

RECEIVED DEC 21 2016

Court File No.: 2762-16 CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN

KARSTEN HENRIKSEN

Plaintiff

and

SAMSUNG ELECTRONICS AMERICA, INC., and  
SAMSUNG ELECTRONICS CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

AMENDED THIS 29th DAY OF NOV 16  
PURSUANT TO RULE 26.03(1a)  
K. Henriksen  
LOCAL REGISTRAR  
SUPERIOR COURT OF JUSTICE  
MODIFIÉ CE 29 NOV 2016  
CONFORMÉMENT À L'ARTICLE 26.03(1a)  
GREFFIER LOCAL  
COUR SUPÉRIEURE DE JUSTICE

Date November <sup>18</sup>~~29~~, 2016

Issued by "L Webdale"  
Local registrar

Address of court office London Court House  
80 Dundas Street  
London ON N6A 6K1

**TO: SAMSUNG ELECTRONICS AMERICA, INC.  
85 Challenger Road  
Ridgefield Park, NJ 07660**

**AND TO: SAMSUNG ELECTRONICS CANADA INC.  
2050 Derry Road West  
Mississauga ON L5N 0B9**

## CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the proposed national class pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
  - (b) a declaration that the Defendants' actions, as hereinafter described, were false, misleading, and deceptive contrary to Part III of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
  - (c) a declaration that it is in the interests of justice to disregard the requirement to give notice pursuant to section 18(5) and section 101 of the *Consumer Protection Act, 2002* and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
  - (d) damages pursuant to section 18(2) of the *Consumer Protection Act, 2002* in an amount to be determined and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
  - (e) a declaration that the Defendants' actions, as hereinafter described, were false and misleading contrary to section 52 of the *Competition Act*, R.S.C. 1985, c. C-34;
  - (f) pecuniary and special damages in the amount of \$180,000,000 or as aggregated following a trial on the common issues;

- (g) non-pecuniary damages in an amount to be assessed for each class member;
- (h) exemplary, punitive, and aggravated damages in the amount of \$50,000,000;
- (i) in the alternative to the claim for damages, an accounting or other such restitutionary remedy disgorging the revenues realized by the Defendants from the sale of the Affected Machines, as hereinafter defined;
- (j) a declaration that any funds received by the Defendants through the sale of the Affected Machines, as hereinafter defined, are held in trust for the benefit of the Plaintiff and Class Members;
- (k) a reference to decide any issues not decided at the trial of the common issues;
- (l) costs of administration and notice, plus applicable taxes, pursuant to section 26(9) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (m) costs of this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (n) prejudgment interest and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
- (o) such further and other relief as to this Honourable Court seems just.

## **THE PARTIES**

### **Plaintiff and the Plaintiff's Experiences**

2. The Plaintiff, Karsten Henriksen, is a resident of Trail, British Columbia.
3. The Plaintiff owns a Kenmore branded top load washing machine model number 592-29212 manufactured by Samsung. The Plaintiff's washing machine was purchased on or about November 2, 2014 from Sears in Grande Prairie, Alberta. The Plaintiff's washing machine is the subject of a Canada-wide recall issued October 4, 2016, described in further detail below, due to safety risks.
4. After hearing about the recall, the Plaintiff received correspondence from Samsung which included instructions regarding how to contact Samsung to obtain options for repairing and/or replacing the washing machine. The Plaintiff has followed the instructions provided by Samsung and received both a repair option and a monetary reimbursement option to be used to purchase a new Samsung/Kenmore appliance at Sears.
5. The Plaintiff is entirely dissatisfied with the level of customer service he received from Samsung as well as the reimbursement offer he received. Simply, the compensation is wholly inadequate to cover the damages suffered by the Plaintiff. The Defendants' proposed compensation plan is negligible in comparison to the true damages suffered by the Plaintiff and Class Members.
6. Any release signed by the Plaintiff and Class Members in favour of the Defendants in exchange for compensation from the Defendants is invalid. The Plaintiff and Class Members should have the option to participate in the within action.

7. Further, the Defendants are materially misleading consumers who visit the Samsung website specifically designed to provide information to consumers regarding options for repairing or replacing the recalled units. On this website and the subsequent correspondence sent to consumers, the rebate amount offered to consumers automatically includes a “loyalty incentive” without an explanation to the consumer that if the consumer decides to purchase a new machine not manufactured by Samsung, the rebate is substantially less. In fact, the Plaintiff was only provided with a monetary compensation offer to be used towards the purchase of a new Samsung/Kenmore appliance specifically purchased at Sears.

### The Class

8. The Plaintiff seeks to represent the following class (the “Class”) of which the Plaintiff is a Class Member:

All persons, corporations, and other entities resident in Canada who purchased a top load washing machine manufactured, marketed, and/or sold by one or more of the Defendants under the Samsung and/or Kenmore brands with the following Model Numbers:

- Manufactured between March 2011 and April 2016, Model Numbers/UPC:

WA5471ABP/XAA	36725569249
WA5451ANW/XAA	36725560222
WA5451ANP/XAA	770332863207
WA422PRHDWR/AA	36725590397
WA456DRHDWR/AA WA456DRHDSU/AA	36725590502
WA456DRHDWR/AA	36725590458
WA50F9A8DSP/A2	887276018140
WA45H7200AP/A2	887276857947

WA45H7200AW/A2	887276857954
WA45H7000AW/A2	887276857930
WA48J7770AW/A2	887276095875
WA52J8700AP/A2	887276095882
<u>WA56H9000AP/A2</u>	<u>887276963501</u>

- Manufactured between March 2011 and ~~June~~ October 2016, Model Number/UPC:

WA50K8600AV/A2	887276145969
WA45K7600AW/A2	887276126913
<u>WA40J3000AW/A2</u>	<u>887276086989</u>

- Manufactured between March 2011 and April 2016 and sold under the Kenmore brand, Model Numbers/UPC:

592-29212	887276012070
592-29222	887276012063
592-29227	887276012131
592-29336	887276970455

9. The machines sold bearing these Model Numbers/UPC are hereinafter described as the "Affected Machines". There were approximately 256,000 of the Affected Machines sold in Canada.

### **Defendants**

10. The Defendant, Samsung Electronics America, Inc., is a New York corporation with its principal place of business located in Ridgefield Park, New Jersey. Samsung Electronics America, Inc. is a wholly-owned subsidiary of Samsung Electronics Co., Ltd., which is a Korean company headquartered in Suwon, South Korea.
11. The Defendant, Samsung Electronics Canada Inc., is a Canadian corporation with its principal place of business located in Mississauga, Ontario. Samsung Electronics Canada

Inc. is a wholly-owned subsidiary of Samsung Electronics Co., Ltd., which is a Korean company headquartered in Suwon, South Korea.

12. The Defendants, Samsung Electronics America, Inc. and Samsung Electronics Canada Inc. are herein collectively referred to as the “Defendants” or “Samsung”. The Defendants manufacture, market, and sell goods under various brand names, including Kenmore.

### **THE TOP LOAD WASHING MACHINES**

13. Beginning in or about September 2016, reports began to surface indicating that Samsung’s top load washing machines were breaking apart and/or exploding while in use. Specifically, the reports indicated that the drums inside the top load washing machines were losing balance and excessively and violently vibrating. Once the top load washing machines were off balance, many burst apart, separating the inside drum and/or the top from the machine and blowing the machine apart. In the process, the vibration and/or explosion of the top load washing machines has the potential to cause significant damage to personal property and has the potential to cause serious injuries. In fact, serious damage to personal property and serious injuries have been reported in the United States and Canada.
14. On September 28, 2016, Samsung posted a press release on its website recognizing the potential safety issues related to the top load washing machines which were manufactured between March 2011 and April 2016. At that time, Samsung did not provide specific model numbers with respect to which top load washing machines posed a danger.



15. On October 4, 2016, Health Canada issued a recall specifically identifying the Affected Machines noting that the Affected Machines posed a risk of personal injury and damage to property.
16. On November 4, 2016, Health Canada updated and expanded the recall to cover 256,000 Affected Machines in Canada.
17. On November 4, 2016, Samsung voluntarily recalled the Affected Machines stating that the machines were at risk of losing balance, excessively vibrating, and resulting in the top separating from the washer. Samsung indicated that these issues present a risk of injury.
18. On November 4, 2016, the US Consumer Product Safety Commission issued a recall of the Affected Machines again noting the risk of injury.
19. Given the internal and external warnings initiated by the Defendants, Health Canada, and the US Consumer Product Safety Commission, it is clear that the Affected Machines pose a safety risk. Further, it is clear that the Defendants were aware of the safety risks for several weeks prior to issuing any formal recall and/or notifying the public.

## **CAUSES OF ACTION**

### *(a) Breach of the Consumer Protection Act, 2002 and the Competition Act*

20. The Defendants' actions are false, misleading or deceptive representations under section 14 of the *Consumer Protection Act, 2002* and an unfair practice under section 17 of the *Consumer Protection Act, 2002*. In particular, without limiting the scope of the Defendants' representations contrary to sections 14 and 17 of the *Consumer Protection Act, 2002* and the parallel provisions of other provincial legislation as described in

Appendix 1 hereto and section 52 of the *Competition Act*, the Defendants falsely, misleadingly or deceptively made:

- (a) Representations that the Affected Machines had characteristics, benefits or qualities which the product did not have;
- (b) Representations that the Affected Machines were of a particular standard and quality which the products were not; and
- (c) Representations using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact where such use or failure tended to deceive the Plaintiff and class members.

21. The Defendants expressly warranted to the Plaintiff and the Class Members that the Affected Machines were of high quality and safe. The Defendants misrepresented these qualities by providing a product that was subject to a known and dangerous defect and known to fail prematurely. The Defendants knowingly sold a defective product without informing consumers about the defect.
22. The Plaintiff pleads and relies on the provisions of the *Consumer Protection Act, 2002* and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto.
23. The Plaintiff pleads and relies on the provisions of the *Competition Act*.

*(b) Breach of the Sale of Goods Act*

24. The Defendants' marketing and sale of the Affected Machines included an implied condition as to the quality and fitness of the products. Given the known defect of the

Affected Machines and the ongoing complications regarding the recalls, as described in detail above, it is clear that the Affected Machines were not of merchantable quality or fit for use.

25. The Plaintiff repeats and relies upon the allegations made in the preceding paragraphs.
26. The Plaintiff pleads and relies on the provisions of the *Sale of Goods Act*, R.S.O. 1990, c. S.1 and the parallel provisions of the *Sale of Goods Act* in other Canadian provinces as described in Appendix 2 hereto.

*(c) Negligence*

27. The Defendants were negligent as they know or ought to have known that their unlawful acts committed by way of the manufacture, marketing, and sale of the Affected Machines would result in harm to the Plaintiff and Class Members.
28. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to:
  - (a) ensure that the Affected Machines were fit for their intended and/or reasonably foreseeable use;
  - (b) conduct appropriate testing to determine whether and to what extent use of the Affected Machines posed serious safety risks;
  - (c) properly, adequately, and fairly warn of the magnitude of serious safety risks;
  - (d) ensure that consumers and the public were kept fully and completely informed of all safety risks associated with the Affected Machines in a timely manner;

- (e) monitor, investigate, evaluate, and follow up on reports of problems with the Affected Machines; and
  - (f) properly inform Health Canada and other regulatory agencies of all risks associated with the Affected Machines.
29. The Defendants negligently breached their duty of care.
30. The Plaintiff states that his damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:
- (a) the Defendants failed to ensure that the Affected Machines were safe;
  - (b) the Defendants failed to ensure that the Affected Machines were fit for their intended purpose and of merchantable quality;
  - (c) the Defendants failed to adequately test the Affected Machines in a manner that would fully disclose the magnitude of the risks associated with the use of the Affected Machines;
  - (d) the Defendants failed to provide the Plaintiff and Class Members with proper, adequate, and/or fair and timely warning of the risks associated with use of the Affected Machines;
  - (e) the Defendants failed to design and establish a safe, effective, and timely procedure for the repair and/or replacement of the Affected Machines;
  - (f) the Defendants failed to adequately monitor, evaluate, and act upon reports of problems with the Affected Machines;

- (g) the Defendants failed to provide any or any adequate updates and/or current information to the Plaintiff and Class Members in a timely fashion respecting the risks of the Affected Machines as such information became available;
- (h) the Defendants have consistently underreported and withheld information about the propensity of the Affected Machines to cause injuries;
- (i) after noticing problems with the Affected Machines, the Defendants failed to issue adequate warnings, failed to issue a timely recall, failed to publicize the problems, and failed to otherwise act properly in a timely manner to alert the public of the inherent dangers of the Affected Machines;
- (j) the Defendants represented that the Affected Machines were safe and fit for their intended purpose and of merchantable quality when the Defendants knew or ought to have known that these representations were false;
- (k) the misrepresentations were unreasonable given the risks that were known or ought to have been known by the Defendants;
- (l) the Defendants failed to timely cease the manufacturing, marketing, and/or distribution of the Affected Machines when they knew or ought to have known that the Affected Machines caused injuries; and
- (m) in all of the circumstances of this case, the Defendants applied callous and reckless disregard for the health and safety of the Plaintiff and Class Members.

31. As a result of the Defendants breaching their duty of care owed to the Plaintiff and Class Members, the Plaintiff and the Class Members suffered damages.

32. The Plaintiff pleads and relies on the provisions of the *Negligence Act*, R.S.O. 1990, c. N-1 and the parallel provisions of other provincial legislation as described in Appendix 3 hereto.

*(d) Unjust Enrichment*

33. Through the Defendants' manufacture, marketing, and sale of the Affected Machines, the Defendants were unjustly enriched by profits received and retained from the Plaintiff and Class Members. The Plaintiff and Class Members were correspondingly deprived by paying for a product that was defective, unfit for use, not of merchantable quality, and dangerous. There is no established juristic reason for the enrichment of the Defendants.
34. Revenue generated from the manufacture, marketing, and sale of the Affected Machines was revenue received and retained by the Defendants at the expense of the Plaintiff and Class Members. The Defendants must be required to disgorge all of the revenues received thereby.

**DAMAGES**

35. The Plaintiff's and Class Members' damages were caused by the actions of the Defendants. As a result of the misrepresentations, deceit, unfair business practices, and negligence of the Defendants, the Plaintiff and Class Members have suffered and will continue to suffer damages.
36. Rescission of the agreement between the Plaintiff/Class Members and the Defendants pursuant to section 18(1) of the *Consumer Protection Act, 2002* and the parallel provisions of other provincial legislation as described in Appendix 1 hereto is not possible in the circumstances. The Plaintiff and Class Members are therefore entitled to

recover damages pursuant to section 18(2) of the *Consumer Protection Act, 2002* and the parallel provisions of other provincial legislation as described in Appendix 1 hereto.

37. The Plaintiff claims pecuniary and special damages for costs, time, and expenses incurred in the process of repair and/or replacement of Affected Machines and/or personal property. As a result of the Defendants' conduct, the Plaintiff and Class Members have suffered and continue to suffer expenses and special damages of a nature and amount to be particularized prior to trial.
38. The Plaintiff claims non-pecuniary and general damages for non-monetary losses incurred as a result of the Defendants' conduct. Such non-pecuniary and general damages include, but are not limited to, damage to personal property and pain and suffering.
39. The Plaintiff claims punitive, aggravated, and exemplary damages for the reckless and unlawful conduct of the Defendants. The Defendants' acts, wrongdoings, and breaches of duties constitute unlawful business practices, the effects of which were and are borne by the Plaintiff and Class Members.

#### **WAIVER OF TORT**

40. In the alternative to damages, in all of the circumstances, the Plaintiff pleads an entitlement to "waive the tort" and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the Defendants as a result of the manufacture, marketing, and sale of the Affected Machines.
41. As a direct, proximate, and foreseeable result of the Defendants' acts and otherwise wrongful conduct, the Plaintiff and Class Members were economically harmed by the

Defendants' actions. The Defendants profited and benefited economically from the manufacture, marketing, and sale of the Affected Machines and the Plaintiff and Class Members suffered corresponding harm. As a result, the Defendants were unjustly enriched by the revenues they received.

42. The Defendants voluntarily retained these revenues and benefits with full knowledge and awareness that, as a result of their wrongdoing, the Plaintiff and Class Members were harmed.
43. It would be unreasonable for the Defendants to retain the profits or money received from the manufacture, marketing, and sale of the Affected Machines because the Plaintiff and Class Members were deceived.
44. The Plaintiff pleads waiver of tort and requests that an accounting be made of all revenues generated by the Defendants and that all revenues thereof be disgorged and distributed to the Class Members on an aggregate basis regardless of reliance or harm suffered.

#### **SERVICE OUTSIDE OF ONTARIO**

45. The Plaintiff pleads and relies on section 17.02(g), (h), and (p) of the *Rules of Civil Procedure*, allowing for service *ex juris* of the foreign Defendant. Specifically, this originating process may be served without Court Order outside Ontario in that the claim is:
  - (a) in respect of a tort committed in Ontario (Rule 17.02(g));



- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (Rule 17.02(h)); and
- (c) against a person carrying on business in Ontario (Rule 17.02(p)).

**PLACE OF TRIAL**

46. The Plaintiff proposes that this action be tried in the City of London.

November <sup>18</sup>~~29~~, 2016

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**Lawyers for the Plaintiff**

**APPENDIX 1**

Alberta - *Fair Trading Act*, R.S.A. 1000. C. F-2

British Columbia - *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2

Manitoba – *The Business Practices Act*, C.C.S.M. c. B120, c. 2 and *The Consumer Protection Act*. C.C.S.M. c. C200

New Brunswick – *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1

Newfoundland and Labrador - *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1

Northwest Territories – *Consumer Protection Act*, R.S.N.W.T. 1988, c. C-17

Nova Scotia – *Consumer Protect Act*, R.S.N.S., c. 92

Nunavut – *Consumer Protection Act*, R.S.N.W.T. (Nu) 1988, c. C-17

Prince Edward Island - *Business Practices Act*, R.S.P.E.I. 1988, c. B-7

Quebec – *Consumer Protection Act*, CQLR c. P-40.1

Saskatchewan – *The Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2

Yukon – *Consumers Protection Act*, R.S.Y. 2002, c. 40

**APPENDIX 2**

- Alberta – *Sale of Goods Act*, R.S.A. 2000, c. S-2
- British Columbia – *Sale of Goods Act*, R.S.B.C. 1996, c. 410
- Manitoba – *The Sale of Goods Act*, C.C.S.M. c. S10
- New Brunswick – *Sale of Goods Act*, R.S.N.B. 1973, c. S-1
- Newfoundland and Labrador – *Sale of Goods Act*, R.S.N.L. 1990, c. S-6
- Northwest Territories – *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2
- Nova Scotia – *Sale of Goods Act*, R.S.N.S. 1989, c. 408
- Nunavut – *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2
- Prince Edward Island – *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1
- Quebec – *Civil Code of Quebec*, CQLR c. CCQ-1991
- Saskatchewan – *Sale of Goods Act*, R.S.S. 1978, c. S-1
- Yukon – *Sale of Goods Act*, R.S.Y. 2002, c. 198

**APPENDIX 3**

British Columbia – *Negligence Act*, R.S.B.C. 1996, c. 333

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