

1 Gordon M. Fauth, Jr. (SBN: 190280)
2 gfauth@finkelsteinthompson.com
3 Of Counsel

4 Rosanne L. Mah (SBN: 242628)
5 rmah@finkelsteinthompson.com
6 Of Counsel

7 **FINKELSTEIN THOMPSON LLP**

8 100 Pine Street, Suite 1250
9 San Francisco, California 94111

10 Direct: (510) 238-9610
11 Telephone: (415) 398-8700
12 Facsimile: (415) 398-8704

13 [additional counsel listed on signature page]

14 *Attorneys for Individual and Representative*
15 *Plaintiff John Craig Miller*

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **JOHN CRAIG MILLER**, an Individual, on
19 behalf of himself and all others similarly situated,

20 Plaintiff,

21 vs.

22 **GENERAL ELECTRIC COMPANY**, a New
23 York Corporation with its Principal Place of
24 Business in Boston, Massachusetts; and
25 **HAIER US APPLIANCE SOLUTIONS, INC.**,
26 d/b/a GE APPLIANCES, a Delaware Corporation.

27 Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF**

JURY TRIAL DEMANDED

28 Plaintiff John Craig Miller (“Plaintiff” or “Mr. Miller”), individually and on behalf of all others similarly situated, by and through his undersigned counsel, for his Complaint, brings this class action for damages and equitable relief against Defendants General Electric Company, Haier US Appliance Solutions, Inc., d/b/a GE Appliances (“Defendants” or “GE”). Plaintiff alleges the following upon information and belief based on the investigation of counsel, except

1 as to those allegations that specifically pertain to Plaintiff, which are alleged upon personal
2 knowledge:

3 **INTRODUCTION**

4 1. Plaintiff brings this case on behalf of himself and other consumers who purchased
5 a defectively-designed GE oven, with an advertised self-cleaning feature that does not work.

6 2. GE designs, manufactures, advertises, and sells a line of gas and electric stoves,
7 ranges, and ovens, including the GE® 27”/30” Built-In Single/Double Convection Wall Oven
8 (“Oven” or “Defective Oven”). GE advertises that the Oven features a self-clean-with-steam-
9 clean option, and self-clean heavy-duty oven racks option, a system that Defendants purports
10 will, inter alia, “clean your oven the way you want” and “conveniently clean your oven and racks
11 together.”¹ GE represents that the Oven’s self-cleaning function uses “very high temperatures to
12 clean the oven interior” and touts the Oven’s capability to clean heavy soiling with the “self-
13 clean cycle.” In fact, the Oven is incapable of performing as advertised; the self-cleaning feature
14 does not work and presents overheating and safety risks.

15 3. On or around June 28, 2016, Plaintiff purchased GE’s Oven, equipped with the
16 self-cleaning feature. When Plaintiff attempted to use the Oven’s self-clean feature, electrical
17 components in the Oven failed and the Oven became unusable. Plaintiff attempted to have the
18 Oven repaired, but as acknowledged by GE repair agents, the Oven’s self-cleaning function is
19 not repairable.

20 4. GE’s marketing and advertising for the Oven is false, deceptive, and misleading
21 to reasonable consumers because the self-cleaning function – a key product feature – does not
22 perform as advertised or in accordance with GE’s express and implied warranties. In many cases,
23 the Oven’s self-cleaning function results in overheating and an inoperable Oven. Hundreds, if
24 not thousands, of consumers nationwide, including Plaintiff, have complained, to no avail.²

25 5. Plaintiff and other consumers did not receive any of the purported “self-cleaning”
26 benefits of the Oven. Instead, Plaintiff and consumers were forced to endure futile and

27 ¹ <http://products.geappliances.com/appliance/gea-specs/JK5000DFBB> (last visited Nov. 10, 2017).

28 ² https://www.consumeraffairs.com/homeowners/ge_wall_oven.html (last visited Nov. 10, 2017);
https://www.consumeraffairs.com/homeowners/ge_ranges.htm?page=4 (last visited Nov. 10, 2017);
https://www.consumeraffairs.com/homeowners/ge_ranges.htm?page=7 (last visited Nov. 10, 2017);
https://www.consumeraffairs.com/homeowners/ge_ranges.htm?page=8 (last visited Nov. 10, 2017).

1 inconvenient service attempts to try to “repair” the Oven’s self-cleaning function, an evidently
2 irreparable feature. Additionally, Plaintiff and consumers have no choice but to manually clean
3 virtually all surfaces of their Ovens due to the Oven’s inability to self-clean and work as
4 advertised, or, they must tolerate a perpetually dirty oven cavity.

5 6. The Oven has failed to work and operate as advertised, resulting in damages to
6 Plaintiff and consumers including, but not limited to: (1) payment for a defective product; (2)
7 overpayment for a product falsely advertised to include a working self-cleaning function; (3) a
8 decrease in value of their Oven due to the defect; and (4) out-of-pocket money spent in
9 connection with servicing the Oven and/or manually cleaning the Oven.

10 7. Plaintiff and consumers would not have purchased the Oven had they known it
11 would not self-clean as promised. Plaintiff and consumers would not have purchased the Oven at
12 the prices they paid were it not for GE’s false, deceptive, and misleading advertising and/or GE’s
13 failure to disclose the material fact that its Oven’s self-cleaning function is defective and
14 incapable of performing according to GE’s advertising, marketing, and express and implied
15 warranties.

16 8. Accordingly, Plaintiff brings this case and asserts claims on behalf of himself and
17 a Class of similarly-situated consumers (defined below) for violations of the Magnuson-Moss
18 Warranty Act, 15 U.S.C. §2301, *et seq.*, (“MMWA” or “Magnuson-Moss”), the Unfair
19 Competition Law, Bus. & Prof. C. §17200 *et seq.*, the False Advertising Law, Bus. & Prof. C.
20 §17500 *et seq.*, and the California Consumer Legal Remedies Act, Cal. Civil Code § 1750, *et*
21 *seq.*; and for breach of contract, breach of express and implied warranties, and unjust enrichment.

22 **JURISDICTION**

23 9. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
24 Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million,
25 exclusive of interest and costs; the number of members of each of the proposed Classes exceeds
26 100; and Plaintiff and many members of the proposed Plaintiff Classes are citizens of different
27 states than the Defendants.

28 10. This Court has personal jurisdiction over the Defendants as they conduct

1 substantial business in the State of California and in this Judicial District and/or the conduct
2 complained of occurred in and/or emanated from this State and Judicial District.

3 11. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)(2)
4 because a substantial portion of the transactions and wrongs complained of herein occurred in
5 this Judicial District.

6 **INTRADISTRICT ASSIGNMENT**

7 12. Venue is proper in this Judicial District and the San Jose division thereof pursuant
8 to 28 U.S.C. § 1391 subsections (b) and (c), and Civil L.R. 3-2 subsections (c) and (e). Plaintiff
9 resides in Santa Cruz County within such division, and Defendants transacts business in this
10 division and County and/or a substantial part of the events giving rise to the claims at issue in the
11 litigation arose in this division and County.

12 **THE PARTIES**

13 13. Plaintiff John Craig Miller (“Plaintiff” or “Mr. Miller”) is a citizen of California,
14 and was at all relevant times a resident of Santa Cruz County. On or about June 28, 2016, Mr.
15 Miller purchased the Defective Oven.

16 14. Defendant General Electric Company (“General Electric”) is a New York
17 corporation with its principal place of business at 41 Farnsworth Street, Boston, MA 02210.
18 General Electric is one of the largest technology, media, and financial services companies in the
19 world. Prior to the 2016 sale of the GE Consumer and Industrial division (GE Appliances) to
20 Quingdao Haier Co. Ltd., it developed, manufactured and distributed a wide range of durable
21 consumer appliances, including the Defective Oven. At all relevant times, General Electric
22 conducted extensive business in California, including marketing, distributing and selling the
23 Defective Oven.

24 15. Defendant Haier US Appliance Solutions, Inc. (“Haier”), d/b/a GE Appliances, is
25 a Delaware corporation, with principal place of business at Appliance Park, 4000 Buechel Bank
26 Rd, Louisville, KY 40225. GE Appliances is a subsidiary of Quingdao Haier Co., Ltd. (the Haier
27 Group), which acquired GE Appliances, formerly known as GE Appliances and Lighting and GE
28 Consumer and Industrial, from General Electric in 2016. At all times relevant hereto, GE

1 Appliances has done business throughout the United States, with extensive business operations
2 in the state of California. GE Appliances is an engineering, manufacturing and marketing
3 company with R&D centers in the United States, China, Korea and India, and manufacturing
4 facilities in Kentucky, Alabama, Georgia, and Tennessee. GE Appliances designs, develops,
5 manufactures, markets, distributes and sells a wide variety of durable consumer products and
6 home appliances, including refrigerators, freezers, dishwashers, washers, dryers, air conditioners,
7 water filtration systems, water heaters and cooking appliances including the Defective Oven. GE
8 Appliances employs 12,000 employees, including 6,000 at its Louisville, KY headquarters. GE
9 Appliances had annual revenues of \$6.4 billion in 2016.

10 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11 **The Defective Oven**

12 16. GE designs and manufactures gas and electric stoves, ranges, and ovens. The
13 ovens produced by GE include the GE® 27”/30” Built-In Single/Double Convection Wall Oven
14 (“Oven” or “Defective Oven”). GE advertises that the Oven features a self-clean-with-steam-
15 clean option, and self-clean heavy-duty oven racks option. Unfortunately, the self-cleaning
16 feature does not work as advertised, fails, and presents overheating and safety risks.

17 17. GE Appliances, which was formerly GE Appliances and Lighting and GE
18 Consumer and Industrial, manufactures and markets the Oven. Upon information and belief, the
19 Oven purchased by Plaintiff was manufactured before June 6, 2016, when GE Appliances and
20 Lighting/GE Consumer and Industrial was still a division of General Electric, and was sold to
21 Plaintiff after GE Appliances had been acquired by the Haier Group.

22 18. The Oven was and is sold to consumers throughout the United States.

23 19. According to GE, the Oven uses “very high temperatures to clean the oven
24 interior.” GE emphasizes that consumers may clean heavily soiled ovens, where “the maximum
25 5 hour clean time is recommended. If you wish to use the default time, press the Start pad
26 immediately after pressing the Clean pad. The oven will turn off automatically when the self-
27
28

1 clean cycle is complete. The door will stay locked until the oven has cooled down. After the
2 oven has cooled down wipe any ash out of the oven.”³

3 20. The Oven’s Instruction Manual states that there are two cleaning cycles: first, a
4 lower heat “Steam Cleaning” cycle and then a high heat “Self Cleaning” cycle. Subject to
5 certain precautions, GE conveys in the Oven’s Instruction Manual that the Self Cleaning function
6 is a feature that can be used safely and repetitively. For instance, in its “Troubleshooting Tips”
7 for “Oven not clean after a clean cycle,” the Instruction Manual instructs the consumer to “Clean
8 up heavy spillovers before starting the clean cycle. Heavily soiled ovens may need to self-clean
9 again or for a longer period of time.” The Instruction Manual also instructs consumers that a
10 “clean time can be changed to any time between 3:00 and 5:00 hours For heavily soiled
11 ovens, the maximum 5 hour clean time is recommended.” The Instructions Manual prohibits
12 owners from using “oven cleaners, abrasive cleaners, strong liquid cleaners, steel wool, scouring
13 pads, or cleaning powders on the interior of the oven.” Thus, a consumer has to rely on the self-
14 cleaning function to adequately clean the Oven since the use of oven cleaner products is
15 prohibited.

16 21. GE advertises its self-cleaning technology as a key feature to distinguish the Oven
17 from competitors’ products. Through its website, in-store point of-sale displays, and product
18 information labels on the appliances themselves, GE touts its self-clean heavy-duty oven racks
19 option as “clean your oven the way you want” and “conveniently clean your oven and racks
20 together.”

21 22. Defendants provide a one-year “GE Electric Range Warranty” on the Oven.

22 23. In its nationwide advertising and marketing campaign and materials, GE does not
23 set forth any limitations to the performance of the Oven’s self-cleaning function.

24 24. Contrary to GE’s representations in its advertising and marketing, the Oven does
25 not “self-clean” or otherwise perform as advertised to consumers. Indeed, the Internet is teeming
26 with consumer complaints that describe the extent of GE’s defective self-cleaning technology.
27 Consumers complain, by way of example, that when using the self-cleaning mode for the first

28 ³ <http://products.geappliances.com/MarketingObjectRetrieval/Dispatcher?RequestType=PDF&Name=49-80722.pdf>
(last visited Nov. 10, 2017)

1 time, “the thermal fuse blew, which shut down both the top and bottom ovens . . . and now
2 concerned about ever using the Self-Cleaning mode,” and “GE makes crap!”⁴

3 25. GE knew or should have known that its Oven’s self-cleaning feature was
4 defectively designed and does not function as advertised. Indeed, in some instances, dissatisfied
5 consumers, including Plaintiff, have voiced their complaints directly to GE. In response,
6 Plaintiff was largely advised by representatives of GE or its agents that the Oven’s self-cleaning
7 feature does not work, and consumers should not use the self-cleaning function at all. This
8 advice controverts GE’s advertising that the Oven’s self-cleaning function will “clean your oven
9 the way you want” and “conveniently clean your oven and racks together.”

10 **Plaintiff’s Experience**

11 26. Mr. Miller purchased the Oven on June 28, 2016 from University Electric in
12 Santa Clara, California, for a sum of \$1,521.41.



24
25
26
27
28

⁴ https://www.consumeraffairs.com/homeowners/ge_wall_oven.html (last visited Nov. 10, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



27. On January 9 2017, Mr. Miller activated the Oven’s self-cleaning cycle for the first time. Within one hour into the cycle, the Oven displayed an error code and became unusable. While the Oven’s interior lights and clock turned on, the Oven was not able to warm, bake, or broil.

28. Mr. Miller made a service call to GE the next day and a GE technician eventually came to Mr. Miller’s home on January 23, 2017. The GE technician informed Mr. Miller the activation of the self-cleaning function had burned one or more components in the Oven and the destruction of these components caused the Oven’s failure to function. After ordering several replacement parts and scheduling a follow up service appointment on February 6, 2017, the GE technician then told Mr. Miller that he instructs his customers not to use the Oven’s self-cleaning cycle because of potential overheating problems.

29. On January 11, 2017, by referral from University Electric, Mr. Miller reached out to GE directly to speak about how using the Oven’s self-cleaning function rendered the oven

1 useless. In contrast to the GE technician, the GE representative on the telephone denied ever
2 hearing about this problem and acted surprised when Mr. Miller relayed the GE Technician's
3 advice to him. The GE representative on the telephone opened a "file" regarding Mr. Miller's
4 complaint.

5 30. On February 6, 2017, a GE technician came to Mr. Miller's home for the follow-
6 up service appointment. The GE technician replaced electronic components that were damaged
7 by the activation of the Oven's self-cleaning function.

8 31. The Oven then functioned for the next six days, until February 12, 2017, when
9
10



11
12
13
14
15
16
17
18
19
20
21 Mr. Miller broiled pieces of chicken. Approximately 8 minutes after the activation of the broil
22 function, an error alarm flashed on the Oven's digital screen and the Oven completely shut
23 down. Although two hours later, Mr. Miller successfully re-activated the Oven, he remains very
24 cautious about using the Oven's self-cleaning or any other high heat function out of fear that the
25 Oven's electronic components will be again destroyed and that the Oven will once more be
26 rendered unusable.

27 32. Many other consumers report experiences that are similar or worse than Mr.
28 Miller's regarding their use of the self-cleaning function or malfunctions of their GE ovens:

1 Sherrie of Boiling Springs, SC on Nov. 11, 2016: "Bought our brand new home
2 just over a year ago. With all new appliances. Decided to use the self-cleaner on
3 our wall over model# JT3500SF3SS. In the middle of the cleaning the inner glass
4 shattered. Immediately turned off. Very dangerous and they want me to pay
5 someone \$99 to come look at it and then more for part and service."⁵

6 John of Plainfield, NY on Aug. 2, 2016: "We used the self-cleaning mode for the
7 1st time last week. The thermal fuse blew, which shut down both the top and
8 bottom ovens. \$500 cost to repair and replace fuse. Very upset with an oven only
9 2 years old that this would happen. Now concerned about ever using Self-
10 Cleaning mode."⁶

11 Renee G. posted a message on the GE Appliances Facebook page: "Never never
12 never buy a GE appliance - certainly not their top of the line 27" monogram
13 double wall oven. They do look great but they are built with an inherent problem
14 with the 2 fans. They are at the back of the oven and create so much heat that they
15 fry the circuit boards and damage the fans. This happens over the course of a few
16 months. From the very start you receive an error code F97. When you call the
17 helpline (which incidently is not recorded or noted so you have no proof you
18 called except for your word) they try to tell you it's a power outage or power
19 surge that caused it. They tell you to flip the breaker. You assume it's fixed but it
20 only helps temporarily. When it happens consistently they tell you it's your fuse
21 box or your breaker has a short. They are hoping this quick fix will last just long
22 enough to get you thru the year warranty. Lucky for me the oven blew with 3
23 months of warranty left. But trying to get it fixed has been a nightmare. The
24 customer relations team -yes that's you Kevin and Frank- has been totally
25 unhelpful and downright rude. The consumer advocate team has been ineffective.
26 I've been lied to and strung along - appointments made and then cancelled and
27 rescheduled by GE without asking. Promised follow up calls that never come.
28 Solutions that work for GE but not the consumer. despite the fact that I've done
nothing wrong, save for buying a \$4000+ oven, I can't get satisfaction. What is a
consumer to do? HELP!!!"⁷

Tina of Leland, NC on June 26, 2014: "I always keep my oven clean so I only
used my self-cleaning once and this is what happened. This was November 2011
as I was hosting Thanksgiving for my family. It was like an explosion, then it
sounded like someone grinding rocks in the oven and smoke. . . . I purchased
[another oven] because I was scared to use my oven."⁸

Jan of Fairfax Station, VA on Feb. 27, 2013: "Last week, I turned on the self
cleaning feature on my double wall oven (GE profile). When I returned from

⁵ https://www.consumeraffairs.com/homeowners/ge_wall_oven.html

⁶ https://www.consumeraffairs.com/homeowners/ge_wall_oven.html

⁷ <https://www.facebook.com/geappliances/posts/10153597323986127> (last visited July 14, 2017).

⁸ https://www.consumeraffairs.com/homeowners/ge_wall_oven.html (last visited Nov. 10, 2017).

1 work, I was standing about 5 inches from it talking to my son when I heard a loud
2 pop and crackling. I immediately stepped away as we both watched the oven
3 shatter and basically explode spattering pieces of glass on the floor.”⁹

4 33. Defendants’ nationwide advertising campaign for the Oven’s self-cleaning
5 function – a key product feature – is false, deceptive, and misleading to reasonable consumers
6 because, contrary to GE’s representations, the Oven does not “self-clean” the interior of the
7 Ovens, but instead, causes damage and requires consumers to manually clean their Ovens —
8 defeating the purpose of the “self-clean” Oven.

9 34. Plaintiff and Class are reasonable consumers who did not expect that with proper
10 use of the Oven its self-cleaning function would result in overheating or oven malfunctions.

11 35. The facts concealed or not disclosed by Defendants to Plaintiff and the Class are
12 material because a reasonable consumer would have considered them to be important in deciding
13 whether or not to purchase the Defective Oven.

14 36. Had Plaintiff and members of the Class known that the Oven’s self-cleaning
15 function was defective, they would not have purchased the Oven or would only have purchased it
16 at a lower price.

17 CLASS ACTION ALLEGATIONS

18 37. Class Definition. Pursuant to Fed. R. Civ. P. 23, Mr. Miller brings this action on
19 behalf of himself and the members of a class (the “Class”) initially defined as follows:

20 All persons who purchased a GE ® Built-In Wall Oven, Model JK5000, JT5000, JK5500
21 or JT5500, in the state of California. Excluded from the Class are any entity in which GE
22 has a controlling interest or which has a controlling interest in GE, and GE’s legal
23 representatives, assigns, and successors; and the judge assigned to this case, any member
24 of the judge’s immediate family, and the judge’s courtroom staff.

25 38. Numerosity. Fed. R. Civ. P. 23(a)(1). Members of the Class are so numerous
26 that their joinder is impracticable. While the exact number of Class members is unknown to Mr.
27 Miller, it is believed that the Class is comprised of hundreds or thousands of members
28 geographically disbursed throughout the State of California. The Class, however, is readily
identifiable from information and records in the possession of GE and can be ascertained through

⁹ https://www.consumeraffairs.com/homeowners/ge_wall_oven.html (last visited Nov. 10, 2017).

1 appropriate investigation and discovery. Class members may be notified of the pendency of this
2 action by first class mail, electronic mail, or published notice.

3 39. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). Common questions of law
4 and fact exist as to all members of the Class. These common questions of law and fact include,
5 without limitation:

- 6 a. Whether GE's advertising of the Oven's self-cleaning function was false,
7 deceptive, or misleading to a reasonable consumer;
- 8 b. Whether GE knew or should have known that the Oven's self-cleaning function
9 was defective and could not perform as advertised;
- 10 c. Whether GE had a duty to disclose the design flaw in the Oven;
- 11 d. Whether the purported ability of the Oven's self-cleaning function is a material
12 fact to consumers;
- 13 e. Whether GE knew or reasonably should have known about the defects after
14 distributing the Oven to Mr. Miller and the Class;
- 15 f. Whether GE represented that the Oven had characteristics, uses, and benefits, that
16 it does not have;
- 17 g. Whether GE advertised the Oven with the intent not to sell it as advertised;
- 18 h. Whether GE failed to reveal a material fact regarding its Oven's self-cleaning
19 function, the omission of which would tend to mislead or deceive consumers, and
20 which fact could not reasonably be known by consumers;
- 21 i. Whether GE made a representation of fact or statement of fact material to its sale
22 of the Defective Oven such that a person could reasonably believe the represented
23 or suggested state of affairs to be other than it actually was;
- 24 j. Whether GE failed to reveal facts material to its sale of the Oven in light of
25 representations of fact made in a positive manner;
- 26 k. Whether GE engaged in unfair, unlawful, or deceptive business practices in
27 marketing or selling its Defective Oven;
- 28 l. Whether GE violated the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, et seq.;
- m. Whether GE breached express warranties relating to its Defective Oven;

- 1 n. Whether GE breached the implied warranty of merchantability relating to its
2 Defective Oven;
- 3 o. Whether GE was unjustly enriched by receiving monies in exchange for its
4 Defective Oven;
- 5 p. Whether GE should be ordered to disgorge all or part of the ill-gotten profits it
6 received from the sale of the Defective Oven;
- 7 q. Whether GE acted willfully and in wanton disregard of the consequences of its
8 actions to consumers.
- 9 r. Whether Mr. Miller and the Class are entitled to damages, including
10 compensatory, exemplary, and statutory damages, and the amount of such
11 damages; and
- 12 s. Whether Plaintiff and the Class are entitled to equitable relief, including an
13 injunction enjoining GE from engaging in the wrongful and unlawful conduct
14 alleged herein and ordering GE to engage in a corrective advertising campaign.

15 40. Typicality. Fed. R. Civ. P. 23(a)(3). Mr. Miller's claims are typical of the claims
16 of the members of the Class as all members of the Class are similarly affected by GE's
17 actionable conduct. Mr. Miller and all members of the Class purchased one or more Defective
18 Ovens. In addition, GE's conduct that gave rise to the claims of Mr. Miller and members of the
19 Class (*i.e.*, designing, manufacturing and marketing the Oven, and concealing the defect, and
20 breaching warranties respecting the Oven) is the same for Plaintiff and all members of the Class.
21 Mr. Miller's claims, like the claims of the Class, arise out of the same common course of conduct
22 by GE and are based on the same legal and remedial theories.

23 41. Adequacy. Fed. R. Civ. P. 23(a)(4). Mr. Miller will fairly and adequately protect
24 the interests of the Class because Mr. Miller has no interests antagonistic to, or in conflict with,
25 the Class that he seeks to represent. Mr. Miller has retained competent and capable attorneys
26 with significant experience in complex and class action litigation, including consumer class
27 actions. Mr. Miller and his counsel are committed to prosecuting this action vigorously on
28 behalf of the Class and have the financial and other resources to do so.

1 42. Predominance. Fed. R. Civ. P. 23(b)(3). GE has engaged in a common course of
2 conduct towards Mr. Miller and members of the Class. The common issues arising from this
3 conduct that affect Mr. Miller and members of the Class predominate over any individual issues.

4 43. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). Class action treatment is a
5 superior method for the fair and efficient adjudication of this controversy, in that, among other
6 things, such treatment will permit a large number of similarly situated persons to prosecute their
7 common claims in a single forum simultaneously, efficiently, and without the unnecessary
8 duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory
9 judgments that numerous individual actions would engender. The benefits of the class
10 mechanism, including providing injured persons or entities with a method for obtaining redress
11 on claims that might not be practicable to pursue individually, substantially outweigh any
12 difficulties that may arise in the management of this class action. There will be no significant
13 difficulty in the management of this case as a class action.

14 44. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). GE has acted or
15 refused to act on grounds generally applicable to the Class, thereby making appropriate final
16 injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

17 45. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the common
18 questions of fact and law, set forth above, are appropriate for issue certification on behalf of the
19 proposed Class.

20 **TOLLING OF STATUTES OF LIMITATION AND ESTOPPEL**

21 46. On information and belief, GE was, or should have been aware, at least as early as
22 2012, that the Oven was defective in that the self-cleaning function cannot be used as intended or
23 advertised without resulting in the malfunction of and/or damage to the Oven's components.

24 47. Although GE was aware of the self-cleaning defect, it took no steps to warn
25 Plaintiff or the members of the Class regarding such defect or the dangers that the defect would
26 pose. GE continued to sell the Defective Oven to Plaintiff and members of the Class.

27 48. The defect in the design and/or manufacture of the Defective Oven was not
28 detectible to Plaintiff and members of the Class.

1 49. Defendants actively concealed the existence of the defect and/or failed to inform
2 members of the Class of the existence of the defect. As a result of Defendants' active
3 concealment of the defect and/or failure to inform Plaintiff and members of the Class of the
4 defect, any and all statutes of limitations otherwise applicable to the allegations herein have been
5 tolled. Furthermore, Defendants are estopped from relying on any statutes of limitation in light
6 of their concealment of the defective nature of the Oven.

7 **FIRST CAUSE OF ACTION**

8 **(Violations of the Consumer Legal Remedies Act, Cal. Civil Code § 1750, et seq.)**

9 50. Plaintiff re-alleges and incorporates each and every preceding allegation of fact as
10 if fully written herein, and brings this cause of action on behalf of himself and on behalf of the
11 Class against all Defendants.

12 51. By their acts and omissions alleged herein, Defendants violated the California
13 Consumer Legal Remedies Act, Cal. Civil Code § 1750, et seq. ("CLRA").

14 52. Defendants are "persons" within the meaning of Cal. Civ. Code §§ 1761(c) and
15 1770, and provide "goods" within the meaning of Cal. Civ. Code §§ 1761(a) and 1770.
16 Defendants' customers, including Plaintiff and Class members, are "consumers" within the
17 meaning of Cal. Civ. Code §§ 1761(d) and 1770. Each purchase of Defendants' Oven by
18 Plaintiff, and each Class member constitutes a "transaction" within the meaning of Cal. Civ.
19 Code §§ 1761(e) and 1770.

20 53. The Consumer Legal Remedies Act makes it unlawful for a company to: (a)
21 Represent that goods have characteristics or benefits which they do not have (Cal. Civ. Code
22 § 1770(a)(5)); (b) Represent that goods are of a particular standard, quality, or grade, if they are
23 another (Cal Civ. Code § 1770(a)(7)); and (c) Advertise goods with intent not to sell them as
24 advertised (Cal. Civ. Code § 1770(a)(9)).

25 54. Defendants violated Cal Civ. Code § 1770(a)(5)(7) and (9) by, *inter alia*, their
26 misrepresentations concerning the Oven and its features; by intentionally failing to disclose that
27 usage of the Defective Oven's self-cleaning feature will cause it to malfunction and render it
28 unusable by causing damage to its own electric components; and by advertising the Oven with an
intent not to sell it as advertised.

1 55. Defendants' unfair and deceptive acts or practices occurred repeatedly in
2 Defendants' trade or business, and were capable of deceiving a substantial portion of the
3 purchasing public.

4 56. Defendants knew that their Defective Oven's self-cleaning function suffered from
5 an inherent defect, was defectively designed or manufactured, would fail prematurely, and was
6 not suitable for the intended use.

7 57. Defendants were under a duty to Plaintiff and the Class to disclose the defective
8 nature of the Oven's self-cleaning function and its associated costs to repair; that owners would
9 need to manually clean the Defective Oven; and that the self-cleaning function of the Oven
10 would not perform as represented:

11 a. Defendants were in superior positions to know the true state of facts about
12 the self-cleaning defects in the Defective Oven;

13 b. Plaintiff and the Class could not reasonably have been expected to learn or
14 discover the self-cleaning defect until they experienced the defect when attempting to self-clean
15 their Defective Ovens; and

16 c. Defendants knew that Plaintiff and the Class could not reasonably have
17 been expected to learn about or discover the defect.

18 58. By failing to disclose the Oven's defect, Defendants have knowingly and
19 intentionally concealed material facts and breached their duty not to do so.

20 59. The facts concealed or not disclosed by Defendants to Plaintiff and the Class are
21 material because a reasonable consumer would have considered them to be important in deciding
22 whether or not to purchase the Defective Oven, or whether to purchase it at the price charged.
23 Had Plaintiff and Class members known that the Defective Oven's self-cleaning function was
24 defective, they would not have purchased the Defective Oven or would have paid less for it.

25 60. As a result of Defendants' misconduct, Plaintiff and the Class have been harmed
26 and have suffered actual damages in that, among other things, the Defective Oven's self-cleaning
27 function is not usable, is defective, and causes overheating and oven malfunction.

28 61. As a result of Defendants' violations of the CLRA, Plaintiff and the Class have
been harmed and have suffered and will continue to suffer actual damages.

1 70. Defendants' actions and practices constitute "fraudulent" business practices in
2 violation of the UCL because, among other things, they have a capacity and tendency to deceive
3 members of the public. Defendants intended for Plaintiff and Class members to rely on the
4 representations and Plaintiff did rely on Defendants' representations.

5 71. Defendants had a duty to disclose the defect in the Oven because consumers were
6 likely to be deceived regarding the ability of the Oven to self-clean.

7 72. Defendants knew its Oven suffered from an inherent defect, was defectively
8 designed or manufactured, and was not suitable for its intended use.

9 73. In failing to disclose the defect in the Oven's self-cleaning function, Defendants
10 have knowingly and intentionally concealed material facts and breached their duty not to do so.

11 74. Defendants' unfair or deceptive acts or practices occurred repeatedly in
12 Defendants' trade or business, and were capable of deceiving a substantial portion of the
13 purchasing public.

14 75. As a direct and proximate result of Defendants' unfair and deceptive practices,
15 Plaintiff and Class have lost money and suffered and will continue to suffer actual damages.

16 76. Defendants have been unjustly enriched and should be required to make
17 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &
18 Professions Code.

19 77. Plaintiff and Class members are entitled to further equitable relief as prayed for
20 hereunder, and to their attorney fees and costs.

21 **THIRD CAUSE OF ACTION**

22 **(Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

23 78. Plaintiff re-alleges and incorporates each and every preceding factual allegation as
24 if fully written herein, and brings this claim against all Defendants.

25 79. Defendants publicly disseminated untrue or misleading advertising, or intended
26 not to sell the Defective Oven as advertised, in violation of the False Advertising Law, Cal. Bus.
27 & Prof. Code §§ 17500, *et seq.* ("FAL").

28 80. Defendants' violations of the FAL include, *inter alia*, representing that the
Defective Oven has a repeatedly usable self-cleaning feature when, in fact, using the self-

1 cleaning feature just once destroys the Defective Oven's electric components so that the
2 Defective Oven is no longer usable.

3 81. Defendants committed such violations of the FAL with actual knowledge or in the
4 exercise of reasonable care should have known their advertising was untrue or misleading.

5 82. Plaintiff and Class members reasonably relied on Defendants' statements
6 regarding the Defective Oven made in violation of the FAL.

7 83. As a result of Defendants' violations, Plaintiff and the Class members suffered
8 injury in fact and lost money.

9 84. Plaintiff and Class members are entitled to equitable relief as prayed for
10 hereunder, including an order prohibiting Defendants from engaging in the alleged misconduct
11 described herein and requiring Defendants to repair the defect and perform a corrective
12 advertising campaign.

13 **FOURTH CAUSE OF ACTION**

14 **(Violations of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1791, *et seq.*,
15 and Breach of Implied Warranty)**

16 85. Plaintiff re-alleges and incorporates each and every preceding factual allegation as
17 if fully written herein, and asserts this cause of action against all Defendants.

18 86. By their conduct alleged herein, Defendants violated the Song-Beverly Consumer
19 Warranty Act, Cal. Civ. Code § 1791, *et seq.* ("Song-Beverly Act" or "SBCWA"), and
20 committed breach of implied warranty.

21 87. The Defective Ovens are "consumer goods" within the meaning of Cal. Civ. Code
22 § 1791(a).

23 88. Defendants are "manufacturers" within the meaning of Cal. Civ. Code § 1791(j).

24 89. Defendants impliedly warranted to Plaintiff and the Class members that the
25 Defective Ovens were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) and
26 1792.

27 90. Plaintiff and the Class members purchased Defective Ovens manufactured by
28 Defendants.

91. Cal. Civ. Code § 1791.1(a) states that the "Implied warranty of merchantability"

1 or “implied warranty that goods are merchantable” means that “the consumer goods meet each of
2 the following:”

- 3 “(1) Pass without objection in the trade under the contract description.
4 (2) Are fit for the ordinary purposes for which such goods are used.
5 (3) Are adequately contained, packaged and labeled. [and]
6 (4) Conform to the promises or affirmations of fact made on the container or label.”

7 92. As the Defective Ovens do not actually contain a repeatedly usable self-cleaning
8 function, the Defective Ovens could not pass without objection in the appliance trade.

9 93. The Defective Ovens are inadequately labeled since the label misrepresents the
10 Defective Ovens as having a usable self-cleaning function, or fails to disclose the fact that using
11 the self-cleaning function will render the Defective Oven unusable.

12 94. Defendants’ conduct caused the Defective Oven to be worth less than what
13 Plaintiff and Class members paid and deprived Plaintiff and Class members of the benefit of
14 their bargain.

15 95. As a direct and proximate result of Defendants’ breach of their duties, Plaintiff
16 and Class members received goods in a condition that substantially impairs their value. Plaintiff
17 and Class members have been damaged in that the Defective Oven has a diminished value,
18 malfunctions, and subjects them to actual and potential increased maintenance and repair costs.

19 96. Plaintiff and the Class members have met all of their obligations under the
20 warranty, or otherwise have been excused from performance of such obligations as a result of
21 Defendants’ conduct.

22 97. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiff and Class members are
23 entitled to damages and other legal and equitable relief including, the purchase price of their
24 Defective Ovens or the amount representing overpayment for or reduction in value of their
25 Ovens, and are also entitled to their attorney fees and costs.

26 **FIFTH CAUSE OF ACTION**

27 **(Breach of Express Warranty, Cal. Com. Code § 2313)**

28 98. Plaintiff re-alleges and incorporates each and every preceding factual allegation as
if fully written herein, and asserts this claim against all Defendants.

1 99. Defendants breached an express warranty made to Plaintiff and Class members.

2 100. Defendants made an express warranty and/or approved the use of the expressed
3 warranty to Plaintiff and the Class members that the Ovens they purchased have a repeatedly
4 usable self-cleaning function.

5 101. This express warranty made to Plaintiff and the Class members was listed as a
6 feature of the Defective Oven's specifications and is repeatedly mentioned in the Defective
7 Oven's instruction manual. This promise regarding the nature of the products marketed by
8 Defendants specifically related to the goods being purchased and became the basis of the
9 bargain.

10 102. Plaintiff and the Class members purchased the Defective Oven based on the belief
11 that it conformed to the express warranties that were made in the product's specifications or
12 packaging.

13 103. Defendants breached the express warranty made to Plaintiff and the Class
14 members by failing to supply goods that conformed to the warranty made. As a result, Plaintiff
15 and Class members suffered injury.

16 104. Plaintiff and Class members paid money for the Oven that was labeled as having a
17 repeatedly usable self-cleaning function. However, because activation or completion of the
18 Defective Oven's self-cleaning function causes it to become permanently unusable, Plaintiff and
19 the Class members did not receive the product that was promised. If Plaintiff and the Class
20 members had known of the true nature of the product, they would not have purchased the
21 product for the price they paid. However, they may consider purchasing the Oven in the future if
22 the Oven is equipped with a self-cleaning function that works and will not render it permanently
23 useless, or, at a lower price, if the Defective Oven is not advertised as having a self-cleaning
24 feature.

25 105. Plaintiff and Class members have been injured and are entitled to damages and
26 relief as set forth hereunder.
27
28

SIXTH CAUSE OF ACTION

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

106. Plaintiff re-alleges and incorporates each and every preceding factual allegation as if fully written herein, and asserts this claim against all Defendants.

107. By their actions, Defendants have breached written and implied warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (“MMWA” or “Magnuson-Moss”).

108. The MMWA, 15 U.S.C. § 2310(d)(1), provides a private right of action for purchasers of consumer products against manufacturers or retailers who fail to comply with the terms of a written or implied warranty.

109. Plaintiff and the Class are “consumers,” Defendants are “suppliers” and “warrantors,” and the Defective Ovens equipped with self-clean functions are “consumer products,” as defined by the Magnuson-Moss, 15 U.S.C. § 2301.

110. Defendants’ written affirmations of fact, promises, and/or descriptions relating to its Defective Ovens equipped with the self-cleaning function, as alleged herein, as well as its one-year “GE Electric Range Warranty,” are each a “written warranty” as defined in the Magnuson-Moss, 15 U.S.C. § 2301.

111. Despite those written warranties, Defendants delivered to Plaintiff and the Class the Defective Oven equipped with a self-cleaning function that did not conform to GE’s written warranties.

112. Specifically, as alleged herein, GE warranted that its Oven has, among other things, two cleaning cycles: first, a lower heat “Steam Cleaning” cycle and then a higher heat “Self Cleaning” cycle. However, the Defective Ovens Defendants delivered to Plaintiff and the Class could not self-clean as promised.

113. Furthermore, pursuant to the “GE Electric Range Warranty” on its Defective Oven, GE was obligated to “provide any part of the range which fails due to a defect in materials or workmanship.” As alleged herein, Plaintiff and members of the Class purchased the Defective Oven with a defective self-cleaning function that was incapable of “self-cleaning” and performing as advertised.

1 114. Defendants have breached the written warranties to Plaintiff and the class in
2 violation of the MMWA by, among other things, their failure to tender their Oven equipped with
3 the self-cleaning function free of defects, as well as the failure to repair, acknowledge, or
4 respond to Plaintiff's requests to adequately fix the inherent defects of the self-cleaning function
5 within a reasonable time.

6 115. Under the Magnuson-Moss, an "implied warranty" is one that "arise[s] under
7 State law . . . in connection with the sale by a supplier of a consumer product." 15 U.S.C. § 2301.

8 116. Under California law, a warranty that goods shall be merchantable is implied in
9 every contract for the sale of goods by a merchant that deals in such goods.

10 117. Defendants are merchants with respect to kitchen ovens. As such, a warranty that
11 its Oven equipped with the self-cleaning function was merchantable was implied in the contract
12 of each sale, including each sale of the Oven to Plaintiff and the Class members.

13 118. In order to be merchantable, the Oven with self-cleaning function, at a minimum,
14 was required to: (a) pass without objection in the trade under the contract description; (b) be fit
15 for the ordinary purposes for which such goods are used; and (c) conform to the promises or
16 affirmations of fact made on the container.

17 119. GE breached the implied warranty on its Defective Oven because, contrary to
18 GE's representations, promises, and affirmations of fact, including on each product's label, the
19 Defective Oven could not "self-clean" the interior of the Ovens.

20 120. Indeed, the self-cleaning feature on the Defective Oven was defective when such
21 Defective Oven and each unit thereof left the possession of Defendants and, as such, could not
22 perform according to GE's affirmative representations that the system, among other things, had
23 two cleaning cycles: first, a lower heat "Steam Cleaning" cycle and, second, a higher heat "Self
24 Cleaning" cycle. Therefore, the Defective Oven with the self-cleaning function was not fit for its
25 intended, anticipated, or reasonably foreseeable use.

26 121. Accordingly, the Defective Oven would not: (a) pass without objection in the
27 trade under the contract description; (b) are not fit for the ordinary purposes for which such
28 goods are used; and (c) do not conform to the promises or affirmations of fact made on the
container.

1 G. Any and all remedies provided pursuant to the Magnuson-Moss Warranty Act,
2 including 15 U.S.C. § 2310(d);

3 H. For restitution of all money or property wrongfully obtained by Defendants;

4 I. For disgorgement, for the benefit of the Class, all or part of the ill-gotten profits
5 they received from the sale of the Defective Oven;

6 J. An award of attorneys fees and costs pursuant to California Code of Civil
7 Procedure § 1021.5, or as otherwise allowed by law;

8 K. An award of pre-judgment and post-judgment interest, as provided by law;

9 L. Leave to amend the Complaint to conform to the evidence produced at trial; and

10 M. Such other relief as may be appropriate under the circumstances.

11 **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all claims so triable.

12 Respectfully submitted,

13 **FINKELSTEIN THOMPSON LLP**

14 DATED: December 7, 2017

By: /s/ Gordon M. Fauth, Jr.

Gordon M. Fauth, Jr.

Of Counsel

Rosanne L. Mah

Of Counsel

FINKELSTEIN THOMPSON LLP

100 Pine Street, Suite 1250

San Francisco, California 94111

Direct: (510) 238-9610

Telephone: (415) 398-8700

Facsimile: (415) 398-8704

Rosalee B. C. Thomas

rbcthomas@finkelsteinthompson.com

FINKELSTEIN THOMPSON LLP

3201 New Mexico Avenue, NW, Suite 395

Washington, D.C. 20016

Tel.: (202) 337-8000

Fax: (202) 337-8090

*Attorneys for Individual and Representative
Plaintiff John Craig Miller*

EXHIBIT A

1 Gordon M. Fauth, Jr. (SBN: 190280)
2 gfauth@finkelsteinthompson.com

3 Of Counsel

4 Rosanne L. Mah (SBN: 242628)

5 rmah@finkelsteinthompson.com

6 Of Counsel

7 **FINKELSTEIN THOMPSON LLP**

8 100 Pine Street, Suite 1250

9 San Francisco, California 94111

10 Direct: (510) 238-9610

11 Telephone: (415) 398-8700

12 Facsimile: (415) 398-8704

13 *Attorneys for Individual and Representative*

14 *Plaintiff John Craig Miller*

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **JOHN CRAIG MILLER**, an Individual, on
18 behalf of himself and all others similarly situated,

19 Plaintiff,

20 vs.

**DECLARATION OF JOHN CRAIG MILLER
PURSUANT TO CALIFORNIA CIVIL CODE
§ 1780(d)**

21 **GENERAL ELECTRIC COMPANY**, a New
22 York Corporation with its Principal Place of
23 Business in Boston, Massachusetts; and **HAIER**
24 **US APPLIANCE SOLUTIONS, INC.**, d/b/a GE
25 **APPLIANCES**, a Delaware Corporation.

26 Defendants.

27 I, John Craig Miller, declare as follows:

28 1. I am Plaintiff in this action. I have personal knowledge of the matters set forth
herein and, if called as a witness, I could and would competently testify thereto.

2. I am informed and believe that venue is proper in this court pursuant to California
Civil Code § 1780(d) based on the following:

1 a. Defendants General Electric Company and Haier US Appliance Solutions,
2 Inc. d/b/a GE Appliances does business in Santa Cruz County, California, and within the
3 Northern District of California, San Jose Division (Santa Cruz County).

4 b. The transaction complained herein occurred in Santa Cruz County,
5 California, and within the Northern District of California, San Jose Division (Santa Cruz
6 County).

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States that the foregoing is true and correct.

9 Executed on December 3, 2017 in Santa Cruz County, California.

10 

11 _____
12 John Craig Miller

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOHN CRAIG MILLER, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Santa Cruz County, Calif
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

General Electric Company and Haier US Appliance Solutions, Inc. d/b/a GE APPLIANCES
County of Residence of First Listed Defendant Suffolk County, Mass
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

Gordon M. Fauth, Jr. (SBN: 190280) or Rosanne L. Mah (SBN: 242628); Finkelstein Thompson LLP, 100 Pine St, Ste. 1250, SF CA 94111; Direct Telephone No. (510)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation—Transfer
8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 2301 and/or 28 U.S.C SECTION 1332(d)

Brief description of cause:
Breach of Express & Implied Warranties

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/9/2017

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.