



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

PETER TRAVERS

Plaintiff

and

WHIRLPOOL CORPORATION, WHIRLPOOL CANADA CO.,  
HOME DEPOT OF CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

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

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

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

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY**

**LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A  
LOCAL LEGAL AID OFFICE.**

Date: November 16, 2023

Issued By: \_\_\_\_\_

Address of Court Office:  
330 University Avenue  
Toronto, ON M5G 1R7

**TO: WHIRLPOOL CORPORATION**

**AND TO: WHIRLPOOL CANADA CO.**

**AND TO: HOME DEPOT OF CANADA INC.**

## I. DEFINITIONS

The following definitions apply for the purpose of this Statement of Claim:

- A. “**BPA**” means the *Business Practices Act*, C.C.S.M. c. B120;
- B. “**BCCPA**” means the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.
- C. “**Class**” or “**Class Members**” means Canadian residents who purchased a Class Dishwasher with the inverted diverter shaft seal.
- D. “**Class Dishwasher(s)**” means any dishwasher manufactured by the Defendant Manufacturers which included the defective inverted diverter shaft seal, including dishwashers with the model numbers, BLB14DR, IUD750, IUD850, WDF5, WDF7, WDL785, WDT7, WDT9, WDTA5, and WDTA7; JennAir Models beginning with JDB8, JDB9, and JDTSS2; Kenmore Models beginning with 662.13, 665.12, 665.13, 665.14, and 665.15; KitchenAid Models beginning with KDFE1, KDFE2, KDFE3, KDFE4, KDTE1, KDTE2, KDTE3, KDTE4, KDTE5, KDTE7, KDHE4, KDHE7, KDTM3, KUDE2, KUDE4, KUDE5, KUDE6, KUDE7, KUDL, KDPE2, and KDPE3; and Maytag Models beginning with JDB8.
- E. “**CCQ**” means the *Civil Code of Quebec*, C.Q.L.R. c C-1991;
- F. “**CPA**” means the *Consumer Protection Act*, 2002, S.O. 2002, c.30;
- G. “**CPBPA**” means the *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2;
- H. “**Defects**” mean defects in the functioning of the Class Dishwashers
- I. “**Defendant Manufacturers**” means Whirlpool Corporation.
- J. “**Defendant Distributor**” means Whirlpool Canada Co.
- K. “**Defendant Retailer**” or “**Home Depot**” means Home Depot of Canada Inc.

- L. “**NFLD CPBPA**” means the *Consumer Protection and Business Practices Act*, SNL 2009, C-31.1;
- M. “**PEI BPA**” means the *Business Practices Act*, RSPEI 1988, c B-7;
- N. “**Provincial Consumer Protection Legislation**” means *BCCPA, BPA, CPA, CPBPA, FTA, NFLD CPBPA, PEI BPA, and QC CPA*;
- O. “**QC CPA**” means the *Consumer Protection Act*, R.S.Q. c. P-40.1;
- P. “**Whirlpool**” or “**Whirlpool defendants**” means, collectively, Whirlpool Corporation and Whirlpool Canada Co.

## II. RELIEF SOUGHT

1. The plaintiff, on his own behalf and on behalf of class members, claims:
  - (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the Class;
  - (b) a declaration that the defendant Home Depot is liable to the Class for breach of contract and breach of the implied terms of the *Sale of Goods Act*, RSO 1990, c S.1 and equivalent legislation;
  - (c) a declaration that the Whirlpool and Home Depot are liable to the Class for breach of the *Consumer Protection Act, 2002*, SO 2002, c 30 and equivalent consumer protection legislation;
  - (d) a declaration that the Whirlpool defendants are liable to the Class for negligence;
  - (e) a declaration that the Whirlpool defendants have been unjustly enriched.
  - (f) damages in an amount to be determined;

- (g) an order, pursuant to section 24 of the *Class Proceedings Act, 1992, S.O. 1992, c. 6* directing an aggregate assessment of damages;
- (h) an order directing a reference or giving such other directions as may be necessary to determine any issues not determined at the trial of the common issues;
- (i) pre-judgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act, R.S.O. 1980, c. 43*;
- (j) costs of this action, together with applicable HST or other applicable taxes thereon;
- (k) the costs of administering the plan of distribution of the recovery in this action; and
- (l) such further and other relief as this Honourable Court deems just.

### **III. OVERVIEW**

2. Whirlpool designed, manufactured, distributed, marketed, and sold dishwashers with a uniform defect that can and has caused the dishwashers to leak and damage consumers' cabinetry, flooring and other property.
3. The Class Dishwashers were and are equipped with a pump motor diverter shaft seal ("Diverter Shaft Seal" or "Shaft Seal") oriented incorrectly during the installation/manufacturing process, thereby accelerating degradation of the seal and creating a buildup of debris that prevents the shaft seal spring from properly sealing the diverter shaft and sump. As a result of this uniform defect the Diverter Shaft Seal fails to seal off water between the diverter shaft and sump pump, causing the Plaintiff's and Class Members' dishwashers to experience significant leakage during the washing cycle through

the Diverter Shaft Seal, of water flowing out of the dishwasher and pooling on the floor damaging cabinetry, flooring, and other property.

4. Beginning in or around 2013, the defendants knew or ought to have known that the Class Dishwashers contained the defects as the issues were widely reported on internet forums and in warranty requests.
5. Despite this knowledge, the defendants continued to manufacture, distribute and sell the Class Dishwashers without correcting the installation defect during manufacturing.

#### **IV. PARTIES**

##### **A. The Plaintiff**

6. The Plaintiff, Peter Travers (hereinafter the plaintiff or “Mr. Travers”), is a resident of Ottawa, Ontario.

##### **B. The Defendants**

###### *i. Whirlpool Corporation*

7. Whirlpool Corporation is a manufacturer and marketer of home appliances including laundry appliances, home refrigeration, home cooking appliances, home dishwashers and mixers, and other household appliances. Whirlpool Corporation’s annual sales are close to \$20 billion. It has over 68,000 employees, and approximately 70 manufacturing and technology research centers around the world. The global headquarters is located in Benton Harbor, Michigan with regional headquarters located in Europe, Asia and Latin America.
8. Whirlpool Corporation is the manufacturer of the Class Dishwashers.

###### *ii. Whirlpool Canada Co.*

9. Whirlpool Canada Co. is Whirlpool Corporation's Canadian distributor. It is one of Canada's leading marketer and supplier of home appliances, with over \$1 billion in revenue. The company has roughly 230 employees and operates nationwide. It is registered in Nova Scotia, with its head office located in Mississauga, Ontario. Whirlpool Canada LP distributed and sold the Class Dishwashers to Canadian retailers, including Home Depot.

*iii. KitchenAid*

10. KitchenAid is a U.S. home appliance brand owned by Whirlpool Corporation. In Canada, the trademark on "KitchenAid" is registered to Whirlpool Properties Inc.

*iv. Home Depot of Canada Inc.*

11. Home Depot is Canada's leading home improvement specialty retailer, with 182 stores in ten Canadian provinces. It sold the Class Dishwashers across the country. Home Depot Canada, Inc. sold the plaintiff his dishwasher.

**V. FACTS**

**A. The Dishwasher**

12. On or about December 5, 2017, the plaintiff purchased the dishwasher from Home Depot in Nepean, Ottawa. The dishwasher bears model number KDTE234GPS and serial number F74515843. The dishwasher was purchased for consumer/ household purposes and cost \$1,071.22 after tax. The dishwasher was installed at the plaintiff's residence

13. On or about November 16, 2021, the plaintiff noticed water on the floor around the dishwasher. He removed the bottom panel from the dishwasher and observed water pooled under the machine. He identified a drip from the counter-balance weight. The pooled water had caused damage to his floor.

14. He called a repair technician from Bryan's Appliance Recycling. On November 18, 2021, a technician attended the residence, inspected the dishwasher and issued an invoice for \$101.70 for the service call and wrote "Found sump motor assembly, faulty". The technician estimated the repair at "more than \$400".
15. The plaintiff contacted the 1-800 number provided on his warranty from Whirlpool and was informed that the repair would not be covered.
16. As a direct result of the faulty sump motor assembly the plaintiff could no longer use the dishwasher as it would cause water to cover the kitchen floor. The estimated cost of the repair and service charge was in the range of \$500-\$600 for a dishwasher that cost \$1071.22 in 2017. Therefore, on December 18, 2021, the plaintiff purchased a new LG dishwasher at a cost of \$898.36.

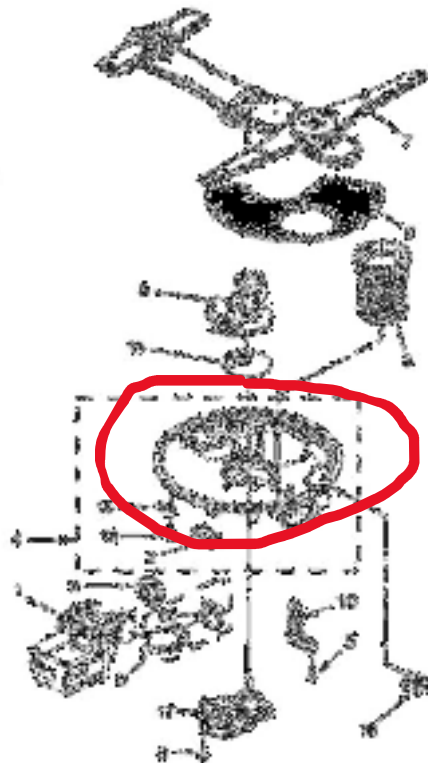
#### **B. The Defects**

17. The Class Dishwashers were designed and manufactured to distribute dish detergent along with clean, hot water consistently throughout the dishwasher during the cleaning process. This process is accomplished utilizing various mechanical parts, including motors, rotating spray arms, and the sump assembly.
18. The Class Dishwashers are equipped with a pump motor diverter shaft seal ("Diverter Shaft Seal" or "Shaft Seal").
19. A Diverter Shaft Seal is a part of a dishwasher's sump pump assembly, which is located at the bottom of the dishwasher's tub and is responsible for collecting and distributing the water throughout the dishwasher during cleaning. The sump collects and holds water below



the dishwasher tub and the diverter shaft directs the collected water into the spray arms, while the Diverter Shaft Seal prevents leaks between the sump and tub. In other words, the Diverter Shaft Seal's main purpose is to prevent the dishwasher from leaking and causing damage to consumers' property.

20. Below is a representative parts diagram, with (4) being the sump pump and Diverter Shaft Seal assembly, and (17) the dishwasher's diverter motor. The red circle specifically indicates the location of the Divert Shaft Seal.



21. The Divert Shaft Seal's manufacturer's installation instructions direct the seal to be affixed in an orientation towards the tub so that there is protection from hot soapy water and food debris during cleaning, and a complete and properly functioning seal. However, Whirlpool failed to follow the installation instructions. Instead, it designed and manufactured all of

the Class Dishwashers including the dishwasher in question with the sump and diverter motor pump assembly with the seal affixed in an *inverted* position, contrary to the manufacturer's instructions, which exposes it to hot soapy water and debris. As the debris accumulates and the seal degrades, water begins to leak between the sump and the tub, eventually leaking through the entire unit and onto floors.

22. The defective sump and diverter motor pump assembly in the dishwashers exists at the time of manufacture in the United States and distribution by Whirlpool Canada to retailers in Canada, that is when it leaves the manufacturer, and before it is purchased by consumers. Thus prior to purchasing the dishwashers, the plaintiff and other Class members did not know and could not know that the dishwashers have a defective sump and diverter motor pump assembly and would leak and cause damage to the floors, causing them to need repairs that cost more than the resale value of the appliance long before the average lifetime of a dishwasher.
23. Beginning as early as 2013, consumers began to post online describing how the Divert Shaft Seal in their dishwashers was improperly installed causing the dishwasher to leak or stop working. Whirlpool would have received inquiries from customers at that time or even earlier making it aware of the defect in the dishwashers.
24. The same complaints made Whirlpool aware that the latent defect in their dishwashers would cause the dishwashers to leak, causing property damage to owners, or cease functioning long before the normal average life of a dishwasher. Home Depot would have learned of the defect around the same time from customer complaints.

25. Whirlpool failed to disclose this defect to the plaintiff and Class members at the time of purchase or thereafter and continued to manufacture the dishwashers in the same defective manner despite knowing of multiple incidents of flooding and complaints.
26. Whirlpool compounded this problem by directing that the problem should be repaired by replacing the sump with a sump provided by Whirlpool that contains the same installation defect – meaning that unless Whirlpool’s instructions were disregarded, the repair would simply perpetuate the problem.

### **C. The Warranty**

#### ***i. Kitchen Aid Dishwasher Limited Warranty***

27. The defendants carrying on under the KitchenAid brand name provided a warranty for the dishwasher comprised of a “First Year Limited Warranty”, “Second through Fifth Year Limited Warranty”, and “Lifetime limited Warranty”. Mr. Travers received a copy of the warranty with his purchase of the dishwasher.
28. The First Year Limited Warranty included parts and labour, and reads “for one year from the date of purchase, when this major appliance is installed, operated, and maintained according to instructions... KitchenAid ... will pay for factory specified replacement parts and repair labor to correct defects in materials or workmanship that existed when this major appliance was purchased...”
29. The Second through Fifth Year Limited Warranty provided that KitchenAid would replace “Nylon dish racks and Electronic controls” but it would not pay for repairs or replacement of other parts, including the seal at issue here.

30. The Lifetime Limited Warranty reads “for the lifetime of the product from the date of original purchase, ... KitchenAid will pay for factory specified replacement parts and repair labor for the ... stainless steel tub [and] inner door liner.” Once again, the relevant part was excluded.
31. The plaintiff pleads that the other warranties for the Class Dishwashers contained the same limitations.
32. By excluding the Diverter Shaft Seal and the sump motor from the warranty after only one year, Whirlpool implicitly acknowledged that it knew the part would fail after that period of time, well before the average lifetime of a dishwasher.

## **VI. CAUSES OF ACTION**

### **A. Breach of Contract and the *Sale of Goods Act* as against Home Depot**

33. The plaintiff and all class members who purchased the Class dishwashers from Home Depot entered into a contract, being a sales agreement. In exchange for the purchase price, Home Depot agreed to sell a new Class dishwasher to the purchaser, free of defects.
34. The sales were governed by the *Sale of Goods Act, R.S.O. 1990, c. S.1* (“SOGA”), legislation which is implied into every one of the sales transactions. Under s. 1. the class are buyers and Home Depot, having agreed to sell the dishwashers, is a ‘seller.
35. Dishwashers are personal chattels and thus are “goods” within the meaning of section 1 of the *SOGA*, s. 1.
36. The dishwashers were supplied by Home Depot. The Plaintiff and Class Members who purchased dishwashers from Home Depot entered into a contract for the purchase and sale of the goods as defined in ss. 1 and 2 of the *SOGA*.

37. S. 15 of the *SOGA* implies three conditions into every contract :

- a. an implied condition that the goods will be reasonably fit for the purpose they are sold for;
- b. an implied condition that the goods will be of merchantable quality; and
- c. an implied warranty or condition as to quality or fitness for their particular purpose.

38. Home Depot breached these implied conditions for the sale of goods because:

- a. The Class Dishwashers were not of acceptable quality and were not fit for the sole and only purpose for which they were offered for sale in Canada because the design and/or manufacturing defect would cause them to break and cause damage to the dishwasher and to owner's homes before the end of their ordinary life;
- b. The Class Dishwashers were not of merchantable quality because they contained a latent defect;
- c. The Class Dishwashers were not of ordinary quality or fitness because the latent defect caused them to break down and become unusable long before their ordinary life cycle.

39. As a result, Home Depot breached the contracts and the plaintiff and class members who purchased the dishwashers from Home Depot are entitled to statutory remedies pursuant to ss. 51 and 52 of the *SOGA*.

40. Pursuant to s. 51 of the *SOGA*, the plaintiffs and Class Members are entitled to recover the amounts they paid for the defective products in addition to recovering compensation for other damages as provided in that section and s. 52.

41. The Plaintiff and Class Members also advance a contract claim pursuant to equivalent legislation in the other Provinces and Territories:

- (a) *Sale of Goods Act*, R.S.B.C. 1996, c 410, s. 1 including, without limitations, ss. 17(1), 18(a) (b), 56 and 57
- (b) *Sale of Goods Act*, R.S.A. 2000, c. S-2, including, without limitation, ss.15, 16(2) and (4), 52, and 53;
- (c) *The Sale of Goods Act*, C.C.S.M., c. S10, including, without limitation, ss.15, 16(a) and (b), 54, and 55;
- (d) *Sale of Goods Act*, R.S.N.B. 2016, c. 110, including, without limitation, ss.19, 20(a) and (b), 67 - 70;
- (e) *Sale of Goods Act*, R.S.N.L. 1990, c. S-6, including, without limitation, ss. 15(1), 16(a) and (c,) 54, and 55;
- (f) *Sale of Goods Act*, R.S.N.S. 1989, c. 408, including, without limitation, ss.16, 17(a) and (b), 54, and 55;
- (g) *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1, including, without limitation, ss.15, 16(a) and (b), 53, and 54;
- (h) *Sale of Goods Act*, R.S.S. 1978, c. S-1, including, without limitation, ss. 15, 16(1) and (2), 52, and 53;
- (i) *Sale of Goods Act*, R.S.N.W.T. 1998, c. S-2, including, without limitation, ss.17(a), 18(1)(a)(i)-(ii) and (1)(b), 60, 62, and 63;
- (j) *Sale of Goods Act*, R.S.N.W.T. (Nu) 1998, c. S-2, including, without limitation, ss.17(a), 18(1)(a)(i)-(ii) and (1)(b), 60, 62, and 63;
- (k) *Sale of Goods Act*, R.S.Y. 2002, c. 198, including, without limitation, ss.14, 15(a) and (b), 50, and 51.

**B. Breach of Provincial Consumer Protection Legislation as against Whirlpool**

42. The Whirlpool defendants made, approved or authorized a number of consistent, common and uniform representations regarding the Class Dishwashers they manufactured and distributed. Specifically, each defendant represented that the dishwashers it manufactured and distributed were of high quality, were free of defects that would render the dishwasher unusable or cause property damage and were functional and fit for the purpose intended during its average life expectancy. (collectively, the “Representations”).

43. The Representations were conveyed by Whirlpool to the class members and public by:

- a. by each defendant placing its name and trademarks/trade names on the dishwashers it manufactured and distributed, as well as on the relevant product labelling and packaging, and the relevant warranty; and
- b. through Whirlpool’s websites and advertisements which were disseminated in Canada and/or conveyed to the class members through internet searches conducted in Canada.

44. The Representations were false, misleading, deceptive and constituted an unfair practice under the Provincial Consumer Protection Legislation because:

- a. The dishwashers were not of high quality;
- b. The dishwashers were not free of defects;
- c. The dishwashers had defects which rendered them unusable and caused property damage;
- d. The dishwashers would not remain functional for their average life expectancy; and

- e. The dishwashers would not remain fit for the purpose intended during their average life expectancy.

45. But for the Representations, the Class Members never would have purchased the dishwashers.

46. The Representations were unconscionable under the Applicable Consumer Protection Legislation for the provinces of Ontario, British Columbia, Newfoundland and Labrador, and Prince Edward Island, which provinces have an unconscionability standard, because Whirlpool knew, or ought to have known that:

- a. The dishwashers were similar in price, function and features to dishwashers which were safe and free of defects, and as a result, the price for the Class Dishwashers grossly exceeded the price at which similar goods or services were available to consumers;
- b. Class members did not receive a substantial benefit from the dishwashers ;
- c. The transactions were excessively one-sided in favour of Whirlpool;
- d. The terms of the consumer transaction were so adverse to the Class Members as to be inequitable.

47. The Representations are unconscionable because the defendants engaged in a policy or practice of manufacturing the dishwashers while aware of the manufacturing and/or design defect, as pleaded above.

*Ontario*

48. The Class Members located in Ontario (the “Ontario Class Members”) who purchased the Class Dishwashers for personal, family or household purposes are consumers, as defined in s. 1 of the *CPA*.



49. The Representations made to the Ontario Class Members were false, misleading, deceptive or unconscionable and constituted an unfair practice under ss. 14 and 15 of the *CPA*. The material facts are pleaded in paragraphs 42 - 45 above. Class members relied on the representations in purchasing the products.
50. The purchase contracts entered into by the plaintiff and class members with Home Depot and other retailers constitute a “consumer agreement” under section 1 of the *CPA* which means “an agreement between supplier and a consumer”.
51. For the purposes of s. 18 of the *CPA*, the Representations were made on or before the Ontario Class Members entered into the agreements to purchase the Class Dishwashers. Under s. 18, class members are entitled to rescind their agreements (including those with Home Depot) because they entered into the agreements after or while Whirlpool engaged in an unfair practice.
52. The Ontario Class Members are also entitled to damages from Whirlpool pursuant to s. 18 of the *CPA*, including damages for the amount by which the Ontario Class Members’ payment for the Class Dishwashers exceeded the value of the Class Dishwashers; and damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect.
53. The Ontario Class Members seek to rescind their agreements and/or damages.
54. The Ontario Class Members are entitled, to the extent necessary and pursuant to s. 18(15) of the *CPA*, to a waiver of any notice requirements or extension of time under the *CPA*, particularly as the Whirlpool defendants have concealed the actual state of affairs from the Class Members.

*British Columbia*

55. The Class Members located in British Columbia (the “B.C. Class Members”) who purchased the Class Dishwashers for personal, family or household purposes are consumers, as defined in s. 1 of the *BCCPA*.
56. The Whirlpool defendants are suppliers as defined in s. 1 of the *BCCPA*. In the course of business, the Whirlpool defendants supplied a good, the Class Dishwashers, to the B.C. Class Members, and solicited, offered, advertised, and promoted with respect to a consumer transaction between the B.C. Class Members and Whirlpool defendants.
57. The Representations made by the Whirlpool defendants constitute deceptive acts or practices, pursuant to s. 4 of the *BCCPA* and unconscionable acts or practices, pursuant to s. 8 of the *BCCPA*. The material facts are pleaded in paragraphs 42 - 45 above.
58. The Representations were made on or before the B.C. Class Members entered into the agreements to purchase the Class Dishwashers, as defined in s. 4(2) of the *BCCPA*.
59. The B.C. Class Members suffered damage and/or loss due to the deceptive acts or practices and unconscionable acts or practices of the Whirlpool defendants, and, as such, are entitled to damages pursuant to s. 171 of the *BCCPA*, including damages for the amount by which the B.C. Class Members’ payment for the Class Dishwashers exceeded the value of the Class Dishwashers, damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect.
60. The B.C. Class Members are entitled to a declaration that the Whirlpool defendants’ acts or practices contravened the *BCCPA*, and that the Whirlpool defendants restore the monies paid by the B.C. Class Members for the Class Dishwashers which ultimately were

received as income by the Whirlpool defendants as a result of the Whirlpool defendants' contravention of the *BCCPA*, pursuant to s. 172 of the *BCCPA*.

61. The B.C. Class Members are entitled, to the extent necessary and pursuant to s. 173(3) of the *BCCPA*, to a waiver of any notice requirements under the *BCCPA*, or alternatively, that the within action should proceed irrespective of any notice being served pursuant to the *BCCPA*.

*Manitoba*

62. The Class Members located in Manitoba (the "Manitoba Class Members") who purchased the Class Dishwashers for personal, family or household uses are consumers, as defined in s. 1 of the *BPA*.

63. The Whirlpool defendants are suppliers as defined in s. 1 of the *BPA*. In the course of business, the Whirlpool defendants sold, or otherwise disposed of goods, the Class Dishwashers, to the Manitoba Class Members. The Whirlpool defendants are also manufacturers, producers, and/or distributors of the Class Dishwashers.

64. The Representations made by the Whirlpool defendants were deceiving or misleading, pursuant to s. 2 of the *BPA*. The material facts are pleaded in paragraphs 42 - 45.

65. The Representations were made on or before the Manitoba Class Members entered into the agreements to purchase the Class Dishwashers, for the purposes of s. 7 of the *BPA*.

66. The Manitoba Class Members suffered damage and/or loss due to the unfair business practices of the Whirlpool defendants, and as such are entitled to damages pursuant to s. 23(2) of the *BPA*, including damages for the amount by which the Class Members' payment for the Class Dishwashers exceeded the value of the Class Dishwashers,

damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect.

67. The Manitoba Class Members are further entitled to exemplary or punitive damages because the Whirlpool defendants engaged in a policy or practice of practice of manufacturing, distributing, marketing and selling the Class Dishwashers while aware of the defect in the Class Dishwashers, as pleaded above, pursuant to s. 23(4) of the *BPA*.

*Saskatchewan*

68. The Class Members located in Saskatchewan (the “Saskatchewan Class Members”) who purchased the Class Dishwashers for personal, family or household purposes are consumers, pursuant to s. 2 of the *CPBPA*.

69. The Whirlpool defendants are suppliers as defined in s. 2 the *CPBPA*. In the course of business, the Whirlpool defendants sold, or otherwise provided goods, the Class Dishwashers, to the Saskatchewan Class Members. The Whirlpool defendants are also manufacturers, producers, and/or distributors of the Class Dishwashers.

70. The Representations made by the Whirlpool defendants were deceiving or misleading or false claims, pursuant to ss. 6 and 7 the *CPBPA*. The material facts are pleaded in paragraphs 42 - 45.

71. The Representations were made on or before the Saskatchewan Class Members entered into the agreements to purchase the Class Dishwashers, for the purposes of s. 9 of the *CPBPA*.

72. The Saskatchewan Class Members suffered damage and/or loss due to the unfair business practices of the Whirlpool defendants, and as such are entitled to damages pursuant to s. 93(1)(b) of the *CPBPA*.

73. The Saskatchewan Class Members are entitled to a repayment by the Whirlpool defendants of the amount paid by the Saskatchewan Class Members for the Class Dishwashers, pursuant to s. 93(1)(a) of the *CPBPA*, as well as damages for, damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect.

74. The Saskatchewan Class Members are further entitled to exemplary or punitive damages, pursuant to ss. 93(1)(b) and (2) of the *CPBPA*, because the Whirlpool defendants engaged in a policy or practice of practice of manufacturing, distributing, marketing and selling the Class Dishwashers while aware of the defect in the Class Dishwashers, as pleaded above, and as such did not take reasonable precautions or exercise due diligence.

*Alberta*

75. The Class Members located in Alberta (the “Alberta Class Members”) who purchased the Class Dishwashers for personal, family or household purposes are consumers, as defined in s. 1(1) of the *FTA*.

76. The Whirlpool defendants are suppliers as defined in s. 1(1) of the *FTA*. In the course of business, the Whirlpool defendants sold, or otherwise provided goods, the Class Dishwashers, to the Alberta Class Members. The Whirlpool defendants are also manufacturers and/or producers of the Class Dishwashers, and promoters of the use or purchase of the Class Dishwashers.

77. The Representations made by the Whirlpool defendants were unfair practices and deceived or misled, or might reasonably have deceived or misled, the Class Members, pursuant to s. 6 of the *FTA*. The material facts are pleaded in paragraphs 42 - 45.

78. The Representations were made on or before the Alberta Class Members entered into the agreements to purchase the Class Dishwashers, for the purposes of s. 7 of the *FTA*.
79. The Alberta Class Members suffered damage and/or loss due to the unfair business practices of the Whirlpool defendants, and as such are entitled to damages pursuant to ss. 7(1) and (3) and 13 of the *FTA*, including damages for the amount by which the Alberta Class Members' payment for the Class Dishwashers exceeded the value of the Class Dishwashers, damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect.
80. The Alberta Class Members are entitled to repayment by the supplier of monies paid for the Class Dishwashers, pursuant to ss. 7(1) and (3), and 13 of the *FTA*.
81. The Alberta Class Members are further entitled to exemplary or punitive damages because the Whirlpool defendants engaged in a policy or practice of practice of manufacturing, distributing, marketing and selling the Class Dishwashers while aware of the defect in the Class Dishwashers, as pleaded above, pursuant to ss. 7.2(1) and 13 of the *FTA*.
82. The Alberta Class Members are entitled, to the extent necessary and pursuant to s. 7.2(3) of the *FTA*, to a waiver of any notice requirements under the *FTA*.

*Newfoundland and Labrador*

83. The Class Members located in Newfoundland and Labrador (the "Newfoundland and Labrador Class Members") who purchased the Class Dishwashers for personal, family or household purposes are consumers, as defined in s. 2 of the *NFLD CPBPA*.
84. The Whirlpool defendants are suppliers, as defined in s. 2 of the *NFLD CPBPA*. In the course of business, the Whirlpool defendants offered, advertised, and/or sold goods, the

Class Dishwashers, to the Newfoundland and Labrador Class Members. The Whirlpool defendants engaged in a consumer transaction with the Newfoundland and Labrador Class Members for the sale of the Class Dishwashers. The Whirlpool defendants also were manufacturers, importers, and/or producers of the Class Dishwashers.

85. The Representations made by the Whirlpool defendants were deceiving or misleading, pursuant to s. 7 of the *NFLD CPBPA* and constitute unconscionable acts or practices, as defined in s. 8 of the *NFLD CPBPA*. The material facts are pleaded in paragraphs 42 - 45.
86. The Representations were made on or before the Newfoundland and Labrador Class Members entered into the agreements to purchase the Class Dishwashers, for the purposes of s. 7(2) of the *NFLD CPBPA*.
87. The Newfoundland and Labrador Class Members suffered damage and/or loss due to the unfair business practices of the Whirlpool defendants, and as such are entitled to repayment by the Whirlpool defendants of the amount paid by the Newfoundland and Labrador Class Members for the Class Dishwashers, damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect pursuant to s. 10 of the *NFLD CPBPA*.
88. The Class Members are further entitled to exemplary or punitive damages because the Whirlpool defendants engaged in a policy or practice of practice of manufacturing, distributing, marketing and selling the Class Dishwashers while aware of the defect in the Class Dishwashers, as pleaded above, pursuant to s. 10 of the *NFLD CPBPA*.

*Prince Edward Island*

89. The Class Members located in Prince Edward Island (the “P.E.I. Class Members”) who purchased the Class Dishwashers not acting in the course of carrying on business are consumers, as defined in s. 1 of the *PEI BPA*.

90. The Representations made by the Whirlpool defendants were false, misleading or deceptive consumer representations, pursuant to s. 2(a) of the *PEI BPA* and constituted unconscionable consumer representations, as defined in s. 2(b) the *PEI BPA*. The material facts are pleaded in paragraphs 42 - 45.

91. The Representations were consumer representations, as defined in s. 1 of the *PEI BPA*, because they were made by the Whirlpool defendants in the course of business with a respect to supplying goods, the Class Dishwashers, to the P.E.I. Class Members, or made for the purpose of or with a view to receiving consideration for the Class Dishwashers.

92. The Representations were made before the P.E.I. Class Members entered into the agreements to purchase the Class Dishwashers, for the purposes of s. 4 of the *PEI BPA*.

93. The P.E.I. Class Members suffered damage and/or loss due to the unfair business practices of the Whirlpool defendants.

94. The P.E.I. Class Members are entitled to damages and/or recovery of the amount by which the P.E.I. Class Members paid under the consumer agreement in excess of the fair value of the Class Dishwashers, damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect, pursuant to s. 4(1) of the *PEI BPA*.



95. The P.E.I. Class Members are further entitled to exemplary or punitive damages because the Whirlpool defendants' unfair practices constituted unconscionable consumer representations, as pleaded above, pursuant to s. 4(2) of the *PEI BPA*.

**C. Breach of Provincial Consumer Protection Legislation as against Home Depot**

96. Home Depot made, approved or authorized a number of consistent, common and uniform representations regarding the Class Dishwashers they sold to class members. Specifically, Home Depot adopted the statements by Whirlpool set out above at paragraphs 42 - 45.

97. The Representations were conveyed by Home Depot to the class members and public by:

- a. Home Depot placing the Whirlpool defendants names and trademarks/trade names on its websites and advertisements which were disseminated in Canada and/or conveyed to the class members through internet searches conducted in Canada.

98. The Representations were false, misleading, deceptive and constituted an unfair practice for the reasons set out above at paragraph 42 - 45.

99. But for the Representations, the Class Members never would have purchased the dishwashers.

100. The Class Members located in Ontario (the "Ontario Class Members") who purchased the Class Dishwashers for personal, family or household purposes are consumers, as defined in s. 1 of the *CPA*.

101. Home Depot is a supplier as defined in s. 1 of the *CPA*.

102. The Representations made to the Ontario Class Members were false, misleading, deceptive or unconscionable and constituted an unfair practice under ss. 14 and 15 of the

*CPA*. The material facts are pleaded in paragraphs 42 - 45 above. Class members relied on the representations in purchasing the products.

103. The purchase contracts entered into by the plaintiff and class members with Home Depot and other retailers constitute a “consumer agreement” and a “consumer transaction” within the meaning of section 1 of the *CPA*. They are also an “agreement” within the meaning of s. 18 of the *CPA* because they were entered into by consumers.

104. For the purposes of s. 18 of the *CPA*, the Representations were made on or before the Ontario Class Members entered into the agreements to purchase the Class Dishwashers. Under s. 18, class members are entitled to rescind their purchase agreements (including those with Home Depot) because they entered into the purchase agreements after or while Whirlpool and/or Home Depot engaged in an unfair practice.

105. The Ontario Class Members are also entitled to damages pursuant to s. 18 of the *CPA*, including damages for the amount by which the Ontario Class Members’ payment for the Class Dishwashers exceeded the value of the Class Dishwashers; and damages for the cost of installation, removal, and repairs related to the defect, and damages for any property damage caused by the defect.

106. The Ontario Class Members seek to rescind their agreements and/or damages.

107. The Ontario Class Members are entitled, to the extent necessary and pursuant to s. 18(15) of the *CPA*, to a waiver of any notice requirements or extension of time under the *CPA*, particularly as Home Depot concealed the actual state of affairs from the Class Members.

108. Class Members in the other provinces who purchased their Class Dishwashers from Home Depot plead and rely on the equivalent Provincial Consumer Protection Legislation against Home Depot.

#### **D. Negligence**

109. Whirlpool owed a duty of care to the Class Members in the design, manufacturing, processing, distributing, delivering, supplying, inspecting, marketing and/or selling the dishwashers that Whirlpool places into the stream of commerce. Specifically, Whirlpool owed a duty of care to take reasonable steps to manufacture and distribute the Class Dishwashers free of defects and in accordance with parts suppliers specifications.

110. There was a sufficient degree of proximity between the Class members and Whirlpool to establish a duty of care because:

- a. It was reasonable for the Class Members to expect that Whirlpool had implemented appropriate manufacturing procedures and quality controls when assembling the Class Dishwashers:
- b. It was reasonably foreseeable to Whirlpool that, if it did not assemble, install parts or manufacture the Class Dishwashers in accordance with part suppliers specifications, the dishwashers would fail and/or cause leakage and property damage such that Whirlpool should have been mindful of the risk of harm to Class Members:

- c. It was reasonably foreseeable to Whirlpool that if it did not install the Diverter Shaft Seal in accordance with the part suppliers specifications, the dishwashers would fail and /or leaking would occur.
  - d. Class Members were entirely vulnerable to Whirlpool in terms or relying on the defendants to take appropriate measures to manufacture and distribute dishwashers that did not have a propensity to leak.
  - e. There is a sufficient degree of proximity between the Class Members and Whirlpool because the Class Members are or were purchasers of the Class Dishwashers.
111. Whirlpool failed in its duty to implement an appropriate standard of care in its manufacturing and distribution of the dishwashers, as described below:
- a. It failed to establish design and manufacturing procedures where its employees would follow parts supplier specifications.
  - b. It failed to install the Diverter Shaft Seal in accordance with parts supplier specifications as part of the assembly and manufacture of the Class Dishwashers.
  - c. It failed to establish sufficient quality controls to inspect the dishwashers for compliance with parts supplier specifications, test for defects and manufacturing deficiencies, before placing them into the stream of commerce or failed to adhere to its own quality controls.
  - d. It failed to correct parts installation deficiencies once known but continued to manufacture and distribute the dishwashers.

- e. It distributed the dishwashers in Canada when Whirlpool Canada knew of the defects.
  - f. It failed to recall the dishwashers or otherwise notify Class Members at the earliest date that it became known that the dishwashers were, in fact, defective and would prematurely fail and cause property damage;
  - g. Negligently designing the dishwashers in a manner that would prematurely fail;
  - h. Failing to conduct adequate testing to determine the useful life of the dishwashers;
  - i. Failing to warn Class Members, either directly or indirectly, orally or in writing, about the defective nature of the product
  - j. In other such ways that may be proven at trial.
112. As a result of Whirlpool's negligence, Class Members sustained damages including the cost of the dishwasher and related expenses for delivery and installation, repair costs, cost to replace the dishwasher, and damages to property.
113. In addition, there exists a real and substantial risk that Class Members will suffer damage to property, including damage to the dishwashers themselves caused by the defect as well as water damage to their floors, cabinetry and other property caused by the leaks. The risk of damage to property constitutes an imminent risk, in the sense that the onset of the leakage is unpredictable and could begin to occur at any time.
114. Whirlpool should have been mindful of the risk to class members of property damage and leakage and knew or should have known that consumers such as the plaintiff

and Class Members would foreseeably suffer damage to their property because of the early and unexpected failure of the dishwashers.

115. Whirlpool's negligence was the proximate cause of the plaintiffs' and Class Members' damages including damage to the product, water damage to cabinetry and flooring.

116. Had the plaintiffs and Class members known that the dishwashers were defective or would cause damage, they would not have purchased the dishwashers or would have paid far less for them.

117. The plaintiff and Class Members plead and rely on the *Negligence Act*, RSO.1990, c N.1, and equivalent legislation across Canada. The Whirlpool defendants are jointly and severally liable for damages caused by their negligence, which damages are indivisible.

#### **E. Unjust Enrichment**

118. This alternative claim is asserted on behalf of the plaintiff and Class Members to the extent that there is any determination that any contracts between Class Members and Whirlpool would not govern the subject matter of the disputes with Whirlpool, or that the plaintiff does not have any basis to assert any contractual claims against Whirlpool.

119. Whirlpool received a monetary benefit from the plaintiff and Class members, and it had knowledge of this benefit. The average price paid by plaintiffs and Class members for the dishwashers was more than \$500.

120. By its wrongful acts and omissions, including selling the defective dishwashers, Whirlpool was unjustly enriched at the expense of the plaintiff and other Class members.

121. It would be inequitable for Whirlpool to retain the profits and benefits stemming from their wrongful conduct.

### **E. Québec Causes of Action**

#### *Consumer Protection*

122. The presence of the inverted Diverter Shaft Seal was a latent defect in the Class Dishwashers sold to Québec class members that formed the objects of contracts that Class Members entered into with Home Depot and Whirlpool and the defect was one which Class Members could not have discovered by ordinary examination and/or there was a lack of instructions necessary for the protection of Class Members against the risk or danger posed by the defect, of which the users were otherwise unaware. As such, Class Members in Québec also advance consumer claims against the Defendants pursuant to s. 53 of the *Québec Consumer Protection Act*, C.Q.L.R. c. P-40.1 (“*QC CPA*”).

123. The Class Members are entitled to damages, pursuant to section 272 of the *QC CPA*.

124. The Class Members are entitled to rescission or annulment of the consumer agreement; the consumer agreement being set aside; or the Class Members’ obligations under the consumer agreement being reduced, pursuant to section 272 of the *QC CPA*.

125. The Class Members are further entitled to exemplary or punitive damages because the defendants engaged in a policy or practice of practice of manufacturing,

distributing, marketing and selling the Class Dishwashers while aware of the defects, as pleaded above, pursuant to section 272 of the *QC CPA*.

### *Contract/Sale of Goods*

126. Class Members in Québec also advance their claims based in breaches of warranties against Home Depot pursuant to articles 1726, 1728, 1729, and 1730 of the *Civil Code of Québec*, C.Q.L.R. c. C.C.Q.-1991.

### *Negligence*

127. With respect to Quebec, the law of civil liability under provisions 1457-1469 of the *Civil Code of Quebec*, C.Q.L.R. c C-1991, similarly establishes extra-contractual liability where Whirlpool breached their duties owed to the plaintiffs through an unsafe or defective product placed into the marketplace, as pleaded under the heading “Negligence” in respect of the common law provinces, above.

## **VII. DAMAGES**

128. As a result of the defect in the Class Dishwashers, the Class has suffered damages. Class members who purchased Class Dishwashers overpaid because the price was inflated as a result of the failure to disclose the defect and the reduced life expectancy of the appliance.

129. The market and resale value of Class Dishwashers will be reduced.



130. Class Members suffered damages in paying for delivery, installation, repair and removal of defective dishwashers.
131. Class members have suffered damages to their property due to the leaks caused by the defect.
132. The defendants should refund the amounts which class members overpaid for their dishwashers. The defendants should further pay damages for class members' loss of use, inconvenience, and out-of-pocket expenses.
133. The plaintiff and class members claim the same damages under the Applicable Consumer Protection Legislation and Applicable Sale of Goods Legislation.

#### **VIII. STATUTES RELIED UPON BY THE PLAINTIFFS**

134. The plaintiff and class members plead and rely upon:
- A. *Business Practices Act*, R.S.P.E.I. 1988, c. B-7
  - B. *The Business Practices Act*, S.M. 1990-1991, c. 6
  - C. *Business Practices and Consumer Protection Act*, S.B.C 2004 c. 2
  - D. *Civil Code of Quebec*, C.Q.L.R. c. C.C.Q.-1991
  - E. *Class Proceedings Act, 1992*, S.O. 1992, c. 6
  - F. *Consumer Protection Act, 2002*, S.O. 2002, c. 30
  - G. *Consumer Protection Act*, R.S.A. 2000, c. C-26.3
  - H. *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2
  - I. *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1
  - J. *Consumer Protection Act*, R.S.N.S. 1989, c. 92

- K. *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1
- L. *Consumer Protection Act*, S.O. 2002, c. 30
- M. *Consumer Protection Act*, C.Q.L.R. c. P-40.1
- N. *Consumers Protection Act*, RSY 2002, c 40
- O. *Consumer Protection Act*, RSNWT 1988, c C-17
- P. *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17
- Q. *Consumer Protection Act, 2002*, SO 2002, c 30
- R. *Courts of Justice Act*, R.S.O. 1980, c. 43
- S. *Negligence Act*, R.S.O. 1990, c. N.1
- T. *Sale of Goods Act*, R.S.A. 2000, c. S-2
- U. *Sale of Goods Act*, R.S.B.C. 1996, c 410
- V. *The Sale of Goods Act*, C.C.S.M., c. S10
- W. *Sale of Goods Act*, R.S.N.B. 2016, c. 110
- X. *Sale of Goods Act*, R.S.N.L. 1990, c. S-6
- Y. *Sale of Goods Act*, R.S.N.S. 1989, c. 408
- Z. *Sale of Goods Act*, RSO 1990, c. S.1
- AA. *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1
- BB. *Sale of Goods Act*, R.S.S. 1978, c. S-1
- CC. *Sale of Goods Act*, R.S.N.W.T. 1998, c. S-2
- DD. *Sale of Goods Act*, R.S.N.W.T. (Nu) 1998, c. S-2
- EE. *Sale of Goods Act*, R.S.Y. 2002, c. 198

135. Pursuant to Rule 17.04(1), the plaintiffs plead and rely on Rules 17.02(a), 17.02(c), 17.02(f), 17.02(g), and 17.02(p) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, in support of service of the Statement of Claim upon Whirlpool Corporation without a court order.

**IX. PLACE OF TRIAL**

136. The plaintiff proposes that the trial of this action be held in the City of Toronto.

Date: November 16, 2023

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PETER TRAVERS v. Whirlpool Canada LP

Plaintiff Defendant.

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

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