

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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CHARLENE DZIELAK, SHELLEY	:	
BAKER, FRANCIS ANGELONE,	:	Civil Action No. 12-cv-0089 (KM)(MCA)
BRIAN MAXWELL, JEFFERY	:	Honorable Kevin McNulty, U.S.D.J.
MCLENNA, JEFFERY REID, KARI	:	Honorable James B. Clark, U.S.M.J.
PARSONS, CHARLES BEYER,	:	
JONATHAN COHEN, and JENNIFER	:	
SCHRAMM on behalf of themselves	:	
and all others similarly situated,	:	
Plaintiffs,	:	
v.	:	
WHIRLPOOL CORPORATION,	:	
LOWE'S HOME CENTER, SEARS	:	
HOLDINGS CORPORATION, THE	:	
HOME DEPOT, INC., FRY'S	:	
ELECTRONICS, INC., and	:	
APPLIANCE RECYCLING	:	
CENTERS OF AMERICA, INC.,	:	
Defendants.	:	

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**DEFENDANT HOME DEPOT U.S.A., INC.'S ANSWER AND  
DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

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Defendant Home Depot U.S.A., Inc. ("Home Depot"), improperly identified as The Home Depot, Inc.,<sup>1</sup> submits the following answer and defenses to Plaintiffs' Second Amended Complaint (the "Complaint").

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<sup>1</sup> The Home Depot, Inc. is not a retailer and therefore engaged in no transactions with Plaintiffs. Rather, The Home Depot, Inc. is the parent company of Home Depot U.S.A., Inc., which is a home improvement retailer. To the extent a response to the Complaint is required from The Home Depot, Inc., the responses herein are made on behalf of both companies.

**ANSWER**

Home Depot denies all allegations contained in the headings and all unnumbered or introductory paragraphs in the Complaint. Home Depot answers the allegations in the numbered paragraphs in the Complaint as follows:

1. Home Depot denies the allegations in paragraph 1 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 as they relate to the other Defendants and, therefore, denies them. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in footnote 2 and, therefore, denies them.

2. Home Depot admits the allegations in the first sentence of paragraph 2. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second and third sentences of paragraph 2 and, therefore, denies them. Home Depot denies all of the remaining allegations in paragraph 2.

3. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 and, therefore, denies them.

4. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 and, therefore,

denies them.

5. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 and, therefore, denies them.

6. Home Depot denies the allegations in paragraph 6 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 as they relate to the other Defendants and, therefore, denies them.

7. Home Depot admits that Plaintiffs purport to bring this action individually and on behalf of a putative class of consumers. Home Depot denies that Plaintiffs are entitled to any relief on an individual or class basis and denies all remaining allegations in paragraph 7.

8. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 and, therefore, denies them.

9. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 and, therefore, denies them.

10. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 and, therefore,

denies them.

11. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 and, therefore, denies them.

12. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 and, therefore, denies them.

13. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 and, therefore, denies them.

14. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 and, therefore, denies them.

15. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 and, therefore, denies them.

16. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 16 and, therefore, denies them.

17. Home Depot lacks knowledge or information sufficient to form a

belief as to the truth or falsity of the allegations in paragraph 17 and, therefore, denies them.

18. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 18 and, therefore, denies them.

19. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 and, therefore, denies them.

20. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 20 and, therefore, denies them.

21. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 21 and, therefore, denies them.

22. Home Depot admits the allegations in the first three sentences of paragraph 22, except for the allegation that Home Depot has retail stores in China, which Home Depot denies. Home Depot admits that the fourth and fifth sentences of paragraph 22 contain partial quotations from Home Depot's website, which speak for themselves. Home Depot Home Depot denies the allegations in paragraph 22 to the extent they misquote, mischaracterize, or contradict Home

Depot's website and denies that these statements constitute representations. Home Depot denies the remaining allegations in paragraph 22.

23. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23 and, therefore, denies them.

24. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 24 and, therefore, denies them.

25. Home Depot denies the allegations in paragraph 25 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 25 as they relate to the other Defendants and, therefore, denies them.

26. Paragraph 26 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 26 of the Complaint. Home Depot further notes that the Court has dismissed Plaintiffs' claims under federal law.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 27 of the Complaint.

28. Home Depot admits that it does business in the judicial district in

which this Court sits. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 28 as they relate to the other Defendants and Ms. Dzielak and, therefore, denies them. The remaining allegations in paragraph 28 state a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the remaining allegations in paragraph 28 of the Complaint.

29. Paragraph 29 purports to quote 42 U.S.C. § 6294a, which speaks for itself. Home Depot denies the allegations in paragraph 29 to the extent they misquote, mischaracterize, or contradict this statute. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 29 and, therefore, denies them.

30. Home Depot admits that the Energy Star program is jointly administered by the Department of Energy (“DOE”) and Environmental Protection Agency (“EPA”). The remaining allegations in paragraph 30 characterize and purport to quote from 42 U.S.C. § 6294a, which speaks for itself. Home Depot denies the allegations in paragraph 30 to the extent they misquote, mischaracterize, or contradict this statute.

31. Paragraph 31 characterizes and purports to quote from a licensing agreement, which speaks for itself. Home Depot denies the allegations in paragraph 31 to the extent they misquote, mischaracterize, or contradict the

agreement. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 31, including the allegations in footnote 3, and, therefore, denies them.

32. Paragraph 32 purports to characterize the requirements of the Energy Star program, which speak for themselves. Home Depot denies the allegations in paragraph 32 to the extent they misquote, mischaracterize, or contradict the requirements of the Energy Star program.

33. Home Depot denies the allegations in paragraph 33 of the Complaint.

34. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of paragraph 34 and, therefore, denies them. Home Depot admits that products with the Energy Star label are required to meet guidelines established by the EPA and DOE. Home Depot denies the allegations in paragraph 34 of the Complaint to the extent they are inconsistent with the guidelines established by the EPA and DOE.

35. Home Depot denies the allegations in the first sentence of paragraph 35 of the Complaint. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 35 and, therefore, denies them. Home Depot denies the allegations in the third sentence of paragraph 35 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the

truth or falsity of the allegations in the third sentence of paragraph 35 as they relate to the other Defendants and, therefore, denies them.

36. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 36 and, therefore, denies them.

37. Paragraph 37 purports to quote from an EPA publication, which speaks for itself. Home Depot denies the allegations in paragraph 37 to the extent they misquote, mischaracterize, or contradict the EPA publication. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 37 and, therefore, denies them.

38. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 38 and, therefore, denies them.

39. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 39 and, therefore, denies them.

40. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 40 and, therefore, denies them.

41. Home Depot lacks knowledge or information sufficient to form a

belief as to the truth or falsity of the allegations in paragraph 41 and, therefore, denies them.

42. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 42 and, therefore, denies them.

43. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 43 and, therefore, denies them.

44. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 44 and, therefore, denies them.

45. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 45 and, therefore, denies them.

46. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 46 and, therefore, denies them.

47. Paragraph 47 purports to quote a book issued by the EPA, which speaks for itself. Home Depot denies the allegations in paragraph 47 to the extent they misquote, mischaracterize, or contradict the book. Home Depot lacks

knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 47 and, therefore, denies them.

48. Paragraph 48 purports to quote a book issued by the EPA, which speaks for itself. Home Depot denies the allegations in paragraph 48 to the extent they misquote, mischaracterize, or contradict the book.

49. Paragraph 49 purports to quote a book issued by the EPA, which speaks for itself. Home Depot denies the allegations in paragraph 49 to the extent they misquote, mischaracterize, or contradict the book.

50. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50, including footnote 6, and, therefore, denies them.

51. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 51 and, therefore, denies them.

52. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 52 and, therefore, denies them.

53. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 53 and, therefore, denies them.

54. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 54 and, therefore, denies them.

55. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 55 and, therefore, denies them.

56. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 56 and, therefore, denies them.

57. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 57 and, therefore, denies them.

58. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 58 and, therefore, denies them.

59. Home Depot denies the allegations in paragraph 59 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 59 as they relate to the other Defendants and, therefore, denies them.

60. Home Depot lacks knowledge or information sufficient to form a

belief as to the truth or falsity of the allegations in paragraph 60 and, therefore, denies them.

61. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 61 and, therefore, denies them.

62. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 62 and, therefore, denies them.

63. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 63 and, therefore, denies them.

64. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 64 and, therefore, denies them.

65. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 65 and, therefore, denies them.

66. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 66 and, therefore, denies them.

67. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 67 and, therefore, denies them.

68. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 68 and, therefore, denies them.

69. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 69 and, therefore, denies them.

70. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 70 and, therefore, denies them.

71. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 71 and, therefore, denies them.

72. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 72 and, therefore, denies them.

73. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 73 and, therefore,

denies them.

74. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 74 and, therefore, denies them.

75. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 75 and, therefore, denies them.

76. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 76 and, therefore, denies them.

77. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 77 and, therefore, denies them.

78. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 78 and, therefore, denies them.

79. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 79 and, therefore, denies them.

80. Home Depot lacks knowledge or information sufficient to form a

belief as to the truth or falsity of the allegations in paragraph 80 and, therefore, denies them.

81. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 81 and, therefore, denies them.

82. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 82 and, therefore, denies them.

83. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 83 and, therefore, denies them.

84. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 84 and, therefore, denies them.

85. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 85 and, therefore, denies them.

86. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 86 and, therefore, denies them.

87. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 87 and, therefore, denies them.

88. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 88 and, therefore, denies them.

89. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 89 and, therefore, denies them.

90. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 90 and, therefore, denies them.

91. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 91 and, therefore, denies them.

92. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 92 and, therefore, denies them.

93. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 93 and, therefore,

denies them.

94. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 94 and, therefore, denies them.

95. Plaintiff McLenna has voluntarily dismissed his claims against Defendants in this action. *See* ECF No. 112. To the extent a response is required to paragraph 95 of the Complaint, Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 95 and, therefore, denies them.

96. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 96 and, therefore, denies them.

97. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 97 and, therefore, denies them.

98. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 98 and, therefore, denies them.

99. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 99 and, therefore,

denies them.

100. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 100 and, therefore, denies them.

101. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 101 and, therefore, denies them.

102. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 102 and, therefore, denies them.

103. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 103 and, therefore, denies them.

104. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 104 and, therefore, denies them.

105. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 105 and, therefore, denies them.

106. Home Depot lacks knowledge or information sufficient to form a

belief as to the truth or falsity of the allegations in paragraph 106 and, therefore, denies them.

107. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 107 and, therefore, denies them.

108. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 108 and, therefore, denies them.

109. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 109 and, therefore, denies them.

110. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 110 and, therefore, denies them.

111. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 111 and, therefore, denies them.

112. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 112, including those contained in Exhibit B, and, therefore, denies them.

113. Home Depot admits that some of its advertisements referred to the model number of the washing machines at issue as “MVWC6ESWW.” Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 113 and, therefore, denies them.

114. The first sentence in paragraph 114 purports to characterize and quote from 10 C.F.R. § 430.2, which speaks for itself. Home Depot denies the allegations in the first sentence in paragraph 114 to the extent they misquote, mischaracterize, or contradict 10 C.F.R. § 430.2. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 114 and, therefore, denies them.

115. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 115 and, therefore, denies them.

116. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 116 and, therefore, denies them.

117. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 117 and, therefore, denies them.

118. Home Depot denies the allegations in paragraph 118 of the

Complaint.

119. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 119 and, therefore, denies them.

120. Home Depot denies the allegations in the first sentence of paragraph 120 of the Complaint as they relate to Plaintiffs who allege that they purchased a washing machine from Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of paragraph 120 as they relate to Plaintiffs who allege that they purchased a washing machine from other Defendants and, therefore, denies them. Home Depot denies the allegations in the second sentence of paragraph 120 of the Complaint.

121. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of paragraph 121 of the Complaint and, therefore, denies them. Home Depot denies the allegations in the second sentence of paragraph 121 of the Complaint.

122. Home Depot admits that Plaintiffs seek to bring this action on behalf of a putative nationwide class as defined in paragraph 122. Home Depot denies that the putative class is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiffs or the putative class members are entitled to

any relief whatsoever. Home Depot denies any remaining allegations in paragraph 122.

123. Home Depot admits that Plaintiffs Dzielak and Angelone seek to bring this action on behalf of a putative subclass as defined in paragraph 123. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiffs Dzielak and Angelone or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in paragraph 123.

124. Home Depot admits that Plaintiffs Baker, Maxwell, and Christy seek to bring this action on behalf of a putative subclass as defined in paragraph 124. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiffs Baker, Maxwell, and Christy or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in paragraph 124.

125. Home Depot denies that Plaintiff McLenna seeks to bring any claims on a class basis. Plaintiff McLenna has voluntarily dismissed his claims in this action. Home Depot denies any remaining allegations in paragraph 125.

126. Home Depot admits that Plaintiff Reid seeks to bring this action on behalf of a putative subclass as defined in paragraph 126. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class

treatment, and denies that Plaintiff Reid or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in paragraph 126.

127. Home Depot admits that Plaintiff Parsons seeks to bring this action on behalf of a putative subclass as defined in paragraph 127. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiff Parsons or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in paragraph 127.

128. Home Depot admits that Plaintiff Beyer seeks to bring this action on behalf of a putative subclass as defined in paragraph 128. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiff Beyer or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in paragraph 128.

129. Home Depot admits that Plaintiff Cohen seeks to bring this action on behalf of a putative subclass as defined in paragraph 129. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiff Cohen or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in

paragraph 129.

130. Home Depot admits that Plaintiff Schramm seeks to bring this action on behalf of a putative subclass as defined in paragraph 130. Home Depot denies that the putative subclass is properly defined, denies that this case is suitable for class treatment, and denies that Plaintiff Schramm or the putative class members are entitled to any relief whatsoever. Home Depot denies any remaining allegations in paragraph 130.

131. Home Depot denies the allegations in paragraph 131.

132. Home Depot denies the allegations in paragraph 132, including all subparts.

133. Home Depot denies the allegations in paragraph 133.

134. Home Depot denies the allegations in paragraph 134.

135. Home Depot denies the allegations in paragraph 135.

### **AS TO COUNT I<sup>2</sup>**

136. Home Depot restates and reasserts its responses to paragraphs 1–135 as if fully set forth herein.

137. Home Depot denies that the claims asserted in Count I may properly

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<sup>2</sup> Count I of the Complaint (paragraphs 136 through 144) has been dismissed by the Court, and Plaintiffs have declined to amend the Complaint to attempt to cure the deficiencies in Count I identified by the Court. Therefore, no response to Count I is required. To the extent a response is required, Home Depot responds as set forth in numbered paragraphs 136 through 144 of this Answer.

be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 137 of the Complaint.

138. Paragraph 138 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 138 of the Complaint.

139. Paragraph 139 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 139 of the Complaint.

140. Paragraph 140 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 140 of the Complaint.

141. Home Depot denies the allegations in paragraph 141 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 141 as they relate to the other Defendants and, therefore, denies them.

142. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 142 and, therefore, denies them.

143. Home Depot denies the allegations in paragraph 143 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations in paragraph 143 as they relate to the other Defendants and, therefore, denies them.

144. Home Depot denies the allegations in paragraph 144 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 144 as they relate to the other Defendants and, therefore, denies them.

### **AS TO COUNT II**

145. Home Depot restates and reasserts its responses to paragraphs 1–144 as if fully set forth herein.

146. Home Depot denies that the claims asserted in Count II may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 146 of the Complaint.

147. Home Depot denies that Plaintiff McLenna brings any claims individually or on a class basis. Plaintiff McLenna has voluntarily dismissed his claims in this action. Home Depot denies any remaining allegations in paragraph 147 of the Complaint.

148. Home Depot denies the allegations in paragraph 148 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 148 as they relate to the other Defendants and, therefore, denies them.

149. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 149 and, therefore, denies them.

150. Home Depot denies the allegations in paragraph 150 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 150 as they relate to the other Defendants and, therefore, denies them.

### **AS TO COUNT III**

151. Home Depot restates and reasserts its responses to paragraphs 1–150 as if fully set forth herein.

152. Home Depot denies that the claims asserted in Count III may properly be brought on behalf of any putative class or subclass. Home Depot also denies that Plaintiff McLenna brings any claims individually or on a class basis. Plaintiff McLenna has voluntarily dismissed his claims in this action. Home Depot denies any remaining allegations in paragraph 152 of the Complaint.

153. Home Depot denies that the claims asserted in Count III may properly be brought on behalf of any putative class or subclass. Home Depot also denies that Plaintiff McLenna brings any claims individually or on a class basis. Plaintiff McLenna has voluntarily dismissed his claims in this action. Home Depot denies any remaining allegations in paragraph 153 of the Complaint.

154. Home Depot denies the allegations in paragraph 154 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 154 as they relate to the other Defendants and, therefore, denies them.

155. Home Depot denies the allegations in paragraph 155 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 155 as they relate to the other Defendants and, therefore, denies them.

156. Home Depot denies the allegations in paragraph 156 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 156 as they relate to the other Defendants and, therefore, denies them.

157. Home Depot denies the allegations in paragraph 157 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 157 as they relate to the other Defendants and, therefore, denies them.

158. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of paragraph 158 and, therefore, denies them. Home Depot denies the allegations in the second sentence of paragraph 158.

159. Home Depot denies the allegations in paragraph 159 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 159 as they relate to the other Defendants and, therefore, denies them.

160. Home Depot denies the allegations in paragraph 160 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 160 as they relate to the other Defendants and, therefore, denies them.

#### **AS TO COUNT IV**

161. Home Depot restates and reasserts its responses to paragraphs 1–160 as if fully set forth herein.

162. Home Depot denies that the claims asserted in Count IV may properly be brought on behalf of any putative class or subclass. Home Depot also denies that Plaintiff McLenna brings any claims individually or on a class basis. Plaintiff McLenna has voluntarily dismissed his claims in this action. Home Depot denies any remaining allegations in paragraph 162 of the Complaint.

163. Paragraph 163 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 163 of the Complaint.

164. Paragraph 164 states a legal conclusion to which no response is

required. To the extent a response is required, Home Depot denies the allegations of paragraph 164 of the Complaint.

165. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 165 and, therefore, denies them.

166. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 166 and, therefore, denies them.

167. Home Depot denies the allegations in paragraph 167 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 167 as they relate to the other Defendants and, therefore, denies them.

168. Home Depot denies the allegations in paragraph 168 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 168 as they relate to the other Defendants and, therefore, denies them.

#### **AS TO COUNT V**

169. Home Depot restates and reasserts its responses to paragraphs 1–168 as if fully set forth herein.

170. Home Depot denies that the claims asserted in Count V may properly

be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 170 of the Complaint.

171. Home Depot denies the allegations in paragraph 171 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 171 as they relate to the other Defendants and, therefore, denies them.

172. Home Depot denies the allegations in paragraph 172 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 172 as they relate to the other Defendants and, therefore, denies them.

#### **AS TO COUNT VI**

173. Home Depot restates and reasserts its responses to paragraphs 1–172 as if fully set forth herein.

174. Home Depot denies that the claims asserted in Count VI may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 174 of the Complaint.

175. Paragraph 175 purports to quote from the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, which speaks for itself. Home Depot denies the allegations in paragraph 175 to the extent they misquote, mischaracterize, or contradict the statute.

176. Home Depot denies the allegations in paragraph 176 of the Complaint.

177. Paragraph 177 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 177 of the Complaint.

178. Paragraph 178 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 178 of the Complaint.

179. Paragraph 179 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 179 of the Complaint.

180. Paragraph 180 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of paragraph 180 of the Complaint.

181. Home Depot denies the allegations in paragraph 181 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 181 as they relate to the other Defendants and, therefore, denies them.

182. Home Depot denies the allegations in paragraph 182 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations in paragraph 182 as they relate to the other Defendants and, therefore, denies them.

**AS TO COUNT VII**

183. Home Depot restates and reasserts its responses to paragraphs 1–182 as if fully set forth herein.

184. Home Depot denies that the claims asserted in Count VII may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 184 of the Complaint.

185. Paragraph 185 purports to quote from the California Consumer Legal Remedies Act, which speaks for itself. Home Depot denies the allegations in paragraph 185 to the extent they misquote, mischaracterize, or contradict the statute. Home Depot denies the remaining allegations in paragraph 185 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 185 as they relate to the other Defendants and, therefore, denies them.

186. Paragraph 186 purports to quote from the California Consumer Legal Remedies Act, which speaks for itself. Home Depot denies the allegations in paragraph 186 to the extent they misquote, mischaracterize, or contradict the statute. Home Depot denies the remaining allegations in paragraph 186 of the

Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 186 as they relate to the other Defendants and, therefore, denies them.

187. Paragraph 187 purports to quote from the California Consumer Legal Remedies Act, which speaks for itself. Home Depot denies the allegations in paragraph 187 to the extent they misquote, mischaracterize, or contradict the statute. Home Depot denies the remaining allegations in paragraph 187 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 187 as they relate to the other Defendants and, therefore, denies them.

188. Home Depot denies the allegations in paragraph 188 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 188 as they relate to the other Defendants and, therefore, denies them.

189. Home Depot denies the allegations in paragraph 189 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 189 as they relate to the other Defendants and, therefore, denies them.

190. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 190 and, therefore, denies them.

191. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 191 and, therefore, denies them.

192. Home Depot denies the allegations in paragraph 192 of the Complaint.

#### **AS TO COUNT VIII**

193. Home Depot restates and reasserts its responses to paragraphs 1–192 as if fully set forth herein.

194. Home Depot denies that the claims asserted in Count VIII may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 194 of the Complaint.

195. Paragraph 195 purports to quote from the California Unfair Competition Law, which speaks for itself. Home Depot denies the allegations in paragraph 195 to the extent they misquote, mischaracterize, or contradict the statute.

196. Home Depot denies the allegations in paragraph 196 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations in paragraph 196 as they relate to the other Defendants and, therefore, denies them.

197. Home Depot denies the allegations in paragraph 197 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 197 as they relate to the other Defendants and, therefore, denies them.

198. Home Depot denies the allegations in paragraph 198 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 198 as they relate to the other Defendants and, therefore, denies them.

199. Home Depot denies the allegations in paragraph 199 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 199 as they relate to the other Defendants and, therefore, denies them.

### **AS TO COUNT IX**

200. Home Depot restates and reasserts its responses to paragraphs 1–199 as if fully set forth herein.

201. Home Depot denies that the claims asserted in Count IX may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 201 of the Complaint.

202. Paragraph 202 purports to quote from the California False Advertising Law, which speaks for itself. Home Depot denies the allegations in paragraph 202 to the extent they misquote, mischaracterize, or contradict the statute.

203. Home Depot denies the allegations in paragraph 203 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 203 as they relate to the other Defendants and, therefore, denies them.

204. Home Depot denies the allegations in paragraph 204 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 204 as they relate to the other Defendants and, therefore, denies them.

205. Home Depot denies the allegations in paragraph 205 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 205 as they relate to the other Defendants and, therefore, denies them.

206. Home Depot denies the allegations in paragraph 206 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 206 as they relate to the other Defendants and, therefore, denies them.

**AS TO COUNT X<sup>3</sup>**

207. Home Depot restates and reasserts its responses to paragraphs 1–206 as if fully set forth herein.

208. Home Depot denies that the claims asserted in Count IV may properly be brought on behalf of any putative class or subclass. Home Depot also denies that Plaintiff McLenna brings any claims individually or on a class basis. Plaintiff McLenna has voluntarily dismissed his claims in this action. Home Depot denies any remaining allegations in paragraph 208 of the Complaint.

209. Paragraph 209 purports to quote from the Michigan Consumer Protection Act, which speaks for itself. Home Depot denies the allegations in paragraph 209 to the extent they misquote, mischaracterize, or contradict the statute. Home Depot denies the remaining allegations in paragraph 209 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 209 as they relate to the other Defendants and, therefore, denies them.

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<sup>3</sup> Count X of the Complaint (paragraphs 207 through 217) should be dismissed in its entirety. Plaintiff McLenna has voluntarily dismissed his claims, and no other named plaintiff asserts claims under the Michigan Consumer Protection Act. Therefore, no response to Count X is required. To the extent a response is required, Home Depot responds as set forth in numbered paragraphs 207 through 217 of this Answer.

210. Paragraph 210 purports to quote from the Michigan Consumer Protection Act, which speaks for itself. Home Depot denies the allegations in paragraph 210 to the extent they misquote, mischaracterize, or contradict the statute. Home Depot denies the remaining allegations in paragraph 210 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 210 as they relate to the other Defendants and, therefore, denies them.

211. Paragraph 211 purports to quote from the Michigan Consumer Protection Act, which speaks for itself. Home Depot denies the allegations in paragraph 211 to the extent they misquote, mischaracterize, or contradict the statute. Home Depot denies the remaining allegations in paragraph 211 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 211 as they relate to the other Defendants and, therefore, denies them.

212. Home Depot denies the allegations in paragraph 212 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 212 as they relate to the other Defendants and, therefore, denies them.

213. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 213 and, therefore, denies them.

214. Home Depot denies the allegations in paragraph 214 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 214 as they relate to the other Defendants and, therefore, denies them.

215. Home Depot denies the allegations in paragraph 215 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 215 as they relate to the other Defendants and, therefore, denies them.

216. Home Depot denies the allegations in paragraph 216 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 216 as they relate to the other Defendants and, therefore, denies them.

217. Home Depot denies the allegations in paragraph 217 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 217 as they relate to the other Defendants and, therefore, denies them.

**AS TO COUNT XI<sup>4</sup>**

218. Home Depot restates and reasserts its responses to paragraphs 1–217 as if fully set forth herein.

219. Home Depot denies that the claims asserted in Count XI may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 219 of the Complaint.

220. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 220 and, therefore, denies them.

221. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 221 and, therefore, denies them.

222. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 222 and, therefore, denies them.

223. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 223 and, therefore,

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<sup>4</sup> Count XI of the Complaint (paragraphs 218 through 227) is not asserted against Home Depot. Therefore, Home Depot is not required to respond to Count XI. To the extent a response is required, Home Depot responds as set forth in numbered paragraphs 218 through 227 of this Answer.

denies them.

224. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 224 and, therefore, denies them.

225. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 225 and, therefore, denies them.

226. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 226 and, therefore, denies them.

227. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 227 and, therefore, denies them.

**AS TO COUNT XII**<sup>5</sup>

228. Home Depot restates and reasserts its responses to paragraphs 1–227 as if fully set forth herein.

229. Home Depot denies that the claims asserted in Count XII may

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<sup>5</sup> Count XII of the Complaint (paragraphs 228 through 239) is not asserted against Home Depot. Therefore, Home Depot is not required to respond to Count XII. To the extent a response is required, Home Depot responds as set forth in numbered paragraphs 228 through 239 of this Answer.

properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 229 of the Complaint.

230. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 230 and, therefore, denies them.

231. Home Depot admits that it engages in consumer transactions in every state and denies the remaining allegations in paragraph 231 as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 231 as they relate to the other Defendants and, therefore, denies them.

232. Home Depot denies the allegations in paragraph 232 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 232 as they relate to the other Defendants and, therefore, denies them.

233. Home Depot denies the allegations in paragraph 233 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 233 as they relate to the other Defendants and, therefore, denies them.

234. Home Depot denies the allegations in paragraph 234 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations in paragraph 234 as they relate to the other Defendants and, therefore, denies them.

235. Home Depot denies the allegations in the first sentence of paragraph 235 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence of paragraph 235 as they relate to the other Defendants and, therefore, denies them. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 235 and, therefore, denies them.

236. Home Depot denies the allegations in paragraph 236 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 236 as they relate to the other Defendants and, therefore, denies them.

237. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 237 and, therefore, denies them.

238. Home Depot denies that the claims asserted in Count XII may properly be brought on behalf of any putative class or subclass and denies that Plaintiffs are entitled to any of the relief sought in paragraph 238 of the Complaint. Home Depot denies any remaining allegations in paragraph 238.

239. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 239 and, therefore, denies them.

**AS TO COUNT XIII**<sup>6</sup>

240. Home Depot restates and reasserts its responses to paragraphs 1–239 as if fully set forth herein.

241. Home Depot denies that the claims asserted in Count XIII may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 241 of the Complaint.

242. Paragraph 242 purports to quote from the Indiana Deceptive Consumer Sales Act, which speaks for itself. Home Depot denies the allegations in paragraph 242 to the extent they misquote, mischaracterize, or contradict the statute.

243. The first sentence of Paragraph 243 states a legal conclusion to which no response is required. To the extent a response is required, Home Depot denies the allegations of the first sentence of paragraph 243 of the Complaint. Home Depot denies the remaining allegations in paragraph 243 of the Complaint as they

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<sup>6</sup> Count XIII of the Complaint (paragraphs 240 through 249) is not asserted against Home Depot. Therefore, Home Depot is not required to respond to Count XIII. To the extent a response is required, Home Depot responds as set forth in numbered paragraphs 240 through 249 of this Answer.

relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 243 as they relate to the other Defendants and, therefore, denies them.

244. Home Depot denies the allegations in paragraph 244 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 244 as they relate to the other Defendants and, therefore, denies them.

245. Home Depot denies the allegations in paragraph 245 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 245 as they relate to the other Defendants and, therefore, denies them.

246. Home Depot denies the allegations in paragraph 246 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 246 as they relate to the other Defendants and, therefore, denies them.

247. Home Depot denies the allegations in paragraph 247 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 247 as they relate to the other Defendants and, therefore, denies them.

248. Home Depot denies that the claims asserted in Count XIII may

properly be brought on behalf of any putative class or subclass and denies that Plaintiffs are entitled to any of the relief sought in paragraph 248 of the Complaint. Home Depot denies any remaining allegations in paragraph 248 of the Complaint.

249. Home Depot denies that the claims asserted in Count XIII may properly be brought on behalf of any putative class or subclass and denies that Plaintiffs are entitled to any of the relief sought in paragraph 249 of the Complaint. Home Depot denies any remaining allegations in paragraph 249 of the Complaint.

#### **AS TO COUNT XIV**

250. Home Depot restates and reasserts its responses to paragraphs 1–249 as if fully set forth herein.

251. Home Depot denies that the claims asserted in Count XIV may properly be brought on behalf of any putative class or subclass. Home Depot denies any remaining allegations in paragraph 251 of the Complaint.

252. Home Depot denies the allegations in paragraph 252 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 252 as they relate to the other Defendants and, therefore, denies them.

253. Home Depot denies the allegations in paragraph 253 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph

253 as they relate to the other Defendants and, therefore, denies them.

254. Home Depot denies the allegations in paragraph 254 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 254 as they relate to the other Defendants and, therefore, denies them.

255. Home Depot denies the allegations in paragraph 255 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 255 as they relate to the other Defendants and, therefore, denies them.

256. Home Depot denies the allegations in paragraph 256 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 256 as they relate to the other Defendants and, therefore, denies them.

257. Home Depot denies the allegations in paragraph 257 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 257 as they relate to the other Defendants and, therefore, denies them.

258. Home Depot denies the allegations in paragraph 258 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph

258 as they relate to the other Defendants and, therefore, denies them.

259. Home Depot denies the allegations in paragraph 259 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 259 as they relate to the other Defendants and, therefore, denies them.

260. Home Depot denies that it violated the Texas Deceptive Trade Practices Act, denies that the claims asserted in Count XIV may properly be brought on behalf of any putative class or subclass, denies that Plaintiffs are entitled to any of the relief sought in paragraph 260 of the Complaint, and denies any remaining allegations in paragraph 260 of the Complaint as they relate to Home Depot. Home Depot lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 260 as they relate to the other Defendants and, therefore, denies them.

261. Home Depot denies that the claims asserted in Count XIV may properly be brought on behalf of any putative class or subclass, denies that Plaintiffs are entitled to any relief under the Texas Deceptive Trade Practices Act, and denies any remaining allegations in paragraph 261 of the Complaint.

WHEREFORE, Home Depot denies that this case is suitable for class treatment and denies that Plaintiffs are entitled to any relief whatsoever from Home Depot, including but not limited to the relief requested in the paragraph

beginning “WHEREFORE” following paragraph 261 of the Complaint, including all subparts. Home Depot denies any remaining allegations in the paragraphs following paragraph 261 of the Complaint, including all subparts.

### **JURY TRIAL DEMAND**

Home Depot hereby demands trial by jury on any and all Counts and defenses so triable.

### **DEFENSES**

Home Depot will rely on all defenses lawfully available to it at the time of trial and reserves the right to amend its Answer and Defenses, if necessary, if discovery in this action makes known facts that support such defenses. Home Depot also incorporates by reference any and all other defenses asserted or to be asserted by any other Defendants to the extent those defenses are applicable to Home Depot. To the extent that the defenses below raise matters on which Plaintiffs bear the burden of proof at trial, Home Depot does not adopt or assume that burden by virtue of its pleading. Home Depot pleads the following defenses to both the individual and class claims alleged in the Complaint:

### **FIRST DEFENSE**

The Complaint fails to state facts sufficient to entitle Plaintiffs or any member of the putative class or subclasses to the relief sought or to any other relief.

### **SECOND DEFENSE**

Plaintiffs' claims are barred because they have incurred no actionable damage.

### **THIRD DEFENSE**

Plaintiffs' claims, in whole or in part, are barred because any loss, damage, or injury alleged is not the consequence of any actionable conduct, acts, or omissions by Home Depot.

### **FOURTH DEFENSE**

Plaintiffs' claims and the putative class members' purported claims against Home Depot are barred, in whole or in part, because any alleged damages they have sustained were caused by third parties or entities other than Home Depot.

### **FIFTH DEFENSE**

Any damage or loss sustained by Plaintiffs and attributable to Home Depot (if any) must be reduced, diminished, and/or barred in proportion to the wrongful conduct of third parties or entities other than Home Depot under the principles of equitable allocation, recoupment, set-off, proportionate responsibility, and/or comparative fault.

### **SIXTH DEFENSE**

Any damage allegedly suffered by Plaintiffs arising out of the conduct of Home Depot was caused by the intervening act(s) or omission(s) of persons other

than Home Depot, and said act(s) or omission(s) superseded any action or omission by Home Depot for which it might be considered liable.

**SEVENTH DEFENSE**

Plaintiffs' claims are barred, in whole or part, to the extent Plaintiffs are not in privity with Home Depot.

**EIGHTH DEFENSE**

Home Depot made no warranties, express or implied, to Plaintiffs, containing the terms alleged by Plaintiffs.

**NINTH DEFENSE**

The washing machines at issue 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. Home Depot pleads the written warranties as a complete bar to Plaintiffs' claims.

**TENTH DEFENSE**

Plaintiffs failed to give Home Depot adequate notice of the alleged breaches of express warranties.

**ELEVENTH DEFENSE**

Plaintiffs failed to afford Home Depot a reasonable opportunity to cure the alleged breaches of express warranties.

**TWELFTH DEFENSE**

Plaintiffs' breach of express warranty claims fail because Home Depot has not failed or refused to repair purported defects in accordance with any applicable warranty. On the contrary, Home Depot has fully performed under any applicable warranty.

**THIRTEENTH DEFENSE**

Plaintiffs' breach of express warranty claims fail because they are based on statements beyond the express terms of any allegedly applicable warranty.

**FOURTEENTH DEFENSE**

Plaintiffs' statutory claims are barred because they merely restate the allegations of their breach of warranty claims, without alleging which facts show deceptive or unfair practices.

**FIFTEENTH DEFENSE**

Plaintiffs' claims are barred because any representations Home Depot allegedly made to Plaintiffs regarding any products were mere puffery, and not actionable representations.

**SIXTEENTH DEFENSE**

Plaintiffs' claims against Home Depot are barred to the extent that Home Depot had no notice or knowledge that any product was defective or not suitable for the purposes for which it was sold.

**SEVENTEENTH DEFENSE**

Plaintiffs' claims and/or the alleged claims of the putative class members for damages are barred because Plaintiffs and/or the putative class members have not acted with reasonable diligence and have not mitigated their damages, if any.

**EIGHTEENTH DEFENSE**

Plaintiffs are not entitled to injunctive relief. Plaintiffs have an adequate remedy at law and will not be harmed or prejudiced in the absence of an injunction. Plaintiffs cannot show a likelihood that they will suffer any future injury from Home Depot. Home Depot has not violated their rights, and there is no likelihood that Home Depot will violate their rights in the future.

**NINETEENTH DEFENSE**

Plaintiffs' claims and/or the alleged claims of the putative class members for treble damages, punitive damages, and other similar damages are barred because Home Depot did not willfully or knowingly violate any applicable law or commit any intentional misconduct.

**TWENTIETH DEFENSE**

While Home Depot denies that Plaintiffs have alleged any damages, to the extent that Plaintiffs seek punitive damages against Home Depot, claims for punitive damages against Home Depot are barred in whole or in part by all applicable constitutional, statutory, and judicial limitations on punitive damages.

**TWENTY-FIRST DEFENSE**

Plaintiffs are not entitled to any attorneys' fees, costs, or expenses.

**TWENTY-SECOND DEFENSE**

Plaintiffs' claims are barred to the extent they have failed to satisfy any condition precedent to suit.

**TWENTY-THIRD DEFENSE**

Plaintiffs' claims and the claims of the purported class are barred to the extent that Plaintiffs and/or members of the purported class lack standing to assert any or all of the causes of action alleged and/or remedies requested in the Complaint, either individually or on behalf of the purported class.

**TWENTY-FOURTH DEFENSE**

Some or all of Plaintiffs' claims and/or the alleged claims of the putative class members are barred by the statute of limitations.

**TWENTY-FIFTH DEFENSE**

Plaintiffs' claims are barred by waiver, estoppel, laches, and/or unclean hands.

**TWENTY-SIXTH DEFENSE**

Plaintiffs' unjust enrichment claims against Home Depot are barred because Plaintiffs did not confer any unjust benefit on Home Depot.

**TWENTY-SEVENTH DEFENSE**

Plaintiffs' unjust enrichment claims against Home Depot are barred because any Plaintiffs who purchased washing machines from Home Depot had sales contracts with Home Depot.

**TWENTY-EIGHTH DEFENSE**

The claims alleged in the Complaint may not be properly certified or maintained as a class action. Plaintiffs have failed to allege adequately all of the elements necessary to establish a valid class action under the Federal Rules of Civil Procedure and other applicable law. The claims in the Complaint may not be properly certified because the putative class members are not readily ascertainable. Plaintiffs are not appropriate class representatives because their claims are not common and/or typical of the claims of the purported class members, which are subject to numerous individualized defenses. The claims in the Complaint are inappropriate for class treatment because there are no common questions of law or

fact, the alleged common questions do not predominate over individual issues raised by the claims in the Complaint, and Plaintiffs and their counsel would not adequately represent the putative class members.

**TWENTY-NINTH DEFENSE**

The claims alleged in the Complaint may not be properly certified or maintained as a class action because they are based on an inherently individualized set of facts.

**THIRTIETH DEFENSE**

Plaintiffs' claims against Home Depot under California's Consumers Legal Remedies Act are barred by Plaintiffs' failure to comply with the notice and demand requirements of the Act.

WHEREFORE, having fully answered the Complaint, Home Depot denies that Plaintiffs are entitled to judgment in any amount and prays that the Complaint be dismissed with prejudice at the cost of Plaintiffs.

Respectfully submitted this 25th day of September, 2015.

/s/ Nicholas Stevens  
Nicholas Stevens  
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Roseland, New Jersey 07068  
(973) 403-9200  
(973) 226-0031 (facsimile)

**CERTIFICATE OF SERVICE**

This is to certify that I have this day electronically filed a true and correct copy of **DEFENDANT HOME DEPOT U.S.A., INC.'s ANSWER AND DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT** with the Clerk of the Court using the ECF system, which will send notification of such all counsel of record.

Dated: September 25, 2015

*/s/ Nicholas Stevens*  
Nicholas Stevens