



Plaintiffs Ivan and Melanie Kail (“plaintiffs”), by and through their undersigned counsel, individually and on behalf of all others similarly situated, bring this action for damages and equitable relief against defendant Wolf Appliance, Inc. (“defendant” or “Wolf”). Plaintiffs allege the following upon information and belief based on the investigation of counsel, except as to those allegations which specifically pertain to plaintiffs (which are alleged upon personal knowledge).

## **INTRODUCTION**

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

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

3. Through this action, plaintiffs seek to represent all purchasers of Wolf Ovens containing blue porcelain interiors, including the following dual fuel range model numbers: DF304, DF364C, DF364G, DF366, DF484DG, DF484F, DF484CG, DF486C, DF486G, DF604CF, DF604GF, DF606F, DF606CG and DF606DG. Additionally, plaintiffs seek to represent purchasers of the following E and L Series built-in ovens that contain blue porcelain interiors: DO30PE/S/PH, DO30TE/S/TH, SO30CE/B/TH, SO30PE/S/PH, SO30TE/S/TH, DO30U/S, SO30F/S, SO30U/S and SO36U/S. Plaintiffs also seek to represent purchasers of any other Wolf model oven containing a similar blue porcelain interior since March 13, 2011.

4. Defendant falsely advertises and markets its Wolf Ovens to consumers. The blue porcelain interior of the Wolf Ovens is prone to chipping and cracking through regular use and due to, upon information and belief, the self-clean function of the Ovens.

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

6. Wolf is a leading manufacturer of high-end cooking appliances, including ranges and built-in ovens. It competes directly with Viking in the luxury kitchen appliance market. Wolf charges a premium price for its top-of-the-line Ovens. Its Ovens retail for approximately \$6,000 to \$16,000 (and upward).

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

8. Wolf also advertises that its Ovens' "convenient features," such as the self-clean function, are "[w]onderfully easy to use."<sup>2</sup>

9. As for dependability, Wolf assures that its Ovens are "rigorously tested to ensure dependability" and "*are designed to last a minimum of 20 years under far heavier use than any home cook will ever subject them to.*"<sup>3</sup>

10. To back up its reliability claims, Wolf purports to have "the best warranty and service in the cooking business."<sup>4</sup> Under its "full two year warranty," Wolf warrants that: "For two years from the date of original installation, this Wolf Appliance product warranty covers all parts and labor

---

<sup>1</sup> E.g., <http://www.subzero-wolf.com/wolf/ranges/dual-fuel/48-inch-dual-fuel-range-6-burners-infrared-charbroiler> (last visited June 12, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (all emphasis is added unless otherwise noted).

<sup>4</sup> Internet Archive Wayback Machine, Nov. 21, 2008 search results for "<http://www.subzero.com/wolf/warranty.asp>", <http://web.archive.org/web/20081121012838/http://www.subzero.com/wolf/warranty.asp> (last visited June 12, 2015).

to repair or replace, under normal residential use, any part of the product that proves to be defective in materials or workmanship.”<sup>5</sup>

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

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

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

14. Plaintiffs and Class members purchased the defective Ovens designed, marketed, manufactured, distributed and sold by defendant based on their reasonable expectation that the Ovens would work and be reliable as advertised and warranted, and without knowledge of the products’ defect. Through the ordinary and/or directed use of the Ovens, consumers throughout the country have experienced cracking, chipping, crazing and/or flaking, and the inability to fully operate their Ovens, including the self-clean function, without damaging the oven cavity and risking injury.

15. Plaintiffs and Class members would not have purchased the Ovens and/or paid the premium purchase price for a luxury brand oven if they knew that the signature blue porcelain interior would deteriorate and cause the Ovens, and their self-clean function, to become inoperable.

---

<sup>5</sup> Wolf Appliance Residential Limited Warranty, <http://www.subzero-wolf.com/resources/WolfWarranty.pdf> (last visited June 12, 2015).

Absent defendant's actions, and had plaintiffs and Class members known of the defective nature of the Ovens, plaintiffs and Class members would not have purchased and/or paid the purchase price for defendant's Ovens. And, absent defendant's actions, and had plaintiffs and Class members known of the defective nature of the Ovens, plaintiffs and Class members would not have used the Ovens in their homes.

16. Plaintiffs assert claims on behalf of themselves and a Nationwide Class (defined below) for breach of express and implied warranties, violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.* ("MMWA"), negligent misrepresentation and violations of New York General Business Law ("GBL") §§349-350.

17. In addition, and in the alternative to the Nationwide Class, plaintiffs asserts claims on behalf of a New York Subclass (defined below) for breach of express and implied warranties, negligent misrepresentation, violation of the MMWA and violations of GBL §§349-350. The Nationwide Class and New York Subclass are cumulatively hereinafter referred to as the "Classes," and members thereof are referred to herein as "Class members."

### **THE PARTIES**

18. Plaintiffs are, and were at all relevant times, residents of Woodmere, New York. In or about October 2006, plaintiffs first purchased a Wolf dual fuel oven from A.H.C. Appliance in Cedarhurst, New York. Within several months of owning and operating the oven under normal household conditions, plaintiffs observed that the blue porcelain interior finish of their oven began to chip after utilizing the self-clean function. Plaintiffs complained to Wolf about the defect. Wolf made numerous repairs in connection with the chipping porcelain interior, including replacement of the oven cavity and even a replacement of the entire oven. Plaintiffs received their current Wolf oven – a 48-inch dual fuel range with six burners and infrared charbroiler – in or about March 2014. This oven contains the identical defect. Plaintiffs cannot use the self-clean function of their current

oven without further damaging the interior finish or safely operate the oven without risking injury to themselves. Wolf refuses to repair or replace plaintiffs' oven.

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

#### **JURISDICTION AND VENUE**

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

21. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to plaintiffs' claims occurred in this judicial district and defendant does business throughout this district and a substantial part of the events or omissions giving rise to plaintiffs' claims took place within this district.

#### **FACTUAL ALLEGATIONS**

##### **Defendant's Promotion and Sale of Defective Ovens with Blue Porcelain Interiors**

22. Wolf is a leading manufacturer of premium cooking appliances and is in the business of manufacturing, producing, distributing and/or selling dual fuel and built-in ovens throughout the United States under the Wolf brand name. Wolf's "dual fuel" is its most popular range, purporting to offer "the best of both cooking worlds" – gas burners on the range top and dual convection electric ovens below. Wolf advertises that these ranges "make[] fixing consistently delicious meals almost effortless."<sup>6</sup> The dual fuel ranges are available in 30 inches, 36 inches, 48 inches or 60 inches, with cooktop configurations that include griddle, broiler and French Top options.

23. Wolf manufactures, produces, and/or distributes the Ovens for sale through its network of specialty distributors. This, along with the fact that Wolf Ovens retail from \$6,000 to more than \$16,000, allows Wolf to maintain a sense of exclusivity and eliteness within the industry.

24. As part of the sale of each oven, defendant warranted, marketed, and advertised that its Ovens were of merchantable quality fit for the ordinary purpose for which the Ovens are used, *i.e.*, to safely cook food without causing damage to the Ovens, or worse, risk of injury, through normal use. For example, according to Wolf, its Ovens "are manufactured in the United States *using only premium-quality materials that are proven to stand the test of time.*"<sup>7</sup>

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

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

---

<sup>6</sup> <http://www.subzero-wolf.com/wolf/ranges/dual-fuel> (last visited June 12, 2015).

<sup>7</sup> Press Release, *Wolf Appliance Inc. to Introduce M Series Built-In Ovens* (Nov. 17, 2014), available at <http://www.subzero-wolf.com/company/press-releases/wolf-appliance-to-introduce-m-series-built-in-ovens>.

final design of the unit, and every major function of every completed product is tested before shipping.<sup>8</sup>

As part of its “unflinching quality assurance program,” defendant claims that “*every Wolf will have the performance and longevity our discerning customers expect.*”<sup>9</sup>

26. Wolf distinguishes its ovens by touting the “cobalt blue porcelain interior” as a key feature and critical attribute of its dual fuel and certain built-in ovens, and is part of “Wolf’s *signature aesthetics* [that] enhance the oven’s interior, creating a bold cooking backdrop.”<sup>10</sup> A typical Wolf product webpage will promote the cobalt blue porcelain interior in at least two of the three principal sections of the webpage, including as a central “product feature” and as one of the oven’s primary “highlights” under the “specifications” section.<sup>11</sup> Wolf covets its signature looks, including its distinctive red knobs and blue oven interiors that it markets to homeowners seeking to enhance their upscale kitchens. Wolf’s emphasis on design and style is so strong that in 2009 it successfully sued rival Viking for trademark infringement regarding its signature red knobs.<sup>12</sup>

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

- When Wolf first introduced its dual fuel ranges, it noted that the “oven comes complete with Wolf’s *striking cobalt blue interior.*”<sup>13</sup>

---

<sup>8</sup> *Id.*

<sup>9</sup> <http://www.subzero-wolf.la/worth-it/wolf-quality.php> (last visited June 12, 2015).

<sup>10</sup> *E.g.*, <http://www.subzero-wolf.com/wolf/ranges/dual-fuel/48-inch-dual-fuel-range-6-burners-infrared-charbroiler> (last visited June 12, 2015).

<sup>11</sup> *E.g.*, <http://www.subzero-wolf.com/wolf/ovens/e-series/30-inch-e-series-transitional-built-in-double-oven> (last visited June 12, 2015).

<sup>12</sup> *Wolf Appliance, Inc. v. Viking Range Corp.*, 686 F. Supp. 2d 878 (W.D. Wis. 2010).

<sup>13</sup> <http://www.promptserviceappliance.com/Articles/Brands/Wolf.htm> (last visited May 26, 2015).

- In its preliminary injunction motion in the trademark action against Viking, Wolf cited an article in *Madison Magazine* stating: “With its signature red knobs and **cobalt blue oven interiors**, Wolf is a familiar choice for cooktops, ovens and freestanding ranges in upscale kitchens.”<sup>14</sup>
- The *Daily Mail* reported that Wolf’s double-oven “**boasts an ‘eye-catching’ cobalt blue interior** (useful for spotting burnt-on food).”<sup>15</sup>
- Wolf’s U.K. website stated in a blog that *Hello Magazine* recently reported that the Duke and Duchess of Cambridge personally selected Wolf appliances for their country home (having already been installed in their London home), stating: “According to reports, the Duke and Duchess have furnished it with high-end appliances by US brand, (Sub-Zero) & Wolf, a supplier favoured by professional chefs all over the world. A state-of-the-art oven, with a **trademark cobalt blue interior . . . .**”<sup>16</sup>

28. Wolf also advertises that it has “the best warranty and service in the cooking business.”<sup>17</sup> Defendant provides the same express written warranty (the “Warranty” or “Warranties”) for all of its Ovens, which reads in relevant part:

Wolf Appliance Residential Limited Warranty  
FOR RESIDENTIAL USE  
FULL TWO YEAR WARRANTY\*

For two years from the date of original installation, this Wolf Appliance product warranty covers all parts and labor to repair or replace, under normal residential use, any part of the product that proves to be defective in materials or workmanship. All service provided by Wolf Appliance under the above warranty must be performed by

---

<sup>14</sup> *Wolf Appliance*, 686 F. Supp. 2d at 884.

<sup>15</sup> Catherine Ostler, *So that’s how Kate is going to iron Wills’ trousers! From a fridge with NASA technology to a hands-free iron and taps you turn with your feet, secrets of Kate’s super-bling new kitchen* (July 4, 2014), available at <http://www.dailymail.co.uk/femail/article-2681229/So-thats-Kate-going-iron-Wills-trousers-From-fridge-NASA-technology-hands-free-iron-taps-turn-feet-secrets-Kates-super-bling-new-kitchen.html>.

<sup>16</sup> <http://www.subzero-wolf.co.uk/westyeblog.aspx?BlogID=58> (last visited June 12, 2015).

<sup>17</sup> Internet Archive Wayback Machine, Nov. 21, 2008 search results for “<http://www.subzero.com/wolf/warranty.asp>”, <http://web.archive.org/web/20081121012838/http://www.subzero.com/wolf/warranty.asp> (last visited June 12, 2015).

Wolf factory certified service, unless otherwise specified by Wolf Appliance, Inc. Service will be provided during normal business hours.<sup>18</sup>

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

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

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

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

---

<sup>18</sup> Wolf Appliance Residential Limited Warranty, <http://www.subzero-wolf.com/resources/WolfWarranty.pdf> (last visited June 12, 2015).

33. Defendant was obligated to disclose the defect because defendant had exclusive knowledge of the material facts not known to plaintiffs and the Classes, since only defendant had exclusive access to the aggregate data from its retailers, its own tests, and complaints from its customers. Defendant, upon information and belief, actively concealed and suppressed the material facts from plaintiffs by failing to warn of the defect at the time of purchase and by performing warranty and/or repair work that it knew would not cure the defect. As online consumer complaints (detailed below) indicate, Wolf has represented to complaining customers that the instances of oven cavity chipping and cracking are rare and unusual occurrences, and that repeated instances of such damage are even more scarce.

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

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

36. Defendant has refused to recall the Ovens, to repair or replace materials that cause the defects, or adequately refund plaintiffs for the purchase of and resulting damages from their Ovens.

#### **Wolf's Knowledge of and Reckless Disregard for the Defects**

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

38. In addition, online references and complaints regarding the Ovens mirror plaintiffs’

experience, including the following sampling:

Source	Comments
<p>Chowhound Jan. 17, 2015 <a href="http://chowhound.chow.com/topics/891381">http://chowhound.chow.com/topics/891381</a> (last visited June 12, 2015)</p>	<p><i>I cleaned the oven and the blue enamel is completely off down to the substrate on the floor of the oven.</i> This has happened to most people who have had the wall oven on Gardenweb. Wolf wants me to pay to have liner (which they would supply) replaced with labor starting at \$800 with no limit to what they will charge and the part will only be guaranteed a year. Nope, not reinvesting in a known Wolf issue.</p>
<p>Houzz (GardenWeb) Dec. 15, 2014 <a href="http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens">http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens</a> (last visited June 12, 2015)</p>	<p>Argggggg!!!! New wolf E series ovens, purchased and installed July or so. Ran the self clean for the first time today, guess what? I’m upset. <i>I thought they had fixed the chipping issue in the new ovens?</i> The local wolf/sz rep is friends with my builder, so hopefully they’ll get it resolved soon. Meanwhile <i>I’m scared to use the oven</i>, so I guess we eat out???</p>
<p>Consumer Affairs Dec. 1, 2014 <a href="http://www.consumeraffairs.com/homeowners/wolf-cooking-appliances.html">http://www.consumeraffairs.com/homeowners/wolf-cooking-appliances.html</a> (last visited June 12, 2015)</p>	<p>This thanksgiving we turned on the self-cleaning mode after we roasted our thanksgiving meal. Upon inspection of the oven floor there was left a dull marring on the oven floor. Obviously <i>the integrity of the porcelain has been damaged by the high heat of the self cleaning mode as well as crazing of the blue porcelain oven floor</i> where the heating elements are underneath. In researching on the Internet, <i>we are now aware that Wolf has had multiple problems with their blue porcelain oven surfaces crazing, flaking, and peeling.</i> The problems are all over the Internet. Problems with both the ranges and wall oven units. I also believe that <i>the company knew of this problem previous to our purchase, and were still selling their product at the tune of 7,919.00 per range.</i> I have started a paper trail with a certified letter to the CEO of Sub Zero Wolf, and if no satisfaction is received I will start a Class Action lawsuit on behalf of all those that have been ripped off! Buyer BEWARE!</p>
<p>Houzz (GardenWeb) Aug. 5, 2014 <a href="http://ths.gardenweb.com/discussions/23018">http://ths.gardenweb.com/discussions/23018</a></p>	<p>I found it not nice <i>they tried to say 1) no one else had these repeated problems,</i> 2) the ovens weren’t made for the use, although not inappropriate, I gave them, and 3) that this problem is “just cosmetic.” <i>I got a bloody finger</i>, too, from a difficult to remove, crumbling glass shard. And <i>who wants to pay top dollar for an oven that looks like heck</i></p>

<p>81/wolf-dual-fuel-df366-enamel-failure-what (last visited June 12, 2015)</p>	<p><i>inside in a matter of months, and is harder to clean, even if there weren't glass flakes to gouge our fingers and possibly blow into our food?</i></p>
<p>Houzz (GardenWeb) Oct. 26, 2013  <a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>Right now the oven is extra storage until I figure out what to do. You <i>can't really use it because there are shards of glass coming off and add to that a convection fan blowing them around.</i></p>
<p>Houzz (GardenWeb) July 5, 2013  <a href="http://ths.gardenweb.com/discussions/2301881/wolf-dual-fuel-df366-enamel-failure-what">http://ths.gardenweb.com/discussions/2301881/wolf-dual-fuel-df366-enamel-failure-what</a> (last visited June 12, 2015)</p>	<p>I have the Wolf 36 inch DF range and the enamel on the floor of <i>the oven cavity has failed</i>. . . . This oven has only been lightly used as it is a second oven and never at high heat. After haggling back and forth, they will give me the part and \$325 towards labor which is estimated to start at \$800 and can be more. . . . My concern other than the eventual degradation of the floor of the oven is the <i>glass shards of enamel finding their way into food or being inhaled</i>.</p>
<p>Houzz (GardenWeb) Feb. 24, 2013  <a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>I have a Wolf E series with chipping porcelain. <i>But I don't think it is just the heat of self cleaning that causes it</i>. Otherwise the chipping would be at random places in the oven. <i>It maybe a poor design of the liner</i> and the chipping is at stress points (where the bottom meets the side walls) and that when it heats up the bottom expands and pops causing the crazing and chipping.</p>
<p>Blogger Jan. 10, 2013  <a href="http://rhome410.blogspot.com/2013/01/the-oven-saga-continues.html">http://rhome410.blogspot.com/2013/01/the-oven-saga-continues.html</a> (last visited June 12, 2015)</p>	<p>Sadly, at about 13 months in, I noticed porcelain issues across the bottom and in the corners of both oven cavities. . . .  But only 6 months later, <i>I was wiping crumbs out of oven #2 and got a shard of porcelain in my hand</i>. That oven, also, was developing issues with the porcelain at the front corners. I again sent photos and got a quick phone call from Wolf, apologizing that I'd had to deal with this twice, and <i>assured it was unusual for this to happen</i>. Again, there was a pretty quick oven switch. . . .</p>

	<p>In early November I noticed crazing in the porcelain at those infamous front corners, and by Thanksgiving, I could see <b><i>bare metal and had the loose shards of blue porcelain again.</i></b></p> <p>This time Wolf is throwing in the towel. . . If the porcelain was letting go in the corners in the first half year, I have no idea what it will look like a couple years in, or 10 years from now, and wasn't willing to keep it under those circumstances. In addition, <b><i>I didn't consider it just a cosmetic issue, but also a cleaning and safety issue,</i></b> so decided they can have it back.</p>
<p>Houzz (GardenWeb) Nov. 30, 2012 <a href="http://ths.gardenweb.com/discussions/2270633/oven-porcelain-lining-flaking-chippingonly-with-blue">http://ths.gardenweb.com/discussions/2270633/oven-porcelain-lining-flaking-chippingonly-with-blue</a> (last visited June 12, 2015)</p>	<p>Enter my first Wolf, which had porcelain issues about 10 months in. They promptly replaced it with oven 2, which developed the same problem. The rep was so nice, apologetic, and aghast that I'd had this happen twice. Again, they sent and arranged the replacement right away. . . Well, as I told them now, <b><i>the 3rd time has not been the charm, because here I am with the porcelain splintering at the front corners</i></b> (inside, near the door on each side) again . . . just where it started with the other two.</p>
<p>Houzz (GardenWeb) Aug. 31, 2012 <a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>I am on my second set of Wolf Wall ovens . . . <b><i>we now have the same "scraping" (crazing, chipping) in the enamel on the floor of the replacement ovens.</i></b> The trouble areas are in exactly the same spots on both upper and lower ovens (aligning, I assume, with some portion of the heating elements). . . . I am going to call Wolf but am not optimistic of any real assistance. <b><i>I am just stunned at quality (of lack thereof) of these ovens.</i></b> . . . don't run the self-clean cycle EVER.</p>
<p>Houzz (GardenWeb) Apr. 2-3, 2012 <a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>I have 2 wolf ovens, and the one that gets very little use has cracked after I self-cleaned it last night.</p> <p style="text-align: center;">*****</p> <p>. . . crazy update. Today a guy told me it is just "Cosmetic" and not to worry about it. Let them know if the oven is 'off' a little, but it should be fine. IT'S NOT FINE!! . . . <b><i>I don't think you should pay 4 grand for an oven that can't stand its own heat</i></b></p>
<p>Houzz (GardenWeb)</p>	<p>Model DF486C - 6 Burners, Charbroiler \$12,885*</p>

<p>Jan. 25, 2012</p> <p><a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>Hardly used 6 months old , <b><i>I ran the self clean cycle and noticed scraped cracks in the far back corner</i></b> of the smaller oven ,</p> <p>Called wold [sic] and ran the larger oven and it splintered</p> <p>Wolf replaced . . . It's now 3-2012 and I have the same cracks in the back of the small oven Without running the cleaning cycle</p> <p>I am in talks with wolf now, <b><i>I can't believe 12'000 gets you dual lemons not dual ovens</i></b></p>
<p>Houzz (GardenWeb)</p> <p>Jan. 22, 2012</p> <p><a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>[M]y latest problem is the finish on the floor of the upper oven which has several cracks and chips. At the advise [sic] of my dealer I paid them to come out and take photos. They agreed that it was a defect in the finish so they sent Wolf the photos and their report. A few days later I was called by my dealer who told me that . . . the enamel finish is <b><i>considered an appearance item and therefore not covered by warranty</i></b> (which I think is total crap).</p>
<p>Houzz (GardenWeb)</p> <p>Mar. 4, 2008</p> <p><a href="http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven">http://ths.gardenweb.com/discussions/2267417/breaks-in-enamel-finish-of-relatively-new-wolf-oven</a> (last visited June 12, 2015)</p>	<p>We noticed recently that on the floor of the upper oven, <b><i>that beautiful bright blue enamel had what for the world looked like scrape marks</i></b> (except that NO ONE has scraped it with anything at all, much less something seriously metallic which is what it would take to dig into the enamel) toward the left rear. Sort of a small clump of lines where the enamel is clearly broken. Just ran the self-clean on that oven last night, and found a new area, looking identical, of “scrapes” at the front center. The <b><i>enamel actually came off in bits when we wiped down the oven</i></b> with a damp paper towel post-cleaning.</p> <p style="text-align: center;">*****</p> <p>We have the same problem with our Wolf DO. <b><i>I often wipe out “splinters” of blue paint out of the base of each oven. . .</i></b></p> <p>I like the looks, but <b><i>I'm not convinced anyone should pay the premium for Wolf wall ovens.</i></b></p> <p style="text-align: center;">*****</p> <p>So ... on closer inspection, it appears that the exact same problem exists (or will just as soon as the crazing that is showing now blossoms into full-fledged breakthrough of the enamel) on the bottom oven as well. Curiously (and I suspect significantly), the two areas of concern are in EXACTLY (meaning, we measured with a tape measure) the same place in both ovens. . . .</p>

	Wolf has agreed to replace the entire unit . . . it will cost us out of pocket anywhere from \$300-\$700 for delivery and installation of the new unit.
--	---

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



See <http://ths.gardenweb.com/discussions/2324401/wolf-48-dual-fuel-or-all-gas> (last visited June 12, 2015).

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



See <http://rhome410.blogspot.com/2013/11/still-sad-about-wolf-breaking-up-with-me.html> (last visited June 12, 2015).

The November 2013 blog post explained that “the porcelain coating kept coming loose, crazing, then splintering, and chipping, in the front corners of the interior” of her Wolf E Series oven. *Id.* She also echoed what many other customers have experienced in their discussions with Wolf about the issue – that Wolf places the blame on its customers by claiming that their unique use of the Ovens creates an “unusual situation” that causes the defect. *Id.* In this instance, Wolf “decided” the customer “baked more often and at higher heats (for pizzas) than ‘the norm’ who the oven was designed for (even though they agreed and assured me I was doing nothing wrong).” *Id.* She explained on another forum that *Wolf “promises that this ‘never’ happens, and ‘certainly not to one person twice.’”*<sup>19</sup> After communicating her experience to others, the poster realized that the problem was widespread and not unique to her “unusual situation,” as “many Wolf oven owners who baked less often and at more ‘normal’ temperatures contacted [her] to say they had the same, exact problem.”<sup>20</sup>

---

<sup>19</sup> See <http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens> (last visited June 12, 2015).

<sup>20</sup> See <http://rhome410.blogspot.com/2013/11/still-sad-about-wolf-breaking-up-with-me.html> (last visited June 12, 2015).

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



See <http://ths.gardenweb.com/discussions/2813591/wolf-porcelain-chipping-on-new-ovens> (last visited June 12, 2015).

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

42. Defendant failed to adequately design and/or manufacture the Ovens to ensure that they were and are free from a defect that causes chipping, cracking, crazing and/or flaking of the oven interiors. At the time defendant began selling the Ovens in the United States, defendant knew, or was reckless in not knowing, that they: (a) contained a defect to the Ovens’ design, parts,

materials and workmanship; and (b) were not of merchantable quality or fit for their ordinary purpose.

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

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

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

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

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

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

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

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

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

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

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

#### **Plaintiffs' Experience with Wolf Ovens**

45. Plaintiffs first purchased a Wolf 36-inch dual fuel range, model number WDF366-3, from A.H.C Appliance in Cedarhurst, New York in or about October 2006 for approximately \$6,900. Based on Wolf's advertising and/or marketing of the Ovens, Plaintiffs were well aware of the blue porcelain oven interior. The oven interior was, at a minimum, one of the bases for Plaintiffs' purchase.

46. After using the self-clean function on their oven, plaintiffs observed that the blue internal porcelain cavity was chipped.

47. Plaintiffs complained to Wolf. Wolf sent a serviceman to plaintiffs' home. The serviceman acknowledged the problem and replaced the blue internal porcelain cavity. The replacement cavity chipped as well.

48. In or around May 2007, Wolf replaced the oven. Plaintiffs then experienced the same problems with the oven cavity in the replacement oven.

49. Wolf replaced the oven for a second time in September 2009. In conjunction with the September 2009 replacement, plaintiffs opted to upgrade to the Wolf 48-inch dual fuel range. The upgraded model also had the blue internal porcelain cavity. It too began to chip through regular use of the oven.

50. In March 2012, Wolf agreed to replace the September 2009 oven with another 48-inch dual fuel range. The blue internal porcelain cavity in the March 2012 oven, same as the ovens before it, began to chip through regular use.

51. In October 2013, Wolf replaced the March 2012 oven with a similar 48-inch range. The blue internal porcelain cavity in the October 2013 oven began to chip through regular use.

52. In March 2014, Wolf replaced plaintiffs' October 2013 oven with an identical 48-inch dual fuel range, model number WDF486C.

53. The March 2014 oven came with Wolf's "best warranty service in the cooking business," and was backed by Wolf's claims that its Ovens are comprised of "only premium-quality materials that are proven to stand the test of time," assurance that its Ovens are "rigorously tested to ensure dependability," and representation that its Ovens are "[b]uilt with superior-quality materials" and deliver "signature aesthetics."

54. On or about March 9, 2015, plaintiff Melanie Kail contacted Wolf about an error message that appeared on the oven after operating the self-clean function. She further relayed to Wolf that the blue internal porcelain cavity in the March 2014 replacement oven, precisely like the previous ovens, was chipping. The inquiry was referred to Pinnacle Appliance Care, a factory-certified Wolf servicer, and the technician "took pictures of [the] cavity damage," "spoke to [the] factory" and informed plaintiffs that Wolf "will not replace [the] cavity."

55. Plaintiffs endured numerous replacement ovens and service calls. Each oven had the same defect to the blue internal porcelain cavity. While Wolf initially took ownership and responsibility for the defect, it ultimately refused to fix or replace plaintiffs' March 2014 oven. Plaintiffs now own a defective 48-inch dual fuel range, model number WDF486C.

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

57. The Wolf Ovens were and/or are worth less than what plaintiffs and Class members paid for them. In fact, plaintiffs and Class members paid more for defendant's Ovens than they otherwise would have had they not been misled by the deceptive conduct complained of herein. As such, plaintiffs and Class members lost money as a result of defendants' actions in that they did not receive what they paid for.

58. As a result of defendant's conduct and concealment of material information about its Ovens, as well as defendant's other acts and omissions described in this Complaint, defendant has caused plaintiffs and Class members to suffer injury as a result of the defect in the Ovens, including, but not limited to: (1) overpayment for a defective product, (2) a decrease in value of the Ovens due to the defect, (3) payment for a product that is effectively inoperable, and (4) out-of-pocket money spent for attempted repairs of the defect, and other purported remedies.

## CLASS ACTION ALLEGATIONS

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

### **The Nationwide Class**

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

### **The New York Subclass**

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

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

61. Numerosity: The Classes are so numerous that joinder of all individual members is impracticable. While the exact number and identities of members of the Classes are unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, upon information and belief, plaintiffs allege that the Classes are comprised of thousands of individual members geographically disbursed throughout the United States. The number of Class members and their geographical disbursement renders joinder of all individual members impracticable if not impossible.

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

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

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

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

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

(e) whether the actions and activities of defendant violated consumer fraud provisions of New York General Business Law §§349 and 350;

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

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

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

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

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

63. Typicality: Plaintiffs' claims are typical of the members of the Classes they seek to represent. Plaintiffs and all other members of the Classes sustained damages arising out of defendant's common course of conduct as complained herein. The losses of each member of the Classes were caused directly by defendant's wrongful conduct alleged herein. The amount of money

at issue is such that proceeding by way of class action is the only economical and sensible manner in which to vindicate the injuries sustained by plaintiffs and the members of the Classes.

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

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

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

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

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

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

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

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

## COUNT I

### **Breach of Express Warranty**

69. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

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

71. Defendant knew, or should have known, that the Ovens were defective, as detailed in ¶¶37-42 and ¶¶45-53, and nevertheless marketed and sold the Wolf Ovens with an express warranty.

72. Defendant warranted that the Ovens would safely cook food, self-clean and maintain their "signature aesthetics."

73. Plaintiffs relied on the warranties at the time of, and after, their purchase of a Wolf oven.

74. Plaintiffs would not have purchased a Wolf oven had defendant not offered the express warranty.

75. Plaintiffs understood that the warranties made by Wolf were part of the basis of the bargain.

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

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

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

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

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

81. As a proximate result of defendant's breach of its express warranty, plaintiffs and Class members have sustained damages and other losses in an amount to be determined at trial.

Plaintiffs and Class members are entitled to recover damages, costs, attorneys' fees, rescission, and other relief as provided by statute or deemed appropriate by the Court.

## COUNT II

### **Breach of Implied Warranty of Merchantability**

82. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

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

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

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

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

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

88. Plaintiffs cannot use the self-clean function without causing further damage to their Wolf oven.

89. Plaintiffs were the intended third-party beneficiaries of the implied warranty made by defendant. Defendant knew that the retailers to whom it sold the Ovens were not going to own the Ovens any longer than it took to sell them to plaintiffs. Further, defendant intended that any

warranties, whether express or implied, that applied to the Ovens were for the benefit of plaintiffs and Class members.

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

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

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

### **COUNT III**

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

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

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

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

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

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

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

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

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

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

#### **COUNT IV**

##### **Negligent Misrepresentation**

102. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

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

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

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

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

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

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

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

## **COUNT V**

### **Violations of §349 of New York General Business Law**

110. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

111. GBL §349 makes unlawful any “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York.

112. Defendant has engaged in deceptive acts and practices through misrepresentations and omissions of material facts directed at plaintiffs and Class members, as more fully described above, in connection with the sale of Ovens that have an inherent defect that cause the oven interiors to chip, crack, craze and/or flake.

113. Wolf also has denied and continues to deny valid warranty claims and otherwise fails to adequately compensate plaintiffs and Class members for the effects of their deceptive behavior.

114. Defendant's misrepresentations and omissions are likely to mislead and did materially mislead plaintiffs and other reasonable consumers by causing them to purchase the Ovens at a price they would not have otherwise paid and to incur additional damages and expenses that they would not have incurred but for defendant's deceptive acts and practices.

115. Defendant made numerous misrepresentations and omitted material facts upon which plaintiffs and Class members relied to their detriment.

116. The unfair and deceptive trade practices have directly, foreseeably, and proximately caused damages and injury to plaintiffs and Class members as described above.

117. By virtue of the foregoing, defendant has violated GBL §349.

## **COUNT VI**

### **Violations of §350 of New York General Business Law: False Advertising**

118. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

119. GBL §350 provides: "False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."

120. Defendant's advertising of the Ovens, as alleged in more detail herein, is and was false within the meaning of GBL §350-a(1).

121. Plaintiffs and Class members were materially misled by defendant's advertising.

122. As a direct and proximate result of defendant's false advertising, plaintiffs and Class members lost money in that they would not have purchased the Ovens or would have paid less for them.

## **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs on behalf of themselves and all others similarly situated, pray for judgment and relief against defendant as follows:

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

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

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

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

E. Disgorgement and restitution;

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

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

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: June 16, 2015

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

*/s/ Mark S. Reich*

---

MARK S. REICH

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

*Attorneys for Plaintiffs*