

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
(AT COVINGTON)**

SUSAN PASTOR-RICHARD, GEORGE
MCMEEN, LOUIS MEYERS, and
RANDALL BROWN on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOODMAN GLOBAL, INC., GOODMAN
MANUFACTURING COMPANY, L.P.,
and GOODMAN COMPANY, L.P.,

Defendants.

Civil No. 2:12-cv-00268-WOB-JGW

Judge William O. Bertlesman

(JURY TRIAL DEMANDED)

Filed Electronically

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Susan Pastor-Richard, George McMeen, Louis Meyers, and Randall Brown individually on behalf of themselves and all others similarly situated, bring this Class Action Complaint against defendants Goodman Global, Inc., Goodman Manufacturing Company, L.P., and Goodman Company, L.P. (collectively, “Goodman”) and in support allege as follows:

NATURE OF THIS ACTION

1. Goodman is the second largest manufacturer of heating, ventilation, and air conditioning products for residential use in the United States. Goodman manufactures and sells central air conditioning units and heat pumps under the trade names Goodman® and Amana® (hereinafter the “Goodman Units”).

2. The Goodman Units contain defective evaporator coils that improperly and prematurely leak refrigerant (a.k.a. Freon) under normal use. Evaporator coils are an essential component of air conditioning and heat pump systems. The defective coils render the Goodman Units unfit for their ordinary purpose because the loss of refrigerant due to leakage reduces and

ultimately eliminates the Goodman Units' ability to provide cold air, or warm air in the case in the case of Goodman Units that are heat pumps operating on heating mode.

3. Goodman has received, and continues to receive, complaints from consumers and air conditioning service technicians that the Goodman Units sold since at least January 2007 contain defective evaporator coils that improperly and prematurely leak refrigerant. Thus, Goodman knew, or reasonably should have known, that the evaporator coils in its air conditioners and heat pumps sold since at least January 2007 were defective, but has failed or refused to inform consumers or issue a recall.

4. Indeed, far from informing consumers about the defective evaporator coils that cause the Goodman Units to prematurely fail, Goodman falsely and deceptively represented, and continues to falsely and deceptively represent on its website, that the Goodman Units are reliable, durable, dependable, long lasting, and that Goodman's manufacturing processes and the quality of its indoor comfort products either meet or exceed the highest standards in the heating and cooling industry. Goodman also falsely represents on its website that it offers outstanding warranty coverage, which it purports to be capable of doing due to the quality and reliability of the Goodman Units.

THE PARTIES

5. Plaintiff Susan Pastor-Richard is a resident of Burlington, Boone County, Kentucky.

6. Plaintiff George McMeen is a resident of Cresson, Hood County, Texas.

7. Plaintiff Louis Meyers is a resident of Durham, Durham County, North Carolina.

8. Plaintiff Randall Brown is a resident of Mount Pleasant, Charleston County, South Carolina.

9. Defendant Goodman Global, Inc. is a Delaware corporation with its corporate headquarters located at 5151 San Felipe, Suite 500, Houston, Harris County, Texas.

10. Defendant Goodman Manufacturing Company, L.P. is a Texas limited partnership with its headquarters located at 5151 San Felipe, Suite 500, Houston, Harris County, Texas.

11. Defendant Goodman Company, L.P. is a Delaware limited partnership with its headquarters located at 5151 San Felipe, Suite 500, Houston, Harris County, Texas.

12. Defendant Goodman Global, Inc. is the parent company of defendants Goodman Manufacturing Company, L.P. and Goodman Company, L.P. Each defendant acted as the principal of or agent for other defendants with respect to the acts, violations, and common course of conduct alleged.

13. Although Goodman's corporate headquarters is located in Texas, Goodman has manufacturing and assembly facilities in Tennessee, Arizona, Pennsylvania, and Florida. In addition, Goodman distributes the Goodman Units all over North America via distribution network with over 700 distribution points, including 136 company-operated distribution centers throughout the country.

JURISDICTION AND VENUE

14. This Court has original jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d). Plaintiffs and members of the class have suffered aggregate damages exceeding \$5,000,000, exclusive of interest and costs, and this a class action in which any member of the class of plaintiffs is a citizen of a state different from any defendant.

15. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because it is a district in which any defendant resides and all defendants are residents of the State in which this district is located. Pursuant to 28 U.C.S. § 1391(c)(2), the defendants are residents of this

District and the Commonwealth of Kentucky because they are entities with the capacity to sue and be sued in their common names under applicable law and because they are subject to this Court's personal jurisdiction with respect to the civil action in question. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this case took place in this District.

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action on behalf of themselves and the members of a class comprising of:

All persons residing in the United States who purchased a Goodman Unit since January 2007.

17. Plaintiffs also bring this action on behalf of themselves and members of subclasses comprised of:

All persons residing in the Commonwealth of Kentucky who purchased a Goodman Unit since January 2007;

All persons residing in the State of Texas who purchased a Goodman Unit since January 2007;

All persons residing in the State of North Carolina who purchased a Goodman Unit since January 2007; and

All persons residing in the State of South Carolina who purchased a Goodman Unit since January 2007.

18. Subject to additional information obtained through further investigation and discovery, the foregoing class and subclasses may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the class and subclasses is any entity in which defendants had a controlling interest or which has a controlling interest in defendants, and defendants' legal representatives, assigns, and successors.

19. Members of the class and subclasses are so numerous that joinder is

impracticable. While the exact number of class and subclass members is unknown to plaintiffs, it is believed that the class is comprised of at least thousands of members geographically dispersed throughout the United States and that the subclasses are comprised of thousands of members geographically disbursed throughout the Commonwealth of Kentucky, the State of Texas, the State of North Carolina, and the State of South Carolina. The class and subclasses, however, are readily identifiable from information and records in the possession of Goodman.

20. Common questions of law and fact exist as to all members of the class and subclasses. These questions predominate over questions that may affect only individual class and subclass members because Goodman has acted on grounds generally applicable to the class and subclasses. Such common legal or factual questions include:

- (a) Whether the Goodman Units are defective;
- (b) Whether the Goodman Units are defectively designed and/or manufactured;
- (c) Whether Goodman knew or reasonably should have known about the defects prior to distributing the Goodman Units to plaintiffs and the class and the subclasses;
- (d) Whether Goodman concealed from and/or failed to disclose to plaintiffs, the class, and the subclasses the problems with the Goodman Units;
- (e) Whether Goodman knew or reasonably should have known about the defects after distributing the Goodman Units to plaintiffs, the class, and the subclasses;
- (f) Whether Goodman breached express warranties relating to the Goodman Units;
- (g) Whether Goodman breached the implied warranty of merchantability relating to the Goodman Units;
- (h) Whether the terms of Goodman's written warranties relating to the Goodman Units were unconscionable and/or failed their essential purpose;
- (i) Whether Goodman was unjustly enriched by receiving moneys in exchange for air conditioners and heat pumps that were defective;

(j) Whether Goodman should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Goodman Units;

(k) Whether plaintiffs, the class, and the subclasses are entitled to damages, including compensatory, exemplary, and statutory damages;

(l) Whether Goodman should be enjoined from selling and marketing the defective Goodman Units;

(m) Whether Goodman engaged in unfair, false, misleading, or deceptive trade practices by selling and/or marketing defective air conditioners and heat pumps;

(n) Whether Goodman engaged in unfair, false, misleading, or deceptive trade practices by placing unconscionable limitations on express and implied warranties associated with the Goodman Units;

(o) Whether Goodman engaged in unfair, false, misleading, or deceptive trade practices by concealing and/or failing to inform plaintiff and members of the class and subclasses that the Goodman Units were defective;

(p) Whether Goodman engaged in unfair, false, misleading, or deceptive trade practices by falsely representing that the Goodman units are reliable, durable, dependable, long lasting, and meet or exceed the highest standards in the heating and cooling industry; and

(q) Whether Goodman engaged in unfair, false, misleading, or deceptive trade practices by making false representations regarding the quality of its warranties.

21. Plaintiffs' claims are typical of the members of the class and the subclasses as all members of the class and subclasses are similarly affected by Goodman's actionable conduct. Plaintiffs and all members of the class and the subclasses own Goodman Units with defect(s) that make the air conditioners unfit for their ordinary purpose. In addition, Goodman's conduct that gave rise to the claims of plaintiffs and members of the class and the subclasses (*i.e.* selling defective air conditioners, concealing the defect, and breaching warranties respecting the air conditioners) is the same for all members of the class and the subclasses.

22. Plaintiffs will fairly and adequately protect the interests of the class and the subclasses because plaintiffs have no interests antagonistic to, or in conflict with, the class or the subclasses that plaintiffs seek to represent. Furthermore, plaintiffs have retained counsel

experienced and competent in the prosecution of complex class action litigation.

23. Class action treatment is a superior method for the fair and efficient adjudication of this controversy in that, among other things, such treatment will permit a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

24. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

25. Plaintiffs have acted or refused to act on grounds generally applicable to the class and the subclasses, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class and subclasses as a whole.

FACTUAL BACKGROUND

26. Air conditioners and heat pumps use refrigerant (a.k.a. Freon) in a closed-loop system designed to take advantage of a physical law known as phase conversion to provide cool or warm air. When liquid is converted into gas, the process results in the absorption of heat. Refrigerants are substances that change phase at relatively low temperatures.

27. All air conditioners and heat pumps contain the following three major components: a compressor, a condenser, and an evaporator. In central air conditioners used for household purposes, the compressor and the condenser are located outside a consumer's house.

The compressor compresses the refrigerant into high pressure gas which then travels to the condenser where it is cooled into high pressure liquid.

28. The evaporator for central air conditioners is usually located within the consumer's house and includes of a series of coils known as "evaporator coils." The liquid refrigerant is fed into the evaporator coils where it experiences a pressure drop that results in the refrigerant converting from liquid to gas. This phase conversion absorbs heat from the hot indoor air circulated over the evaporator coils by a fan, which cools the air. The cool air is then blown through the house via ducts.

29. Heat pumps used for household purposes have the same major components as central air conditioner except that they also contain a reversing valve that reverses the flow of refrigerant. Accordingly, a heat pump is essentially a central air conditioning system capable of providing both cool and warm air. In cooling mode, a heat pump functions in the same manner as a central air conditioner. But in heating mode, the refrigerant cycle is reversed and the evaporator acts as the condenser and the condenser as the evaporator. Thus, in heating mode, the evaporator coil is producing heat that is blown through the house via ducts.

30. The models of air central conditioners and heat pumps at issue were manufactured by Goodman and sold under the trade names Goodman® and Amana® from January 2007 to the present.

31. Like all central air conditioners and heat pumps used for residential purposes, the Goodman Units at issue contain evaporator coils. Goodman uses the same evaporator coils for its central air conditioning units and heat pumps.

32. The Goodman Units' evaporator coils are defective because they improperly and prematurely leak refrigerant during normal use.

33. The defective evaporator coils render the Goodman Units unfit for the ordinary purpose for which they are used because the loss of refrigerant reduces and/or eliminates the Goodman Units' ability to provide cool air, or warm air in the case of Goodman Units that are heat pumps operating in heating mode.

34. Furthermore, the problem of improper and premature refrigerant leakage from the Goodman Units' evaporator coils has been exacerbated by the heating, ventilation, and air conditioning (HVAC) industry's shift from low pressure refrigerant to refrigerant that operates at higher pressures.

35. The 1987 Montreal Protocol established a schedule to phase out the use of hydrochlorofluorocarbons (HCFCs) over time because they are damaging to the Earth's ozone layer. For more than four decades, HCFC-22 (also known as R-22) had been the refrigerant of choice in the HVAC industry. Release of R-22 into the atmosphere, however, contributes to ozone depletion. Furthermore, the manufacturing process of R-22 results in a byproduct that is believed to contribute to global warming.

36. The U.S. Environmental Protection Agency, therefore, implemented regulations under the United States Clean Air Act to comply with the Montreal Protocol, including a schedule to phase out the use of R-22 refrigerant. Accordingly, by January 1, 2010, producers and importers of R-22 were only allowed to produce or import R-22 refrigerant to service existing HVAC equipment, whereas virgin R-22 could not be used in new HVAC equipment. Thus, as of January 2010, HVAC manufacturers were not allowed to produce new HVAC equipment containing R-22.

37. The most popular substitute for R-22 is a refrigerant known as R-410A. R-410A is a blend of hydrofluorocarbons that does not contribute to depletion of the ozone layer. On the

other hand, R-410A refrigerant operates at a much higher pressure than R-22 refrigerant, requiring a more robust air conditioning or heat pump system to handle the higher pressures. Accordingly, HVAC manufacturers began marketing and selling air conditioning and heat pump systems capable of handling either R-410A only, or both R-22 and R-410A.

38. The evaporator coils for the Goodman Units were so deficient that they improperly and prematurely leaked refrigerant even when the low pressure R-22 refrigerant was being used. This problem, however, was further aggravated because Goodman continued to use evaporator coils that were only capable of handling R-22 refrigerant in its central air conditioning and heat pump systems that were supposedly designed to use R-410A refrigerant. Thus, Goodman's already deficient evaporator coils were not capable of handling the higher pressure associated with the R-410A refrigerant, worsening the leakage problem.

39. The defective evaporator coils in the Goodman Units caused plaintiffs and members of the class and subclasses to suffer damages, including, but not limited to, the difference in value of the Goodman Units as warranted and the Goodman Units they received with the defective evaporator coils, loss of use of their Goodman Units, increased utility costs, labor costs, repair costs, and replacement refrigerant costs. The defective evaporator coils were the direct, proximate, and foreseeable cause of damages incurred by plaintiffs and members of the class and subclasses.

40. Had the Goodman Units been properly manufactured and/or free from design defects, plaintiffs and the class and subclasses would not have suffered the damages complained of herein.

41. Had plaintiffs and members of the class and subclasses been informed about the defective evaporator coils in the Goodman Units, they would not have purchased the Goodman

Units or would have at least paid less for them.

42. Goodman expressly and impliedly warranted, via its user manuals, website, brochures, specifications, and/or models that the Goodman Units are fit for the ordinary purpose in which such goods are used.

43. All Goodman Units bearing the Goodman® trade name came with an express warranty between defendant Goodman Manufacturing Company, L.P. and the owner of the Goodman Unit. All Goodman Units bearing the Amana® trade name came with an express warranty between defendant Goodman Company, L.P. and the owner of the Goodman Unit.

44. In their express warranties, Goodman Manufacturing Company, L.P. and Goodman Company, L.P. expressly warranted to the owners of the Goodman Units that the Goodman Units were “free from defects in materials and workmanship that affect performance under normal use and maintenance” for a period of 10 years if the unit is registered with Goodman online within 60 days after original installation or for a period of 5 years if the product is not registered. Goodman Manufacturing Company, L.P. and Goodman Company, L.P.’s warranties also state that **“ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THIS WARRANTY.”** In other words, the duration of any implied warranties is limited to the duration of the express warranty.

45. In their express warranties, Goodman Manufacturing Company, L.P. and Goodman Company, L.P. also expressly warranted to the owners of the Goodman Units that “[a]s its only responsibility, and your only remedy, Goodman will furnish a replacement part, without charge for the part only, to replace any part that is found to be defective due to

workmanship or materials under normal use and maintenance.” Goodman Manufacturing Company, L.P. and Goodman Company, L.P. also expressly warranted that “[t]hese warranties do not apply to labor, freight, or any of cost associated with the service, repair or operation of the unit.”

46. Goodman Manufacturing Company, L.P. and Goodman Company, L.P.’s warranties further state that **“GOODMAN SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO EXTRA UTILITY EXPENSES OR DAMAGES TO PROPERTY.”**

47. The above warranty limitations on a Goodman Unit owner’s potential remedies are unconscionable and/or fail their essential purpose because the Goodman Units contained defective evaporator coils that were defective at the time plaintiffs and members of the class and subclasses acquired their Goodman Units and because Goodman knew, or reasonably should have known, its evaporator coils were defective, but continued represent that the Goodman Units were free of defects and failed to inform consumers about the defective evaporator coils.

48. The above warranty limitations on a Goodman Unit owner’s potential remedies are also unconscionable and/or fail their essential purpose because plaintiffs and members of the class and subclasses had no ability to detect the defect in the Goodman Units and had no notice of the defect. Accordingly, the bargaining power between the parties was grossly unequal and the warranty limitations rendered the warranty substantially one-sided, thereby rendering the warranty limitations unconscionable.

49. In fact, not only did Goodman fail to inform consumers about the defective evaporator coils, but Goodman falsely represented, and continues to falsely represent on its website, www.goodmanmfg.com, *inter alia*, that:

- (a) Goodman has “focused on the design, engineering, and manufacture of dependable products that helped millions and millions of homeowners achieve reliable, high-quality, and affordable indoor comfort;”
- (b) Goodman’s goal is to “build more reliable, longer lasting products than anyone else;”
- (c) Goodman’s philosophy is to “[c]reate products that are engineered for reliable long life, utilizing the best components with some of the lowest failure[] rates in the industry;”
- (d) Consumers should not “choose between affordability, durability, and optimum cooling comfort. Install a Goodman brand air conditioner and get all three;” and
- (e) “Every Goodman brand indoor comfort product is built to the highest standards of the heating and cooling industry, and in many cases Goodman products exceed those standards. The high quality of our product warranties reflects the high standards of our manufacturing processes.”

50. Goodman also repeatedly promotes the quality and superiority of the warranties it offers with its products on its website. For example, Goodman claims on its website that “[a]ll Goodman brand air conditioners come with outstanding warranty coverage.” In a February 2, 2012 press release published on its website, Goodman claims that “the Goodman brand layers on some of the industry’s most robust limited warranties on its products.” And that limited warranties like Goodman’s “can only come from a company that is 100% certain of the quality and reliability of its products.”

51. Accordingly, Goodman intended to give consumers, via the representations on its

website, the impression that the Goodman Units were reliable, durable, dependable, and long lasting. In fact, Goodman states on its website that if the Goodman Units are properly maintained, consumers can expect them to last 12 to 15 years. Goodman also intended to give consumers the impression that in the unlikely event that the Goodman Units failed prematurely, that the consumer would be secured by Goodman's outstanding warranty coverage. All of these representations were intended to induce, and did induce, plaintiffs and members of the class and subclasses to purchase Goodman Units.

52. The representations on Goodman's website were false and/or misleading because the Goodman Units were not reliable, durable, dependable, and long lasting due to the defective evaporator coils. And Goodman's warranties failed to make plaintiffs and members of the class and subclass whole or provide them with the benefit of their bargain.

Plaintiff Pastor-Richard

53. On or about November 2009, plaintiff Susan Pastor-Richard moved into her new house, which had just been built. Accordingly, Pastor-Richard and her family were the first people to live in her house and the first people to use their Goodman Unit. Her house came equipped with a brand new Goodman Unit, model number ARUF364216BA, manufactured in July 2007.

54. In summer 2010, Pastor-Richard used her Goodman Unit regularly and it appeared to be working properly except that the second floor of her home was not getting as cool as the first floor. After August 2010, Pastor-Richard stopped regular use of her Goodman Unit until summer 2011.

55. On or about May 28, 2011, Pastor-Richard's Goodman Unit stopped emitting any cool air and, therefore, completely failed to cool her house. Pastor-Richard called Morris

Heating and Cooling, an air conditioning repair service, to fix the problem. The technician from Morris stated that the Freon in Pastor-Richard's Goodman Unit was low and its "O-ring" needed to be replaced. The Morris technician added Freon and replaced the O-ring and charged plaintiff \$192.50 for the repairs. After these repairs, Pastor-Richard's Goodman Unit worked for the rest of the summer. Pastor-Richard shut off her Goodman Unit in August 2011.

56. On or about May 28, 2012, Pastor-Richard's Goodman Unit stopped emitting any cool air again, rendering it incapable of cooling her home. This time, Pastor-Richard contacted Precision Air, another air conditioning repair company, to come fix the problem. The technician from Precision Air determined that Pastor-Richard's Goodman Unit was leaking Freon from the evaporator coil. The technician added Freon and charged plaintiff \$500 for the Freon and labor.

57. The Precision Air technician stated that adding Freon was only a temporary fix and that the broken evaporator coil would need to be replaced in order to permanently solve the problem. The technician stated that it would cost an additional \$800 in labor to repair and replace the broken evaporator coil.

58. On or about August 20, 2012, Pastor-Richard wrote a letter to Mr. David Swift, Goodman's chief executive officer, demanding that Goodman repair her unit at no cost to her and reimburse her the \$500 she had already paid for repairs.

59. On or about August 31, 2012, Pastor-Richard received a letter from Goodman. In its letter, Goodman advised that "it is impossible to predict the life of any one part, so we provide a warranty to assist with repair costs should they be needed." Goodman, however, refused to pay for any of Pastor-Richard's repair costs. Rather, Goodman stated that its warranty only covers failed parts. It further stated that in order for Pastor-Richard to receive a part under its express warranty, her service contractor must take the failed part to a local authorized

distributor to be exchanged for a replacement part.

60. Pastor-Richard refused to have her service contractor remove the defective evaporator coil in order to have it replaced because she would have been forced to incur at least an additional \$800 in labor and repair costs.

Plaintiff George McMeen

61. In early 2008, plaintiff George McMeen moved into his new house, which had just been built. Accordingly, he and his family were the first people to live in the house. On or about January 18, 2008, McMeen paid Reliant Air Conditioning (“Reliant”) to install multiple Goodman Units, model numbers ASXC160241, AXSC160361, and AXSC160481, which were manufactured in 2007.

62. In or about August of 2010, McMeen noticed that his three-ton Goodman Unit, model number AXSC160361, stopped emitting any cool air and, therefore, failed to cool his house. He called Reliant to fix the problem. The Reliant technician told McMeen that the evaporator coil in his three-ton Goodman Unit was leaking and had failed, and that it needed to be replaced. The Reliant technician replaced the evaporator coil and added refrigerant. McMeen was not charged for this service. McMeen was also forced to incur higher utility costs as a result of the evaporator coil failure in his three-ton Goodman Unit.

63. In or about April of 2012, McMeen noticed that his four-ton Goodman Unit, model number AXSC160481, stopped emitting any cool air and, therefore, failed to cool his house. He called Reliant to fix the problem, whose technician determined that the unit required additional refrigerant. McMeen paid \$353.60 to Reliant for this service. Shortly thereafter, when the Goodman Unit still did not adequately cool his house, McMeen contacted Javco Mechanical to address the problem. In diagnosing the problem, the Javco Mechanical technician

told McMeen that the evaporator coil in his four-ton Goodman Unit was leaking and had failed, and that it needed to be replaced. The technician further informed McMeen that the evaporator coil in his four-ton Goodman Unit—which had been designed to utilize R-410A refrigerant—was a coil used with R-22 refrigerant and could not handle the additional pressure caused by the R-410A refrigerant. The technician replaced the evaporator coil and added refrigerant. McMeen paid Javco Mechanical \$750 to diagnose the problem and replace the evaporator coil. McMeen was also forced to incur higher utility costs as a result of the evaporator coil failure in his four-ton Goodman Unit.

64. For both the 2010 and 2012 incidents, McMeen's service contractors contacted Goodman on his behalf and procured the replacement evaporator coils from Goodman representatives pursuant to Goodman's warranty to McMeen. Goodman, however, refused to cover the cost of labor to replace the coils. Rather, Goodman stated to McMeen's service contractors that its warranty only covers failed parts and that the failed part must be exchanged for a replacement part.

Plaintiff Louis Meyers

65. On or about February 1, 2008, plaintiff Louis Meyers had a Goodman Unit—model number SSZ160361AB, manufactured in 2008—installed by Green Country Service in the Durham, N.C. home that he owns. Meyers's decision to purchase a Goodman Unit was based, in part, on the representations on Goodman's website regarding the reliability of its products and the quality of Goodman's warranties.

66. On or about June 3, 2008, Meyers's Goodman Unit was not cooling his house effectively. Meyers contacted Green Country Service to diagnose the problem. The technician determined that the refrigerant in the unit was leaking and replaced a valve stem on the

evaporator coil. This service was performed free of charge by Green Country Service.

67. On or about June 26, 2010, Meyers's Goodman Unit again failed to cool his house effectively. Meyers again contacted Green Country Service to address the problem. Over the course of two service calls, the technician added refrigerant to Meyers's Goodman Unit and replaced a Schrader valve. These repairs were performed free of charge by Green Country Service.

68. On or about July 12, 2012, Meyers's Goodman Unit once again failed to cool his house. Meyers similarly contacted Green Country Service to address the problem, and the technician added three pounds of refrigerant to Meyers' Goodman Unit. Yet less than a week later, Mr. Meyers' Goodman Unit failed once more. On July 20, 2012, the Green Country Service technician diagnosed the issue as a severely leaking evaporator coil that needed to be replaced. The technician replaced the coil and added refrigerant, for which Meyers incurred \$879.53 in expenses after a discount applied to his bill by Green Country Service.

69. Green Country Service contacted Goodman on behalf of Meyers and procured the new coil for his unit pursuant to Goodman's warranty to Meyers. The new coil was an aluminum coil, a different material than Meyers's old coil, which was made of copper. The technician told Meyers that the old coil was substandard and was not equipped to handle the additional pressure caused by the R-410A refrigerant, despite the fact that Meyers's Goodman Unit was supposed to be able to use R-410A refrigerant.

70. After replacing the coil, Meyers wrote a letter to Goodman asking to be reimbursed for the repair costs he incurred as a result of replacing his evaporator coil. Goodman replied to Meyers in a form letter, informing him that pursuant to the warranty, they would supply the part, but Meyers would be responsible for labor costs.

Plaintiff Randall Brown

71. In or about March of 2008, plaintiff Randall Brown moved into his home, which had been newly renovated. As part of the renovation, two Goodman Units had been installed in his home. Brown was the home's first occupant following its renovation and, therefore, was the first user of the Goodman Units. Subsequent to moving into the home, in or about October of 2008, Mr. Brown's contractor replaced a three-ton Goodman Unit with a two-ton Goodman Unit. The Goodman Units now in Mr. Brown's home are a three-ton unit, model number AEPF426016BB (manufactured in 2007), and a two-ton unit, AEPF303616CA (manufactured in 2008). The Goodman Units are air handlers, which are components of a heat pump split system.,

72. Brown was able to procure an extended warranty for parts and labor on his model AEPF303616CA system, but he was not able to do so for his AEPF426016BB system, as too much time had elapsed between the unit's installation and Brown's move into his new home. Brown's service company Custom Climate Heating and Air ("Custom Climate") purchased the extended warranty on the AEPF303616CA system from a Goodman distributor and re-sold it to Brown.

73. On or about October 8, 2009, Brown noticed that his AEPF426016BB system was running for an unusually long amount of time. Brown, who works as an engineer, was aware that such behavior by a heat pump or central air conditioner was indicative that the unit might be low on refrigerant. Brown contacted Custom Climate to address the problem. The technician diagnosed the problem as a leak on the unit's evaporator coil and determined that the coil needed to be replaced. Custom Climate procured a replacement copper coil from a Goodman distributor, pursuant to Brown's warranty with Goodman. Custom Climate removed the old copper coil and replaced it with the new one. The replacement evaporator coil was covered under Brown's

warranty with Goodman, but Brown incurred \$648.00 in expenses for the replacement work, including labor and additional refrigerant.

74. In or about December of 2011, Brown noticed that his AEPF303616CA unit was running for an unusually long amount of time. He contacted Custom Climate to investigate the problem. The technician discovered that the unit's evaporator coil was leaking and determined that the coil needed to be replaced. Custom Climate procured a replacement copper coil from a Goodman distributor, pursuant to Brown's warranty with Goodman. On or about December 23, 2011, Custom Climate removed the old copper evaporator coil and replaced it with the replacement coil, which was made of aluminum. The cost of this replacement was covered under the extended warranty Brown had for his AEPF303616CA unit. Brown, however, incurred additional utility costs in order to heat his home prior to the time of the coil's replacement.

75. On or about January 18, 2013, Brown noticed that his previous two electricity bills had increased significantly. His November 2012 bill had increased by approximately 50% over the normal amount and his December 2012 bill had increased by approximately 100%. Based upon his experience in December 2011 and his familiarity with the Goodman Units, Brown suspected that the evaporator coil on one or both of his units was leaking again. He contacted Custom Climate to address the issue. Custom Climate determined that his AEPF426016BB unit's copper evaporator coil, which had previously been installed as a replacement in 2009, had a leak and needed to be replaced.

76. Custom Climate procured a replacement copper coil from a Goodman distributor, pursuant to Brown's warranty with Goodman. Custom Climate removed the old copper evaporator coil in his AEPF426016BB unit and replaced it with a new aluminum coil procured

from a Goodman distributor. Although the part was covered under Brown's warranty with Goodman, Brown incurred \$918.00 in expenses for the replacement work, including labor and additional refrigerant.

TOLLING AND ESTOPPEL OF STATUTES OF LIMITATION

77. Goodman has received, and continues to receive, complaints from consumers and air conditioning service technicians that its Goodman Units sold since at least January 2007 contain defective evaporator coils that improperly and prematurely leak refrigerant. Thus, Goodman was aware that the evaporator coils in the Goodman Units sold since at least January 2007 were defective and would improperly and prematurely leak refrigerant under normal use.

78. Although Goodman was aware that the evaporator coils in the Goodman Units were defective, it took no steps to warn plaintiffs, the class, or the subclasses of the defect. Goodman continued to sell its defective air conditioners to plaintiffs, the class, and the subclasses.

79. The defects in the design and/or manufacture of the Goodman Units were not detectible, or capable of being detected, by plaintiffs or members of the class and subclasses until they were informed by experienced service technicians the evaporator coils on their Goodman Units were defective and needed to be replaced.

80. Goodman actively concealed the existence of this defect and/or failed to inform members of the class and subclasses of the existence of the defect.

COUNT I (Express Warranty)

81. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

82. Goodman is a "seller" within the meaning of Ky. Rev. Stat. Ann. § 355.2-

103(1)(d); Tex. Bus. & Com. Code Ann. § 2.103(a)(4); N.C. Gen. Stat. § 25-2-103(1)(d); and S.C. Code Ann. § 36-2-103(1)(d).

83. The Goodman Units are “goods” within the meaning of Ky. Rev. Stat. Ann. § 355.2-105(1), Tex. Bus. & Com. Code Ann. § 2.105(a); N.C. Gen. Stat. § 25-2-105(1); and S.C. Code § 36-2-105(1).

84. Plaintiffs and the members of the class and subclasses are “buyers” within the meaning of Ky. Rev. Stat. Ann. § 355.2-103(1)(a); Tex. Bus. & Com. Code Ann. § 2.103(a)(1); N.C. Gen. Stat. § 25-2-103(1)(a); and S.C. Code Ann. § 36-2-103(1)(a).

85. Goodman expressly warranted via its user manuals, website, brochures, specifications, and/or models that the Goodman Units are fit for the ordinary purpose in which such goods are used. Goodman expressly warranted in its user manuals that the Goodman Units were “free from defects in materials and workmanship that affect performance under normal use and maintenance” for a period of 10 years if the unit is registered with the defendant online within 60 days after original installation or for a period of 5 years if the product is not registered.

86. Goodman’s express warranties were part of the basis of the bargain between Goodman and plaintiffs and members of the class and subclasses.

87. Goodman breached its express warranties because the Goodman Units were not fit for the ordinary purpose in which they are used and because they were not free from defects in materials and workmanship that affect performance under normal use and maintenance. Specifically, the Goodman Units are defective because their evaporator coils improperly and prematurely leak refrigerant under normal use, which renders them unfit for their ordinary purpose because the loss of refrigerant stops the Goodman Units from emitting cool air and cooling consumers’ homes, or warming consumers’ homes in the case of Goodman Units that are

heat pumps operating in heating mode. Goodman also breached its express warranty by refusing to repair the Goodman Units and/or replace the defective evaporator coils.

88. Plaintiffs and members of the class and subclasses relied upon the representation and/or warranty that they would be supplied a Goodman Unit free of defects.

89. Plaintiffs and members of the class and subclasses notified Goodman of the breach.

90. Plaintiffs and members of the class and subclasses sustained injuries and damages as a result of the breach.

91. The limitations on Goodman's express warranty are unconscionable and/or fail their essential purpose.

COUNT II
(Implied Warranty Of Merchantability)

92. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

93. The Goodman Units are "goods" within the meaning of Ky. Rev. Stat. Ann. § 355.2-105(1); Tex. Bus. & Com. Code Ann. § 2.105(a); N.C. Gen. Stat. § 25-2-105(1); and S.C. Code § 36-2-105(1).

94. Plaintiffs and the members of the class and subclasses are "buyers" within the meaning of Ky. Rev. Stat. Ann. § 355.2-103(1)(a) Tex. Bus. & Com. Code Ann. § 2.103(a)(1); N.C. Gen. Stat. § 25-2-103(1)(a); and S.C. Code Ann. § 36-2-103(1)(a).

95. A warranty that goods shall be merchantable and fit for the ordinary purposes for which such goods are used is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Ky. Rev. Stat. Ann § 355.2-314; Tex. Bus. & Com. Code Ann. § 2.314; N.C. Gen. Stat. § 25-2-314; and S.C. Code Ann. § 36-2-314.

96. Goodman is a “merchant” with respect to air conditioners within the meaning of Ky. Rev. Stat. Ann. § 355.2-104(1); Tex. Bus. & Com. Code Ann. § 2.104(a); N.C. Gen. Stat. § 25-2-104(1); and S.C. Code Ann. § 36-2-104(1).

97. Goodman’s implied warranty that the Goodman Units were merchantable was part of the basis of the bargain between Goodman and plaintiffs and members of the class and subclasses.

98. Goodman breached the implied warranty of merchantability because the Goodman Units were not fit for the ordinary purpose in which such goods are used. Specifically, the Goodman Units are defective because their evaporator coils improperly and prematurely leak refrigerant under normal use, which renders them unfit for their ordinary purpose because the loss of refrigerant stops the Goodman Units from emitting cool air and cooling consumers’ homes.

99. Plaintiffs and members of the class and subclasses notified Goodman of the breach.

100. Plaintiffs and members of the class and subclasses sustained injuries and damages as a result of the breach.

101. The limitations on Goodman’s implied warranties are unconscionable and/or fail their essential purpose.

COUNT III
(Violation of the Kentucky Consumer Protection Act (“KCPA”),
Ky. Rev. Stat. Ann. §§ 367.110 *et seq.*)

102. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

103. The KCPA declares unlawful any unfair, false, misleading, or deceptive acts or

practices in the conduct of any trade or commerce. For purposes of the KCPA, unfair is construed to mean unconscionable. *See* Ky. Rev. State. Ann. § 367.170.

104. Goodman committed unfair, unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by selling, marketing, and distributing the Goodman Units with defective evaporator coils.

105. Goodman committed unfair, unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by selling, marketing, and distributing the Goodman Units with defective evaporator coils with unconscionable warranty limitations.

106. Goodman committed unfair, unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce by concealing and/or failing to inform plaintiff and members of the class and subclasses that the Goodman Units were defective.

107. Goodman committed unfair, unconscionable, false, misleading, or deceptive trade practices in the conduct of trade or commerce by falsely representing that the Goodman units are reliable, durable, dependable, long lasting, and meet or exceed the highest standards in the heating and cooling industry.

108. Goodman committed unfair, unconscionable, false, misleading, or deceptive trade practices in the conduct of trade or commerce by making false representations regarding the quality of its warranties.

109. These unfair, unconscionable, false, misleading, or deceptive acts or practices caused damages to plaintiffs and members of the class and subclasses.

COUNT IV
(Violation of the Texas Deceptive Trade Practices and Consumer Protection Act (“TCPA”),
Tex. Bus. & Com. Code Ann. §§ 17.41, *et seq.*)

110. Plaintiffs re-allege and incorporate each and every allegation set forth above as if

fully written herein.

111. Plaintiffs are “consumers” as defined in Tex. Bus. & Com. Code Ann. § 17.45(4) and plaintiffs’ Goodman Units are “goods” as defined in Tex. Bus. & Com. Code. Ann. § 17.45(1).

112. The TCPA declares unlawful any false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. *See* Tex. Bus. & Com. Code Ann. § 17.46(a).

113. Goodman knowingly used or employed a false, misleading, or deceptive act or practice in the conduct of trade or commerce by representing that the Goodman Units have characteristics, uses, or benefits which they do not have. *See* Tex. Bus. & Com. Code Ann. § 17.46(b)(5).

114. Goodman knowingly used or employed a false, misleading, or deceptive act or practice in the conduct of trade or commerce by representing that the Goodman Units are of a particular standard, quality, or grade which they are not. *See* Tex. Bus. & Com. Code Ann. § 17.46(b)(7).

115. Goodman knowingly used or employed a false, misleading, or deceptive act or practice in the conduct of trade or commerce by failing to disclose to plaintiffs and members of the class and subclasses that the Goodman Units were defective at the time plaintiffs and the members of the class and subclasses acquired their Goodman Units. Goodman’s failure to disclose that the Goodman Units were defective was intended to induce plaintiffs and members of the class and subclasses to purchase a Goodman Unit, which plaintiffs and members of the class and subclasses would not have done had this information been disclosed. *See* Tex. Bus. & Com. Code Ann. § 17.46(b)(24).

116. Plaintiffs and members of the class and subclasses relied on Goodman’s

representations to their detriment.

117. Goodman also violated the TCPA by breaching express and implied warranties to plaintiffs and members of the class and subclasses. *See* Tex. Bus. & Com. Code Ann. § 17.50(a)(2).

118. Goodman also violated the TCPA by engaging in unconscionable actions. *See* Tex. Bus. & Com. Code Ann. § 17.50(a)(3). Goodman engaged in unconscionable actions by (i) selling, marketing, and distributing Goodman Units with defective evaporator coils; (ii) selling, marketing, and distributing Goodman Units with defective evaporator coils with unconscionable warranty limitations; (iii) concealing and/or failing to inform plaintiff and members of the class and subclasses that the Goodman Units were defective; (iv) falsely representing that the Goodman Units were reliable, durable, dependable, long lasting, and meet or exceed the highest standards in the heating and cooling industry; and (v) making false representations regarding the quality of its warranties.

119. These unfair, unconscionable, false, misleading, or deceptive acts or practices caused damages to plaintiffs and members of the class and subclasses.

COUNT V
(Violation of the North Carolina Unfair and Deceptive Trade Practices Act,
N.C. Gen. Stat. § 75-1.1)

120. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

121. The North Carolina Unfair and Deceptive Trade Practices Act declares unlawful unfair or deceptive acts or practices in or affecting commerce. *See* N.C. Gen. Stat. § 75-1.1.

122. Goodman committed unfair or deceptive acts or practices in or affecting commerce by selling, marketing, and distributing the Goodman Units with defective evaporator

coils.

123. Goodman committed unfair or deceptive acts or practices in or affecting commerce by selling, marketing, and distributing the Goodman Units with defective evaporator coils with unconscionable warranty limitations.

124. Goodman committed unfair or deceptive acts or practices in or affecting commerce by concealing and/or failing to inform plaintiff and members of the class and subclasses that the Goodman Units were defective.

125. Goodman committed unfair or deceptive acts or practices in or affecting commerce by falsely representing that the Goodman units are reliable, durable, dependable, long lasting, and meet or exceed the highest standards in the heating and cooling industry.

126. Goodman committed unfair or deceptive acts or practices in or affecting commerce by making false representations regarding the quality of its warranties.

127. Goodman's unfair or deceptive acts or practices offended established public policy and was immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

128. Plaintiffs and members of the class and subclasses relied on Goodman's false or deceptive representations.

129. These unfair or deceptive acts or practices caused damages to plaintiffs and members of the class and subclasses.

**COUNT VI
(Unjust Enrichment)**

130. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

131. Plaintiffs and members of the class and subclasses conferred a benefit upon

Goodman. Plaintiffs and members of the class and subclass paid money to acquire ownership of their Goodman Units. Accordingly, plaintiffs and members of the class and subclasses conferred an economic benefit upon Goodman because Goodman profited as a result from plaintiffs and members of the class and subclasses paying money to acquire ownership of their Goodman Units.

132. Goodman retained that benefit.

133. Goodman, however, retained that benefit under circumstances that make it inequitable for Goodman to retain it without paying the value thereof. Specifically, Goodman retained that benefit despite the fact that the Goodman Units were defective and despite the fact that Goodman knew or reasonably should have known that the Goodman Units were defective, but failed to disclose the defect to plaintiffs and members of the class and subclasses.

REQUESTS FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court:

A. Certify the class and/or subclasses pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the class and/or subclasses in an amount to be determined at trial;

C. Grant restitution to plaintiffs and the class and/or subclasses and require Goodman to disgorge its ill-gotten gains;

D. Permanently enjoin Goodman from engaging in the wrongful and unlawful conduct alleged herein;

E. Award plaintiffs and the class and/or subclasses their expenses and costs of suit,

including reasonable attorneys' fees to the extent provided by law;

F. Award plaintiffs and the class and/or subclasses pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and

G. Award such further relief as the Court deems appropriate.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

/s/ John C. Whitfield

John C. Whitfield
WHITFIELD BRYSON & MASON LLP
19 North Main Street
Madisonville, KY 42431
Ph.: (270) 825-0656
Fax: (270) 825-1163
john@wbmlp.com

Gary E. Mason
Monica Bansal
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, D.C. 20036
Ph: (202) 429-2290
Fax: (202) 429-2294
gmason@wbmlp.com
mbansal@wbmlp.com

Jonathan K. Tycko
Lorenzo B. Cellini
TYCKO & ZAVAREEI LLP
2000 L Street, N.W., Suite 808
Washington, D.C. 20036
(202) 973-0900
(202) 973-0950 *facsimile*
jtycko@tzlegal.com
lcellini@tzlegal.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing First Amended Class Action Complaint was served this the 23rd day of January, 2013, electronically in accordance with the method established under this Court's rules for CM/ECF Procedures upon all parties in the electronic filing system in this case.

Jeffrey C. Mando, Esq. (KBA #43548)
Adams, Stepner, Woltennann & Dusing, PLLC
40 W. Pike St., P. O. Box 861
Covington, KY 41012
Telephone: (859) 394-6200
Fax: (859) 392-7263
Email: jmando@aswdlaw.com

Louis A. Chaiten, Esq.
Jones Day
1901 Lakeside Ave.
Cleveland, OH 44114
Telephone: (216) 586-7244
Fax: (216) 579-0212
Email: lachaiten@jonesday.com

Attorneys for Defendants

/s/ John C. Whitfield
John C. Whitfield, Esq. (KBA #76410)
Whitfield Bryson & Mason LLP
19 North Main St.
Madisonville, KY 42431
Telephone: (270) 821-0656
Fax: (270) 825-1163
Email: Jolm@wbmlp.com

Attorney for Plaintiff