

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
TRIAL COURT DEPARTMENT

<p>GFS REALTY TRUST, a/k/a 111-125 REALTY TRUST; SIVER INSURANCE AGENCY; JERRY SIVER; AMY DIGGINS; SANTOSH CHAVAN; ANGELA CASTRO; KATHRYN BEURER; JOHN MIRO; JOSEPH ROBERTS; DAVID HAYES; RICHARD FOWLER; LEO GOODMAN; JOSEPH GOODMAN; KAREN DEWOLF RICARD; DAVID SILVESTRI; JAMES RUSSELL; ELIZABETH SNOW; DAVID FELBER; JEROME NOBLE; DOUGLAS RUITER; individually and on behalf of persons similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>BRISTOL COMPRESSORS INTERNATIONAL; F.W. WEBB COMPANY; and HALLOWELL INTERNATIONAL,</p> <p>Defendants.</p>	<p>Civil Action No. 11-2358</p>
---	---------------------------------

**CLASS ACTION COMPLAINT**

Plaintiffs GFS REALTY TRUST, a/k/a 111-125 REALTY TRUST, SIVER INSURANCE AGENCY, JERRY SIVER, AMY DIGGINS, SANTOSH CHAVAN, ANGELA CASTRO, KATHRYN BEURER, JOHN MIRO, JOSEPH ROBERTS, DAVID HAYES, RICHARD FOWLER, LEO GOODMAN, JOSEPH GOODMAN, KAREN DEWOLF RICARD, DAVID SILVESTRI, JAMES RUSSELL, ELIZABETH SNOW, DAVID FELBER, JEROME NOBLE, and DOUGLAS RUITER, by and through their attorneys, allege on behalf of themselves and all others similarly situated, on information and belief based, *inter alia*, upon the

investigation of their counsel, except as to those allegations which pertain to the named Plaintiffs or their attorneys, which are alleged on personal information and belief, as follows:

**I. NATURE OF THE ACTION**

1. This is a class action for economic damages under the Massachusetts Consumer Protection Act, G.L. c. 93A, and the common law, on behalf of persons who purchased Acadia™ Combined Heating and Cooling Systems (hereinafter “Acadia System” or “Acadia”) marketed, designed, assembled, manufactured, distributed, and/or sold by Defendants Bristol Compressors International (“Bristol”); F.W. Webb Company (“Webb”); and Hallowell International (“Hallowell”) (hereinafter collectively “Defendants”) in the Commonwealth of Massachusetts.

2. As more fully set forth herein, Defendants engaged in deceptive acts and practices and defrauded Plaintiffs and other purchasers and consumers of the Acadia System (the “Class”) through providing an inherently flawed and defective product, and through its integrated advertising campaign for the Acadia System. While utilizing a wide spectrum of media, Defendants claimed that Acadia delivered “affordable comfort in any season” and that it would result in “money savings up to 70%” and it was “low maintenance” and “built to last.” As part of the purchase, Defendants represented that it would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor provided by Defendant Bristol. Once the Acadia system was installed, it soon became evident that it was defective and it did not work as intended or represented.

3. The Acadia System frequently broke down because of a design flaw, required significant maintenance, and Defendants were unwilling or unable to repair and maintain the product. Defendants engaged in a common source of deceptive and unlawful conduct in

connection with their manufacture, sale and distribution of the Acadia System by falsely representing to purchasers that they will have lower heating bills in comparison to traditional heating and cooling systems. Defendants were, or should have been, aware that the Acadia System's compressor and components would not work as intended or represented thereby forcing buyers to incur higher energy bills, repair costs and replacement costs.

4. As a basis for sales and revenue growth, Defendants depend largely on consumers in cold-weather climates, such as Northern New England, outfitting their homes with the Acadia System's energy-saving, cost-efficient technology. Defendants used advertising as its principal method for influencing or persuading customers to upgrade to their innovative and purportedly "money-saving" and "energy saving" heating and cooling system which would allegedly result in "years of continuous money savings."

5. Plaintiffs and members of the Class were persuaded by these false claims to purchase the Acadia System. As a result, Plaintiffs have incurred repair bills, frequent loss of use, and the replacement of two of the four units in less than three (3) years from the date of purchase and within the warranty period that has made this product more expensive than other systems, not reliable and high maintenance. Despite requests for repairs under the warranty, each Defendant has refused to fully honor the warranties.

6. Plaintiffs seek such actual or statutory damages and other relief (both in equity and at law) as may be available to them under M.G.L. c. 93A, restitution and injunctive relief, including: (a) compensatory and punitive damages; (b) an injunction ordering Defendants, through corrective advertising, to make disclosures regarding the true capacity and value of the Acadia System; (c) an injunction enjoining Defendants from selling the Acadia System absent

adequate disclosures; and (d) disgorgement and restitution, together with any further relief which may be available to them under said common law.

## **II. PARTIES**

7. Plaintiffs bring this action in their individual capacities and on behalf of all others similarly situated.

8. Plaintiff GFS Realty Trust, also known as 111-125 Realty Trust (“GFS”) is a Massachusetts business trust located in Lancaster in the Commonwealth of Massachusetts.

9. Plaintiff Siver Insurance Agency (“Siver Insurance”) is an independent insurance agency and financial services company that has been serving families and businesses in Worcester County and surrounding Central Massachusetts communities since 1964. Siver Insurance is a domestic profit corporation with its principal place of business located in South Massachusetts.

10. Plaintiff Jerry Siver (“Siver”) is a resident of the Commonwealth of Massachusetts residing in Sterling. He is President of Siver Insurance. Craig Reynolds and Siver Insurance are co-owners of the property located at 111-125 Main Street, Lancaster, Massachusetts (hereinafter “GFS Property”), where GFS is located. Plaintiffs Siver and Siver Insurance (hereinafter “Siver Plaintiffs”) purchased four of the Acadia Systems (hereinafter the “Product”) which were installed at the GFS Property. The Siver Plaintiffs purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor.

As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

11. Plaintiff Amy Diggins is a resident of the Commonwealth of Massachusetts, residing in Auburn. Ms. Diggins purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

12. Plaintiff Santosh Chavan is a resident of the Commonwealth of Massachusetts, residing in Lexington. Mr. Chavan purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

13. Plaintiff Angela Castro is a resident of the Commonwealth of Massachusetts, residing in Newburyport. Ms. Castro purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its

exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

14. Plaintiff Kathryn Beurer is a resident of the Commonwealth of Massachusetts, residing in Marblehead. Ms. Beurer purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

15. Plaintiff John Miro is a resident of the Commonwealth of Massachusetts, residing in Revere. Mr. Miro purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once

the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

16. Plaintiff Joseph Roberts is a resident of the Commonwealth of Massachusetts, residing in Berlin. Mr. Roberts purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

17. Plaintiff David Hayes is a resident of the Commonwealth of Massachusetts, residing in Shirley. Mr. Hayes purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

18. Plaintiff Richard Fowler is a resident of the Commonwealth of Pennsylvania and resides in East Berlin. Mr. Fowler purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its

exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

19. Plaintiff Leo Goodman is a resident of the Commonwealth of Pennsylvania and resides in Carlisle. Mr. Goodman purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

20. Plaintiff Joseph Goodman is a resident of the Commonwealth of Pennsylvania and resides in Carlisle. Mr. Goodman purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail

below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

21. Plaintiff Karen DeWolf Ricard is a resident of the State of New Hampshire and resides in Canaan. Ms. DeWolf Ricard purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

22. Plaintiff David Silvestri is a resident of the State of New Hampshire and resides in Brookline. Mr. Silvestri purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

23. Plaintiff James Russell is a resident of the State of Maine and resides in Caribou. Mr. Russell purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor,

Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

24. Plaintiff Elizabeth Snow is a resident of the State of Maine and resides in Doer Foxcroft. Ms. Snow purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

25. Plaintiff David Felber is a resident of the State of Ohio and resides in Ravenna. Mr. Felber purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product

was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

26. Plaintiff Jerome Noble is a resident of the State of Wisconsin and resides in Clinton. Mr. Noble purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

27. Plaintiff Douglas Ruitter is a resident of the State of Minnesota and resides in Pipestone. Mr. Ruitter purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant Webb Company, that the product was reliable, had low maintenance and would save money in comparison with traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five (5) year warranty for parts, including a five (5) year warranty for the compressor. As described in more detail below, once the product was installed it soon thereafter became evident that the product was defective and did not work as intended or as represented.

28. Defendant Bristol Compressors International, Inc., is a Virginia corporation conducting business in the Commonwealth of Massachusetts. At all times relevant hereto,

Defendant Bristol manufactured, promoted, marketed, distributed and/or sold the compressor component part used by the Product.

29. Defendant F.W. Webb Company is a Commonwealth of Massachusetts business with its principal place of business located in Bedford, Massachusetts. At all times relevant hereto, Defendant Webb was the exclusive distributor of the Product and engaged in the business of promoting, marketing, distributing, and/or selling the Product in Massachusetts.

30. Defendant Hallowell International, LLC is a Maine business with its principal place of business located in Bangor, Maine, that conducts business in the Commonwealth of Massachusetts. At all times relevant hereto, Defendant Hallowell engaged in the business of manufacturing, assembling, promoting, marketing, distributing and/or selling the Product. Defendant Hallowell conducts business in Massachusetts, and at all relevant times manufactured, promoted, marketed, distributed and/or sold the Product in Massachusetts.

### **III. JURISDICTION AND VENUE**

31. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Mass. Gen. Laws ch. 212 § 4. This Court has personal jurisdiction over the parties because Plaintiffs and members of the Class submit to the jurisdiction of this Court and Defendants systematically and continually conduct business in, or otherwise intentionally avail themselves of, the Massachusetts marketplace through the production, promotion, sale, marketing and distribution of its products and services in Massachusetts. Mass. Gen. Laws ch. 223A § 3.

32. Venue is proper in this Court because Defendant Webb is headquartered in Middlesex County and Defendants conduct business in Middlesex, including marketing, advertising and sales directed at Massachusetts residents. Mass. Gen. Laws ch. 223 § 1.

#### **IV. FACTUAL ALLEGATIONS**

##### **Background Facts**

33. In or about the mid-1990's, a retired compressor design and refrigeration engineer, frustrated with his own electric bill, developed an Opti-Cyle booster heat pump for home heating and cooling, which he patented and sold to Defendant Hallowell. The booster had become the "secret sauce" of the Acadia System in or about 2008.

34. Defendant Hallowell launched an advertisement campaign in written material and a website that promised the Acadia System would eliminate the need for additional components and promised the Acadia System would operate efficiently in temperatures as low as 30 degrees below zero, knocking as much as 70 percent off the cost of traditional baseboard heat.

35. The promise of lower heating bills and smaller carbon footprint resonated with both consumers and engineering groups. The Acadia System has been featured by Bob Vila and because of strong promises of cost-savings and low maintenance, Defendant Hallowell landed a contract with McGuire Air Force Base in New Jersey to outfit 2,400 homes on the base with Acadia Systems. Hallowell also made it known that it was working with the U.S. Department of Homeland Security to install the Acadia Systems into new border crossings and other facilities.

36. On its website and brochures, Hallowell claimed that the Product "was designed to provide years of comfort and reliability" and that using "electricity efficiently means that Acadia can provide savings of up to 70% over other traditional heating systems." In fact, Defendant Hallowell provided a "Savings Calculator" to help the consumer visualize their projected average yearly savings with the Acadia System replacement. The consumer was encouraged to personalize their savings at the website [www.gotohallowell.com](http://www.gotohallowell.com) with their cost calculator.

37. Hallowell also made strong claims of reliability, promising that its Product was “[m]ade from time tested and industry standard components” and that the Product “will provide you with years of service” and would not “have to worry about maintaining peak efficiency and comfort for the many heating and cooling seasons to come.” Defendant Hallowell also claimed “constant year round savings,” “low maintenance,” and “low installation cost” and promised that the Product was “built to last.”

38. Defendant Hallowell also provided a 5 year limited parts warranty and a 5 year limited compressor warranty with the Product.

39. Defendant Hallowell’s heavy marketing and false advertising campaign to the cold-weather climates such as Northern New England, achieved its desired results. Defendants profited millions of dollars on sales of the Product.

### **The Problem**

40. Once the Product became installed it soon became evident that it was defective and did not work as intended or represented. The Product frequently broke down because of design flaws, did not work as intended and represented, required significant maintenance, and Defendants were unwilling or unable to repair and maintain the Product as represented.

41. On or about October 20, 2008, the Siver Plaintiffs purchased four Acadia Systems and had them installed at the GFS Property for the total cost of \$63,920.00. Plaintiffs purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance and would save money in comparison to traditional heating and cooling systems. As part of the purchase, Defendants represented that it would

include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

42. Soon after installation, and well within the warranty period, the Product frequently broke down because of a design flaw of the product, required significant maintenance, and Defendants were unable or unwilling to repair and maintain the product as warranted. The Siver Plaintiffs also had to completely replace two of their four units in less than three years from the date of purchase and within the warranty period. Despite requests for repairs under the warranties, all Defendants have refused to make the repairs under the warranties.

43. Plaintiff, Amy Diggins, purchased one Acadia System and had it installed at her home for the total cost of approximately \$7,000 in or about September 2008. Plaintiff Diggins purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance and would save money in comparison to traditional heating and cooling systems. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

44. Soon after installation, and well within the warranty period, Plaintiff Diggins began having problems with the Product in December 2008. The Product broke down because of a design flaw of the compressor and Plaintiff Diggins was told by Defendants that they were unable or unwilling to repair and maintain the product as warranted. Plaintiff Diggins had to obtain backup heating and completely replace the unit in June 2011 for the cost of \$2,200 in less than three years from the date of purchase and within the warranty period. Despite requests for

repairs under the warranties, all Defendants have refused to make the repairs under the warranties.

45. Plaintiff Santosh Chavan purchased one Acadia System for his home which was installed on or about August 24, 2008, for the total cost of approximately \$10,400 (unit and labor). Plaintiff purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

46. Soon after installation, and well within the warranty period, in September 2008 the Product experienced refrigeration line failures and caused unusually high heating bills. Plaintiff Chavan had to pay \$450 for emergency heating costs and an extra \$1600 in heating bills from running the Acadia System, over and above what he would have paid had he had an oil heating system. Plaintiff Chavan's unit was replaced by an HVAC contractor on or about July 30, 2011, due to a locked compressor booster and capacitor and relay failure.

47. Plaintiff Angela Castro purchased one Acadia System for her home which was installed on or about September 2008, for the total cost of approximately \$13,000 (unit, labor and removal of oil system). Plaintiff purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was

environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

48. Soon after installation, and well within the warranty period, in February 2010, the Product had various failure issues. Plaintiff Castro had to pay \$250 for service calls and anticipates having to pay between \$5,000 to \$8,000 for a new unit due to the malfunctioning of the Acacia System.

49. Plaintiff Kathryn Beurer purchased two Acadia Systems for her home which were installed on or about October 2008, for the total cost of approximately \$19,073.12 (units and labor). Plaintiff purchased the Products because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

50. Soon after installation, and well within the warranty period, in January 2009, the Products had issues with the relays, capacitors and compressors. Plaintiff Beurer had to pay for emergency heating costs. Plaintiff's Beurer's units were replaced by Bright Star Heating on or about April 1, 2011, due to the non-functioning Acadia Systems at a cost of \$20,854.17.

51. Plaintiff John Miro purchased one Acadia System for his home which was installed on or about August 23, 2008, for the total cost of \$13,572 (unit and labor). Plaintiff Miro purchased the Product because of representations made by Defendant Hallowell and

communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

52. Soon after installation, and well within the warranty period, in or about September 2008, the Product had issues with proper functionality. Plaintiff Miro had to pay for emergency heating costs and an additional \$500 to attempt to fix the Product. Plaintiff Miro's unit was replaced by Custom Air on or about June 24, 2011, due to a lack of a fix and lack of parts on the market for a proper fix. The replacement unit cost \$4,700.

53. Plaintiff Joseph Roberts purchased one Acadia System for his home which was installed on or about November 2008, for the total cost of approximately \$22,000 (unit and labor). Plaintiff purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

54. Soon after installation, and well within the warranty period, in December 2010, the Product had a failed compressor component. Plaintiff Roberts had to pay over \$1,000 for

service calls. Plaintiff Roberts had to pay \$28,965 for a new unit due to the malfunctioning of the Acacia System, as well as the cost for emergency heating.

55. Plaintiff David Hayes purchased one Acacia System for his home which was installed on or about November 8, 2008, for the total cost of approximately \$19,100 (unit and labor). Plaintiff Hayes purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

56. Soon after installation, and well within the warranty period, in or about November 2008, the Product had issues with a freon leak that continued to get larger until the unit was replaced in February of 2009. In the meantime, Plaintiff Hayes had to pay for emergency heating costs and \$3,000 to attempt to fix the Product and for back up heating. Plaintiff Hayes' second unit has now also failed and there is no fix for it. Plaintiff Hayes is in the process of trying to repair the unit himself but may need to replace it.

57. Plaintiff Richard Fowler purchased one Acacia System for his home which was installed on or about September 18, 2008, for the total cost of approximately \$10,400.00 (unit and labor). Plaintiff purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally

friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

58. Soon after installation, and well within the warranty period, in or about February 2011, the Product had issues with proper functionality. Plaintiff Fowler had to pay for emergency heating costs. Plaintiff Fowler's unit was replaced by Ensor & Sowers HVAC on or about April 14, 2011, due to a lack of a fix and lack of parts on the market for a proper fix. The replacement unit cost \$4,810.

59. Plaintiff Karen DeWolf Ricard purchased two Acadia Systems for her home – a 4-ton and a 3-ton unit, which were installed on or about December 31, 2008, for the total cost of \$38,881.94 (units and labor). Plaintiff Ricard purchased the Products because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

60. Almost immediately after installation, and well within the warranty period, the 4-ton unit began having problems in or about January 2009. The Product had issues with proper functionality. Plaintiff Ricard had to pay \$492.50 in costs to attempt to fix the Product. Plaintiff Ricard's 3-ton unit stopped running well in February 2010, and the sensor was replaced, but in March 2011, the 3-ton unit stopped operating entirely due to a blown compressor and Defendants are unable and unwilling to fix it. The 3-ton unit is still not operating. Plaintiff

Ricard is spending \$9,390 on a new oil furnace that currently is being installed because she cannot take the chance of the remaining unit malfunctioning.

61. Plaintiff David Felber purchased one Acadia System for his home which was installed on or about June 10, 2008, for the total cost of \$7,946.43 (unit and labor). Plaintiff Felber purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

62. Soon after installation, and well within the warranty period, in or about January 2009, the Product had issues with the fan blade breaking. Plaintiff Felber had to pay for emergency heating costs in the amount of \$675. Plaintiff Felber's unit is anticipated to be replaced in the immediate future.

63. Plaintiff Leo Goodman purchased one Acadia System for his home which was installed in or about October 2008, for the total cost of \$14,654 (unit and labor) plus \$750 for an additional 10 year parts and labor warranty. Plaintiff Goodman purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that

it would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

64. Soon after installation, and well within the warranty period, in or about October 2008, the Product had issues with proper functionality. Plaintiff Goodman anticipates replacing the unit in the immediate future.

65. Plaintiff Joseph Goodman purchased one Acadia System for his home which was installed in or about October 2008, for the total cost of \$14,654 (unit and labor) plus \$750 for an additional 10 year parts and labor warranty. Plaintiff Goodman purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that it would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

66. Soon after installation, and well within the warranty period, in or about October 2008, the Product had issues with proper functionality. Plaintiff Joseph Goodman anticipates replacing the unit in the immediate future.

67. Plaintiff Jerome Noble purchased one Acadia System for his home which was installed in or about August 2008, for the total cost of approximately \$12,000 (unit and labor). Plaintiff Noble purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As

part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

68. Soon after installation, and well within the warranty period, in or about August 2010, the Product had issues with proper functionality, specifically the fan. Plaintiff Noble had to pay for emergency heating costs in the amount of approximately \$400 due to the breakdown of the Product. Plaintiff Noble's unit has not yet been replaced, but due to the current issues Plaintiff anticipates that he will need to replace the unit.

69. Plaintiff Douglas Ruitter purchased one Acadia System for his home which was installed on or about October 17, 2008, for the total cost of approximately \$16,250.00 (unit and labor). Plaintiff Ruitter purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

70. Soon after installation, and well within the warranty period, in or about January 2011, the Product had issues with proper functionality and becoming locked-out. Plaintiff Ruitter had to pay for emergency heating costs and the first unit was replaced. Plaintiff Ruitter's unit was replaced by Lynn's Heating & Air at a cost of \$14,695.00, due to a lack of a fix and lack of parts on the market for a proper fix.

71. Plaintiff James Russell purchased one Acadia System for his home which was installed on or about July 18, 2008, for the total cost of \$12,214.44 (unit and labor). Plaintiff Russell purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

72. Soon after installation, and well within the warranty period, in or about December 2008 the Product had issues with proper functionality, namely, it would not defrost properly in the winter and would not keep running in the summer. Plaintiff Russell had to pay for emergency heating costs and approximately \$550 in costs to attempt to fix the Product. Plaintiff Russell's unit has not yet been replaced but he anticipates the need for a replacement in the immediate future.

73. Plaintiff David Silvestri purchased one Acadia System for his home which was installed on or about August 2008, for the total cost of approximately \$13,450 (unit and labor). Plaintiff Silvestri purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year

warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

74. Soon after installation, and well within the warranty period, in or about January 2009, the Product had issues with proper functionality. Plaintiff Silvestri had the unit replaced but the second unit stopped working in December 2010. Plaintiff Silvestri's unit was replaced by Absolute Mechanical due to a lack of fix and replacement parts. The replacement unit cost \$4,100.

75. Plaintiff Elizabeth Snow purchased one Acadia System for her home which was installed on or about November 28, 2008, for the total cost of approximately \$7,500 (unit and labor). Plaintiff Snow purchased the Product because of representations made by Defendant Hallowell and communicated through its own marketing materials and through its exclusive distributor, Defendant F.W. Webb, that the Product was reliable, had low maintenance, would save money in comparison to traditional heating and cooling systems, and was environmentally friendly. As part of the purchase, Defendants represented that they would include a five year warranty for parts, including a five year warranty for the compressor provided by Defendant manufacturer Bristol.

76. Soon after installation, and well within the warranty period, almost immediately the Product had issues with proper functionality. Plaintiff Snow had to pay for emergency heating costs of over \$5,000 per month. Her unit was replaced by Radigan Mechanical, due to a lack of a fix and lack of parts on the market for a proper fix.

77. Other Class Members with failed Acadia Systems often reported expanded start and run caps and welded contactors and potential relay contacts. There were also reports of

blown compressors. There are defects in the Product's contact circuit, and catastrophic failures of compressors and components is the ultimate costly result.

78. Defendant Webb negotiated the sale of the Product with consumers as the only dealer on the upper eastern seaboard. However, when consumers called to complain about compressor failures, they were told that they would have to pay full price for the compressor and that neither them, nor Defendant Bristol who manufactured the compressor, would warrant the failed compressor unless the Product was sold within the past year. Defendant Webb provided no technical support as the dealer.

79. Defendant Bristol took the position that the compressor failures were due to cheap and inferior start and run components, and not due to their compressor.

80. At all relevant times, Defendants knew or recklessly disregarded the fact that the intentional representations about the Product in its sales and marketing communications with purchasers of the product are false and misleading, and thus Defendants have acted willfully and in bad faith.

81. The value of the Product represented in Defendants' advertising is greater than the value of the Product actually received by Plaintiffs. Had Plaintiffs known that the low-maintenance and money-saving claims were false, they would not have purchased the Product.

82. Defendants' false statements and misrepresentations were material. These widespread communications and advertisements were directed at those persons who may purchase the Product. Plaintiffs' and members of the Class' decision to purchase the Product were and are influenced by the advertising campaigns used by Defendants.

83. Plaintiffs and members of the Class were likely misled as to the capacity of the Product that they purchased.

84. Defendants' intentional misrepresentations harmed Plaintiffs and the Class members in that they were deceived into purchasing the Product based on Defendants' false and misleading claims in its advertising. As a result, Plaintiffs and members of the Class have incurred repair bills, frequent loss of use, and the replacement costs of entire units, all within the warranty period that has made this Product more expensive than other systems, not reliable and high maintenance. Despite requests for repairs under warranty, all Defendants have refused to make the repairs under the warranty and place blame elsewhere.

#### V. CLASS ACTION ALLEGATIONS

85. This action is brought pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure and M.G.L. c. 93A, § 9(2).

86. Plaintiffs bring this action on behalf of themselves and as a class defined as follows:

**All persons or entities who purchased the Acadia System combined Home Heating and Cooling Systems (the "Product") who incurred loss of use, repair costs, maintenance costs, or replacement costs of the Product caused by a defect in the Product or by the fact that the Product did not operate as represented.**

87. The Class consists of hundreds or thousands of individuals and entities, making individual joinder impractical. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

88. The claims of the representative Plaintiffs are typical of the claims of the Class because they, like all Class members, have purchased the Product and have been harmed by Defendants' misconduct because they would not have purchased the Product had they known the truth.

89. The factual and legal bases of Defendants' misconduct are common to all Class members and represent a common thread of deception and other misconduct resulting in injury to the representative Plaintiffs and all members of the Class.

90. There is a well-defined community of interest in the questions of law and fact involving and affecting the parties to be represented. Common questions of law and fact exist and such common questions predominate over any question of law or fact which may affect only individual Class members. Such common questions include the following:

- (a) Whether, by engaging in unfair methods of competition and practicing deceptive acts in advertising the Product, Defendants violated the common law of Massachusetts;
- (b) Whether Defendants' engaging in unfair methods of competition and practicing deceptive acts as alleged herein should be enjoined;
- (c) Whether Defendants were unjustly enriched by their improper conduct;
- (d) Whether Defendants negligently or intentionally misrepresented the capabilities of the Product to Plaintiffs and the Class;
- (e) Whether Defendants breached express and implied warranties by failing to provide a product that was or is capable of performing in the manner in which Defendants advertised or described the Product to Plaintiffs and the Class;
- (f) Whether Plaintiffs and the members of the Class have sustained damages and, if so, what is the proper measure of those damages;
- (g) The nature and extent of any additional relief which the Class is entitled to recover under common law;

(h) Whether Defendants violated Massachusetts General Laws c. 93A, § 2 and common law through their common course of deceptive conduct as alleged herein;

(i) Whether by reason of Defendants' violations of M.G.L. c. 93A, Plaintiffs and the Class are entitled to recover actual or statutory damages;

(j) Whether by reason of Defendants' violations of M.G.L. c. 93A, Defendants should be required to refund all sums which Plaintiffs and the Class Members paid for the Product, or whether Defendants should be required to disgorge all profits which they made on account of the Product.

91. Plaintiffs assert claims that are typical of the claims of the entire Class. They will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs have retained counsels who are competent and experienced in class action litigation.

92. Defendants have acted or refused to act on grounds generally applicable to all the members of the Class, thereby making final relief concerning the Class as a whole appropriate.

93. Plaintiffs and the Class have suffered injury and damages as a result of Defendants' wrongful conduct as alleged herein. Absent a representative action, Class members will continue to suffer injury, thereby allowing these alleged violations of law to proceed without remedy, and allowing Defendants to retain the proceeds of their ill-gotten gains.

94. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

**FIRST CAUSE OF ACTION**  
**Deceptive and Unfair Trade Practices**

95. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

96. Plaintiffs and Members of the Class are consumers who purchased the Product, and were injured by being deprived of full use and functionality of the Product, as it was advertised and represented by Defendants.

97. Massachusetts has enacted laws to protect consumers against unfair, deceptive or fraudulent business practices, unfair competition and false advertising, which provides consumers with a private right of action under these statutes. The Massachusetts Consumer Protection Act is codified at M.G.L. c. 93A, §§ 2 and 9.

98. In violation of these statutes, Defendants have affirmatively misrepresented and knowingly concealed, suppressed and failed to disclose material facts with the intent that others rely upon such concealment and deception in connection with marketing and selling the Product.

99. The conduct of Defendants, as set forth above, constitutes unfair, unconscionable, fraudulent and/or deceptive trade practices prohibited under the Massachusetts Consumer Protection Act and the consumer fraud acts of various other states, which are all substantially similar to the Massachusetts Consumer Protection Act.

100. At all times relevant hereto, Plaintiffs and the Class were “persons” within the meaning of M.G.L. c. 93A, § 1(a), and are entitled to relief under the Act in accordance with M.G.L. 93A, §9.

101. At all times relevant hereto, Defendants were engaged in “trade or commerce” as defined by M.G.L. c. 93A, § 1 (b).

102. Plaintiffs and the Class entered into consumer transactions with Defendants by purchasing the Acadia System combined Home Heating and Cooling Systems.

103. As heretofore alleged, during the course of these transactions, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, in the conduct of trade or commerce, in violation of M.G.L. c. 93A, § 2.

104. Starting in or before 2008, Defendants Hallowell and Webb misrepresented to Plaintiffs and the Class that the purchase of their Product would result in substantial cost-savings, would be reliable, and would require little maintenance. Defendants Hallowell and Webb delivered this message in multiple advertising mediums, using a variety of claims intended to persuade consumers that the Product was innovative and had superior technology that was cost-effective, reliable, and low maintenance.

105. Defendants' acts, practices and conduct were willful and knowing violations of M.G.L. c. 93A, § 2, and invaded the rights of the Plaintiffs and the Class to be free from deceptive business practices.

106. As a direct result of Defendants' violations, Plaintiffs and the Class are entitled to judgment under M.G.L. c. 93A (a), awarding such actual damages as they may prove, or statutory damages, tripled, and (b) requiring Defendants to refund all sums Plaintiffs and the Class Members paid to purchase the Product or to disgorge all profits which they made on account of the sale of the Product to Plaintiffs or members of the Class.

107. More than 30 days prior to filing the amended Complaint in this action, Plaintiffs made a written demand for relief to Defendant, F.W. Webb Company, pursuant to M.G.L. c. 93A, § 9(3). As of the time of filing this First Amended Complaint, Defendant has not complied with the written demand for relief.

108. Defendants' refusal to grant relief upon demand was made in bad faith and with knowledge or reason to know that the acts or practices complained of herein violated M.G.L. c. 93A, § 2.

**SECOND CAUSE OF ACTION**  
**Negligent Misrepresentation**

109. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

110. Starting in or before 2008, Defendants Hallowell and Webb misrepresented to Plaintiffs and the Class that the purchase of their Product would result in substantial cost-savings, reliable, and would require little maintenance. Defendants Hallowell and Webb

delivered this message in multiple advertising mediums, using a variety of worded claims intended to persuade consumers that the Product was innovative and superior technology that was cost-effective, reliable, and low maintenance.

111. The cost-saving, reliable and low-maintenance claims by Defendants Hallowell and Webb concerning the product are false and misleading because they misrepresent the nature or qualities of the Acadia System.

112. At the time Defendants Hallowell and Webb made and publicized such claims, Defendants Hallowell and Webb had no reasonable grounds for believing that the representations were true.

113. At the time that these representations were made and publicized, Plaintiffs and the Class were unaware that such Claims were false.

114. Upon information and belief, the cost-effective, reliable, and low maintenance claims were likely to deceive a substantial portion of the Class and Defendants' potential customers and, in fact, have actually deceived or confused a substantial portion of the buying public and the Class. The referenced claims have also influenced or are likely to influence future purchasing decisions of the buying public. Plaintiffs and the Class reasonably acted in reliance upon the truth of the representations made by Defendants Hallowell and Webb regarding the Product.

115. As a direct and proximate result of the Plaintiffs' and the Class' reliance upon the representations of Defendants Hallowell and Webb, as described above, Plaintiffs and the Class have sustained damages.

**THIRD CAUSE OF ACTION**  
**Intentional Misrepresentation**

116. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs

as if fully set forth herein.

117. Staring in or before 2008, Defendants Hallowell and Webb represented to the public, including to Plaintiffs and the Class, that the Product has certain capabilities, including, for example, the cost-effective, reliable, and low maintenance claims.

118. Defendants Hallowell's and Webb's misrepresentations were false and misleading.

119. At the time Defendants Hallowell and Webb made such claims, they knew the representations were false.

120. Defendants Hallowell and Webb made the misrepresentations alleged herein with the intention of inducing and persuading Plaintiffs and the Class to purchase the Product.

121. As a direct and proximate result of Defendants Hallowell's and Webb's misrepresentations, Plaintiffs and the members of the Class were induced to pay for the Product, make repairs and incur replacement costs, in an amount to be determined at trial.

122. Defendants Hallowell and Webb knew that the Product did not have the capabilities, including the money-saving, low maintenance and reliability, claims advertised by Defendants Hallowell and Webb and, with the advantage of this knowledge, intended for its customers and the general public to rely on its representations. Plaintiffs and members of the Class, by purchasing and using the Product, relied on Defendants Hallowell's and Webb's false representations.

123. Plaintiffs and members of the Class were damaged through their purchase and use of the Product.

124. Plaintiffs' and the Class' reliance on Defendant Hallowell's and Webb's advertising and representations of the use and characteristics of the Product were reasonable.

125. Based upon the allegations stated herein, Defendants were and are guilty of malice, oppression, fraud, and Plaintiffs and the Class are thereby entitled to recover exemplary or punitive damages.

**FOURTH CAUSE OF ACTION**  
**Breach of Express Warranty**

126. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

127. Starting in or before 2008, all Defendants, and each of them, represented, in writing and otherwise that the Product and its component parts was an advanced and innovative improvement in heating and cooling system technology. Those promises and assurances became part of the basis of the bargain between Defendants, and each of them, and Plaintiffs and the Class and thereby constituted an express warranty.

128. Defendants then sold the Product to Plaintiffs and members of the Class. By the same token, Plaintiffs and members of the Class purchased Defendants' product, the Acadia System, including its component parts.

129. Defendants, however, and each of them, breached the express warranty in that the cost-saving, reliability, and low maintenance claims were false. As a result of the stated breach, Plaintiffs and the members of the Class did not, in fact, receive goods as warranted by Defendants.

130. As a direct or proximate result of this breach of warranty by Defendants, and each of them, Plaintiffs and the Class, and each of them, have been damaged in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**Breach of Implied Warranty of Fitness of Purpose**

131. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

132. Starting in or before 2008, Plaintiffs and members of the Class sought a heating and cooling system with qualities that Defendants claimed were held by the Product. Plaintiffs and the Class relied on Defendants' skill, expertise, and judgment to furnish suitable goods for the stated purpose. When Defendants sold the Product, directly or indirectly, to Plaintiffs and members of the Class, Plaintiffs and the Class bought these goods from Defendants in reliance on Defendants' good skill and judgment.

133. At the time of advertising and sale, Defendants had reason to know the particular purpose for which the goods were required. Defendants knew that Plaintiffs and members of the Class were relying on Defendants' skill and judgment to select and furnish suitable goods, thereby creating and confirming an implied warranty that the goods were fit for its stated and advertised purpose.

134. Defendants, however, breached the implied warranty. Plaintiffs and members of the Class did not receive suitable goods in the form of the Product. The Product was not fit for the particular purpose for which it was sought, purchased and required in that it did not have the capabilities claimed by Defendants, including, for example, the cost-effective, reliable, and low maintenance claims.

135. As a direct or proximate result of this breach of implied warranty by Defendants, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION**  
**Unjust Enrichment**

136. Plaintiffs repeat and reallege the allegations contained in all preceding paragraphs as if fully set forth herein.

137. By means of its material misrepresentations and misconduct, as set forth above, Defendants, and each of them, induced Plaintiffs and the Class to purchase the Product. As a consequence of such misrepresentations and misconduct, Plaintiffs and the members of the Class purchased a Product that they would not have otherwise purchased or paid more than they otherwise would have paid absent the misrepresentations and misconduct.

138. By virtue of the foregoing, Defendants have been unjustly enriched in an amount yet to be determined with respect to the Class members, to the extent that Defendants have received and kept revenues attained from the sale of the Product and its component parts from the Plaintiffs and the Class that it would not have received absent Defendants' improper conduct.

### **PRAYERS FOR RELIEF**

WHEREFORE, Plaintiffs and the Class request the following relief:

1. Certification of this action as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, and designation of Plaintiffs as the representatives of the Class;
2. An order awarding compensatory damages in favor of Plaintiffs and the other Class Members against Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
3. An order declaring Defendants' practices to be unlawful, unfair, and/or deceptive and requiring Defendants to provide refunds to consumers;
4. A temporary, preliminary or permanent injunction (i) ordering that Defendants make disclosures, through corrective advertising, to alert the public of the true nature concerning the capacity of the Product; and (ii) enjoining Defendants from selling its product until the proper disclosures set forth above are incorporated in its advertising and sales materials;

5. Treble damages, disgorgement and restitution;
6. An order awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
7. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand trial by jury on all issues raised in this complaint which are triable by jury.

DATED: September 27, 2011

By their Attorneys,

---

Daniel A. Notaro, BBO #668872  
Philbin & O'Neil, LLC  
43 High Street  
Clinton, MA 01510  
Telephone: (978) 368-8356