

4. Defendant admits the allegations contained in paragraph 4 of Plaintiff's Petition.

JURISDICTION AND VENUE

5. In response to paragraph 5 of Plaintiff's Petition, Defendant states that the paragraph contains legal conclusions, not statements of fact, to which no response is required of Defendant. To the extent that a response is deemed necessary, Defendant denies the allegations contained in paragraph 5.
6. In response to paragraph 6 of Plaintiff's Petition, Defendant states that the paragraph contains legal conclusions, not statements of fact, to which no response is required of Defendant. To the extent that a response is deemed necessary, Defendant denies the allegations contained in paragraph 6.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. Defendant is without sufficient information, knowledge, or belief to admit or deny the allegations contained in paragraph 7 of Plaintiff's Petition.
8. Defendant admits the allegations contained in paragraph 8 of Plaintiff's Petition.
9. Defendant denies the allegations contained in paragraph 9 of Plaintiff's Petition.

Initial Appliance Failures

10. Defendant is without sufficient information, knowledge, or belief to admit or deny the allegations contained in paragraph 10 of Plaintiff's Petition.
11. Defendant is without sufficient information, knowledge, or belief to admit or deny the allegations contained in paragraph 11 of Plaintiff's Petition.
12. Defendant is without sufficient information, knowledge, or belief to admit or deny the allegations contained in paragraph 12 of Plaintiff's Petition.

13. Defendant is without sufficient information, knowledge, or belief to admit or deny the allegations contained in paragraph 13 of Plaintiff's Petition.
14. Defendant is without sufficient information, knowledge, or belief to admit or deny the allegations contained in paragraph 14 of Plaintiff's Petition.

Defendant's Initial Acknowledgement and Attempted Solutions

15. In response to paragraph 15, Defendant admits that the quoted language appears on its website.
16. In response to paragraphs 16 through 25, Defendant acknowledges that it worked with Plaintiff in attempts to resolve his alleged concerns. In further responding, Defendant denies Plaintiff's characterizations of the nature and extent of the alleged water quality issues, allegedly experienced by Platte County residents.

Defendant's Actions Showing Knowledge of Fault

17. In response to paragraphs 26 through 31 of Plaintiff's Petition, Defendant acknowledges that it worked with Plaintiff in attempts to resolve his alleged concerns. In further responding, Defendant denies Plaintiff's characterizations of the nature and extent of the alleged water quality issues, allegedly experienced by Platte County residents.

Defendant's Acknowledgement That Problem is Widespread

18. In response to paragraphs 32 through 36 of Plaintiff's Petition, Defendant acknowledges that it worked with Plaintiff in attempts to resolve his alleged concerns. In further responding, Defendant denies Plaintiff's characterizations of the nature and extent of the alleged water quality issues, allegedly experienced by Platte County residents. Defendant further denies Plaintiff's characterizations of the alleged actions and statements of representatives of Defendant.

19. Defendant denies the allegations contained in paragraph 37 of Plaintiff's Petition.

CLASS ACTION ALLEGATIONS

20. In response to paragraph 38 of Plaintiff's Petition, Defendant incorporates by reference its responses to paragraphs 1 through 37, as though fully set forth herein.

21. The allegations contained in Paragraphs 39, 40 and 41 of Plaintiff's Petition are introductory in nature and contain Plaintiff's contentions and conclusions of law; therefore, said Paragraphs require no response. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs. Further, Defendant specifically denies that any class should be certified in this matter.

22. Defendant denies the allegations contained in paragraph 42 of Plaintiff's Petition.

23. Defendant denies the allegations contained in paragraph 43 of Plaintiff's Petition.

24. Defendant denies the allegations contained in paragraph 44 of Plaintiff's Petition, including subparts a through m.

25. Defendant denies the allegations contained in paragraph 45 of Plaintiff's Petition.

26. Defendant denies the allegations contained in paragraph 46 of Plaintiff's Petition.

27. Defendant denies the allegations contained in paragraph 47 of Plaintiff's Petition.

28. Defendant denies the allegations contained in paragraph 48 of Plaintiff's Petition, including subparts a and b.

29. Defendant denies the allegations contained in paragraph 49 of Plaintiff's Petition.

COUNT I

30. In response to paragraph 50 of Plaintiff's Petition, Defendant incorporates by reference its responses to paragraphs 1 through 49, as though fully set forth herein. Further, Defendant

specifically states that this matter is not a proper class action and denies that any class should be certified in this matter.

31. Defendant denies the allegations contained in paragraph 51 of Plaintiff's Petition.

32. Defendant denies the allegations contained in paragraph 52 of Plaintiff's Petition.

33. Defendant denies the allegations contained in paragraph 53 of Plaintiff's Petition.

COUNT II

34. In response to paragraph 54 of Plaintiff's Petition, Defendant incorporates by reference is responses to paragraphs 1 through 53, as though fully set forth herein. Further, Defendant specifically states that this matter is not a proper class action and denies that any class should be certified in this matter.

35. Defendant denies the allegations contained in paragraph 55 of Plaintiff's Petition.

36. Defendant denies the allegations contained in paragraph 56 of Plaintiff's Petition.

37. Defendant denies the allegations contained in paragraph 57 of Plaintiff's Petition.

COUNT III

38. In response to paragraph 58 of Plaintiff's Petition, Defendant incorporates by reference is responses to paragraphs 1 through 57, as though fully set forth herein. Further, Defendant specifically states that this matter is not a proper class action and denies that any class should be certified in this matter.

39. The allegations contained in Paragraphs 59, 60, and 61 of Plaintiff's Petition are introductory in nature and contain Plaintiff's contentions and conclusions of law; therefore, said Paragraphs requires no response. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs.

40. Defendant denies the allegations contained in paragraph 62 of Plaintiff's Petition.

41. Defendant denies the allegations contained in paragraph 63 of Plaintiff's Petition.

42. Defendant denies the allegations contained in Paragraph 64 of Plaintiff's Petition.

COUNT IV

43. In response to paragraph 65 of Plaintiff's Petition, Defendant incorporates by reference is responses to paragraphs 1 through 64, as though fully set forth herein. Further, Defendant specifically states that this matter is not a proper class action and denies that any class should be certified in this matter.

44. The allegations contained in Paragraphs 66, 67 (including subparts a through e), 68, 69, 70, and 71 of Plaintiff's Petition are introductory in nature and contain Plaintiff's contentions and conclusions of law; therefore, said Paragraphs requires no response. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs. Further, Defendant specifically denies that any class should be certified in this matter.

45. Defendant denies the allegations contained in paragraph 72 of Plaintiff's Petition.

46. Defendant denies the allegations contained in paragraph 73 of Plaintiff's Petition.

47. Defendant denies the allegations contained in paragraph 74 of Plaintiff's Petition.

48. Defendant denies the allegations contained in paragraph 75 of Plaintiff's Petition.

49. Defendant denies the allegations contained in Paragraph 76 of Plaintiff's Petition.

COUNT V

50. In response to paragraph 77 of Plaintiff's Petition, Defendant incorporates by reference is responses to paragraphs 1 through 76, as though fully set forth herein. Further, Defendant specifically states that this matter is not a proper class action and denies that any class should be certified in this matter.

51. The allegations contained in Paragraphs 78 (including subparts a through c), and 79 of Plaintiff's Petition are introductory in nature and contain Plaintiff's contentions and conclusions of law; therefore, said Paragraphs requires no response. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs. Further, Defendant specifically denies that any class should be certified in this matter.
52. Defendant denies the allegations contained in paragraph 80 of Plaintiff's Petition.
53. Defendant denies the allegations contained in paragraph 81 of Plaintiff's Petition.
54. Defendant denies the allegations contained in paragraph 82 of Plaintiff's Petition.
55. Defendant denies the allegations contained in paragraph 83 of Plaintiff's Petition.
56. Defendant denies the allegations contained in Paragraph 84 of Plaintiff's Petition.

COUNT VI

57. In response to paragraph 85 of Plaintiff's Petition, Defendant incorporates by reference is responses to paragraphs 1 through 84, as though fully set forth herein. Further, Defendant specifically states that this matter is not a proper class action and denies that any class should be certified in this matter.
58. The allegations contained in Paragraphs 86, 87, 88, and 89 of Plaintiff's Petition are introductory in nature and contain Plaintiff's contentions and conclusions of law; therefore, said Paragraphs requires no response. To the extent a response is required, Defendant denies the allegations contained in said Paragraphs. Further, Defendant specifically denies that any class should be certified in this matter.
59. Defendant denies the allegations contained in paragraph 90 of Plaintiff's Petition.
60. Defendant denies the allegations contained in paragraph 91 of Plaintiff's Petition.
61. Defendant denies the allegations contained in paragraph 92 of Plaintiff's Petition.

62. Defendant denies the allegations contained in paragraph 93 of Plaintiff's Petition.
63. Defendant is without sufficient information, knowledge, or belief to admit or deny the statements contained in paragraph 94 of Plaintiff's Petition.
64. Defendant denies the allegations contained in Paragraph 95 of Plaintiff's Petition.

AFFIRMATIVE DEFENSES

1. Further answering, Defendant states that if putative class members sustained any injury or damage as alleged in Plaintiff's Petition, which defendant strictly denies, said injury or damage was caused, or contributed to be caused, by the intervening and/or superseding negligence, fault, and conduct of Plaintiff including but not limited to failing to exercise reasonable care in the maintenance of his water lines. Such before-mentioned actions or inactions should serve to reduce or bar any recovery by Plaintiff in accordance with the principles of comparative fault.
2. Defendant affirmatively states that if class members sustained damage as alleged and it is determined that Defendant was at fault in any way, which Defendant specifically denies, Defendant is entitled to a reduction of and/or set-off to any judgment against it in the amount of all good faith settlement paid or to be paid by any other tortfeasor or party, as provided in § 537.060 RSMo. Defendant further reserves the right to challenge any settlement on the basis that it was not made in good faith, is not reasonable and is not otherwise enforceable.
3. Defendant specifically denies that Plaintiff's claims are appropriate for class action status.
4. The Petition fails to adequately define or plead a class.

5. The claims asserted in Plaintiff's Petition are barred to the extent that they have been settled, compromised, released, or otherwise discharged.
6. The putative class members' claims are barred because the putative class members have not incurred any damage as a result of the claims and allegations contained in Plaintiff's Petition.
7. Plaintiff's Petition fails because the claims therein are not appropriate for class treatment.
8. Further answering, Defendant states that Plaintiff's claims and alleged causes of action, and/or the actions of the court and judiciary branch of government in granting relief for those causes of action, cannot be maintained because they fall solely within the purview of the Public Service Commission.
9. Defendant affirmatively states that Plaintiff's requests for declaratory judgment and injunctive relief are improper and cannot be granted as the questions raised in Plaintiff's Petition can and should be addressed by other means, including but not limited to through action of the Public Service Commission.
10. Plaintiff is estopped from obtaining declaratory relief or injunctive relief, as the relief requested cannot be issued by the Court, and must be obtained through the Public Service Commission.
11. Defendant states that Defendant's product which allegedly caused Plaintiff's damages, if any, which Defendant specifically denies, was in compliance with the state of the art, the prevailing industry standards, as well as the federal or state statutes or administrative regulations existing at the time, and these were within the

prescribed standards for design, inspection, testing, manufacturing, labeling, warning, and instruction for use of said product.

12. If any of the allegations of Plaintiff with respect to the allegedly defective condition of Defendant's product is proven, the Plaintiffs are barred from any recovery due to the fact that there was no known substitute for such product at the time of the incident complained of herein.
13. Plaintiff's Petition fails to state a claim or cause of action against Defendant for nuisance because his allegations fail to establish a substantial interference that would entitle him to finding of a nuisance.
14. Plaintiff's claim that Defendant violated the Missouri Merchandising Practice Act is not within the scope of the Act as defined in § 407.020, RSMo., because Defendant did not engage in any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with the intent that others rely upon any concealment, suppression or omission, in connection with sale or advertisement of any of merchandise; therefore, Plaintiffs' claim is barred.
15. Defendant affirmatively states that Plaintiff is not entitled to attorneys' fees and pre-judgment and post-judgment interests as a matter of law.
16. For other affirmative answer and defense, Defendant affirmatively states that any claim for punitive damages in this cause is unconstitutional and in violation of defendant's right to due process and equal protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, and the same or similar guarantees of the Constitution of the State of Missouri, including, but not limited to,

Article I, §2 and Article I, §10. The law of punitive damages in this state is unconstitutional for the further reasons that it permits the imposition of unlimited punitive damages in violation of the excessive fines provision of the Eighth Amendment to the United States Constitution and the Constitution of the State of Missouri; it permits the imposition of unlimited punitive damages without adequate prior notice of what conduct may render a defendant liable, and without notice of the punishment to be imposed; it permits the imposition of unlimited punitive damages to punish the defendant without constitutional protection, including, but not limited to, the requirement of proof beyond a reasonable doubt or other standard of proof exceeding a preponderance of the evidence, the prohibition against double jeopardy and ex post facto laws in violation of Article I, §9, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and like provisions of the Constitution of the State of Missouri; it permits punishment to be measured by the net or financial worth of a defendant and thereby permits imposition of a greater punishment on defendants with larger net worth and permits dissimilar treatment of similarly situated defendants, all in violation of the equal protection provision of the Fourteenth Amendment of the United States Constitution and like provision of the Constitution of the State of Missouri; and it chills and obstructs the fundamental right of access to the courts to defend claims against it in violation of the First, Ninth, and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Missouri.

17. Plaintiff's claims for punitive damages, if any, against Defendant cannot be sustained because such an award under Missouri law without bifurcating the trial on this issue

of punitive damages violates Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and the due process provisions of the Missouri Constitution and would be improper under the common law and public policies of the State of Missouri and under the applicable court rules and statutes.

18. Plaintiff's claim for punitive damages, if any, against Defendant cannot be sustained, because such an award under Missouri law is not subject to any limits and the amount of damages that a jury may impose would violate Defendant's due process rights guaranteed by the due process provisions of the Missouri Constitution and would be improper under common law and public policies of the State of Missouri.
19. Plaintiff's claims for punitive damages, if any, against Defendant cannot be sustained because in an award of punitive damages under Missouri law the jury is not provided standards of sufficient clarity for determining the appropriateness and the appropriate size of the punitive damages award; is not adequately instructed on the limits of punitive damages imposed by the applicable principle of deterrents and punishment; is not expressly prohibited by awarding damages for punitive damages or determining the amount of an award for punitive damages, in whole or in part on the basis of individual discriminating characteristics, including the resident's wealth, corporate status of defendant; is permitted to award damages for punitive damages under a standard that is vague and arbitrary and does not define the required conduct or mental state for an award of punitive damages; and such award is not subject to judicial review for reasonableness and of legitimate purposes on the basis of objective standards. As such, an award of punitive damages violates Defendant's due process

and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Missouri Constitution provisions providing for due process and equal protection and would be improper under common law and public policies of the State of Missouri.

20. For other affirmative answer and defense, Defendant affirmatively states that any claim for punitive damages in this cause is unconstitutional and in violation of Defendant's right to due process and equal protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, and the same or similar guarantees of the Constitution of the State of Missouri, including, but not limited to, Article I, §2 and Article I, §10. The law of punitive damages in this state is unconstitutional for the further reasons that it permits the imposition of unlimited punitive damages in violation of the excessive fines provision of the Eighth Amendment to the United States Constitution and the Constitution of the State of Missouri; it permits the imposition of unlimited punitive damages without adequate prior notice of what conduct may render a defendant liable, and without notice of the punishment to be imposed; it permits the imposition of unlimited punitive damages to punish the defendant without constitutional protection, including, but not limited to, the requirement of proof beyond a reasonable doubt or other standard of proof exceeding a preponderance of the evidence, the prohibition against double jeopardy and ex post facto laws in violation of Article I, §9, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and like provisions of the Constitution of the State of Missouri; it permits punishment to be measured by the net or financial worth of a defendant and thereby permits imposition of a greater

punishment on defendants with larger net worth and permits dissimilar treatment of similarly situated defendants, all in violation of the equal protection provision of the Fourteenth Amendment of the United States Constitution and like provision of the Constitution of the State of Missouri; and it chills and obstructs the fundamental right of access to the courts to defend claims against it in violation of the First, Ninth, and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Missouri.

21. Defendant specifically denies that the incident described in plaintiff's Petition involved any malice, ill will or mental state sufficient to justify the imposition of punitive damages.

WHEREFORE Defendant respectfully requests that this Court issue an Order dismissing Plaintiff's Petition at Plaintiff's cost and entering such further relief that the Court deems just and proper.

/s/ Lee Baty
Lee M. Baty (#29547)
Kathryn A. Baty (#65770)
BATY, HOLM, NUMRICH & OTTO P.C.
4600 Madison Avenue, Suite 210
Kansas City, MO 64112-3019
Telephone: 816-531-7200
Fax: 816-531-7201
Email: lbaty@batyholm.com
kbaty@batyholm.com
ATTORNEYS FOR DEFENDANT

Certificate of Filing

I do hereby certify that a true and accurate copy of the foregoing document was served via the Court's e-Filing system, this 21st day of February, 2017, to:

Eric L. Dirks (#54921)
Matthew L. Dameron (#52093)
Michael A. Williams (#47538)
Jordan C. Baehr (#65756)
WILLIAMS DIRKS DAMERON LLC
1100 Main Street, Suite 2600
Kansas City, MO 64105
Telephone: 816-876-2600
Fax: 816-221-8763
Email: dirks@williamsdirks.com
matt@williamsdirks.com
mwilliams@williamsdirks.com
jbaehr@williamsdirks.com

James E. Brady, III (#62310)
WATSON & DAMERON, LLP
2500 Holmes Street
Kansas City, MO 64108
Telephone: 816-474-3350
Fax: 816-474-3351
Email: jbrady@kctraillawyers.com

ATTORNEYS FOR PLAINTIFF and
PROPOSED CLASSES

/s/ Lee Baty
Attorneys for Defendant