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Sears Holdings Corporation, and Fry’s Electronics, Inc.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CHARLENE DZIELAK, SHELLEY BAKER,  
FRANCIS ANGELONE, BRIAN MAXWELL,  
JEFFERY REID, KARI PARSONS, CHARLES  
BEYER, JONATHAN COHEN, JENNIFER  
SCHRAMM, and ASPASIA CHRISTY on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

WHIRLPOOL CORPORATION, LOWE’S HOME  
CENTER, LLC, SEARS HOLDINGS  
CORPORATION, THE HOME DEPOT U.S.A.,  
INC., FRY’S ELECTRONICS, INC. and  
APPLIANCE RECYCLING CENTERS OF  
AMERICA, INC.,

Defendants.

Civil Action No. 2:12-cv-00089-KM-JBC  
Honorable Kevin McNulty  
Honorable James B. Clark, III

**DEFENDANTS WHIRLPOOL  
CORPORATION, LOWE’S HOME  
CENTER, LLC, SEARS HOLDINGS  
CORPORATION, AND FRY’S  
ELECTRONICS, INC.’S ANSWER TO  
PLAINTIFFS’ SECOND AMENDED  
CONSOLIDATED COMPLAINT**

Defendants Whirlpool Corporation (“Whirlpool”), Lowe’s Home Center, LLC  
 (“Lowe’s”), Sears Holdings Corporation (“Sears”), and Fry’s Electronics, Inc. (“Fry’s”)  
 (together, “Defendants”), answers Plaintiffs’ Second Amended Consolidated Complaint and

Demand for Jury Trial (“Complaint”).<sup>1</sup> Except as specifically and expressly admitted, Defendants deny every allegation in the Complaint.

### NATURE OF THE ACTION

1. Defendants admit that Plaintiffs purport to bring their action on behalf of themselves and the putative class defined in paragraph 122 of the Complaint, but Defendants deny the propriety of any class proposed by Plaintiffs. Defendants admit that the Maytag Centennial washing machines, model numbers MVWC6ESWW0, MVWC6ESWW1, and MVWC7ESWW0, (“Washers”), were marketed and labeled as Energy Star-certified consistent with guidance from the U.S. Department of Energy (“DOE”) before model MVWC6ESWW1 was disqualified by the U.S. Environmental Protection Agency (“EPA”) from the Energy Star program. Defendants deny that the Energy Star label states how much water or energy the Washers were to consume. Defendants deny the remaining allegations in Paragraph 1.

2. Defendants admit that a washing machine model may be eligible for certification in the Energy Star program if the model meets certain criteria in laboratory tests as set forth in regulations promulgated and interpreted by the DOE. The specific eligibility criteria are not tied to “standard models” and the minimum criteria have changed over time. The allegations about Whirlpool’s “Product Catalogue” concern written documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents, including the suggestion that those documents constitute a “promise” of any kind. Defendants deny that Energy Star-certified washing machines are, without exception, more expensive than “standard models,” and Defendants deny that Energy

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<sup>1</sup> The Complaint also names Appliance Recycling Centers of America, Inc. (“ARCA”) as a defendant, but Plaintiffs have not effected service of process on ARCA, despite the fact that this litigation commenced more than three years ago.

Star-certified washing machines come with a “promise” of reduced water and energy bills that, over time, will “recoup the higher price.” Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and thus deny each such allegation.

3. The allegations in paragraph 3 reference documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and thus deny each such allegation.

4. The allegations in paragraph 4 reference documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 4, if any.

5. Defendants admit that the Washers were labeled with the Energy Star logo. Paragraph 5 references “Whirlpool’s national print media campaign,” which presumably consists of documents that speak for themselves, and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 5, if any.

6. Defendants deny the allegations in paragraph 6.

7. Defendants admit that Plaintiffs purport to bring their action on behalf of themselves and the putative class defined in paragraph 122 of the Complaint and that they assert the causes of action listed in paragraph 7 of the Complaint, but Defendants deny the propriety of any class proposed by Plaintiffs and deny the remaining allegations in paragraph 7, if any.

**THE PARTIES**

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and thus deny those allegations.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and thus deny those allegations.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and thus deny those allegations.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and thus deny those allegations.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and thus deny those allegations.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and thus deny those allegations.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and thus deny those allegations.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and thus deny those allegations.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and thus deny those allegations.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and thus deny those allegations.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and thus deny those allegations.

19. Defendants admit that Whirlpool is a Delaware corporation and that its headquarters are located in Benton Harbor, Michigan. Defendants admit that Whirlpool is one of the world's leading manufacturers of home appliances, with annual sales of approximately \$18.8 billion in 2013. The allegations in paragraph 19 reference documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Regarding the final sentence of paragraph 19, Defendants are unable to locate a document that contains the quoted material. Such a document, if it exists, speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 19, if any.

20. Defendants admit that Lowe's is a North Carolina corporation with its principal place of business in Mooresville, North Carolina. The allegations in paragraph 20 reference documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 20, if any.

21. Defendants admit that Sears is a Delaware corporation with its principal place of business in Hoffman Estates, Illinois and is the parent company to Sears, Roebuck and Co. The allegations in paragraph 21 reference documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 21, if any.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and thus deny those allegations.

23. Defendants admit that Fry's is a California corporation with its principal place of business in San Jose, California and that it is a retailer of computers, electronics, and appliances. The allegations in paragraph 23 reference documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 23, if any.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and thus deny those allegations.

25. Defendants deny the allegations in paragraph 25.

#### **JURISDICTION AND VENUE**

26. Defendants state that the allegations in paragraph 26 consist of legal conclusions to which no response is required. To the extent that the other allegations require a response, Defendants deny the allegations in paragraph 26.

27. Defendants state that the allegations in paragraph 27 consist of legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 27.

28. Defendants admit that Whirlpool marketed and sold the Washers to its trade customers in New Jersey and in the District of New Jersey, for re-sale to consumers. Defendants admit that Lowe's and Sears do business in New Jersey and in the District of New Jersey. Defendants are without knowledge of information sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 and thus deny such allegations. Defendants further state that the remaining allegations in paragraph 28 consist of legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 28.

**FACTS COMMON TO ALL CLAIMS**

**A. The ENERGY STAR® Promise And Its Significant Effect On Consumers**

29. Paragraph 29 references legal documents and statutory provisions that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those legal documents or statutory provisions. Further, Paragraph 29 contains legal conclusions to which no response is required.

30. Paragraph 30 references statutory provisions that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those statutory provisions. Further, paragraph 30 contains legal conclusions to which no response is required.

31. Paragraph 31 references legal documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents, including, for example, any suggestion that Energy Star program participants are not subject to federal regulations. Paragraph 31 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 31. Defendants deny the remaining allegations in paragraph 31, if any.

32. Defendants admit that a washing machine model may be eligible for certification in the Energy Star program if the model meets certain criteria in laboratory tests as set forth in regulations promulgated and interpreted by the DOE. Paragraph 32 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Paragraph 32 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 32.



33. Defendants deny the allegations in paragraph 33.

34. Defendants admit that the Energy Star certification mark is part of the Energy Star program. Paragraph 34 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 34, if any.

35. Defendants admit that the Energy Star certification mark is part of the Energy Star program, but Defendants deny that the Energy Star certification mark conveys a “promise” of any kind. Paragraph 35 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 35.

36. Defendants admit that the Energy Star program has existed for over a decade. Defendants admit that the EPA has promoted the Energy Star program. The allegation concerning the alleged “three key messages” of “the first consumer campaign” references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 36, if any.

37. Paragraph 37 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 37, if any.

38. Paragraph 38 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 38, if any.



39. Defendants are without knowledge or information sufficient to form a belief as to the truth of how the Energy Star label was “specifically engineered.” Paragraph 39 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 39, if any.

40. Paragraph 40 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 40, if any.

41. Paragraph 41 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 41, if any.

42. Paragraph 42 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents, including the suggestion that the Energy Star logo “is more than a symbol” or that it conveys a particular message to consumers, “unequivocal” or otherwise. Defendants deny the remaining allegations in paragraph 42, if any.

43. Paragraph 43 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 43, if any.

44. Paragraph 44 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents, including the suggestion that the Energy Star logo is “material.” Defendants deny the remaining allegations in paragraph 44, if any.

45. Paragraph 45 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 45, if any.

46. Paragraph 46 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents, including the suggestion that those documents “support[] a similar finding of materiality.” Defendants deny the remaining allegations in paragraph 46, if any.

47. Paragraph 47 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 47, if any.

48. Paragraph 48 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 48, if any.

49. Paragraph 49 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 49, if any.

50. Paragraph 50 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 50, if any.

51. Defendants deny the allegations in paragraph 51.

52. Paragraph 52 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 52, if any.

53. Paragraph 53 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 53, if any.

54. Defendants admit that, on March 9, 2009, Jeff M. Fettig, Chairman and Chief Executive Officer of Whirlpool, presented at a Raymond James Institutional Investors Conference. Paragraph 54 references a statement that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that statement. Defendants deny the remaining allegations in paragraph 54, if any.

55. Defendants admit that, on March 9, 2009, Jeff M. Fettig, Chairman and Chief Executive Officer of Whirlpool, presented at a Raymond James Institutional Investors Conference. Paragraph 55 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 55, if any.

56. Defendants admit that, on April 7, 2010, Tom Catania, Whirlpool's Vice President for Government Relations, participated in a Pew Center on Global Climate Change Best Practices Conference and made a presentation titled "Increasing the Value of Energy Efficiency to the Consumer: The Case of Major Home Appliances." Paragraph 56 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 56, if any.

57. Paragraph 57 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 57, if any.

58. Paragraph 58 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 58, if any.

59. Defendants deny the allegations in paragraph 59.

**B. Whirlpool's Reliance on The ENERGY STAR® Logo In The Marketing And Sale Of The Mislabeled Washing Machines**

60. Defendants admit that the Washers were labeled with the Energy Star logo. Defendants admit that certain of Whirlpool's products are marketed in conjunction with the Energy Star logo and that the Energy Star logo is attached to certain products. Defendants deny the remaining allegations in paragraph 60, if any.

61. Paragraph 61 references a statement that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that statement. Defendants deny the remaining allegations in paragraph 61, if any.

62. Defendants admit that Whirlpool has received awards from the EPA in connection with the Energy Star program, including Sustained Excellence awards. Defendants admit that, in 2008, Whirlpool announced that it had received a Sustained Excellence award. Paragraph 62 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 62, if any.

63. Defendants admit that, in 2009, Whirlpool announced that it had received a Sustained Excellence award. Paragraph 63 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 63, if any.

64. Defendants admit that, in 2010, Whirlpool announced that it had received a Sustained Excellence award. Paragraph 64 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 64, if any.

65. Defendants admit that, in 2011, Whirlpool announced that it had received a Sustained Excellence award. Paragraph 65 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 65, if any.

66. Defendants admit that, in 2012, Whirlpool announced that it had received a Sustained Excellence award. Paragraph 66 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 66, if any.

67. Defendants admit that Whirlpool issued the press release referenced in Paragraph 67. Paragraph 67 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 67, if any.

68. Defendants admit that the Washers were labeled with the Energy Star logo, and Defendants admit that the Energy Star logo was used in connection with promotional materials and attached to certain Washers. Defendants deny the remaining allegations in paragraph 68.

69. Paragraph 69 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 69, if any.

70. Paragraph 70 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 70, if any.

71. Paragraph 71 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 71, if any.

72. Paragraph 72 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 72, if any.

73. Paragraph 73 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 73, if any.

74. Paragraph 74 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 74, if any.

75. Paragraph 75 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 75, if any.

76. Paragraph 76 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 76, if any.

77. Paragraph 77 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 77, if any.

78. Paragraph 78 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 78, if any.

79. Paragraph 79 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document, including the suggestion that Whirlpool included a glossary of terms “to erase any ambiguities on the part of consumers.” Defendants deny the remaining allegations in paragraph 79, if any.

80. Defendants are without knowledge or information sufficient to form a belief as to whether the image reproduced in paragraph 81 is an accurate representation of content that appeared on Whirlpool’s website at any particular time and thus deny the allegation. Defendants further state that Whirlpool’s website speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with Whirlpool’s website. Defendants deny the remaining allegations in paragraph 80, if any.

81. Defendants are without knowledge or information sufficient to form a belief as to whether the image reproduced in paragraph 81 is an accurate representation of content that appeared on Whirlpool’s website at any particular time and thus deny the allegation. Defendants



further state that Whirlpool's website speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with Whirlpool's website. Defendants are without knowledge or information sufficient to form a belief as to whether Whirlpool's list of Energy Star-certified clothes washers "mirrors" the list of "purportedly ENERGY STAR®-compliant appliances found on the EnergyStar.gov website" at any particular time and thus deny the allegation. Defendants further state that the EnergyStar.gov website speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with the EnergyStar.gov website. Defendants deny the remaining allegations in paragraph 81, if any.

82. Defendants admit that the Washers were marketed and labeled as Energy Star-certified consistent with guidance from the DOE before model MVWC6ESWW1 was disqualified by the EPA from the Energy Star program. Defendants are without knowledge or information sufficient to form a belief as to whether paragraph 82 accurately describes the contents of the MVWC6ESWW page on Amazon.com on the date indicated in footnote 8 and thus deny the allegation. Defendants further state that the Amazon.com website speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with the Amazon.com website. Defendants deny the remaining allegations in paragraph 82, if any.

83. Defendants admit that Lowe's marketed Maytag Centennial model number MVWC7ESWW on its website. Defendants are without knowledge or information sufficient to form a belief as to whether the image reproduced in paragraph 83 is an accurate representation of content that appeared on the Lowe's website at any particular time and thus deny the allegation. Defendants further state that the Lowe's website speaks for itself and thus does not require a

substantive response. But Defendants deny any characterization that is inconsistent with the Lowe's website. Defendants deny the remaining allegations in paragraph 83, if any.

84. Defendants deny that Whirlpool engaged in a "comprehensive internet campaign." Defendants admit that the EnergyGuide label that accompanied certain Washers contained the Energy Star logo. Footnote 9 to paragraph 84 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 84, if any.

85. Paragraph 85 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 85, if any.

86. Defendants admit that the EnergyGuide labels for certain Washers contained the Energy Star logo. Paragraph 86 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 86, if any.

87. Defendants admit that certain Washers bore the Energy Star logo. Defendants deny the remaining allegations in paragraph 87, if any.

88. Paragraph 88 references a document that speaks for itself and thus does not require a substantive response. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 88, if any.

89. Paragraph 89 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent

with those documents, including the suggestion that those documents promise any particular energy performance. Defendants deny the remaining allegations in paragraph 89, if any.

**C. Plaintiffs' Experiences**

90. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 and thus deny those allegations.

91. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 and thus deny those allegations.

92. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 and thus deny those allegations.

93. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 and thus deny those allegations.

94. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 94 and thus deny those allegations.

95. On April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit. Thus, no response is required. To the extent that a response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 and thus deny those allegations.

96. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 and thus deny those allegations.

97. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 and thus deny those allegations.

98. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 and thus deny those allegations.

99. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 and thus deny those allegations.

100. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100 and thus deny those allegations.

**D. DOE Testing And Revocation Of The Mislabeled Washing Machines' The ENERGY STAR® Qualification**

101. Defendants admit that, since approximately 2010, the DOE, through third-party certified labs, has begun conducting tests to verify that certain Energy Star-certified products comply with program requirements by randomly selecting units “off-the shelf” and testing them under the same laboratory conditions under which the model was originally certified. Defendants deny the remaining allegations in paragraph 101.

102. Paragraph 102 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 102, if any.

103. Defendants admit that, in a letter dated September 20, 2010, the DOE notified Whirlpool that one unit of Maytag Centennial model MVWC6ESWW1 did not meet the Energy Star program’s energy efficiency specifications. Paragraph 103 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 103, if any.

104. Paragraph 104 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 104, if any.

105. Paragraph 105 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 105, if any.

106. Defendants admit that, in a letter dated January 19, 2011, the DOE notified Whirlpool that four units of Maytag Centennial model MVWC6ESWW1 did not meet the Energy Star program's energy efficiency specifications. Paragraph 106 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 106, if any.

107. Paragraph 107 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 107, if any.

108. Defendants admit that the EPA disqualified Maytag Centennial model MVWC6ESWW1 on May 7, 2012, without providing Whirlpool with the advance notice required by the EPA's guidance on disqualification procedures and without notifying Whirlpool that the model had been disqualified.

109. Defendants admit that Maytag Centennial model MVWC6ESWW1 was included on the EPA's list of disqualified models. Defendants deny that "these models" refer to any other model than the model described in paragraph 108. Defendants deny the remaining allegations in paragraph 109, if any.

110. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the EPA disqualified the Washers "after consulting with the DOE" and thus deny that allegation. Defendants admit that the corrective actions referred to in

paragraph 110 are consistent with EPA guidance on disqualification procedures. However, since Whirlpool ceased manufacturing Maytag Centennial model MVWC6ESWW1 approximately 17 months before the EPA's notice of disqualification, and because the EPA failed to notify Whirlpool of the disqualification, Whirlpool denies the remaining allegations in paragraph 110.

111. Defendants are without information or knowledge sufficient to form a belief as to the truth of whether the named plaintiffs bought Maytag Centennial model MVWC6ESWW1 and thus deny the allegation. Defendants deny the remaining allegations in paragraph 111.

112. Defendants deny the allegations in paragraph 112.

113. Paragraph 113 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants further deny that the allegations in paragraph 113 are "illustrative" of any "fact" alleged in paragraph 112. Defendants deny the remaining allegations in paragraph 113, if any.

114. Defendants admit that Whirlpool manufactured the Washers. Defendants state that the regulation referred to in paragraph 114 is a document that speaks for itself and thus does not require a substantive response. Defendants deny the remaining allegations in paragraph 114.

115. Defendants admit that Whirlpool is one of the world's leading manufacturers of home appliances, maintaining more than 65 manufacturing and technology centers. Paragraph 115 references documents that speak for themselves and thus do not require a substantive response. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in paragraph 118.

119. Defendants deny the allegations in paragraph 119.

120. Defendants deny the allegations in paragraph 120.

121. Defendants deny the allegations in paragraph 121.

**CLASS ACTION ALLEGATIONS**

122. Defendants admit that Plaintiffs purport to bring this action as a class action.

Defendants deny that Plaintiffs' action is properly maintainable as a class action. Defendants deny the remaining allegations in paragraph 122, if any.

123. Defendants admit that Plaintiffs Dzielak and Angelone purport to seek to represent a putative New Jersey subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 123, if any.

124. Defendants admit that Plaintiffs Baker, Maxwell, and Christy purport to seek to represent a putative California subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 124, if any.

125. On April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit. Thus, no response is required. To the extent that a response is required, Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 125, if any.

126. Defendants admit that Plaintiff Reid purports to seek to represent a putative Florida subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 126, if any.



127. Defendants admit that Plaintiff Parsons purports to seek to represent a putative Ohio subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 127, if any.

128. Defendants admit that Plaintiff Beyer purports to seek to represent a putative Indiana subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 128, if any.

129. Defendants admit that Plaintiff Cohen purports to seek to represent a putative Texas subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 129, if any.

130. Defendants admit that Plaintiff Schramm purports to seek to represent a putative Virginia subclass, but Defendants deny that Plaintiffs' action is properly maintainable as a class action, including subclasses. Defendants deny the remaining allegations in paragraph 130, if any.

131. Defendants admit that some purchasers of Washers could be identified through discovery. Paragraph 131 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 131.

132. Paragraph 132 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 132.

133. Paragraph 133 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 133.

134. Paragraph 134 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 134.

135. Paragraph 135 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny the allegations in paragraph 135.

**COUNT I**

**(Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*)**

136. Defendants answer paragraph 136 by referring to, and incorporating by reference, their answers to paragraphs 1 through 135. Defendants further state that Count I was dismissed by the Court and thus no response is required.

137. Defendants admit that Plaintiffs purport to assert Count I against Defendants on behalf of themselves and a putative class and subclasses, but Defendants deny the propriety of any proposed class or subclasses by Plaintiffs. Defendants further state that Count I was dismissed by the Court and thus no response is required.

138. Paragraph 138 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants admit that the Washers are “consumer products” as that term is defined by 15 U.S.C. § 2301(1). Defendants further state that Count I was dismissed by the Court and thus no response is required.

139. Paragraph 139 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants admit that Plaintiffs are “consumers” as that term is defined by 15 U.S.C. § 2301(3). Defendants further state that Count I was dismissed by the Court and thus no response is required.

140. Paragraph 140 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants admit that they are “warrantors” and “suppliers” as those terms are defined by 15 U.S.C. § 2301(4) and (5). Defendants further state that Count I was dismissed by the Court and thus no response is required.

141. Paragraph 141 contains legal conclusions to which no response is required. To the extent that the allegations require a response, Defendants deny that the Energy Star logo constitutes a “written warranty” as that term is defined by 15 U.S.C. § 2301(6). Defendants deny

the remaining allegations in paragraph 141, if any. Defendants further state that Count I was dismissed by the Court and thus no response is required.

142. Defendants deny the allegations in paragraph 142. Defendants further state that Count I was dismissed by the Court and thus no response is required.

143. Defendants deny the allegations in paragraph 143. Defendants further state that Count I was dismissed by the Court and thus no response is required.

144. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 144. Defendants further state that Count I was dismissed by the Court and thus no response is required.

**COUNT II**  
**(Breach of Express Warranty)**

145. Defendants answer paragraph 145 by referring to, and incorporating by reference, their answers to paragraphs 1 through 144.

146. Defendants admit that Plaintiffs Dzielak, Baker, Angelone, Maxwell, Reid, Parsons, Beyer, Cohen, Schramm, and Christy purport to assert Count II on behalf of themselves and a putative class and subclasses, but Defendants deny the propriety of any proposed class or subclasses by Plaintiffs. Defendants deny the remaining allegations in paragraph 146, if any.

147. Defendants state that Plaintiff McLenna voluntarily dismissed his claims against Defendants on April 17, 2015, and is no longer part of this lawsuit. Thus, no response is required.

148. Paragraph 148 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 148.

149. Defendants deny the allegations in paragraph 149.

150. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 150.

**COUNT III**  
**(Breach of Implied Warranty of Merchantability)**

151. Defendants answer paragraph 151 by referring to, and incorporating by reference, their answers to paragraphs 1 through 150.

152. Defendants admit that Plaintiffs Dzielak, Baker, Angelone, Maxwell, Reid, Parsons, McLenna, Beyer, Cohen, Schramm, and Christy purport to assert Count III against the Retailer Defendants on behalf of themselves and a putative class and subclasses, but Defendants deny the propriety of any proposed class or subclasses by Plaintiffs. Defendants further state that Plaintiff McLenna voluntarily dismissed his claims against Defendants on April 17, 2015, and is no longer part of this lawsuit.

153. Defendants admit that Plaintiffs Dzielak, Angelone, McLenna, Beyer, Cohen, and Schramm purport to assert Count III against Whirlpool on behalf of themselves and a putative class and subclasses, but Defendants deny the propriety of any proposed class or subclasses by Plaintiffs. Defendants further state that Plaintiff McLenna voluntarily dismissed his claims against Defendants on April 17, 2015, and is no longer part of this lawsuit.

154. Paragraph 154 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 154.

155. Defendants deny the allegations in paragraph 155.

156. Paragraph 156 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants deny the allegation in paragraph 156.

157. Defendants are without knowledge or information sufficient to form a belief as to what Plaintiffs relied on and thus deny the allegation. Paragraph 157 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 157.

158. Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiffs altered the Washers and thus deny the allegation. Defendants deny the remaining allegations in paragraph 158.

159. Defendants deny that they had knowledge of what Plaintiffs and putative class members would do with their Washers after purchase. Defendants deny the remaining allegations in paragraph 159.

160. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 160.

**COUNT IV**  
**(Unjust Enrichment)**

161. Defendants answer paragraph 161 by referring to, and incorporating by reference, their answers to paragraphs 1 through 160. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

162. Defendants admit that Plaintiffs purport to assert Count IV against Defendants on behalf of themselves and a putative class and subclasses, but Defendants deny the propriety of any proposed class or subclasses by Plaintiffs. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

163. Defendants state that the case law quotation referred to in paragraph 163 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 163, if any. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

164. Defendants state that the case law quotation referred to in paragraph 164 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Paragraph 164 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants deny the allegation in paragraph 164. Defendants deny the remaining allegations in paragraph 164, if any. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

165. Paragraph 165 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants deny the allegation in paragraph 165. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

166. Defendants deny the allegations in paragraph 166. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

167. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 167. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

168. Paragraph 168 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 168. Defendants deny that Plaintiffs are entitled to the relief they request in paragraph 168. Defendants further state that the Court dismissed Count IV with prejudice as to Whirlpool.

**COUNT V**

**(Violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*)**

169. Defendants answer paragraph 169 by referring to, and incorporating by reference, their answers to paragraphs 1 through 168.

170. Defendants admit that Plaintiffs Dzielak and Angelone purport to assert Count V against Whirlpool, Lowe’s, and The Home Depot on behalf of themselves and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

171. Defendants deny the allegations in paragraph 171.

172. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 172.



**COUNT VI**  
**(Violations of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act  
“TCCWNA,” New Jersey Stat. §§ 56:12-14 to 56:12-18)**

173. Defendants answer paragraph 173 by referring to, and incorporating by reference, their answers to paragraphs 1 through 172.

174. Defendants admit that Plaintiffs Dzielak and Angelone purport to assert Count VI against Whirlpool, Lowe’s, and The Home Depot on behalf of themselves and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

175. Defendants state that the statutory provision referred to in paragraph 175 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 175, if any.

176. Paragraph 176 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 176.

177. Paragraph 177 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants admit that Plaintiffs Dzielak and Angelone are “consumers” within the meaning of N.J.S.A. § 56:12-15. Defendants deny the remaining allegations in paragraph 177, if any.

178. Paragraph 178 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants deny the allegation in paragraph 178.

179. Paragraph 179 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 179.

180. Paragraph 180 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 180.

181. Defendants deny the allegations in paragraph 181.

182. Paragraph 182 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 182. Defendants deny that Plaintiffs are entitled to the relief that they request in paragraph 182.

**COUNT VII**  
**(Violation of the Consumers Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*)**

183. Defendants answer paragraph 183 by referring to, and incorporating by reference, their answers to paragraphs 1 through 182.

184. Defendants admit that Plaintiffs Baker, Maxwell, and Christy purport to assert Count VII against Whirlpool, Sears, Fry’s, and The Home Depot on behalf of themselves and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

185. Defendants state that the statutory provision referred to in paragraph 185 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that they violated CLRA § 1770(a)(5).

186. Defendants state that the statutory provision referred to in paragraph 186 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that they violated CLRA § 1770(a)(7).

187. Defendants state that the statutory provision referred to in paragraph 187 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that they violated CLRA § 1770(a)(9).

188. Defendants deny the allegations in paragraph 188.

189. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 189.

190. Defendants admit that Whirlpool and Sears received the letter from Plaintiff Baker dated November 11, 2011. Defendants admit that Exhibit C to the Complaint appears to be the letter it received. Defendants deny the remaining allegations in paragraph 190.

191. Defendants admit that Whirlpool received the letter from Plaintiff Maxwell dated November 16, 2011. Defendants admit that Exhibit D to the Complaint appears to be the letter it received. Defendants deny the remaining allegations in paragraph 191.

192. Defendants deny that Plaintiffs are entitled to the relief that they request in paragraph 192.

#### **COUNT VIII**

#### **(Violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**

193. Defendants answer paragraph 193 by referring to, and incorporating by reference, their answers to paragraphs 1 through 192.

194. Defendants admit that Plaintiffs Baker, Maxwell, and Christy purport to assert Count VIII against Whirlpool, Sears, Fry’s, and The Home Depot on behalf of themselves and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

195. Defendants state that the statutory provision referred to in paragraph 195 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Paragraph 195 contains legal conclusions to which no response is required.

To the extent that these allegations require a response, Defendants deny the allegations in paragraph 195.

196. Defendants deny the allegations in paragraph 196.

197. Defendants deny the allegations in paragraph 197.

198. Defendants deny the allegations in paragraph 198.

199. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 199.

**COUNT IX**  
**(False Advertising)**  
**(False Advertising Law, Business & Professions Code § 17500 *et seq.*)**

200. Defendants answer paragraph 200 by referring to, and incorporating by reference, their answers to paragraphs 1 through 199.

201. Defendants admit that Plaintiffs Baker, Maxwell, and Christy purport to assert Count IX against Whirlpool, Sears, Fry’s, and The Home Depot on behalf of themselves and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

202. Defendants state that the statutory provision referred to in paragraph 202 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 202, if any.

203. Defendants deny the allegations in paragraph 203.

204. Defendants deny the allegations in paragraph 204.

205. Defendants deny the allegations in paragraph 205.

206. Defendants are without knowledge or information sufficient to form a belief as to the truth of how Plaintiffs and the putative class would have behaved “if the true facts concerning [the Washers’] energy efficiency and water usage had been known” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 206.

**COUNT X**

**(Violation of the Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.*)**

207. Defendants answer paragraph 207 by referring to, and incorporating by reference, their answers to paragraphs 1 through 206. Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

208. Defendants deny that Plaintiff McLenna purports to assert Count X against Whirlpool and The Home Depot on behalf of himself and a putative subclass. On April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

209. Defendants state that the statutory provision referred to in paragraph 209 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that they violated Mich. Comp. Laws § 445.903(c). Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

210. Defendants state that the statutory provision referred to in paragraph 210 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that they violated Mich. Comp. Laws § 445.903(e). Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

211. Defendants state that the statutory provision referred to in paragraph 211 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that they violated Mich. Comp. Laws § 445.903(g). Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

212. Defendants deny the allegations in paragraph 212. Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

213. Defendants are without knowledge or information sufficient to form a belief as to what Plaintiffs relied on and thus deny the allegation. Defendants are without knowledge or information sufficient to form a belief as to whether the putative class member's Washers were used primarily for "personal, family and household services" and thus deny the allegation. Defendants deny the remaining allegations in paragraph 213, if any. Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

214. Defendants deny the allegations in paragraph 214. Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

215. Whirlpool admits that its principal place of business is in Michigan. Paragraph 215 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants deny the allegations in paragraph 215. Defendants deny the remaining allegations in paragraph 215, if any. Defendants further state that, on April

17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

216. Defendants are without knowledge or information sufficient to form a belief as to what Plaintiffs relied on and thus deny the allegation. Defendants deny the remaining allegations in paragraph 216, if any. Defendants further state that, on April 17, 2015, Jeffery McLenna voluntarily dismissed his claims against Defendants and is no longer part of this lawsuit.

217. Defendants deny the allegations in paragraph 217. Defendants deny that Plaintiffs are entitled to the relief described in paragraph 217.

**COUNT XI**  
**(Violation of Florida's Deceptive and Unfair Trade Practices Act,  
Fla. Stat. §§ 501.201, *et seq.*)**

218. Defendants answer paragraph 218 by referring to, and incorporating by reference, their answers to paragraphs 1 through 217.

219. Defendants admit that Plaintiff Reid purports to assert Count XI against Whirlpool on behalf of himself and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

220. To the extent that Plaintiffs are referring to statutory language in paragraph 220, Defendants state that the statutory language referred to in paragraph 220 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document.

221. Paragraph 221 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants admit that Whirlpool engaged in "trade or commerce" within the meaning of the FDUTPA, Fla. Stat. § 501.203(8). Defendants deny the remaining allegations in paragraph 221, if any.

222. Defendants deny the allegations in paragraph 222.



223. Defendants deny the allegations in paragraph 223.

224. Defendants deny the allegations in paragraph 224.

225. Defendants deny the allegations in paragraph 225.

226. Defendants deny the allegations in paragraph 226.

227. Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiffs “will serve” Florida’s Attorney General with the Complaint. Defendants deny that Plaintiffs are entitled to the relief described in paragraph 227.

**COUNT XII**  
**(Violation of the Ohio Consumer Sales Practices Act,  
Ohio Rev. Code Ann. § 1345.01, *et seq.*)**

228. Defendants answer paragraph 228 by referring to, and incorporating by reference, their answers to paragraphs 1 through 227.

229. Defendants admit that Plaintiff Parsons purports to assert Count XII against Whirlpool and ARCA on behalf of herself and a putative class, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

230. Paragraph 230 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants are without information or knowledge sufficient to form a belief as to whether Plaintiffs bought Washers primarily for “personal, family, and/or household use” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 230, if any.

231. Paragraph 231 contains legal conclusions to which no response is required. To the extent that these allegations require a response, Defendants admit that they are “suppliers” as that term is defined by Ohio Rev. Code § 1345.01(C). Defendants deny the remaining allegations in paragraph 231, if any.

232. Defendants deny the allegations in paragraph 232.

233. Defendants deny the allegations in paragraph 233.

234. Defendants deny the allegations in paragraph 234.

235. Defendants state that the case law citations referred to in paragraph 235 are documents that speak for themselves. But Defendants deny any characterization that is inconsistent with those documents. Defendants deny the remaining allegations in paragraph 235.

236. Defendants are without knowledge or information sufficient to form a belief as to what Plaintiffs relied on and thus deny the allegation. Defendants deny the remaining allegations in paragraph 236.

237. Defendants deny that Plaintiffs have been damaged.

238. Defendants admit that Plaintiffs purport to seek the relief described in paragraph 238, but Defendants deny that Plaintiffs are entitled to the relief described in paragraph 238.

239. Defendants are without knowledge or information sufficient to form a belief as to whether the Complaint “will be served” on Ohio’s Attorney General.

**COUNT XIII**  
**(Violation of Indiana’s Deceptive Consumer Sales Act,  
Ind. Code. Ann. § 24-5-0.5-1, *et seq.*)**

240. Defendants answer paragraph 240 by referring to, and incorporating by reference, their answers to paragraphs 1 through 239.

241. Defendants admit that Plaintiff Beyer purports to assert Count XIII against Whirlpool and Sears on behalf of himself and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

242. Defendants state that the statutory provision referred to in paragraph 242 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny the remaining allegations in paragraph 242, if any.

243. Paragraph 243 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants admit that they are “persons” as that term is defined by IND. CODE § 24-5-0.5-2(2). Defendants deny the remaining allegations in paragraph 243.

244. Defendants deny the allegations in paragraph 244.

245. Paragraph 245 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants deny the allegation in paragraph 245.

246. Defendants deny the allegations in paragraph 246.

247. Defendants deny the allegations in paragraph 247.

248. Defendants admit that Plaintiffs purport to seek the relief described in paragraph 248, but Defendants deny that Plaintiffs are entitled to the relief described in paragraph 248.

249. Defendants deny that Plaintiffs are entitled to punitive damages for any reason.

**COUNT XIV**  
**(Violation of the Texas Deceptive Trade Practices Act,  
Tex. Bus. & Com. Code §§ 17.41, *et seq.*)**

250. Defendants answer paragraph 250 by referring to, and incorporating by reference, their answers to paragraphs 1 through 249.

251. Defendants admit that Plaintiff Cohen purports to assert Count XIV against Whirlpool and The Home Depot on behalf of himself and a putative subclass, but Defendants deny the propriety of any proposed class or subclass by Plaintiffs.

252. Defendants are without knowledge or information sufficient to form a belief as to what Plaintiffs relied on and thus deny the allegation. Defendants deny the remaining allegations in paragraph 252.

253. Defendants deny the allegations in paragraph 253.

254. Defendants deny the allegations in paragraph 254.

255. Defendants deny the allegations in paragraph 255.

256. Defendants are without knowledge or information sufficient to form a belief as to what Plaintiffs relied on and thus deny the allegation. Defendants are without knowledge or information sufficient to form a belief as to how Plaintiffs and the putative class would have behaved if they had “known” that the Washers allegedly “were not, in fact, ENERGY STAR® compliant” and thus deny the allegation. Defendants deny the remaining allegations in paragraph 256.

257. Paragraph 257 contains a legal conclusion to which no response is required. To the extent that this allegation requires a response, Defendants deny the allegation in paragraph 257. Defendants deny the remaining allegations in paragraph 257.

258. Defendants deny the allegations in paragraph 258. Defendants deny that Plaintiffs are entitled to the relief described in paragraph 258.

259. Defendants state that the statutory provision referred to in paragraph 259 is a document that speaks for itself. But Defendants deny any characterization that is inconsistent with that document. Defendants deny that Plaintiffs are entitled to the relief described in paragraph 259. Defendants deny the remaining allegations in paragraph 259, if any.

260. Defendants admit that Plaintiff Cohen purports to seek the relief described in paragraph 260, but Defendants deny that Plaintiffs are entitled to the relief described in paragraph 260.

261. Defendants admit that Plaintiff Cohen purports to seek the relief described in paragraph 261, but Defendants deny that Plaintiffs are entitled to the relief described in paragraph 261.

**PRAYER FOR RELIEF**

Defendants deny that Plaintiffs are entitled to any of the relief that they request in the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

1. Plaintiffs' Complaint fails to state facts sufficient to state a claim for which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

2. Plaintiffs have failed to mitigate their damages, if any.

**THIRD AFFIRMATIVE DEFENSE**

3. Plaintiffs' claims are barred, in whole or in part, by the defenses of estoppel, laches, and waiver.

**FOURTH AFFIRMATIVE DEFENSE**

4. Any damages sustained by Plaintiffs were proximately caused by the actions and omissions of Plaintiffs or others, and these acts and omissions were the sole cause of Plaintiffs' alleged damages. Thus, Defendants plead independent, intervening, or suspending acts and omissions of Plaintiffs and others as a complete bar to this action.

**FIFTH AFFIRMATIVE DEFENSE**

5. The Washers were covered by express written warranties that Plaintiffs accepted at the time of purchase, and those written warranties are limited in scope and time and do not cover the acts, omissions, and other matters complained of by Plaintiffs. Plaintiffs accepted those limited written warranties in lieu of any other warranty or representation, express or implied. Thus, Defendants plead the written warranties, or any other contractual limitation of remedies, as a complete bar to Plaintiffs' claims.

**SIXTH AFFIRMATIVE DEFENSE**

6. Any damages suffered by Plaintiffs were proximately caused by the abuse, misuse, or improper use of the Washers, and thus Plaintiffs' claims are barred.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiffs' Complaint and all causes of action are barred or limited, or Plaintiffs' recovery should be reduced, by Plaintiffs' negligence or other fault, under the doctrine of comparative fault.

**EIGHTH AFFIRMATIVE DEFENSE**

8. At least some of claims alleged in the Complaint are barred, in whole or in part, by applicable statutes of limitations or repose.

**NINTH AFFIRMATIVE DEFENSE**

9. Plaintiffs failed to give Defendants adequate notice of the alleged breach of express warranties.

**TENTH AFFIRMATIVE DEFENSE**

10. Plaintiffs failed to afford Defendants a reasonable opportunity to cure the alleged breach of express warranties.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. To the extent that Plaintiffs' Complaint alleges or seeks punitive damages against Defendants under a standard less onerous than clear and convincing evidence, any award of punitive damages would violate Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and guaranteed by the constitutions, common law, and public policies of the states.

**TWELFTH AFFIRMATIVE DEFENSE**

12. To the extent that Plaintiffs' Complaint alleges or seeks punitive damages against Defendants, any such claim cannot be maintained unless the trial is bifurcated into a liability phase and a punitive damages phase. Any other procedure would violate Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and guaranteed by the constitutions, common law, and public policies of the states.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. To the extent that Plaintiffs' Complaint alleges or seeks punitive damages against Defendants, any such claim cannot be maintained because an award of punitive damages would be unlawful and unauthorized and would be void for vagueness, both facially and as applied, as a result of, among other deficiencies, the absence of adequate notice of what conduct is subject to punishment, the absence of adequate notice of what punishment may be imposed, and the absence of a predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose, all in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and guaranteed by the constitutions, common law, and public policies of the states.

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. To the extent that Plaintiffs' Complaint alleges or seeks punitive damages against Defendants, any such claim cannot be maintained because any award of punitive damages would be by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously



discriminatory characteristics, including the residence, wealth, and corporate status of Defendants, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards. Any such verdict would violate Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and guaranteed by the constitutions, common law, and public policies of the states.

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

16. Plaintiffs' Complaint may be barred, in whole or in part, because the transaction or conduct at issue was authorized under laws administered by a regulatory board or officer acting under statutory authority of the United States.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Plaintiffs' Complaint may be barred, in whole or in part, by Plaintiffs' failure to comply with the notice and demand procedures required under California Civil Code § 1750 et seq.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Plaintiffs' Complaint may be barred, in whole or in part, under California Civil Code § 1784, in that the alleged conduct of Defendants was not intentional and constituted a bona fide error notwithstanding Defendants' adoption of reasonable procedures and in that Defendants have made (or will make) an appropriate correction, repair, or replacement in compliance with California Civil Code § 1782 for those consumers who have presented or will present a legitimate claim.

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Any violation of the Michigan Consumer Protection Act may be barred, in whole or in part, by Mich. Comp. Laws § 445.904(1)(a).

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Any violation of Florida's Deceptive and Unfair Trade Practices Act may be barred, in whole or in part, by Fla. Stat. § 501.212(1).

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Any violation of the Ohio Consumer Sales Practices Act may be barred, in whole or in part, by Ohio Rev. Code Ann. § 1345.12(A).

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. Any violation of the Ohio Consumer Sales Practices Act was the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

23. Any violation of the Indiana Deceptive Consumer Sales Act may be barred, in whole or in part, by Ind. Code Ann. § 24-5-0.5-6.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24. Any violation of the Texas Deceptive Trade Practices Act may be barred, in whole or in part, by the exemptions listed in Tex. Bus. & Com. Code § 17.49.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. Plaintiffs' Complaint may be barred, in whole or in part, due to Plaintiffs' spoliation of evidence.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26. Plaintiffs' Complaint may be barred, in whole or in part, by the preemptive effect of federal law.

**JURY DEMAND**

Defendants demand a trial by jury on all issues so triable.

Dated: September 25, 2015

McCARTER & ENGLISH, LLP  
Attorneys for Defendants  
Whirlpool Corporation,  
Lowe's Home Center, LLC  
Sears Holdings Corporation  
Fry's Electronics, Inc.

*s/ David R. Kott*  
David R. Kott  
A Member of the Firm


**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2015, I served **DEFENDANTS WHIRLPOOL CORPORATION, LOWE'S HOME CENTER, LLC, SEARS HOLDINGS CORPORATION, AND FRY'S ELECTRONICS, INC.'S ANSWER TO PLAINTIFFS' SECOND AMENDED CONSOLIDATED COMPLAINT** via ECF and email to the individuals listed below:

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