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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**JEFF DOUGHERTY, FRANK ZINN and  
HARVEY OPALESKI**, individuals on behalf  
of themselves and all other Michigan residents  
and entities similarly situated,

Plaintiffs,

v.

**CARRIER CORPORATION**, a Delaware  
corporation,

Defendant.

CIVIL ACTION NO.: \_\_\_\_\_

**COMPLAINT — CLASS ACTION  
FOR DAMAGES, INJUNCTIVE RELIEF,  
AND RESTITUTION**

**JURY DEMAND**

**06 - 15659**

DENISE PAGE HOLD

MAGISTRATE JUDGE VIRGINIA M. MORGAN

**FILED**

**DEC 20 2006**

CLERK'S OFFICE-DETROIT-PSG  
U.S. DISTRICT COURT

1 COME NOW Plaintiffs Jeff Dougherty, Frank Zinn and Harvey Opaleski, on behalf of  
2 themselves and all other Michigan residents and entities similarly situated, by and through their  
3 attorneys, Lief Cabraser Heimann & Bernstein LLP, Cullen Weston Pines & Bach LLP, Tousley  
4 Brain Stephens PLLC, and Edwards & Hagen PS, and as a complaint against the Defendant  
5 Carrier Corporation (“Carrier”) allege the following:

6 **INTRODUCTION**

7 1. Plaintiffs Jeff Dougherty, Frank Zinn and Harvey Opaleski bring this action on  
8 behalf of themselves and all similarly-situated individuals and entities in the State of Michigan  
9 who own or owned high-efficiency condensing furnaces (“furnace(s)”) manufactured by Carrier  
10 Corporation (“Carrier”) since January 1, 1988.

11 2. Starting in 1988, and for the purpose of reducing its costs and thereby maximizing  
12 its profits, Carrier began using polypropylene-laminated (“PPL”) mild steel for its furnaces’  
13 secondary heat exchangers. Carrier switched to PPL-laminated steel despite the fact that the  
14 industry standard was (and still is) to use stainless steel parts to prevent corrosion.

15 3. Based on pre-market testing that Carrier began in 1983, Carrier knew in 1985 –  
16 three years before it began selling them – that the PPL-laminated secondary heat exchangers  
17 would not last as long as the warranted life nor as long as a secondary heat exchanger  
18 manufactured with stainless steel, the industry standard.

19 4. Unlike disposable goods like cameras, or even cars, Carrier’s furnaces are  
20 expected to last at least 20 years, the industry standard. In fact, contrary to all the facts known to  
21 it, Carrier expressly warrants its secondary heat exchanger to be free from defects for the life of  
22 the original purchaser, or for 20 years if the furnace is resold.

23 5. Carrier knew and intentionally concealed from everyone that its PPL-laminated  
24 secondary heat exchangers and the heat exchanger system are inferior and fail prematurely,  
25 damaging components of the furnaces, causing operational problems up to and including the  
26 ultimate failure of the furnaces.

27 6. Upon information and belief, the failure mechanism can be described as follows:  
28 the polypropylene laminate, exposed to temperatures in excess of its tolerances, curls inward

1 from, and flakes off near, the inlet valve of the secondary heat exchanger. When this happens, the  
2 PPL blocks air flow into the secondary heat exchanger. When the PPL peels and flakes off of the  
3 underlying surface, it also exposes the mild steel to acidic condensate, which causes corrosion.  
4 The resulting corrosion of the secondary heat exchanger introduces solids into the condensate that  
5 plug up the system, thereby causing condensate to back up into the fan or otherwise leak from the  
6 secondary heat exchanger, damaging other components of the furnace and causing a variety of  
7 operational problems and, ultimately, premature failure of the furnace. If the corrosion proceeds  
8 to the point of perforation of the outside wall of the secondary heat exchanger, carbon monoxide  
9 can leak from the secondary heat exchanger.

10 7. Upon information and belief, this failure process begins on the first day of use,  
11 even in perfectly installed, maintained and repaired units.

12 8. As described herein, Carrier made false and deceptive statements regarding the  
13 nature of its defective furnaces. To this day, Carrier continues to affirmatively misrepresent and  
14 conceal from its dealers, distributors, and the public, the true nature of its furnaces and its pre-  
15 market knowledge of the fact that its furnaces fail prematurely.

16 9. As a result of Carrier's misconduct, Plaintiffs and all others similarly situated own  
17 or owned furnaces that are defective, have already failed and/or are in the process of failing  
18 prematurely, requiring them to pay out of pocket to repair or replace the furnaces.

19 **PARTIES**

20 10. Plaintiff Jeff Dougherty is an adult resident of the State of Michigan who resides in  
21 Ingham County.

22 11. Plaintiff Frank Zinn is an adult resident of the State of Michigan who resides in  
23 Wayne County.

24 12. Plaintiff Harvey Opaleski is an adult resident of the State of Michigan who resides  
25 in Macomb County.

26 13. Defendant Carrier Corporation, operating as Bryant, is the largest furnace  
27 manufacturer in the U.S. It manufactured the high-efficiency condensing furnaces used by  
28 Plaintiffs and the putative Class Members. Carrier Corporation is a Delaware corporation

1 headquartered in Connecticut that does business in the State of Michigan. According to the  
2 Michigan Department of Labor and Growth, Bryant Air Conditioning is a corporate entity of  
3 Carrier Corporation and is an “assumed name” of Carrier Corporation. Thus, the terms “Carrier”  
4 and “Bryant” are used synonymously herein.

5 **JURISDICTION**

6 14. This is a proposed class action. Members of the proposed plaintiffs’ Class are  
7 residents of Michigan, a state different from the home state of Defendant.

8 15. On information and belief, the aggregate claims of individual class members  
9 exceed \$5,000,000.00, exclusive of interest and costs. As such, jurisdiction is proper in this Court  
10 pursuant to 28 U.S.C. § 1332(a).

11 **VENUE**

12 16. Defendant, through its business of selling, marketing, and warranting its high-  
13 efficiency condensing furnaces, has established sufficient contacts in this district such that it is  
14 subject to personal jurisdiction here. Pursuant to 28 U.S.C. § 1391(c), therefore, Defendant is  
15 deemed to reside in this district.

16 17. Upon information and belief, Carrier has sold more than 250,000 furnaces to  
17 Michigan residents and entities. Thus, a substantial part of the events giving rise to these claims  
18 and a substantial part of the property that is the subject of this action are situated in this district.  
19 As such, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

20 **APPLICABLE LAW**

21 18. Plaintiffs, Michigan residents, seek damages and equitable relief on behalf of  
22 themselves and all other Michigan residents and entities similarly situated under the laws of the  
23 State of Michigan, where their claims arose. Michigan law presumptively applies to all claims in  
24 this action, because no rational reason to do otherwise exists. First, no foreign state has an  
25 interest in having its law applied. Alternatively, should it be determined that a foreign state has  
26 an interest in having its law applied, Michigan's interests mandate that Michigan law be applied,  
27 despite the foreign interests. This is so for several reasons. First, non-forum contacts are not of  
28 greater significance than Michigan contacts. Furthermore, the application of Michigan law

1 advances Michigan's governmental interests. Michigan's interest in this action – of protecting the  
2 rights and interests of Michigan residents against corporations doing business here – has greater  
3 significance than that of any other state. Application of Michigan law also promotes the  
4 predictability of results, maintenance of interstate order, and simplification of the judicial task.

#### 5 FACTS

##### 6 **A. Plaintiff Dougherty's Experience**

7 19. Plaintiff Dougherty purchased his home, equipped with a Carrier high-efficiency  
8 condensing furnace, Model Number 58SXC060, in October, 2002. The furnace had originally  
9 been installed in 1993, when the home was originally constructed.

10 20. In October of 2003, Plaintiff Dougherty noticed that his furnace was leaking a  
11 small amount of water during operation. On October 18, 2003 a technician from AAA Service  
12 Network, acting as an agent of Carrier, serviced the furnace, and changed out the ignitor. Plaintiff  
13 Dougherty had no sales contract with AAA Service Network for the maintenance or repair of his  
14 furnace.

15 21. Over the next three years, the furnace continued to provide heat, but the leaking  
16 water got steadily worse. In October of 2006, during Plaintiff Dougherty's annual furnace  
17 inspection, a technician from Battle Heating, acting as an agent of Carrier, informed Plaintiff  
18 Dougherty that the secondary heat exchanger was corroded and that both heat exchangers, the  
19 primary and the secondary, needed to be replaced.

20 22. Plaintiff Dougherty had no sales contract with Battle Heating for the maintenance  
21 or repair of his furnace. On November 15, 2006, a technician from Battle Heating, acting as an  
22 agent of Carrier, replaced Plaintiff Dougherty's heat exchangers.

23 23. The heat exchangers in Plaintiff Dougherty's furnace were warranted by Carrier for  
24 the lifetime of the original purchaser, and for 20 years from date of installation for subsequent  
25 purchasers. Because Plaintiff Dougherty was a subsequent purchaser, Carrier warranted the heat  
26 exchangers for 20 years from date of installation. Instead, they failed after 13 years.

27 24. Plaintiff Dougherty presented his failed furnace to Carrier for repair under his  
28 warranty. Plaintiff Dougherty submitted a claim to Carrier, which provided new heat exchangers

1 under the warranty. However, Plaintiff Dougherty's warranty did not cover the labor costs  
2 associated with the repair of the furnace, at a cost of \$645.00 to him.

3 25. Prior to the purchase of his home, Plaintiff Dougherty was aware that the furnace  
4 was a Carrier brand furnace and believed the furnace was warranted by Carrier. If Plaintiff  
5 Dougherty had known his furnace was defective, or that he would be required to pay \$645.00 to  
6 repair the furnace after only a few years, Plaintiff Dougherty would have negotiated a lower  
7 purchase price for his family home.

8 26. Plaintiff Dougherty has suffered actual injury in that his furnace failed  
9 prematurely, and he has paid out of pocket to repair it.

10 27. Carrier's warranty failed of its essential purchase and Plaintiff Dougherty's  
11 contract with Carrier was breached.

12 28. Experts hired by Plaintiff Dougherty's counsel have confirmed the presence of  
13 corrosion in the secondary heat exchanger. Upon information and belief, the corrosion found on  
14 Plaintiff Dougherty's secondary heat exchanger is of the type exhibited by all of the furnaces at  
15 issue.

16 **B. Plaintiff Zinn's Experience**

17 29. Plaintiff Zinn purchased his home, equipped with two high-efficiency furnaces  
18 (manufactured by Carrier, but branded as "Bryant" furnaces), in August 1992. The furnaces were  
19 installed sometime in 1989, when the home was originally constructed. Plaintiff Zinn's large  
20 furnace (Model No. 398AAW060120) was the home's primary heat source, while his second,  
21 smaller furnace (Model No. 398AAW036040), which was used infrequently, heated a small  
22 second floor of the house.

23 30. Plaintiff Zinn's furnaces were originally installed by, and were consistently  
24 maintained and repaired by, Bryant-authorized dealer Flame Furnace Company ("Flame").  
25 Plaintiff Zinn had no sales contract with Flame for the maintenance and repair of his furnaces.

26 31. On October 27, 2005, the technician from Flame found "a bad motherboard, heavy  
27 rust," and "maybe a hole in the heat exchanger" in Plaintiff Zinn's large furnace and "significant  
28 rust" in the small furnace.

1           32.     The Flame technician tending to Plaintiff Zinn's furnaces, acting as an agent of  
2 Carrier, advised Plaintiff Zinn that he had the option of either paying the significant repair costs  
3 associated with diagnosing and replacing the defective secondary heat exchangers, or purchasing  
4 new furnaces. Plaintiff Zinn elected to purchase two new furnaces, manufactured by Carrier, at a  
5 total cost of \$6,447.00. The two new furnaces were installed on November 16 and 29, 2005.  
6 Plaintiff Zinn remained in his home throughout this period, but lost the full use and enjoyment of  
7 his home due to the failure of his furnaces and the resulting loss of heat.

8           33.     Plaintiff Zinn presented his failed furnaces to Carrier for repair under his warranty  
9 and was given a \$400.00 rebate towards the purchase of his new furnaces.

10          34.     The secondary heat exchangers in Plaintiff Zinn's furnaces were warranted by  
11 Carrier for the lifetime of the original purchaser and for 20 years from date of installation for  
12 subsequent purchasers. Because Plaintiff Zinn was a subsequent purchaser, Carrier warranted the  
13 secondary heat exchangers for 20 years from date of installation. Instead, they both failed after 13  
14 years.

15          35.     Prior to the purchase of his home, Plaintiff Zinn was aware that the furnace was  
16 manufactured by Carrier and believed the furnace was warranted by Carrier. If Plaintiff Zinn had  
17 known his furnace was defective, or that he would be required to pay \$6,447.00 for premature  
18 replacement of the furnaces, Plaintiff Zinn would have negotiated a lower purchase price for his  
19 family home.

20          36.     Plaintiff Zinn has suffered actual injury in that his furnaces failed prematurely, and  
21 he has paid out of pocket to replace them.

22          37.     Carrier's warranty failed of its essential purchase and Plaintiff Zinn's contract with  
23 Carrier was breached.

24          38.     Plaintiff Zinn's new replacement furnaces, Model Numbers 352AAV060120 and  
25 340MAV024040, are also defective in design and, upon information and belief – and based on the  
26 mechanism of failure and the data Plaintiffs have uncovered evidencing extremely high failure  
27 rates – have already begun the failure process. Plaintiff Zinn, like all Class members, is thus  
28 reasonably certain to suffer actual injury well in advance of the warranted and expected life of his

1 new furnaces in addition to the actual injury he suffered as a result of the replacement of his failed  
2 furnaces.

3 **C. Plaintiff Opaleski's Experience**

4 39. Plaintiff Opaleski had a high-efficiency condensing furnace, Model No.  
5 350MAV048100 (manufactured by Carrier, but branded as a "Bryant" furnace), installed by  
6 Bryant-authorized dealer Roseville Hearing & Cooling, Inc. ("Roseville") on April 2, 1999.  
7 Plaintiff Opaleski had no sales contract with Roseville for the maintenance or repair of his  
8 furnace.

9 40. After only six years of use, Plaintiff Opaleski noticed that his furnace was leaking.  
10 On November 26, 2005, a technician from Roseville confirmed the leak and informed Plaintiff  
11 Opaleski that the secondary heat exchanger was "corroded through." On December 21, 2005,  
12 Bryant-authorized dealer Flame Furnace Company ("Flame"), acting as an agent for Carrier,  
13 replaced the secondary heat exchanger. Plaintiff Opaleski had no sales contract with Flame for  
14 the maintenance or repair of his furnace.

15 41. The secondary heat exchanger in Plaintiff Opaleski's furnace was warranted for the  
16 lifetime of the original purchaser and for 20 years from date of installation for subsequent  
17 purchasers. Because Plaintiff Opaleski was an original purchaser, Carrier warranted the  
18 secondary heat exchanger for a lifetime. Instead, it failed after only six years.

19 42. Plaintiff Opaleski presented his failed furnace to Carrier for repair under his  
20 warranty. The cost of the replacement secondary heat exchanger was covered under the warranty,  
21 but the labor associated with replacing the part was not. Plaintiff Opaleski paid \$639.00 for the  
22 repair.

23 43. Prior to the purchase of his furnace, Plaintiff Opaleski was aware that the furnace  
24 was warranted by Carrier. If Plaintiff Opaleski had known his furnace was defective, or that he  
25 would be required to pay \$639.00 for premature repair of the furnace, Plaintiff Opaleski would  
26 not have purchased the furnace or would have negotiated a lower purchase price for it.

27 44. Plaintiff Opaleski has suffered actual injury in that his furnace failed prematurely,  
28 and he has paid out of pocket to repair it.

1           45.     Carrier's warranty failed of its essential purchase and Plaintiff Opaleski's contract  
2 with Carrier was breached.

3           **D.     Carrier's High-Efficiency Furnaces are Uniformly Defective and Carrier**  
4           **Deliberately Made False and Deceptive Statements Concealing the True**  
5           **Nature of the Furnaces.**

6           46.     High-efficiency condensing (or 90%) furnaces maximize efficiency by employing  
7 a second heat exchanger to extract more heat from the furnace's hot gases through condensation.  
8 These furnaces are more expensive than non-condensing (or 80%) furnaces.

9           47.     The condensate formed in the secondary heat exchanger is acidic, creating a highly  
10 corrosive environment. As such, most furnace manufacturers use corrosion-resistant stainless  
11 steel in the design of their secondary heat exchangers, a material more costly than ordinary carbon  
12 steel or other engineering metals. At all times relevant, Carrier was aware that most furnace  
13 manufacturers use stainless steel and was aware that the condensate inside secondary heat  
14 exchangers is extremely acidic.

15           48.     Carrier has been manufacturing, warranting, advertising, marketing and selling  
16 90% furnaces with secondary heat exchangers since 1988. Carrier manufactured, expressly  
17 warranted, advertised, and sold the furnaces to Michigan residents under the brand names  
18 "Carrier," "Bryant," "Payne," and "Day & Night."

19           49.     Carrier has known or should have known, since at least 1985, that its PPL-  
20 laminated secondary heat exchangers are defective. Upon information and belief, Carrier  
21 conducted inadequate testing on its furnaces and failed to test things that it knew or should have  
22 known would lead to premature furnace failure.

23           50.     In an effort to reduce costs -- by one estimate achieving a savings of \$7.00 per  
24 furnace -- Carrier began exploring ways to provide a lower cost material alternative to stainless  
25 steel as early as 1983. By 1988, Carrier began applying a polypropylene laminate to mild steel or  
26 other less costly engineering metals, ostensibly to protect the corrosion-vulnerable material.  
27 Carrier made these design changes despite corrosion problems with its PPL-laminated secondary  
28 heat exchangers that it observed as early as 1985, three years before it brought the product to  
market.

1           51.     Upon information and belief, both the secondary heat exchanger polypropylene  
2 liner material and the manner in which it was placed on the secondary heat exchanger failed in  
3 their intended design and purpose.

4           52.     Upon information and belief, other parts in the heat exchanger system – including  
5 the coupling box, cold spot baffle, inlet plate, and RTV sealant – are also defective in their design  
6 and choice of material and contribute to the premature operational problems (e.g., inefficiency,  
7 leaking condensate) and ultimately, failure of the furnaces well before the lifetime period (or 20  
8 years).

9           53.     Upon information and belief, the failure process begins on the first day of use,  
10 even in perfectly installed, maintained and repaired units.

11           54.     Upon information and belief, Carrier knew or should have known that the average  
12 life of its condensing furnaces is actually only nine years, and may be as few as 2 years. In spite  
13 of that knowledge, Carrier intentionally falsely and deceptively represented that “A typical  
14 furnace is expected to last about 20 years with minimal maintenance.”

15           55.     Upon information and belief – and based on the mechanism of failure and the data  
16 Plaintiffs have uncovered evidencing extremely high failure rates – all Class members own  
17 furnaces that have already failed prematurely or are in the process of failing prematurely, and thus  
18 are reasonably certain to suffer actual injury well in advance of the warranted and expected life of  
19 their furnaces.

20           56.     The failure of a furnace can be more than just an inconvenience. When a furnace  
21 fails in the dead of winter – which is almost always the case given that furnaces, by their nature,  
22 are only used in cold weather – furnace owners and their families can be without heat in  
23 dangerously cold temperatures. Naturally, if a furnace fails in the dead of winter, furnace owners  
24 are forced to act quickly (and pay whatever it takes) to get the heat back on. Frequently, owners  
25 of failed furnaces lose the use of their homes until the furnace is repaired or replaced.

26           57.     On information and belief, many Class members, like Plaintiffs, after having  
27 presented their failed furnaces to Carrier, have paid out of pocket to repair or replace their  
28 furnaces, and the remaining Class members are reasonably certain to have to do so.

1           58.     Upon information and belief, when Carrier began selling and marketing furnaces  
2 equipped with the PPL-laminated secondary heat exchanger, it knew that the PPL-laminated  
3 secondary heat exchangers did not perform as well as the stainless steel secondary heat  
4 exchangers of its competitors and that they would not last as long as the warranty or the industry  
5 standard.

6           59.     Contrary to all the facts known to it, Carrier knowingly falsely and deceptively  
7 misrepresented that its furnaces were built to last by warranting that they were “free from defects  
8 in material and workmanship.” Carrier expressly warranted the furnaces as a whole as free from  
9 defects for at least one full year. Carrier further expressly warranted its secondary heat exchanger  
10 to be free from defects for the life of the original purchaser, or for 20 years if the furnace was  
11 resold. Carrier intended for its customers to rely on these statements and other representations  
12 made in sales brochures, owners’ manuals and other materials. These statements were  
13 affirmations of fact and were not couched as “belief” or “opinion.” Nor were these affirmations  
14 of fact “generalized statements of quality not capable of proof or disproof.” These affirmations of  
15 fact became a part of the basis for the bargain and were material to the transaction for Plaintiffs  
16 and all members of the Class.

17           60.     Given that Carrier was aware of the design defect in its furnaces, which results in  
18 premature failure of the furnaces, Carrier knew or should have known that its warranty was a  
19 sham and unconscionable. Moreover, Carrier’s warranty covers only the cost of the secondary  
20 heat exchanger. It specifically does not cover the much-higher labor costs associated with  
21 diagnosing and replacing the defective secondary heat exchanger – costs that can range from \$500  
22 to \$1,500. Given Carrier’s knowledge of the latent design defect which results in premature  
23 failure of its furnaces, Carrier’s warranty is woefully inadequate, fails of its essential purpose, is  
24 unconscionable, and robs Plaintiffs and members of the Class of the substantial benefit of their  
25 bargain.

26           61.     To this day, Carrier continues to affirmatively misrepresent and conceal from its  
27 dealers, distributors, and the public, the true nature of its furnaces.

28

1           62.     Plaintiffs Dougherty and Zinn, like all Class members, would not have purchased a  
2 house with a defective furnace in it, or would have negotiated lower purchase prices, if they had  
3 known that their homes were equipped with defectively-designed furnaces that would require  
4 repair or replacement well in advance of its expected and warranted life and at substantial cost.

5           63.     Likewise, Plaintiff Opaleski, like all Class members, would not have purchased a  
6 defective furnace, or would have negotiated a lower price for it, if he had known that the  
7 defectively-designed furnace would require repair or replacement well in advance of its expected  
8 and warranted life and at substantial cost.

9           64.     Moreover, Plaintiffs and Class members did not take into consideration or  
10 negotiate for the risk of carbon monoxide leaks when purchasing their homes equipped with  
11 Carrier furnaces, or when purchasing their furnaces. Additionally, Plaintiffs and Class members  
12 did not take into consideration or negotiate for the risk of loss of use when a furnace fails in the  
13 dead of winter when purchasing their homes equipped with Carrier furnaces, or when purchasing  
14 their furnaces. Carrier had the responsibility of informing Plaintiffs and Class members of those  
15 material facts, which are extraneous to the warranty. The “risk and the responsibility” thus fell  
16 outside the scope of what each of the parties contracted for, and was not interwoven with, the  
17 warranty.

18           65.     Carrier knows or should know that homes installed with its furnaces get resold. In  
19 fact, Carrier’s warranties specifically contemplate that truism, and anticipatorily warrant to future  
20 homeowners – like Plaintiffs Dougherty and Zinn – that the secondary heat exchangers will be  
21 free of defects for a period of 20 years. For these reasons, Carrier is estopped from denying that it  
22 owes a duty to subsequent purchasers, or from asserting lack of privity as to such purchasers.

23           66.     Carrier had a duty to disclose to Plaintiffs and members of the Class the latent  
24 defects in its furnaces as the fact was material to Plaintiffs’ and the Class members’ transactions.  
25 Carrier, as the only party with knowledge of the defect, knew that Plaintiffs and members of the  
26 Class were entering transactions under a mistake as to the fact of the defective design of the  
27 furnaces. The fact of the defective nature of the design was peculiarly and exclusively within  
28 Carrier’s knowledge and the mistaken parties, Plaintiffs and Class members, could not reasonably

1 be expected to discover it. On account of the objective circumstances, Plaintiffs and the members  
2 of the Class reasonably expected disclosure of the fact of the defect. Carrier also had a duty to  
3 disclose based on its partial disclosures.

4 67. As a result of Carrier's challenged conduct, Plaintiffs and the proposed Class have  
5 been harmed and suffered actual damages or are reasonably certain to suffer actual harm, and will  
6 continue to be harmed and suffer actual damages, in that the furnaces have failed or are  
7 experiencing continuous and progressive premature failure, and the secondary heat exchangers  
8 and heat exchanger systems have failed and will continue to fail long before the expected and  
9 warranted life of the furnace has run, resulting in damage to other parts of the furnace, loss of use,  
10 and costly repairs or replacement.

#### 11 TOLLING

12 68. The causes of action alleged herein accrue upon discovery of the latently defective  
13 nature of the furnaces' secondary heat exchangers and heat exchanger systems. Because the  
14 defect is latent and because Carrier took and continues to take steps to conceal the latently  
15 defective nature of the furnaces, among other reasons, Plaintiffs and members of the Class did not  
16 discover and could not have discovered their true defective nature despite reasonable and diligent  
17 investigation. Indeed, even after Class members were aware their secondary heat exchangers had  
18 failed, or were failing, Defendant prevented them from ascertaining an inherent deficiency was  
19 the cause by asserting the problems with Plaintiffs' furnaces were due to faulty installation,  
20 improper operation, or local conditions.

21 69. Moreover, reasonable and diligent investigation into the cause of the failed  
22 furnaces did not and could not reveal a factual basis for a cause of action due to Carrier's failure  
23 to disclose/concealment of the defect.

24 70. Any applicable statutes of limitation have thus been tolled by Carrier's knowing  
25 and active concealment and denial of the facts as alleged herein, which concealment is ongoing.  
26 Plaintiffs and the Class have been kept ignorant of vital information essential to the pursuit of  
27 these claims, without any fault or lack of diligence on their part.

