

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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**ROBERT THOMAS, SCOTT PATRICK  
HARRIS, MICHAEL BELL, SANDRA  
PALUMBO, FRANK KARBARZ, and  
THOMAS DAVIS on behalf of Themselves and  
all others similarly situated,**

**CASE NO.: 1:13-cv-07747**

**Plaintiffs,**

**JURY TRIAL DEMANDED**

**-against-**

**LENNOX INDUSTRIES INC.,  
a Delaware Corporation,**

**Defendant.**

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**DEFENDANT'S ANSWER TO PLAINTIFFS'  
AMENDED CLASS ACTION COMPLAINT**

Defendant LENNOX INDUSTRIES INC. ("Lennox") respectfully answers Plaintiffs' Amended Class Action Complaint ("Complaint") of Plaintiffs ROBERT THOMAS, SCOTT PATRICK HARRIS, MICHAEL BELL, SANDRA PALUMBO, FRANK KARBARZ, and THOMAS DAVIS on behalf of themselves and all others similarly situated ("Plaintiffs"), as set forth below.

**NATURE OF THIS ACTION**

1. Lennox is a large manufacturer of heating, ventilation, and air conditioning products for residential use in the United States. Defendant manufactures and sells consumer central air conditioning units under its own trade name (hereinafter the "Lennox ACs").

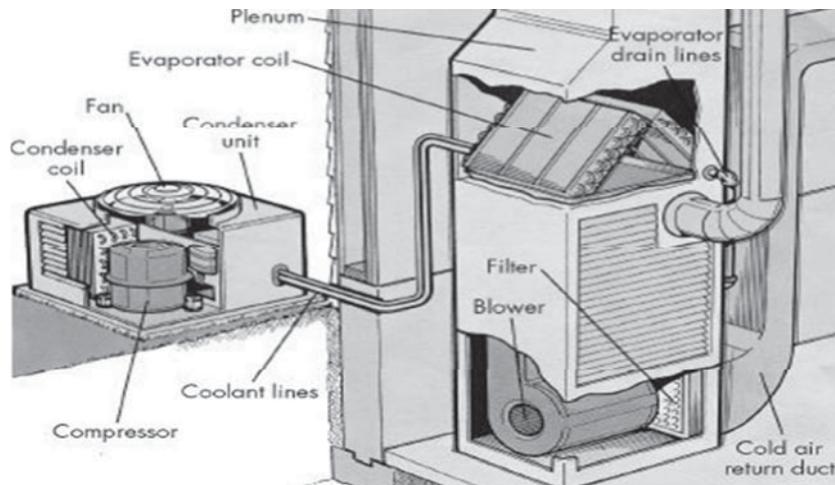
**Answer:** Lennox admits that it manufactures heating, ventilation, and air conditioning products for residential use in the United States, and further admits that it manufactures and sells consumer air conditioning systems under the

Lennox name (hereinafter “Lennox ACs”), but denies the remaining allegations in paragraph 1 of the Complaint.

2. Air conditioners, including Lennox ACs, contain a component known as an evaporator coil, which is an essential component to the system. Inside the evaporator coil, refrigerant (such as Freon, Puron, etc.) absorbs heat from the air passing over a tube and acts as a heat exchange, thereby cooling the home’s air.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the Complaint, except Lennox admits that Lennox ACs contain a component known as an evaporator coil that contains refrigerant that helps in the process of cooling the home.

3. This diagram depicts a standard AC unit setup:



<http://www.howstuffworks.com/how-to-maintain-an-air-conditioner.htm>

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegation in paragraph 3 of the Complaint, except Lennox admits that the diagram has some similarities to some air conditioning systems.

4. Air conditioner manufacturers such as Lennox have traditionally manufactured evaporator coils using copper tubing. However, copper coils are uniquely vulnerable to a type of degradation known as “formicary corrosion.” Exhibit A.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of paragraph 4 of the Complaint. Lennox denies the remaining allegations in paragraph 4 of the Complaint.

5. Formicary corrosion is caused by a chemical reaction between molecules known as volatile organic compounds and the copper tubes, and results in microscopic tunnels within the tubing which causes the coil to leak refrigerant. Exhibit A.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 of the Complaint, except Lennox admits that formicary corrosion is a phenomenon that can affect copper tubing.

6. Volatile organic compounds are a large group of carbon-based chemicals that are given off from a host of common household products and activities. For example, volatile organic compounds are given off by composite wood furniture and flooring, carpeting, cleaning and disinfecting products, air fresheners, cosmetics, and numerous other consumer products. Exhibit A.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Complaint.

7. Formicary corrosion is a particularly insidious defect in an evaporator coil because the resultant leakage is difficult to detect, and usually results in consumers being forced to repeatedly refill their air conditioners with refrigerant, often at significant cost, which only works to mask the defect for a period of time, until the Coil fails.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the Complaint.

8. Air conditioner manufacturers have begun to recognize copper coils' unique vulnerability to formicary corrosion as changes in housing and consumer behavior made formicary corrosion more prevalent and recognizable. Exhibit B. For example, modern houses are typically made more energy efficient by improved sealing of windows and doors, which results in less heated/cooled air escaping the home. A natural and foreseeable result of this increase in energy efficiency is that volatile organic compounds tend to accumulate in the home's air.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 of the Complaint.

9. A number of HVAC contractors have publicly expressed concern over the increasing incidence of formicary corrosion in air conditioning units. Exhibit C.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the Complaint.

10. There are reasonable design and manufacturing techniques available to air conditioner manufacturers to lessen or even prevent incidence of formicary corrosion. For example, evaporator coils can be manufactured from aluminum, which is not susceptible to formicary corrosion, or copper coils can be coated with a polymer sealant or tin plating. Other air condition manufacturers utilize these types of techniques and as a result have virtually eliminated the incidence of formicary corrosion in their air conditioners. Exhibit D.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10 of the Complaint, except Lennox admits that tubes in evaporator coils can be manufactured from aluminum and copper coils can be coated with a polymer or tin plating.

11. Despite being aware of the susceptibility of copper coils to formicary corrosion, the increasing incidence of formicary corrosion, and the available remedies at its disposal, Lennox continued to design and manufacture its ACs using copper evaporator coils (referred to herein as “Lennox Coils” or “Coils”), Lennox continues to fix failed Coils with similarly defective Coils and Lennox has failed to take any of the known steps that are available to reduce the susceptibility of the copper in the Lennox Coils to formicary corrosion.

**Answer:** Lennox denies that Lennox Coils are defective and denies the other allegations in paragraph 11 of the Complaint, except Lennox admits that it designs and manufactures some Lennox ACs using copper tubes in evaporator coils.

12. Lennox Coils are defective because they are manufactured with materials that, within the industry, are well known to be prone to formicary corrosion, which makes the Lennox Coils unreasonably susceptible to premature rupture and refrigerant leaks under normal use and conditions.

**Answer:** Lennox denies that Lennox Coils are defective and denies that Lennox Coils are unreasonably susceptible to premature rupture and refrigerant leaks under normal use and conditions, and Lennox lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 12 of the Complaint.

13. Lennox has not informed its customers of the Lennox ACs susceptibility to formicary corrosion. Lennox knew, or reasonably should have known, that the Coils in its air conditioners were unreasonably susceptible to formicary corrosion and thus defective, but has failed or refused to inform consumers or initiate other similar action.

**Answer:** Lennox denies Lennox ACs and Coils are unreasonably susceptible to formicary corrosion, denies that Lennox Coils are defective, denies Lennox has failed or refused to inform its customers about formicary corrosion and denies the other allegations contained in paragraph 13 of the Complaint.

14. Lennox has not informed its customers of the causes of formicary corrosion, even when replacing failed Coils, which would allow customers to make an informed decision about their risks.

**Answer:** Lennox denies the allegations in paragraph 14 of the Complaint.

15. When a defective coil leaks to the point that it eliminates the Lennox AC's ability to provide cold air within the warranty period, Lennox's standard practice is to replace the refrigerant in the unit, not the defective coil. Such a remedy, however, is only temporary and stop-gap in nature, and does not address the inherent defect in the Lennox AC. Once a consumer's warranty is expired, they are left with a defective product that requires a new evaporator coil, but no remedy offered by Lennox.

**Answer:** Lennox denies that there is an inherent defect and a defective coil in Lennox ACs and denies the other allegations in paragraph 15 of the Complaint.

16. Even if Lennox replaces the defective coil in a Lennox AC within the warranty period, the replacement coil is equally susceptible to formicary corrosion and likely to prematurely rupture and leak refrigerant under normal use.

**Answer:** Lennox denies that there is a defective coil in Lennox ACs and denies the other allegations in paragraph 16 of the Complaint.

17. As Lennox has known of the Lennox ACs' defects and has failed to timely honor its express and implied warranties, the warranty has failed of its essential purpose, and the limitations therein are null and void. Further, the limitations contained in the limited warranty are not conspicuous.

**Answer:** Lennox denies that there are defects in Lennox ACs and denies the other allegations in paragraph 17 of the Complaint.

18. Despite knowing of the defects in the Lennox ACs, Lennox has not notified all purchasers, builders, and/or homeowners with the Lennox ACs of the defect nor provided uniform relief.

**Answer:** Lennox denies that there are defects in Lennox ACs and denies the other allegations in paragraph 18 of the Complaint.

19. Plaintiffs and Class Members have not received the value for which they or their builder bargained when the Lennox ACs were purchased. There is a difference in value between the Lennox ACs as warranted and the Lennox ACs containing the defect.

**Answer:** Lennox denies the allegations in paragraph 19 of the Complaint.

### **THE PARTIES**

20. Plaintiff Robert Thomas ("Plaintiff Thomas") at all relevant times hereto, has been a citizen and resident of DuPage County, Illinois. Plaintiff owns a Lennox AC which had a Coil that failed, which Plaintiff paid to replace.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 of the Complaint.

21. Plaintiff Scott Patrick Harris ("Plaintiff Harris") at all relevant times hereto, has been a citizen and resident of South Carolina. Plaintiff Harris owns a Lennox AC which had a Coil that failed, which Plaintiff Harris paid to replace.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 of the Complaint.

22. Plaintiff Michael Bell ("Plaintiff Bell") at all relevant times hereto, has been a citizen and resident of Pennsylvania. Plaintiff Bell owns a Lennox AC which had a Coil that failed, which Plaintiff Bell paid to replace.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the Complaint.

23. Plaintiff Sandra Palumbo (“Plaintiff Palumbo”) at all relevant times hereto, has been a citizen and resident of Florida. Plaintiff Palumbo owns a Lennox AC which had a Coil that failed, which Plaintiff Palumbo paid to replace.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of the Complaint.

24. Plaintiff Frank Karbarz (“Plaintiff Karbarz”) at all relevant times hereto, has been a citizen and resident of Texas. Plaintiff Karbarz owns a Lennox AC which had a Coil that failed, which Plaintiff Karbarz paid to replace.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of the Complaint.

25. Plaintiff Thomas Davis (“Plaintiff Davis”) at all relevant times hereto, has been a citizen and resident of California. Plaintiff Davis owns a Lennox AC which had a Coil that failed, which Plaintiff Davis paid to replace.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the Complaint.

26. Defendant Lennox Industries, Inc. is a Delaware corporation with its corporate headquarters located at 2140 Lake Park Blvd., Richardson, Texas 75080.

**Answer:** Lennox admits the allegations in paragraph 26 of the Complaint.

### **JURISDICTION AND VENUE**

27. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs and at least one Class member is a citizen of a state different from Defendants.

**Answer:** Lennox admits that this Court has jurisdiction over this action because certain named Plaintiffs are allegedly citizens of different states from Lennox and because this is a putative nationwide class action in which Plaintiffs allege an amount in controversy exceeding \$5,000,000, exclusive of interest and

costs. Lennox denies that Plaintiffs can maintain their case on behalf of any class, and denies that Plaintiffs are entitled to the claimed damages. Lennox denies the remaining allegations in paragraph 27 of the Complaint.

28. Lennox transacts business in Illinois, advertises and markets its products in Illinois, disseminates the afore-described representations and deceptions throughout Illinois, and derives substantial income from the sale of products in Illinois.

**Answer:** Lennox admits that it transacts business in Illinois, advertises and markets its products in Illinois and derives income from the sale of products in Illinois, but denies the remaining allegations in paragraph 28 of the Complaint.

29. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court because a substantial part of the events, omissions and acts giving rise to the claims herein occurred in this District. Additionally, venue is appropriate for the claims arising out of Illinois' Consumer Fraud Act because the statute applies to any company engaging in any of the activities regulated by the Act within the State of Illinois.

**Answer:** Lennox does not contest venue in this Court, but denies the remaining allegations in paragraph 29 of the Complaint.

### **CLASS ALLEGATIONS**

30. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3) and/or (c)(4) on behalf of the following nationwide consumer classes (the "Classes"):

All persons residing in the United States who purchased a Lennox AC containing a Lennox Coil, primarily for personal, family, or household purposes.

All persons residing in the United States who purchased a Lennox AC containing a Lennox Coil, primarily for personal, family, or household purposes, and who paid to replace a Lennox AC evaporator coil.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action, but Lennox denies that Plaintiffs' claims are proper individually or as a class action under the provisions of Federal

Rule of Civil Procedure 23(a), (b)(2), (b)(3), and/or (c)(4) and further states that Plaintiffs' claims cannot be maintained as a class action because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies the remaining allegations in paragraph 30 of the Complaint.

31. Plaintiff Thomas also seeks to represent subclasses defined as all members of the Classes who reside in Illinois ("the Illinois Subclasses").

**Answer:** Lennox admits that Plaintiff Thomas purports to bring this action on behalf of a subclass. Lennox denies that Plaintiff Thomas's claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Thomas's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 31 of the Complaint.

32. Plaintiff Harris also seeks to represent subclasses defined as all members of the Classes who reside in South Carolina ("the South Carolina Subclasses").

**Answer:** Lennox admits that Plaintiff Harris purports to bring this action on behalf of a subclass. Lennox denies that Plaintiff Harris's claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Harris's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 32 of the Complaint.

33. Plaintiff Bell also seeks to represent subclasses defined as all members of the Classes who reside in Pennsylvania (“the Pennsylvania Subclasses”).

**Answer:** Lennox admits that Plaintiff Bell purports to bring this action on behalf of a subclass. Lennox denies that Plaintiff Bell’s claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Bell’s claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 33 of the Complaint.

34. Plaintiff Palumbo also seeks to represent subclasses defined as all members of the Classes who reside in Florida (“the Florida Subclasses”).

**Answer:** Lennox admits that Plaintiff Palumbo purports to bring this action on behalf of a subclass. Lennox denies that Plaintiff Palumbo’s claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Palumbo’s claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 34 of the Complaint.

35. Plaintiff Karbarz also seeks to represent subclasses defined as all members of the Classes who reside in Texas (“the Texas Subclasses”).

**Answer:** Lennox admits that Plaintiff Karbarz purports to bring this action on behalf of a subclass. Lennox denies that Plaintiff Karbarz’s claims are proper individually or as a class action or as a subclass under the provisions of Federal

Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Karbarz's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 35 of the Complaint.

36. Plaintiff Davis also seeks to represent subclasses defined as all members of the Classes who reside in California ("the California Subclasses") (collectively, with the above, the "Subclasses").

**Answer:** Lennox admits that Plaintiff Davis purports to bring this action on behalf of a subclass. Lennox denies that Plaintiff Davis's claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Davis's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 36 of the Complaint.

37. Subject to additional information obtained through further investigation and discovery, the foregoing Classes may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the Classes is any entity in which Defendants had a controlling interest or which has a controlling interest in Defendants, and Defendants' legal representatives, assigns, and successors.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 of the Complaint.

38. Members of the Classes are so numerous that joinder is impracticable. While the exact number of Class members is unknown to Plaintiffs, it is believed that the Classes are comprised of thousands of members geographically disbursed throughout the United States and that the Subclasses are comprised of at least hundreds of members geographically disbursed throughout each state. The Classes and Subclasses, however, are readily identifiable from information and records in the possession of Lennox.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning what is “believed” and denies the remaining allegations in paragraph 38 of the Complaint.

39. Common questions of law and fact exist as to all members of the Classes. The critical questions of law and fact common to the Classes that will materially advance the litigation is whether the Coils in Lennox ACs are inherently defective, whether they are not of a good and merchantable quality and/or do not perform according to the reasonable expectations of consumers and whether Lennox deceived consumers under the common law and statutory consumer protection laws identified in the pleadings. The resolution of these common questions of law and fact will, in turn, drive the resolution of the litigation.

**Answer:** Lennox denies the allegations in paragraph 39 of the Complaint.

40. Additional common legal and factual questions that will also drive the resolution of the litigation include, but are not limited to:

- a) Whether Lennox ACs are defectively designed or manufactured;
- b) Whether Lennox Coils (i.e., made of copper) are defectively designed and/or manufactured;
- c) Whether Lennox knew or reasonably should have known about the defects prior to distributing them to Plaintiffs and Classes;
- d) Whether Lennox concealed from or failed to disclose to Plaintiffs and Classes the defect;
- e) Whether Lennox breached express warranties relating to Lennox ACs;
- f) Whether Lennox breached the implied warranty of merchantability under applicable state law;
- g) Whether Lennox breached the implied warranty of fitness under applicable state law for a particular purpose;
- h) Whether the terms of Lennox’s written warranties relating to Lennox ACs were unconscionable or failed their essential purpose;
- i) Whether Lennox was unjustly enriched by receiving monies in exchange for air conditioners that were defective;
- j) Whether Lennox should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of defective Lennox ACs and Coils, including replacement Coils;
- k) Whether Plaintiffs and Classes are entitled to damages, including compensatory, exemplary, and statutory damages; and
- l) Whether Lennox should be enjoined from selling and marketing the defective Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 40 of the Complaint, and all of its subparts a through l.

41. Plaintiffs' claims are typical of the members of the Classes as all such claims arise out of Lennox's conduct in designing, manufacturing, warranting, marketing and selling the defective Lennox ACs and Lennox's conduct in concealing the defect in Lennox Coils from Plaintiffs and Classes.

**Answer:** Lennox denies the allegations in paragraph 41 of the Complaint.

42. Plaintiffs will fairly and adequately protect the interests of the Classes because Plaintiffs have no interests antagonistic to, or in conflict with, the Classes that Plaintiffs seeks to represent. Furthermore, Plaintiffs has retained counsel experienced and competent in the prosecution of complex class action litigation including but not limited to consumer class actions involving, inter alia, breach of warranties, product liability and design defects.

**Answer:** Lennox denies the allegations in paragraph 42 of the Complaint.

43. The class action mechanism is superior to other available means for the fair and efficient adjudication of the claims of all Class members. Besides the predominance of questions common to all Class members, individual Class members lack resources to undertake the burden and expense of individual prosecution of these claims against a large corporate defendant like Lennox, especially in comparison with the maximum individual recovery to which each Class member would be entitled. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. It also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Lennox's liability.

**Answer:** Lennox denies the allegations in paragraph 43 of the Complaint.

#### **FACTS SPECIFIC TO PLAINTIFFS**

44. Plaintiffs were not told, nor did Lennox disclose, that Lennox ACs contained Lennox Coils that were defective, because they were unreasonably susceptible to formicary corrosion and failure, which would cause the air conditioning units to cease cooling or leak.

**Answer:** Lennox denies Lennox Coils are defective, denies Lennox Coils are unreasonably susceptible to formicary corrosion and failure, and denies the remaining allegations in paragraph 44 of the Complaint.

45. Plaintiffs did not and could not reasonably have discovered the defects at the time of purchase or delivery, nor known of the omitted material information regarding the defective coil in the Lennox ACs.

**Answer:** Lennox denies Lennox ACs have defects, denies Lennox ACs have defective coils, lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 45 of the Complaint concerning what Plaintiffs did not or could not have discovered or known, denies that Plaintiffs could not have discovered facts about formicary corrosion in copper coils, and denies the remaining allegations in paragraph 45 of the Complaint.

46. As a matter of practice, when a Coil fails due to formicary corrosion, Lennox requires its authorized dealers/service technicians to obtain the failed Coil from the AC owner and return it to Lennox as part of its warranty protocol; otherwise Lennox will not credit the dealer/technician for the work done. In this way, Lennox maintains exclusive control over all evidence relating to the (defective) failed Coils, failure rates and in particular root cause analysis of copper Coil failures

**Answer:** Lennox denies the allegations in paragraph 46 of the Complaint, except Lennox admits that, under certain circumstances, qualified service contractors seeking reimbursement under Lennox's warranty policy should retain the replaced evaporator coil in their inventories for certain periods of time.

47. Plaintiffs purchased Lennox ACs rather than other available AC products. Had Plaintiffs known that Lennox ACs contained defective Coils, Plaintiffs would not have purchased Lennox ACs.

**Answer:** Lennox denies Lennox ACs have defective coils and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 47 of the Complaint.

**Thomas**

48. In January 2009, Plaintiff Thomas purchased a Lennox Merit Series 13ACX air conditioner, containing model number C33-36C-2-4 coil from Golden Seal Heating & Air ("Golden Seal") in Saint Charles, Illinois, an authorized Lennox dealer.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of the Complaint, except Lennox admits that Golden Seal Service Experts is an independent Lennox dealer.

49. Plaintiff Thomas was not told, nor did Lennox disclose, that Lennox ACs contained Lennox Coils that were defective, because they were unreasonably susceptible to formicary corrosion and failure, which would cause the air conditioning units to cease cooling or leak.

**Answer:** Lennox denies Lennox ACs have defects and denies Lennox ACs have defective coils. Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 49 of the Complaint concerning what Plaintiff Thomas was told about Lennox ACs and further denies the remaining allegations in paragraph 49 of the Complaint.

50. In April, 2009, the air conditioner was installed in Plaintiff Thomas' home, and at that time he was given for the first time a document titled "Lennox Quality Care Program Equipment Limited Warranty" (the "Lennox Warranty"). Exhibit E.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 50 of the Complaint.

51. In May 2011, Plaintiff Thomas' Lennox AC ceased cooling. A Golden Seal service technician replaced the refrigerant, but did not diagnose the problem.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 51 of the Complaint.

52. On or about May 2012, Plaintiff Thomas' Lennox AC again ceased cooling. A Golden Seal service technician again replaced the refrigerant, but did not diagnose the problem.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 52 of the Complaint.

53. In August 2013, Plaintiff Thomas' Lennox AC again ceased cooling. A Golden Seal service technician could not recharge it with refrigerant, and diagnosed the problem as a leaking coil. On information and belief, Plaintiff Thomas' Coil failed due to formicary corrosion.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53 of the Complaint.

54. Plaintiff Thomas notified Lennox of the problems with the evaporator coil shortly after the problem was identified. Lennox refused to cover the cost of labor, and covered only the cost of replacing the Lennox Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 54 of the Complaint concerning whether Plaintiff Thomas contacted Lennox, except Lennox admits that it provided a free replacement evaporator coil to Golden Seal Service Experts for Plaintiff Thomas in 2013.

55. As a result, Plaintiff Thomas paid approximately \$400 for diagnostics and labor to replace his failed Lennox Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 55 of the Complaint.

### **Harris**

56. In June 2008, Plaintiff Harris purchased a new home which included two Lennox air conditioners, containing model number cx3436-1-6f-2 Coils.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56 of the Complaint.

57. Plaintiff Harris did not receive any warranty documents at the time of purchase.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 57 of the Complaint.

58. In August 2011, one of Plaintiff Harris' Lennox AC ceased cooling. A technician from Brother Heat and Air, a licensed Lennox dealer and installer, replaced the refrigerant at a cost of \$877, but did not diagnose the problem.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 58 of the Complaint, except Lennox admits that ARS—Brothers Air & Heat Inc. is an independent Lennox dealer.

59. In July 2012, Plaintiff Harris' same Lennox AC again ceased cooling. A service technician from Dan King's One Hour Air Conditioning replaced the refrigerant at a cost of \$138, but did not diagnose the problem.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 59 of the Complaint.

60. On or about September 5, 2012, Plaintiff Harris' same Lennox AC again ceased cooling. A service technician from Dan King's One Hour Air Conditioning replaced the refrigerant at a cost of \$399, but did not diagnose the problem.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 60 of the Complaint.

61. On or about September 21, 2012, Plaintiff Harris' same Lennox AC again ceased cooling. A service technician from Dan King's One Hour Air Conditioning diagnosed the problem as a leaking coil. On information and belief, Plaintiff Harris' Coil failed due to formicary corrosion.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 61 of the Complaint.

62. Lennox refused to cover the cost of labor, and covered only the cost of replacing the Lennox Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 62 of the Complaint.

63. As a result, Plaintiff Harris paid approximately \$900 for diagnostics and labor to replace his failed Lennox Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 63 of the Complaint.

**Bell**

64. In February 2012, Plaintiff Bell purchased a Lennox XP16 Elite Series heat pump / air conditioner, containing model number CBX32MV-048-230-6 coil from Peters Associates in Philadelphia, Pennsylvania, an authorized Lennox dealer.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 64 of the Complaint, except Lennox admits that Peters Associates is an independent Lennox dealer.

65. In February, 2012, the air conditioner was installed in Plaintiff Bell's home, and at that time he was given for the first time a copy of the Lennox Warranty.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65 of the Complaint.

66. On or about July 23, 2013, Plaintiff Bell's Lennox AC ceased cooling. A Peters Associates service technician replaced the refrigerant, but did not diagnose the problem.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 66 of the Complaint.

67. On or about July 26, 2013, a Peters Associates service technician replaced the refrigerant, and diagnosed the problem as a leaking Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 67 of the Complaint.

68. On information and belief, Plaintiff Thomas' [sic] Coil failed due to formicary corrosion.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68 of the Complaint.

69. Lennox refused to cover the cost of labor, and covered only the cost of replacing the Lennox Coil.

**Answer:** Lennox denies the allegations in paragraph 69 of the Complaint, except Lennox admits that it provided a free replacement evaporator coil to Peters Associates for Plaintiff Bell in 2013.

70. As a result, Plaintiff Bell paid approximately \$717 for diagnostics and labor to replace his failed Lennox Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 70 of the Complaint.

**Palumbo**

71. In December 2008, Plaintiff Palumbo purchased a Lennox 14HPX Heat Pump air conditioner, containing model number CBX26UH-042-230-1 Coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 71 of the Complaint.

72. Plaintiff Palumbo's Lennox AC was installed in January 2009 as part of her new home construction.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 72 of the Complaint.

73. On or about July 2010, Plaintiff Palumbo's Lennox AC ceased cooling. In September, 2010, a service technician from Marlin James, Inc. diagnosed the problem as a leaking coil and replaced the refrigerant at a cost of \$390.00. On or about June 2011, Marlin James, Inc. replaced the coil in Plaintiff Palumbo's Lennox AC. Lennox covered the part and labor in this instance.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 73 of the Complaint, except Lennox admits that it provided a free replacement evaporator coil to Marlin James, Inc. for Plaintiff Palumbo in 2011 and that it provided a labor credit to Marlin James, Inc. in 2011 for the replacement of the evaporator coil for Plaintiff Palumbo.

74. On or about July 2012, Plaintiff Palumbo's Lennox AC again ceased cooling. Marlin James, Inc. again replaced the coil in Plaintiff Palumbo's Lennox AC. Lennox covered the part and labor in this instance.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 74 of the Complaint, except Lennox admits that it provided a free replacement evaporator coil to Marlin James, Inc. for Plaintiff Palumbo in 2012 and that it provided a labor credit to Marlin James, Inc. in 2012 for the replacement of the evaporator coil for Plaintiff Palumbo.

75. On or about September 2013, Plaintiff Palumbo's Lennox AC again ceased cooling. A service technician from One Hour Air performed a leak check at a cost of \$655.00 and found a leak in the coil. The technician replaced the refrigerant at a cost of \$196.00

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 75 of the Complaint.

76. Lennox informed Plaintiff Palumbo that it will not cover the labor for the replacement of the newest Coil, which is estimated to be approximately \$400.00.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 76 of the Complaint concerning the estimated labor cost for a replacement coil. Lennox admits that it has informed Plaintiff Palumbo that it will provide Plaintiff Palumbo with a free coated copper coil, but Plaintiff Palumbo will be responsible for any labor costs. Lennox denies the remaining allegations in paragraph 76 of the Complaint.

77. On information and belief, Plaintiff Palumbo's Coils failed due to formicary corrosion.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 77 of the Complaint.

**Karbarz**

78. In April 2007, Plaintiff Karbarz purchased and installed a Lennox 14ACX Merit Series air conditioner, containing model number CBX26UH-18-230-01 Coil from Air Team, LTD.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 78 of the Complaint.

79. On or about June 2009, Plaintiff Karbarz's Lennox AC ceased cooling and was diagnosed with a leaking coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 79 of the Complaint.

80. Plaintiff Karbarz paid \$517 in labor to replace the failed coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 80 of the Complaint.

81. On or about May 2013, Plaintiff Karbarz's Lennox AC again ceased cooling.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 81 of the Complaint.

82. Plaintiff Karbarz paid \$179 to replace the refrigerant in his Lennox AC.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 82 of the Complaint.

83. On or about September, 2013, Plaintiff Karbarz's Lennox AC again ceased cooling.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 83 of the Complaint.

84. Plaintiff Karbarz paid \$2,260 for a new air handler which contained a new coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 84 of the Complaint.

85. On information and belief, Plaintiff Karbarz's Coils failed due to formicary corrosion.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 85 of the Complaint.

**Davis**

86. In August, 2010, Plaintiff Davis purchased two Lennox Signature Collection 15 GCSX units containing Lennox Coils from Palm Desert Heating & Air Conditioning, who also installed the units.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 86 of the Complaint.

87. Plaintiff Davis first saw a copy of the Lennox Warranty at the time of purchase.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 87 of the Complaint.

88. In June 2013, one of Plaintiff Davis's Lennox ACs ceased cooling. In August 2014 [sic], a service technician from Palm Desert Heating & Air Conditioning diagnosed the problem as a leaking coil and refilled the unit with refrigerant. Plaintiff Davis paid \$65.00 for the service call.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 88 of the Complaint.

89. On August 16, 2013, Plaintiff Davis contacted Lennox, who denied there was a problem with the coil.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 89 of the Complaint.

90. On September 26, 2013, Breeze Air Conditioning replaced the Lennox Coil at a cost of \$2,200.00.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 90 of the Complaint.

91. On information and belief, Plaintiff Davis's Coil failed due to formicary corrosion.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 91 of the Complaint.

**FACTS COMMON TO THE CLASS/CLAIMS**

92. Upon information and belief, Defendants have sold, directly or indirectly (through dealers and other retailer outlets), thousands of Lennox ACs containing copper-made Coils, in the states of Illinois, South Carolina, Pennsylvania, Florida, Texas, and California to homeowners, developers, contractors or subcontractors.

**Answer:** Lennox denies the allegations in paragraph 92 of the Complaint, except Lennox admits that it has sold air conditioning systems that contain copper evaporator coils in the states of Illinois, South Carolina, Pennsylvania, Florida, Texas, and California.

93. According to Lennox's website, there are hundreds of authorized dealers of the Lennox ACs within 100 miles of Plaintiffs' homes.<sup>1</sup>

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 93 of the Complaint.

94. Upon information and belief, Lennox designed, manufactured, marketed, advertised, warranted and sold, through distributors, the Lennox ACs to Plaintiffs and Classes and their builders, contractors, subcontractors or agents. Lennox ACs were installed on Class members' structures.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94 of the Complaint.

95. Lennox Coils are defective because they are unreasonably susceptible to formicary corrosion and break prematurely during normal use, resulting in the failure to prevent the leakage of refrigerant.

**Answer:** Lennox denies the allegations in paragraph 95 of the Complaint.

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<sup>1</sup> <http://www.lennox.com/locate/default.asp> (last visited December 16, 2013)

96. Lennox expressly and impliedly warranted, via its user manuals, website, brochures, specifications, or models that Lennox ACs are fit for the ordinary purpose in which such goods are used.

**Answer:** Lennox denies the allegations in paragraph 96 of the Complaint.

97. On its website, Lennox represented:

For more than a hundred years, Lennox has set the standard for home comfort with innovative heating, cooling and indoor air quality products. We stand behind those products with industry-leading warranty coverage designed to protect your investment and ensure your peace of mind.<sup>2</sup>

**Answer:** Lennox admits that the Lennox website, as of March 28, 2014, contains the language set forth in paragraph 97 of the Complaint.

98. Lennox states in its brochure that “Every component in the 13ACX is designed for exception durability and easy maintenance year after year. Every unit is built solid inside and out and thoroughly tested before leaving the factory. And once it’s installed, Lennox’ industry-leading warranty coverage adds another layer of protection for your investment.” Exhibit F.

**Answer:** Lennox admits that the document attached as Exhibit F to the Complaint contains the language quoted in paragraph 98 of the Complaint, except that the Complaint uses the word “exception” rather than the word “exceptional” that is set forth in Exhibit F.

99. Lennox continues to make false representations about the quality and fitness of the Lennox ACs including, but not limited to:

Reliable performance, ideal comfort and money-saving energy efficiency all come together in one perfect packet in the Merit Series 13ACX air conditioner. Its dependable scroll compressor and high-efficiency outdoor coil work together to keep your home comfortable and your energy costs under control.

Exhibit F.

**Answer:** Lennox denies the allegations in paragraph 99 of the Complaint, except Lennox admits that the document attached as Exhibit F to the Complaint

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<sup>2</sup> <http://www.lennox.com/support/warranty.asp> (last visited October 21, 2013)

contains the language quoted in paragraph 99 of the Complaint, except that the Complaint uses the word “packet” rather than the word “package” that is set forth in Exhibit F.

100. The bargaining power between Plaintiffs and Class members on the one hand and Lennox on the other hand was grossly unequal and any limitations on the warranty are substantially one-sided, making such limitations unconscionable.

**Answer:** Lennox denies the allegations in paragraph 100 of the Complaint.

101. Contrary to its representations, the Lennox ACs are not of a merchantable quality, not fit for their intended use, and are defective.

**Answer:** Lennox denies the allegations in paragraph 101 of the Complaint.

102. The representations made by Lennox were false or misleading and Lennox knew or should have known at the time they made them that they were false or misleading.

**Answer:** Lennox denies the allegations in paragraph 102 of the Complaint.

103. All air conditioners use refrigerant in a closed-loop system designed to take advantage of a physical law known as phase conversion to provide cool air. When liquid is converted into gas, the process results in the absorption of heat. Refrigerants are substances that change phase at relatively low temperatures.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 103 of the Complaint.

104. All air conditioners contain the following three major components: a compressor, a condenser, and an evaporator. In central air conditioners used for household purposes, the compressor and the condenser are located outside a consumer’s house. The compressor compresses the refrigerant into high pressure gas which then travels to the condenser where it is cooled into high pressure liquid.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 104 of the Complaint, except Lennox admits that some air conditioning systems contain a compressor, a condenser coil, and an evaporator coil. Lennox also admits that in some

residential air conditioning systems, the compressor and the condenser coil are located outside a house.

105. The evaporator for central air conditioners is usually located within the consumer's house and includes of a series of coils known as "evaporator coils." The liquid refrigerant is fed into the evaporator coils where it experiences a pressure drop that results in the refrigerant converting from liquid to gas. This phase conversion absorbs heat from the hot indoor air circulated over the evaporator coils by a fan, which cools the air. The cool air is then blown through the house via ducts.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 105 of the Complaint, except Lennox admits that the evaporator coil for some air conditioning systems is located inside the house.

106. Like all central air conditioners used for residential purposes, the Lennox ACs at issue contain evaporator coils. However, Lennox evaporator coils render the Lennox ACs unfit for their ordinary purpose because they are unreasonably susceptible to formicary corrosion, resulting in the loss of refrigerant due to leakage, which reduces and ultimately eliminates the Lennox ACs' ability to provide cold air.

**Answer:** Lennox admits that some Lennox air conditioning systems contain evaporator coils. Lennox denies that the Lennox evaporator coils render the Lennox ACs unfit for their ordinary purpose, denies that Lennox ACs are unreasonably susceptible to formicary corrosion, lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning whether all central air conditioners used for residential purposes contain evaporator coils, and denies the remaining allegations in paragraph 106 of the Complaint.

107. The defective Lennox Coils render the Lennox ACs unfit for the ordinary purpose for which they are used because the loss of refrigerant reduces and/or eliminates the Lennox ACs' ability to provide cool air.

**Answer:** Lennox denies the allegations in paragraph 107 of the Complaint.

108. The defective coils in the Lennox ACs caused Plaintiffs the Class to suffer damages, including, but not limited to, the difference in value of the Lennox ACs as warranted

and the Lennox ACs they received with defective Coils, loss of use of their Lennox ACs, labor costs, repair costs, and replacement refrigerant costs. The defective evaporator coils were the direct, proximate, and foreseeable cause of damages incurred by Plaintiffs and Class members.

**Answer:** Lennox denies the allegations in paragraph 108 of the Complaint.

109. Had the Lennox ACs been properly manufactured or free from design defects, Plaintiffs and the Classes would not have suffered the damages complained of herein.

**Answer:** Lennox denies that Lennox ACs have been improperly manufactured or contain any design defect and denies the remaining allegations in paragraph 109 of the Complaint.

### **TOLLING AND ESTOPPEL OF STATUTES OF LIMITATION**

110. Plaintiffs are within the applicable statute of limitations for the claims presented because Plaintiffs did not discover the defect, and could not reasonably have discovered the defect until approximately August 2013. Further, Lennox and its agents affirmatively misrepresented the root cause of the problem by claiming that the ACs needed refills of Refrigerant, rather than disclosing that the Coils were defective because they were made of copper and unreasonably susceptible to formicary corrosion, and that the Coils had failed due to formicary corrosion. Plaintiffs also assert that this action has been filed within all applicable time frames from the date of initial installation of the Air Conditioners.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 110 of the Complaint concerning what Plaintiffs did not or could not have discovered or known, denies that Plaintiffs could not have discovered facts about formicary corrosion in copper coils, and denies the remaining allegations in paragraph 110 of the Complaint.

111. Lennox is estopped from relying on any statutes of limitation by virtue of its acts of fraudulent concealment, which include its concealment from Plaintiffs and Classes that its Lennox ACs were defective, while continuing to market the Lennox ACs as suitable for ordinary use, and by its affirmative misrepresentations as set forth above.

**Answer:** Lennox denies the allegations in paragraph 111 of the Complaint.

112. Although Lennox was aware that Lennox Coils were defective, it took no steps to warn Plaintiffs and Classes of the defect. Rather Lennox continued to sell its defective Coils to Plaintiffs and Classes and continues to “fix” and replace failed Coils with similarly defective Coils.

**Answer:** Lennox denies that Lennox ACs are defective and denies the remaining allegations in paragraph 112 of the Complaint.

113. The defects in the design or manufacture of the Lennox ACs were not detectible to Plaintiffs or members of the Classes until they manifested themselves when the defective evaporator coils cracked and caused the Lennox ACs to stop cooling.

**Answer:** Lennox denies that there are defects in the design or manufacturing of the Lennox ACs, lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 113 of the Complaint concerning what Plaintiffs did not or could not have detected, and denies the remaining allegations in paragraph 113 of the Complaint.

**THE PURPORTED WARRANTY LIMITATIONS ARE VOID AND INVALID**

114. Lennox provides the Lennox Warranty to purchasers of Lennox ACs subsequent to the time of purchase. A Lennox warranty is attached as Exhibit E.

**Answer:** Lennox denies the allegations in paragraph 114 of the Complaint, except Lennox admits that a Lennox warranty is attached as Exhibit E to the Complaint.

115. The Lennox Warranty purports to disclaim and exclude certain warranties and damages, stating:

“Lennox makes no express warranties other than the warranty specified above. All implied warranties, including the implied warranties of merchantability and fitness for a particular purpose, are excluded to the extent legally permissible. Should such exclusion or limitation of the warranty be unenforceable, such implied warranties are in any event limited to a period of one (1) year. Liability for incidental and consequential damages is excluded. Exhibit E.”

**Answer:** Lennox admits that the document attached as Exhibit E to the Complaint contains the language quoted in paragraph 115 of the Complaint and that it disclaims and excludes certain warranties and damages. Lennox denies the other allegation in paragraph 115 of the Complaint.

116. Lennox also expressly purports to limit its warranty such that “Lennox will not pay labor involved in diagnostic calls, or in removing, repairing, servicing, or replacing parts. Such costs may be covered by a separate warranty provided by the installing contractor. [sic] Exhibit E.”

**Answer:** Lennox admits that the document attached as Exhibit E to the Complaint contains the language quoted in paragraph 116 of the Complaint, admits that this language limits its warranty and denies the other allegations in paragraph 116 of the Complaint.

117. The above warranty limitations and exclusions fail their essential purpose because the Lennox ACs contained coils that were defective at the time Plaintiffs and members of the class acquired their Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 117 of the Complaint.

118. The above warranty limitations also fail of the essential purpose because no remedies offered by Lennox give purchasers of Lennox ACs the benefit of their bargain, *i.e.* a merchantable air conditioner.

**Answer:** Lennox denies the allegations in paragraph 118 of the Complaint.

119. The limitation of damages is ineffective because the Lennox ACs are sold to consumers with Coils that are unreasonably susceptible to formicary corrosion, which none of Lennox’s limited remedies sufficiently address. The Lennox Warranty fails its essential purpose, and Plaintiffs and Classes are entitled to a remedy under the Uniform Commercial Code.

**Answer:** Lennox denies the allegations in paragraph 119 of the Complaint.

120. The purported disclaimer of warranties is also ineffective because Lennox does not provide the Lennox Warranty to purchasers of Lennox ACs before or at the time of purchase. Consumers only learn of such purported disclaimers at the time of installation of their Lennox AC, and such limitations cannot be considered to be a part of the bargain.

**Answer:** Lennox denies the allegations in the first sentence in paragraph 120 of the Complaint. Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence in paragraph 120 of the Complaint concerning when consumers “learn” of the disclaimers in Lennox’s

express warranty and denies the remaining allegations in the second sentence in paragraph 120 of the Complaint.

**COUNT I**  
**Express Warranty**

121. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 120 above as if fully set forth herein.

122. Plaintiffs bring this claim on behalf of the Class, or, in the alternative on behalf of the Subclasses.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action and on behalf of subclasses, but Lennox denies that Plaintiffs' claims are proper individually or as a class action or as subclasses under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiffs' claims cannot be maintained as a class action or as subclasses because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 122 of the Complaint.

123. Lennox expressly warranted via its user manuals, website, brochures, specifications, and/or models that the Lennox ACs are fit for the ordinary purpose in which such goods are used.

**Answer:** Lennox denies the allegations in paragraph 123 of the Complaint.

124. Lennox's express warranties were part of the basis of the bargain between Lennox and Plaintiffs and members of the Classes.

**Answer:** Lennox denies that the express warranties as alleged in paragraph 123 of the Complaint are part of the basis of the bargain between Lennox and purchasers of Lennox ACs.

125. Lennox breached its express warranties because the Lennox ACs were not fit for the ordinary purpose in which they are used and because they were not free from defects in materials and workmanship that affect performance under normal use and maintenance. Specifically, the Lennox ACs are defective because the Coils are unreasonably susceptible to formicary corrosion and failure, and thus improperly or prematurely crack and break under normal use, rendering them unfit for their ordinary purpose. Lennox also breached its express warranty by refusing to repair the Lennox ACs and/or by “fixing” failed Coils with similarly defective replacement Coils (*i.e.*, made of copper).

**Answer:** Lennox denies the allegations in paragraph 125 of the Complaint.

126. Plaintiffs and members of the Classes relied upon the representation or warranty that they would be supplied Lennox ACs and Coils, and/or replacement Coils, free of defects.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 126 of the Complaint concerning what Plaintiffs and members of the proposed Classes relied upon, and denies the remaining allegations in paragraph 126 of the Complaint.

127. Plaintiffs and members of the Classes notified Lennox of the breach.

**Answer:** Lennox denies there is a breach and lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiffs and members of the proposed Classes’ notifications to Lennox. Lennox denies the remaining allegations in paragraph 127 of the Complaint.

128. Plaintiffs and members of the Classes sustained injuries and damages as a result of the breach because (a) they paid a price premium due to the misrepresentations and omissions of material fact in the packaging, marketing, advertising on the Lennox ACs; (b) the Lennox ACs did not have the attributes or value promised, and/or (c) they paid out of pocket to replace a failed Coil, which was replaced with a similarly defective Lennox Coil.

**Answer:** Lennox denies the allegations in paragraph 128 of the Complaint.

129. The limitations on Lennox’s express warranty are unconscionable or fail in their essential purpose.

**Answer:** Lennox denies the allegations in paragraph 129 of the Complaint.

130. Plaintiffs and members of the Classes are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by Plaintiffs' various states, as well as all other applicable remedies.

**Answer:** Lennox denies the allegations in paragraph 130 of the Complaint.

**COUNT II**  
**Implied Warranty of Merchantability**

131. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 130 above as if fully set forth herein.

132. Plaintiffs bring this claim on behalf of the Class, or, in the alternative on behalf of the Subclasses.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action and on behalf of subclasses, but Lennox denies that Plaintiffs' claims are proper individually or as a class action or as subclasses under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiffs' claims cannot be maintained as a class action or as subclasses because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 132 of the Complaint.

133. Lennox is a merchant who sold air conditioning units to Plaintiffs and the Classes for residential use.

**Answer:** Lennox denies the allegations in paragraph 133 of the Complaint, except Lennox admits that it sold air conditioning systems for residential use.

134. A warranty that goods shall be merchantable and fit for the ordinary purposes for which such goods are used is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

**Answer:** Lennox denies the allegations in paragraph 134 of the Complaint.

135. Lennox's implied warranty that the Lennox ACs were merchantable was part of the basis of the bargain between Lennox and Plaintiffs and members of the Classes.

**Answer:** Lennox denies there is any implied warranty that the Lennox ACs were merchantable and denies the remaining allegations in paragraph 135 of the Complaint.

136. Lennox breached the implied warranty of merchantability because the Lennox ACs were not of merchantable quality or fit for their ordinary and intended use and because they contained a defect at the time of their sale that resulted in, and continues to result in, leaking of Refrigerant and failure of the product, when used in a normal, foreseeable and customary way.

**Answer:** Lennox denies there is any implied warranty of merchantability concerning Lennox ACs and any breach and denies the remaining allegations in paragraph 136 of the Complaint.

137. The defects at issue are latent defects. Plaintiffs and members of the Classes could not have known about their Lennox ACs' propensity for failure.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning what Plaintiffs and members of the proposed Classes could or could not have known, denies that Plaintiffs could not have discovered facts about formicary corrosion in copper coils, denies Lennox ACs have defects or latent defects or a propensity for failure and further denies the remaining allegations in paragraph 137 of the Complaint.

138. Plaintiffs and members of the Classes notified Lennox of the breach.

**Answer:** Lennox denies there is a breach and lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiffs and members of the proposed Classes' notifications to Lennox. Lennox denies the remaining allegations in paragraph 138 of the Complaint.

139. Plaintiffs and members of the Classes sustained injuries and damages as a result of the breach.

**Answer:** Lennox denies there is any breach and denies the remaining allegations in paragraph 139 of the Complaint.

140. The exclusions and/or limitations on Lennox's implied warranties are unconscionable and/or fail their essential purpose.

**Answer:** Lennox denies the allegations in paragraph 140 of the Complaint.

141. As a direct and proximate result of Lennox's breach of the implied warranty of merchantability, Plaintiffs and members of the Classes have suffered damages in amount to be determined at trial including direct monetary losses incurred by Plaintiffs and members of the Classes in connection with attempted repair of the Lennox ACs and/or the price premium paid for the Lennox ACs, or such further damage to be proven at trial.

**Answer:** Lennox denies there is an implied warranty of merchantability concerning Lennox ACs, denies there is any breach and denies the remaining allegations in paragraph 141 of the Complaint.

142. Plaintiffs and members of the Classes are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by Plaintiffs' various states, as well as all other applicable remedies.

**Answer:** Lennox denies the allegations in paragraph 142 of the Complaint.

**COUNT III**  
**Implied Warranty of Fitness for a Particular Purpose**

143. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 142 above as if fully set forth herein.

144. Plaintiffs bring this claim on behalf of the Classes, or, in the alternative on behalf of the Subclasses.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action and on behalf of subclasses, but

Lennox denies that Plaintiffs' claims are proper individually or as a class action or as subclasses under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiffs' claims cannot be maintained as a class action or as subclasses because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 144 of the Complaint.

145. Lennox sold and promoted the Lennox ACs, which it placed into the stream of commerce. Lennox knew or had reason to know of the specific use, *i.e.*, home cooling, for which the Lennox ACs were purchased, and it impliedly warranted that the Lennox ACs were fit for such use.

**Answer:** Lennox denies the allegations in paragraph 145 of the Complaint, except Lennox admits that it sold and marketed air conditioning systems for residential use.

146. Plaintiffs and Class members reasonably relied upon the expertise, skill, judgment and knowledge of Lennox and upon its implied warranty that the Lennox ACs were fit for the purpose and use of cooling homes.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 146 of the Complaint concerning what Plaintiffs and members of the proposed Classes relied upon, denies there is any implied warranty that the Lennox ACs were fit for the purpose and use of cooling homes and further denies the remaining allegations in paragraph 146 of the Complaint.

147. Through the conduct alleged herein, Lennox has breached the implied warranty of fitness for a particular purpose. The defectively designed Lennox ACs were not fit for the particular purpose for which they were purchased by Plaintiffs and Class Members to perform. The Plaintiffs and Classes purchased the Lennox ACs for a particular purpose of being able to cool their homes. Lennox knew that the Plaintiffs and Class Members were purchasing the Lennox ACs for this purpose and marketed the products for this particular purpose.

**Answer:** Lennox denies there is any implied warranty of fitness for a particular purpose, denies there is any breach, lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 147 of the Complaint concerning the purported purposes for which Plaintiffs and members of the proposed Classes purportedly purchased Lennox ACs, and denies the remaining allegations in paragraph 147 of the Complaint.

148. Plaintiffs and Class Members relied on Lennox's misrepresentations by purchasing the Lennox ACs.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 148 of the Complaint concerning what Plaintiffs and members of the proposed Classes relied upon, denies that Lennox made any misrepresentations concerning Lennox ACs, and denies the remaining allegations in paragraph 148 of the Complaint.

149. Lennox knew or had reason to know that Plaintiffs and Class members were influenced to purchase the Lennox ACs through Lennox's expertise, skill, judgment and knowledge in furnishing the products for their intended use.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 149 of the Complaint concerning what influenced Plaintiffs and members of the proposed Classes and denies the remaining allegations in paragraph 149 of the Complaint.

150. The Lennox ACs were not fit for their particular intended use because the design or manufacturing defects alleged herein render them incapable of properly providing cool air to Plaintiffs and Class members' homes as they contain defective evaporator Coils which are unreasonably susceptible to formicary corrosion, which causes them to crack and break under normal use.

**Answer:** Lennox denies the allegations in paragraph 150 of the Complaint.

151. Lennox's actions, as complained of herein, breached their implied warranty that the Lennox ACs were fit for such use, in violation of Uniform Commercial Code §2-315 and the common law of Illinois, as well as the common law and statutory laws of others states.

**Answer:** Lennox denies there is any implied warranty concerning Lennox ACs and denies the remaining allegations in paragraph 151 of the Complaint. To the extent that paragraph 151 of the Complaint references "Lennox's actions, as complained of herein," Lennox incorporates its responses to those allegations herein.

152. Moreover, the limitations on Lennox's implied warranties are unconscionable and/or fail their essential purpose.

**Answer:** Lennox denies the allegations in paragraph 152 of the Complaint.

153. Plaintiffs and Class members have incurred damages as described herein as a direct result of the failure of Lennox to honor its implied warranty. In particular, Plaintiffs and Class members would not have purchased the Lennox ACs had they known the truth about the defects; nor would they have suffered the collateral effects and damages associated with these defects.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 153 of the Complaint concerning what Plaintiffs did not know or would or would not have purchased, denies that Plaintiffs could not have discovered facts about formicary corrosion in copper coils, denies there is any implied warranty concerning Lennox ACs and further denies the remaining allegations.

**COUNT IV**  
**Illinois Consumer Fraud and Deceptive Business Practices Act,**  
**815 ILCS 505/1, et seq.**

154. Plaintiff Thomas re-alleges and incorporates each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 153 above as is fully set forth herein.

155. Plaintiff Thomas asserts this claim individually and on behalf of the Illinois Subclasses.

**Answer:** Lennox admits that Plaintiff Thomas purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Thomas's claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Thomas's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 155 of the Complaint.

156. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, *et seq.*, prohibits unfair methods of competition and unfair and deceptive acts or practices, including among other things, "the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, . . . whether any person has in fact been misled, deceived or damaged thereby."

**Answer:** Lennox denies the allegations in paragraph 156 of the Complaint, except Lennox admits that the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2 provides, in part, that "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act' [815 ILCS 510/2], approved August 5, 1965, in the conduct of any trade or commerce are hereby declared

unlawful whether any person has in fact been misled, deceived or damaged thereby.”

157. Throughout the Class Period, Defendant conducted “trade” and “commerce” within the meaning of 815 ILCS 505/1(f) by its advertising, offering for sale, and sale of Lennox ACs.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 157 of the Complaint because there is no defined “Class Period” in the Complaint.

158. 815 ILCS. 505/1(b) of the Illinois Consumer Fraud and Deceptive Business Practices Act defines the term “merchandise” to include Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 158 of the Complaint.

159. 815 ILCS. 505/1(c) of the Illinois Consumer Fraud and Deceptive Practices defines the term “person” to include Defendant.

**Answer:** Lennox denies the allegations in paragraph 159 of the Complaint.

160. 815 ILCS 505/1(e) of the Illinois Consumer Fraud and Deceptive Practices Act defines the term “consumer” to include Plaintiffs and the other Illinois Subclass members.

**Answer:** Lennox denies the allegations in paragraph 160 of the Complaint.

161. Defendants’ [sic] acts and practices, alleged herein, constitute unfair, deceptive, and/or fraudulent business practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, including but not limited to, Defendants’ [sic] sale of defective Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 161 of the Complaint. To the extent that paragraph 161 of the Complaint references “acts and practices, alleged herein,” Lennox incorporates its responses to those allegations herein.

162. Defendant intended for Plaintiffs and Subclass members to rely on its aforementioned deceptive acts and practices, and such deceptive acts and practices occurred in the course of conduct involving trade or commerce.

**Answer:** Lennox denies the allegations in paragraph 162 of the Complaint. To the extent that paragraph 162 of the Complaint references “aforementioned

deceptive acts and practices” and “such deceptive acts and practices,” Lennox incorporates its responses to those allegations herein.

163. Plaintiffs and the Subclass were exposed to such misrepresentations and were deceived.

**Answer:** Lennox denies the allegations in paragraph 163 of the Complaint. To the extent that paragraph 163 of the Complaint references “such misrepresentations,” Lennox incorporates its responses to those allegations herein.

164. Defendant’ [sic] violation of the Illinois Consumer Fraud and Deceptive Business Practices Act caused Plaintiffs and Subclass to sustain substantial and ascertainable losses of money and/or property and other damages because they were induced to purchase or paid a price premium due to the false and misleading advertising and marketing of Lennox ACs and/or Defendant’s failure to disclose the defects of said products, and/or paid to replace defective Coils.

**Answer:** Lennox denies that it violated the Illinois Consumer Fraud and Deceptive Business Practices Act and denies the remaining allegations in paragraph 164 of the Complaint.

165. Indeed, their purchases are of significantly diminished value because the Lennox AC’s do not perform their sole function without the need for costly repair.

**Answer:** Lennox denies the allegations in paragraph 165 of the Complaint.

**COUNT V**  
**South Carolina Unfair Trade Practices Act,**  
**S.C. Code Ann. § 39-5-20 *et seq.***

166. Plaintiff Harris re-alleges and incorporates each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 165 above as if fully set forth herein.

167. Plaintiff Harris asserts this claim individually and on behalf of the South Carolina Subclasses.

**Answer:** Lennox admits that Plaintiff Harris purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Harris's claims are proper individually or as a class action or as subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Harris's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 167 of the Complaint.

168. The South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20 *et seq.* prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. § 39-5-20.

**Answer:** Lennox denies the allegations in paragraph 168 of the Complaint, except Lennox admits that the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20(a), provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

169. Throughout the Class Period, Defendant conducted “trade” and “commerce” within the meaning of S.C. Code Ann. § 39-5-20 by its advertising, offering for sale, and sale of Lennox ACs.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 169 of the Complaint because there is no defined “Class Period” in the Complaint.

170. Defendant's acts and practices, alleged herein, constitute unfair, deceptive, and/or fraudulent business practices in violation of the South Carolina Unfair Trade Practices Act, including but not limited to, Defendants' [sic] sale of defective Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 170 of the Complaint.

To the extent that paragraph 170 of the Complaint references “acts and practices, alleged herein,” Lennox incorporates its responses to those allegations herein.

171. Defendant’s unfair and deceptive acts and practices, alleged herein, have adversely affected the public interest.

**Answer:** Lennox denies the allegations in paragraph 171 of the Complaint.

To the extent that paragraph 171 of the Complaint references “unfair and deceptive acts and practices, alleged herein,” Lennox incorporates its responses to those allegations herein.

172. Defendants [sic] intended for Plaintiff Harris and South Carolina Subclass members to rely on its aforementioned deceptive acts and practices, and such deceptive acts and practices occurred in the course of conduct involving trade or commerce.

**Answer:** Lennox denies the allegations in paragraph 172 of the Complaint.

To the extent that paragraph 172 of the Complaint references “aforementioned deceptive acts and practices” and “such deceptive acts and practices,” Lennox incorporates its responses to those allegations herein.

173. Plaintiffs and the South Carolina Subclass were exposed to such misrepresentations and were deceived.

**Answer:** Lennox denies the allegations in paragraph 173 of the Complaint.

To the extent that paragraph 173 of the Complaint references “such misrepresentations,” Lennox incorporates its responses to those allegations herein.

174. Defendant’s violation of the South Carolina Unfair Trade Practices Act caused Plaintiff Harris and the South Carolina Subclass to sustain substantial and ascertainable losses of money and/or property and other damages because they were induced to purchase or paid a price premium due to the false and misleading advertising and marketing of Lennox ACs and/or Defendant’s failure to disclose the defects of said products, and/or paid to replace defective Coils.

**Answer:** Lennox denies that it violated the South Carolina Unfair Trade Practices Act and denies the remaining allegations in paragraph 174 of the Complaint.

175. Plaintiff Harris' and the South Carolina Subclass' purchases are of significantly diminished value because the Lennox AC's do not perform their sole function without the need for costly repair.

**Answer:** Lennox denies the allegations in paragraph 175 of the Complaint.

**COUNT VI**  
**Pennsylvania Unfair Trade Practices and Consumer Protection Law,**  
**73 Pa. Stat. Ann. § 201-1, et seq.**

176. Plaintiff Bell re-alleges and incorporates each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 175 above as if fully set forth herein.

177. Plaintiff Bell asserts this claim individually and on behalf of the Pennsylvania Subclasses.

**Answer:** Lennox admits that Plaintiff Bell purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Bell's claims are proper individually or as a class action or as subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Bell's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 177 of the Complaint.

178. The Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 P.S. Sec. 201-1 et seq. (PUTPCP), prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. 73 Pa. Stat. Ann. § 201-3 (West).

**Answer:** Lennox denies the allegations in paragraph 178 of the Complaint, except Lennox admits that the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-3 provides, in part, that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act and regulations promulgated under section 3.1 of this act are hereby declared unlawful.”

179. Throughout the Class Period, Defendants conducted “trade” and “commerce” within the meaning of PUTPCP by its advertising, offering for sale, and sale of Lennox ACs.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 179 of the Complaint because there is no defined “Class Period” in the Complaint.

180. Defendants’ [sic] acts and practices, alleged herein, constitute unfair, deceptive, and/or fraudulent business practices in violation of the PUTPCP, including but not limited to, Defendant’s sale of defective Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 180 of the Complaint. To the extent that paragraph 180 of the Complaint references “acts and practices, alleged herein,” Lennox incorporates its responses to those allegations herein.

181. Defendant intended for Plaintiffs and the Pennsylvania Subclass members to rely on its aforementioned deceptive acts and practices, and such deceptive acts and practices occurred in the course of conduct involving trade or commerce.

**Answer:** Lennox denies the allegations in paragraph 181 of the Complaint. To the extent that paragraph 181 of the Complaint references “aforementioned deceptive acts and practices” and “such deceptive acts and practices,” Lennox incorporates its responses to those allegations herein.

182. Plaintiffs and the Subclass were exposed to such misrepresentations and were deceived.

**Answer:** Lennox denies the allegations in paragraph 182 of the Complaint.

To the extent that paragraph 182 of the Complaint references “such misrepresentations,” Lennox incorporates its responses to those allegations herein.

183. Defendants’ violation of the PUTPCA caused Plaintiff Bell and the Pennsylvania Subclass to sustain substantial and ascertainable losses of money and/or property and other damages because they were induced to purchase or paid a price premium due to the false and misleading advertising and marketing of Lennox ACs and/or Defendant’s failure to disclose the defects of said products, and/or paid to replace defective Coils,

**Answer:** Lennox denies that it violated the PUTPCA and denies the remaining allegations in paragraph 183 of the Complaint.

184. Plaintiff Bell and the Pennsylvania Subclass’ purchases are of significantly diminished value because the Lennox AC’s do not perform their sole function without the need for costly repair.

**Answer:** Lennox denies the allegations in paragraph 184 of the Complaint.

**COUNT VII**  
**Florida Deceptive and Unfair Trade Practices Act,**  
**Fla. Stat. §§ 501.201-501.23**

185. Plaintiff Palumbo re-alleges and incorporates each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 184 above as if fully set forth herein.

186. Plaintiff Palumbo asserts this claim individually and on behalf of the Florida Subclasses.

**Answer:** Lennox admits that Plaintiff Palumbo purports to bring this action on behalf of herself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Palumbo’s claims are proper individually or as a class action or as subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Palumbo’s claims cannot be maintained as a class action or as a subclass because they do not

satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 186 of the Complaint.

187. The Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201-501.23et seq., (“FDUTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce....” Fla. Stat. § 501.204(1) (2001)

**Answer:** Lennox denies the allegations in paragraph 187 of the Complaint, except Lennox admits that the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.204(1) provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

188. Defendant’s acts and practices, alleged herein, constitute unfair, deceptive, and/or fraudulent business practices in violation of the FDUTPA, including but not limited to, Defendant’s misrepresentations and omissions in the sale of defective Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 188 of the Complaint. To the extent that paragraph 188 of the Complaint references “acts and practices, alleged herein,” Lennox incorporates its responses to those allegations herein.

189. Defendant intended for Plaintiffs and Subclass members to rely on its aforementioned deceptive acts and practices, and such deceptive acts and practices occurred in the course of conduct involving trade or commerce.

**Answer:** Lennox denies the allegations in paragraph 189 of the Complaint. To the extent that paragraph 189 of the Complaint references “aforementioned deceptive acts and practices” and “such deceptive acts and practices,” Lennox incorporates its responses to those allegations herein.

190. Plaintiff Palumbo and the Florida Subclasses were exposed to such omissions and misrepresentations and were deceived.

**Answer:** Lennox denies the allegations in paragraph 190 of the Complaint.

To the extent that paragraph 190 of the Complaint references “such omissions and misrepresentations,” Lennox incorporates its responses to those allegations herein.

191. Defendant’s violation of the FDUTPA caused Plaintiff Palumbo and Florida Subclasses to sustain substantial and ascertainable losses of money and/or property and other damages because they were induced to purchase or paid a price premium due to the false and misleading advertising and marketing of Lennox ACs and/or Defendant’s failure to disclose the defects of said products, and/or paid to replace defective Coils.

**Answer:** Lennox denies that it violated the FDUTPA and denies the remaining allegations in paragraph 191 of the Complaint.

192. Plaintiff Palumbo and the Florida Subclasses’ Lennox AC’s are of significantly diminished value because the Lennox AC’s do not perform their sole function without the need for costly repair.

**Answer:** Lennox denies the allegations in paragraph 192 of the Complaint.

### **COUNT VIII**

#### **Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.46**

193. Plaintiff Karbarz re-alleges and incorporates each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 192 above as if fully set forth herein.

194. Plaintiff Karbarz asserts this claim individually and on behalf of the Texas Subclasses.

**Answer:** Lennox admits that Plaintiff Karbarz purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Karbarz’s claims are proper individually or as a class action or as subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Karbarz’s claims cannot be maintained as a class action or as a subclass because they do not

satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 194 of the Complaint.

195. The Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41 *et seq.*, (“TDTPCPA”) declares unlawful “False, misleading, or deceptive acts or practices in the conduct of any trade or commerce...” Tex. Bus. & Com. Code Ann. § 17.46 (West)

**Answer:** Lennox denies the allegations in paragraph 195 of the Complaint, except Lennox admits that the Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.46(a) provides that “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.”

196. Defendant’s acts and practices, alleged herein, constitute false, misleading, and/or deceptive business practices in violation of the TDTPCPA, including but not limited to, Defendant’s misrepresentations and omissions in the sale of defective Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 196 of the Complaint. To the extent that paragraph 196 of the Complaint references “acts and practices, alleged herein,” Lennox incorporates its responses to those allegations herein.

197. Defendant intended for Plaintiffs and Subclass members to rely on its aforementioned deceptive acts and practices, and such deceptive acts and practices occurred in the course of conduct involving trade or commerce.

**Answer:** Lennox denies the allegations in paragraph 197 of the Complaint. To the extent that paragraph 197 of the Complaint references “aforementioned deceptive acts and practices” and “such deceptive acts and practices,” Lennox incorporates its responses to those allegations herein.

198. Plaintiff Karbarz and the Texas Subclasses were exposed to such omissions and misrepresentations and were deceived.

**Answer:** Lennox denies the allegations in paragraph 198 of the Complaint.

To the extent that paragraph 198 of the Complaint references “such omissions and misrepresentations,” Lennox incorporates its responses to those allegations herein.

199. Defendant’s violation of the TDTPCPA caused Plaintiff Karbarz and Texas Subclasses to sustain substantial and ascertainable losses of money and/or property and other damages because they were induced to purchase or paid a price premium due to the false and misleading advertising and marketing of Lennox ACs and/or Defendant’s failure to disclose the defects of said products, and/or paid to replace defective Coils.

**Answer:** Lennox denies that it violated the TDTPCPA and denies the remaining allegations in paragraph 199 of the Complaint.

200. Plaintiff Karbarz and the Texas Subclasses’ Lennox AC’s are of significantly diminished value because the Lennox AC’s do not perform their sole function without the need for costly repair.

**Answer:** Lennox denies the allegations in paragraph 200 of the Complaint.

**COUNT IX**  
**Unfair and Unlawful Practices**  
**Cal. Bus. & Prof. Code § 17200 *et seq.***

201. Plaintiff Davis repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 200 above as if fully set forth herein.

202. Plaintiff Davis brings this claim individually and on behalf of the California Subclasses

**Answer:** Lennox admits that Plaintiff Davis purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Davis’s claims are proper individually or as a class action or as a subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Davis’s claims cannot be maintained as a class action or as a subclass because

they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 202 of the Complaint.

203. Plaintiff Davis brings this statutory claim pursuant to Cal. Bus. & Prof. Code § 17200, which prohibits unfair competition and the type of deceptive representations made by Lennox regarding the Lennox ACs

**Answer:** Lennox denies the allegations in paragraph 203 of the Complaint, except Lennox admits that section 17200 of the California Business and Professions Code defines “unfair competition” to “mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

204. Under Cal. Bus. & Prof. Code § 17200, any business act or practice that is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, or that violates a legislatively declared policy, constitutes an unfair business act or practice.

**Answer:** Lennox denies the allegations in paragraph 204 of the Complaint, except Lennox admits that section 17200 of the California Business and Professions Code defines “unfair competition” to “mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

205. Lennox has engaged in unfair, unlawful, and fraudulent business acts or practices as set forth above.

**Answer:** Lennox denies the allegations in paragraph 205 of the Complaint.

To the extent that paragraph 205 of the Complaint references “acts or practices as set forth above,” Lennox incorporates its responses to those allegations herein.

206. **Unfair.** Lennox’s conduct constitutes an unfair business act or practice because Lennox’s practices have caused and are likely to cause substantial injury to Plaintiff Davis and the California Subclasses, which injury is not reasonably avoidable as alleged herein, and is not outweighed by any countervailing benefits to consumers.

**Answer:** Lennox denies the allegations in paragraph 206 of the Complaint.

207. **Unlawful.** Lennox’s acts and practices are unlawful because they violate (1) Cal. Bus. & Prof. Code § 17500 *et seq.*, and (2) the Consumer Legal Remedies Act, Cal. Civil Code § 1750 *et seq.*

**Answer:** Lennox denies the allegations in paragraph 207 of the Complaint.

208. Lennox fraudulent representations and omissions about the Lennox ACs are an act or practice in the conduct of trade or commerce.

**Answer:** Lennox denies that it made any fraudulent representations and omissions and denies the remaining allegations in paragraph 208 of the Complaint.

209. These representations and omissions impact the public interest.

**Answer:** Lennox denies that it made any fraudulent representations and omissions and denies the remaining allegations in paragraph 209 of the Complaint.

210. Lennox’s representations and omissions about the Lennox ACs are deceptive, unfair and fraudulent because Lennox knew, or should have known, the statements were misrepresentations of the Lennox ACs’ actual capabilities.

**Answer:** Lennox denies the allegations in paragraph 210 of the Complaint.

211. Plaintiff and members of the Class suffered economic injury as a direct and proximate result of Lennox’s conduct, including but not limited to, the price paid for the purchase of a compatible phone to replace the class member’s Galaxy SII.

**Answer:** Lennox denies the allegations in paragraph 211 of the Complaint.

212. Lennox committed deceptive acts or practices within the meaning of the above statute by engaging in the acts and practices alleged herein.

**Answer:** Lennox denies the allegations in paragraph 212 of the Complaint. To the extent that paragraph 212 of the Complaint references “acts and practices alleged herein,” Lennox incorporates its responses to those allegations herein.

213. Plaintiff Davis seeks an order of this Court awarding restitution, injunctive relief, and all other relief allowed under § 17200, *et seq*, plus attorneys’ fees, and costs.

**Answer:** Lennox denies the allegations in paragraph 213 of the Complaint and further denies that Plaintiff Davis, the other Plaintiffs and any members of the California Subclasses are entitled to restitution, injunctive relief, or any other relief whatsoever.

**COUNT X**  
**False Advertising**  
**Cal. Bus. & Prof. Code § 17500 *et seq.***

214. Plaintiff Davis repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 213 above as if fully set forth herein.

215. Plaintiff Davis brings this claim individually and on behalf of the California Subclasses

**Answer:** Lennox admits that Plaintiff Davis purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Davis’s claims are proper individually or as a class action or as subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Davis’s claims cannot be maintained as a class action or as a subclass because they do not

satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 215 of the Complaint.

216. Lennox is a “person” as defined by Cal. Bus. & Prof. Code § 17506.

**Answer:** Lennox denies the allegations in paragraph 216 of the Complaint, except Lennox admits that Lennox Industries Inc. is a “person” as that term is defined by Cal. Bus. & Prof. Code § 17506.

217. Lennox falsely advertised the performance, uses, benefits, characteristics, quality, grade and standard of the Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 217 of the Complaint.

218. Lennox’s misrepresentations and omissions as described above were likely to and did in fact deceive Plaintiff Davis and members of the California Subclasses.

**Answer:** Lennox denies the allegations in paragraph 218 of the Complaint. To the extent that paragraph 218 of the Complaint references “misrepresentations and omissions, as described above,” Lennox incorporates its responses to those allegations herein.

219. Plaintiff Davis relied upon Lennox’s material misrepresentations and omissions to his detriment in that she would not have paid the same price for an air conditioner which was uniquely susceptible to formicary corrosion and would require additional refrigerant and coil replacement.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning what Plaintiff Davis would or would not have purchased or agreed to, denies that Plaintiff Davis could not have discovered facts about formicary corrosion in copper coils, denies that Lennox made material misrepresentation and omissions and further denies the remaining allegations in paragraph 219 of the Complaint.

220. The above-described false and misleading advertising conducted by Lennox continues to the time of this filing and represents an ongoing threat to the general public.

**Answer:** Lennox denies the allegations in paragraph 220 of the Complaint. To the extent that paragraph 220 of the Complaint references “the above-described false and misleading advertising,” Lennox incorporates its responses to those allegations herein.

221. Lennox has been unjustly enriched as a result of the above-described conduct.

**Answer:** Lennox denies the allegations in paragraph 221 of the Complaint. To the extent that paragraph 221 of the Complaint references “the above-described conduct,” Lennox incorporates its responses to those allegations herein.

222. Plaintiff Davis seeks an order of this Court pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535 (a) Requiring Lennox to immediately cease the unlawful, unfair, and/or fraudulent business acts and/or practices and false and misleading advertising described herein; (b) enjoining Lennox from continuing to misrepresent and qualities of its Lennox ACs; (c) requiring Lennox to replace any Lennox Coils with coils which are not subject to formicary corrosion; and (d) providing full restitution and damages to Plaintiff Davis and any member of the California Subclasses, plus interest, costs, and attorneys’ fees.

**Answer:** Lennox denies the allegations in paragraph 222 of the Complaint, and further denies that Plaintiff Davis, the other Plaintiffs and any member of the California Subclasses are entitled to any relief whatsoever.

**COUNT XI**  
**Unfair or Deceptive Acts or Practices**  
**Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.***

223. Plaintiff Davis repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 222 above as if fully set forth herein.

224. Plaintiff Davis brings this claim individually and on behalf of the California Subclasses based on Lennox’s breach of the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 *et seq.*

**Answer:** Lennox admits that Plaintiff Davis purports to bring this action on behalf of himself individually and as a class action and on behalf of a subclass, but Lennox denies that Plaintiff Davis's claims are proper individually or as a class action or as subclass under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiff Davis's claims cannot be maintained as a class action or as a subclass because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 224 of the Complaint.

225. Plaintiff was a "consumer" as that term is defined in Cal. Civ. Code § 1761(d) at all times relevant to the Complaint.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 225 of the Complaint because there is no defined time period for "at all times relevant to the Complaint."

226. The Lennox ACs purchased by Plaintiff Davis and the California Subclasses constituted "goods" as that term is defined in Cal. Civ. Code § 1761 (a) at all times relevant to the Amended Complaint.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 226 of the Complaint because there is no defined time period for "at all times relevant to the Amended Complaint."

227. Lennox constituted a "person" as that term is defined in Cal, Civ. Code § 1761(c) at all times relevant to the Amended Complaint.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 227 of the Complaint because there is no defined time period for "at all times relevant to the Amended Complaint."

228. Plaintiff Davis [sic] the California Subclasses' purchase of the Lennox ACs constituted a "transaction" as that term is defined in Cal. Civ. Code § 1761(e) at all times relevant to the Amended Complaint.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 228 of the Complaint because there is no defined time period for “at all times relevant to the Amended Complaint.”

229. Lennox provided “services” to Plaintiff and the class within the meaning of Cal. Civ. Code § 1761(b).

**Answer:** Lennox denies the allegations in paragraph 229 of the Complaint.

230. The CLRA provides, inter alia, “[the [sic] following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: subsection (a)(5) [r]epresenting that goods... have... characteristics, uses, benefits...which they do not have;...subsection (a)(7) [r]epresenting that goods...are of a particular standard, quality or grade...if they are of another;...and subsection of (a)(9) [a]dvertising goods ...with intent not to sell them as advertised. Cal. Civ. Code §§ 1770(a)(5), (7) and (9).

**Answer:** Lennox admits that Cal. Civ. Code section 1770(a) provides, inter alia, that “[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: . . . (a)(5) [r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have. . . .(a)(7) [r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. . . . (a)(9) [a]dvertising goods or services with intent not to sell them as advertised.” Cal. Civ. Code §§ 1770(a)(5), (7), and (9).

231. Lennox violated the CLRA because it makes uniform written representations that regarding the characteristics, uses, benefits, standards, and quality of the Lennox ACs that represent the Lennox ACs have standards, qualities, or grades which they do not have. Lennox

made these representations with intent to sell the Lennox Acs without the qualities it had represented.

**Answer:** Lennox denies the allegations in paragraph 231 of the Complaint.

232. Lennox did not disclose that Lennox ACs contain coils uniquely susceptible to formicary corrosion.

**Answer:** Lennox denies that Lennox ACs contain coils uniquely susceptible to formicary corrosion and denies the remaining allegations in paragraph 232 of the Complaint.

233. The information Lennox misrepresents, conceals, and/or does not disclose to consumers is material in that a reasonable consumer would have considered them important in deciding whether to purchase, or whether to pay the stated price for, a Lennox AC.

**Answer:** Lennox denies that it misrepresents, conceals and/or does not disclose to consumers any material information and denies the remaining allegations in paragraph 233 of the Complaint.

234. Plaintiff Davis reasonably and justifiably acted or relied to his detriment upon the undisclosed facts as evidenced by her purchase of the Lennox AC. Had Plaintiff Davis known of the material omissions described above, she would not have purchased a Lennox AC, or only agreed to pay less for it.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning what Plaintiff Davis acted or relied upon or knew or should have known or would or would not have purchased or agreed to, denies that Plaintiff Davis could not have discovered facts about formicary corrosion in copper coils, and further denies the remaining allegations in paragraph 234 of the Complaint. To the extent that paragraph 234 of the Complaint references “omissions described above,” Lennox incorporates its responses to those allegations herein.

235. Plaintiff Davis seeks an order of this Court pursuant to Cal. Civ. Code § 1780 (a)(2) enjoining Lennox's conduct described above, and requiring Lennox to replace the Lennox Coils with coils not susceptible to formicary corrosion, plus attorneys' fees and costs.

**Answer:** Lennox denies the allegations in paragraph 235 of the Complaint, and further denies that Plaintiff Davis, the other Plaintiffs and any member of the California Subclasses are entitled to any relief whatsoever. To the extent that paragraph 235 of the Complaint references "Lennox's conduct described above," Lennox incorporates its responses to those allegations herein.

236. Plaintiff Davis has notified Lennox in writing of its particular violations of Cal. Civ. Code § 1770 pursuant to Cal Civ. Code § 1782 and made a demand for corrective action. By agreement, Plaintiff sent this notice to Defendant by electronic mail care of Defendant's counsel. See Exhibit G. Accordingly, Plaintiff reserves the right to seek damages for violation of Cal. Civ. Code § 1770 pursuant to Cal Civ. Code § 1780(a) upon expiration of the 30 day requirement found in Cal Civ. Code § 1782.

**Answer:** Lennox denies the allegations in paragraph 236 of the Complaint, except Lennox admits that on or about January 8, 2014, Zachary A. Jacobs of Complex Litigation Group LLC, sent a letter purporting to be a notification and pre-lawsuit demand pursuant to California Civil Code § 1782 concerning defective air conditioners.

## **COUNT XII** **Unjust Enrichment**

237. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 236 above as if fully set forth herein.

238. Plaintiffs bring this claim on behalf of the Classes or, in the alternative on behalf of the various state Subclasses.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action and on behalf of subclasses, but

Lennox denies that Plaintiffs' claims are proper individually or as a class action or as subclasses under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiffs' claims cannot be maintained as a class action or as subclasses because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 238 of the Complaint.

239. Plaintiffs and members of the Classes conferred a benefit upon Lennox. Namely, Plaintiffs and Class members paid money for ownership of their Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 239 of the Complaint.

240. Lennox retained that benefit.

**Answer:** Lennox denies the allegations in paragraph 240 of the Complaint.

241. Lennox retained that benefit under circumstances that make it inequitable for Lennox to retain it without paying the value thereof. Specifically, Lennox retained that benefit despite the fact that the Lennox ACs contained defective Coils.

**Answer:** Lennox denies the allegations in paragraph 241 of the Complaint.

242. Plaintiffs purchased the Lennox ACs from a Lennox's [sic] agent, in part, because of Lennox's advertisements, marketing and product claims, and [sic] a result, a relationship between the parties has been created even though Plaintiffs did not purchase Lennox ACs directly from Lennox.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiffs' alleged purchases of Lennox ACs, and Lennox further denies the remaining allegations in paragraph 242 of the Complaint.

243. As set forth above, Lennox misrepresented the relevant Lennox ACs as free from design defect through it [sic] marketing, advertising, product packaging, and print publications specifically designed to entice Plaintiffs, Class Members, builders, contractor and others to buy Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 243 of the Complaint.

To the extent that paragraph 243 of the Complaint references allegations “[a]s set forth above,” Lennox incorporates its responses to those allegations herein.

244. Because Lennox’s retention of the non-gratuitous benefit conferred on it by Plaintiffs and Class members is unjust and inequitable, Lennox must pay restitution to Plaintiffs and class members for its unjust enrichment, as ordered by the Court.

**Answer:** Lennox denies the allegations in paragraph 244 of the Complaint, and Lennox further denies that Plaintiffs and Class members are entitled to any relief whatsoever.

### **COUNT XIII** **Fraudulent Concealment**

245. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 244 above as if fully set forth herein.

246. Plaintiffs bring this claim on behalf of the Classes or, in the alternative on behalf of the various state Subclasses.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action and on behalf of subclasses, but Lennox denies that Plaintiffs’ claims are proper individually or as a class action or as subclasses under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiffs’ claims cannot be maintained as a class action or as subclasses because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 246 of the Complaint.

247. Lennox knew or should have known that the Coils were defective in design, were not fit for their ordinary and intended use, and performed in accordance with neither the

advertisements, marketing materials and warranties disseminated by Lennox nor the reasonable expectations of ordinary consumers.

**Answer:** Lennox denies that the Coils were defective and denies the remaining allegations in paragraph 247 of the Complaint.

248. Lennox fraudulently concealed from and/or intentionally failed to disclose to Plaintiffs and the Class that the Coils are defective.

**Answer:** Lennox denies that the Coils are defective and denies the remaining allegations in paragraph 248 of the Complaint.

249. Lennox had exclusive knowledge of the defective nature of the Coils at the time of sale. The defect is latent and not something that Plaintiffs or Class members, in the exercise of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible.

**Answer:** Lennox lacks knowledge or information sufficient to form a belief about the truth of the allegation concerning what Plaintiffs or the proposed Class members could or could not have discovered, denies that Plaintiffs could not have discovered facts about formicary corrosion in copper coils, denies the Coils are defective, and further denies the remaining allegations in paragraph 249 of the Complaint.

250. Lennox had the capacity to, and did, deceive Plaintiffs and Class members into believing that they were purchasing Coils free from defects.

**Answer:** Lennox denies that the Coils are defective and denies the remaining allegations in paragraph 250 of the Complaint.

251. Lennox undertook active and ongoing steps to conceal the defect. Plaintiffs are aware of nothing in Lennox advertising, publicity or marketing materials that disclosed the truth about the defect, despite Lennox's awareness of the problem.

**Answer:** Lennox denies that the Coils are defective and denies the remaining allegations in paragraph 251 of the Complaint.

252. The facts concealed and/or not disclosed by Lennox to Plaintiffs and the Class members are material facts in that a reasonable person would have considered them important in deciding whether to purchase (or to pay the same price for) the Coils.

**Answer:** Lennox denies the allegations in paragraph 252 of the Complaint.

253. Lennox intentionally concealed and/or failed to disclose material factors for the purpose of inducing Plaintiffs and the Class to act thereon.

**Answer:** Lennox denies the allegations in paragraph 253 of the Complaint.

254. Plaintiffs and the Class justifiably acted or relied upon the concealed and/or nondisclosed facts to their detriment, as evidenced by their purchase of, or replacements using, the Coils.

**Answer:** Lennox denies the allegations in paragraph 254 of the Complaint.

255. Plaintiffs and Class members suffered a loss of money in an amount to be proven at trial as a result of Lennox's fraudulent concealment and nondisclosure because: (a) they would not have purchased the ACs on the same terms if the true facts concerning the defective Coils had been known; (b) they paid a price premium due to they would be free from defects; and (c) the ACs did not perform as promised. Plaintiffs also would have initiated this suit earlier had the defect been disclosed to them.

**Answer:** Lennox denies the allegations in paragraph 255 of the Complaint.

256. By reason of the foregoing, Plaintiffs and the Class members suffered, and continue to suffer, financial damage and injury.

**Answer:** Lennox denies the allegations in paragraph 256 of the Complaint.

**COUNT XIV**  
**Declaratory Relief, 28 U.S.C. § 2201**

257. Plaintiffs repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

**Answer:** Lennox repeats and re-alleges paragraphs 1 through 256 above as is fully set forth herein.

258. Plaintiffs brings this claim on behalf of the Classes, or, in the alternative on behalf of the Subclasses pursuant to 28 U.S.C. § 2201.

**Answer:** Lennox admits that Plaintiffs purport to bring this action on behalf of themselves individually and as a class action and on behalf of subclasses, but

Lennox denies that Plaintiffs' claims are proper individually or as a class action or as subclasses under the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), (c)(4) and/or (c)(5) and further states that Plaintiffs' claims cannot be maintained as a class action or as subclasses because they do not satisfy the prerequisites pursuant to Federal Rules of Civil Procedure 23(a) and (b). Lennox denies any remaining allegations in paragraph 258 of the Complaint.

259. There is an actual controversy between Plaintiffs and the classes on one hand, and Lennox on the other regarding the marketing and sale of the Lennox ACs.

**Answer:** Lennox denies the allegations in paragraph 259 of the Complaint.

260. Pursuant to 28 U.S.C. § 2201, this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

**Answer:** Lennox denies the allegations in paragraph 260 of the Complaint, except Lennox admits that 28 U.S.C. § 2201 provides, in part, that "any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

261. Lennox marketed and sold, and continues to market and sell, Lennox ACs with defective Coils, while concealing this defect from consumers.

**Answer:** Lennox denies the allegations in paragraph 261 of the Complaint, except Lennox admits that it marketed and sold, and continues to market and sell, Lennox ACs for residential use.

262. Lennox has acted or refused to act on grounds that apply generally to the Declaratory Relief Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P. 23(b)(2). Plaintiffs seeks declaratory relief, ruling that:

- a. Lennox ACs containing copper Coils are defective because they are unreasonably susceptible to formicary corrosion;

- b. certain provisions of Lennox's warranty are void as unconscionable;
- c. Lennox must notify AC owners of the defect;
- d. the durational limitations on the warranty are removed;
- e. Lennox will reassess all prior warranty claims and pay the full cost of repairs and damages;
- f. Lennox will pay the cost of inspection to determine whether any Class Member's Coils need replacement; and
- g. any limitation of damages or disclaimer or warranty by Lennox with regard to Lennox Coils are void.

**Answer:** Lennox denies the allegations in paragraph 262 of the Complaint, and all of its subparts a through g, and Lennox further denies that Plaintiffs are entitled to any relief whatsoever.

#### **REQUESTS FOR RELIEF**

Lennox denies that Plaintiffs are entitled to any of the relief Plaintiffs request on page 41 of the Complaint. Wherefore, Lennox respectfully requests that this Court enter judgment in its favor and against Plaintiffs on all claims asserted in this action, and that this Court award Lennox its costs, and provide such further relief and additional relief that this Court deems appropriate and just.

#### **GENERAL DENIAL**

Except as otherwise expressly recognized above, Lennox denies each and every allegation contained in paragraphs 1 through 262, including, without limitation, the headings and subheadings contained in the Complaint, and specifically denies any liability to Plaintiffs. Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, averments in the Complaint to which no responsive pleading is required shall be deemed denied. Lennox expressly reserves the right to amend and/or supplement its Answer.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Defendant demands a trial by jury of all of the claims asserted in Plaintiffs' Complaint so triable.

**AFFIRMATIVE AND OTHER DEFENSES**

Lennox incorporates by reference its responses to paragraphs 1 through 262 of the Complaint as if set forth fully herein. The statement of any defense hereinafter does not assume the burden of proof for any issue as to which applicable law places the burden upon Plaintiffs. Lennox expressly reserves the right to amend and/or supplement its defenses and does not waive any available defense. Lennox asserts as follows:

**FIRST DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.<sup>3</sup>

**SECOND DEFENSE**

Any recovery that Plaintiffs purport to be able to obtain from Lennox must be offset by Plaintiffs' failure to mitigate their damages, as required under applicable law, including but not limited to the Texas Deceptive Trade Practices-Consumer Protection Act.

**THIRD DEFENSE**

All, or at least some, of Plaintiffs' claims fail because Plaintiffs did not give Lennox adequate notice of the alleged breaches of express or implied warranties and the opportunity to cure, as required under applicable law.

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<sup>3</sup> "Plaintiffs" hereinafter shall include the named Plaintiffs and the putative classes and subclasses, as defined in paragraphs 30-36 of the Complaint.

**FOURTH DEFENSE**

All, or at least some, of Plaintiffs' claims for breaches of express or implied warranties are barred due to Plaintiffs' lack of privity with Lennox, as Plaintiffs have not alleged in the Complaint that they purchased their Lennox ACs directly from Lennox.

**FIFTH DEFENSE**

All, or at least some, of Plaintiffs' claims for breach of warranty, express or implied, fail because Plaintiffs cannot bring a warranty claim where the alleged defect has not manifested itself.

**SIXTH DEFENSE**

All, or at least some, of Plaintiffs' claims for breach of express warranty fail because Plaintiffs do not properly allege reliance on an express warranty. Rather, Plaintiffs allege, in a conclusory fashion, that "Plaintiffs and members of the Classes relied upon the representation or warranty that they would be supplied Lennox ACs and Coils, and/or replacement Coils, free of defects." (Compl. ¶ 126.) Moreover, Plaintiffs admit that they did not purchase the Lennox ACs directly from Lennox. (See, e.g., Compl. ¶¶ 48, 56, 64.)

**SEVENTH DEFENSE**

All, or at least some, of Plaintiffs' claims for breach of express warranty fail because Plaintiffs do not plead a specific breach of the Lennox warranty that caused them injury.

**EIGHTH DEFENSE**

Lennox ACs, including Lennox Coils, are covered by an express written warranty that Plaintiffs accepted at the time of purchase, and that express written warranty excludes any other express warranties, the implied warranty of merchantability and the implied warranty of fitness

for a particular purpose, as allowed under applicable law. Plaintiffs accepted that limited written warranty in lieu of any other warranty or representation, express or implied. Therefore, Lennox pleads the written warranty as a complete bar to all, or at least some, of Plaintiffs' claims.

#### **NINTH DEFENSE**

Lennox ACs, including Lennox Coils, are covered by an express written warranty that Plaintiffs accepted at the time of purchase, and that express written warranty limits remedies for a breach of warranty, whether express or implied, to a replacement part. The warranty excludes consequential or incidental damages. Plaintiffs accepted that limited written warranty in lieu of any other warranty or representation, express or implied. To the extent any part of Plaintiffs' Complaint may be construed as alleging or seeking recovery of consequential or incidental damages against Lennox, Lennox pleads the written warranty as a complete bar to all, or at least some, of Plaintiffs' claims.

#### **TENTH DEFENSE**

All, or at least some, of Plaintiffs' claims for breach of implied warranty of fitness for a particular purpose fail because Plaintiffs have failed to allege that the Lennox ACs were to be used for a particular purpose other than their ordinary use, as required under applicable law.

#### **ELEVENTH DEFENSE**

All, or at least some, of Plaintiffs' breach of warranty claims fail because Plaintiffs have not pled facts sufficient to show that Plaintiffs met the conditions of the Lennox warranty, and therefore Plaintiffs are not entitled to invoke the Lennox warranty.

#### **TWELFTH DEFENSE**

To the extent that Plaintiffs claim that the terms of Lennox's express warranty, including its limitations, relating to Lennox ACs are unconscionable or failed their essential purpose,

Plaintiffs fail to adequately plead facts sufficient to show a failure of essential purpose or unconscionability of the warranty.

**THIRTEENTH DEFENSE**

Plaintiffs' claim for breach of implied warranty of merchantability fails because Plaintiffs have not pled facts sufficient to show that the alleged defect in the Lennox ACs rendered the Lennox ACs unfit for the ordinary purpose of cooling or heating homes.

**FOURTEENTH DEFENSE**

All, or at least some, of Plaintiffs' claims are barred by the applicable statutes of limitation. By way of example only, Plaintiffs have failed to allege a class period and, as a result, all, or at least some, of Plaintiffs' claims are barred because they were not filed within the applicable statutes of limitation periods. Lennox further denies that the discovery rule, to the extent it is even available under applicable law, would toll the applicable statutes of limitation for any of Plaintiffs' claims.

**FIFTEENTH DEFENSE**

Upon information and belief, any damages suffered by Plaintiffs were proximately caused and occasioned by the abuse, misuse, or improper use of the Lennox ACs or Lennox Coils, and therefore Plaintiffs' claims are barred. Plaintiffs have not alleged facts showing that they properly maintained or otherwise did not abuse, misuse, or improperly use the Lennox ACs or Lennox Coils.

**SIXTEENTH DEFENSE**

All, or at least some, of Plaintiffs' claims are barred by the doctrine of laches.

**SEVENTEENTH DEFENSE**

All, or at least some, of Plaintiffs' claims are barred by the doctrine of waiver.

**EIGHTEENTH DEFENSE**

All, or at least some, of Plaintiffs' claims are barred by the doctrine of estoppel.

**NINETEENTH DEFENSE**

Plaintiffs' Complaint fails to state facts sufficient to support an award of attorneys' fees.

**TWENTIETH DEFENSE**

If Plaintiffs have sustained any damages, any such damages were proximately caused by the acts and omissions of Plaintiffs or others, and these acts and omissions were the sole causes of Plaintiffs' alleged damages. Therefore, Lennox pleads independent, intervening, or suspending acts and omissions of Plaintiffs and others as a complete bar to this action.

**TWENTY-FIRST DEFENSE**

Upon information and belief, the Complaint and each of its causes of action are barred, limited, or all, or at least some, of Plaintiffs' recoveries should be reduced, by Plaintiffs' negligence or other fault, pursuant to the doctrine of comparative fault.

**TWENTY-SECOND DEFENSE**

Upon information and belief, the Complaint and each of its causes of action are barred, limited, or all, or at least some, of Plaintiffs' recoveries should be reduced by Plaintiffs' contributory negligence.

**TWENTY-THIRD DEFENSE**

Plaintiffs' claim for unjust enrichment fails because an unjust enrichment claim is not available to redress alleged violations of warranty rights.

**TWENTY-FOURTH DEFENSE**

Plaintiffs' claim for unjust enrichment fails because unjust enrichment is not recognized as a separate cause of action.

**TWENTY-FIFTH DEFENSE**

Plaintiffs' declaratory relief count should be dismissed because it is superfluous and unnecessary because it merely seeks to determine issues that are identical to the existing causes of action.

**TWENTY-SIXTH DEFENSE**

All, or at least some, of Plaintiffs' claims for fraudulent concealment should be dismissed because Plaintiffs have not pled fraud with particularity, as required under applicable law, and because Plaintiffs have failed to sufficiently plead any of the necessary elements of the claim.

**TWENTY-SEVENTH DEFENSE**

All, or at least some, of Plaintiffs' claims for fraudulent concealment fail because Plaintiffs have not pled facts necessary to establish causation and reliance. Specifically, Plaintiffs admit that they did not purchase the Lennox ACs directly from Lennox and, accordingly, Plaintiffs have disclaimed causation and reliance as a matter of law. (See, e.g., Compl. ¶¶ 48, 56, 64.)

**TWENTY-EIGHTH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the Illinois Consumer Fraud and Deceptive Practices Act, fail because Plaintiffs do not plead facts in support of violations of those statutes with the same particularity and specificity as required under common law fraud, which is required by all, or at least some, of the state consumer protection statutes.

**TWENTY-NINTH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the Florida Deceptive and Unfair Trade Practices Act, fail because

Plaintiffs do not allege reliance and causation, which are required elements under all, or at least some, of the state consumer protection statutes.

**THIRTIETH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the claims brought by Plaintiff Davis and the putative California subclass under section 17200 *et seq.* of the California Business & Professions Code, fail because Plaintiffs allegedly purchased Lennox ACs from dealers and third parties, and not directly from Lennox, and therefore, the Plaintiffs, including but not limited to Plaintiff Davis and the putative California subclass, lack standing to assert a claim.

**THIRTY-FIRST DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the claims brought by Plaintiff Davis and the putative California subclass under section 17200 *et seq.* of the California Business & Professions Code, fail to the extent those claims are based on alleged misrepresentations by Lennox because such statements could not have economically injured Plaintiffs because Plaintiffs do not allege that they ever saw or heard any alleged misrepresentations and therefore, Plaintiffs could not have relied to their detriment upon such representations that they never saw or heard.

**THIRTY-SECOND DEFENSE**

Plaintiff Davis and the putative California subclass fail to allege that they actually heard or saw or relied on any allegedly false or misleading advertisements and/or alleged misrepresentations and therefore Plaintiff Davis and the putative California subclass fail to adequately allege causation or that they have been economically injured as required by section 17500 *et seq.* of the California Business & Professions Code.

**THIRTY-THIRD DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the claims brought by Plaintiff Davis and the putative California subclass under section 17200 *et seq.* of the California Business & Professions Code, fail because those claims, in whole or in part, are based on Lennox's alleged failure to disclose a defect in its coils, and Plaintiffs, including Plaintiff Davis and the putative California subclass, cannot establish standing based on an omission theory because they do not allege that they ever saw or heard any of Lennox's advertisements, brochures or marketing materials.

**THIRTY-FOURTH DEFENSE**

Plaintiff Davis and the putative California subclass's claims under the Consumer Legal Remedies Act (the "CLRA") are barred because Plaintiff Davis and the putative California subclass failed to file the affidavit required by California Civil Code section 1780.

**THIRTY-FIFTH DEFENSE**

Plaintiff Davis and the putative California subclass did not "transact" with Lennox, as required by California law. The CLRA only proscribes "misrepresentations" made in connection with a "transaction" for goods or services. Because Plaintiff Davis and the putative California subclass allege that they bought their Lennox ACs from Palm Desert Heating & Air Conditioning and/or other dealers and third parties, they do not fall within the coverage of the CLRA. (See Compl. ¶ 86.)

**THIRTY-SIXTH DEFENSE**

The Complaint does not satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, and therefore the putative class claims should be dismissed.

**THIRTY-SEVENTH DEFENSE**

To the extent that Plaintiffs seek to extrapolate liability, causation, or damages on a class-wide basis without requiring each putative class member to prove liability, causation, and damages to establish each individual's claims, Plaintiffs' claims are barred, in whole or in part, by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, as well as the Seventh Amendment's guarantee of a jury trial.

**THIRTY-EIGHTH DEFENSE**

To the extent any part of Plaintiffs' Complaint may be construed as alleging or seeking recovery of punitive or exemplary damages, unless such liability for punitive damages and the appropriate amount of punitive damages are required to be established by clear and convincing evidence, any award of punitive damages would violate Lennox's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and state constitutions, and would be improper under the common law and public policies of the United States and each state.

**THIRTY-NINTH DEFENSE**

To the extent any part of Plaintiffs' Complaint may be construed as alleging or seeking recovery of punitive or exemplary damages against Lennox, any such claim cannot be maintained unless the trial is bifurcated. Any award of punitive damages without bifurcating the trial and trying all punitive damages issues only if and after liability on the merits has been found, would violate Lennox's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the state constitutions and would be improper under the common law and public policies of the United States and each state.

**FORTIETH DEFENSE**

To the extent any part of Plaintiffs' Complaint may be construed as alleging or seeking recovery of punitive or exemplary damages against Lennox, any such claim cannot be maintained, because an award of punitive damages under applicable law would be unlawful and unauthorized, and would be void for vagueness, both facially and as applied, as a result of, among other deficiencies, the absence of adequate notice of what conduct is subject to punishment, the absence of adequate notice of what punishment may be imposed, and the absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose, all in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, and the state constitutions, and the common law and public policies of the United States and each state.

**FORTY-FIRST DEFENSE**

To the extent any part of Plaintiffs' Complaint may be construed as alleging or seeking recovery of punitive or exemplary damages against Lennox, any such claim cannot be maintained, to the extent that any award of punitive damages under applicable law would be by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of Lennox, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to adequate trial court and appellate

judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards. Any such verdict would violate Lennox's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process and equal protection provisions of the United States and each state.

**FORTY-SECOND DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the Texas Deceptive Trade Practices-Consumer Protection Act, fail because any statements made by Lennox were not false, misleading or deceptive, but rather non-actionable opinions.

**FORTY-THIRD DEFENSE**

To the extent that Plaintiffs have unclean hands, all, or at least some, of Plaintiffs' claims are barred.

**FORTY-FOURTH DEFENSE**

All, or at least some, of Plaintiffs' claims, including but not limited to claims under the Texas Deceptive Trade Practices-Consumer Protection Act, are barred by the doctrine of accord and satisfaction.

**FORTY-FIFTH DEFENSE**

To the extent that Plaintiffs demand a jury trial of their claims under the state consumer protection statutes, Plaintiffs' demand fails because there is no right to a jury trial for private causes of action under all, or at least some, of the state consumer protection statutes, including but not limited to the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

**FORTY-SIXTH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the South Carolina Unfair Trade Practices Act, fail because Plaintiffs

have not pled facts to show that Lennox's alleged actions have had an impact upon the public interest, which is necessary to establish a claim under all, or at least some, of the state consumer protection statutes.

**FORTY-SEVENTH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the Texas Deceptive Trade Practices-Consumer Protection Act, fail because any breach of warranty upon which the claims are based must be established independently of the state consumer protection statutes, and Plaintiffs have failed to properly plead any breach of warranty by Lennox.

**FORTY-EIGHTH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the Texas Deceptive Trade Practices-Consumer Protection Act, fail because Lennox ACs, including Lennox Coils, are covered by an express written warranty that the Plaintiffs accepted at the time of purchase, and that express written warranty excludes all express warranties other than those specified in the express warranty itself, and all implied warranties, as allowed under applicable law. Therefore, any alleged breaches of such warranties cannot be the basis of a claim under all, or at least some, of the state consumer protection statutes.

**FORTY-NINTH DEFENSE**

To the extent the compensatory damages claimed by Plaintiffs include consequential damages, such damages, if any, are too speculative to form a basis for recovery.

**FIFTIETH DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including but not limited to the Texas Deceptive Trade Practices-Consumer Protection Act, fail because certain of the alleged statements made by Lennox were mere puffing, which is not actionable under all, or at least some, of the state consumer protection statutes.

**FIFTY-FIRST DEFENSE**

The South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20 *et seq.* (the "SCUTPA"), prohibits a plaintiff from bringing a suit in a representative capacity, including as a class action and, accordingly, Plaintiff Harris's and the putative South Carolina subclass's claims under SCUTPA cannot be maintained as a class action.

**FIFTY-SECOND DEFENSE**

All, or at least some, of Plaintiffs' claims under the state consumer protection statutes, including not but limited to the Texas Deceptive Trade Practices-Consumer Protection Act, fail because Plaintiffs did not give Lennox the required pre-suit notice of their alleged claims, as required under all, or at least some, of the state consumer protection statutes.

DATED: March 28, 2014

Respectfully submitted,

**LENNOX INDUSTRIES INC.**

By:       /s/ Norman K. Beck      

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**CERTIFICATE OF SERVICE**

The undersigned, Norman K. Beck, an attorney, hereby certifies that on March 28, 2014, I caused a copy of the attached **Defendant's Answer to Plaintiffs' Amended Complaint** to be served on the following entities by ECF.

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