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1 RIDOUT & LYON, LLP
CHRISTOPHER P. RIDOUT, ESQ. (State Bar No. 143931)
2 Email: c.ridout@ridoutlyonlaw.com
DEVON M. LYON, ESQ. (State Bar No. 218293)
3 Email: d.lyon@ridoutlyonlaw.com
CALEB LH. MARKER, ESQ. (State Bar No. 269721)
4 Email: c.marker@ridoutlyonlaw.com
555 E. Ocean Blvd., Suite 500
5 Long Beach, CA 90802
(562) 216-7380 Telephone
6 (562) 216-7385 Facsimile

7 *Attorneys for the Plaintiff*

8 *(Additional Counsel Listed Below)*

9 **SUPERIOR COURT OF THE STATE CALIFORNIA**

10 **COUNTY OF ORANGE**

11 JEFFERY ETTER; SUSAN ETTER;
PAUL KAHLER; FRAN CURTIS; and,
12 MICHELLE CURTIS, individually, and on
behalf of themselves and all others similarly
13 situated,

14 Plaintiffs,

15 vs.

16 THETFORD CORPORATION, a Delaware
Corporation, NORCOLD, INC., a Delaware
17 Corporation, DYSON-KISSNER-MORAN
CORPORATION, a Delaware Corporation, and
18 DOES 1 to 50, inclusive.

19 Defendants.

Case No.: 30-2012-00617846-CU-BT-CXC

Judge Gail A. Andler

COMPLAINT (CLASS ACTION)

(Jury Trial Demanded)

21 Plaintiffs Jeffery Etter, Susan Etter, Paul Kahler, Fran Curtis and Michelle Curtis bring
22 this action, by and through their undersigned counsel, on behalf of themselves and all others
23 similarly situated, based on information and belief and the investigation of counsel, except for
24 information based on personal knowledge, hereby alleges as follows:

25 **I. NATURE OF ACTION**

26 1. This class action lawsuit is brought by the above-named Plaintiffs on behalf of
27 themselves and all other similarly situated persons in the Class defined below against Defendants
28 Thetford Corporation, Norcold, Inc. and Dyson-Kissner-Moran Corporation (DKM) (collectively

1 referred to herein as "Defendants"). The Class consists of both (a) a California State Subclass;
2 and, (b) a Florida State Subclass (collectively referred to herein as the "State Law Subclasses,"
3 "State Subclasses" and/or the "Class"). The allegations of this Complaint are based on the
4 personal knowledge of each of the Plaintiffs as to themselves, and on information and belief as to
5 all other matters.

6 2. Through this class action Plaintiffs challenge the unlawful, unfair, and fraudulent
7 business practices of Defendants in connection with their designing, manufacturing, assembling,
8 promoting, marketing, supplying, selling, recalling, retrofitting, and otherwise placing into the
9 stream of commerce gas absorption refrigerators¹ for use in recreational vehicles and boats
10 (collectively referred to herein as "recreational vehicles").

11 3. Since at least 1997, Defendants have designed, manufactured, assembled, sold
12 and otherwise placed into the stream of commerce three (3) models of gas absorption
13 refrigerators for installation and use in recreational vehicles, all of which share common design
14 and manufacturing defects that create a substantial risk of fire when the refrigerators are used as
15 designed and for their intended purpose. Defendants' gas absorption refrigerators have caused
16 and/or contributed to at least 2,000 fires since 1999, resulting in over \$48,000,000.00 in property
17 damage claims, personal injuries, and at least one death. As of the date of this Complaint,
18 Defendants are receiving new fire claims involving their gas absorption refrigerators at a rate of
19 1 to 2 per day (over 365 annually).

20 4. The gas absorption refrigerators that Defendants have designed, manufactured,
21 assembled, sold and otherwise placed into the stream of commerce contain design and
22 manufacturing defects which cause their refrigerators to have a propensity to catch on fire,
23 posing a substantial risk of serious injury and/or death to users of the product, as well as any
24 other person located close to the product.

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28 ¹ Defendants' gas absorption refrigerators come in various sizes, including six cubic feet (the
"N6" Series), eight cubic feet (the "N8" Series), and twelve cubic feet (the "12" Series).

1 5. Rather than eliminate the design and manufacturing defects contained in its gas
2 absorption refrigerators – or provide adequate warning of potential safety risks to users of the
3 products – Defendants instead sought to conceal and minimize the dangers inherent in the
4 refrigerators’ design and operation through a series of limited manufacturer-initiated product
5 safety recalls through the National Highway Traffic Safety Administration (NHTSA). The
6 limited recalls began in 2000, and continued throughout the class period. In each product safety
7 recall, Defendants represented that there was a single failure modality in a limited portion of
8 their product population and that the retrofit associated with the recalls would fix that defect,
9 rendering the refrigerators safe to use. In fact, Defendants’ gas absorption refrigerators suffered
10 from a number of different failure modalities associated with defective design and manufacture
11 of the products, the defects extended throughout and were common to all of the product lines,
12 and none of the defects or failure modalities were ever adequately disclosed to NHTSA or users
13 of the product, nor remedied by the retrofit campaigns initiated by Defendants. Further, the
14 devices Defendants retrofitted to existing gas absorption refrigerators were not only ineffective
15 to remedy the propensity of the refrigerators to cause fires, the devices themselves were designed
16 to render the refrigerators inoperable and unrepairable, requiring users to purchase new
17 refrigerators that contained the same design and manufacturing defects as the originals, and
18 which had the same propensity to cause fires. Such conduct was misleading and deceptive. It
19 was reasonably foreseeable to Defendants that their conduct and failure to act and warn the
20 Class, in light of the information they actually or should have possessed, as described herein,
21 would cause Plaintiffs and members of the Class damage injury and loss.

22 6. Defendants’ actions harm consumers in the Class by inducing them to
23 unknowingly purchase a product that contains inherent dangers and design and manufacturing
24 defects. These products carry an inherent risk of causing devastating fires, of which Defendants
25 are aware. Given their superior knowledge of the product defects and inherent risks, Defendants
26 had a duty to disclose such facts to members of the Class. Defendants provided no notice of the
27 inherent and potential risks of use of their product to consumers at the time of sale, but rather
28 conceal those risks through omissions of material fact and through affirmative representations in

1 marketing, sales and operational material that represent the products as safe and defect-free. By
2 such conduct, Defendants breached the duties of care they owed to the class. Additionally,
3 Defendants post-sale actions are deceptive and misleading in that they conceal and/or minimize
4 the dangers and risks inherent in the use of defendants' products from both consumers and
5 federal regulators, and lead both consumers and federal regulators to believe that there is a single
6 design and manufacturing defect in some of their refrigerators that is corrected through product
7 safety recalls, when in reality there are several design and manufacturing defects in all of their
8 products, none of which are corrected through the product safety recalls Defendants have
9 conducted. In fact, Defendants' recent safety recalls caused further harm to consumers by
10 retrofitting the defective refrigerators with a device that masks the defects by disabling the
11 electronic controls within the refrigerator before the refrigerator has a chance to ignite a fire. The
12 harm caused by this is felt when the refrigerator malfunctions and fails, and the retrofit device
13 permanently disables the electronic controls. If the refrigerator is no longer under warranty, the
14 consumer must replace the refrigerator at his/her own cost. If the refrigerator is under warranty,
15 Defendants still shift some or all of the cost of repair or replacement onto consumers by
16 misrepresenting the terms of the warranty programs offered. In either event, the consumer
17 unknowingly ends up with the same defective product that failed in the first place, *i.e.* one of
18 Defendants' refrigerators with the same defective design and retrofit. This harm to consumers is
19 the direct result of Defendants' intentional act of placing defective products into the stream of
20 commerce, and Defendants' intentional decision to retrofit the product with devices that do not
21 remedy any of the design and manufacturing defects but instead disable and/or destroy the
22 product and impose the entire cost onto the consumer.

23 7. Plaintiffs bring this lawsuit against Defendants individually and on behalf of the
24 Class of all other similarly situated purchasers and owners of Defendants' gas absorption
25 refrigerators within the Class Period. Plaintiffs allege representative claims for unfair
26 competition, unfair and deceptive acts and practices, breach of express and/implied warranty,
27 negligence, and unjust enrichment under the statutory and common laws of the states in which
28 the named Plaintiffs reside.

1 12. Plaintiffs Fran and Michelle Curtis (collectively referred to as "CURTIS" or the
 2 "CURTIS") are consumers residing in Antioch, California. CURTIS purchased a Keystone
 3 Raptor 5th wheel trailer from Camping World in Bakersfield, California on November 13, 2010.
 4 CURTIS' 5th wheel came equipped with a Norcold N811 (N8 Series) gas absorption refrigerator
 5 as original equipment.² CURTIS' refrigerator is subject to Defendants' recalls; however, they
 6 have not received any notice of recall/retrofit to date from Defendants. They were alerted to
 7 Defendants' recall by their insurance agent. Defendants failed to disclose to CURTIS the same
 8 facts they possessed regarding the gas absorption refrigerator's inherent defects and risks that
 9 they withheld and failed to disclose to the other members of the Class. CURTIS owned the
 10 motor home and Norcold refrigerator during the Class Period and are members of the Class.

11 **Florida Plaintiffs**

12 13. Plaintiffs Jeff and Susan Etter (hereinafter collectively referred to as "ETTER")
 13 are consumers residing in Florida. ETTER purchased a 2007 Damon Tuscany 4072 Class A
 14 motor home equipped with a Norcold 1200 Series gas absorption refrigerator as original
 15 equipment. ETTER's refrigerator was subject to Defendants' product safety recalls, and they
 16 had all of the relevant recall and retrofits performed on the refrigerator. The first recall kit was
 17 installed on ETTER's refrigerator in October, 2011, and failed shortly thereafter. The second
 18 recall kit, installed in November, 2011, also failed, resulting in failure of the refrigerator cooling
 19 unit, which had to be replaced at ETTER's cost. Defendants failed to disclose to ETTER the
 20 same facts they possessed regarding the gas absorption refrigerator's inherent defects and risks
 21 that they withheld and failed to disclose to the other members of the Class. ETTER owned the
 22 motor home and Norcold refrigerator during the Class Period and are members of the Class.

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28 ² Refrigerator Serial Number 13043751. Cooling Unit Serial Number 13035899.

1 **B. Defendants**

2 14. Norcold, Inc. ("Norcold") at some point in time was a corporation organized and
3 existing under the laws of the state of Delaware, with its headquarters and principal place of
4 business at 1 Century Drive, Gettysburg, OH 45328. On or about 1997, all of Norcold's assets
5 and stock were purchased by Thetford Corporation and DKM. Norcold is authorized to transact
6 business and is doing business in both California and Florida.

7 15. Thetford Corporation ("Thetford") is, and at all times mentioned herein was, a
8 corporation organized and existing under the laws of the state of Delaware, with its headquarters
9 and principal place of business at 7101 Jackson Road, Ann Arbor, MI 48103. Plaintiffs are
10 informed and believe and thereon allege that, at least since 1996, all of the assets and stock of
11 Thetford are owned by Dyson-Kissner-Moran Corporation (DKM). Thetford is authorized to
12 transact business and is doing business in both California and Florida.

13 16. Dyson-Kissner-Moran Corporation (DKM) is, and at all times mentioned herein
14 was, a corporation organized and existing under the laws of the state of Delaware, with its
15 headquarters and principle place of business at 565 Fifth Avenue, Fourth Floor, New York, NY
16 10017. DKM is authorized to transact business and is doing business in both California and
17 Florida.

18 17. Plaintiffs are informed and believe and thereon allege that in or about 1997,
19 Defendants DKM and Thetford purchased the assets of Defendant Norcold, and Norcold then
20 became a division of Thetford. Thereafter, Norcold operated as a division or wholly owned
21 subsidiary of Thetford, and Norcold and Thetford operated as divisions or wholly owned
22 subsidiaries of DKM. All Defendants are alter-egos of each other and any corporate veils should
23 be pierced.

24 18. Since at least 1997, Thetford and Norcold have operated and have been controlled
25 by DKM as part of DKM's "Recreational Vehicle Group." As part of the organizational
26 structure established by DKM, Norcold operates and is controlled by Thetford through officers
27 and corporate management that is joint to both entities. Thetford and Norcold officers report
28 directly to DKM. All profits generated by Thetford and Norcold flow directly to DKM. DKM

1 exercises substantial control over the distribution of profits to and between Thetford and
2 Norcold, and further exercises substantial control over the expenditure of monies by Thetford
3 and Norcold. DKM, Thetford and Norcold are privy to, and share amongst themselves (and/or
4 have access to) the same facts and information regarding the gas absorption refrigerator's
5 inherent defects and risks.

6 19. DKM has, at all times relevant hereto, combined Thetford and Norcold's
7 management and operations to the point where Norcold has, as a practical matter, ceased to exist
8 as a separate entity. As organized and overseen by DKM, Norcold gas absorption refrigerators
9 are advertised and marketed through Thetford's marketing department and sales staff, in
10 conjunction with Thetford's tradename and trademarks. All written advertising for Norcold
11 products is generated by Thetford. Norcold's products are advertised through both DKM and
12 Thetford's websites. Customer service for Norcold products, including warranty claims, is
13 handled through the customer service department of Thetford by Thetford employees. Norcold
14 does not have its own sales staff, or marketing or customer service departments. In short,
15 Norcold is not organized or operated as an independent entity, but is rather the manufacturing
16 division of Thetford, which is wholly owned and controlled by DKM.

17 20. DKM has, at all times since at least 1997, exercised substantial control over the
18 design, manufacture, distribution, recall and retrofit of Norcold gas absorption refrigerators.
19 Under the organizational system established and maintained by DKM, Norcold had and has no
20 authority to spend money on changes to the design or manufacture of their gas absorption
21 refrigerators without the prior express consent of DKM. Norcold had and has no authority to
22 initiate recalls of their gas absorption refrigerators without the prior express consent of DKM.
23 Norcold had and has no authority to establish or prosecute a retrofit campaign to remedy defects
24 in their gas absorption refrigerators without the express prior consent of DKM. Since at least
25 2000, all decisions regarding recalls/retrofits of Norcold gas absorption refrigerators – including,
26 but not limited to, the decision to initiate the recall, the scope of the recall, and the remedy to be
27 applied through a retrofit campaign – were made by an executive committee that included, and
28 was controlled by, officers and directors of DKM. Those officers included, but were not limited

1 to, Robert R. Dyson, Chairman and Chief Executive Officers of DKM, and Michael J. Harris,
2 President and Chief Operating Office of DKM.

3 21. DKM further controlled the decision to initiate product safety recalls of Norcold
4 gas absorption refrigerators through a claims reporting procedure established to allow their direct
5 monitoring of fire claims involving Norcold's products. Under this system, all fire claims
6 reported to Norcold were tracked by Norcold employees in an Incident Log which identified the
7 claim by date of incident, date reported, model of refrigerator, type of recreational vehicle, etc.
8 Norcold employees were also delegated the task of investigating each claim, including obtaining
9 fire investigation reports, the latter of which would be included in separate Incident Files. Under
10 the system established and maintained by DKM, all of this information was forwarded to James
11 Fitzsimons, the Secretary and General Counsel of DKM. Decisions regarding any particular fire
12 claim were made by Mr. Fitzsimons in his capacity as Secretary and General Counsel of DKM.
13 DKM made the ultimate decisions regarding the need, timing and scope of recall/retrofit
14 campaigns involving Norcold gas absorption refrigerators based on this fire claim history.
15 Regardless of the fire claim history of Norcold's gas absorption refrigerators, Norcold had no
16 authority to initiate a product safety recall or prosecute a retrofit campaign without the express
17 prior authority of DKM.

18 22. The commonality of ownership, management and control of Norcold by Thetford,
19 and of Norcold and Thetford by DKM, eliminates any separation or distinction between the
20 entities such that Norcold, at all times since 1997, was and is the alter-ego of Thetford, and
21 Norcold and Thetford were and are the alter-egos of DKM, and for that reason, treating Norcold,
22 Thetford and DKM as independent and distinct entities would be unfair and prejudicial to
23 Plaintiffs. Further, the close, continuous and direct business relationship between DKM,
24 Thetford and Norcold - including, but not limited to, DKM's close participatory relationship with
25 the design, manufacture, marketing and distribution of Norcold's gas absorption refrigerators;
26 DKM's control over and use of both DKM and Thetford tradenames and/or trademarks in the
27 marketing of Norcold's products; and the direct financial benefit received by DKM through the
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1 sale of Norcold's products – establishes sufficient nexus between DKM and Norcold to render
2 DKM liable for placing Norcold's defective products into the stream of commerce.

3 23. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
4 as DOES 1 to 50, inclusive, and therefore sues said defendants by such fictitious names.
5 Plaintiffs will amend this Complaint to allege the true names and capacities of said defendants
6 when ascertained. Plaintiffs are informed and believe, and based thereon allege that each of said
7 fictitiously named defendants acted intentionally, negligently, and/or recklessly or is responsible
8 in some manner for the occurrences herein alleged, and that each of the violations of Plaintiffs'
9 rights as herein alleged were proximately and legally caused by said defendants' actions.

10 24. Plaintiffs are informed and believe, and based thereon allege that all of
11 Defendants identified herein, whether identified by name or by fictitious name, were and are the
12 agents, servants, and employees of each of the remaining defendants, and that in doing the things
13 alleged herein were acting within the purpose, course and scope of said agency, service, and/or
14 employment and with the permission, consent, authorization, and subsequent ratification of each
15 of the remaining defendants.

16 25. Plaintiffs are informed and believe, and based thereon allege that Defendants
17 agreed to, cooperated with, aided, abetted, encouraged, ratified, and/or adopted the acts, actions,
18 wrongdoing, and representations of each of the remaining Defendants herein, and that in doing
19 any act alleged herein, were acting in concert and through a civil conspiracy by and among each
20 Defendant to further the interests of each Defendant individually, and all Defendants as a group.

21 **IV. FACTUAL ALLEGATIONS**

22 26. Beginning at least in 1997, and continuing thereafter, Defendants designed,
23 manufactured, assembled, marketed, sold and otherwise placed into the stream of commerce gas
24 absorption refrigerators for use in recreational vehicles and boats.

25 27. Defendants' gas absorption refrigerators came in various sizes, including six
26 cubic feet (the "N6" Series), eight cubic feet (the "N8" Series), and twelve cubic feet (the
27 ("1200" Series).

1 28. All of Defendants' gas absorption refrigerators share the same technology, which
2 involves a process whereby a solution of ammonia, water, sodium chromate, and hydrogen gas is
3 heated by electricity or propane until it boils (approximately 400 degrees Fahrenheit), releasing
4 ammonia gas. The gas circulates through a series of tubes at approximately 450 psi. As the
5 ammonia gas is first condensed to liquid, and then evaporated through interaction with the
6 hydrogen gas, heat is removed from the refrigerator box, causing the temperature in the box to
7 decrease and providing the refrigeration effect. The series of tubes is referred to as a "cooling
8 unit", and includes the heat source (propane and electric), as well as a condenser, evaporator,
9 absorber, and solution tank.

10 **A. Defendants' Gas Absorption Refrigerators Contain Design and Manufacturing**
11 **Defects.**

12 29. The cooling units used on all of Defendants' N6/N8 Series refrigerators and 1200
13 Series refrigerators contain common design and/or manufacturing defects that cause fires.
14 Defendants have instituted two (2) product safety recalls of its N6/N8 refrigerators through the
15 National Highway Traffic Safety Administration (NHTSA) – one in 2000 (NHTSA No. 00E-
16 031) and one in 2002 (NHTSA No. 02E-019). Additionally, Defendants have instituted five (5)
17 separate product safety recalls of its 1200 Series refrigerators – NHTSA No. 02E-045 (2002);
18 NHTSA No. 08E-030 (2008); NHTSA Nos. 09E-026 and 09E-027 (2009); and NHTSA No.
19 10E-049 (2010). The first six (6) of these recalls involved a single defect common to all of the
20 cooling units used in Defendants' gas absorption refrigerators, described by Defendants as a
21 "low cycle fatigue failure on thermal expansion [when the refrigerator is operated] in the AC
22 mode." The fatigue failure is the result of the inability of the steel tubing used by Defendants' in
23 their cooling units to withstand the fabrication and manufacturing process, and the stresses
24 placed on the tubing during normal operation of the refrigerators, namely, high temperature, high
25 pressure, and corrosive cooling solution. The combination of these factors causes microscopic
26 cracks at and around the "boiler tube" – the section of the cooling unit that includes the electric
27 heat inputs, and also includes the area where the boiler tube is dimpled to hold an interior
28 "percolator tube." Microscopic cracks in the boiler tube section of the cooling unit causes highly

1 flammable cooling solution, ammonia, and hydrogen gas to leak from the cooling unit. When
2 the solution in the cooling unit is reduced by as little as twenty percent (20%), the cooling unit
3 can experience a “run-away heating event” that causes the steel tubing to reach temperatures in
4 excess of 1000 degrees Fahrenheit, resulting in fires, either by ignition of the escaping
5 flammable gases, or by ignition of the combustible unprotected wood inside the refrigerator
6 compartment. This defect carries the risk of injury or death to individuals using their products.

7 30. Defendants’ N6/N8 Series refrigerators and 1200 Series refrigerators contain
8 flammable gases – including hydrogen gas – under high pressure. The gases are heated by
9 electricity or propane to circulate and provide the refrigeration effect. Fires are caused when
10 defects in the refrigerator design release the flammable gases, which can then explosively ignite
11 and spread quickly through the refrigerator compartment and into the passenger area of the
12 recreational vehicle. This is a common defect.

13 31. In addition to the low cycle fatigue failure modality, which was the subject of the
14 various manufacturer initiated NHTSA recalls described above, Defendants’ N6, N8, and 1200
15 Series refrigerators’ cooling units also contain further design/manufacturing defects, including,
16 but not limited to, a “safety fuse.” The safety fuse is a plug made of low melting point tin-
17 bismuth alloy that is inserted into the end of a tube in the cooling unit. The safety fuse is
18 designed to melt and “blow out” at relatively low temperatures (less than 300 degrees
19 Fahrenheit), thereby depressurizing the cooling unit before it ruptures. However, the safety fuse
20 plug operates on temperature and not on pressure, making it ineffective as a pressure relief
21 system, i.e. it does *not* prevent the cooling unit from rupturing due to high pressure. Further,
22 when the safety fuse “blows out” because it is exposed to heat – as in a fire - it releases the
23 cooling solution into the enclosed space of the refrigerator compartment at over 400 p.s.i.,
24 creating a cloud of highly flammable ammonia and hydrogen gas, which is then ignited by any
25 available ignition source. The effect of this “safety” device – when operating as designed – is
26 either to initiate a fire where none existed, or make a small fire much worse.

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1 **B. Defendants' Continued to Produce, Market, and Sell Their Gas Absorption**
2 **Refrigerators Despite Actual Knowledge of The Defects And Propensity To Cause**
3 **Fires.**

4 32. Since at least 2000, Defendants had actual knowledge of the existence of the
5 above-described design and manufacturing defects. Since at least 1999, Defendants have
6 maintained databases – including Incident Logs, warranty/return databases, and Incident Files –
7 documenting the fire history of their gas absorption refrigerators, and therefore at all times had
8 actual knowledge that the defects in their gas absorption refrigerators were causing millions of
9 dollars of property damage, personal injury and at least one death to users of their product.
10 Notwithstanding this knowledge, Defendants never modified the design of their gas absorption
11 cooling units, or the fabrication, manufacture or installation of the cooling units, to eliminate the
12 defects, or minimize the effects of the defects. Defendants never stopped selling and placing the
13 dangerously defective refrigerators into the stream of commerce until the refrigerators could be
14 manufactured to operate safely. Defendants never provided users of the refrigerators with
15 adequate warnings of the risks of use of the product. Rather, Defendants actively concealed and
16 minimized the dangers and risks inherent in their defective products from consumers, and federal
17 regulators at NHTSA responsible for ensuring safety on the highways, through a series of
18 stratagems, including, but not limited to:

- 19 • Misrepresenting through written warranties provided to purchasers of Defendants'
20 gas absorption refrigerators that the products were free from defects, when in fact
21 Defendants knew that their products contained design defects that created a
22 substantial risk of fire, injury and death when the product was used for its
23 normally intended purpose.
- 24 • Misrepresenting the nature and number of defects inherent in the design of their
25 gas absorption refrigerators by describing only the “low cycle fatigue failure”
26 involving “some specific gas absorption cooling units.” In fact, the low cycle
27 fatigue failure modality was and is the result of defective cooling unit tubing
28 design common to all Defendants' N6, N8 and 1200 Series gas absorption
refrigerators. Further, Defendants have actual knowledge, through their fire claim

1 databases and internal testing, that their gas absorption refrigerators cause fires in
2 a number of ways in addition to leaks caused by low cycle fatigue failure,
3 including, but not limited to, electric shorting of refrigerator control boards, and
4 internal corrosion.

- 5 • Misrepresenting the nature and number of defects inherent in the design of their
6 gas absorption refrigerator cooling units by concealing the dangerously defective
7 safety fuse plug design.
- 8 • Establishing a field testing protocol whereby Defendants' gas absorption
9 refrigerators alleged to be a substantial factor in causing and/or enhancing a fire
10 are pressure tested to determine if they leak. The testing protocol arbitrarily sets
11 the maximum pressure of the leak test to 100 p.s.i., notwithstanding the fact that
12 the product normally operates at 450 p.s.i. The testing protocol focuses
13 exclusively on a small section of the boiler tube, notwithstanding the fact that
14 Defendants have actual knowledge through their own testing and warranty
15 databases that their refrigerator cooling units leak in over forty (40) different
16 places. The testing protocol Defendants use is intentionally designed (a) *not* to
17 find the kind of microscopic leaks described by Defendants in their product safety
18 recalls; and, (b) *not* to find leaks in any other part of the refrigerator cooling unit,
19 notwithstanding Defendants' knowledge that such leaks regularly occur.
20 Defendants routinely use this testing protocol as part of their risk management
21 practices to reduce their claims exposure, and to mislead consumers into believing
22 that Defendants' gas absorption refrigerators are not defective, or have only one
23 defect when, in fact, they have several.
- 24 • Conducting repeated retrofit campaigns to install various devices onto
25 Defendants' gas absorption refrigerators that were represented to "fix" the
26 defects. In truth, however, the retrofit devices – variously described as an
27 algorithm, a thermal safety switch, or a high temperature thermocouple – did not
28 and do not address the defects at all, but only seek to counter the propensity of the

1 defects to cause fires. The retrofit devices also did not and do not work to prevent
2 Defendants' products from causing and/or enhancing fires, a fact that Defendants
3 knew about, but concealed from Plaintiffs, all members of the Class, and the
4 federal regulators at NHTSA.

- 5 • Minimizing and misleading both the public and federal regulators regarding the
6 true nature and scope of the defects in Defendants' gas absorption refrigerators.
7 Defendants have been placing dangerously defective gas absorption refrigerators
8 into the stream of commerce since at least 1997. During that time, they have
9 received actual notice of over 2,000 fires involving their product. While
10 Defendants have continued to sell their defective products during this time, they
11 have never fixed the product so that it would not catch on fire. In fact,
12 Defendants continue to receive new fire claims involving their gas absorption
13 refrigerators at the rate of 1 to 2 per day, 7 days per week, 365 days per year.
14 Defendants have *never* provided consumers with any information regarding the
15 fire claim history of the product, or all of the risks inherent in the use of the
16 product. Defendants have *never* disclosed to federal regulators the true fire claim
17 history of their product, or the several defects involved in their product. Rather,
18 Defendants have actively concealed the safety risks associated with use of their
19 products.
- 20 • Intentionally limiting the number of gas absorption refrigerators subject to some
21 of their product safety recalls, despite having actual knowledge that gas
22 absorption refrigerators not subject to the recalls were also defective and had a
23 propensity to cause deadly fires. Illustrative is the determination by Defendants
24 to exclude 1200 Series cooling units manufactured after January 1, 2003 from any
25 product safety recall between 2003 and 2010. The purported reason for this
26 exclusion was Defendants' "belief" that cooling units manufactured after January
27 1, 2003 would not cause fires because of the inclusion of an algorithm chip in the
28 electronic controls of the refrigerator. However, Defendants had actual

1 knowledge by September, 2005 that the algorithm was ineffective to prevent fires
2 in 1200 Series refrigerators, and, by 2010, had further actual knowledge that 1200
3 Series refrigerators equipped with the algorithm had caused at least 165 fires.
4 Defendants never advised consumers who had algorithm-equipped refrigerators:
5 (a) that their refrigerators had defects which created potential safety risks of fire;
6 (b) that their refrigerators were equipped with a fail-safe device (i.e. the
7 algorithm) that was designed to counter the safety risks inherent in the
8 refrigerators' design; or, (c) that Defendants had determined that the algorithm
9 was not effective to prevent fires and that the manufacturer had decided to move
10 to a different safety device. Defendants never provided owners of algorithm-
11 equipped refrigerators with any warning or other notice of risks in the continued
12 use of their refrigerator until after October 7, 2010, when Defendants finally
13 recalled all 1200 Series refrigerators they ever made.

- 14 • Misrepresenting and misleading consumers and federal regulators regarding the
15 efficacy of their most recent product safety recall. The ostensible purpose of the
16 October 7, 2010 recall of 1200 Series refrigerators was to retrofit the products
17 with another safety device to replace the algorithm and thermal safety switch
18 which Defendants finally conceded did not work to stop the refrigerators from
19 causing fires. Defendants represented to both consumers and federal regulators
20 that the new device was effective to render their product safe to use. In fact, the
21 new device is itself defective in design and/or manufacture, in that, in many
22 instances, it simply does not work. Plaintiffs are informed and believe that
23 Defendants are on their fifth or sixth version of the new device, which has not yet
24 proven to work reliably. Even when the new device works, it is ineffective to
25 stop Defendants' product from causing fires, because it does not address or
26 eliminate the design and/or manufacturing defects inherent in Defendants'
27 products. Defendants' products continue to cause fires, even when equipped
28 with the latest safety device.

1 34. The design and manufacturing defects in Defendants' gas absorption refrigerators,
2 Defendants' active concealment of those defects, and the inadequate and fraudulent product
3 safety recall/retrofit campaigns conducted by Defendants, created serious and unreasonable
4 safety risks to consumers and users of Defendants' products, *i.e.* the risk of property damage,
5 injury and death by fire. These safety risks were and are material to a reasonable consumer,
6 including Plaintiffs and the members of the Class that own Defendants' products. Had
7 Defendants disclosed the true nature and scope of the safety risks inherent in the use of their
8 product in the sales and marketing material provided consumers along with the product, or with
9 warnings prominently placed on the product, Plaintiffs, and all others similarly situated, would
10 have been aware of it and acted differently, *i.e.* purchased a different recreational vehicle that did
11 not contain Defendants' defective product; or, paid less for the recreational vehicle or boat
12 because of the defective product or because of the cost of replacing the defective product with a
13 non-defective product. Defendants had actual and exclusive knowledge of the exact nature and
14 scope of the defects in their products, the fire claim history of the products, and the fact that their
15 recall and retrofit campaigns did not address or eliminate the defects, and therefore, at all times,
16 had a duty to disclose the safety risks inherent in the use of their product, and the inadequacies of
17 their recall/retrofit campaigns to Plaintiffs, and to all members of the Class described herein.
18 However, Defendants at all times actively concealed the true nature and scope of the defects,
19 safety risks, and recall/retrofit inadequacies from Plaintiffs, and the members of the Class
20 described herein.

21 35. Defendants have a duty to manufacture defect-free products and to disclose
22 details about known defects and hazards both truthfully and completely. The refrigerators that
23 Defendants manufactured and placed into the stream of commerce have at least one common
24 defect that poses a serious risk of fire, injury and death, but they have never eliminated that
25 defect, notwithstanding their actual knowledge of alternative designs that would lessen or
26 eliminate the risks. On the contrary, Defendants continue to market their refrigerators with
27 representations that they are reliable and defect-free knowing that their products are dangerously
28 defective. Defendants have a duty to recall and retrofit the products so that they can be operated

1 safely. While Defendants have conducted a number of product safety recalls and represented
2 that the retrofits would render the products safe to use, they have actual knowledge that the
3 retrofits don't work in that, *inter alia*: (a) they do not eliminate the defect that causes the risk of
4 fire in the first place; and, (b) they are ineffective to counter the risks posed by the defects.
5 Defendant's products continue to cause fires even after the retrofit. These facts, however, are
6 not disclosed to the members of the Class and instead constitute material omissions.

7 36. As a result of their concealment and other actions outlined above, Plaintiffs and
8 the members of the Class that owned and/or own Defendants' gas absorption refrigerators have
9 been misled by Defendants' omissions into purchasing and using the refrigerators, believing
10 them to be safe for their intended purpose. Plaintiffs and the members of the Class have further
11 been misled by Defendants' omissions into believing that their refrigerators do not contain
12 dangerous defects or potential risks or, if the refrigerators were part of a product safety recall by
13 Defendants, that any defects or potential safety risks have been eliminated by Defendants'
14 retrofit campaigns. In fact, Defendants' gas absorption refrigerators have never been, and are
15 not, safe for their intended purpose in that Defendants have never eliminated the design and
16 manufacturing defects which cause their products to ignite fires. Plaintiffs reasonably relied
17 upon Defendants' conduct described herein. Defendants made material omissions regarding the
18 defects and hazards associated with the gas absorption refrigerators, information solely within
19 Defendants' control, rendering it impossible for Plaintiffs and the members of the Class to know
20 the hazards associated with the gas absorption refrigerators they purchased. As a result,
21 Plaintiffs and the members of the Class who own Defendants' gas absorption refrigerators
22 continue, unknowingly, to be put at risk of damage, injury and death through the use of
23 Defendants' defective gas absorption refrigerators.

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1 **C. Defendants' Recalls Cause Further Injury To Consumers By Destroying Their**
2 **Refrigerators Before A Fire Is Ignited.**

3 37. In September 2005, Defendants began to install a Thermal Safety Switch (TSS)
4 on all new Norcold 1200 Series refrigerators. The TSS was a metal sleeve installed toward the
5 base of the refrigerator chimney/flue, with a thermal sensor designed to cut all power to the
6 refrigerator in the event of excessive heat being detected in the refrigerator cabinet. Excess heat
7 was a sign that the cooling unit was defective, overheating and likely to ignite a fire. Defendants
8 did not begin to offer the TSS to consumers through product safety retrofit campaigns until
9 March 2008.

10 38. Beginning with the October 2010 product recall, Defendants began to replace the
11 TSS with a new device – the High Temperature Sensor (“HTS”). Unlike the TSS – which
12 measured heat inside the refrigerator cabinet – the HTS was designed to be attached directly to,
13 and to measure the temperature of, the refrigerator cooling unit boiler tube, i.e. the tube that is
14 heated with either the 110 VAC heaters or propane burner. The HTS was designed to measure
15 and understand the boiler temperature, and if the module sensed high temperature from the boiler
16 tube, to cut off electric power to the refrigerator before the cooling unit could overheat and cause
17 a fire.

18 39. Neither of the above-mentioned retrofits worked to eliminate the defects and
19 inherent safety risks in Defendants' refrigerators. As a result, defects still remain. For example,
20 neither of the retrofits have dealt with – much less eliminated - the propensity of the cooling
21 units to leak cooling solution and flammable gases, which cause the cooling units to overheat and
22 cause fires. Neither of the retrofits has been able to control – much less eliminate – the excessive
23 temperatures leaking cooling units achieve, which lead to fires. Neither of the retrofits has
24 addressed the other failure modalities of Defendants' gas absorption refrigerators, such as fires
25 caused by faulty electric control panels. Neither of the retrofits has addressed the defective
26 design of the safety fuse plug common to all of Defendants' products. Finally, neither retrofit
27 did anything to protect the combustibles inside the refrigerator compartment – such as the bare
28 wood of the compartment itself – from the excessive heat and/or fire resulting from a
malfunctioning cooling unit. Upon information and belief, every new gas absorption refrigerator

1 sold by Defendants contains the same design and/or manufacturing defects as described above,
2 with the sole exception that the new refrigerators are equipped with the Thermocouple safety
3 device. These facts have not been disclosed to members of the Class.

4 40. With both of the above-mentioned retrofits, once the fail-safe devices "trip," the
5 electric power to the refrigerator is shut down, and there is no alternative but to replace the
6 cooling unit or get a new refrigerator, since once the module is tripped the refrigerator can no
7 longer operate. Thus, Defendants' retrofits do not "fix" the defects inherent in the product but
8 simply mask the defects by destroying a malfunctioning cooling unit and refrigerator,
9 presumably before it destroys a consumer's recreational vehicle, or worse, causes a devastating
10 fire. Defendants have and continue to intentionally conceal the operation and effect of the TSS
11 and HTS from consumers, including Plaintiffs and members of the Class described herein.

12 41. The misleading, ineffective and fraudulent recall and retrofit campaigns
13 Defendants have initiated regarding their gas absorption refrigerators have injured and harmed,
14 and continue to harm, consumers in *inter alia*, the following ways. First, by failing to disclose
15 complete and accurate information regarding the nature and scope of the design and
16 manufacturing defects in their product, Defendants have misled, and continue to mislead
17 consumers into the belief that Defendants' products are safe to use for their intended purpose,
18 when in fact said products constitute a serious fire hazard. Second, Defendants' misleading and
19 ineffective recall and retrofit campaigns have created, and continue to create, the false
20 impression with consumers that if they participate in the recall campaigns, their gas absorption
21 refrigerators will be rendered safe to use, when in fact the retrofits used by Defendants are
22 ineffective to prevent their products from causing fires. Third, Defendants have failed, and
23 continue to fail to advise consumers that the retrofit campaigns are not only ineffective, but that
24 the devices installed through said campaigns actually operate to destroy consumers' refrigerators,
25 requiring them to purchase a replacement refrigerator. Fourth, Defendants have misrepresented,
26 and continue to misrepresent, the existence and scope of warranty protection available to
27 consumers regarding Defendants' products, and deny warranty coverage to consumers, forcing
28 consumers to incur the entire cost of repairing or replacing Defendants' defective products.

1 Even if the refrigerator is replaced under warranty, the consumer is harmed because he or she
2 receives another of Defendants' gas absorption refrigerators with the same defects and risks of
3 fire as the unit replaced. Whether the refrigerator is replaced, or subject to Defendants' retrofit
4 campaign, consumers are forced to incur the costs to deliver their vehicles to dealers and RV
5 repair shops, and thereby incur further damages and expenses for loss of use of the vehicles/boats
6 while the replacement/retrofit is done. Many consumers have had to incur these costs and
7 expenses on more than one occasion due to the multiple and ineffective recall campaigns. All of
8 these costs and expenses to consumers are the result of Defendants placing dangerously defective
9 products into the stream of commerce in the first place, and thereafter failing to effectively recall
10 and retrofit the products so that they are safe for their intended use.

11 42. Defendants' conduct, as outlined herein, is unfair, misleading and deceptive.
12 Consumers are induced into believing that Defendants' products are not defective, or that any
13 defects have been corrected through the product safety recalls. In reality, Defendants are doing
14 nothing to correct the defects and only installing a retrofit that attempts to eliminate the
15 propensity to cause fires by destroying the refrigerator entirely.

16 43. Rather than design and manufacture a product that is safe to use, Defendants are
17 in fact turning their design and manufacturing defects into a profit generating mechanism. If the
18 defects in Defendants' refrigerator cause a fire that destroys the product, Defendants make
19 money selling the consumer a new refrigerator. If a consumer's refrigerator is destroyed because
20 of the devices retrofitted by Defendants through their recall campaigns, the effect is the same –
21 Defendants make money selling another refrigerator. In either event, the consumer is damaged
22 by being forced to pay some or all of the cost of replacing Defendants' defective product.
23 Further, in those instances where Plaintiffs and members of the Class have purchased another of
24 Defendants' refrigerators, Defendants have, and continue, to profit from their own wrongful
25 conduct.

26 44. In all scenarios, Plaintiffs and Class members have not received the value for
27 which they bargained when they purchased Defendants' product.

1 45. As a result of the defects in Defendants' gas absorption refrigerators, the value of
2 Plaintiffs' and the Class members' recreational vehicles has diminished.

3 III. CLASS ACTION ALLEGATIONS

4 46. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant
5 to Code of Civil Procedure §382 ("CCP 5382") and Civil Code §1781 on behalf of the Class
6 consisting of the following State subclasses defined as:

7 The California State Subclass

8 All persons, who during the Class Period, purchased and/or owned a Norcold N6,
9 N8 and/or 1200 Series gas absorption refrigerator in California (the "California
State Subclass").

10 The Florida State Subclass

11 All persons, who during the Class Period, purchased and/or owned a Norcold N6,
12 N8 and/or 1200 Series gas absorption refrigerator in Florida (the "Florida State
Subclass").

13 The Class Period dates back four years (or the length of the longest applicable statute of
14 limitations for any claim asserted) from the date this action was commenced and continues
15 through the present and the date of judgment. Excluded from the classes are: (a) any officers,
16 directors or employees of Defendants; (b) any judge assigned to hear this case (or spouse or
17 family member of any assigned judge); (c) any employee of the Court; and, (d) any juror selected
18 to hear this case. (Collectively the California State subclass and the Florida State subclass are
19 referred to as the "Class," "State Subclasses" and/or "State Law Subclasses").

20 47. Numerosity of the Class. Members of each of the State Law Subclasses are so
21 numerous that their individual joinder herein is impracticable. The precise number of members
22 of the State Law Subclasses and their addresses are presently unknown to Plaintiffs. Plaintiffs
23 are informed and believe that Defendants have manufactured and sold over 200,000 N6, N8, and
24 1200 Series gas absorption refrigerators in the United States since 1996, of which over 10,000
25 are currently owned by individuals/entities located in the State of California alone. Plaintiffs
26 therefore allege that the total number of members in each of the State Subclasses is well in
27 excess of 10,000 persons and/or entities who would fall within the proposed class definitions.

1 48. Ascertainable Class. The community of interest among these class members in
2 the litigation is well defined and the proposed classes are ascertainable from objective criteria.

3 49. Common Questions of Fact and Law Exist and Predominate over Individual
4 Issues. There is a well-defined community of interest in the questions of law and fact involved
5 affecting the parties to be represented. These common questions of law and fact exist as to all
6 members of the Class and predominate over the questions affecting only individual members of
7 the Class. These common legal and factual questions include without limitation:

- 8 a. Whether Defendants engaged in the conduct as alleged herein;
- 9 b. Whether the N6, N8 and 1200 series gas absorption refrigerators that Defendants
10 manufactured and placed into the stream of commerce have a common defect;
- 11 c. Whether Defendants made material omissions about the N6, N8 and 1200 series
12 gas absorption refrigerators that Defendants manufactured and placed into the
13 stream of commerce;
- 14 d. Whether Defendants practices violate applicable law;
- 15 e. Whether Plaintiffs and the other members of the Class are entitled to actual,
16 statutory, or other forms of damages, and other monetary relief; and
- 17 f. Whether Plaintiffs and other members of the Class are entitled to equitable relief,
18 including but not limited to injunctive relief and restitution.

19 50. Defendants have engaged in a common course of conduct giving rise to the legal
20 rights sought to be enforced by Plaintiffs individually and on behalf of the other members of the
21 Class. Similar or identical statutory and common law violations, business practices, and injuries
22 are involved as to all members in each State Subclass. Individual questions, if any, pale by
23 comparison, in both quality and quantity, to the numerous common questions that dominate this
24 action.

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1 51. Plaintiffs are members of and present claims that are typical of the claims of
2 members of the Class. Plaintiffs each owed one of the Norcold gas absorption refrigerators at
3 issue during the Class Period. Plaintiffs and all Class members each sustained damages arising
4 from Defendants' wrongful conduct, as alleged more fully herein. The same material facts that
5 Defendants withheld from the Plaintiffs were withheld from the other members of the Class.

6 52. All members of the Class have been the subject of Defendants' unfair and
7 unlawful business practices as described herein. The relief sought is common, unitary, and class-
8 wide in nature.

9 53. Adequacy of Representation. Plaintiffs will fairly and adequately represent and
10 protect the interest of the members of the Class. Plaintiffs share a common interest with all
11 Plaintiff class members, with respect to the conduct of Defendants herein, and redress of same.
12 Plaintiffs have suffered an injury-in-fact as a result of the conduct of Defendants, as alleged
13 herein. Plaintiffs have retained counsel who are competent and experienced in the prosecution of
14 complex consumer fraud, mass tort and class actions. Plaintiffs and their counsel intend to
15 prosecute this action vigorously and faithfully for the benefit the State Subclass members.
16 Plaintiffs have no interests contrary to the class members, and will fairly and adequately protect
17 the interests of the State Subclasses.

18 54. Community of Interest. The proposed State Subclasses have a well defined
19 community of interest in the questions of fact and law to be litigated. The common questions of
20 law and fact are predominant with respect to the liability issues, relief issues and anticipated
21 affirmative defenses. The Named Plaintiffs have claims typical of the Class. Without limitation,
22 as a result of Defendants' conduct alleged herein, Plaintiffs were: (a) injured; (b) deprived of the
23 value of the goods that they bargained for; and, (c) sustained pecuniary loss in an ascertainable
24 amount to be proven at the time of trial.

25 55. Superiority of Class Adjudication. The certification of a class in this action is
26 superior to the litigation of a multitude of cases by members of the putative classes. Class
27 adjudication will conserve judicial resources and will avoid the possibility of inconsistent
28 rulings. Moreover, there are class members who are unlikely to join or bring an action due to,

1 among other reasons, their reluctance to sue Defendants and/or their inability to afford a separate
2 action. Equity dictates that all persons who stand to benefit from the relief sought herein should
3 be subject to the lawsuit and hence subject to an order spreading the costs of the litigation among
4 the class members in relationship to the benefits received. The damages, restitution and other
5 potential recovery for each individual member of the classes are modest given the low-purchase
6 price of the consumer goods at issue, relative to the substantial burden and expense of individual
7 prosecution of these claims. Given the amount of the individual class members' claims, few, if
8 any, class members could afford to seek legal redress individually for the wrongs complained of
9 herein. Even if the members of the classes themselves could afford individual litigation, the
10 court system could not. Individualized litigation presents a potential for inconsistent or
11 contradictory judgments. Individualized litigation increases the delay and expense to all parties
12 and the court system presented by the complex legal and factual issues of the case. By contrast,
13 the class action device presents far fewer management difficulties, and provides the benefits of
14 single adjudication, economy of scale, and comprehensive supervision by a single court.

15 56. In the alternative, the above-referenced State Subclasses may be certified because:

- 16 a. The prosecution of separate actions by the individual members of the classes
17 would create a risk of inconsistent or varying adjudication with respect to
18 individual class members' claims which would establish incompatible standards of
19 conduct for Defendant;
- 20 b. The prosecution of separate actions by individual members of the classes would
21 create a risk of adjudications which would as a practical matter be dispositive of
22 the interests of other members of the classes who are not parties to the
23 adjudications, or which would substantially impair or impede the ability of other
24 class members to protect their interests; and,
- 25 c. Defendants have acted or refused to act on grounds generally applicable to the
26 classes, thereby making appropriate final and injunctive relief with respect to the
27 State Subclasses.
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FIRST CAUSE OF ACTION

**Violation of California Legal Remedies Act, California Civil Code §1750 et. seq.
(Brought on Behalf of Plaintiffs KAHLER, CURTIS and the California State Subclass)**

57. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as though stated herein.

58. Plaintiffs KAHLER and CURTIS bring this claim individually and on behalf of all others similarly situated in the State of California.

59. Plaintiffs' claims arise under and are brought pursuant to Cal. Civil Code §1750 et seq., commonly known as the Consumers Legal Remedies Act (hereinafter "CLRA" or "§1750").

60. Plaintiffs do not seek recovery of damages under this CLRA claim at this time. By letter dated December 5, 2012, mailed as directed in Civil Code §1782, Plaintiffs notified Defendants of its violations of the CLRA and demanded that Defendants provide a remedy that rectifies its misconduct. In this complaint, Plaintiffs and the California Subclass Members seek only injunctive and other equitable relief pursuant to Civil Code §1780(a) and (d). If Defendants fail to give or agree to give a sufficient remedy for the violations of the CLRA set forth herein within a reasonable time (30 days) as set forth in Civil Code §1782(c), Plaintiffs will amend this complaint to also seek damages.

61. The CLRA prohibits deceptive, misleading and unconscionable practices as described within. Terms of the CLRA cannot be waived. Cal. Civil Code §1751.

62. Defendants are "persons" within the meaning of Civil Code §§1761(c) and 1770.

63. Defendants sell "goods" within the meaning of Civil Code §§1761(a) and 1770. These unfair deceptive and unlawful practices described herein were committed by Defendants in the conduct of trade and commerce in goods and services.

64. Plaintiffs and all members of the California State Subclass are consumers who purchased and/or owned one or more of Defendants' N6, N8 or 1200 Series gas absorption refrigerators, either as separate products, or as installed in recreational vehicles. By entering into

1 the subject transactions, Plaintiffs and the Class members purchased goods or services, for
2 personal, family, or household purposes and their transactions are subject to the CLRA.

3 65. Defendants made material omissions about the defects in their gas absorption
4 refrigerators as described within.

5 66. By concealing and failing to disclose material facts regarding the defects in their
6 gas absorption refrigerators, Defendants have violated Civil Code §1770(a) in that they have
7 represented that their refrigerators had characteristics and benefits that they do not have, and
8 represented that their refrigerators were of a particular standard, quality or grade when they were
9 of another.

10 67. Defendants' unfair acts and/or practices occurred repeatedly in Defendants' trade
11 or business, were capable of deceiving a substantial portion of the purchasing public, and
12 imposed a serious safety risk on the public.

13 68. Defendants knew that their gas absorption refrigerators were defectively designed
14 and/or manufactured, would fail prematurely, and were not fit for their intended purpose.

15 69. Defendants were under a duty to Plaintiffs and the California State Subclass to
16 disclose the defective nature of their refrigerators because:

- 17 a. Defendants were in a superior position to know the true state of facts
18 about the safety defects in their gas absorption refrigerators;
- 19 b. Plaintiffs and members of the California State Subclass could not
20 reasonably have been expected to learn or discover that the refrigerators
21 had dangerous safety defects until they manifested failure; and,
- 22 c. Defendants knew that Plaintiffs and members of the California State
23 Subclass could not reasonably have been expected to learn or discover the
24 safety defects in the refrigerators.

25 70. In failing to disclose the defects in their product, Defendants knowingly and
26 intentionally concealed material facts and breached their duty not to do so.

27 71. The facts concealed or not disclosed by Defendants to Plaintiffs and members of
28 the California State Subclass are material in that a reasonable consumer would have considered

1 them to be important in deciding whether to purchase Defendants' products or pay a lesser price.
2 Had Plaintiffs and the members of the California State Subclass known of the defective nature of
3 Defendants' products, they would not have purchased the products, or would have paid less for
4 them.

5 72. By reason of the foregoing, Defendants violated laws prohibition, unfair and
6 deceptive trade practices including, but not limited to, Civil Code §§1770 (a)(2), (3), (5), (7),
7 (14) and (16). Through the above conduct and omissions, Defendants, *inter alia*:

- 8 a) Misrepresented the approval of certification of goods or services (Civil Code
9 §1770(a)(2));
10 b) Misrepresented the certification of goods or services (Civil Code §1770 (a)(3));
11 c) Represented that goods or services have sponsorship, approval, characteristics,
12 uses or benefits which they do not have (Civil Code §1770 (a) (5));
13 d) Represented that goods or services are of a particular standard, quality or grade,
14 or that goods are of a particular style or model, if they are another (Civil Code
15 §1770 (a)(7));
16 e) Advertised goods or services with intent not to sell them as advertised (Civil Code
17 §1770 (a)(9));
18 f) Represented that a transaction confers or involves rights, remedies, or obligations
19 which it does not have or involve, or which are prohibited by the law (Civil Code
20 §1770 (a)(14)); and,
21 g) Represented that the subject of a transaction has been supplied in accordance with
22 a previous representation when it has not (Civil Code §1770 (a)(16)).

23 73. Plaintiffs and members of the California State Subclass reasonably expected that
24 Defendants' gas absorption refrigerators would function properly and not be susceptible to the
25 hazards described within for the life of their recreational vehicles. That is the reasonable and
26 objective consumer expectation for gas absorption refrigerators.

27 74. As a result of the foregoing, Plaintiffs and the members of the California State
28 Subclass are entitled to equitable relief, as prayed for below.

1 83. Defendants, and their agents, were unable to conform Plaintiffs' and Class
2 members' refrigerators to the applicable express and implied warranties after a reasonable
3 number of attempts, including attempted repairs and retrofits pursuant to product safety recalls
4 initiated by Defendants.

5 84. Notwithstanding Plaintiffs' and Class members' entitlement under the Act and
6 demand by Plaintiffs and Class members therefore, Defendants have failed to either promptly
7 replace Plaintiffs' and Class members' gas absorption refrigerators with a new, non-defective
8 and conforming refrigerator, or promptly to make restitution in accordance with the Act.

9 85. Defendants' failure to remedy the defects in their gas absorption refrigerators
10 described above, or to replace said refrigerators or provide restitution to Plaintiffs and Class
11 members, constitutes a breach of Defendants' obligations to Plaintiffs and Class members under
12 the Act.

13 86. In addition to the acts described above, Defendants have engaged in a persistent
14 pattern and practice of denying warranty coverage to consumers to repair and/or replace
15 Defendants' defective products. Defendants sell their gas absorption refrigerators with three
16 different express warranties – a one (1) year limited warranty covering repair or replacement of
17 defective parts; a two (2) year limited warranty for labor to repair or replace defective parts; and,
18 a three (3) year limited warranty that their product is free from defects. Under the Act, the
19 expiration of all said express warranties is extended so long as repairs and/or service performed
20 on a manufacturer's nonconforming goods does not remedy the nonconformity for which the
21 repair or service was performed. As described above, Defendants' gas absorption refrigerators
22 were defective when sold to Plaintiffs and all members of the California State Subclass, and were
23 therefore nonconforming goods. Notwithstanding any repair or service by or on behalf of
24 Defendants, the nonconformities were never eliminated, and under California law, Defendants'
25 express warranties therefore never expired. Nevertheless, Defendants engaged in a pattern and
26 practice of representing to Plaintiffs, and to members of the subclass, that the latter's warranties
27 had not been extended, but had expired. Defendants engaged in this conduct with the intent of
28 shirking their warranty obligations, and passing the cost of their defective products onto

1 consumers. This conduct is a violation of Cal. Civil Code §1795.6, and constitutes a breach of
2 Defendants' obligations to Plaintiffs and Class members under the Act.

3 87. In addition to the acts described above, Defendants have instituted a clandestine
4 policy and procedure to conceal the true nature and scope of the defects and risks in their gas
5 absorption refrigerators by paying some or all of the costs to replace or retrofit the refrigerators
6 of those owners who are the most vocal and persistent in seeking those remedies, including those
7 owners who threaten legal action, notwithstanding Defendants' stated position that the cost of
8 replacement or retrofit of refrigerators that are outside Defendants' warranty period is on the
9 consumer. Defendants have not, and do not, disclose their policy of extending their warranty
10 coverage to those consumers who complain the most, but keep such policy confidential, using
11 terms such as "goodwill" to mask the secret exceptions to their warranty policy. This conduct is
12 a violation of the Secret Warranty Law, Cal. Civ. Code §1795.90(d), and constitutes a breach of
13 Defendants' obligations to Plaintiffs and Class members under the Act.

14 88. In addition to the acts described above, Defendants have compelled Plaintiffs and
15 Class members to incur costs and expenses to transport, convey and deliver Defendants'
16 defective gas absorption refrigerators to authorized repair facilities, and in many instances to pay
17 some or all of the material and/or labor costs incurred in Defendants' unsuccessful attempts to
18 repair and correct their products' defects and nonconformities. In addition, in many instances
19 Defendants have not created or maintained sufficient inventory of parts and supplies to repair the
20 defects and nonconformities in their gas absorption refrigerators so that repairs can be
21 accomplished in a reasonable time, i.e. within thirty (30) days. This conduct is a violation of
22 Cal. Civil Code §1793.2, and constitutes a breach of Defendants' obligations to Plaintiffs and
23 Class members under the Act.

24 89. Plaintiffs and Class members are justified and entitled to revoke their acceptance
25 of Defendants' gas absorption refrigerators under the Act. Plaintiffs and Class members intend
26 that service of the Summons and Complaint in this action shall serve as notice that Plaintiffs and
27 Class members have revoked acceptance of Defendants' gas absorption refrigerators, and will
28

1 tender said products on condition that Defendants restore to Plaintiffs and all Class members the
2 consideration advanced and/or paid.

3 90. Plaintiffs and Class members are justified and entitled to rescission of the sale
4 regarding Defendants' gas absorption refrigerators, and will tender the refrigerators on condition
5 that Defendants restore to Plaintiffs and Class members all consideration advanced or paid by
6 Plaintiffs and Class members. Defendants refuse, and continue to refuse, to return said
7 consideration or to recognize that said sale has been rescinded.

8 91. As a direct and proximate result of Defendants' violations of the Act Plaintiffs
9 and Class Members are entitled to reimbursement of the purchase price paid for Defendants' gas
10 absorption refrigerators, less that amount directly attributable to use prior to discovery of the
11 nonconformities, in an amount which will be established according to proof.

12 92. As a further direct and proximate result of Defendants' violations of the Act
13 Plaintiffs and Class Members are entitled to all incidental, consequential and general damages
14 they have suffered or sustained, in an amount which will be established at trial according to
15 proof.

16 93. As a further direct and proximate result of Defendants' violations of the Act
17 Plaintiffs and Class Members are entitled to recover a sum equal to the aggregate amount of
18 costs and expenses, including attorney's fees, reasonable incurred in connection with the
19 commencement and prosecution of this action, in an amount which be established at trial
20 according to proof.

21 **THIRD CAUSE OF ACTION**

22 **Breach of Express and Implied Warranty**
23 **(Brought on Behalf of Plaintiffs KAHLER, CURTIS and the California State Subclass)**

24 94. Plaintiffs incorporate by reference every other paragraph of this Complaint as
25 through fully stated herein.

26 95. Plaintiffs KAHLER and CURTIS bring this claim individually and on behalf of
27 all other similarly situated in the State of California.

1 96. Defendants made statements of fact, which were received by Plaintiffs and
2 members of the California State Subclass. Defendants' statements included, but were not limited
3 to, (a) they had a global reputation for excellence in the design and manufacture of gas
4 absorption refrigerators based on many years of experience that created an assurance of quality
5 in their products; (b) their gas absorption refrigerators were designed and manufactured to meet
6 the highest standards of reliability and performance; (c) quality, integrity and reliability were
7 built into each unit made in America by an American-owned company; (d) that the refrigerators
8 were superior, with exceptional performance; and, (e) that the refrigerators were the hallmark of
9 performance and reliability by America's leading manufacturer of refrigerators and freezers for
10 RV, Marine and Truck markets. Defendants also provided Plaintiffs and members of the classes
11 with written warranties and owner's manuals in which they stated and warranted that their gas
12 absorption refrigerators were free from defects.

13 97. At the time Defendants marketed and otherwise placed their gas absorption
14 refrigerators into the stream of commerce, they knew that the refrigerators were going to be
15 installed in recreational vehicles which would then be sold to consumers, including Plaintiffs and
16 members of the California State Subclass, for personal and recreational use. Defendants also
17 knew that consumers, including Plaintiffs and members of the California State Subclass, would
18 have no ability or opportunity to inspect their gas absorption refrigerators for defects, but instead
19 would rely on Defendants' representations and on Defendants' knowledge, expertise, and
20 experience to manufacture a gas absorption refrigerator that was safe and reliable for its intended
21 purpose.

22 98. Defendants' gas absorption refrigerators were defective, in that they contained
23 design and manufacturing defects which created and/or enhanced fires, with the potential of
24 causing serious damage, injury and/or death.

25 99. Defendants have failed to deliver to Plaintiffs and members of the California State
26 Subclass the thing purchased, and have delivered a thing other than the thing purchased, and
27 have thus breached the express warranties of sale.

1 100. Defendants intentionally and deceptively withheld material facts regarding the
2 product defects from Plaintiffs and members of the California State Subclass.

3 101. As a direct and proximate result of Defendants' breach, Plaintiffs and members of
4 the California State Subclass have suffered, and will continue to suffer, significant economic
5 damages, including, but not limited to, the diminution of value of their recreational vehicles, in
6 an amount that will be established at trial according to proof.

7 **FOURTH CAUSE OF ACTION**

8 **Violation of California Unfair Competition Law,
9 California Business and Professions Code §17200 *et. seq.*
(Brought on Behalf of Plaintiffs KAHLER, CURTIS and the California State Subclass)**

10 102. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as
11 though stated herein.

12 103. Plaintiffs KAHLER and CURTIS bring this claim individually and on behalf of
13 all others similarly situated in the State of California.

14 104. The State of California has enacted statutes designed to protect consumers against
15 unfair, deceptive, fraudulent, and unconscionable trade and business practices, and/or false
16 advertising. Those statutes further allow consumers to bring private and/or class actions. These
17 statutes are:

- 18 a. California Consumer Legal Remedies Act, Cal. Civ. Code §1750, *et. seq.*;
19 b. California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et. seq.*,
20 and Cal. Bus & Prof. Code §17500, *et. seq.*

21 105. In addition, the California Unfair Competition Law, Cal. Bus. & Prof. Code
22 §17200, *et seq.* (UCL) declares that any act or business practice that is forbidden by law is
23 unlawful and a violation of the UCL.

24 106. Each of the Plaintiffs and proposed class members in the California State Subclass
25 is a consumer, purchaser, or other person entitled to the protection of the above-described
26 consumer protection laws.

27 107. Plaintiffs suffered both injury-in-fact and lost money as a result of Defendants'
28 conduct and practices which are described herein and challenged.

1 108. Defendants' N6, N8 and 1200 Series gas absorption refrigerators constitute
2 products to which these consumer protection statutes apply.

3 109. To the extent required, Plaintiffs in the California State Subclass have provided
4 Defendants notice under each of the above listed statutes.

5 110. Defendants' conduct, as described above, constitutes unlawful, unfair and
6 fraudulent practices under the UCL.

7 111. Defendants' unlawful practices include, but are not limited to:

- 8 a. Violations of the Song-Beverly Consumer Warranty Act, Cal. Civil Code
9 §§1793.2, 1795.6, 1795.90(d); and,
10 b. Cal. Civil Code §1770 (a) (2), (3), (5), (7), (14) and (16).

11 112. Defendants committed unfair and/or fraudulent business practices by the acts
12 alleged herein, including, but not limited to:

- 13 a. Designing, manufacturing, assembling, marketing, distributing, selling and
14 otherwise placing into the stream of commerce dangerously defective gas
15 absorption refrigerators that posed serious safety risks to users of the
16 product, and members of the general public;
17 b. Misrepresenting through sales, operational and marketing material, and
18 through written warranties, that Defendants' gas absorption refrigerators
19 were free from defects, when in fact Defendants knew that they contained
20 several design defects that created a substantial risk of fire, injury and
21 death when the product was used for its normally intended purpose;
22 c. Misrepresenting the nature and number of defects inherent in the design of
23 their gas absorption refrigerators, including, but not limited to, the number
24 of Defendants' products containing said defects;
25 d. Conducting repeated manufacturer-initiated recall and retrofit campaigns
26 which were intentionally misleading in an effort to minimize and conceal
27 the nature and scope of the defects in Defendants' products, including the
28 serious safety risks arising from said defects;

1 e. Conducting retrofit campaigns to install various devices onto Defendants'
2 gas absorption refrigerators that were represented to "fix" the defects
3 when in fact, the retrofit devices did not address the defects at all, or the
4 propensity of the defects to cause and/or enhance fires;

5 f. Concealing the fact that the retrofit devices installed on Defendants'
6 products were not only ineffective to stop fires, but were in fact designed
7 by Defendants to turn their defective products into a new source of profits,
8 by rendering their refrigerators unrepairable, thereby requiring consumers
9 to purchase – at their cost – another of Defendants' gas absorption
10 refrigerators.

11 113. Defendants knew that their N6, N8 and 1200 Series gas absorption refrigerators
12 were defectively designed, would fail prematurely, and were not suitable for their intended use.
13 Defendants also knew that the design defects in their gas absorption refrigerators created and
14 constituted a serious safety and fire hazard. Further, Defendants knew that the design defects
15 and safety hazards in their gas absorption refrigerators could be substantially decreased, if not
16 totally eliminated, by the adoption of alternate designs readily available in the market.

17 114. Notwithstanding Defendants' knowledge of the design defects and inherent safety
18 risks in their gas absorption refrigerators, and their knowledge of alternate designs to eliminate
19 the defects and safety hazards, Defendants failed and refused to alter their gas absorption
20 refrigerator design, and instead engaged in a continuous pattern of deception and concealment,
21 designed to mislead Plaintiffs in the California State Subclass into believing that their gas
22 absorption refrigerators were safe, when in fact they were, and continue to be, dangerously
23 defective.

24 115. Defendants, at all times up to the filing of this complaint, have engaged in a
25 pattern of concealment and misrepresentation designed to mislead Plaintiffs and all members of
26 the Consumer Protection States Subclasses into believing that Defendants' refrigerators they
27 owned were either free of defects, or that any defects had been fully and completely eliminated
28 through Defendants' retrofit campaigns. As a result of Defendants' concealment and

1 misrepresentation, Plaintiffs did not know, and could not through the exercise of reasonable
2 diligence be expected to know, of the defects and safety risks involved in their use of
3 Defendants' products, or of Defendants' fraudulent, unlawful and unfair conduct, as outlined
4 above, until their own gas absorption refrigerators were recalled, retrofitted and then failed.
5 Neither Plaintiffs KAHLER nor CURTIS were included in any of Defendants' product safety
6 recalls prior to October 7, 2010, nor did either Plaintiff receive any notice or warning prior to
7 that time from Defendants alerting them to any defects or safety risks in Defendants' gas
8 absorption refrigerators. Plaintiff CURTIS was never included in any of Defendants' product
9 safety recalls at all.

10 116. Plaintiffs and all members of the California State Subclass reasonably expected
11 Defendants' gas absorption refrigerators to function properly for the life of their recreational
12 vehicles.

13 117. Plaintiff KAHLER received his first recall notice from Defendants in 2011 and
14 had the HTS device installed in his refrigerator in January, 2012. Plaintiff KAHLER reasonably
15 believed that Defendants' retrofit campaign was as represented, i.e. that the HTS device was
16 effective and that his gas absorption refrigerator was safe to use. Plaintiff KAHLER discovered
17 that defects and safety risks continued to exist in his refrigerator when, on August 28, 2012, his
18 refrigerator caught fire while Plaintiff KAHLER and his family were using his RV on a camping
19 trip. The fact of the fire further disclosed that the HTS device retrofitted to Plaintiff KAHLER's
20 refrigerator under the direct supervision of Defendants' Technical Service Trainer (Jerry
21 Alexander) was ineffective to counter the defects and risks in Defendants' products.

22 118. Defendants' sale of dangerously defective gas absorption refrigerators, their
23 failure to eliminate the design defects and safety hazards inherent in said products, and their
24 pattern of deception and concealment of said defects and risks, did not have any legitimate
25 utility, and even if it did, the utility was substantially outweighed by the grave consequences
26 such conduct exposed Plaintiffs and members of the subclass to, i.e. the risk of fire and the
27 potential for serious damage, injury and death.

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1 119. Defendants' conduct, as alleged herein, was immoral, unethical, oppressive,
2 unscrupulous and substantially injurious to Plaintiffs in the California State Subclass, and
3 constituted violations of the various consumer protection statutes outlined above.

4 120. Plaintiffs and other members of the California State Subclass relied on
5 Defendants' actions and conduct (including, to the extent possible, Defendants' omissions and
6 conduct failing to disclose material facts regarding product defects and risks), and believed that
7 they were receiving gas absorption refrigerators that were free from or cured of any defects.

8 121. Plaintiffs and other members of the California State Subclass have suffered injury
9 in fact and lost money and property as a result of Defendants' unlawful, unfair and/or fraudulent
10 practices, in that, among other things:

- 11 a. Plaintiffs and other members of the California State Subclass have been
12 and/or will be subject to economic damages including, but not limited to, the
13 cost of any repairs, service, modifications and retrofitting necessary to allow
14 their gas absorption refrigerators to be operated safely, without risk and/or
15 potential of fire;
- 16 b. Plaintiffs and other members of the California State Subclass have been
17 and/or will be subject to further economic damage through the loss of use of
18 their recreational vehicles while Defendants' defective products are being
19 rendered safe to use, or replaced;
- 20 c. Plaintiffs and other members of the California State Subclass have been
21 deprived of making an informed decision about the recreational vehicle they
22 purchased;
- 23 d. The recreational vehicles purchased by Plaintiffs and other members of the
24 California State Subclass are worth less in the marketplace as a result of
25 Defendants' conduct.

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1 122. Plaintiffs and other members of the California State Subclass would not have
2 purchased Defendants' gas absorption refrigerator, or a recreational vehicle equipped with one,
3 had they known the truth and are thus entitled to a full or partial refund as allowed under each of
4 the state laws alleged herein.

5 123. Defendants' unlawful, unfair and fraudulent conduct, described above, present a
6 continuing threat to Plaintiffs, the members of the California State Subclass, and to the general
7 public. Unless enjoined, Defendants will continue to place dangerously defective gas absorption
8 refrigerators into the stream of commerce, and will continue to conceal and mislead consumers
9 regarding the inherent defects and safety risks associated with use of the product. Unless
10 enjoined, Defendants will continue to conceal and mislead owners of their gas absorption
11 refrigerators into believing that their products are safe, or that any risks have been completely
12 eliminated through Defendants' fraudulent and ineffective recall and retrofit campaigns. Such
13 conduct presents a continuing threat to owners of Defendants' products, in that they will be
14 unknowingly exposed to serious safety risks through the continued use of Defendants' product,
15 including the risk of property damage, injury and death. Defendants' conduct also presents a
16 continuing risk to members of the public in that the risk of property damage, injury and death by
17 fire extends beyond the owners of Defendants' products, to anyone living next door, camping in
18 the same campground, or driving on the same highway as an owner of a recreational vehicle
19 containing one of Defendants' gas absorption refrigerators. Injunctive relief is therefore
20 appropriate and necessary to eliminate a serious safety risk to Plaintiffs, all members of the
21 California State Subclass, and members of the general public.

22 124. Accordingly, Plaintiffs and members of the California State Subclass seek an
23 injunction that requires Defendants to immediately cease the unfair, unlawful and fraudulent
24 business acts alleged herein, and to immediately take all necessary actions to cure the design
25 and/or manufacturing defects inherent in their gas absorption refrigerators so that the
26 refrigerators can be designed and manufactured, and/or effectively retrofitted, to operate safely.

27 125. Plaintiffs and other members of the California State Subclass are entitled to the
28 relief set forth below.

FIFTH CAUSE OF ACTION

**Money Had and Received
(Brought on Behalf of Plaintiffs KAHLER, CURTIS and the California State Subclass)**

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4 126. Plaintiffs incorporate by reference all preceding paragraphs as though fully stated
5 herein.

6 127. This count is alleged in the alternative to the First, Second, Third and Fourth
7 Causes of Action.

8 128. Plaintiffs KAHLER and CURTIS bring this claim individually and on behalf of
9 the other members of the California State Subclass similarly situated.

10 129. By their unlawful, unfair, deceptive, and wrongful acts and omissions, Defendants
11 were unjustly enriched at the expense of Plaintiffs and members of the California State Subclass,
12 who paid substantial sums of money for recreational vehicles, which contained defective gas
13 absorption refrigerators at the time of sale.

14 130. Defendants were aware and had knowledge of the benefit they were receiving as a
15 result of their unlawful, unfair, deceptive, and wrongful acts and omissions, as hereinabove
16 described, and have enjoyed the benefits of their financial gains to the detriment and at the
17 expense of Plaintiffs and members of the California State Subclass.

18 131. Defendants' retention of some or all of the monies they have gained through their
19 wrongful acts and practices would be unjust considering the circumstances of their obtaining
20 those monies.

21 132. Plaintiffs and members of the California State Subclass have no adequate remedy
22 at law.

23 133. Plaintiffs and members of the California State Subclass are entitled to seek
24 restitution from Defendants and an order disgorging all profits, benefits, and other compensation
25 obtained by Defendants through and for their wrongful conduct.

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SIXTH CAUSE OF ACTION

**Violation of Florida State Consumer Protection Laws
(Brought on Behalf of Plaintiffs ETTER and the Florida State Subclass)**

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4 134. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as
5 though stated herein.

6 135. Plaintiffs Etter bring this claim individually and on behalf of all others similarly
7 situated in the State of Florida.

8 136. Each of the Plaintiffs and proposed Class members in the Florida State Subclass is
9 a consumer, purchaser, or other person entitled to the protection of the consumer protection laws
10 of the State of Florida, in which they purchased Defendants' N6, N8 and/or 1200 Series gas
11 absorption refrigerators.

12 137. The consumer protection laws of the State of Florida declare that unfair or
13 deceptive acts or practices in the conduct of trade or commerce are unlawful.

14 138. The State of Florida has enacted the Florida Deceptive and Unfair Trade Practices
15 Act, Fla. Stat. Ann. §501.201, *et. seq.* to protect consumers against unfair, deceptive, fraudulent,
16 and unconscionable trade and business practices, and/or false advertising.

17 139. Defendants' N6, N8 and 1200 Series gas absorption refrigerators constitute
18 products to which these consumer protection statutes apply.

19 140. To the extent required, Plaintiffs in the Florida State Subclass have provided
20 Defendants notice under each of the above listed statutes.

21 141. As detailed above, Defendants' unfair and deceptive practices include
22 misrepresenting through sales, operational and marketing material, and through written
23 warranties, that Defendants' gas absorption refrigerators were free from defects, when in fact
24 Defendants knew

- 25 a. that they contained several design defects that created a substantial risk of fire,
26 injury and death when the product was used for its normally intended purpose;
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- 1 b. that they were misrepresenting the nature and number of defects inherent in the
2 design of their gas absorption refrigerators, including, but not limited to, the
3 number of Defendants' products containing said defects;
- 4 c. that they were conducting repeated manufacturer-initiated recall and retrofit
5 campaigns which were intentionally misleading in an effort to minimize and
6 conceal the nature and scope of the defects in Defendants' products, including the
7 serious safety risks arising from said defects;
- 8 d. that they were conducting retrofit campaigns to install various devices onto
9 Defendants' gas absorption refrigerators that were represented to "fix" the defects
10 when in fact, the retrofit devices did not address the defects at all, or the
11 propensity of the defects to cause and/or enhance fires;
- 12 e. that they were concealing the fact that the retrofit devices installed on Defendants'
13 products were not only ineffective to stop fires, but were in fact designed by
14 Defendants to turn their defective products into a new source of profits, by
15 rendering their refrigerators unrepairable, thereby requiring consumers to
16 purchase – at their cost – another of Defendants' gas absorption refrigerators.

17 142. Defendants' knew that their N6, N8 and 1200 Series gas absorption refrigerators
18 were defectively designed, would fail prematurely, and were not suitable for their intended use.
19 Defendants also knew that the design defects in their gas absorption refrigerators created and
20 constituted a serious safety and fire hazard. Further, Defendants knew that the design defects and
21 safety hazards in their gas absorption refrigerators could be substantially decreased, if not totally
22 eliminated, by the adoption of alternate designs readily available in the market.

23 143. Notwithstanding Defendants' knowledge of the design defects and inherent safety
24 risks in their gas absorption refrigerators, and their knowledge of alternate designs to eliminate
25 the defects and safety hazards, Defendants failed and refused to alter their gas absorption
26 refrigerator design, and instead engaged in a continuous pattern of deception and concealment,
27 designed to mislead Plaintiffs in the Florida State Subclass into believing that their gas
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1 absorption refrigerators were safe, when in fact they were, and continue to be, dangerously
2 defective.

3 144. Defendants, at all times up to the filing of this complaint, have engaged in a
4 pattern of concealment and misrepresentation designed to mislead Plaintiffs and all members of
5 the Florida State Subclass into believing that Defendants' refrigerators they owned were either
6 free of defects, or that any defects had been fully and completely eliminated through Defendants'
7 retrofit campaigns. As a result of Defendants' concealment and misrepresentation, Plaintiffs did
8 not know, and could not through the exercise of reasonable diligence be expected to know, of the
9 defects and safety risks involved in their use of Defendants' products, or of Defendants'
10 fraudulent, unlawful and unfair conduct, as outlined above, until their own gas absorption
11 refrigerators were recalled, retrofitted and then failed. Plaintiffs ETTER were not included in
12 any of Defendants' product safety recalls prior to October 7, 2010, nor did said Plaintiffs receive
13 any notice or warning prior to that time from Defendants alerting them to any defects or safety
14 risks in Defendants' gas absorption refrigerators.

15 145. Plaintiffs and all members of the Florida State Subclass reasonably expected
16 Defendants' gas absorption refrigerators to function properly for the life of their recreational
17 vehicles.

18 146. Plaintiffs ETTER received their first recall notice from Defendants in September,
19 2011, and had their gas absorption refrigerator retrofitted with the HTS device in October 2011.
20 Plaintiffs ETTER reasonably believed that Defendants' retrofit campaign was as represented, i.e.
21 that the HTS device was effective and that their gas absorption refrigerator was safe to use.
22 Plaintiffs ETTER discovered that defects and safety risks continued to exist in their refrigerator
23 and that the HTS device was ineffective to counter the defects and risks in March 2012, after the
24 HTS devices installed on their refrigerator repeatedly failed, and their refrigerator cooling unit
25 suffered a "blown boiler" (a leak of flammable gases and sodium chromate from the boiler
26 section of the cooling unit), notwithstanding the retrofit of the HTS device.

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1 147. Defendants' sale of dangerously defective gas absorption refrigerators, their
2 failure to eliminate the design defects and safety hazards inherent in said products, and their
3 pattern of deception and concealment of said defects and risks, did not have any legitimate
4 utility, and even if it did, the utility was substantially outweighed by the grave consequences
5 such conduct exposed Plaintiffs and members of the subclass to, i.e. the risk of fire and the
6 potential for serious damage, injury and death.

7 148. Defendants' conduct, as alleged herein, was immoral, unethical, oppressive,
8 unscrupulous and substantially injurious to Plaintiffs in the Florida State Subclass, and
9 constituted violations of the consumer protection statute outlined above.

10 149. Plaintiffs ETTER and other members of the Florida State Subclass relied on
11 Defendants' actions and conduct (including, to the extent possible, Defendants' omissions and
12 conduct failing to disclose material facts regarding product defects and risks), and believed that
13 they were receiving gas absorption refrigerators that were free from or cured of any defects.

14 150. Plaintiffs ETTER and other members of the Florida State Subclass have suffered
15 injury in fact and lost money and property as a result of Defendants' unlawful, unfair and/or
16 fraudulent practices, in that, among other things:

- 17 a. Plaintiffs ETTER and other members of the Florida State Subclass have
18 been and/or will be subject to economic damages including, but not
19 limited to, the cost of any repairs, service, modifications and retrofitting
20 necessary to allow their gas absorption refrigerators to be operated safely,
21 without risk and/or potential of fire;
- 22 b. Plaintiffs ETTER and other members of the Florida State Subclass have
23 been and/or will be subject to further economic damage through the loss of
24 use of their recreational vehicles while Defendants' defective products are
25 being rendered safe to use, or replaced;
- 26 c. Plaintiffs ETTER and other members of the Florida State Subclass have
27 been deprived of making an informed decision about the recreational
28 vehicle they purchased;

1 d. The recreational vehicles purchased by Plaintiffs ETTER and other
2 members of the Florida State Subclass are worth less in the marketplace as
3 a result of Defendants' conduct.

4 e. Plaintiffs ETTER and all other members of the Florida State Subclass
5 would not have purchased Defendants' gas absorption refrigerator, or a
6 recreational vehicle equipped with one, had they known the truth and are
7 thus entitled to a full or partial refund as allowed under the state law
8 alleged herein.

9 f. Defendants' unlawful, unfair and fraudulent conduct, described above,
10 presents a continuing threat to Plaintiffs, the members of the Florida State
11 Subclass, and to the general public. Unless enjoined, Defendants will
12 continue to place dangerously defective gas absorption refrigerators into
13 the stream of commerce, and will continue to conceal and mislead
14 consumers regarding the inherent defects and safety risks associated with
15 use of the product. Unless enjoined, Defendants will continue to conceal
16 and mislead owners of their gas absorption refrigerators into believing that
17 their products are safe, or that any risks have been completely eliminated
18 through Defendants' fraudulent and ineffective recall and retrofit
19 campaigns. Such conduct presents a continuing threat to owners of
20 Defendants' products, in that they will be unknowingly exposed to serious
21 safety risks through the continued use of Defendants' product, including
22 the risk of property damage, injury and death. Defendants' conduct also
23 presents a continuing risk to members of the public in that the risk of
24 property damage, injury and death by fire extends beyond the owners of
25 Defendants' products, to anyone living next door, camping in the same
26 campground, or driving on the same highway as an owner of a recreational
27 vehicle containing one of Defendants' gas absorption refrigerators.
28 Injunctive relief is therefore appropriate and necessary to eliminate a

1 serious safety risk to Plaintiffs ETTER, all members of the Florida State
2 Subclass, and members of the general public.

3 g. Accordingly, Plaintiffs ETTER and members of the Florida State Subclass
4 seek an injunction that requires Defendants to immediately cease the
5 unfair, unlawful and fraudulent business acts alleged herein, and to
6 immediately take all necessary actions to cure the design and/or
7 manufacturing defects inherent in their gas absorption refrigerators so that
8 the refrigerators can be designed and manufactured, and/or effectively
9 retrofitted, to operate safely.

10 h. Plaintiffs ETTER and other members of the Florida State Subclass are
11 entitled to the relief set forth below, as appropriate, including, but not
12 limited to, actual compensatory and/or statutory damages, injunctive
13 relief, as well as attorneys' fees and legal expenses under the various
14 California laws implicated by this Claim.

15 **SEVENTH CAUSE OF ACTION**

16 **Breach of Express and Implied Warranty**
17 **(Brought on Behalf of Plaintiffs ETTER and the Florida State Subclass)**

18 151. Plaintiffs incorporate by reference every other paragraph of this Complaint as
19 through fully stated herein.

20 152. Plaintiffs ETTER and all other members of the Florida State Subclass have
21 suffered injury in fact and lost money and property as a result of Defendants' unlawful, unfair
22 and/or fraudulent practices, in that, among other things:

- 23 a. Defendants made statements of fact, which were received by Plaintiffs and
24 members of the Florida State Subclass. Defendants' statements included,
25 but were not limited to, (a) they had a global reputation for excellence in
26 the design and manufacture of gas absorption refrigerators based on many
27 years of experience that created an assurance of quality in their products;
28 (b) their gas absorption refrigerators were designed and manufactured to

1 meet the highest standards of reliability and performance; (c) quality,
2 integrity and reliability were built into each unit made in America by an
3 American-owned company; (d) that the refrigerators were superior, with
4 exceptional performance; and (e) that the refrigerators were the hallmark
5 of performance and reliability by America's leading manufacturer of
6 refrigerators and freezers for RV, Marine and Truck markets. Defendants
7 also provided Plaintiffs and members of the subclass, with written
8 warranties and owner's manuals in which they stated and warranted that
9 their gas absorption refrigerators were free from defects.

10 153. At the time Defendants marketed and otherwise placed their gas absorption
11 refrigerators into the stream of commerce, they knew that the refrigerators were going to be
12 installed in recreational vehicles which would then be sold to consumers, including Plaintiffs and
13 members of the Florida State Subclass, for personal and recreational use. Defendants also knew
14 that consumers, including Plaintiffs and members of the Florida State Subclass, would have no
15 ability or opportunity to inspect their gas absorption refrigerators for defects, but instead would
16 rely on Defendants' representations and on Defendants' knowledge, expertise, and experience to
17 manufacture a gas absorption refrigerator that was safe and reliable for its intended purpose.

18 154. Defendants' gas absorption refrigerators were defective, in that they contained
19 design and manufacturing defects which created and/or enhanced fires, with the potential of
20 causing serious damage, injury and/or death.

21 155. Defendants have failed to deliver to Plaintiffs and members of the Florida State
22 Subclass the thing purchased, and have delivered a thing other than the thing purchased, and
23 have thus breached the express warranties of sale.

24 156. As a direct and proximate result of Defendants' breach, Plaintiffs and members of
25 the Florida State Subclass have suffered, and will continue to suffer, significant economic
26 damages, including, but not limited to, the diminution of value of their recreational vehicles, in
27 an amount that will be established at trial according to proof.

EIGHTH CAUSE OF ACTION

**Unjust Enrichment/Money Had and Received
(Brought on Behalf of Plaintiffs ETTER and the Florida State Subclass)**

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4 157. Plaintiffs incorporate by reference all preceding paragraphs as though fully stated
5 herein.

6 158. This Count is alleged in the alternative to the Sixth and Seventh Causes of Action.

7 159. Plaintiffs ETTER bring this claim individually and on behalf of the other
8 members of the Florida State Subclass similarly situated.

9 160. By their unlawful, unfair, deceptive, and wrongful acts and omissions, Defendants
10 were unjustly enriched at the expense of Plaintiffs and members of the Florida State Subclass,
11 who paid substantial sums of money for recreational vehicles, which contained defective gas
12 absorption refrigerators at the time of sale.

13 161. Defendants were aware and had knowledge of the benefit they were receiving as a
14 result of their unlawful, unfair, deceptive, and wrongful acts and omissions, as hereinabove
15 described, and have enjoyed the benefits of their financial gains to the detriment and at the
16 expense of Plaintiffs and members of the Florida State Subclass.

17 162. Defendants' retention of some or all of the monies they have gained through their
18 wrongful acts and practices would be unjust considering the circumstances of their obtaining
19 those monies.

20 163. Plaintiffs and members of the Florida State Subclass have no adequate remedy at
21 law.

22 164. Plaintiffs and members of the Florida State Subclass are entitled to seek
23 restitution from Defendants and an order disgorging all profits, benefits, and other compensation
24 obtained by Defendants through and for their wrongful conduct as well as injunctive and
25 declaratory relief as may be appropriate.

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1 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

2 **PLAINTIFFS KAHLER, CURTIS AND THE CALIFORNIA STATE SUBCLASS:**

- 3 1) For actual, compensatory and statutory damages/penalties, according to proof, on
4 any Courts that permit the recovery of damages;
- 5 2) For restitution, disgorgement and/or other equitable relief as the Court deems
6 proper;
- 7 3) For an order that Defendants be permanently enjoined from performing or
8 proposing to perform any of the aforementioned acts of unfair, unlawful,
9 deceptive and/or fraudulent business practices;
- 10 4) For an order that Defendants be permanently enjoined from selling, offering to
11 sell, or otherwise placing into the stream of commerce, dangerously defective gas
12 absorption refrigerators;
- 13 5) For an order certifying the California State Subclass as defined above;
- 14 6) For pre-judgment and post-judgment interest according to proof;
- 15 7) For reasonable attorney's fees and costs of suit; and
- 16 8) For such other and further relief as the Court may deem proper.

17 **PLAINTIFFS ETTER AND THE FLORIDA STATE SUBCLASS:**

- 18 1) For actual, compensatory and statutory damages/penalties, according to proof;
- 19 2) For restitution, disgorgement and/or other equitable relief as the Court deems
20 proper;
- 21 3) For an order that Defendants be permanently enjoined from performing or
22 proposing to perform any of the aforementioned acts of unfair, unlawful,
23 deceptive and/or fraudulent business practices;
- 24 4) For an order that Defendants be permanently enjoined from selling, offering to
25 sell, or otherwise placing into the stream of commerce, dangerously defective gas
26 absorption refrigerators;
- 27 5) For an order certifying the California State Subclass as defined above;
- 28 6) For pre-judgment and post-judgment interest according to proof;

7) For reasonable attorney's fees and costs of suit; and

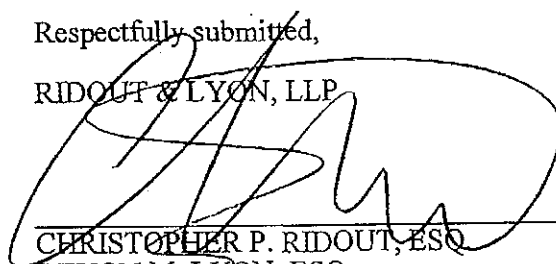
8) For such other and further relief as the Court may deem proper.

JURY TRIAL DEMANDED

Plaintiffs seek a trial by jury for all appropriate issues on each and every cause of action in this Complaint

Respectfully submitted,

RIDOUT & LYON, LLP



Dated: December 12, 2012 By:

CHRISTOPHER P. RIDOUT, ESQ.
DEVON M. LYON, ESQ.
CALEB LH. MARKER, ESQ.
555 E. Ocean Blvd., Suite 500
Long Beach, CA 90802
(562) 216-7380 Telephone
(562) 216-7385 Facsimile

ZIMMERMAN REED, PLLP
BRADLEY C. BUHROW, ESQ. (CA Bar No. 283791)
E-mail: Brad.Buhrow@zimmreed.com
14646 N. Kierland Blvd., Suite 145
Scottsdale, AZ 85254
(480) 348-6400 Telephone
(480) 348-6415 Facsimile

LAW OFFICES OF TERRENCE A. BEARD
TERRENCE A. BEARD, ESQ. (State Bar No. 098013)
E-mail: tbeard1053@aol.com
525 Marina Blvd.
Pittsburg, CA 94565
(925) 778-1060 Telephone
(925) 473-9098 Facsimile

Attorneys for Plaintiffs