class consists of thousands of people dispersed throughout the United States. The exact number of Class members can readily be determined upon review of sales information and other records maintained by Whirlpool and its authorized dealers. The Class members are therefore so numerous that joinder of all members is impracticable.

58. **Commonality:** Common questions of law and fact exist as to all members of the Class. These common questions will have common answers for all Class members. Among the questions of law and fact common to the Class are:

a. Whether the Defective Cooktops designed, manufactured, and/or sold by Whirlpool possess material Defects;

b. Whether the Defects represent an unreasonable risk of igniting, burning and/or causing fire;

- c. Whether Whirlpool knew or should have known that the Defective Cooktops possess the Defects when it placed the Defective Cooktops into the stream of commerce;
- d. Whether Whirlpool fraudulently concealed the Defects from Plaintiff and consumers;
- e. Whether Whirlpool breached express warranties relating to the Defective Cooktops;
- f. Whether Whirlpool breached implied warranties of merchantability relating to the Defective Cooktops;
- g. Whether Whirlpool is negligent for designing, marketing and selling Defective Cooktops;
- h. Whether Whirlpool is strictly liable for selling Defective Cooktops;
- i. Whether Plaintiff and Class members are entitled to damages, including compensatory, exemplary, and statutory damages; and
- j. Whether Plaintiff and Class members are entitled to equitable relief, including an injunction and requiring that Whirlpool engage in a corrective notice campaign and/or an adequate recall of affected Cooktops.

59. **Typicality:** Plaintiff has the same interests in this matter as all other members of the Class, and Plaintiff's claims arise out of the same set of facts and conduct by Whirlpool as all other members of the Class. Plaintiff and all Class members

own or owned a Defective Cooktops designed and/or manufactured by Whirlpool with uniform Defects that makes them immediately dangerous upon purchase and that causes the Defective Cooktops to fail within their expected useful lives and turn on by themselves, burn, catch on fire, cause personal injury, and/or burn consumers' homes and other real and personal property. The claims of Plaintiff and Class members arise out of Whirlpool's placement into the marketplace of products that are defective and that cause a serious safety risk to consumers, and from Whirlpool's failure to disclose that known safety risk and Defects. As a result of Whirlpool's conduct, Plaintiff and Class members did not receive the benefit of their bargain. Also common to Plaintiff and Class members' claims is Whirlpool's conduct in designing, manufacturing, marketing, advertising, warranting and/or selling the Defective Cooktops; Whirlpool's conduct in concealing the Defects in the Defective Cooktops; and Plaintiff and Class members' purchases of the Defective Cooktops.

60. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and has retained competent counsel experienced in consumer and product liability class action litigation. Accordingly, Plaintiff and his counsel will fairly and adequately protect the interests of the members of the Class. Plaintiff's claims coincide with, and are not antagonistic to, those claims of the other Class members he seeks to represent. Plaintiff has no disabling conflicts with the members of the Class and will fairly and adequately represent the interests of the Class.

61. **Injunctive/Declaratory Relief:** The elements of Rule 23(b)(2) are met. Whirlpool will continue to commit the unlawful practices alleged herein, and the members of the Class and the general public will continue to remain at an unreasonable and serious personal safety and property damage risk as a result of the Defects. Whirlpool has acted and refused to act on grounds that apply generally to the Class members so that final injunctive relief and corresponding declaratory relief is appropriate respecting the Class as a whole.

62. **Predominance:** The elements of Rule 23(b)(3) are met. Here, the common questions of law and fact enumerated above predominate over the questions affecting only individual members of the Class, and a class action is the superior method for the fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. Serial adjudication in numerous venues is not efficient or proper. Judicial resources will be unnecessarily depleted by separate resolution of individual claims. Joinder on an individual basis of thousands of claimants in one suit would be impractical or impossible. Individualized rulings and judgments could result in inconsistent relief for a similarly situated Plaintiff. Plaintiff's counsel, who are highly experienced in class action litigation, foresee little difficulty in the management of this case as a class action.

**The Statutes of Limitation are Tolled Due to the Discovery Rule, Whirlpool's
Fraudulent Concealment of the Defect in its Defective Cooktops, and Principles
of Estoppel**

63. The claims alleged herein accrued upon discovery of the defective nature of the Defective Cooktops, which manifests when the Defective Cooktops turn on by themselves and catch fire. Because the Defects alleged herein are hidden, and, as described above, Whirlpool failed to disclose the true character, nature, and quality of the Defective Cooktops, among other reasons, Plaintiff and Class members did not discover and could not have discovered the Defects alleged herein through reasonable and diligent investigation. Plaintiff's own visual examinations of the Defective Cooktops when purchased, as well as the continued intended use and maintenance of the Defective Cooktops, did not reveal the defective nature of the Defective Cooktops.

64. Any applicable statutes of limitations have been tolled by Whirlpool's knowledge and actual misrepresentations and/or concealment and denial of the facts as alleged herein. Plaintiff and Class members could not have reasonably discovered the true defective nature of the Defective Cooktops. As a result of Whirlpool's active concealment of the defects and/or failure to inform Plaintiff and Class members of the defects, any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

65. Alternatively, the facts alleged herein give rise to principles of estoppel. Whirlpool has actively and fraudulently concealed the defective nature of the Defective

Cooktops. Whirlpool was and is under a continuous duty to disclose to Plaintiff and Class members the true character, quality, and nature of the Defective Cooktops, particularly that they pose a serious risk to personal safety and of igniting and creating fire. At all relevant times Whirlpool knowingly, affirmatively, and actively misrepresented and concealed the true character, quality, and nature of the Defective Cooktops. Given Whirlpool's failure to disclose this non-public information about the defective nature of the Defective Cooktops—information over which it has exclusive control—and because Plaintiff and Class members could not reasonably have known that the Defective Cooktops are defective, Plaintiff reasonably relied on Whirlpool's knowing affirmative and/or ongoing concealment. Based on the foregoing, Whirlpool is estopped from prevailing on any statute of limitations defense in this action.

66. Additionally, Whirlpool is estopped from raising any defense of laches due to its own unclean hands as alleged herein.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF MINN. STAT. ANN. § 325D.13** **(On Behalf of Plaintiff and the Class)**

67. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

68. Whirlpool has misrepresented the true quality of its Defective Cooktops, while touting its appliances as being “innovative, high-quality products.” Whirlpool

also represents in its Electric Cooktop User Instructions that its electric cooktops touch controls offer a variety of heat settings and that, to use, the consumer must touch the ON/OFF control for the desired element, affirming that users should follow basic precautions to reduce the risk of fire.

69. Minnesota Unlawful Trade Practices Act (MUTPA) prohibits sellers from “knowingly misrepresent[ing] ... the true quality ... of ... merchandise,” granting a private right of action to enjoin violations any person damaged or who is threatened with loss, damage, or injury by reason of a violation of sections 325D.09 to 325D.16 shall be entitled to sue for and have injunctive relief ... against any damage or threatened loss or injury by reason of a violation. Minn.Stat. § 325D.13; *Buetow v. A.L.S. Enterprises, Inc.*, 650 F.3d 1178, 1185 (8th Cir. 2011).

70. In the course of its business, Whirlpool willfully failed to disclose and actively concealed that the defectively designed Defective Cooktops discussed herein were unsafe, and otherwise engaged in activities with a tendency or capacity to deceive. Whirlpool also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of the Defective Cooktops.

71. Whirlpool knew it had defectively designed, manufactured, and sold Defective Cooktops, and knew that the Defective Cooktops were not safe.

72. By failing to disclose that the defectively designed Defective Cooktops were not safe, Whirlpool engaged in deceptive business practices in violation of the MUTPA.

73. Whirlpool's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and the other Class members, about the true safety, quality, and functionality of the Defective Cooktops.

74. Whirlpool intentionally and knowingly misrepresented material facts regarding the Defective Cooktops with an intent to mislead Plaintiff and Class members.

75. Whirlpool knew or should have known that its conduct violated the MUTPA.

76. Whirlpool owed Plaintiff and Class members a duty to disclose the true safety, performance, and reliability of the Defective Cooktops, because Whirlpool:

- a. Possessed exclusive knowledge that it valued profits and cost-cutting over safety and performance, and that it was manufacturing, selling, and distributing Defective Cooktops throughout the United States that were unsafe and did not perform as advertised;
- b. Intentionally concealed the foregoing from Plaintiff and the Class; and/or

- c. Made incomplete representations about the safety of the Defective Cooktops generally, while purposefully withholding material facts from Plaintiffs and the Class that contradicted these representations.

77. Plaintiff and the Class suffered ascertainable loss caused by Whirlpool's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Defective Cooktops either would have paid less for them or would not have purchased them at all but for Whirlpool's violations of the MUTPA.

78. Whirlpool had an ongoing duty to all Whirlpool customers to refrain from unfair and deceptive practices under the Michigan CPA. All owners of the Defective Cooktops suffered ascertainable loss as a result of Whirlpool's deceptive and unfair acts and practices made in the course of Whirlpool's business.

79. Whirlpool's violations present a continuing risk to Plaintiff as well as to the general public. Whirlpool's unlawful acts and practices complained of herein affect the public interest.

80. As a direct and proximate result of Whirlpool's violations of the MUTPA, Plaintiff and the Class have suffered injury-in-fact and/or actual damage.

81. Plaintiff seeks monetary relief against Whirlpool; reasonable attorneys' fees; and any other just and proper relief available.

82. Further, upon alerting consumers of the recall, Whirlpool has failed to timely replace their Defective Cooktops in a timely fashion.

SECOND CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(On Behalf of Plaintiff and the Class)

83. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

84. The Defective Cooktops purchased by Plaintiff and Class members were defectively designed and manufactured and posed a serious and immediate safety risk to consumers and the public.

85. The Defective Cooktops left Whirlpool's facilities and control with Defects caused by a defective design incorporated into the manufacture of the Defective Cooktops.

86. Under Minnesota law, an implied warranty of merchantability is breached on a showing that a "product is defective to a normal buyer making ordinary use of the product." *Driscoll v. Standard Hardware, Inc.*, 785 N.W.2d 805, 816 (Minn.Ct.App.2010) (citing *Peterson v. Bendix Home Sys., Inc.*, 318 N.W.2d 50, 53 (Minn.1982)). A buyer seeking to recover for breach of warranty must establish: (1) the existence of a warranty; (2) breach of that warranty; and (3) that the breach caused the alleged harm. *Daigle v. Ford Motor Co.*, 713 F.Supp.2d 822, 825 (D.Minn.2010) (citing Minn Stat. § 336.2–313).

87. The Defects place consumers at a serious safety and property damage risk simply upon installing the Defective Cooktops in their homes, which is reasonably foreseeable by Whirlpool.

88. At all times relevant hereto, there was a duty imposed by law which requires that a manufacturer's or seller's product be merchantable and reasonably fit for the ordinary purposes for which such products are used, and that the product be acceptable in trade for the product description. This implied warranty of merchantability is part of the basis for the bargain between Whirlpool, on the one hand, and consumers, on the other hand.

89. Notwithstanding the aforementioned duty, at the time of delivery, Whirlpool breached the implied warranty of merchantability in that the Defective Cooktops were defective and posed a serious safety risk at the time of sale, would not pass without objection, are not fit for the ordinary purposes for which such goods are used of safely cooking in a residential setting, and failed to conform to the standard performance of like products used in the trade.

90. Whirlpool knew or should have known that the Defective Cooktops posed a safety risk and were defective and knew or should have known of these breaches of implied warranties at the time of its sale of the Defective Cooktops to Plaintiff and Class members.

91. As a direct and proximate result of Whirlpool's breaches of its implied warranties, Plaintiff and Class members bought the Defective Cooktops without knowledge of the Defects or their serious safety risks.

92. As a direct and proximate result of Whirlpool's breach of its implied warranties, Plaintiff and Class members purchased defective and unsafe Defective Cooktops which could not be used for their intended use of cooking in a residential setting.

93. Upon information and belief, Whirlpool received notice and has been on notice of the Defects and of its breaches of express and implied warranties through customer warranty claims reporting problems with the Defective Cooktops, customer complaints, and its own internal and external testing.

94. Despite such notice and its knowledge of the Defects, Whirlpool failed to provide Defect-free cooktops to consumers, failed to provide free repairs of the Defective Cooktops, and failed to provide any form of compensation for the damages resulting from the Defects.

95. As a direct and proximate result of Whirlpool's breach of its implied warranties, Plaintiff and Class members have suffered damages, including costs incurred by mitigating the fire hazard posed by the Defective Cooktops.

THIRD CLAIM FOR RELIEF
NEGLIGENCE
(On Behalf of Plaintiff and the Class)

96. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

97. Whirlpool owed a duty to Plaintiff and Class members to design, manufacture, produce, test, inspect, market, distribute, and sell the Defective Cooktops with reasonable care and in a workmanlike fashion, and had a duty to protect consumers from foreseeable and unreasonable risk of harm. Whirlpool breached that duty by, among other things, defectively designing, manufacturing, testing, inspecting and selling the Defective Cooktops.

98. Whirlpool also acted unreasonably in failing to provide appropriate and adequate warnings and instructions, and the failure to provide adequate warnings and instructions was a proximate cause of the harm for which damages are sought. In addition, at the time the Defective Cooktops left the control of Whirlpool, the Defective Cooktops, without an adequate warning or instruction, created an unreasonably dangerous condition that Whirlpool knew, or in the exercise of ordinary care should have known, posed a substantial and reasonably foreseeable risk of harm to Plaintiff and Class members. Whirlpool knew or should have known that the Defective Cooktops it designed, manufactured, produced, tested, inspected, marketed, distributed, and/or sold, in ordinary and foreseeable use, created an unreasonable safety risk and would fail to perform as intended.

99. At the time of the design or manufacture of the Defective Cooktops, Whirlpool acted unreasonably in designing or formulating the product, and this conduct was a proximate cause of the harm for which damages will be sought. Further, at the time the Defective Cooktops left the control of Whirlpool, it had unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design or formulation that could then have been reasonably adopted and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product. Furthermore, at the time the Defective Cooktops left the control of Whirlpool, the design or formulation of the product was so unreasonable that a reasonable person, aware of the relevant facts, would not purchase or use a product of the Defective Cooktops' design.

100. Whirlpool knew or should have known that the Defective Cooktops create an unreasonable safety risk as the Defective Cooktops had Defects causing them to turn on by themselves. Whirlpool further knew or should have known that the Defective Cooktops had Defects which could cause property damage, personal injury, and/or death.

101. Based on its knowledge, Whirlpool had a duty to disclose to Plaintiffs and Class members the serious safety risks posed by the Defective Cooktops, and a duty to disclose the defective nature of the Defective Cooktops.

102. Whirlpool had a further duty not to put the Defective Cooktops on the market and has a continuing duty to remove its unsafe Glass Cooktops from the market and institute a proper recall from consumers.

103. Whirlpool failed to exercise reasonable care with respect to the design, manufacture, production, testing, inspection, marketing, distribution and sale of the Glass Cooktops by, among other things, failing to design and manufacture the Defective Cooktops in a manner to ensure that, under normal intended usage, a serious safety risk such as the one posed by the Defects did not occur.

104. Whirlpool failed to exercise reasonable care in failing to warn or to warn adequately and sufficiently, either directly or indirectly, users of the Defects in its Defective Cooktops.

105. Whirlpool failed to exercise reasonable care when it knew of the safety risks the Defective Cooktops posed, and actively concealed those risks from Plaintiff and Class members.

106. Whirlpool failed to exercise reasonable care when it knew of the safety risks the Defects posed, and failed to replace, repair or recall Defective Cooktops it knew or should have known were unsafe and defective.

107. As a direct and proximate result of Whirlpool's negligence, Plaintiff and Class members bought the Defective Cooktops without knowledge of the Defects or of the serious safety risks it caused.

108. As a direct and proximate result of Whirlpool's negligence, Plaintiff and Class members purchased defective and unsafe Defective Cooktops which could not be used for their intended use.

109. As a direct and proximate result of Whirlpool's negligence, Plaintiff and Class members have suffered damages, including costs incurred by mitigating the fire hazard posed by the Defective Cooktops.

FOURTH CLAIM FOR RELIEF
UNJUST ENRICHMENT
(On Behalf of Plaintiff and the Class)

110. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

111. This claim is asserted in the alternative on behalf of Plaintiff and members of the Class to the extent there is any determination that any contracts do not govern the subject matter of the disputes with Whirlpool, or that Plaintiff does not have standing to assert any contractual claims asserted against Whirlpool.

112. Plaintiff and Class members conferred a benefit on Whirlpool, of which benefit Whirlpool had knowledge. By its wrongful acts and omissions described herein, including selling the Defective Cooktops, Whirlpool was unjustly enriched at the expense of Plaintiff and the members of the Class.

113. Plaintiff and Class members' detriment and Whirlpool's enrichment were related to and flowed from the wrongful conduct alleged in this Complaint.

114. It would be inequitable for Whirlpool to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the Defective Cooktops.

115. Plaintiff and members of the Class seek restitution from Whirlpool and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Whirlpool from its wrongful conduct and establishing a constructive trust from which Plaintiff and Class members may seek restitution.

FIFTH CLAIM FOR RELIEF
STRICT LIABILITY – MANUFACTURING AND DESIGN DEFECT AND
FAILURE TO WARN
(On Behalf of Plaintiff and the Class)

116. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

117. Whirlpool designed, manufactured, and/or sold its Defective Cooktops to Plaintiff and the Class.

118. The Defective Cooktops were defective in their manufacture and design and contained the Defects when they left Whirlpool's control.

119. A manufacturer has a duty to design its product to avoid an unreasonable risk of harm when the product is used as intended or misused in a reasonably foreseeable manner. *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 629 (Minn. 2017). Further, a manufacturer has a duty to warn if it “should anticipate that an unwarned

operator might use the machine in a particular manner so as to increase the risk of injury and the manufacturer has no reason to believe that users will comprehend that risk.” *Id.*

120. For both design-defects and failure-to-warn claims, a manufacturer’s duty “arises from the probability or foreseeability of injury to the plaintiff.” *Id.* To determine foreseeability, Courts look “to the defendant’s conduct and ask whether it was objectively reasonable to expect the specific danger causing the plaintiff’s injury.” *Id.* “If the connection between the danger and the alleged negligent act ‘is too remote to impose liability as a matter of public policy, the courts then hold there is no duty.’” *Id.*

121. Whirlpool knew or should have known that its Defective Cooktops were defective and pose a serious and real risk of ignition and fire during their regular use.

122. Whirlpool failed to inform consumers about the Defective Cooktops’ susceptibility to turning themselves on, thus causing fire and possible loss of life and property.

123. The Defective Cooktops are defective due to inadequate warnings, inadequate inspection and testing, and inadequate reporting regarding the results of quality control testing, or lack thereof.

124. Had Plaintiff and Class members been adequately warned concerning the likelihood that the Defective Cooktops could turn themselves on and thereby creating a serious safety risk when used for their intended purpose, they would have taken steps to avoid damages by not purchasing them.

125. Once learning that its Glass Cooktops could self-start and catch fire, Whirlpool had a duty to immediately warn consumers of the possibility that catastrophic injury to persons and property could result from the Defects in the Glass Cooktops, even when used for their intended purpose. Instead, Whirlpool withheld this information for weeks, prioritizing its stock value over consumer safety. *See*, <https://investors.whirlpoolcorp.com/news-and-events/news/news-details/2019/Whirlpool-Corporation-Declares-Quarterly-Dividend-bb18efd4e/default.aspx>.

126. As a direct and proximate result of the defective condition of the Defective Cooktops, consumers have incurred or are at risk of incurring damages to their persons and to their personal and real property in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members pray for the following judgment:

- A. An Order certifying this action as a class action;
- B. An Order appointing Plaintiff as Class representatives, and appointing undersigned counsel as Class counsel to represent the Class;
- C. An award of damages to Plaintiff and the Class of all damages associated with or caused by the Defective Cooktops, in amounts to be proven at trial, including, but not limited to, statutory penalties and fines, actual damages, punitive and/or exemplary damages;

D. An award of attorneys' fees and costs, as provided by law and/or as would be reasonable from any recovery of monies recovered for or benefits bestowed on the Class;

E. Any and all equitable relief, including but not limited to an injunction and/or declaratory relief, restitution, disgorgement.

F. An injunction and/or declaratory relief requiring defendant to replace all of the "Defective Cooktops."

G. Interest, including but not limited to pre-judgment and post-judgment interest; and

H. Such other and further relief as this Court may deem just, equitable, or proper.

Dated: November 20, 2019

Respectfully submitted,

s/Daniel E. Gustafson

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