



Plaintiff, Michael Oaks (“Plaintiff” or “Oaks”), by and through his attorneys, brings this action on behalf of himself and all others similarly situated against Defendant, Sears, Roebuck and Co. (“Sears” or “Defendant”), and alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action individually and on behalf of a proposed nationwide class (“Class”), and, in the alternative, a Virginia class (“Virginia Class”) (collectively, “Class” or “Classes”), as more fully defined below, for the benefit and protection of all current and former owners of Sears Kenmore grills with firebox trays made with galvanized steel, except model numbers 16154, 23683, 34176, 34178 and 34308 (the “Grill(s)”). As more fully alleged herein, the Grills all have a design defect that causes their firebox tray to rust and fail prematurely, resulting in a safety hazard and the consumers’ inability to use the Grills as intended (the “Defective Firebox Tray(s)”).

2. Plaintiff brings this action on behalf of himself and all other similarly situated consumers to stop the sale of the defective Grills and to obtain redress for those who have purchased the Grills. Plaintiff alleges violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, (815 ILCS 505/1, *et seq.* (“CFDBPA”); Virginia Consumer Protection Act, §§ 59.1-196, *et seq.* (“VCPA”); Magnuson-Moss Warranty Act, (15 U.S.C. §§ 2301-2312 (“MMWA”); and alleges breach of express warranty, breach of implied warranty of merchantability, and unjust enrichment.

3. At all relevant times, Sears has manufactured and sold the Grills fitted with Defective Firebox Trays made out of galvanized steel instead of aluminized or other less-corrosive steel, which causes the firebox tray on the Grills to routinely rust and fail prematurely,

resulting in a fire hazard and preventing consumers, including Plaintiff and the Class, from using their Grills. This Defective Firebox Tray presents a serious safety issue for users of the Grills, as the firebox tray disintegrates, exposing the Grills' propane tanks to the open flames in the grill area.

4. The defect in the Defective Firebox Tray is substantially certain to manifest during the useful life of the Grills and occurs in the course of normal use and operation of the Grills.

5. In or about November 2014, Sears issued a statement regarding similarly-defective grills, stating:

We are aware that a limited number of Kenmore grills have firebox trays that are rusting prematurely. Most importantly, we are taking care of these customers at no cost. Customers who are experiencing this issue with their Kenmore grill should call 1-800-4-MYHOME / (800) 469-4663 to request a complete firebox tray replacement. Both the firebox tray kit and installation will be provided at no charge to the customer. In addition, to address this issue, the Kenmore brand is improving the materials that comprise the firebox tray - so it will be manufactured from aluminized steel (rather than galvanized steel) for longer life.

Sears later clarified that it would only be fixing grills with the following model numbers: 16154, 23683, 34176, 34178 and 34308 and would not be fixing the Grills at issue in this lawsuit.

6. Sears has been on notice of the Defective Firebox Tray and resulting safety hazard of the Grills since they were first brought to market, or very shortly thereafter, and has done little, if anything, to ameliorate the problem. Instead, Sears has continued to realize significant profits from the repairs that have been required to address the defect, which Sears has refused to pay for. Sears has not publicized the defect, including to its customers, and has not recalled the Grills.

7. Sears knew or should have known that the Grills are defective, not fit for their intended purpose, and unsafe when used as intended. Nevertheless, Sears has actively concealed and failed to disclose the Defective Firebox Tray to Plaintiff and Class members, both before and after purchase.

8. Notwithstanding Sears' knowledge of the Defective Firebox Tray in the Grills, it has routinely refused to repair the Grills without charge when the defect manifests, requiring owners of the Grills to spend in the range of \$300 per repair.

9. Many owners of the Grills have requested that Defendant or its agents remedy or address the Defective Firebox Tray; however, Defendant has failed and refused to do so. Despite notice of the Defective Firebox Tray from consumers, and being aware that similar models are having the same problems for which Sears is offering a new firebox tray replacement free of charge, Sears has not offered to repair the Grills or offered reimbursement to consumers who have paid for repairs to or replacement of their Grills' Defective Firebox Trays.

10. As a result of the Defective Firebox Tray, Plaintiff and Class members have incurred monetary costs to repair their Grills. Plaintiff and Class members have suffered injury in fact, incurred damages, and otherwise been harmed by Sears' conduct.

#### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because the matter in controversy is more than \$5 million, exclusive of interest and costs, and this is a class action in which certain of the Class members (including Plaintiff) and Defendant are citizens of different states.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391 because Defendant

does business throughout this district and a substantial part of the acts and omissions giving rise to Plaintiff's claims occurred in or emanated from this district. Sears also has its principal place of business in this district.

13. At all pertinent times, Defendant was engaged in the sale of products, including the Grills, throughout the United States.

14. At all pertinent times, Sears was in the business of distributing, advertising, marketing, promoting and selling products, including the Grills.

15. The Grills that form the basis of this Complaint were purchased from Defendant and/or placed in the stream of commerce by Defendant.

#### **PARTIES**

16. Oaks is, and at all times relevant to this action has been, a resident of Purcellville, Loudon County, Virginia, and, thus, is a citizen of Virginia.

17. Sears is a New York corporation that maintains its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. At all times relevant and pertinent to this action, Sears has been a citizen of the State of Illinois. Sears markets and sells Kenmore brand products, including the Grills, throughout the United States, including in this judicial district, and by and through its own stores, as well as at Kmart and other retail outlets.

#### **SUBSTANTIVE ALLEGATIONS**

18. This is an action brought against Sears on behalf of Plaintiff and all persons who purchased, not for resale, a Grill in the United States, and, in the alternative, in Virginia.

19. Sears holds itself out to the public as a leading broadline retailer providing merchandise, including the Grills, and related services. Sears is in the business of distributing

and/or selling Kenmore brand grills and other household appliances through more than 2,400 Sears-branded and affiliated stores in the United States and Canada.

20. Sears has sold and/or distributed the Grills for its retailers throughout the United States.

21. In the Grill's Use and Care Guide, Sears claims that the Grills are "safety certified for use," indicating that the Grills have been assessed for safety and the Grills are safe to use.

22. This safety claim, which appears in substantially similar form in the Use and Care Guide for all of the Grills, is misleading, because, clearly the Grills are not safe. The Defective Firebox Tray exposes the propane tank to flames, grease, and other highly-flammable debris, causing an unreasonable fire safety hazard.

23. Moreover, Sears makes a one-year full warranty from the date of purchase in which Sears would arrange for "free repair (or replacement if repair proves impossible)," "[i]f the grill fails due to a defect in material or workmanship."

24. Sears also makes a five-year limited warranty on any burner, which states as follows:

For five years from the date of purchase, any burner that rusts through will be replaced free of charge. After the first year from the date of purchase, you pay for labor if you wish to have it installed.

All warranty coverage excludes ignitor batteries and grill part paint loss, discoloration or rusting, which are either expendable parts that can wear out from normal use within the warranty period, or are conditions that can be the result of normal use, accident or improper maintenance.

25. The warranty, which is in similar form for all of the Grills, is false and misleading because Sears has refused to repair the Grills as promised.

**A. Defective and Hazardous Grills**

26. The Grills each have firebox tray, which is intended to separate the flame, grease, and other debris in the firebox tray from the propane tank which rests underneath the tray.

27. However, since the Defective Firebox Trays are made out of galvanized steel rather than aluminized or other less-corrosive steel (which causes the firebox tray on the Grills to routinely rust and fail early), the propane tank area becomes exposed to flames, grease, and other debris from the grill surface, which results in an extremely hazardous situation.

28. No reasonable consumer expects the firebox tray on his or her Grill to fail within the normal useful life of the Grill.

29. As a result of the Defective Firebox Tray, the Grills become unusable for their intended purpose – safely grilling food.

30. When the defect manifests, consumers are forced to incur significant expenses, often in excess of \$300 per tray, to replace the Defective Firebox Tray.

**B. Plaintiff's Experiences With His Grill**

31. On or about May 2013, Oaks purchased a new Grill from Sears Dulles Town Center in Dulles, Virginia, for \$429.00.

32. At all pertinent times, Oaks used and maintained the Grill as instructed by Sears' Use and Care Guide. Although Oaks used and maintained the Grill as instructed by Sears, the defect in the Defective Firebox Tray manifested itself irrespective of Plaintiff's proper use and maintenance habits. Indeed, the defect is such that the firebox tray is substantially likely to fail during the useful life of the Grill, thereby resulting in consumers facing a very serious safety hazard, which is what happened with Oaks' grill.

33. In April 2015, Oaks noticed for the first time that the firebox tray of his Grill had completely rusted out and, as a result, the propane gas tank that sits underneath the Defective Firebox Tray became completely exposed to the flames, grease, and other flammable debris from the grill surface.

34. Oaks contacted Sears in May 2015 to have the Defective Firebox Tray replaced and, despite multiple requests, Sears refused to do so. Because the Grill had become too dangerous to use, Oaks purchased a new (and different) grill from Home Depot.

**C. Class Members' Experiences With Their Grill**

35. Plaintiff's experience mirrors those of numerous other owners of the Grills who experienced rusted out firebox trays and were exposed to safety hazards, including their Grills becoming "[c]ompletely engulfed in flames." The internet is replete with references to the common and profound problems with the Grills, as well as the resultant safety hazard alleged here. The following is a small sample of complaints appearing in one online forum:

I bought a grill at Sears and had trouble from the very beginning with the igniters. They flat quit. Then the far right burner quit. Then the burner box crumbled and rotted out. Oh, I had the grill for only 1 yr. And I purchased the 5-yr. Plan and let me tell you that it is the biggest joke just trying to talk to Sears people about what to do. They tried to tell me that I actually purchased the wrong plan. Please, someone needs to fill the whole staff in on warranties and plans.

Posted by Debra of Decker, Indiana on July 24, 2013 on  
[http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=3](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=3)

I purchased this Kenmore Gas Grill brand new from Sears with a custom-fitted heavy duty grill cover to go with it. I paid over \$500 for the grill and cover thinking this would be the last grill I buy for a long time. 2 short years later, I needed to replace all 3 flame shields as they rusted and crumpled. I paid \$65 for the covers online. As I went to install the cover, I thought I would clean up some of the rusty bits that fell in the drip tray. As I initially scooped the debris, the whole bottom of the grill collapsed! I was not happy but thought, no big deal, I will order a new drip pan. Nope! I have to

buy the whole burner box which is essentially a new grill at a cost of \$325.00. Freaking Ridiculous! I will repair it myself by making a grease tray, but had I known this was such cheap materials, I would have purchased another brand.

Posted by Myles of Dallas, Texas on October 16, 2013 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

I bought the Kenmore Gas Grill with Folding Shelves because of its stainless steel parts particularly the hood, shelves, burners and most importantly the grill grates. The Grill works beautifully for me BUT like others who also take good care of this grill, the cheap metal tray beneath the burners has completely rusted away before the grill is two years old.

THERE IS NO PART that can replace this tray and for the number of complaints that are on the internet about this problem Sears continues to deny customers a reasonable fix. Like others Sears only offers a new Burner Box which is essentially the cost of a new grill at \$344. The rest of my grill is in great shape but it is completely unusable because there is no barrier between the burners and the propane tank. IF the entire grill deteriorated at the same rate, you could convince yourself that you just needed a new grill, but to have a nicely working grill with all original parts that is just a useless piece of junk unless you double your original investment is inexcusable.

Posted by Andrew of PV, Kansas on March 17, 2014 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

We also bought the SS gas grill from sears. The internal parts are not all stainless and the bottom pan has completely rusted out. Without this pan the flames (and grease or anything else) is directly about the propane tank and hose connections. This isn't safe. I'm in agreement with everyone else here that there is no part for this...I made a plate at work of our SS but I'm still disappointed as several other parts and panels are also corroded and rusting out. Super annoying. These are always too expensive to fix so we typically throw our grills out every 2-4 years

Posted by Michelle of Washington on May 15, 2014 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

Less than two years old my Kenmore gas grill is beyond repair. Sears remedy is 10% off the purchase of a new grill. That is like doing nothing at all. And they said they were sorry. The drain pan under the burners has a hole the size of a basketball from rust after less than two years. Three of four burner mounts are rusted off. The cooking grids are splitting apart and pieces of metal could get in the food, but no worry because three out of the four gas valves are bad. Also, the electronic spark doesn't work. Less than two years and this thing is in worse shape than the 13 year old grill it

was meant to replace. Kenmore and Sears should be ashamed for pawning this stuff off on the public. I thought I might just have gotten a lemon, but after reading other reviews here and elsewhere on the net, I am convinced this is business as usual for Kenmore gas grills.

Posted by Don of Germantown, Ohio on June 5, 2014 on  
[http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

We purchased a 4 burner gas grill from Sears in July 2012. The tray below the burners is already rusted out. The grill is kept on the deck, covered at all times. I called customer solutions to help, but the only answer I received was that I would have to pay \$96 to repair it. I told customer solutions we choose Kenmore over a Weber this time because we trusted the product. Never again will we purchase any Kenmore appliance. The quality and service is terrible!

Posted by Sue of Wharton, New Jersey on June 7, 2014 on  
[http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

I purchased the Kenmore stainless steel 4 burner gas grill with folding side shelves in April 2013. I've now had this grill for 15 months and I keep it covered when not in use. I bought it because I wanted stainless steel burners and grates. Two of the four burners are rusted though. Good luck dealing with customer service. After three separate phone calls and over 2 hours of my time I got a warranty call set up. They said they had to come look at the burners because they will not just send you new ones and want try to charge you a \$79.99 service fee to come look. There is no longer a bottom to the burner box. It rusted away to nothing but flakes. They will not do anything about that though because I called three months too late. The part is not sold separately. You have to buy the entire burner box which cost over \$300. Very poor quality for a grill that cost \$400.

Posted by Stephen of Baton Rouge, Louisiana on July 26, 2014 on  
[http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

Fire hazard, they refuse to recall and STILL SELL. As all previous reports the firebox completely crumbled and flames melted the gas hose and luckily we were able to shut off tank before any other damage. Completely engulfed in flames. Sears is aware of problem and disregard the safety of consumers. Next complaint and pictures are being sent to the consumer product safety commission.

Posted by Diane of Hauppauge, New York on July 29, 2014 on  
[http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

Purchased SS Kenmore gas grill with folding side shelves in May 2012. In August

2014, the burner tray is totally rusted out. Sears says there is no recall and they can't do anything. The same grill is still on their sales floor. After reading the many comments with the same problems, I can't believe it!

Posted by Flora of Watertown, Wisconsin on August 18, 2014 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html?page=2](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html?page=2)

I was given a Kenmore Gas Grill, model 146.23673310, as a birthday gift by my parents 2 years ago (March 5th, 2013). While I was cleaning my grill yesterday (March 8th, 2013), I noticed the firebox had completely rusted through, exposing the propane tank below to heat from the burners above. I contacted Sears Customer Service several times after finding an article claiming that Sears would replace the faulty firebox (see below). After experiencing several "dropped calls" and transfers, I finally talked to a representative who explained that a service technician would have to come out to my house to order the part at a cost of \$90, non-refundable. I asked if I could bring the grill into Sears instead - no, only a service tech can order the part. Can I take a picture and send it to someone? No again, a service tech must come out to place the order for the part.

The grill cost ~\$250 dollars according to the receipt - not worth the nearly \$100 service fee. Seems like a pretty shrewd way for Sears to make the problem disappear, especially when it seems to be so widespread across people who purchased the grill. Guess I'll be going to Home Depot or Lowe's to make my next grill purchase. Pretty disappointed in Sears, a company which used to be a trusted name.

Posted by Brad of Cary, North Carolina on March 9, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

We have a Kenmore Stainless Steel split lid gas grill model number 148.16656011; it was purchased November 2011. While hooking up a new propane tank I noticed that the bottom of the burner box is rusting out. What is typically a \$25 replacement panel on other models is not available separately for this grill and requires a full burner box replacement for around \$343.00. At first Sears' position was they would replace burner boxes for all affected customers, but now Sears will not replace this one because it is not on the list of models that are the top 5 worst models for quantity of complaints for this issue? That doesn't mean that it doesn't have a problem, it just means that they don't care about ours because we are low on the priority list?

Posted by James of Ithaca, New York on March 10, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

The grease tray on model number 146.16197210 completely rusted out about 2 years creating a serious fire hazard. This Kenmore BBQ grill was located in a relatively dry environment (southern California). The grill was regularly covered with a rain cover

and stored in areas away from the infrequent rain. Nonetheless, the grease tray rusted out very quickly.

Despite the fact that Sears & Kenmore knows their product is rusting out much quicker than it should (as acknowledged by their PR Director Larry Costello in response to a consumer reports television segment), Sears customer service refused to send me a replacement tray. So, the moral of the story is **DO NOT BUY KENMORE GRILLS**. To be safe, stay away from all Sears products when you can because their customer service does not back their products.

Posted by E.P. of Dana Point, California on March 23, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

Buyer beware! Sears sold me a gas grill with defective safety features, which has resulted in the possibility of explosion and fire. Sears refuses to include my model number in its selectively chosen recall/repair program for these defective products. My Kenmore gas grill, like many others sold by Sears in the past several years, has a defective firebox tray. The firebox tray has the important job of keeping the burner flames from reaching the propane tank and causing an explosion or fire. These metal trays, which sit discreetly underneath the grill burners, are known by Sears to prematurely rust and disintegrate, leaving no protection whatsoever between the propane tank and flames from the grill burners.

Sears already has publicly admitted to this problem. Grill owners in other states have had their defective parts replaced by Sears at no cost to them. According to published news reports by NBC5 WPTV in West Palm Beach, Florida, in November 2014, Sears was offering a free repair to any U.S. grill owner with the failed firebox tray. By February 2015, according to the news broadcast, Sears skinned down its covered list to only five model numbers. As I noted before, mine is not one of them. Despite my model not being covered under its recall/repair offer, Sears gave \$300 to a Florida man with the SAME Kenmore grill as mine after his grill's firebox tray rusted and crumbled apart prematurely. This man was interviewed in by the WPTV reporter, and there is a clear shot of my same exact grill in the video.

I purchased my Kenmore grill from Sears a few years ago (2011, I think). The firebox tray was completely rusted through, broken, and crumbling away by summer 2014. Certainly, this problem would take a year or two to develop and progress, so I would be inclined to believe that the part was defective from day one. When I didn't realize until just this week is that consumers across the country have had the same thing happen to them. And some of these folks got free repairs or money to buy a new grill!

Sears cannot claim that we failed to maintain the product properly. We are meticulous about keeping the grill covered and storing it in the garage during inclement weather and over the winter. There are only two of us, and we use the grill only minimally. So

it's not like this premature part failure is due to normal wear and tear. We are afraid to use our grill right now because of the dangerous possibility of explosion. There is no protection whatsoever between the propane tank and the burner flames.

In refusing to fix my grill for free, Sears would not explain to me why some people with newer models get their grills fixed for free and others, like me, whose model is only slightly older, do not. (It might be a different situation if my grill was 10 or 15 years old and this happened, but it should not happen on a grill that's well kept and only a few years old!) Sears needs to take responsibility for this problem for ALL consumers, not just a select few!! I would like my model number included in its recall/repair offer, and I also would like to know why it is has specifically excluded my model, even though it gave \$300 to another consumer with the same defective grill as mine.

Buyer beware: Spend your money on another brand of gas grill!

Posted by C.C. of Langhorne, Pennsylvania on April 10, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

I have contacted Sears via phone, email and Facebook posts with no help in replacing my DEFECTIVE firebox on my Kenmore grill model number 415.16151110. Sears does not care that my firebox has rusted and disintegrated making my grill a piece of garbage just sitting on my deck! Without a firebox my propane tank can come into contact with the flames and could essentially blow up!

There are only 5 models that Sears will replace at this time based on consumer reviews but I am a consumer who has reviewed and made Sears WELL AWARE of my grill having the same issues and they still won't help! I have reported them to consumer safety and they are doing their own investigation. I encourage all of you with the same Kenmore gas grill firebox issues to report yours as well or Sears WILL NOT do anything about it!

Posted by Jennifer of Statesville, North Carolina on May 19, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

I want other consumers to be aware of the immense safety hazard presented by some Kenmore grills. I purchased model 148.23682310 like another poster on here in 2013. In less than 2 years the burn pan rotted out and disintegrated, exposing the propane tank to flames. I take excellent care of my equipment and have never had anything like this happen. The Sears representative I contacted told me only the 5 supported models ever had this problem. The pile of rusted metal next to my propane tank says otherwise. I will never buy anything from Sears again. I will stay away from Kenmore products like my life depends on it. At this point I truly believe it does.

Posted by Todd of West Lebanon, New Hampshire on June 25, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

In the spring of 2013 I purchased what I thought would be a very nice Kenmore Grill. It even has a separate hood for the searing burner. It is model 148.23682310. Everything seemed to be working great and it has always been kept under the Kenmore cover I purchased with it. This spring, the grates and burner covers started rusting really badly. The grate over the searing burner had started falling apart much earlier, but I figured that it must have just been from the high temperature. While I was looking online to find new guts for the grill I came across this page. I was shocked by how many people said the bottom had just rusted away, so I went out and checked mine and sure enough, there was a giant gaping hole.

I had a cheapo Charbroil grill for about 8 years and never had anything like this happen. Naturally, the warranty is gone and Sears asked if I wanted a repair, but that would cost as much as the grill. Overall, the grill gets a 5 out of 5 for looks and a 0 out of 5 for quality. I can't see me buying any type of appliance from Sears ever again. I didn't get the most expensive grill but for \$450 I would expect it to last more than 2 years.

Posted by David of Ooltewah, Tennessee on July 13, 2015 on [http://www.consumeraffairs.com/homeowners/kenmore\\_gas\\_grill.html](http://www.consumeraffairs.com/homeowners/kenmore_gas_grill.html)

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36. Due to the serious dangers posed by the Defective Firebox Trays, at least two news networks have reported on this issue. *See* JOHN MATARESE, Sears to Fix Rusting Kenmore Grills, *available at* <http://www.wcpo.com/money/consumer/dont-waste-your-money/sears-to-fix-rusting-kenmore-grills> (last visited October 30, 2015); JENN STRATHMAN, Firebox in Sears Kenmore Grills Disintegrating and Rusting; Sears Making Changes after CW Story, *available at* <http://www.wptv.com/money/consumer/firebox-in-sears-kenmore-grills-disintegrating-rusting-sears-making-changes-after-cw-story> (last visited October 30, 2015).

**D. Sears' Knowledge of the Defect**

37. Sears is well aware of the safety implications of the Grills' Defective Firebox Tray and the need to address the defect.

38. Sears has been on notice of the Defective Firebox Tray since no later than July 2013.

39. Indeed, in similar model grills, Sears issued a statement related to models 16154, 23683, 34176, 34178 and 34308, stating:

We are aware that a limited number of Kenmore grills have firebox trays that are rusting prematurely. Most importantly, we are taking care of these customers at no cost. Customers who are experiencing this issue with their Kenmore grill should call 1-800-4-MYHOME / (800) 469-4663 to request a complete firebox tray replacement. Both the firebox tray kit and installation will be provided at no charge to the customer. In addition, to address this issue, the Kenmore brand is improving the materials that comprise the firebox tray - so it will be manufactured from aluminized steel (rather than galvanized steel) for longer life.

40. There is no material difference between the grill models addressed by Sears and the Grills at issue in this lawsuit, except that Sears has failed and refused to repair the Grills referenced herein at no cost.

41. Sears also has a duty to disclose the defective nature of the Grills to consumers because the Defective Firebox Tray poses an unreasonable safety hazard. Although Sears has made a general statement regarding the Defective Firebox Trays, it has further stated that *only* five of its Models (16154, 23683, 34176, 34178 and 34308) are affected by this problem – implying that the rest of the models are not defective. As a result, Sears is, in effect, actively concealing the defect contained in the Grills from its consumers.

#### **CLASS ACTION ALLEGATIONS**

42. Plaintiff brings this lawsuit, both individually and as a class action, on behalf of similarly situated purchasers of the Grills, pursuant to Federal Rule of Civil Procedure 23(b)(2) and (3).

43. The Class that Plaintiff seeks to represent is defined as follows:

**Nationwide Class:**

All persons who purchased, not for resale, Sears Kenmore grills with firebox trays made with galvanized steel, except model numbers 16154, 23683, 34176, 34178 and 34308 . Plaintiff alternatively brings this action on behalf of the following Class:

**Alternative Virginia Class:**

All persons who purchased, not for resale, Sears Kenmore grills with firebox trays made with galvanized steel, except model numbers 16154, 23683, 34176, 34178 and 34308.

Excluded from the Class are Defendant, as well as Defendant's affiliates, employees, officers and directors, including franchised dealers; any person who has experienced physical injury as a result of the defect at issue in this litigation; and the Judge(s) to whom this case is assigned. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

44. **Numerosity/Impracticability of Joinder:** There are so many members of the Class that joinder of all members is impracticable. Plaintiff estimates that there are thousands in the Nationwide Class and at least hundreds, if not thousands, of Virginia Class members. The members of the Class are readily identifiable from information and records in Defendant's possession, custody or control. The disposition of these claims will provide substantial benefits to the members of the Class.

45. **Commonality and Predominance:** There is a well-defined community of interest and common questions of law and fact that predominate over any question affecting only individual members of the Class. These common legal and factual questions, which do not vary from members of the Class, and which may be determined without reference to the individual circumstances of any members of the Class, include, but are not limited, to the following:

- a) whether the Grills are defective;
- b) whether Defendant's claims regarding the Grills were and are deceptive or misleading;
- c) whether Defendant concealed facts from Plaintiff and members of the Class about the defect in the Grills;
- d) whether Defendant knew or should have known that its representations were false, or that it omitted material information;
- e) whether Defendant's conduct violated the Illinois CFDBPA;
- f) whether Defendant's conduct violated the VCPA;
- g) whether Defendant's conduct violated the MMWA;
- h) whether Defendant's conduct was a breach of express warranty;
- i) whether Defendant's conduct was a breach of implied warranty of merchantability;
- j) whether Defendant has been unjustly enriched by its conduct, as alleged herein;
- k) whether Defendant's conduct as alleged herein violates public policy; and
- l) whether Plaintiff and members of the Class are entitled to damages, restitution, equitable relief and/or other damages and other relief, and, if so, the amount and nature of such relief.

46. **Typicality and Adequacy:** Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests antagonistic to those of the Class. Plaintiff's counsel are experienced in the prosecution of this type of litigation. The questions of law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class.

47. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for members of the Class to prosecute their claims individually. The litigation and trial of the Class-wide claims are manageable.

48. Unless a class is certified, Defendant will improperly retain monies received as a result of its conduct from Plaintiff and members of the Class. Unless Defendant is required to change its unfair and deceptive practices, Defendant will continue to commit the violations and the members of the Class, and the general public, will continue to be misled.

49. Defendant has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

**COUNT I**  
**Violation Of The Illinois CFDBPA**  
**(815 LCS 505/1, *et seq.*)**  
**On Behalf Of Plaintiff And The Class Against Sears**

50. Plaintiff realleges and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

51. At all relevant times, Plaintiff and all members of the Class were consumers within the meaning of CFDBPA, and utilized the Grills for household use and not for resale in the ordinary course of their trade or business.

52. At all relevant times hereto, Sears engaged in trade and/or commerce within the meaning of the CFDBPA.

53. Despite knowing that the Grills are manufactured and sold with the Defective Firebox Tray, when it markets and sells the Grills, Sears uniformly represents to customers and

the general public that the Grills are safe to use, free from defects and will perform in the manner and for the purpose that they are intended.

54. Under all circumstances, Sears' representations and/or omissions regarding the Defective Firebox Tray in the Grills were and are misleading and deceptive, and Sears intentionally made these misleading and deceptive representations and/or omissions (while knowing they were deceptive and misleading) for the sole purpose of deceiving Plaintiff and other Class members. Defendant intended that Plaintiff rely on Sears' deceptive and misleading practice.

55. Sears' conduct was unfair and deceptive and was an improper concealment, suppression, or omission of material facts, in violation of the CFDPA's prohibition against unfair business practices.

56. Sears violated the CFDPA's prohibition against misrepresenting and omitting material information during commercial transactions, as well as the CFDPA's prohibition against unfair business practices.

57. As a direct and proximate result of Sears' violations of the CFDPA, Plaintiff and other Class members suffered damages, in the form of, *inter alia*, monies spent to repair their Grills.

## **COUNT II**

### **Violation Of The VCPA (§§ 59.1-196, *et seq.*) Alternatively On Behalf Of Plaintiff And The Virginia Class Only**

58. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-49 as if fully set forth herein.

59. The VCPA was enacted as “remedial legislation to promote fair and ethical standards of dealings between suppliers and the consuming public.” Va. Code. § 59.1-197.

60. At all relevant times hereto, Sears is a “supplier” within the meaning of Va. Code. § 59.1-198.

61. The Grills at issue are “goods” within the meaning of Va. Code. § 59.1-198.

62. The sale of the Grills with the Defective Firebox Trays to Plaintiff and the Virginia Class members was a “consumer transaction” within the meaning of Va. Code. § 59.1-198.

63. The VCPA lists “prohibited practices,” which include the following: “5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; 8. Advertising goods or services with intent not to sell them as advertised; [and] 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.” Va. Code. § 59.1-200. Sears violated the VCPA by misrepresenting that the Grills had certain characteristics and qualities; misrepresenting that the Grills were of a particular standard and quality; advertising the Grills with the intent not to sell them as advertised; and otherwise using any other deception, fraud, or misrepresentation to sell the Grills.

64. Specifically, despite knowing that the Grills are manufactured and sold with the Defective Firebox Tray, when it markets and sells the Grills, Sears uniformly represents to customers and the general public that the Grills are safe to use, free from defects and will perform in the manner and for the purpose that they are intended.

65. Under all circumstances, Sears' representations and/or omissions regarding the Defective Firebox Tray in the Grills were and are misleading and deceptive, and Sears intentionally made these misleading and deceptive representations and/or omissions (while knowing they were deceptive and misleading) for the sole purpose of deceiving Plaintiff and other Virginia Class members. Defendant intended that Plaintiff and the Virginia Class members rely on Sears's deceptive and misleading practice.

66. Moreover, Sears has known of the Defective Firebox Trays in the Grills since no later than July 2013. Yet, Sears continues to actively conceal from the public the potential dangers and risks posed by the Grills as described herein. Sears' conduct is unfair and deceptive and constitutes an improper concealment, suppression or omission of material facts, in violation of the VCPA's prohibition against unfair business practices.

67. Sears owed Plaintiff and the Virginia Class members a duty to disclose the true safety and reliability of the Grills and/or the Defective Firebox Trays because Sears: (a) possessed exclusive knowledge of the dangers and risks posed by the foregoing; (b) intentionally concealed the foregoing from Plaintiff and the Virginia Class members; and (c) made incomplete representations about the safety and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiff and the Virginia Class members that contradicted these representations.

68. Sears violated the VCPA's prohibition against misrepresenting and omitting material information during commercial transactions, as well as the VCPA's prohibition against unfair business practices.

69. Sears knew or should have known that its conduct violated the VCPA.

70. As alleged above, Sears made material statements about the safety and reliability of the Grills and/or the Defective Firebox Trays that were either false or misleading.

71. As a direct and proximate result of Sears' violations of the VCPA, Plaintiff and the Virginia Class members suffered ascertainable loss, in the form of, *inter alia*, monies spent to repair and/or replace their Grills.

72. Pursuant to Va. Code. § 59.1-204, Plaintiff and the Virginia Class members seek monetary relief against Sears measured as the greater of: (a) actual damages in an amount to be determined at trial; and (b) statutory damages in the amount of \$500 for Plaintiff and each Virginia Class member. For the reason that Sears' conduct was committed willfully and knowingly, Plaintiff and each Virginia Class member is entitled to the greater of: (a) three times the actual damages; or (b) \$1,000.

73. Plaintiff also seeks an order enjoining Sears' unfair and/or deceptive acts or practices, punitive damages, attorneys' fees and expenses, and any other just and proper relief available under Va. Code. § 59.1-204, *et seq.*

**COUNT III**  
**Violations Of The MMWA (15 U.S.C. §§ 2301-2312 – Written Warranty)**  
**On Behalf Of Plaintiff And The Class**

74. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 – 49 as if fully set forth herein.

75. The Grills at issue are “consumer products” within the meaning of 15 U.S.C. § 2301(1).

76. Plaintiff and all Class members are “consumers” within the meaning of 15 U.S.C. § 2301(3) and used the Grills for personal use and not for resale or commercial purposes.

77. Sears is and was a “warrantor” and “supplier” within the meaning of 15 U.S.C. §§ 2301(4) and (5).

78. Sears made “written warranties” to Plaintiff and all Class members within the meaning of 15 U.S.C. § 2301(6).

79. Sears’ written warranties made to Plaintiff and all Class members were the same in all material respects.

80. Sears knew that the Grills at issue had a serious defect and nevertheless still marketed and otherwise sold them with the express warranty that the Grills are safe to use, free from defects, and will perform in the manner and for the purpose that they are intended.

81. Sears was obligated under the terms of the written warranty to repair or replace the Defective Firebox Tray to ensure the Grills were working properly.

82. Sears has breached the written warranty, as set forth above, by supplying the Grills in a condition that does not meet the warranty obligations undertaken by Sears, and by failing to replace the Defective Firebox Tray and/or refund the amounts paid by Plaintiff and the Class to replace the Defective Firebox Tray.

83. As set forth above, the warranty fails in its essential purpose and, accordingly, Plaintiff and members of the Class cannot and should not be limited to the remedies set forth in the written warranty and, instead, should be awarded other appropriate relief, including all compensatory damages and injunctive relief.

84. Defendant has received sufficient and timely notice of the alleged breaches of warranty. Despite this notice and Defendant’s knowledge of the defect in the Grills at issue, Defendant has failed and refused to honor the warranty.

85. Defendant has received, upon information and belief, thousands of complaints and other notices from its customers nationwide advising it of the defect in the Grills at issue.

86. Plaintiff has given Defendant a reasonable opportunity to cure its failures with respect to its breaches of written warranty, and Defendant has failed to do so. To the extent any member of the Class has not given Defendant a reasonable opportunity to cure, any such failure is excused because of Defendant's conduct described herein.

87. All jurisdictional prerequisites have been satisfied.

88. By Defendant's conduct as described herein, including Defendant's knowledge of the defective Grills and its action, and inaction, in the face of that knowledge, Defendant has failed to comply with its obligations under its written promises, warranties, and representations.

89. As a result of Defendant's breach of its express warranties, Plaintiff and the members of the Class are entitled to revoke their acceptance of the Grills, obtain damages and equitable relief, and obtain attorneys' fees and costs under 15 U.S.C. § 2310.

**COUNT IV**  
**Breach of Express Warranty (810 ILCS 5/2-313)**  
**On Behalf Of Plaintiff And The Class**

90. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-49 as if fully set forth herein.

91. Sears' express warranties covered the Grills under the circumstances described herein.

92. The express warranty was provided to Plaintiff and members of the Class by Sears and specifically extend to original purchasers of the Grills and subsequent owners for the period of warranty coverage.

93. Sears has breached its express warranties, as set forth above, by supplying the Grills in a condition in which they do not meet the warranty obligations undertaken by Sears and by failing to repair or replace the defect and/or defective parts inherent in the Grills.

94. Sears is obligated under the terms of its express warranties to repair and/or replace the defective Grills sold to Plaintiff and the Class.

95. Sears has received timely notice of the breaches of warranty alleged herein, or its conduct has otherwise obviated the need for any such notice.

96. In addition, Sears has received, upon information and belief, thousands of complaints and other notices from its customers nationwide advising it of the defects in the Grills, including hundreds (if not thousands) from Virginia residents. Despite this notice and Sears's knowledge, Sears refuses to honor its warranties, even though it knows of the inherent defect in the Grills; *i.e.*, that the Defective Firebox Trays routinely rust and prematurely fail.

97. Sears has failed to provide Plaintiff and the Class, as a warranty replacement, a product that conforms to the qualities and characteristics that Sears expressly warranted when it sold the Grills to Plaintiff and members of the Class.

**COUNT V**  
**Breach of Implied Warranty of Merchantability (810 ILCS 5/2-314)**  
**On Behalf Of Plaintiff And The Class**

98. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 – 49 as if fully set forth herein.

99. Plaintiff and the members of the Class are “buyers” as that term is defined in 810 ILCS 5/2-103.

100. Sears is a “seller” as that term is defined in 810 ILCS 5/2-103.

101. The Grills are “goods” as that term is defined in 810 ILCS 5/2-105.

102. Sears is a merchant in the sale of the Grills to Plaintiff and the members of the nationwide Class pursuant to 810 ILCS 5/2-104. Sears manufactures, markets and sells the Grills; thus, Sears provided Plaintiff and the members of the Class with an implied warranty that the Grills are merchantable and fit for the ordinary purposes for which they were sold. The Grills, however, are not fit for ordinary purposes for which such Grills are used because the Defective Firebox Tray in the Grills rusts prematurely, creating a safety hazard and rendering the Grills inoperable. As a result, the Grills do not meet with the expectations of Plaintiff or any other reasonable purchasers of the Grills as to the manner in which the Grills should perform when used for ordinary purposes, because the manner in which the Grills perform is so deficient and below a minimum level of quality as to render them unfit for their ordinary use and purpose. By selling the Grills, as well as by failing to repair the Grills, Defendant has breached the implied warranty of merchantability.

103. The Grills do not conform to the promises and affirmations uniformly issued by Sears in its sales and marketing materials and warranties.

104. Plaintiff and the Class members have used the Grills for their intended and ordinary purpose.

105. Plaintiff and the Class members have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant’s unconscionable conduct.

106. Members of the Class have provided timely notice to Defendant regarding the problems they experienced with the Grills and, notwithstanding such notice, Defendant has failed

and refused to offer Plaintiff and the Class an effective remedy, or such notice has otherwise been excused by Sears' conduct and operation of law.

107. In addition, Defendant has received, on information and belief, numerous complaints and other notices from consumers and others advising it of the problems associated with the Defective Firebox Trays.

108. By virtue of the conduct described herein, Defendant breached its implied warranty of merchantability.

109. Plaintiff and the Class members have been damaged as a direct and proximate result of Sears's breach of the implied warranty.

**COUNT VI**  
**Unjust Enrichment**  
**On Behalf Of Plaintiff And The Class**

110. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 - 49 as if fully set forth here, to the extent not inconsistent with the claims asserted in this Count.

111. This claim is asserted in the alternative on behalf of Plaintiff and the members of the Class, to the extent that any contracts do not govern the entirety of the subject matter of the disputes with Defendant.

112. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched.

113. Specifically, by its misconduct described herein, Defendant has accepted a benefit (monies paid by Plaintiff and Class members).

114. It would be inequitable for Defendant to retain the profits, benefits, compensation, consideration and other monies obtained by and from Defendant's wrongful conduct in marketing and selling the defective Grills at issue to Plaintiff and the Class, as well as engaging in the other unfair and deceptive conduct detailed in this Complaint.

115. Plaintiff, on behalf of himself and all others similarly situated, seeks restitution from Defendant and an Order of this Court proportionally disgorging all profits, benefits, compensation, consideration, and other monies obtained by Defendant from its wrongful conduct.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and members of the proposed Class, prays for judgment as follows:

- a. Certification of the Classes under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and his counsel as Class counsel;
- b. Compensatory and other damages for economic and non-economic damages;
- c. Awarding restitution and disgorgement of Defendant's revenues or profits to Plaintiff and the members of the proposed Classes;
- d. An Order requiring Defendant to cease and desist from engaging in the alleged wrongful conduct and to engage in a corrective advertising campaign;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Payment of reasonable attorneys' fees and recoverable litigation expenses as may be allowable under applicable law; and
- g. Such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: December 16, 2015

Respectfully Submitted,

/s/ James B. Zouras

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