

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

6 *Attorneys for the Plaintiff*  
7 *(Additional Counsel Listed Below)*

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 CHARLES CHOW, JOHN ROBINSON,  
RANDY DUPREE, RAY BURKHEAD,  
12 LINDA PIERSON, and, GORDON  
WILLIAMSON, individually, and on  
13 behalf of themselves and all others  
similarly situated,

14 Plaintiffs,

15 v.

16 NORCOLD, INC., a Delaware  
Corporation, THETFORD  
17 CORPORATION, a Delaware  
Corporation, THE DYSON-KISSNER-  
18 MORAN CORPORATION, a Delaware  
Corporation, and DOES 1 to 50, inclusive.  
19

20 Defendants.

Case No.: 2:14-cv-06759-JLS-RNB

**FIRST AMENDED  
CLASS ACTION COMPLAINT**

(Jury Trial Demanded)

1 Plaintiffs Charles Chow, John Robinson, Randy Dupree, Ray Burkhead, Linda  
2 Pierson and Gordon Williamson (collectively referred to hereinafter as “Plaintiffs”)  
3 bring this action, by and through their undersigned counsel, on behalf of themselves  
4 and all others similarly situated, based on information and belief and the  
5 investigation of counsel, except for information based on personal knowledge,  
6 hereby alleges as follows:

7 **I. NATURE OF ACTION**

8 1. This class action lawsuit is brought by the above-named Plaintiffs on  
9 behalf of themselves and all other similarly situated persons in the nationwide Class  
10 defined below against Defendants Norcold, Inc., Thetford Corporation and The  
11 Dyson-Kissner-Moran Corporation (“DKM”) (collectively referred to herein as  
12 “Defendants”). The allegations of this Complaint are based on the personal  
13 knowledge of each of the Plaintiffs as to themselves, and on information and belief  
14 as to all other matters. This case seeks injunctive and equitable relief, and recovery  
15 of economic losses, that are common to the Plaintiffs and all members of the Class  
16 described below relating to the replacement of Defendants’ defective gas absorption  
17 refrigerators. The Counts herein listed below do not seek recovery for personal  
18 injury, wrongful death or to damages to property other than to the subject gas  
19 absorption refrigerator on a class-wide basis.

20 2. Through this class action Plaintiffs, on behalf of the Class, challenge  
21 the unlawful, unfair, and fraudulent business practices of Defendants and each of  
22 them, in connection with their designing, manufacturing, assembling, promoting,  
23 marketing, supplying, selling, recalling, retrofitting, and otherwise placing into the  
24 stream of commerce three models of gas absorption refrigerators for use in  
25 recreational vehicles and boats (collectively referred to herein as “recreational  
26 vehicles”), all of which share common defects, and concealing and failing to  
27 disclose those material facts.

1           3.       Since at least 1997, Defendants have designed, manufactured,  
2 assembled, sold and otherwise placed into the stream of commerce three (3) models  
3 of gas absorption refrigerators for installation and use in recreational vehicles, all of  
4 which share common design and manufacturing defects that create a substantial risk  
5 of fire when the refrigerators are used as designed and for their intended purpose.  
6 Defendants' gas absorption refrigerators, at issue in this case, come in three sizes:  
7 six cubic feet (the "N6" Series), eight cubic feet (the "N8" Series), and twelve cubic  
8 feet (the "1200" Series). These gas absorption refrigerators are believed to have  
9 caused and/or contributed to at least 2,000 fires since 1999, resulting in significant in  
10 property damage claims, personal injuries, and at least one death. Defendants, and  
11 each of them, have actual knowledge of the fire claim history of their gas absorption  
12 refrigerators and, since 1999, have kept track of each fire involving Defendants'  
13 products through a series of databases, including a non-public Incident Log that  
14 Defendants maintain. Upon information and belief, as of the date of this Complaint,  
15 Defendants are receiving new fire claims involving their gas absorption refrigerators.  
16 The inherent defects and frequency of fires, and Defendants' suppression of facts  
17 pertaining thereto, are not limited to any single state, but rather occur in and  
18 negatively affect class members nationwide, including those where each named  
19 Plaintiff resides.

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

26           5.       Rather than eliminate the design and manufacturing defects contained  
27 in its gas absorption refrigerators – or provide adequate warning of potential safety  
28 risks to users of the products – Defendants instead sought to conceal and minimize

1 the dangers inherent in the refrigerators' design and operation through a series of  
2 limited manufacturer-initiated product safety recalls through the National Highway  
3 Traffic Safety Administration (NHTSA). The limited recalls began in 2000, and  
4 continued throughout the Class Period. In each product safety recall, Defendants  
5 represented that there was a single failure modality in a limited portion of their  
6 product population and that the retrofit associated with the recalls would fix that  
7 defect, rendering the refrigerators safe to use. In fact, Defendants' gas absorption  
8 refrigerators suffered from a number of different failure modalities associated with  
9 defective design and manufacture of the products, the defects extended throughout  
10 and were common to all of the product lines, and none of the defects or failure  
11 modalities were ever adequately disclosed to NHTSA or users of the product, nor  
12 remedied by the retrofit campaigns initiated by Defendants. Rather, these material  
13 facts were concealed and continue to be concealed. Further, the devices Defendants  
14 retrofitted to existing gas absorption refrigerators were not only ineffective to  
15 remedy the propensity of the refrigerators to cause fires, the devices themselves were  
16 designed to render the refrigerators inoperable and unrepairable, requiring users to  
17 purchase new refrigerators or, if the user was still under warranty, obtain a similar  
18 defective refrigerator from Defendants. Defendants' ongoing concealment and  
19 omission of such facts, when they had an ongoing duty to disclose such facts was  
20 misleading and deceptive. It was reasonably foreseeable to Defendants that their  
21 conduct and failure to act and warn the Class, in light of the information they  
22 actually or should have possessed, as described herein, would cause Plaintiffs and  
23 members of the Class damage, injury and loss.

24 6. Defendants' actions and concealment of material facts injure and harm  
25 consumers in the Class by inducing them to unknowingly purchase and/or retain a  
26 product that contains inherent dangers and design and manufacturing defects. These  
27 products continue to carry an inherent risk of causing devastating fires, of which  
28 Defendants are aware. Given their superior knowledge of the product defects and

1 inherent risk of the danger involved in their continued use, Defendants had an  
2 ongoing duty to disclose such facts to members of the Class. Defendants provided  
3 no notice of the inherent and potential risks of use of their product to consumers at  
4 the time of sale, but rather concealed those risks through omissions of material fact  
5 and through affirmative representations in marketing, sales and operational material  
6 that represent the products as safe and defect-free. By and through such conduct,  
7 Defendants breached the duties of care they owed to the Class, including the duty to  
8 warn them of dangerous defects in Defendants' refrigerators. Defendants post-sale  
9 actions are deceptive and misleading in that they conceal and/or minimize the  
10 dangers and risks inherent in the use of Defendants' products from both consumers  
11 and federal regulators, and lead both consumers and federal regulators to believe that  
12 there is a single design and manufacturing defect in some of their refrigerators that is  
13 corrected through product safety recalls, when in reality there are several design and  
14 manufacturing defects in all of their products, none of which are corrected through  
15 the product safety recalls Defendants have conducted. Notwithstanding Defendants'  
16 recall and retrofit campaigns, the risk of fire remains. In fact, Defendants' recent  
17 safety recalls caused further harm to consumers by retrofitting the defective  
18 refrigerators with a device that masks the defects by disabling the electronic controls  
19 within the refrigerator before the refrigerator has a chance to ignite a fire. The harm  
20 caused by this is felt when the refrigerator malfunctions and fails, and the retrofit  
21 device permanently disables the electronic controls. If the refrigerator is no longer  
22 under warranty, the consumer must replace the refrigerator at his/her own cost. If  
23 the refrigerator is under warranty, Defendants still shift some or all of the cost of  
24 repair or replacement onto consumers by concealing and failing to disclose material  
25 facts to consumers regarding the terms of the warranty programs offered by  
26 Defendants. In either event, the consumer unknowingly ends up with the same  
27 defective product that failed in the first place, *i.e.* one of Defendants' refrigerators  
28 with, in material respects, the same defective design, retrofit and susceptibility to

1 dangerous fires. This harm to consumers is the direct result of Defendants'  
2 intentional act of placing defective products into the stream of commerce, and  
3 Defendants' intentional decision to retrofit the product with devices that do not  
4 remedy any of the design and manufacturing defects but instead disable and/or  
5 destroy the product and impose the entire cost onto the consumer.

6 7. In short, Defendants' N6, N8 and 1200 Series gas absorption  
7 refrigerators all continue to share, in material respects, common defects which are  
8 dangerous to Class members who own them. All Defendants' gas absorption  
9 refrigerators (even those that have been replaced with new or retrofitted Norcold gas  
10 absorption refrigerators or cooling units) continue to suffer from the same common  
11 latent defects in the design of the refrigerator cooling units' (1) boiler tubing; and,  
12 (2) safety fuse plug, which renders the units susceptible to danger of overheating,  
13 fracture, leak of flammable gases, ignition and in turn, fire. Despite this,  
14 Defendants, and each of them, have concealed, withheld and omitted disclosure of  
15 common material facts from the Class about the continuing dangerous nature of their  
16 gas absorption refrigerators. Even if an original unit has been replaced or received  
17 Defendants' retrofit when recalled, Defendants' gas absorption refrigerators continue  
18 to suffer from these common latent defects and risks of fire. Despite any recall or  
19 retrofit, the gas absorption refrigerators owned and possessed by Class members  
20 continue to present a dangerous fire risk to all Class members as evidenced by the  
21 Plaintiffs and Class members who have experienced fires in units which have  
22 undergone Defendants' retrofits. As described within, Defendants' recall retrofits do  
23 not replace or remedy the defects in the refrigerator cooling unit which cause and/or  
24 enhance fires. Fires continue to occur in units that have been retrofitted. And even  
25 if the retrofit is successful in cutting off electric power to the refrigerator before the  
26 latent defects in the cooling unit cause a fire, the result is a permanently disabled  
27 unit that cannot be repaired and must be replaced, leading to financial losses for all  
28 Class members. Thus, to date, the true nature of these risks of danger, fire and

1 financial loss have not been fully disclosed by Defendants. These omissions are  
2 common to the Class and have caused common injury to the Class. Had the truth  
3 been fully disclosed, as Defendants had a duty to do at all times, reasonable  
4 consumers, like Plaintiffs, would have acted differently and taken steps to protect  
5 themselves, as described further below. All Class members possess a recreational  
6 vehicle that, once the truth is disclosed, is of diminished value due to the presence of  
7 one of Defendants' N6, N8 or 1200 Series gas absorption refrigerators, as opposed  
8 to a unit without the latent defects and risks of fire. The proper remedy is not a  
9 replacement of a Norcold gas absorption refrigerator or a retrofitted Norcold gas  
10 absorption refrigerator – both of which still contain the same latent defects, which  
11 create the risk of fire. Rather, the proper remedy is the provision of a gas absorption  
12 refrigerator that does not contain the latent defects in the cooling unit described  
13 below (or the cash equivalent), and is therefore safe to use for its intended purpose.  
14 This lawsuit seeks such remedies and confers a public benefit.

15 8. Plaintiffs bring this lawsuit against Defendants individually and on  
16 behalf of the Class of all other similarly situated purchasers and owners of  
17 Defendants' gas absorption refrigerators within the Class Period. Plaintiffs allege  
18 nationwide representative claims for unfair competition, unfair and deceptive acts  
19 and practices, breach of express and/implied warranty, and unjust enrichment under  
20 the laws where Defendants reside and committed the challenged acts from,  
21 emanating and harming class members nationwide, as well as under the statutory  
22 and common laws of the states in which the named Plaintiffs reside.

## 23 II. JURISDICTION AND VENUE

24 9. This Court has personal jurisdiction over Defendants because a  
25 substantial portion of the wrongdoing alleged by Plaintiffs occurred in the State of  
26 California and this District, Defendants have sufficient minimum contacts with  
27 and/or otherwise intentionally avails itself of the markets in the State of California  
28 and this District, and Defendants have sufficient contracts with the State of



1 California and this District such that it is fair and just for Defendants to adjudicate  
2 this dispute here.

3 10. Plaintiffs' claims asserted herein are related to the claims asserted by  
4 the Plaintiffs in *Etter, et al. v. Thetford Corporation, et al.*, No. 13-cv-00081 (C.D.  
5 Cal.), now pending before this Court. The class definitions and the specific causes  
6 of actions plead in the two cases are distinct, although substantially similar. Because  
7 Plaintiffs' claims alleged herein have questions of law or fact in common with the  
8 Plaintiffs' claims in *Etter*, this matter can be consolidated and/or otherwise  
9 coordinated and tried jointly with *Etter*.

10 11. Venue is proper in this District because Plaintiff CHOW is a resident of  
11 this District and a substantial part of the events, transactions, and/or omissions  
12 giving rise to the claims asserted herein occurred in this District; and, a substantial  
13 portion of Defendants' alleged wrongdoing is believed to have occurred in this  
14 District.

15 12. Venue is also proper in this Court because, upon information and belief,  
16 more Class members reside in California than any other state.

### 17 **III. PARTIES**

#### 18 **A. Plaintiffs**

19 13. Plaintiff Charles Chow ("CHOW") is a consumer residing in California.  
20 CHOW purchased a 2006 MONOCO motor home equipped with a Norcold 1200  
21 Series gas absorption refrigerator as original equipment in California during the  
22 class period. As with all class members, the Norcold refrigerator in CHOW's RV  
23 was designed, manufactured, sold, distributed, constructed, manufactured and/or  
24 assembled and put into the stream of commerce by Defendants, and each of them.  
25 CHOW owned the motor home and Norcold refrigerator during the Class Period and  
26 is a member of the Class. Despite any recall or retrofit, the gas absorption  
27 refrigerator continues to present a dangerous fire risk to CHOW as evidenced by  
28 other Plaintiffs and Class members who have experienced fires in their units which



1 have undergone the retrofits. Defendants failed to disclose to CHOW the same facts  
2 they possessed, described below, regarding the gas absorption refrigerator's inherent  
3 defects, risks and safety hazards that they exclusively possessed but withheld,  
4 concealed and failed to disclose to CHOW and the other members of the Class. The  
5 facts concealed by Defendants were material. Defendants had an ongoing duty,  
6 throughout the Class Period, to disclose these facts to CHOW and the Class.  
7 Reasonable consumers, like CHOW and the Class, would want to know about the  
8 Norcold gas absorption refrigerator's inherent defects, ongoing risks and safety  
9 hazards. Like other reasonable consumers, had CHOW been provided all material  
10 facts regarding the gas absorption refrigerator's inherent defects, risks and safety  
11 hazards that Defendants exclusively possessed but omitted, withheld and concealed  
12 from CHOW and the Class, CHOW would have been aware of the safety concerns  
13 present and acted differently, including but not limited to not purchasing (or  
14 retaining) a product equipped with a Norcold refrigerator containing the latent  
15 defects described within. The Defendants' wrongful conduct, as described herein,  
16 has caused and will continue to cause Plaintiffs and all Class Members injury in fact  
17 that is common to Plaintiffs and all Class Members. Among other things, as a result  
18 of Defendants' conduct described herein, Plaintiffs and all Class Members lost the  
19 benefit of their bargain as they unknowingly paid for a defective Norcold  
20 refrigerator, the Norcold refrigerator has diminished in value, the Norcold  
21 refrigerators have suffered a loss of usefulness, and Plaintiffs and all Class Members  
22 are (or have been) exposed to further costs and expenses to dispose of and/or replace  
23 said refrigerators, in that the refrigerators' cooling units contain  
24 chemicals/substances that are corrosive (ammonia), explosive (hydrogen) and a  
25 known carcinogen (sodium chromate). The amount of said common injury and  
26 damage will be proven at trial according to proof.

27 14. Plaintiff John Robinson ("ROBINSON") is a consumer who purchased  
28 a motor home equipped with a Norcold 1200 Series gas absorption refrigerator

1 and/or cooling unit as original equipment in Texas. After purchasing the motor  
2 home, in approximately 2009, ROBINSON replaced the cooling unit in his Norcold  
3 1200 series refrigerator with a new Norcold cooling unit. Thereafter, in  
4 approximately 2013, he replaced the existing Norcold refrigerator and cooling unit  
5 with a residential refrigerator at a cost of approximately \$1500. As with all class  
6 members, the Norcold refrigerator in ROBINSON's RV was designed,  
7 manufactured, sold, distributed, constructed, manufactured and/or assembled and put  
8 into the stream of commerce by Defendants, and each of them. ROBINSON owned  
9 the motor home and Norcold refrigerator during the Class Period and is a member of  
10 the Class. Despite any recall or retrofit, the gas absorption refrigerator continues to  
11 present a dangerous fire risk to ROBINSON as evidenced by other Plaintiffs and  
12 Class members who have experienced fires in their units which have undergone the  
13 retrofits. Defendants failed to disclose to ROBINSON the same facts they  
14 possessed, described below, regarding the gas absorption refrigerator's inherent  
15 defects, risks and safety hazards that they exclusively possessed but withheld,  
16 concealed and failed to disclose to ROBINSON and the other members of the Class.  
17 The facts concealed by Defendants were material. Defendants had an ongoing duty,  
18 throughout the Class Period, to disclose these facts to ROBINSON and the Class.  
19 Reasonable consumers, like ROBINSON and the Class, would want to know about  
20 the Norcold gas absorption refrigerator's inherent defects, ongoing risks and safety  
21 hazards. Like other reasonable consumers, had ROBINSON been provided all  
22 material facts regarding the gas absorption refrigerator's inherent defects, risks and  
23 safety hazards that Defendants exclusively possessed but omitted, withheld and  
24 concealed from ROBINSON and the Class, ROBINSON would have been aware of  
25 the safety concerns present and acted differently, including but not limited to not  
26 purchasing (or retaining) a product equipped with a Norcold refrigerator containing  
27 the latent defects described within. The Defendants' wrongful conduct, as described  
28 herein, has caused and will continue to cause Plaintiffs and all Class Members injury

1 in fact that is common to Plaintiffs and all Class Members. Among other things, as  
2 a result of Defendants' conduct described herein, Plaintiffs and all Class Members  
3 lost the benefit of their bargain as they unknowingly paid for a defective Norcold  
4 refrigerator, the Norcold refrigerator has diminished in value, the Norcold  
5 refrigerators have suffered a loss of usefulness, and Plaintiffs and all Class Members  
6 are (or have been) exposed to further costs and expenses to dispose of and/or replace  
7 said refrigerators, in that the refrigerators' cooling units contain  
8 chemicals/substances that are corrosive (ammonia), explosive (hydrogen) and a  
9 known carcinogen (sodium chromate). The amount of said common injury and  
10 damage will be proven at trial according to proof.

11 15. Plaintiff Randy Dupree ("DUPREE") is a consumer residing in Florida.  
12 DUPREE purchased a 1999 BlueBird Wanderlodge motor home equipped with a  
13 Norcold 1200 Series gas absorption refrigerator as original equipment while residing  
14 in Florida during the Class Period. The serial number for DUPREE'S Cooling Unit  
15 is in the post-January 2002 cooling unit range and within the Class. As with all class  
16 members, the Norcold refrigerator in DUPREE's RV was designed, manufactured,  
17 sold, distributed, constructed, manufactured and/or assembled and put into the  
18 stream of commerce by Defendants, and each of them. DUPREE owned the motor  
19 home and Norcold refrigerator during the Class Period and is a member of the Class.  
20 Despite any recall or retrofit, the gas absorption refrigerator continues to present a  
21 dangerous fire risk to DUPREE as evidenced by other Plaintiffs and Class members  
22 who have experienced fires in their units which have undergone the retrofits.  
23 Defendants failed to disclose to DUPREE the same facts they possessed, described  
24 below, regarding the gas absorption refrigerator's inherent defects, risks and safety  
25 hazards that they exclusively possessed but withheld, concealed and failed to  
26 disclose to DUPREE and the other members of the Class. The facts concealed by  
27 Defendants were material. Defendants had an ongoing duty, throughout the Class  
28 Period, to disclose these facts to DUPREE and the Class. Reasonable consumers,

1 like DUPREE and the Class, would want to know about the Norcold gas absorption  
2 refrigerator's inherent defects, ongoing risks and safety hazards. Like other  
3 reasonable consumers, had DUPREE been provided all material facts regarding the  
4 gas absorption refrigerator's inherent defects, risks and safety hazards that  
5 Defendants exclusively possessed but omitted, withheld and concealed from  
6 DUPREE and the Class, DUPREE would have been aware of the safety concerns  
7 present and acted differently, including but not limited to not purchasing (or  
8 retaining) a product equipped with a Norcold refrigerator containing the latent  
9 defects described within. The Defendants' wrongful conduct, as described herein,  
10 has caused and will continue to cause Plaintiffs and all Class Members injury in fact  
11 that is common to Plaintiffs and all Class Members. Among other things, as a result  
12 of Defendants' conduct described herein, Plaintiffs and all Class Members lost the  
13 benefit of their bargain as they unknowingly paid for a defective Norcold  
14 refrigerator, the Norcold refrigerator has diminished in value, the Norcold  
15 refrigerators have suffered a loss of usefulness, and Plaintiffs and all Class Members  
16 are (or have been) exposed to further costs and expenses to dispose of and/or replace  
17 said refrigerators, in that the refrigerators' cooling units contain  
18 chemicals/substances that are corrosive (ammonia), explosive (hydrogen) and a  
19 known carcinogen (sodium chromate). The amount of said common injury and  
20 damage will be proven at trial according to proof.

21 16. Plaintiff Ray Burkhead ("BURKHEAD") is a consumer residing in  
22 California. In 2004, BURKHEAD purchased a 1997 Thor Pinnacle motor home  
23 equipped with a Norcold N8 Series gas absorption refrigerator as original equipment  
24 while residing in California during the Class Period. In February 2012, the  
25 compressor failed on the original refrigerator, and BURKHEAD replaced it with a  
26 Norcold N8 Series gas absorption refrigerator. As with all class members, the  
27 Norcold refrigerator in BURKHEAD's RV was designed, manufactured, sold,  
28 distributed, constructed, manufactured and/or assembled and put into the stream of

1 commerce by Defendants, and each of them. BURKHEAD owned the motor home  
2 and Norcold refrigerator during the Class Period and is a member of the Class.  
3 Despite any recall or retrofit, the gas absorption refrigerator continues to present a  
4 dangerous fire risk to BURKHEAD as evidenced by other Plaintiffs and Class  
5 members who have experienced fires in their units which have undergone the  
6 retrofits. Defendants failed to disclose to BURKHEAD the same facts they  
7 possessed, described below, regarding the gas absorption refrigerator's inherent  
8 defects, risks and safety hazards that they exclusively possessed but withheld,  
9 concealed and failed to disclose to BURKHEAD and the other members of the  
10 Class. The facts concealed by Defendants were material. Defendants had an  
11 ongoing duty, throughout the Class Period, to disclose these facts to BURKHEAD  
12 and the Class. Reasonable consumers, like BURKHEAD and the Class, would want  
13 to know about the Norcold gas absorption refrigerator's inherent defects, ongoing  
14 risks and safety hazards. Like other reasonable consumers, had BURKHEAD been  
15 provided all material facts regarding the gas absorption refrigerator's inherent  
16 defects, risks and safety hazards that Defendants exclusively possessed but omitted,  
17 withheld and concealed from BURKHEAD and the Class, BURKHEAD would have  
18 been aware of the safety concerns present and acted differently, including but not  
19 limited to not purchasing (or retaining) a product equipped with a Norcold  
20 refrigerator containing the latent defects described within. The Defendants' wrongful  
21 conduct, as described herein, has caused and will continue to cause Plaintiffs and all  
22 Class Members injury in fact that is common to Plaintiffs and all Class Members.  
23 Among other things, as a result of Defendants' conduct described herein, Plaintiffs  
24 and all Class Members lost the benefit of their bargain as they unknowingly paid for  
25 a defective Norcold refrigerator, the Norcold refrigerator has diminished in value,  
26 the Norcold refrigerators have suffered a loss of usefulness, and Plaintiffs and all  
27 Class Members are (or have been) exposed to further costs and expenses to dispose  
28 of and/or replace said refrigerators, in that the refrigerators' cooling units contain

1 chemicals/substances that are corrosive (ammonia), explosive (hydrogen) and a  
2 known carcinogen (sodium chromate). The amount of said common injury and  
3 damage will be proven at trial according to proof.

4 17. Plaintiff Linda Pierson (“PIERSON”) is a consumer residing in  
5 Anaheim, California. In 2013, PIERSON purchased a Jayco HT 5<sup>th</sup> Wheel motor  
6 home equipped with a Norcold N6 Series gas absorption refrigerator as original  
7 equipment while residing in California during the Class Period. As with all class  
8 members, the Norcold refrigerator in PIERSON’s RV was designed, manufactured,  
9 sold, distributed, constructed, manufactured and/or assembled and put into the  
10 stream of commerce by Defendants, and each of them. PIERSON owned the motor  
11 home and Norcold refrigerator during the Class Period and is a member of the Class.  
12 Despite any recall or retrofit, the gas absorption refrigerator continues to present a  
13 dangerous fire risk to PIERSON as evidenced by other Plaintiffs and Class members  
14 who have experienced fires in their units which have undergone the retrofits.  
15 Defendants failed to disclose to PIERSON the same facts they possessed, described  
16 below, regarding the gas absorption refrigerator’s inherent defects, risks and safety  
17 hazards that they exclusively possessed but withheld, concealed and failed to  
18 disclose to PIERSON and the other members of the Class. The facts concealed by  
19 Defendants were material. Defendants had an ongoing duty, throughout the Class  
20 Period, to disclose these facts to PIERSON and the Class. Reasonable consumers,  
21 like PIERSON and the Class, would want to know about the Norcold gas absorption  
22 refrigerator’s inherent defects, ongoing risks and safety hazards. Like other  
23 reasonable consumers, had PIERSON been provided all material facts regarding the  
24 gas absorption refrigerator’s inherent defects, risks and safety hazards that  
25 Defendants exclusively possessed but omitted, withheld and concealed from  
26 PIERSON and the Class, PIERSON would have been aware of the safety concerns  
27 present and acted differently, including but not limited to not purchasing (or  
28 retaining) a product equipped with a Norcold refrigerator containing the latent



1 defects described within. The Defendants' wrongful conduct, as described herein,  
2 has caused and will continue to cause Plaintiffs and all Class Members injury in fact  
3 that is common to Plaintiffs and all Class Members. Among other things, as a result  
4 of Defendants' conduct described herein, Plaintiffs and all Class Members lost the  
5 benefit of their bargain as they unknowingly paid for a defective Norcold  
6 refrigerator, the Norcold refrigerator has diminished in value, the Norcold  
7 refrigerators have suffered a loss of usefulness, and Plaintiffs and all Class Members  
8 are (or have been) exposed to further costs and expenses to dispose of and/or replace  
9 said refrigerators, in that the refrigerators' cooling units contain  
10 chemicals/substances that are corrosive (ammonia), explosive (hydrogen) and a  
11 known carcinogen (sodium chromate). The amount of said common injury and  
12 damage will be proven at trial according to proof.

13 18. Plaintiff Gordon Williamson ("WILLIAMSON") is a consumer  
14 residing in California. WILLIAMSON purchased a 1992 Rexhall motor home  
15 equipped with a Norcold N6 Series gas absorption refrigerator as original equipment  
16 while residing in California during the Class Period. In 2012, the original  
17 refrigerator failed, and WILLIAMSON replaced it with another Norcold N6 Series  
18 gas absorption refrigerator, manufactured in 2012. WILLIAMSON purchased the  
19 2012 N6 refrigerator at his own expense. As with all Class members, the Norcold  
20 refrigerator in WILLIAMSON's RV was designed, manufactured, sold, distributed,  
21 constructed, manufactured and/or assembled and put into the stream of commerce by  
22 Defendants, and each of them. WILLIAMSON owned the motor home and Norcold  
23 refrigerator during the Class Period and is a member of the Class. Despite any recall  
24 or retrofit, the gas absorption refrigerator continues to present a dangerous fire risk  
25 to WILLIAMSON as evidenced by other Plaintiffs and Class members who have  
26 experienced fires in their units which have undergone the retrofits. Defendants  
27 failed to disclose to WILLIAMSON the same facts they possessed, described below,  
28 regarding the gas absorption refrigerator's inherent defects, risks and safety hazards



1 that they exclusively possessed but withheld, concealed and failed to disclose to  
2 WILLIAMSON and the other members of the Class. The facts concealed by  
3 Defendants were material. Defendants had an ongoing duty, throughout the Class  
4 Period, to disclose these facts to BURKHEAD and the Class. Reasonable  
5 consumers, like WILLIAMSON and the Class, would want to know about the  
6 Norcold gas absorption refrigerator's inherent defects, ongoing risks and safety  
7 hazards. Like other reasonable consumers, had WILLIAMSON been provided all  
8 material facts regarding the gas absorption refrigerator's inherent defects, risks and  
9 safety hazards that Defendants exclusively possessed but omitted, withheld and  
10 concealed from WILLIAMSON and the Class, WILLIAMSON would have been  
11 aware of the safety concerns present and acted differently, including but not limited  
12 to not purchasing (or retaining) a product equipped with a Norcold refrigerator  
13 containing the latent defects described within. The Defendants' wrongful conduct, as  
14 described herein, has caused and will continue to cause Plaintiffs and all Class  
15 Members injury in fact that is common to Plaintiffs and all Class Members. Among  
16 other things, as a result of Defendants' conduct described herein, Plaintiffs and all  
17 Class Members lost the benefit of their bargain as they unknowingly paid for a  
18 defective Norcold refrigerator, the Norcold refrigerator has diminished in value, the  
19 Norcold refrigerators have suffered a loss of usefulness, and Plaintiffs and all Class  
20 Members are (or have been) exposed to further costs and expenses to dispose of  
21 and/or replace said refrigerators, in that the refrigerators' cooling units contain  
22 chemicals/substances that are corrosive (ammonia), explosive (hydrogen) and a  
23 known carcinogen (sodium chromate). The amount of said common injury and  
24 damage will be proven at trial according to proof.

25 19. Each above-named Plaintiffs, like the members of the Class and each  
26 subclass, personally have standing to assert the claims alleged herein as each  
27 Plaintiff has been injured, damaged, suffered cognizable loss and incurred loss of  
28 money by reason of the conduct of Defendants described further herein. At relevant

1 times within the Class Period, each Plaintiff owned a RV with a defective Norcold  
2 gas absorption refrigerator where the risk and possibility of fire has either occurred,  
3 and/or remains actual or imminent. In order to eliminate the serious safety risks  
4 involved with the continued use of Defendants' defective products, each Plaintiff has  
5 or will be forced to incur costs to replace Defendants' defective refrigerators with  
6 refrigerators that are not defective, and do not pose a safety risk when used for their  
7 intended purpose. Those costs include, but are not limited to, parts and labor to  
8 remove, replace and dispose of Defendants' refrigerators. These costs are common  
9 to all Plaintiffs and members of each Subclass, and constitute economic losses and  
10 damages directly and proximately caused by the Defendants' wrongful conduct, as  
11 set forth herein. Regardless of a manifested defect, each Plaintiff has been injured,  
12 *inter alia*, because their injuries consist of economic losses which include the  
13 diminished value of their RV which results once the full truth regarding the ongoing  
14 Norcold defective gas absorption refrigerators is made public. The information  
15 currently in the marketplace regarding the defective Norcold gas absorption  
16 refrigerators has caused the value of the RV's containing them to partially drop and  
17 once the full extent and complete truth about the defective Norcold gas absorption  
18 refrigerators and the continuing risk of fire despite recalls and retrofits is made  
19 public the value of any RV containing a Norcold gas absorption refrigerator will  
20 drop even more, causing further injury to Plaintiffs and the Class. Plaintiffs, *inter*  
21 *alia*, seek recovery of the difference between the value of the RV as delivered with  
22 the defective Norcold gas absorption refrigerator, and the value those RV's would  
23 have had had it been delivered as warranted and not in a defective state. Plaintiffs  
24 suffered economic loss and injury-in-fact because the Norcold gas absorption  
25 refrigerators they acquired were defective at the moment of purchase, and at all  
26 times continuing thereafter, due to Defendants' concealment of material facts.  
27 Plaintiffs contracted for completely safe products, but did not receive such products  
28 but instead, received dangerous products highly susceptible to the risk of fire within

1 the products' useful and anticipated life which are, in turn, worth less. As a result  
2 of the foregoing, Plaintiffs and all class members lost the benefit of their bargain.

3 20. Plaintiffs and/or class members have provided any requisite pre-filing  
4 notices of claims and all waiting periods to the extent applicable have lapsed.  
5 Alternatively, such requirements have been waived by Defendants. All claims,  
6 therefore are properly asserted at this time.

7 **B. Defendants**

8 21. Norcold, Inc. ("Norcold") at points in time relevant to this case was a  
9 corporation organized and existing under the laws of the state of Delaware, with its  
10 headquarters and principal place of business at 1 Century Drive, Gettysburg, OH  
11 45328. On or about 1997, all of Norcold's assets and stock were purchased by  
12 Thetford Corporation and Dyson-Kissner-Moran Corporation ("DKM"). Norcold is  
13 authorized to transact business and is doing business in California and other states  
14 where the named Plaintiffs identified above reside.

15 22. Thetford Corporation ("Thetford") is, and at all times mentioned herein  
16 was, a corporation organized and existing under the laws of the state of Delaware,  
17 with its headquarters and principal place of business at 7101 Jackson Road, Ann  
18 Arbor, MI 48103. Plaintiffs are informed and believe and thereon allege that, at least  
19 since 1996, all of the assets and stock of Thetford are owned by DKM. Thetford is  
20 authorized to transact business and is doing business in California and other states  
21 where the named Plaintiffs identified above reside.

22 23. DKM is, and at all times mentioned herein was, a corporation organized  
23 and existing under the laws of the state of Delaware, with its headquarters and  
24 principle place of business at 565 Fifth Avenue, Fourth Floor, New York, NY  
25 10017. DKM is authorized to transact business and is doing business in California  
26 and other states where the named Plaintiffs identified above reside.

27 24. Plaintiffs are informed and believe and thereon allege that in or about  
28 1997, Defendants DKM and Thetford purchased the assets of Defendant Norcold,

1 and Norcold then became a division of Thetford. Thereafter, Norcold operated as a  
2 division or wholly owned subsidiary of Thetford, and Norcold and Thetford operated  
3 as divisions or wholly owned subsidiaries of DKM. All Defendants are alter-egos of  
4 each other, fail to maintain separate identities, and any corporate veils should be  
5 pierced. Norcold is the alter ego of DKM and Thetford as they control and direct  
6 Norcold's activities. Norcold is an instrument for the personal advantage of DKM  
7 and Thetford. There is such a unity of interest and ownership between the Norcold,  
8 Thetford and DKM that the separate personalities of Norcold, on one hand, and  
9 DKM and Thetford on the other, do not in reality exist. DKM and Thetford control  
10 Norcold to such a degree as to render Norcold the mere instrumentality of both  
11 DKM and Thetford. There would be an inequitable result if the acts in question are  
12 treated as those of the Norcold alone.

13 25. DKM's website confirms that DKM is not merely a passive investor or  
14 shareholder in Norcold or Thetford, but is actively involved in directing those  
15 companies operations. <http://www.dkmcorp.com/about.html> ("For more than 50  
16 years, the DKM formula has included active long-term stewardship of its  
17 businesses"); <http://www.dkmcorp.com/about.html>")

18 26. Since at least 1997, Thetford and Norcold have operated and have been  
19 controlled by DKM as part of DKM's "Recreational Vehicle Group." As part of the  
20 organizational structure established by DKM, Norcold operates and is controlled by  
21 Thetford through officers and corporate management that is joint to both entities.  
22 Thetford and Norcold officers report directly to DKM. All profits generated by  
23 Thetford and Norcold flow directly to DKM. DKM exercises substantial control  
24 over the distribution of profits to and between Thetford and Norcold, and further  
25 exercises substantial control over the expenditure of monies by Thetford and  
26 Norcold. DKM, Thetford and Norcold are privy to, and share amongst themselves  
27 (and/or have access to) the same facts and information regarding the gas absorption  
28 refrigerator's inherent defects and risks.

1           27. DKM has, at all times relevant hereto, combined Thetford and  
2 Norcold's management and operations to the point where Norcold has, as a practical  
3 matter, ceased to exist as a separate entity. As organized and overseen by DKM,  
4 Norcold gas absorption refrigerators are advertised and marketed through Thetford's  
5 marketing department, website and sales staff, in conjunction with Thetford's  
6 tradename and trademarks. All written advertising for Norcold products is generated  
7 by Thetford. Norcold's products are advertised through both DKM and Thetford's  
8 websites and marketed collectively thereon as "our refrigerators." See e.g.,  
9 [www.thetford.com/HOME/PRODUCTS/Norcold](http://www.thetford.com/HOME/PRODUCTS/Norcold) Customer service for Norcold  
10 products, including warranty claims, is handled through the customer service  
11 department of Thetford by Thetford employees. Norcold does not have its own sales  
12 staff, or marketing or customer service departments. In short, Norcold is not  
13 organized or operated as an independent entity, but is rather the manufacturing  
14 division of Thetford, which is wholly owned and controlled by DKM.

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

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

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

20 30. The commonality of ownership, management and control of Norcold by  
21 Thetford, and of Norcold and Thetford by DKM, eliminates any separation or  
22 distinction between the entities such that Norcold, at all times since 1997, was and is  
23 the alter-ego of Thetford, and Norcold and Thetford were and are the alter-egos of  
24 DKM, and for that reason, treating Norcold, Thetford and DKM as independent and  
25 distinct entities would be unfair and prejudicial to Plaintiffs. Further, the close,  
26 continuous and direct business relationship between DKM, Thetford and Norcold -  
27 including, but not limited to, DKM's close participatory relationship with the design,  
28 manufacture, marketing and distribution of Norcold's gas absorption refrigerators;



1 DKM's control over and use of both DKM and Thetford tradenames and/or  
2 trademarks in the marketing of Norcold's products; and the direct financial benefit  
3 received by DKM through the sale of Norcold's products – establishes sufficient  
4 nexus between DKM and Norcold to render DKM liable for placing Norcold's  
5 defective products into the stream of commerce.

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

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

21 33. Plaintiffs are informed and believe, and based thereon allege that  
22 Defendants agreed to, cooperated with, aided, abetted, encouraged, ratified, and/or  
23 adopted the acts, actions, wrongdoing, and representations of each of the remaining  
24 Defendants herein, and that in doing any act alleged herein, were acting in concert  
25 and through a civil conspiracy by and among each Defendant to further the interests  
26 of each Defendant individually, and all Defendants as a group. For this reason as  
27 well, all Defendants are jointly liable to the Class.



#### IV. FACTUAL ALLEGATIONS

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

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

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

##### **A. All of Defendants' Gas Absorption Refrigerators Contain Common Design and Manufacturing Defect.**

37. The cooling units used on all of Defendants' N6/N8 Series refrigerators and 1200 Series refrigerators contain common design and/or manufacturing defects that cause and/or enhance fires. Defendants have instituted two (2) product safety recalls of its N6/N8 refrigerators through the National Highway Traffic Safety Administration (NHTSA) – one in 2000 (NHTSA No. 00E-031) and one in 2002 (NHTSA No. 02E-019). Additionally, Defendants have instituted five (5) separate product safety recalls of its 1200 Series refrigerators – NHTSA No. 02E-045 (2002); NHTSA No. 08E-030 (2008); NHTSA Nos. 09E-026 and 09E-027 (2009); and

1 NHTSA No. 10E-049 (2010). The first six (6) of these recalls involved a single  
2 defect common to all of the cooling units used in Defendants' gas absorption  
3 refrigerators, described by Defendants as a "low cycle fatigue failure on thermal  
4 expansion [when the refrigerator is operated] in the AC mode." The fatigue failure is  
5 the result of the inability of the steel tubing used by Defendants' in their cooling  
6 units to withstand the fabrication and manufacturing process, and the stresses placed  
7 on the tubing during normal operation of the refrigerators, namely, high temperature,  
8 high pressure, and the effects of corrosion, including corrosive cooling solution.  
9 The combination of these factors causes microscopic cracks at and around the  
10 "boiler tube" – the section of the cooling unit that includes the electric heat inputs,  
11 and also includes the area where the boiler tube is dimpled to hold an interior  
12 "percolator tube." Microscopic cracks in the boiler tube section of the cooling unit  
13 causes highly flammable cooling solution, ammonia, and hydrogen gas to leak from  
14 the cooling unit. When the solution in the cooling unit is reduced by as little as  
15 twenty percent (20%), the cooling unit can experience a "run-away heating event"  
16 that causes the steel tubing to reach temperatures in excess of 1000 degrees  
17 Fahrenheit, resulting in fires, either by ignition of the escaping flammable gases, or  
18 by ignition of the combustible unprotected wood inside the refrigerator  
19 compartment.

20 38. The fires caused by Defendants' products create serious safety risks to  
21 users of Defendants' products in that the flammable gases released – particularly the  
22 hydrogen - can explosively ignite and spread quickly through the refrigerator  
23 compartment and into the passenger area of the recreational vehicle. Such fires also  
24 pose a serious safety risk to any person or property in the vicinity of the recreational  
25 vehicle in that refrigerator fires can expand quickly outside the RV to structures,  
26 other vehicles and people nearby. This is a common defect present in all  
27 Defendants' N6/N8 Series refrigerators and 1200 Series refrigerators, and carries the  
28 risk of property damage, serious injury or death to individuals using their products.

1 The amount and frequency of leaks and fires in 1200 series units, however, to the  
2 extent reflected by reports recorded on Defendants' Incident Log, appears to be  
3 significantly greater than in N6 and N8 units.

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

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

24 40. Since at least 2000, Defendants had actual knowledge of the existence  
25 of the above-described design and manufacturing defects. Since at least 1999,  
26 Defendants have maintained non-public databases – including Incident Logs,  
27 warranty/return databases, and Incident Files – documenting the fire history of their  
28 gas absorption refrigerators, and therefore at all times had actual knowledge that the  
defects in their gas absorption refrigerators were causing millions of dollars of

1 property damage, personal injury and at least one death to users of their product.  
2 Notwithstanding this knowledge, until October 2012, Defendants never modified the  
3 design of their gas absorption cooling units, or the fabrication, manufacture or  
4 installation of the cooling units, to eliminate the defects, or minimize the effects of  
5 the defects. During that period Defendants never stopped selling and placing the  
6 dangerously defective refrigerators into the stream of commerce until the  
7 refrigerators could be manufactured to operate safely. Defendants never provided  
8 users of the refrigerators with adequate warnings of the risks of use of the product.  
9 Rather, Defendants actively concealed and minimized the dangers and risks inherent  
10 in their defective products from consumers, and federal regulators at NHTSA  
11 responsible for ensuring safety on the highways, through a series of stratagems,  
12 including, but not limited to:

- 13 • Misrepresenting through written warranties provided to purchasers of  
14 Defendants' gas absorption refrigerators that the products were free  
15 from defects, when in fact Defendants knew that their products  
16 contained design defects that created a substantial risk of fire, injury  
17 and death when the product was used for its normally intended purpose.  
18 This material fact was not disclosed to the Class, but concealed and  
19 suppressed.
- 20 • Misrepresenting the nature and number of defects inherent in the design  
21 of their gas absorption refrigerators by describing only the "low cycle  
22 fatigue failure" involving "some specific gas absorption cooling units."  
23 In fact, the low cycle fatigue failure modality was and is the result of  
24 defective cooling unit tubing design common to all Defendants' N6, N8  
25 and 1200 Series gas absorption refrigerators. Defendants had actual  
26 knowledge that the defects were causing fires in RVs from 1999  
27 through the Class Period based on their internal databases, including the  
28

1 Incident Log. This material fact was not disclosed to the Class, but  
2 concealed and suppressed.

- 3 • Further, Defendants have actual knowledge, through their fire claim  
4 databases and internal testing, that the failure of their cooling units –  
5 and resulting fires - due to leaks and overheating, are not limited to low  
6 cycle fatigue failure in a single area of the boiler tubing to which all of  
7 their recall/retrofit campaigns are directed, but include leaks in other  
8 areas of the cooling unit, including the safety fuse plug, none of which  
9 are addressed by Defendants’ recall/retrofit campaign. The full extent  
10 of the defects and safety risks inherent in the design of the cooling  
11 units, and the limitations of Defendants’ recall/retrofit campaigns, are  
12 material facts which were not disclosed to the Class, but instead  
13 concealed and suppressed.
- 14 • Concealing the dangerously defective safety fuse plug design.
- 15 • Establishing a field testing protocol whereby Defendants’ gas  
16 absorption refrigerators alleged to be a substantial factor in causing  
17 and/or enhancing a fire are pressure tested to determine if they leak due  
18 to low cycle fatigue failure in the boiler tubing. The testing protocol  
19 arbitrarily sets the maximum pressure of the leak test to 100 p.s.i.,  
20 notwithstanding the fact that the product normally operates at 450 p.s.i.  
21 The testing protocol focuses exclusively on a small section of the boiler  
22 tube, notwithstanding the fact that Defendants have actual knowledge  
23 through their own testing and warranty databases that their refrigerator  
24 cooling units leak in over forty (40) different places. The testing  
25 protocol Defendants use is intentionally designed (a) *not* to find the  
26 kind of microscopic leaks described by Defendants in their product  
27 safety recalls; and, (b) *not* to find leaks in any other part of the  
28 refrigerator cooling unit, notwithstanding Defendants’ knowledge that

1 such leaks regularly occur. The testing protocol is misleading and  
2 deceptive in that it conceals and suppresses material facts regarding the  
3 dangerous defects inherent in Defendants' products. Defendants  
4 routinely use this testing protocol as part of their risk management  
5 practices to reduce their claims exposure, and to mislead consumers,  
6 and federal regulators, into believing that Defendants' gas absorption  
7 refrigerators are not defective, or that the population of defective  
8 refrigerators is smaller than it really is.

- 9 • Conducting incomplete and limited manufacturer-initiated recall and  
10 retrofit campaigns. Notwithstanding the fact that Defendants had actual  
11 knowledge that their N6, N8 and 1200 Series gas absorption  
12 refrigerators all shared the same common design defects and safety  
13 risks, and continued to cause fires, Defendants excluded all N6 and N8  
14 Series refrigerators from any recall or retrofit campaign, except for a  
15 small population manufactured between May and October, 1999. By  
16 excluding N6 and N8 Series refrigerators from any recall/retrofit  
17 campaign, Defendants suppressed material facts regarding the existence  
18 of defects in those refrigerators, and the safety risks involved in the use  
19 of the product, from all owners of those models. This concealment of  
20 material facts misled owners of N6 and N8 Series refrigerators into  
21 believing that their refrigerators did not contain dangerous product  
22 safety defects, and were safe to use for their intended purpose. In fact,  
23 the N6 and N8 Series refrigerators shared the same safety defects and  
24 risks as the 1200 Series, and were causing fires in RVs in the same way  
25 as Defendants' 1200 Series refrigerators. Defendants also used this  
26 suppression of material facts to mislead consumers and federal  
27 regulators regarding the true nature and scope of the product safety  
28

1 defects in their gas absorption refrigerators, i.e. that the existence of  
2 defects and safety risks was more limited than it really was.

- 3 • Conducting repeated manufacturer-initiated and controlled retrofit  
4 campaigns to install various devices onto Defendants' gas absorption  
5 refrigerators that were represented to "fix" the defects, while concealing  
6 the material facts that the retrofits were ineffective to render the  
7 refrigerators safe to use. In truth the retrofit devices – variously  
8 described as an algorithm, a thermal safety switch, or a high  
9 temperature thermocouple – did not and do not address the defects at  
10 all, but only seek to counter the propensity of the defects to cause fires.  
11 The retrofit devices also did not and do not work to prevent  
12 Defendants' products from causing and/or enhancing fires. Defendants'  
13 gas absorption refrigerators continue to cause fires, notwithstanding  
14 being retrofitted by Defendants. Defendants, and each of them, have  
15 actual knowledge that their retrofit campaigns have been ineffective to  
16 render their gas absorption refrigerators safe to use, but have suppressed  
17 and concealed that fact from Plaintiffs, all members of the Class, and  
18 the federal regulators at NHTSA.
- 19 • Minimizing and misleading both the public and federal regulators  
20 regarding the true nature and scope of the defects in Defendants' gas  
21 absorption refrigerators. Defendants have been placing dangerously  
22 defective gas absorption refrigerators into the stream of commerce since  
23 at least 1997. During that time, they have received actual notice of over  
24 2,000 fires involving their product, which they have not only kept  
25 individual detailed records of through their Incident Log, but which  
26 they have routinely compiled and analyzed on a yearly basis. While  
27 Defendants have continued to sell their defective products during this  
28 time, they have never fixed the product so that it would not catch on



1 fire. In fact, Defendants continue to receive new fire claims involving  
2 their gas absorption refrigerators at the rate of 1 to 2 per day, 7 days per  
3 week, 365 days per year. Defendants have *never* provided consumers  
4 with any information regarding the fire claim history of the product, or  
5 all of the risks inherent in the use of the product. Defendants have  
6 *never* disclosed to federal regulators the true fire claim history of their  
7 product, or the several defects involved in their product. Rather,  
8 Defendants have actively concealed the safety risks associated with use  
9 of their products.

- 10 • Intentionally limiting the number of gas absorption refrigerators  
11 subject to some of their product safety recalls, despite having actual  
12 knowledge that gas absorption refrigerators not subject to the recalls  
13 were also defective and had a propensity to cause deadly fires. In  
14 addition to excluding N6 and N8 Series refrigerators from recall and  
15 retrofit campaigns, described above, illustrative is the determination by  
16 Defendants to exclude 1200 Series cooling units manufactured after  
17 January 1, 2003 from any product safety recall between 2003 and 2010.  
18 The purported reason for this exclusion was Defendants' "belief" that  
19 cooling units manufactured after January 1, 2003 would not cause fires  
20 because of the inclusion of an algorithm chip in the electronic controls  
21 of the refrigerator. However, Defendants had actual knowledge by  
22 September, 2005 that the algorithm was ineffective to prevent fires in  
23 1200 Series refrigerators, and, by 2010, had further actual knowledge  
24 that 1200 Series refrigerators equipped with the algorithm had caused at  
25 least 165 fires. Defendants never advised consumers who had  
26 algorithm-equipped refrigerators: (a) that their refrigerators had defects  
27 which created potential safety risks of fire; (b) that their refrigerators  
28 were equipped with a fail-safe device (i.e. the algorithm) that was

1 designed to counter the safety risks inherent in the refrigerators' design;  
2 or, (c) that Defendants had determined that the algorithm was not  
3 effective to prevent fires and that the manufacturer had decided to move  
4 to a different safety device. Defendants never provided owners of  
5 algorithm-equipped refrigerators with any warning or other notice of  
6 risks in the continued use of their refrigerator until after October 7,  
7 2010, when Defendants finally recalled all 1200 Series refrigerators  
8 they ever made.

- 9 • Misrepresenting and misleading consumers and federal regulators  
10 regarding the efficacy of their most recent product safety recall through  
11 omissions of material fact. The ostensible purpose of the October 7,  
12 2010 recall of 1200 Series refrigerators was to retrofit the products with  
13 another safety device to replace the algorithm and thermal safety switch  
14 which Defendants finally conceded did not work to stop the  
15 refrigerators from causing fires. Defendants represented to both  
16 consumers and federal regulators that the new device was effective to  
17 render their product safe to use. In fact, the new device is itself  
18 defective in design and/or manufacture, in that, in many instances, it  
19 simply does not work. Plaintiffs are informed and believe that  
20 Defendants are on their fifth or sixth version of the new device, which  
21 has not yet proven to work reliably. Even when the new device works,  
22 it is ineffective to stop Defendants' product from causing fires, because  
23 it does not address or eliminate the design and/or manufacturing defects  
24 inherent in Defendants' products. Defendants' products continue to  
25 cause fires, even when equipped with the latest safety device. This  
26 material fact was not disclosed to the Class, but suppressed.

27 41. The design and manufacturing defects in Defendants' gas absorption  
28 refrigerators, Defendants' active concealment of those defects, and the inadequate

1 and fraudulent product safety recall/retrofit campaigns conducted by Defendants,  
2 created serious and unreasonable safety risks to consumers and users of Defendants'  
3 products, *i.e.* the risk of property damage, injury and death by fire. These safety  
4 risks were and are material to a reasonable consumer, including Plaintiffs and the  
5 members of the Class, who own Defendants' products. Had Defendants disclosed  
6 the true nature and scope of the safety risks inherent in the use of their product in the  
7 sales and marketing material provided consumers along with the product, or with  
8 warnings prominently placed on the product, Plaintiffs, and all others similarly  
9 situated in the Class, would have been aware of it and acted differently, *i.e.*  
10 purchased a different recreational vehicle that did not contain Defendants' defective  
11 product; decided not to retain an RV with a Norcold refrigerator and/or, paid less for  
12 the recreational vehicle or boat because of the defective product or because of the  
13 cost of replacing the defective product with a non-defective product. Defendants  
14 had actual and exclusive knowledge of the exact nature and scope of the defects in  
15 their products, the fire claim history of the products, and the fact that their recall and  
16 retrofit campaigns did not address or eliminate the defects, and therefore, at all  
17 times, had a duty to disclose the safety risks inherent in the use of their product, and  
18 the inadequacies of their recall/retrofit campaigns to Plaintiffs, and to all members of  
19 the Class described herein. However, Defendants at all times actively concealed the  
20 true nature and scope of the defects, safety risks, and recall/retrofit inadequacies  
21 from Plaintiffs, and the members of the Class described herein. Only in October  
22 2012, did Defendants modify the cooling unit boiler tubes in new 1200 units being  
23 manufactured, by deciding to use a thicker gauge steel.

24 42. Reasonable consumers, acting diligently, cannot discover the defects at  
25 issue. The defective boiler tubes, safety plugs and/or other parts are not visible to  
26 the user of a Norcold gas absorption refrigerator when installed in a RV as intended.

27 ///

28 ///

1 **C. Defendants Have an Ongoing Duty to Disclose Material Facts About**  
2 **Dangerous Products that They Have Placed into the Stream of**  
3 **Commerce.**

4 43. A fraudulent omission is actionable under the laws set forth herein if  
5 the omission is of a fact the defendant was obliged to disclose. Defendants here had  
6 an ongoing duty to disclose all material facts regarding the defective gas absorption  
7 refrigerators and their continuing dangers as Defendants: (1) had exclusive  
8 knowledge of material facts not known to the plaintiff; (2) have actively concealed  
9 material facts from Plaintiffs and the Class; and, (3) have made partial  
10 representations but also suppressed some material facts.

11 44. Defendants have a duty to manufacture defect-free products and an  
12 ongoing duty to disclose details about known defects, hazards and unreasonable  
13 safety risks (such as the fire risks here) regardless of any warranty period both  
14 truthfully and completely. Due to the serious dangers involved, Defendants' duty to  
15 disclose known defects is ongoing. The refrigerators that Defendants manufactured  
16 and placed into the stream of commerce have at least one common defect that poses  
17 a serious risk of fire, injury and death, but they have never eliminated that defect,  
18 notwithstanding their actual knowledge of alternative designs that would lessen or  
19 eliminate the risks. On the contrary, Defendants continue to market their  
20 refrigerators with representations that they are reliable and defect-free knowing that  
21 their products are dangerously defective and fires are still occurring. Defendants  
22 have a duty to recall and retrofit the products so that they can be operated safely.  
23 While Defendants have conducted a number of product safety recalls and  
24 represented that the retrofits would render the products safe to use, they have actual  
25 knowledge that the retrofits don't work in that, *inter alia*: (a) they do not eliminate  
26 the defect that causes the risk of fire in the first place; and, (b) they are ineffective to  
27 counter the risks posed by the defects. Defendants' products continue to cause fires  
28 even after any recall or any retrofit is installed. These facts, however, are not  
disclosed to the members of the Class and instead constitute material omissions.

1 **D. Material Facts About the Ongoing Fire Danger Despite Any Recalls or**  
2 **Retrofits Are Concealed and Suppressed by Defendants.**

3 45. Defendants, and each of them, had and have actual knowledge that their  
4 N6, N8 and 1200 Series gas absorption refrigerators contain defects which cause  
5 fires. As part of their manufacturer-initiated recall/retrofit campaigns, Defendants'  
6 recall notices state that the recalls and accompanying retrofits "seek to minimize the  
7 risk of injury or death due to fire". However, Defendants, and each of them, wholly  
8 omit, suppress and conceal from Plaintiffs and Class members the material fact that  
9 their recall and retrofit campaigns neither eliminate nor cure the inherent defects in  
10 Defendants' N6, N8 and 1200 Series refrigerators, and that their recall/retrofits  
11 therefore do not eliminate the ongoing risk of fire, damage, injury and death to users  
12 of their products. To the contrary, Defendants, and each of them, have actual  
13 knowledge that their recall/retrofit campaigns are ineffective to render their products  
14 safe to use, and that Defendants' N6, N8 and 1200 Series refrigerators continue to  
15 cause fires even after being recalled and retrofitted. These material omissions act as  
16 a misrepresentation in that Defendants' recall notices communicate and convey a  
17 false sense of safety to consumers, and a belief that if the product is retrofitted, it is  
18 safe to use. These omissions result in consumers unknowingly continuing to use a  
19 dangerously defective product, thereby exposing themselves, and all others around  
20 them, to the risk of property damage, serious injury and death.

21 46. Despite knowledge of the defects and fire risks, Defendants continue to  
22 this day to market their gas absorption refrigerators on the [www.thetford.com/](http://www.thetford.com/HOME/PRODUCTS/Norcold)  
23 HOME/PRODUCTS/Norcold website, and other materials, through such terms  
24 "superior cooling units for superior performance," "quality, integrity and reliability  
25 are built into each unit," "well-designed," and "superior cooling unit for exceptional  
26 performance and durability" without mention of the defects and fire risks. Due to  
27 the omissions, these statements, therefore, were misleading.

1           47. Thus, common omissions of material fact have been made to the entire  
2 Class by Defendants during the Class Period. Those Class members who never  
3 received a recall notice were not informed of the ongoing danger inherent in  
4 continued use of their Norcold gas absorption refrigerator. Those Class members  
5 who received a recall notice likewise were never informed of the ongoing danger  
6 inherent in continued use of their Norcold gas absorption refrigerator, regardless of  
7 whether their unit was retrofitted.

8           48. Had Defendants not concealed the material facts described above,  
9 which implicate safety concerns, Plaintiffs and the Class would have been aware of  
10 those facts, acted differently and not been injured and damaged.

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

1 unknowingly, to be put at risk of damage, injury and death through the use of  
2 Defendants' defective gas absorption refrigerators.

3 **E. Defendants' Recalls Cause Further Injury To Consumers By Destroying**  
4 **Their Refrigerators Before A Fire Is Ignited.**

5 50. Defendants did not initiate their recalls of N6, N8 and 1200 Series  
6 refrigerators to eliminate the defects in said products that cause and/or enhance fires,  
7 therefore rendering the products safe to use,. Rather, the Defendants, and each of  
8 them, initiated product safety recalls to conceal and mask the true nature and extent  
9 of the defects and dangers involved in the use of their products, and to mislead  
10 consumers and federal regulators into the belief that Defendants' recalls were both  
11 comprehensive and effective when they were not.

12 51. In September 2005, Defendants began to install a Thermal Safety  
13 Switch (TSS) on all new Norcold 1200 Series refrigerators. The TSS was a metal  
14 sleeve installed toward the base of the refrigerator chimney/flue, with a thermal  
15 sensor designed to cut all power to the refrigerator in the event of excessive heat  
16 being detected in the refrigerator cabinet. Excess heat was a sign that the cooling  
17 unit was defective, overheating and likely to ignite a fire. Defendants did not begin  
18 to offer the TSS to consumers through product safety retrofit campaigns until March  
19 2008. Defendants never offered the TSS to owners of N6 and N8 Series  
20 refrigerators, notwithstanding the fact that those products shared the same defects  
21 and safety risks as the 1200 Series refrigerators.

22 52. Beginning with the October 2010 product recall, Defendants began to  
23 replace the TSS with a new device – the High Temperature Sensor (“HTS”). Unlike  
24 the TSS – which measured heat inside the refrigerator cabinet – the HTS was  
25 designed to be attached directly to, and to measure the temperature of, the  
26 refrigerator cooling unit boiler tube, i.e. the tube that is heated with either the 110  
27 VAC heaters or propane burner. The HTS was designed to measure and understand  
28 the boiler temperature, and if the module sensed high temperature from the boiler



1 tube, to cut off electric power to the refrigerator before the cooling unit could  
2 overheat and cause a fire. Defendants never offered the TSS to owners of N6 and N8  
3 Series refrigerators, notwithstanding the fact that those products shared the same  
4 defects and safety risks as the 1200 Series refrigerators.

5 53. Neither of the above-mentioned retrofits worked to eliminate the  
6 defects and inherent safety risks in Defendants' refrigerators. As a result, common  
7 defects and risk of dangerous fires still remain in N6, N8 and 1200 series  
8 refrigerators. For example, neither of the retrofits have dealt with – much less  
9 eliminated – the propensity of the cooling units to leak cooling solution and  
10 flammable gases, which cause the cooling units to overheat and cause fires. Neither  
11 of the retrofits has been able to control – much less eliminate – the excessive  
12 temperatures leaking cooling units achieve, which lead to fires. Neither of the  
13 retrofits has addressed the defective design of the safety fuse plug common to all of  
14 Defendants' products. Finally, neither retrofit did anything to protect the  
15 combustibles inside the refrigerator compartment – such as the bare wood of the  
16 compartment itself – from the excessive heat and/or fire resulting from a  
17 malfunctioning cooling unit. Upon information and belief, every new gas absorption  
18 refrigerator sold by Defendants contains the same design and/or manufacturing  
19 defects as described above, with the sole exception that the new refrigerators are  
20 equipped with the Thermocouple safety device. These facts have not been disclosed  
21 to members of the Class.

22 54. With both of the above-mentioned retrofits, once the fail-safe devices  
23 “trip,” the electric power to the refrigerator is shut down, and there is no alternative  
24 but to replace the cooling unit or get a new refrigerator, since once the module is  
25 tripped the refrigerator can no longer operate. Thus, Defendants' retrofits do not  
26 “fix” the defects inherent in the product but simply mask the defects by destroying a  
27 malfunctioning cooling unit and refrigerator, presumably before it destroys a  
28 consumer's recreational vehicle, or worse, causes a devastating fire. Defendants

1 have and continue to intentionally conceal the operation and effect of the TSS and  
2 HTS from consumers, including Plaintiffs and members of the Class described  
3 herein.

4 55. In 2000, and again in 2002, Defendants issued a recall for a limited  
5 population of N6 and N8 Series refrigerators, which were manufactured between  
6 May and October, 1999. The recall has never been expanded to the entire  
7 population of N6 and N8 Series refrigerators. Norcold N6 and N8 Series  
8 refrigerators that have been manufactured since 2000 are constructed the same way,  
9 have the same problems with the boiler tubing and overheating that the 1200 series  
10 units have, continue to pose the risk of catching on fire, and have continued from  
11 2000 through the Class Period to cause fires. Despite this, Defendants have never  
12 attempted to address this problem through a recall or otherwise.

13 56. Starting in October 2012, Defendants began manufacturing 1200  
14 Cooling Units with thicker boiler tubes.

15 57. Defendants' above-described concealment of material facts regarding  
16 their gas absorption refrigerators and the ineffective, misleading and fraudulent  
17 recall and retrofit campaigns Defendants have initiated, have injured and harmed,  
18 and continue to harm Class members in *inter alia*, the following ways. *First*, by  
19 failing to disclose complete and accurate information regarding the nature and scope  
20 of the design and manufacturing defects in their product, Defendants have misled,  
21 and continue to mislead consumers into the belief that Defendants' products are safe  
22 to use for their intended purpose, when in fact said products constitute a serious fire  
23 hazard. *Second*, Defendants' limited, misleading and ineffective recall and retrofit  
24 campaigns have created, and continue to create, the false impression with consumers  
25 that (1) if they own a N6 or N8 Series refrigerator, it is not defective and is safe to  
26 use, when in fact the N6 and N8 Series contain the same common defects and safety  
27 risks as the 1200 Series; and (2) if they own a 1200 Series refrigerator and  
28 participate in the recall campaigns, their gas absorption refrigerators will be rendered

1 safe to use, when in fact the retrofits used by Defendants are ineffective to prevent  
2 their products from causing fires; the defects inherent in the refrigerators will cause  
3 fires whether retrofitted or not; and, 1200 Series refrigerators have and continue to  
4 leak, overheat and cause fires, notwithstanding being equipped with the latest  
5 retrofit. *Third*, Defendants have failed, and continue to fail to disclose to consumers  
6 that the retrofit campaigns are not only ineffective in stopping fires, but that the  
7 devices installed through said campaigns actually operate to destroy consumers'  
8 refrigerators, requiring them to purchase a replacement refrigerator. *Fourth*,  
9 Defendants have actively concealed and failed to disclose material facts regarding  
10 the existence and scope of warranty protection available to consumers regarding  
11 Defendants' products, and deny warranty coverage to consumers, forcing consumers  
12 to incur the entire cost of repairing or replacing Defendants' defective products. If  
13 warranty coverage is denied, consumers in the Class are forced to incur the entire  
14 cost of repairing or replacing Defendants' defective products. Alternatively, if the  
15 refrigerator is replaced under warranty, the consumer is harmed because he or she  
16 receives another of Defendants' gas absorption refrigerators with the same defects  
17 and risks of fire as the unit replaced. *Fifth*, whether the refrigerator is replaced, or  
18 subject to Defendants' retrofit campaign, consumers are forced to incur the  
19 incidental costs, including costs to deliver their vehicles to dealers and RV repair  
20 shops, and thereby incur further damages and expenses for loss of use of the  
21 vehicles/boats while the replacement/retrofit is done. Many consumers have had to  
22 incur these costs and expenses on more than one occasion due to the multiple and  
23 ineffective recall campaigns. Finally, due to Defendants concealment of material  
24 facts, all Class members' own property of diminished value. From the date the true  
25 facts regarding the dangerous and continuing safety hazards inherent in all  
26 Defendants' gas absorption refrigerators is disclosed, the units have diminished  
27 value in the marketplace. All of these costs and expenses to consumers are the result  
28 of Defendants placing dangerously defective products into the stream of commerce

1 in the first place, and thereafter failing to effectively recall and retrofit the products  
2 so that they are safe for their intended use.

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

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

20 60. In all scenarios, Plaintiffs and Class members have not received the  
21 value for which they bargained when they purchased Defendants' product.

## 22 **V. ACCRUAL OF CLAIMS AND EQUITABLE TOLLING**

23 61. Since at least 1999 (and at least through October 2012 when the boiler  
24 tubes in the 1200 Series were modified to that with a thicker gauge), Defendants,  
25 and each of them, have knowingly sold gas absorption refrigerators that were  
26 defectively designed, would fail prematurely, and were not suitable for their  
27 intended use. At all relevant times, Defendants also knew that the design defects in  
28 their gas absorption refrigerators created and constituted a serious safety and fire

1 hazard, and that their products were in fact causing fires in recreational vehicles on  
2 almost a daily basis for more than a decade, including during the Class Period and  
3 continuing through the present time. Further, since at least 2000 and at all times  
4 extending through the Class Period (and at least through October 2012 when the  
5 boiler tubes were modified to that with a thicker gauge), Defendants knew that the  
6 design defects and safety hazards in their gas absorption refrigerators could be  
7 substantially decreased, if not totally eliminated, by the adoption of alternate designs  
8 readily available in the market.

9         62. Notwithstanding Defendants' knowledge of the design defects and  
10 inherent safety risks in their gas absorption refrigerators, and their knowledge of  
11 alternate designs to eliminate the defects and safety hazards, at all times since at  
12 least 2000 and continuing through the Class Period (and at least through October  
13 2012) Defendants failed and refused to alter their gas absorption refrigerator design,  
14 and instead engaged in a continuous pattern of deception, suppression and  
15 concealment of material facts, designed to mislead Plaintiffs and Class Members  
16 into believing that the Norcold gas absorption refrigerators they owned were safe.  
17 Defendants' manufacturer-initiated NHTSA recalls between 2000 and 2010 were  
18 part of the concealment and deception. Six (6) of the seven (7) recalls initiated  
19 during this time were limited to a small population of units, notwithstanding the fact  
20 that the entire population of refrigerators shared common defects and serious safety  
21 risks to consumers. All seven (7) recalls involved retrofit campaigns that neither  
22 addressed the inherent defects in Defendants' refrigerators, nor rendered the  
23 refrigerators safe to use. Only starting in October 2012 did Defendants began  
24 manufacturing 1200 Cooling Units with thicker-gauged boiler tubes. Defendants,  
25 and each of them, knew that their recall/retrofit campaigns were neither  
26 comprehensive nor effective, but concealed this fact from owners of their product.  
27 Defendants' continuing concealment misled consumers in at least two ways. First, if  
28 a consumer's refrigerator was not in a recall population, the consumer was

1 necessarily misled into believing that the refrigerator did not contain defects and  
2 safety risks, and it was therefore safe to use. Second, if a consumer's refrigerator  
3 was subject to one or more of Defendants' recall/retrofit campaigns, the consumer  
4 was misled into believing that the retrofit proposed by Defendants was effective to  
5 render their refrigerator safe to use. In that the defects and safety risks to users of  
6 Defendants' refrigerators manifested themselves over time, and were not therefore  
7 readily apparent to the reasonable consumer, there was no way for consumers,  
8 including Plaintiffs and Class members, to discover the defects and safety risks of  
9 Defendants' products except from Defendants themselves. Rather than provide  
10 consumers with complete and accurate information based on their exclusive and  
11 superior knowledge of the performance of their products – particularly the fire claim  
12 history of the N6, N8 and 1200 Series refrigerators - Defendants, and each of them,  
13 engaged in a continuing and consistent pattern and practice of deception and  
14 concealment, up to and through the Class Period, to mislead consumers into  
15 believing Defendants' products were defect-free and safe to use. As a result,  
16 consumers had no knowledge of the true nature and extent of the safety risks  
17 involved in continuing to use Defendants' products. By such actions and omissions  
18 of material fact, Defendants, and each of them, affirmatively concealed Plaintiff's  
19 causes of action and the claims of the members of the Class.

20 63. Defendants had a duty to disclose material facts to Plaintiffs and the  
21 Class regarding the ongoing dangers of Norcold gas absorption refrigerators, despite  
22 any retrofits, at all times before and during the Class Period. Such disclosures  
23 should have been provided to Plaintiffs and each Class member in the state in which  
24 they reside. Each day in which Defendants did not do this constitutes an actionable  
25 offence in the state in which the Plaintiff and Class member resides. Defendants'  
26 failure to disclose all material facts to Plaintiffs and the Class prevented Plaintiffs  
27 and the Class from being able to discover the truth about the dangerous products,  
28 despite reasonable diligence, and to take further steps to protect themselves, their



1 property and to assert their rights. As such, Plaintiffs' and each Class members'  
2 claims based on Defendants omissions accrue during the Class Period.

3 64. The common omissions made by Defendants represent affirmative acts  
4 that were intended to prevent, and did in fact prevent Plaintiffs and members of the  
5 Class from discovering their potential claims. Because of the nature of concealment  
6 and the testing needed to discover the inherent defects in Defendants gas absorption  
7 refrigerators, Plaintiffs and members of the Class could not, even with the exercise  
8 of due diligence, have independently discovered their cause of action. Defendants  
9 exclusively possessed this information.

10 65. To this day, Defendants have continued this concealment and  
11 suppression by failing to inform the public about the true nature and scope of the  
12 defects and safety risks inherent in the use of their gas absorption refrigerators.

13 66. Each Plaintiff and each Class member had a right to receive a full and  
14 complete disclosure from Defendants in their state of residence, on each day during  
15 the Class Period, that: (1) the Norcold gas absorption they owned or otherwise  
16 possessed continued to present dangerous risks of fire despite any retrofit; (2) if  
17 there was an incident and the retrofit mechanisms was triggered, the result would be  
18 a complete shutdown of the refrigerator rendering it worthless and in need of  
19 complete replacement. Defendants' failure to do this on each day during the Class  
20 Period was a separate actionable offence.

21 67. Due to Defendants' ongoing and continuous concealment and  
22 deception, even extending through the last recall and retrofit, the truth about the  
23 continuing fire risk was not disclosed and no reasonable consumer, including  
24 Plaintiffs could have discovered the factual knowledge to assert these claims sooner.

25 68. Plaintiffs' claims are timely. At all times and dates within the Class  
26 Period, Defendants had a duty to disclose the material facts discussed herein,  
27 including the fact that despite any recalls and retrofits to the present day, Defendants  
28 series N6, N8 and 1200 series gas absorption refrigerators continue to have



1 inherently dangerous design defects which present the ongoing risk of fire, facts  
2 exclusively within Defendants knowledge and which Plaintiffs and Class members  
3 could not know about and discover despite reasonable diligence. Defendants had a  
4 duty to disclose these material facts to Plaintiffs and the Class within the limitations  
5 period but failed to. Defendants' failure has caused Plaintiff and the Class injury  
6 and loss. Had Plaintiffs and the Class been provided all material facts regarding the  
7 gas absorption refrigerator's inherent defects, risks and safety hazards that  
8 Defendants exclusively possessed but omitted, withheld and concealed from  
9 Plaintiffs and the Class, they would have been aware of the safety concerns present  
10 and acted differently, including but not limited to not purchasing (or retaining) a  
11 product equipped with a Norcold refrigerator containing the latent defects described  
12 within. As a result of Defendants' conduct, described herein, Plaintiffs and all Class  
13 members have been injured, incurred loss-of-money, and been damaged in a similar  
14 manner, in an amount which will be established at trial according to proof. In  
15 addition, among other things, due to the foregoing, Plaintiffs and the Class lost the  
16 benefit of their bargain as they overpaid for their RV's containing the defective  
17 Norcold refrigerator; their RV's containing the Norcold refrigerator have a  
18 diminished value, and the RV's containing the Norcold refrigerator have a loss of  
19 usefulness, all in amounts to be proven at trial.

20 69. In addition, based on this conduct and the allegations herein,  
21 Defendants are estopped from relying on any statute of limitations or other time-  
22 related defense in this action. Defendants affirmatively misrepresented and actively  
23 concealed the true nature, character, and quality of the gas absorption refrigerators  
24 and, for the reasons described herein, were under a continuous duty to disclose to  
25 Plaintiffs and the Class the facts they omitted and concealed. Plaintiffs and the  
26 members of the Class reasonably relied upon Defendants' misrepresentations (by  
27 omission) and active concealment and hence, could not bring the claims asserted  
28 herein sooner. As a result of Defendants' fraudulent concealment, equity requires

1 that the statute of limitations on Plaintiffs' and the putative class members' claims  
2 be tolled.

### 3 VI. CLASS ACTION ALLEGATIONS

4 70. Plaintiffs bring this action on behalf of themselves and as a class action,  
5 pursuant to the applicable rules of civil procedure, on behalf of themselves and the  
6 "Class" defined as:

7 All persons in the United States, who: (i) currently own, or formerly  
8 owned, a Norcold, manufactured as original equipment, 1200 Series  
9 Gas Absorption Refrigerator or Cooling Unit that was manufactured  
10 during the time period starting January 1, 2002, and continuing to and  
11 including October 1, 2012, and/or; (ii) currently own a Norcold,  
12 manufactured as original equipment, N6 Series Gas Absorption  
13 Refrigerator or Cooling Unit, or N8 Series Gas Absorption  
14 Refrigerator or Cooling Unit, manufactured during the time period  
15 starting January 1, 2009, and continuing to and including December  
16 31, 2013.

13 (Referenced to herein as the "Class").

14 71. To the extent necessary, the Court can in addition, and/or in the  
15 alternative certify state Subclasses consisting of all persons in each state, who during  
16 the Class Period, (i) purchased and/or owned a Norcold 1200 Series, and (ii)  
17 currently own an Norcold 800 Series or Norcold 600 Series gas absorption  
18 refrigerator.

19 72. The "Class Period" is defined as:

20 With respect to Norcold 1200 Series refrigerators, the time period  
21 starting January 1, 2002 and continuing through and including  
22 October 1, 2012; and with respect to Norcold N6 and N8 refrigerators,  
23 the time period starting January 1, 2009, and continuing through and  
24 including December 31, 2013.

25 73. Specifically excluded from the Class, are: (a) any officers, directors or  
26 employees of Defendants; (b) any judge assigned to hear this case (or spouse or  
27 family member of any assigned judge); (c) any employee of the Court; (d) any juror  
28 selected to hear this case; (e) any person who had claims against Defendants for  
personal injury, wrongful death or for damage to property in relation to an alleged  
defective Gas Absorption Refrigerator or Cooling Unit which were fully resolved by

1 way of settlement, dismissal or judgment prior to July 21, 2014; (f) any person who  
2 as of July 21, 2014, had a separate lawsuit pending against Defendants in any state  
3 or federal court asserting claims related to an alleged defective Gas Absorption  
4 Refrigerator or Cooling Unit; (g) any person who purchased a Norcold Gas  
5 Absorption Refrigerator as used equipment, either as a stand-alone product or as a  
6 component part of a used RV sale, that no longer had a Norcold Cooling Unit  
7 installed at the time of purchase but rather had a cooling unit manufactured by a  
8 manufacturer other than Norcold at the time of purchase; and, (h) persons who  
9 timely and properly exclude themselves from the Class as provided in this  
10 Agreement.

11 74. All requirements for class certification in Fed.R Civ.P. 23(a), 23(b)(1),  
12 23(b)(2) and/or 23(b)(3) (or any other applicable state or federal rule of civil  
13 procedure) are satisfied with respect to the Class and each of the Subclasses.

14 75. Numerosity of the Class. Members of the Class and each of the State  
15 Subclasses are so numerous that their individual joinder herein is impracticable. The  
16 precise number of members of the Class and each of the Subclasses and their  
17 addresses are presently unknown to Plaintiffs. Plaintiffs are informed and believe  
18 that Defendants have manufactured and sold over 200,000 N6, N8, and 1200 Series  
19 gas absorption refrigerators in the United States during the Class Period, of which  
20 over 10,000 are currently owned by individuals/entities located in the State of  
21 California alone. Plaintiffs therefore allege that the total number of members in the  
22 Class and each of the State Subclasses are well in excess of 500 persons and/or  
23 entities who would fall within the proposed class definitions.

24 76. Ascertainable Class. The community of interest among these class  
25 members in the litigation is well defined and the proposed classes are ascertainable  
26 from objective criteria. If necessary to preserve the case as a class action, the court  
27 itself can redefine the Class and any Subclass.

28

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

- 7           a. Whether Defendants engaged in the conduct as alleged herein;  
8           b. Whether the N6, N8 and 1200 series gas absorption refrigerators  
9           that Defendants manufactured and placed into the stream of  
10           commerce have a common defect;  
11           c. Whether Defendants made material omissions about the N6, N8  
12           and 1200 series gas absorption refrigerators that Defendants  
13           manufactured and placed into the stream of commerce;  
14           d. Whether Defendants' practices violate applicable law;  
15           e. Whether New York, Michigan and Ohio law applies to the class  
16           based on the deceptive acts and omissions conducted by  
17           Defendants in and from their principal places of business in those  
18           states, respectively, emanating and harming class members  
19           nationwide;  
20           f. Whether Plaintiffs and the other members of the Class are  
21           entitled to actual, statutory, or other forms of damages, and other  
22           monetary relief;  
23           g. Whether Plaintiffs and other members of the Class are entitled to  
24           equitable relief, including but not limited to injunctive relief and  
25           restitution; and,  
26           h. Whether Defendants' omissions and concealment of material  
27           facts tolls the statute of limitations for class members.  
28

1           78. Defendants have engaged in a common course of conduct giving rise to  
2 the legal rights sought to be enforced by Plaintiffs individually and on behalf of the  
3 other members of the Class. Similar or identical statutory and common law  
4 violations, business practices, and injuries are involved as to all members in the  
5 Class and each State Subclass. Individual questions, if any, pale by comparison, in  
6 both quality and quantity, to the numerous common questions that dominate this  
7 action.

8           79. Plaintiffs are members of and present claims that are typical of the  
9 claims of members of the Class. Plaintiffs each owned one of the Norcold gas  
10 absorption refrigerators at issue during the Class Period. Plaintiffs and all Class  
11 members each sustained damages arising from Defendants' wrongful conduct, as  
12 alleged more fully herein. The same material facts that Defendants withheld from  
13 the Plaintiffs were withheld from the other members of the Class. The test for  
14 materiality is an objective test subject to class wide proof.

15           80. All members of the Class have been the subject of Defendants' unfair  
16 and unlawful business practices as described herein. The relief sought is common,  
17 unitary, and class-wide in nature.

18           81. Adequacy of Representation. The adequacy requirement is satisfied.  
19 The the above-named plaintiffs are adequate to serve as class representatives for the  
20 Class and are willing to fulfill any required duties. The Court makes the ultimate  
21 determination and appointment of class representatives and counsel. Each named  
22 plaintiff and counsel of record will have the opportunity to demonstrate to the  
23 Court's satisfaction, by filing a petition, whether they can fairly and adequately  
24 represent and protect the interests of the members of the Class at the time the Court  
25 decides whether to certify the class under Fed.R.Civ.P. 23. The undersigned counsel  
26 (the law firms of Ridout Lyon + Ottoson LLP and Zimmerman Reed, PLLP) are  
27 adequate in all respects and qualified to serve as class counsel.  
28

1           82. Community of Interest. The Class (and any Subclasses, if applicable)  
2 has a well-defined community of interest in the questions of fact and law to be  
3 litigated. The common questions of law and fact are predominant with respect to the  
4 liability issues, relief issues and anticipated affirmative defenses. The Named  
5 Plaintiffs have claims typical of the Class. Without limitation, as a result of  
6 Defendants' conduct alleged herein, the named Plaintiffs were: (a) injured; (b)  
7 deprived of the value of the goods that they bargained for; and, (c) sustained  
8 pecuniary loss in an ascertainable amount to be proven at the time of trial.

9           83. Superiority of Class Adjudication. The certification of a class in this  
10 action is superior to the litigation of a multitude of cases by members of the putative  
11 classes. Class adjudication will conserve judicial resources and will avoid the  
12 possibility of inconsistent rulings. Moreover, there are class members who are  
13 unlikely to join or bring an action due to, among other reasons, their reluctance to  
14 sue Defendants and/or their inability to afford a separate action. Equity dictates that  
15 all persons who stand to benefit from the relief sought herein should be subject to  
16 the lawsuit and hence subject to an order spreading the costs of the litigation among  
17 the class members in relationship to the benefits received. Even if the members of  
18 the classes themselves could afford individual litigation, the court system could not.  
19 Individualized litigation presents a potential for inconsistent or contradictory  
20 judgments. Individualized litigation increases the delay and expense to all parties  
21 and the court system presented by the complex legal and factual issues of the case.  
22 By contrast, the class action device presents far fewer management difficulties, and  
23 provides the benefits of single adjudication, economy of scale, and comprehensive  
24 supervision by a single court. Further, a class action is superior and necessary to  
25 protect the Class' rights as the recalls, either voluntary or through any agency, such  
26 as NHTSA, have been ineffective and continue not to be effective. Fire risk remains  
27 even after any recalls. Further, any recalls, either voluntary or through any agency,  
28 cannot provide the remedies and relief sought in this action.

1 84. In the alternative, the above-defined Class (and any Subclasses, if  
2 applicable) may be certified pursuant to Fed.R Civ.P. 23(b)(1) and (b)(2) because:

3 a. The prosecution of separate actions by the individual members of  
4 the Class would create a risk of inconsistent or varying  
5 adjudication with respect to individual class members' claims  
6 which would establish incompatible standards of conduct for  
7 Defendant;

8 b. The prosecution of separate actions by individual members of the  
9 classes would create a risk of adjudications which would as a  
10 practical matter be dispositive of the interests of other members  
11 of the classes who are not parties to the adjudications, or which  
12 would substantially impair or impede the ability of other class  
13 members to protect their interests; and,

14 c. Defendants have acted or refused to act on grounds generally  
15 applicable to the classes, thereby making appropriate final and  
16 injunctive relief with respect to the Class and each State  
17 Subclass.

18 **VII. INTENT**

19 85. Defendants each knowingly and intentionally committed the acts,  
20 concealments and material omissions alleged herein. Those acts and decisions were  
21 committed primarily, in and from each Defendants DKM's, Norcold's and  
22 Thetford's, principal places of business in New York, Ohio, and/or Michigan,  
23 respectively; deceptive conduct which emanated to other states; harming Plaintiffs'  
24 class member's nationwide; from those deceptive and illegal acts which have their  
25 origin in New York, Ohio, and/or Michigan, respectively. The acts and omissions  
26 which Plaintiffs challenge and contend should have been conducted, or conducted  
27 differently, should have been conducted by Defendants DKM, Norcold and  
28 Thetford, at their principal places of business in New York, Ohio, and/or Michigan,



1 respectively. All actions and omissions by Defendants were willful and not the result  
2 of mistake or inadvertence. At all times relevant, Defendants were aware of the  
3 defective nature of their N6, N8 and 1200 series gas absorption refrigerators. Despite  
4 this, Defendants manufactured, marketed and sold, as fit for their intended purpose,  
5 their defective gas absorption refrigerators. Defendants each knowingly and  
6 intentionally undertook and directed that their respective businesses undertake the  
7 illicit practices and conceal the material facts which are the subject of this suit.

8 **FIRST CAUSE OF ACTION**

9 **Violation of New York’s Consumer Protection from Deceptive Acts and**  
10 **Practices Statute, N.Y. Gen. Bus. Law §§349 *et seq.***  
11 **(On Behalf the National Class)**

12 86. Plaintiffs incorporate by reference all preceding paragraphs of this  
13 Complaint as though fully stated herein.

14 87. Plaintiffs bring this action on behalf of themselves and on behalf of the  
15 national Class against Defendants for violations under New York’s Consumer  
16 Protection from Deceptive Acts and Practices Statute - N.Y. Gen. Bus. Law §349 *et*  
17 *seq.* (“GBL §349”).

18 88. This claim is based on the deceptive and misleading conduct and  
19 common omissions of material fact, described above and within this count,  
20 conducted in and from Defendant DKM’s offices, principal place of business and  
21 headquarters in New York, emanating to other states, harming Class members  
22 nationwide.

23 89. The GBL §349 prohibits “deceptive acts or practices in the conduct of  
24 any business, trade or commerce or in the furnishing of any service...”

25 90. Each N6, N8 or 1200 Series gas absorption refrigerator owned by Class  
26 members contains an inherent defect, which is substantially certain to result in  
27 malfunction during the useful life of the product when used as reasonable anticipated  
28 and intended.

1           91. By manufacturing, marketing and distributing for sale the N6, N8 and  
2 1200 Series gas absorption refrigerators, Defendants engaged in business, trade or  
3 commerce, the sale of goods, and/or practices affecting commerce within the  
4 meaning of the GBL §349.

5           92. By failing to disclose and concealing the defective nature of the gas  
6 absorption refrigerators from Plaintiffs and prospective Class members, Defendants  
7 have engaged in deceptive, unfair, fraudulent, and misleading acts and practices in  
8 connection with consumer transactions, as Defendants' have represented that their  
9 refrigerators had characteristics and benefits that they do not have, and represented  
10 that their refrigerators were of a particular standard, quality or grade when they were  
11 of another.

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

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

26           95. Defendants, at all times up to the filing of this Complaint, have engaged  
27 in a pattern of concealment and misrepresentation designed to mislead Plaintiffs and  
28 all members of the Class into believing that Defendants' refrigerators they owned

1 were either free of defects, or that any defects had been fully and completely  
2 eliminated through Defendants' retrofit campaigns. As a result of Defendants'  
3 concealment and misrepresentation, Plaintiffs did not know, and could not through  
4 the exercise of reasonable diligence be expected to know, of the defects and safety  
5 risks involved in their use of Defendants' products, or of Defendants' fraudulent,  
6 unlawful and unfair conduct, as outlined above, until their own gas absorption  
7 refrigerators were recalled, retrofitted and then failed.

8 96. Through the above-described omissions, Defendants have engaged in  
9 deceptive business practices in and from New York including:

- 10 a. misrepresenting by omission that the gas absorption refrigerators  
11 have characteristics, uses, benefits, and qualities which they do  
12 not have;
- 13 b. misrepresenting by omission that the gas absorption refrigerators  
14 are of a particular standard, quality, and grade when they are not;
- 15 c. advertising the gas absorption refrigerators with the intent not to  
16 sell them as advertised;
- 17 d. misrepresenting by omission that a transaction involving the gas  
18 absorption refrigerators confers or involves rights, remedies, and  
19 obligations which it does not; and,
- 20 e. misrepresenting by omission that the subject of a transaction  
21 involving the gas absorption refrigerators has been supplied in  
22 accordance with a previous representation when it has not.

23 97. Despite reasonable diligence, neither Plaintiffs, Class members, nor any  
24 reasonable consumer acting in the ordinary course of use, could learn the facts  
25 Defendants knowingly concealed from the general public. The defective boiler  
26 tubes and safety plug are not readily apparent or visible to Class members using the  
27 refrigerators as intended in the ordinary course. The only time a fire risk becomes  
28 apparent is when it occurs. By that time, it is too late for Plaintiffs and Class

1 members, like other reasonable consumers, to take practical steps to protect  
2 themselves and their property from fire danger.

3 98. Defendants' unfair and deceptive acts and/or practices occurred  
4 repeatedly in Defendants' trade or business, were capable of deceiving a substantial  
5 portion of the purchasing public, and imposed a serious safety risk on the public.

6 99. Defendants knew that their gas absorption refrigerators were  
7 defectively designed and/or manufactured, would fail prematurely, and were not fit  
8 for their intended purpose. Despite this, Defendants marketed and sold these  
9 products to the Class for financial gain.

10 100. Defendants were under an ongoing and continuous duty to Plaintiffs  
11 and the Class Members to disclose the defective nature of their refrigerators in and  
12 from New York because:

- 13 a. Defendants were in a superior position to know the true state of  
14 facts about the safety defects in their gas absorption refrigerators;
- 15 b. Plaintiffs and Class members could not reasonably have been  
16 expected to learn or discover that the refrigerators had dangerous  
17 safety defects until they manifested failure;
- 18 c. Defendants knew that Plaintiffs and Class members could not  
19 reasonably have been expected to learn or discover the safety  
20 defects in the refrigerators; and
- 21 d. The Transportation Recall Enhancement, Accountability and  
22 Documentation Act ("TREAD Act"),<sup>1</sup> and its accompanying  
23 regulations, imposes a mandatory duty upon manufacturers of  
24 motor vehicle equipment to promptly disclose any defects when  
25 the manufacturer learns that motor vehicle equipment contains a  
26 safety defect.<sup>2</sup> Once a manufacturer knows that the motor vehicle  
27

28 <sup>1</sup> 49 U.S.C. §§30101-30170.

<sup>2</sup> 49 U.S.C. §30118(c)(1) & (2)

1 equipment is defective, the manufacturer has an affirmative  
2 continuing duty to notify and warn motor vehicle equipment  
3 owners, purchasers, and dealers of the defect and must remedy  
4 the defect.<sup>3</sup>

5 101. As described herein, Defendants have engaged in business, trade or  
6 commerce, the sale of goods, and/or practices affecting commerce that was  
7 materially misleading and generally directed at the consuming public.

8 102. Proof of individual reliance or individual injury on the part of absent  
9 Class members is not required to establish a basis for relief under GBL §349.

10 103. To the extent that reliance is required for relief it is proper to presume  
11 reliance on the part of Plaintiffs and Class members due to Defendants' omissions  
12 and concealment of material facts. Reasonable consumers would expect to be  
13 warned by a products manufacturer of all facts regarding serious dangers, as exist  
14 here. Defendants deliberately withheld information from the Class that severe fires  
15 could result from the use of Defendants' gas absorption refrigerators, which could  
16 cause serious bodily harm or death. Given the severity of the consequences, which  
17 Defendants failed to disclose, the materiality of such an omission cannot be  
18 questioned.

19 104. In failing to disclose the defects in their product, Defendants knowingly  
20 and intentionally concealed material facts and breached their duty not to do so.

21 105. The facts concealed or not disclosed by Defendants to Plaintiffs and  
22 members of the Class are material in that reasonable consumers would have  
23 considered them to be important in deciding whether to purchase (or retain)  
24 Defendants' products or pay a lesser price. Had Plaintiffs and the Class members  
25 known of true extent of the defective nature of Defendants' products, they would not  
26 have purchased (or retained) the products, or would have paid less for them.

27  
28 <sup>3</sup> 49 U.S.C. §30118(b)(2)(A) & (B).

1           106. Plaintiffs and Class members reasonably expected that Defendants' gas  
2 absorption refrigerators would function properly and not be susceptible to the  
3 hazards described within for the life of their recreational vehicles. That is the  
4 reasonable and objective consumer expectation for gas absorption refrigerators.

5           107. Plaintiffs purchased RV's with Norcold gas absorption refrigerators  
6 with the understanding that the refrigerators would function safely as warranted and  
7 without unreasonable risk of fire when sold, that Defendants had specific  
8 information about dangerous defects in the refrigerators that affected their ability to  
9 function as warranted, and that they did not disclose that material information to  
10 Plaintiffs and the Class but instead concealed such information. Defendants have  
11 had multiple opportunities to disclose the full truth about the defects and the  
12 continuing fire risks to Plaintiffs and the Class but have failed to do so.

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

1 of Defendants' gas absorption refrigerators. Injunctive relief is therefore appropriate  
2 and necessary to eliminate a serious safety risk to Plaintiffs, all members of the  
3 Class, and members of the general public.

4 109. The deceptive and misleading acts and omissions complained of were  
5 conducted, managed and directed by DKM in and from its offices in New York.  
6 Defendants engaged in consumer-oriented activities as their actions caused  
7 consumers in the Class injury or harm to the public interest. Those deceptive and  
8 unlawful acts emanated from and harmed Plaintiffs and Class members nationwide,  
9 including their state of residence. Further DKM controlled the other defendants, as  
10 described above, with regard to the matters and conduct complained of herein, in and  
11 from its offices and headquarters in New York. GBL §349 operates to protect  
12 consumers, regardless of state of residency, from persons and companies performing  
13 unlawful and misleading acts in and from New York state which emanate to and  
14 harm consumers both inside and outside of New York. Hence, all class members  
15 have common claims against DKM and the other Defendants for violation of GBL  
16 §349.

17 110. In addition and/ in or the alternative, Plaintiffs assert claims, based on  
18 the above-described conduct, on behalf of state subclasses, including but not limited  
19 to under the following statutes: California's Consumer Legal Remedies Act, Cal.  
20 Civ. Code §1750 *et seq.*, Tex. Bus. & Com. §§17.46 *et seq.* and Fla. Stat. §§501.201  
21 *et seq.* Defendants' above-described conducted violated these statutes, as well at  
22 GBL §349.

23 111. To the extent required, Defendants have been pre-filing notice under  
24 each of the below listed statutes that require such notice and/or limited their claims.

25 112. As a direct and proximate result of Defendants' unfair or deceptive acts  
26 or practices, Plaintiffs and Class Members have suffered and will continue to suffer  
27 actual damages. Plaintiffs and Class Members have been misled into purchasing  
28 and owning dangerously defective gas absorption refrigerators that cannot be used



1 safely for their intended purpose, and which therefore need to be replaced.  
2 Defendants, and each of them, have failed and refused, and continue to fail and  
3 refuse, to acknowledge their responsibility for placing dangerously defective  
4 products into the stream of commerce, and have further failed and refused to  
5 eliminate the defects and render their products safe to use. Through their wrongful  
6 conduct, as described above, Defendants, and each of them, have foisted the  
7 responsibility – and the costs – of manufacturing a safe product, or rendering their  
8 defective product safe, onto the Plaintiffs and Class Members. The resulting  
9 damage and injury is common to all Plaintiffs and Class Members, and can only be  
10 adequately remedied through the common, class-wide relief sought herein.

11 113. Plaintiffs and the Class Members are entitled to legal and equitable  
12 relief against Defendants, including injunctions, consequential damages, rescission,  
13 restitution, attorneys’ fees, costs of suit, prejudgment interest and other relief as  
14 appropriate.

15 **SECOND CAUSE OF ACTION**

16 **Violation of Michigan Consumer Protection Act,**  
17 **M.C.L. §§445.901 *et seq.***  
18 **(On Behalf of National Class)**

19 114. Plaintiffs incorporate by reference all preceding paragraphs of this  
20 Complaint as though fully stated herein.

21 115. Plaintiffs bring this action on behalf of themselves and on behalf of the  
22 Class against Defendants under the Michigan Consumer Protection Act, M.C.L.  
23 §§445.901 *et seq.* (“MCL”).

24 116. This claim is based on Defendants’ deceptive and misleading conduct  
25 and common omissions of material fact, described above and within this count,  
26 conducted in and from Defendant Thetford’s offices, principal place of business and  
27 headquarters in Michigan, emanating to other states, harming Class members  
28 nationwide.

1           117. Each of the Plaintiffs and proposed Class members is a person entitled  
2 to the protection under the MCL and purchased and/or owned one or more of  
3 Defendants' N6, N8 or 1200 Series gas absorption refrigerators, either as separate  
4 products, or as installed in recreational vehicles, for personal, family, or household  
5 purposes.

6           118. Each N6, N8 or 1200 Series gas absorption refrigerator owned by Class  
7 members contains an inherent defect, which is substantially certain to result in  
8 malfunction during the useful life of the product when used as reasonable anticipated  
9 and intended.

10           119. By manufacturing, marketing and distributing for sale the N6, N8 and  
11 1200 Series gas absorption refrigerators, Defendants engaged in trade or commerce  
12 within the meaning of the MCL.

13           120. By failing to disclose and concealing the defective nature of the gas  
14 absorption refrigerators from Plaintiffs and prospective Class members, Defendants  
15 have engaged in deceptive, unfair, fraudulent, and misleading acts and practices in  
16 connection with consumer transactions, as Defendants' have represented that their  
17 refrigerators had characteristics and benefits that they do not have, and represented  
18 that their refrigerators were of a particular standard, quality or grade when they were  
19 of another.

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

27           122. Notwithstanding Defendants' knowledge of the design defects and  
28 inherent safety risks in their gas absorption refrigerators, and their knowledge of

1 alternate designs to eliminate the defects and safety hazards, Defendants failed and  
2 refused to alter their gas absorption refrigerator design, and instead engaged in a  
3 continuous pattern of deception and concealment, designed to mislead Plaintiffs and  
4 members of the Class into believing that their gas absorption refrigerators were safe,  
5 when in fact they were, and continue to be, dangerously defective.

6 123. Defendants, at all times up to the filing of this Complaint, have engaged  
7 in a pattern of concealment and misrepresentation designed to mislead Plaintiffs and  
8 all members of the Class into believing that Defendants' refrigerators they owned  
9 were either free of defects, or that any defects had been fully and completely  
10 eliminated through Defendants' retrofit campaigns. As a result of Defendants'  
11 concealment and misrepresentation, Plaintiffs did not know, and could not through  
12 the exercise of reasonable diligence be expected to know, of the defects and safety  
13 risks involved in their use of Defendants' products, or of Defendants' fraudulent,  
14 unlawful and unfair conduct, as outlined above, until their own gas absorption  
15 refrigerators were recalled, retrofitted and then failed.

16 124. Through the above-described omissions, Defendants have engaged in  
17 deceptive business practices in and from Michigan including:

- 18 a. misrepresenting by omission that the gas absorption refrigerators  
19 have characteristics, uses, benefits, and qualities which they do  
20 not have;
- 21 b. misrepresenting by omission that the gas absorption refrigerators  
22 are of a particular standard, quality, and grade when they are not;
- 23 c. advertising the gas absorption refrigerators with the intent not to  
24 sell them as advertised;
- 25 d. misrepresenting by omission that a transaction involving the gas  
26 absorption refrigerators confers or involves rights, remedies, and  
27 obligations which it does not; and,
- 28 e. misrepresenting by omission that the subject of a transaction

1 involving the gas absorption refrigerators has been supplied in  
2 accordance with a previous representation when it has not.

3 125. Despite reasonable diligence, neither Plaintiffs, Class members, nor any  
4 reasonable consumer acting in the ordinary course of use, could learn the facts  
5 Defendants knowingly concealed from the general public. The defective boiler  
6 tubes and safety plug are not readily apparent or visible to Class members using the  
7 refrigerators as intended in the ordinary course. The only time a fire risk becomes  
8 apparent is when it occurs. By that time, it is too late for Plaintiffs and Class  
9 members, like other reasonable consumers, to take practical steps to protect  
10 themselves and their property from fire danger.

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

14 127. Defendants knew that their gas absorption refrigerators were  
15 defectively designed and/or manufactured, would fail prematurely, and were not fit  
16 for their intended purpose. Despite this, Defendants marketed and sold these  
17 products to the Class for financial gain.

18 128. Defendants were under an ongoing and continuous duty to Plaintiffs  
19 and the Class Members to disclose the defective nature of their refrigerators in and  
20 from their offices in Michigan because:

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

1           129. As described herein, Defendants have engaged in consumer-oriented  
2 conduct that was materially misleading and generally directed at the consuming  
3 public.

4           130. Proof of individual reliance or individual injury on the part of absent  
5 Class members is not required to establish a basis for relief.

6           131. To the extent that reliance is required for relief under the MCL or any  
7 of the consumer protection statutes Plaintiffs seek to apply, it is proper to presume  
8 reliance on the part of Plaintiffs and Class members due to Defendants' omissions  
9 and concealment of material facts. Reasonable consumers would expect to be  
10 warned by a products manufacturer of all facts regarding serious dangers, as exist  
11 here. Defendants deliberately withheld information from the Class that severe fires  
12 could result from the use of Defendants' gas absorption refrigerators, which could  
13 cause serious bodily harm or death. Given the severity of the consequences, which  
14 Defendants failed to disclose, the materiality of such an omission cannot be  
15 questioned.

16           132. In failing to disclose the defects in their product, Defendants knowingly  
17 and intentionally concealed material facts and breached their duty not to do so.

18           133. The facts concealed or not disclosed by Defendants to Plaintiffs and  
19 members of the Class are material in that reasonable consumers would have  
20 considered them to be important in deciding whether to purchase (or retain)  
21 Defendants' products or pay a lesser price. Had Plaintiffs and the Class members  
22 known of true extent of the defective nature of Defendants' products, they would not  
23 have purchased (or retained) the products, or would have paid less for them.

24           134. Plaintiffs and Class members reasonably expected that Defendants' gas  
25 absorption refrigerators would function properly and not be susceptible to the  
26 hazards described within for the life of their recreational vehicles. That is the  
27 reasonable and objective consumer expectation for gas absorption refrigerators.  
28

1           135. Plaintiffs purchased RV's with Norcold gas absorption refrigerators  
2 with the understanding that the refrigerators would function safely as warranted and  
3 without unreasonable risk of fire when sold, that Defendants had specific  
4 information about dangerous defects in the refrigerators that affected their ability to  
5 function as warranted, and that they did not disclose that material information to  
6 Plaintiffs and the Class but instead concealed such information. Defendants have  
7 had multiple opportunities to disclose the full truth about the defects and the  
8 continuing fire risks to Plaintiffs and the Class but have failed to do so.

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

28

1           137. The deceptive and misleading acts and omissions complained of  
2 emanated from Thetford's office in Ann Arbor, Michigan. Defendants engaged in  
3 consumer-oriented activities as their actions caused consumers in the Class injury or  
4 harm to the public interest. Those deceptive and unlawful acts emanated from and  
5 harmed Plaintiffs and Class members nationwide, including their state of residence.  
6 The MCL operates to protect consumers, regardless of state of residency, from  
7 persons and companies performing unlawful and misleading acts in and from the  
8 state of Michigan which emanate to and harm consumers both inside and outside of  
9 Michigan. Hence, all class members have common claims against Thetford and the  
10 other Defendants Thetford acted in concert with for violation of the MCL.

11           138. In addition and/or in the alternative, Plaintiffs assert claims, based on  
12 the above-described conduct, on behalf of state subclasses, including but not limited  
13 to under the following statutes: California's Consumer Legal Remedies Act, Cal.  
14 Civ. Code §1750 *et seq.*, Tex. Bus. & Com. §§17.46 *et seq.* and Fla. Stat. §§501.201  
15 *et seq.* Defendants' above-described conducted violated these statutes, as well as the  
16 MCL.

17           139. As a direct and proximate result of Defendants' unfair or deceptive acts  
18 or practices, Plaintiffs and Class Members have suffered and will continue to suffer  
19 actual damages. Plaintiffs and Class Members have been misled into purchasing  
20 and owning dangerously defective gas absorption refrigerators that cannot be used  
21 safely for their intended purpose, and which therefore need to be replaced.  
22 Defendants, and each of them, have failed and refused, and continue to fail and  
23 refuse, to acknowledge their responsibility for placing dangerously defective  
24 products into the stream of commerce, and have further failed and refused to  
25 eliminate the defects and render their products safe to use. Through their wrongful  
26 conduct, as described above, Defendants, and each of them, have foisted the  
27 responsibility – and the costs – of manufacturing a safe product, or rendering their  
28 defective product safe, onto the Plaintiffs and Class Members. The resulting



1 damage and injury is common to all Plaintiffs and Class Members, and can only be  
2 adequately remedied through the common, class-wide relief sought herein.

3 140. Plaintiffs and the Class Members are entitled to legal and equitable  
4 relief against Defendants, including injunctions, consequential damages, rescission,  
5 restitution, attorneys' fees, costs of suit, prejudgment interest and other relief as  
6 appropriate.

7 **THIRD CAUSE OF ACTION**

8 **Violation of Ohio Consumer Sales Practices Act,**  
9 **O.R.C. §§1345 *et seq.***  
10 **(On Behalf of National Class)**

11 141. Plaintiffs incorporate by reference all preceding paragraphs of this  
12 Complaint as though fully stated herein.

13 142. Plaintiffs bring this action on behalf of themselves and on behalf of the  
14 Class against Defendants under the Ohio Consumer Sales Practices Act, O.R.C.  
15 §§1345 *et seq.* ("OSCPA").

16 143. This claim is based on Defendants' deceptive and misleading conduct  
17 and common omissions of material fact conducted in and from Defendant Norcold's  
18 offices, principal place of business and headquarters in Ohio, emanating to other  
19 states, harming Class members nationwide.

20 144. Each of the Plaintiffs and proposed Class members is a person entitled  
21 to the protection under the OSCP A and purchased and/or owned one or more of  
22 Defendants' N6, N8 or 1200 Series gas absorption refrigerators, either as separate  
23 products, or as installed in recreational vehicles, for personal, family, or household  
24 purposes.

25 145. Each N6, N8 or 1200 Series gas absorption refrigerator owned by Class  
26 members contains an inherent defect, which is substantially certain to result in  
27 malfunction during the useful life of the product when used as reasonable anticipated  
28 and intended.

1           146. By manufacturing, marketing and distributing for sale the N6, N8 and  
2 1200 Series gas absorption refrigerators, Defendants engaged in trade or commerce  
3 within the meaning of the OSCPA.

4           147. By failing to disclose and concealing the defective nature of the gas  
5 absorption refrigerators from Plaintiffs and prospective Class members, Defendants  
6 have engaged in deceptive, unfair, fraudulent, and misleading acts and practices in  
7 connection with consumer transactions, as Defendants' have represented that their  
8 refrigerators had characteristics and benefits that they do not have, and represented  
9 that their refrigerators were of a particular standard, quality or grade when they were  
10 of another.

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

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

25           150. Defendants, at all times up to the filing of this Complaint, have engaged  
26 in a pattern of concealment and misrepresentation designed to mislead Plaintiffs and  
27 all members of the Class into believing that Defendants' refrigerators they owned  
28 were either free of defects, or that any defects had been fully and completely

1 eliminated through Defendants' retrofit campaigns. As a result of Defendants'  
2 concealment and misrepresentation, Plaintiffs did not know, and could not through  
3 the exercise of reasonable diligence be expected to know, of the defects and safety  
4 risks involved in their use of Defendants' products, or of Defendants' fraudulent,  
5 unlawful and unfair conduct, as outlined above, until their own gas absorption  
6 refrigerators were recalled, retrofitted and then failed.

7 151. Through the above-described omissions, Defendants have engaged in  
8 deceptive business practices in and from Ohio including:

- 9 a. misrepresenting by omission that the gas absorption refrigerators  
10 have characteristics, uses, benefits, and qualities which they do  
11 not have;
- 12 b. misrepresenting by omission that the gas absorption refrigerators  
13 are of a particular standard, quality, and grade when they are not;
- 14 c. advertising the gas absorption refrigerators with the intent not to  
15 sell them as advertised;
- 16 d. misrepresenting by omission that a transaction involving the gas  
17 absorption refrigerators confers or involves rights, remedies, and  
18 obligations which it does not; and,
- 19 e. misrepresenting by omission that the subject of a transaction  
20 involving the gas absorption refrigerators has been supplied in  
21 accordance with a previous representation when it has not.

22 152. Despite reasonable diligence, neither Plaintiffs, Class members, nor any  
23 reasonable consumer acting in the ordinary course of use, could learn the facts  
24 Defendants knowingly concealed from the general public. The defective boiler  
25 tubes and safety plug are not readily apparent or visible to Class members using the  
26 refrigerators as intended in the ordinary course. The only time a fire risk becomes  
27 apparent is when it occurs. By that time, it is too late for Plaintiffs and Class  
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1 members, like other reasonable consumers, to take practical steps to protect  
2 themselves and their property from fire danger.

3 153. Defendants' unfair and deceptive acts and/or practices occurred  
4 repeatedly in Defendants' trade or business, were capable of deceiving a substantial  
5 portion of the purchasing public, and imposed a serious safety risk on the public.

6 154. Defendants knew that their gas absorption refrigerators were  
7 defectively designed and/or manufactured, would fail prematurely, and were not fit  
8 for their intended purpose. Despite this, Defendants marketed and sold these  
9 products to the Class for financial gain.

10 155. Defendants were under an ongoing and continuous duty to Plaintiffs  
11 and the Class Members to disclose the defective nature of their refrigerators in and  
12 from Ohio because:

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

21 156. As described herein, Defendants have engaged in consumer-oriented  
22 conduct that was materially misleading and generally directed at the consuming  
23 public.

24 157. Proof of individual reliance or individual injury on the part of absent  
25 Class members is not required to establish a basis for relief.

26 158. To the extent that reliance is required for relief under any of the  
27 consumer protection statutes Plaintiffs seek to apply, it is proper to presume reliance  
28 on the part of Plaintiffs and Class members due to Defendants' omissions and

1 concealment of material facts. Reasonable consumers would expect to be warned by  
2 a products manufacturer of all facts regarding serious dangers, as exist here.  
3 Defendants deliberately withheld information from the Class that severe fires could  
4 result from the use of Defendants' gas absorption refrigerators, which could cause  
5 serious bodily harm or death. Given the severity of the consequences, which  
6 Defendants failed to disclose, the materiality of such an omission cannot be  
7 questioned.

8 159. In failing to disclose the defects in their product, Defendants knowingly  
9 and intentionally concealed material facts and breached their duty not to do so.

10 160. The facts concealed or not disclosed by Defendants to Plaintiffs and  
11 members of the Class are material in that reasonable consumers would have  
12 considered them to be important in deciding whether to purchase (or retain)  
13 Defendants' products or pay a lesser price. Had Plaintiffs and the Class members  
14 known of true extent of the defective nature of Defendants' products, they would not  
15 have purchased (or retained) the products, or would have paid less for them.

16 161. Plaintiffs and Class members reasonably expected that Defendants' gas  
17 absorption refrigerators would function properly and not be susceptible to the  
18 hazards described within for the life of their recreational vehicles. That is the  
19 reasonable and objective consumer expectation for gas absorption refrigerators.

20 162. Plaintiffs purchased RV's with Norcold gas absorption refrigerators  
21 with the understanding that the refrigerators would function safely as warranted and  
22 without unreasonable risk of fire when sold, that Defendants had specific  
23 information about dangerous defects in the refrigerators that affected their ability to  
24 function as warranted, and that they did not disclose that material information to  
25 Plaintiffs and the Class but instead concealed such information. Defendants have  
26 had multiple opportunities to disclose the full truth about the defects and the  
27 continuing fire risks to Plaintiffs and the Class but have failed to do so.

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

20           164. The deceptive and misleading acts and omissions complained of  
21 emanated from Norcold's principle place of business in Sidney, Ohio. Defendants  
22 engaged in consumer-oriented activities as their actions caused consumers in the  
23 Class injury or harm to the public interest. Those deceptive and unlawful acts  
24 emanated from and harmed Plaintiffs and Class members nationwide, including their  
25 state of residence. The OSCPA operates to protect consumers, regardless of state of  
26 residency, from persons and companies performing unlawful and misleading acts in  
27 and from the state of Ohio which emanate to and harm consumers both inside and  
28

1 outside of Ohio. Hence, all class members have common claims against Norcold  
2 and the other Defendants Norcold acted in concert with for violation of the OSCPA.

3 165. In addition and/or in the alternative, Plaintiffs assert claims, based on  
4 the above-described conduct, on behalf of state subclasses, including but not limited  
5 to under the following statutes: California’s Consumer Legal Remedies Act, Cal.  
6 Civ. Code §1750 *et seq.*, Tex. Bus. & Com. §§17.46 *et seq.* and Fla. Stat. §§501.201  
7 *et seq.* Defendants’ above-described conducted violated these statutes, as well as the  
8 OSCPA.

9 166. As a direct and proximate result of Defendants’ unfair or deceptive acts  
10 or practices, Plaintiffs and Class Members have suffered and will continue to suffer  
11 actual damages. Plaintiffs and Class Members have been misled into purchasing  
12 and owning dangerously defective gas absorption refrigerators that cannot be used  
13 safely for their intended purpose, and which therefore need to be replaced.  
14 Defendants, and each of them, have failed and refused, and continue to fail and  
15 refuse, to acknowledge their responsibility for placing dangerously defective  
16 products into the stream of commerce, and have further failed and refused to  
17 eliminate the defects and render their products safe to use. Through their wrongful  
18 conduct, as described above, Defendants, and each of them, have foisted the  
19 responsibility – and the costs – of manufacturing a safe product, or rendering their  
20 defective product safe, onto the Plaintiffs and Class Members. The resulting  
21 damage and injury is common to all Plaintiffs and Class Members, and can only be  
22 adequately remedied through the common, class-wide relief sought herein.

23 167. Plaintiffs and the Class Members are entitled to legal and equitable  
24 relief against Defendants, including injunctions, consequential damages, rescission,  
25 restitution, attorneys’ fees, costs of suit, prejudgment interest and other relief as  
26 appropriate.

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1 **FOURTH CAUSE OF ACTION**  
2 **Violations Of The Magnuson-Moss Warranty Act,**  
3 **U.S.C. §§2301, *et seq.*,**  
4 **For Breach Of Express Warranty**  
5 **(On Behalf Of National Class)**

6 168. Plaintiffs incorporate by reference all preceding paragraphs of this  
7 Complaint as though fully stated herein. Plaintiffs also incorporate by reference  
8 allegations in the Sixth and Seventh Causes of Action below, as though fully stated  
9 herein.

10 169. Plaintiffs bring this action on behalf of themselves and on behalf of the  
11 national Class against Defendants under the Magnuson-Moss Warranty Act, U.S.C.  
12 §§2301, *et seq.*

13 170. Plaintiffs and members of the Class, are “consumers” as defined in the  
14 Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. §2301(3).

15 171. Defendants are “suppliers” and “warrantors” as defined in the MMWA,  
16 15 U.S.C. §§2301(4) and (5).

17 172. The N6, N8 and 1200 series gas absorption refrigerators are “consumer  
18 products” as defined in the MMWA, 15 U.S.C. §2301(1).

19 173. The actions of Defendants as hereinabove described, and in failing to  
20 tender the gas absorption refrigerators free of defects, constitute breaches of the  
21 written and implied warranties covering the gas absorption refrigerators, in violation  
22 of the MMWA, which allows “a consumer who is damaged by the failure of a  
23 supplier, warrantor, or service contractor to comply with any obligation under... a  
24 written warranty...[to] bring suit for damages and other legal and equitable relief.”  
25 15 U.S.C. §2310(d)(1).

26 174. As a direct and proximate result of the acts and omissions of  
27 Defendants as set forth hereinabove, Plaintiffs and the Class have been damaged and  
28 are entitled to all relief available under the MMWA and by law.

1 175. Plaintiffs' counsel put Defendants on notice that they were in violation  
2 of the MMWA and that Plaintiffs were acting on behalf of a class of aggrieved  
3 persons.

4 **FIFTH CAUSE OF ACTION**  
5 **Violations Of The Magnuson-Moss Warranty Act,**  
6 **15 U.S.C. §§2301, *et seq.*,**  
7 **For Breach Of Implied Warranties**  
8 **(On Behalf of National Class)**

9 176. Plaintiffs incorporate by reference all preceding paragraphs of this  
10 Complaint as though fully stated herein. Plaintiffs also incorporate by reference  
11 allegations in the Sixth and Seventh Causes of Action below, as though fully stated  
12 herein.

13 177. Plaintiffs bring this action on behalf of themselves and on behalf of the  
14 national Class against Defendants under the Magnuson-Moss Warranty Act, U.S.C.  
15 §§2301, *et seq.*

16 178. Plaintiffs and members of the Class, are “consumers” as defined in the  
17 Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. §2301(3).

18 179. Defendants are “suppliers” and “warrantors” as defined in the MMWA,  
19 15 U.S.C. §§2301(4) and (5).

20 180. The gas absorption refrigerators are “consumer products” as defined in  
21 the MMWA, 15 U.S.C. §2301(1).

22 181. The implied warranties pertaining to the gas absorption refrigerators are  
23 “implied warranties” as defined in the MMWA, 15 U.S.C. §2301(7).

24 182. The actions of Defendants as hereinabove described and in failing to  
25 tender the gas absorption refrigerators free of defects constitute breaches of the  
26 implied warranties covering the gas absorption refrigerators, in violation of the  
27 MMWA, which allows “a consumer who is damaged by the failure of a supplier,  
28 warrantor, or service contractor to comply with any obligation under... a[n]...implied  
warranty...[to] bring suit for damages and other legal and equitable relief.” 15 U.S.C.  
§2310(d)(1).

1 183. As a direct and proximate result of the acts and omissions of  
2 Defendants as set forth hereinabove, Plaintiffs and the Class have been damaged and  
3 are entitled to all relief available under the MMWA and by law.

4 184. Plaintiffs' counsel put Defendants on notice that they were in violation  
5 of the MMWA and that Plaintiffs were acting on behalf of a class of aggrieved  
6 persons.

7 **SIXTH CAUSE OF ACTION**

8 **Breach of Express Warranty**  
9 **(On Behalf of All Plaintiffs and the Class)**

10 185. Plaintiffs hereby incorporate by reference every other paragraph of this  
11 Complaint as through fully stated herein.

12 186. Plaintiffs bring this action on behalf of themselves and on behalf of the  
13 Class and each subclass, as applicable, against Defendants.

14 187. Defendants made statements of fact, which were received by Plaintiffs  
15 and members of the Class. Defendants' statements included, but were not limited to:  
16 (a) they had a global reputation for excellence in the design and manufacture of gas  
17 absorption refrigerators based on many years of experience that created an assurance  
18 of quality in their products; (b) their gas absorption refrigerators were designed and  
19 manufactured to meet the highest standards of reliability and performance; (c)  
20 quality, integrity and reliability were built into each unit made in America by an  
21 American-owned company; (d) that the refrigerators were superior, with exceptional  
22 performance; and, (e) that the refrigerators were the hallmark of performance and  
23 reliability by America's leading manufacturer of refrigerators and freezers for RV,  
24 Marine and Truck markets.

25 188. Defendants also provided Plaintiffs and members of the Class with  
26 written warranties and owner's manuals in which they stated and warranted that their  
27 gas absorption refrigerators were free from defects.  
28

1 189. In addition, upon information and belief, Defendants also made the  
2 same statement of facts outlined above and provided the same written warranties and  
3 owner's manual mentioned above, which were received by all manufacturers of  
4 RV's (and/or their distributors/dealers and other agents) and formed the basis of the  
5 bargain in the contracts between Defendants and all manufacturers of RV's (and/or  
6 their distributors/dealers and other agents) to install/include Defendants' gas  
7 absorption refrigerators into the manufacturers RV's.

8 190. Defendants knew or should have known that the gas absorption  
9 refrigerators would ultimately be used by Plaintiffs, Class members, and members of  
10 public.

11 191. As the intended consumers and ultimate users of the Norcold gas  
12 absorption refrigerators, Plaintiff and the Class are third-party beneficiaries of any  
13 contracts between Defendants and the RV manufacturers (and/or their  
14 dealers/distributors/agents); from whom Plaintiffs obtained RV's containing Norcold  
15 gas absorption refrigerators. Plaintiffs and the Class, not any dealership, are the  
16 parties intended to be benefited by any such contract because they are the people  
17 actually using the refrigerators in the manner intended.

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

21 193. Defendants have failed to deliver to Plaintiffs, members of the Class  
22 and RV manufacturers (and/or their dealers/distributors/agents) the things  
23 purchased, and have delivered a thing other than the thing purchased, and have thus  
24 breached the express warranties of sale.

25 194. Defendants intentionally and deceptively withheld material facts  
26 regarding the product defects from Plaintiffs, Class members and RV manufacturers  
27 (and/or their dealers/distributors/agents).

28

1           195. To the extent any notice is required, notice of the alleged breach of  
2 express warranty due to defects creating fire risk have been provided to Defendants  
3 as evidenced by their Incident Log showing a widespread problem, yet Defendants  
4 continued in their failure to fix the actual problems and continued in their intentional  
5 concealment of material facts. Other Class members cannot provide notice until a  
6 dangerous fire occurs as they still do not possess all facts to convey in any such  
7 notice due to Defendants' concealment of material facts. In such situations, any  
8 further requirement of individual notice before pursuing such claim and remedies is  
9 unfair and/or unreasonable due to the serious dangers still present. A Class member  
10 should not have to put themselves at continued risk of a possible fatal fire incident  
11 before being able to pursue remedies.

12           196. As such, Plaintiffs notified Defendants of the breach within a  
13 reasonable time, and/or were not required to do so because affording Defendants a  
14 reasonable opportunity to cure its breach would have been futile. Defendants were  
15 on notice of the defects contained in their gas absorption refrigerators.

16           197. The defects and fire risks continue to exist yet are concealed by  
17 Defendants.

18           198. By way of the foregoing, Defendants breached their express warranties  
19 to the Class (and each subclass, as applicable), in violation of applicable law  
20 including but not limited to N.Y. U.C.C. Law §2-313, Ohio Rev. Code Ann.  
21 §1302.26, Mich. Comp. Laws Ann. §440.2313, California Commercial Code §2313,  
22 Tex. Bus. & Com. Code Ann. §2.313 and/or Fla. Stat. Ann. §672.313.

23           199. As a direct and proximate result of Defendants' breach, Plaintiffs and  
24 members of the Class have suffered, and will continue to suffer, economic damages,  
25 in an amount that will be established at trial according to proof.

26           200. Plaintiffs and the Class Members are entitled to legal and equitable  
27 relief against Defendants, including consequential damages, rescission, attorneys'  
28 fees, costs of suit, and other relief as appropriate.

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**SEVENTH CAUSE OF ACTION**

**Breach of Implied Warranty  
(On Behalf of the Class)**

201. Plaintiffs hereby incorporate by reference every other paragraph of this Complaint as through fully stated herein.

202. Plaintiffs bring this action on behalf of themselves and on behalf of the Class and Subclasses against Defendants, under applicable law including the implied warranty statutes of the states outlined below.

203. Defendants were at all relevant times the manufacturer, distributor, warrantor, and/or seller of the defective gas absorption refrigerators. Defendants knew or had reason to know of the specific use for which their gas absorption refrigerators were purchased.

204. At the time Defendants marketed and otherwise placed their gas absorption refrigerators into the stream of commerce, they knew that the refrigerators were going to be installed in recreational vehicles which would then be sold to consumers, including Plaintiffs and members of the Class, for personal and recreational use. Defendants also knew that consumers, including Plaintiffs and members of the Class, would have no ability or opportunity to inspect their gas absorption refrigerators for defects, but instead would rely on skill and judgment to furnish safe and reliable gas absorption refrigerators that were suitable for their particular purpose and free of dangerous defects that could start fires.

205. To the extent required, upon information and belief, Plaintiffs and all Class members, if not in privity with Defendants, are third-party beneficiaries of the contracts entered into between the manufacturers of Plaintiffs’ and Class members’ RVs and/or the Norcold installing contractors, and/or agents and Defendants.

206. To the extent required, upon information and belief, Plaintiffs and all Class members are third-party beneficiaries of the contracts entered into between Defendants and the manufacturers of Plaintiffs’ and Class members’ RVs and/or the

1 installing contractors, because Plaintiffs and Class members received the direct  
2 benefit of those contracts. Defendants and the manufacturers of Plaintiffs' and Class  
3 members' RVs and/or the installing contractors intended for Plaintiffs and Class  
4 members to directly benefit from any contracts given that the Defendants gas  
5 absorption refrigerators were to be installed on Plaintiffs' and Class Members' RVs.

6 207. Defendants were aware of the particular purpose that each Plaintiff and  
7 class member had for the Norcold gas absorption refrigerators obtained – to have a  
8 safe, properly working refrigeration unit in their RV that did not present a dangerous  
9 risk of fire. Defendants failed to supply such gas absorption refrigerators as, as  
10 described, the refrigerators present a dangerous fire risk.

11 208. Upon information and belief, Defendants and all manufacturers of RV's  
12 (and/or their distributors/dealers and other agents) have contracts which contain the  
13 implied warranty of merchantability where any and all Norcold gas absorption  
14 refrigerators supplied by Defendants were to be fit for ordinary purposes, safe, not  
15 dangerous and susceptible to fire.

16 209. As the intended consumers and ultimate users of the Norcold gas  
17 absorption refrigerators, Plaintiff and the Class are third-party beneficiaries of any  
18 contracts between Defendants and the RV manufacturers (and/or their  
19 dealers/distributors/agents), from whom Plaintiffs obtained RV's containing Norcold  
20 gas absorption refrigerators, which contain the implied warranty of merchantability  
21 and to be fit for ordinary purposes, safe, not dangerous and susceptible to fire.  
22 Plaintiffs and the Class, not any dealership, are the parties intended to be benefited  
23 by any such contract because they are the people actually using the refrigerators in  
24 the manner intended.

25 210. Plaintiffs and members of the Class relied on Defendants' skill and  
26 judgment to furnish safe and reliable gas absorption refrigerators that were suitable  
27 for their particular purpose and free of dangerous defects that could start fires.  
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1           211. Defendants provided Plaintiffs and members of the Class with an  
2 implied warranty that their gas absorption refrigerators and any parts thereof were  
3 merchantable and fit for the ordinary purposes for which they were sold and not  
4 dangerous and susceptible to causing fires. However, the gas absorption  
5 refrigerators Defendants provided to Plaintiffs and the Class are not fit and suitable  
6 for their ordinary purpose because, *inter alia*, they contained design and  
7 manufacturing defects which were likely to create and/or enhance fires, with the  
8 potential of causing serious damage, injury and/or death.

9           212. Defendants impliedly warranted that the gas absorption refrigerators  
10 were of merchantable quality and fit for such use, did not contain dangerous defects  
11 and were not susceptible to causing fires. This implied warranty included, among  
12 other things: (1) a warranty that the gas absorption refrigerators were manufactured,  
13 supplied, distributed, and/or sold by Defendants were safe and reliable for their  
14 intended purpose; and (2) a warranty that their gas absorption refrigerators would be  
15 fit for their intended use while the gas absorption refrigerators were being operated.

16           213. Defendants' gas absorption refrigerators supplied to Plaintiffs and the  
17 Class did not possess the basic degree of fitness for ordinary use due to the defects  
18 described which created unreasonable risk of fire and danger. The defects are so  
19 basic that they render the refrigerator (and the RV containing them) unfit for  
20 ordinary purposes. As such, they are not merchantable.

21           214. The implied warranties were made not only at the time of sale and when  
22 the refrigerators were placed into the stream of commerce, but also at the time of the  
23 last recalls and the retrofits. At those times, Defendant impliedly warranted that the  
24 gas absorption refrigerators were of merchantable quality and fit for such use, did  
25 not contain dangerous defects and were not susceptible to causing fires. Continuing  
26 through the present, Defendants continue to hold out and market the gas absorption  
27 refrigerators as safe and fit. Yet as shown by recent fires experienced by Plaintiffs  
28 and other class members, which continue through the present, regardless of any

1 recalls, retrofits or replacements, the refrigerators are still not safe, are dangerous  
2 and are susceptible to causing fires.

3 215. Contrary to the applicable implied warranties, Defendants' gas  
4 absorption refrigerators at the time of sale and thereafter were not fit for their  
5 ordinary and intended purpose. Instead, Defendants' gas absorption refrigerators are  
6 and continue to be defective and dangerous. Such conduct violated state implied  
7 warranty laws, including but not limited to N.Y. U.C.C. §2-314, Ohio Rev. Code  
8 Ann. §1302.27, Mich. Comp. Laws Ann. §440.2314 California Commercial Code  
9 §2314, Tex. Bus. & Com. Code Ann. §2.314 and/or Fla. Stat. Ann. §672.314.

10 216. As a direct and proximate result of Defendants' breach, Plaintiffs and  
11 members of the Class have suffered, and will continue to suffer, significant  
12 damages, loss and injury in an amount that will be established at trial according to  
13 proof.

14 217. Plaintiffs and the Class Members are entitled to legal and equitable  
15 relief against Defendants, including consequential damages, rescission, attorneys'  
16 fees, costs of suit, and other relief as appropriate.

17 **EIGHTH CAUSE OF ACTION**

18 **Violation of Song-Beverly Consumer Warranty Act,**  
19 **California Civil Code §1790, *et seq.***  
20 **(On Behalf of Plaintiff Chow and the California State Subclass)**

21 218. Plaintiffs incorporate by reference all preceding paragraphs of this  
22 Complaint as though stated herein.

23 219. Plaintiff Chow brings this claim individually and on behalf of all others  
24 similarly situated in the California State Subclass.

25 220. Plaintiffs and all members of the California State Subclass are  
26 consumers who purchased and/or owned one or more of Defendants' N6, N8 or  
27 1200 Series gas absorption refrigerators, either as separate products, or as installed  
28 in recreational vehicles as original equipment. Defendants' refrigerators were  
purchased primarily for family and household use, and said products were therefore

1 “consumer goods” as that term is defined in the Song-Beverly Consumer Warranty  
2 Act (hereinafter the “ACT”), Cal. Civil Code §1790, et seq.

3 221. Plaintiffs and all members of the California State Subclass are “buyers”  
4 of consumer goods under the ACT.

5 222. Defendants are “manufacturers” and/or “distributors” under the ACT.

6 223. Defendants offered, sold, distributed and otherwise placed their gas  
7 absorption refrigerators into the stream of commerce accompanied by express  
8 warranties that the products were reliable and free of defects. In addition to these  
9 express warranties, the sale of Defendants’ gas absorption refrigerators were  
10 accompanied by Defendants’ implied warranties that their refrigerators were  
11 merchantable, and fit for the purpose for which they were intended. However,  
12 Defendants’ gas absorption refrigerators are not fit for their ordinary purpose.

13 224. The above-described defects and non-conformities to warranty of  
14 Defendants’ gas absorption refrigerators manifested themselves within the  
15 applicable express warranty period, and/or within the applicable express warranty  
16 period as extended pursuant to Civil Code §1795.6, and substantially impaired the  
17 use, value and/or safety of the products.

18 225. Plaintiffs and members of the California State Subclass delivered  
19 Defendants’ gas absorption refrigerators to repair facilities authorized by Defendants  
20 to effect repairs and correct the above-described defects and nonconformities in  
21 Defendants’ products.

22 226. Defendants, and their agents, were unable to conform Plaintiffs’ and  
23 Class members’ refrigerators to the applicable express and implied warranties after a  
24 reasonable number of attempts, including attempted repairs and retrofits pursuant to  
25 product safety recalls initiated by Defendants.

26 227. Notwithstanding Plaintiffs’ and Class members’ entitlement under the  
27 Act and demand by Plaintiffs and Class members therefore, Defendants have failed  
28 to either promptly replace Plaintiffs’ and Class members’ gas absorption

1 refrigerators with a new, non-defective and conforming refrigerator, or promptly to  
2 make restitution in accordance with the Act.

3 228. Defendants' failure to remedy the defects in their gas absorption  
4 refrigerators, described above, or to replace said refrigerators or provide restitution  
5 to Plaintiffs and Class members, constitutes a breach of Defendants' obligations to  
6 Plaintiffs and Class members under the Act.

7 229. In addition to the acts described above, Defendants have engaged in a  
8 persistent pattern and practice of denying warranty coverage to consumers to repair  
9 and/or replace Defendants' defective products. Defendants sell their gas absorption  
10 refrigerators with three different express warranties – a one (1) year limited warranty  
11 covering repair or replacement of defective parts; a two (2) year limited warranty for  
12 labor to repair or replace defective parts; and, a three (3) year limited warranty that  
13 their product is free from defects. Under the Act, the expiration of all said express  
14 warranties is extended so long as repairs and/or service performed on a  
15 manufacturer's nonconforming goods does not remedy the nonconformity for which  
16 the repair or service was performed. As described above, Defendants' gas  
17 absorption refrigerators were defective when sold to Plaintiffs and all members of  
18 the California State Subclass, and were therefore nonconforming goods.  
19 Notwithstanding any repair or service by or on behalf of Defendants, the  
20 nonconformities were never eliminated, and under California law, Defendants'  
21 express warranties therefore never expired. Nevertheless, Defendants engaged in a  
22 pattern and practice of representing to Plaintiffs, and to members of the Subclass,  
23 that the latter's warranties had not been extended, but had expired. Defendants  
24 engaged in this conduct with the intent of shirking their warranty obligations, and  
25 passing the cost of their defective products onto consumers. This conduct is a  
26 violation of Cal. Civil Code §1795.6, and constitutes a breach of Defendants'  
27 obligations to Plaintiffs and Class members under the Act.

28

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

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

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

1 Defendants' gas absorption refrigerators, and will tender said products on condition  
2 that Defendants restore to Plaintiffs and all Class members the consideration  
3 advanced and/or paid.

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

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

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

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

24 **NINTH CAUSE OF ACTION**

25 **Violation of California Unfair Competition Law,**  
26 **California Business and Professions Code §17200 *et. seq.***  
**(On Behalf of Plaintiff Chow and the California State Subclass)**

27 237. Plaintiffs incorporate by reference all preceding paragraphs of this  
28 Complaint as though stated herein.

1 238. Plaintiff CHOW brings this claim individually and on behalf of all  
2 others similarly situated in the State of California.

3 239. The State of California has enacted statutes designed to protect  
4 consumers against unfair, deceptive, fraudulent, and unconscionable trade and  
5 business practices, and/or false advertising. Those statutes further allow consumers  
6 to bring private and/or class actions. These statutes are:

7 a. California Consumer Legal Remedies Act, Cal. Civ. Code §1750,  
8 *et. seq.*;

9 b. California's Unfair Competition Law, Cal. Bus. & Prof. Code  
10 §17200, *et. seq.*, and Cal. Bus & Prof. Code §17500, *et. seq.*

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

14 241. California Business & Professions Code §17200 prohibits acts of  
15 "unfair competition," including any "unlawful, unfair or fraudulent business act or  
16 practice" and "unfair, deceptive, untrue or misleading advertising."

17 242. Each of the Plaintiffs and proposed Class members in the California  
18 State Subclass is a consumer, purchaser, or other person entitled to the protection of  
19 the above-described consumer protection laws.

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

22 244. Defendants' N6, N8 and 1200 Series gas absorption refrigerators  
23 constitute products to which these consumer protection statutes apply.

24 245. To the extent required, Plaintiffs in the California State Subclass have  
25 provided Defendants notice under each of the above listed statutes.

26 246. Defendants' conduct, as described above, constitutes unlawful, unfair  
27 and fraudulent practices under the UCL.

28 247. Defendants' unlawful practices include, but are not limited to:



- 1 a. Violations of the Song-Beverly Consumer Warranty Act, Cal.
- 2 Civil Code §§1793.2, 1795.6, 1795.90(d);
- 3 b. Cal. Civil Code §1770 (a) (2), (3), (5), (7), (14) and (16); and,
- 4 c. Breach of express and implied warranties.

5 248. Defendants committed unfair and/or fraudulent business practices by  
6 the acts alleged herein, including, but not limited to:

- 7 a. Designing, manufacturing, assembling, marketing, distributing,  
8 selling and otherwise placing into the stream of commerce  
9 dangerously defective gas absorption refrigerators that posed  
10 serious safety risks to users of the product, and members of the  
11 general public;
- 12 b. Making material omissions which led consumers to believe that  
13 Defendants' gas absorption refrigerators were free from defects,  
14 when in fact Defendants knew that they contained design defects,  
15 even after recall and/or retrofitting, that created a substantial risk  
16 of fire, injury and death when the product was used for its  
17 normally intended purpose;
- 18 c. Conducting repeated manufacturer-initiated recall and retrofit  
19 campaigns which were intentionally misleading in an effort to  
20 minimize and conceal the nature and scope of the defects and  
21 continuing risks in Defendants' products, including the ongoing  
22 serious safety risks arising from said defects;
- 23 d. Conducting retrofit campaigns to install various devices onto  
24 Defendants' gas absorption refrigerators that were represented to  
25 "fix" the defects when in fact, the retrofit devices did not address  
26 the defects at all, or the propensity of the defects to cause and/or  
27 enhance fires - a material fact omitted;
- 28

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

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

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

23 251. Defendants, at all times up to the filing of this Complaint, have engaged  
24 in a pattern of concealment designed to mislead Plaintiffs and all members of the  
25 California State Subclass into believing that Defendants' refrigerators they owned  
26 were either free of defects, or that any defects had been fully and completely  
27 eliminated through Defendants' retrofit campaigns. As a result of Defendants'  
28 concealment, Plaintiffs did not know, and could not through the exercise of

1 reasonable diligence be expected to know, of the defects and safety risks involved in  
2 their use of Defendants' products, or of Defendants' fraudulent, unlawful and unfair  
3 conduct, as outlined above, until their own gas absorption refrigerators were  
4 recalled, retrofitted and then failed.

5 252. Plaintiffs and all members of the California State Subclass reasonably  
6 expected Defendants' gas absorption refrigerators to function properly for the life of  
7 their recreational vehicles.

8 253. Defendants' sale of dangerously defective gas absorption refrigerators,  
9 their failure to eliminate the design defects and safety hazards inherent in said  
10 products, and their pattern of deception and concealment of said defects and risks,  
11 did not have any legitimate utility, and even if it did, the utility was substantially  
12 outweighed by the grave consequences such conduct exposed Plaintiffs and  
13 members of the Subclass to, i.e. the risk of fire and the potential for serious damage,  
14 injury and death.

15 254. Defendants' conduct, as alleged herein, was immoral, unethical,  
16 oppressive, unscrupulous, in violation of public policy and substantially injurious to  
17 Plaintiffs in the California State Subclass, and constituted violations of the various  
18 consumer protection statutes outlined above.

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

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

- 27 a. Plaintiffs and other members of the California State Subclass  
28 have been and/or will be subject to economic damages including,

1 but not limited to, the cost of any repairs, service, modifications  
2 and retrofitting necessary to allow their gas absorption  
3 refrigerators to be operated safely, without risk and/or potential  
4 of fire;

5 b. Plaintiffs and other members of the California State Subclass  
6 have been and/or will be subject to further economic damage  
7 through the loss of use of their recreational vehicles while  
8 Defendants' defective products are being rendered safe to use, or  
9 replaced;

10 c. Plaintiffs and other members of the California State Subclass  
11 have been deprived of making an informed decision about the  
12 recreational vehicle they purchased; and,

13 d. The recreational vehicles purchased by Plaintiffs and other  
14 members of the California State Subclass are worth less in the  
15 marketplace as a result of Defendants' conduct.

16 257. Plaintiffs and other members of the California State Subclass would not  
17 have purchased (or retained) Defendants' gas absorption refrigerator, or a  
18 recreational vehicle equipped with one, had they known the truth and are thus  
19 entitled to a full or partial refund as allowed under each of the state laws alleged  
20 herein.

21 258. Defendants' unlawful, unfair and fraudulent conduct, described above,  
22 presents a continuing threat to Plaintiffs, the members of the California State  
23 Subclass, and to the general public. The risk of fire and/or other damage in the gas  
24 absorption refrigerators remains, regardless of whether the unit has been recalled and  
25 subjected to any retrofit. Unless enjoined, Defendants will continue to place  
26 dangerously defective gas absorption refrigerators into the stream of commerce, and  
27 will continue to conceal and mislead consumers regarding the inherent defects and  
28 safety risks associated with use of the product. Unless enjoined, Defendants will

1 continue to conceal and mislead owners of their gas absorption refrigerators into  
2 believing that their products are safe, or that any risks have been completely  
3 eliminated through Defendants' fraudulent and ineffective recall and retrofit  
4 campaigns. Such conduct presents a continuing threat to owners of Defendants'  
5 products, in that they will be unknowingly exposed to serious safety risks through  
6 the continued use of Defendants' product, including the risk of property damage,  
7 injury and death. Defendants' conduct also presents a continuing risk to members of  
8 the public in that the risk of property damage, injury and death by fire extends  
9 beyond the owners of Defendants' products, to anyone living next door, camping in  
10 the same campground, or driving on the same highway as an owner of a recreational  
11 vehicle containing one of Defendants' gas absorption refrigerators. Injunctive relief  
12 is therefore appropriate and necessary to eliminate a serious safety risk to Plaintiffs,  
13 all members of the California State Subclass, and members of the general public.

14         259. Accordingly, Plaintiffs and members of the California State Subclass  
15 seek an injunction that requires Defendants to immediately cease the unfair,  
16 unlawful and fraudulent business acts alleged herein, and to immediately take all  
17 necessary actions to cure the design and/or manufacturing defects inherent in their  
18 gas absorption refrigerators so that the refrigerators can be designed and  
19 manufactured, and/or effectively retrofitted, to operate safely. Plaintiffs further seek  
20 an order that Defendants, and each of them, establish a warranty program to provide  
21 the Plaintiffs and each class member with a non-defective gas absorption  
22 refrigerator, and that Defendants pay all costs associated with the warranty program,  
23 including, but not limited to, all labor and material costs involved in removing and  
24 replacing Defendants' defective refrigerators in Plaintiffs' and Class members' RVs.  
25 Plaintiffs also seek restitution on behalf of all members of the California State  
26 Subclass. Plaintiffs and other members of the California State Subclass are entitled  
27 to the relief set forth below.

**TENTH CAUSE OF ACTION**

**Restitution/Assumpsit/Money Had and Received  
(On Behalf of All Plaintiffs and the Class/Subclasses)**

1  
2  
3  
4 260. Plaintiffs incorporate by reference all preceding paragraphs as though  
5 fully stated herein.

6 261. This count is alleged in the alternative.

7 262. Plaintiffs bring this claim individually and on behalf of the other  
8 members of the Class similarly situated.

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

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

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

21 266. Plaintiffs and members of the Class have no adequate remedy at law.

22 267. Plaintiffs and members of the Class are entitled to seek restitution and  
23 other relief from Defendants, including an order requiring Defendants to disgorge all  
24 profits, benefits, and other compensation obtained by Defendants through and for  
25 their wrongful conduct.

26 ///

27 ///

28 ///

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

2 **FOR THE PLAINTIFFS AND ALL CLASS MEMBERS:**

- 3 1) For actual, compensatory and statutory damages/penalties, according to  
4 proof;
- 5 2) For restitution, disgorgement and/or other equitable relief as the Court  
6 deems proper;
- 7 3) For an order that Defendants be permanently enjoined from performing  
8 or proposing to perform any of the aforementioned acts of unfair,  
9 unlawful, deceptive and/or fraudulent business practices;
- 10 4) For an order that Defendants be permanently enjoined from selling,  
11 offering to sell, or otherwise placing into the stream of commerce,  
12 dangerously defective gas absorption refrigerators;
- 13 5) Any and all remedies provided pursuant to the Song-Beverly Act,  
14 including California Civil Code section 1794;
- 15 6) For an order certifying the proposed Class and any subclasses, as  
16 applicable, as a class action under Fed. R. Civ. P. 23, naming Plaintiffs  
17 as the class representatives, and the undersigned counsel and law firms  
18 (Ridout Lyon + Ottoson LLP and Zimmerman Reed PLLP) as class  
19 counsel;
- 20 7) For an order that Defendants provide defect-free gas replacement  
21 refrigerators to the Plaintiffs and all members of the each Subclass, and  
22 that Defendants pay all costs associated with the replacement program,  
23 including all costs for parts and labor;
- 24 8) For an order consolidating and/or coordinating this action with related  
25 case, *Etter, et al. v. Thetford Corporation, et al.*, No. 13-cv-00081 (C.D.  
26 Cal.), now pending before this Court.
- 27 9) For pre-judgment and post-judgment interest according to proof;
- 28 10) For reasonable attorney's fees and costs of suit;



- 1 11) For pre-judgment and post-judgment interest according to proof;
- 2 12) For any and all such other and further relief as may be available in law
- 3 or equity;
- 4 13) For any and all such other and further relief as the Court may deem
- 5 proper.

**JURY TRIAL DEMANDED**

6  
7 Plaintiffs seek a trial by jury for all appropriate issues on each and every cause  
8 of action in this Complaint

9 Respectfully submitted,

10 ZIMMERMAN REED, PLLP

11 Dated: November 13, 2014

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

15 RIDOUT LYON + OTTOSON, LLP  
 16 CHRISTOPHER P. RIDOUT, ESQ.  
 17 CALEB LH. MARKER, ESQ.  
 555 E. Ocean Blvd., Suite 500  
 Long Beach, CA 90802  
 (562) 216-7380 Telephone  
 (562) 216-7385 Facsimile

18  
19 *Attorneys for Plaintiffs*