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AAMODT WARD, on behalf of herself

17 and all others similarly situated

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18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 **CV07-01380 JFW (PSW)**

21 KATHIE AAMODT WARD, on behalf of
22 herself and all others similarly situated,

23 Plaintiff,

24 vs.

25 THE SERVICEMASTER COMPANY;
26 AMERICAN HOME SHIELD
CORPORATION; AMERICAN HOME
SHIELD OF CALIFORNIA, INC.,

27 Defendants.
28

CASE NO.

CLASS ACTION

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

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INTRODUCTION

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Kathie Aamodt Ward (hereinafter “Ward” or “Plaintiff”), individually and on behalf of all others similarly situated, brings this action for damages and injunctive relief against Defendants The ServiceMaster Company (“ServiceMaster”), American Home Shield Corporation (“AHS”), and American Home Shield of California, Inc. (“AHS of California”) (together, “Defendants”), demanding a trial by jury, and complains and alleges as follows:

1. AHS, the nation's leading seller of what are commonly referred to as home warranties, engages in deceptive and unconscionable conduct designed to increase its revenues and deny consumers the rights afforded to them under their contracts with AHS. At the heart of this unlawful conduct are two distinct practices. The first practice involves AHS's offer of an illusory "upgrade" to current customers. The second is AHS's pattern and practice of using false pretexts to delay and deny valid claims for repairs to appliances or heating and air conditioning systems covered under an AHS warranty.

2. AHS's recent "upgrade" program demonstrates the deceptive lengths to which the company will go in order to obtain additional revenues from its customer base of over one million consumers throughout the United States. In the spring of 2006, AHS rolled out an extensive marketing campaign offering an "upgrade" to coverage of air conditioning and heating systems, advising its customers that recent changes to United States Department of Energy (DOE) regulations governing the fuel efficiency for newly manufactured air conditioners impacted their right to obtain repairs on their existing systems. They did not. The new federal regulations did not change the fuel efficiency standards for existing systems nor did they address, in any manner whatsoever, repairs of existing systems. Nevertheless, AHS

1 deceptively misrepresented the impact of these new regulations to concoct a basis
2 for offering and charging its customers, including Plaintiff, a \$30 upgrade to their
3 coverage they did not need.

4
5 3. AHS has also engaged in a long-standing pattern and practice of
6 delaying and denying valid claims for repairs based on various pretexts, including
7 but not limited to, false claims made directly or through its authorized service
8 providers, that customers had failed to maintain their appliances or home systems
9 such as air conditioning covered under the warranty. Based on that practice, repairs
10 that should have been made were refused.

11
12 4. This lawsuit brought on behalf of consumers who purchased an AHS
13 warranty seeks to end AHS's deceptive practices and for other relief addressing
14 AHS's unlawful conduct, including without limitation, compensatory damages for
15 the reimbursement of the upgrades and for repairs that AHS wrongfully denied, and
16 injunctive relief as indicated in each cause of action.

17 THE PARTIES

18
19 5. Plaintiff Kathie Aamodt Ward is a resident of California with an
20 address of 18630 Hart Street, Reseda, California 91335. Mrs. Ward purchased an
21 AHS home warranty, which AHS has failed to honor, and a 13 SEER coverage
22 enhancement upgrade.

23
24 6. Defendant The ServiceMaster Company is a Delaware corporation
25 authorized to do business in California with a business address of 3250 Lacey Road,
26 Suite 600, Downers Grove, Illinois 60515-1700. ServiceMaster, through its
27 subsidiaries, purports to provide various services to residential and commercial
28 customers.

7. Defendant American Home Shield Corporation is a Delaware corporation and a subsidiary of The ServiceMaster Company. AHS has a business address of 889 Ridgelake Boulevard, Memphis, Tennessee 38120, and is authorized to do business in California. AHS provides homeowners with home warranty plans which cover such things as the replacement and repair of electrical, plumbing, and heating and cooling systems, as well as the breakdown of major home appliances.

8. Defendant American Home Shield of California, Inc. (“AHS of California”) is a Delaware corporation and a wholly-owned subsidiary of AHS. AHS of California has a business address of 889 Ridgelake Boulevard, Memphis, Tennessee 38120, and is authorized to do business in California.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000 and is a class action in which some members of the class of plaintiffs are citizens of a state other than Defendant.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Plaintiff resides in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

FACTS

AHS Background

11. In 1971, AHS, then based in California, invented a new category of extended warranties covering the major systems such as heating, air conditioning and plumbing and appliances in a home such as refrigerators and washing machines. Although often referred to as a home warranty, the contracts entered into by AHS

1 with consumers do not cover the home itself.

2
3 12. AHS claims its home warranty plans or service contracts “help[]
4 protect homeowners against the cost of unexpected covered repairs or replacement
5 on their major systems and appliances that break down due to normal wear and
6 tear.” These plans must be renewed by homeowners on an annual basis.

7
8 13. AHS specifically describes its home warranty plans and associated
9 services as follows:

10
11 The contract covers household systems and appliances
12 regardless of age, make or model. The moment something
13 breaks down, simply call our toll-free service line or make
14 a service request via the AHS Web site and a local, pre-
15 screened service technician will contact you during normal
16 business hours to schedule a mutually convenient
17 appointment. You pay a trade service call fee of \$55 for
18 each occurrence, regardless of the actual cost to repair or
19 replace the broken item(s).

20
21 14. According to AHS’s website: “It’s never been easier to protect your
22 home’s covered systems and appliances against breakdowns from normal wear and
23 tear. With a home warranty from [AHS], you will feel relieved knowing unexpected
24 repair bills won’t blow your budget.”

25
26 15. AHS has enjoyed continued growth and high profit margins, which are
27 reported throughout the entire so-called home warranty industry. In 2006, AHS
28 reported sales revenue of \$528.7 million making it the largest home warranty

1 company in the nation. AHS currently services 49 states and 1.2 million
2 homeowners.

3
4 16. In 1989, AHS was purchased by ServiceMaster. ServiceMaster's
5 subsidiaries include ServiceMaster Clean, TruGreen, ChemLawn, Terminix, Merry
6 Maids and AHS. The company's combined sales revenues in 2005 exceeded \$3
7 billion.

8
9 17. According to Diane Pieper, AHS' manager of legal services, "most
10 extended warranties are product-specific and sold by retailers and they typically last
11 for multiple years. With a home warranty from AHS, what we do is warrant the
12 major systems and appliances in a home and we repair or replace those items should
13 they fail due to normal wear and tear for one year. And then that warranty can
14 usually be renewed every year thereafter."

15
16 18. AHS markets its home warranties through real estate brokers and
17 agents, and mortgage brokers, who are selling or refinancing existing homes to
18 buyers.

19
20 **AHS's Pattern and Practice of Denying Claims**

21 19. A contract holder can make a claim to AHS for coverage of a repair by
22 phone or via the Internet. AHS has an extensive network of local contractors and
23 service providers throughout the country with which it has contracted to provide
24 repairs to covered home systems and appliances. AHS selects and dispatches the
25 contractor to the home to assess the failed system or appliance. Regardless of
26 whether a repair is ultimately authorized and paid for by AHS, the AHS customers
27 must first pay a service fee to the local contractor, which ranges from \$40-\$55.
28

1 20. AHS's process, however, systematically delays and denies valid claims.
2 Various pretexts are used by AHS, including but not limited to falsely claiming
3 AHS customers have failed to maintain their systems and are not entitled to a repair.
4 In addition, AHS consistently fails to insure that its local contractors make timely
5 service calls. Finally, the process in-place by AHS encourages affiliated local
6 contractors to accept a service fee but conclude that necessary repairs are not
7 covered under warranty agreements and instead attempt to charge the customer
8 directly for the repair.

9
10 21. Former AHS employees would likely corroborate these claims, as
11 evidenced by the plaintiffs' allegations in Fidelity National Home Warranty Co. v.
12 American Home Shield of California, Inc., 2002 WL 373077 (Cal. App. 4 Dist.
13 March 8, 2002). There, as here, the plaintiffs alleged that AHS has engaged in a
14 pattern and practice of denying claims:

15
16 Fidelity accused American of "wrongfully denying
17 legitimate warranty claims covered by the policies,"
18 "setting guidelines and stipulations which penalize
19 contractors for expending resources to resolve problems
20 covered under the policies thereby inducing contractors to
21 fraudulently represent to policyholders that legitimate
22 claims are not covered under the policy," "ranking and
23 rewarding contractors higher if they have a larger ratio of
24 denials of claims than those contractors who in good faith
25 repair the problems," and "imposing upon contractors the
26 requirement of denials of legitimate claims so that Group
27 A contractors hang posters which state '**Deny, Deny,**
28 **Deny**' in a location where their technicians can vie [them]

1 as they walk out the door.”

2 Id. at *1 (emphasis in original).

3
4 22. The following Internet postings represent a small sampling of this
5 pattern and practice.

6
7 • *We have been trying since June 23rd to get our air conditioning*
8 *repaired. AHS refused service saying the problem was caused by a 14*
9 *year old fence. When we had an independent contractor clearly identify*
10 *the problem, AHS sent out 3 different people over a 2 week period to*
11 *confirm the necessary repairs. Then they confused which unit needed to*
12 *be repaired and have charged us for running the unit without freon*
13 *when their own contractor said he had done that by mistake. They*
14 *arrived on the 28th of August to finally do the repairs and we now find*
15 *they were going to repair the wrong unit. We have paid close to \$1000*
16 *to do work that should have been covered by AHS and we have spent*
17 *the entire summer, with temperatures in excess of 100, without*
18 *completely functioning air conditioning.*

19
20 • *Let's just say this: I would not be happy at this point even if AHS*
21 *refunded the premium I paid for their worthless service. Our A/C went*
22 *out a month ago. It hasn't worked properly since we bought the house.*
23 *AHS keeps sending the same band of unqualified people out here to fix*
24 *it, and it is never fixed. Appointments are missed, we get the*
25 *runaround, and all the while the problem is never solved.*

26
27 • *My air conditioning unit went out. AHS denied my claim. They stated*
28 *the unit went out due to lack of maintenance. I have not been in my*

1 house a year. When I bought my house, the seller had a/c unit serviced
2 by a technician. I explained this to AHS but my claim was still denied.
3 AHS could not give me a reason why my claim was denied other than
4 lack of maintenance, when this was done. We had to pay out of pocket
5 for something that they were supposed to cover. I feel it is unfair for
6 them to offer a contract and not honor it.

- 7
- 8 • My air conditioner went out on Saturday and I called AHS Sunday
9 morning. The company (contractor) they gave me could not come out
10 till Wednesday. It's extremely hot but because of their so called 48-
11 hour agreement I have to wait for the particular contractor. AHS will
12 not even give me another company to use. They advertise "call us 24
13 hrs a day" but their service is slow as a snail, and nothing, not even
14 extreme heat and small kids, is considered an emergency. Their
15 warranties are worthless and I will not be using them again.

- 16
- 17 • I would like to add my voice to the 100's of others who have had a
18 terrible experience with American Home Shield (AHS). We recently
19 purchased a 30yr old home that came with an AHS Warranty
20 (purchased by the sellers). After just 1 month in the home, our furnace
21 went out. The repair company said we needed a new one and AHS
22 approved. However the contractor said they would have to charge us
23 \$1200 in other costs to install it. I called AHS and they said they can
24 not second guess the contractors' fees and that they would not get a
25 second opinion. As it turns out I was having some remodeling work
26 done on the home and had a HVAC person my builder uses in the
27 home. When I asked him to review the AHS technician's costs he could
28 find no basis for the \$1200. He also said that the AHS technician's plan

1 for the install was incorrect and would lead to potential problems down
2 the road. I went back to AHS and asked for a cash settlement. They
3 came back with an offer of \$432. A total unreasonable amount by any
4 stretch of the imagination. And totally non-negotiable according to
5 AHS. I have been without heat now for 1 month. And am now having to
6 get bids to have the work done myself. I will never deal with AHS ever
7 again. I suggest anyone reading this do the same.

- 8
- 9 • I had the so-called warranty and my microwave broke. Called AHS and
10 they sent out a technician who took the unit apart, said it would take
11 \$300 to fix and they would have to reschedule someone to install a new
12 one (supposed to get replacement if mine couldn't be fixed). Then he
13 reported that the liner of the microwave was damaged which voided
14 their responsibility to fix or replace. I called the service number, got
15 several very snotty people and when I said to cancel my policies they
16 indicated it was a "legal" contract. I told them the brochure I had said
17 all I had to do was call to cancel. AHS said cancellation had to be in
18 writing and probably wouldn't be cancelled. I faxed in a cancellation
19 and have not heard back from them. No matter what the problem, they
20 find a reason it is not covered.

- 21
- 22 • Paid premiums (\$400) for 5 years. Water heater broke. I have receipt
23 from technician that says "leaking and leaning due to leg being rusted
24 off". AHS denied the claim because they cannot tell if it was leaking
25 before or after the rust started. Apparently, the entire warranty is full
26 of loopholes that apply to most, if not all, the major reasons appliances
27 or major home systems fail. I feel like an idiot for falling for it, and I've
28 spent more time and money with them than I would have if I had just

1 *paid a real plumber to replace the water heater.*

2

3 • *AHS was purchased as part of the warranty package for my home. I*
4 *have had two claims denied by them through loopholes in the contract.*
5 *The first was a broken dishwasher. After paying \$50, the technician*
6 *noted that in addition to the problem that he was there to fix, the*
7 *dishwasher had a recall on a TOTALLY SEPARATE PIECE, (the heat*
8 *control switch for drying) and that I should look into getting addressed.*
9 *When I called AHS, they refused to honor fixing the original problem*
10 *because they claimed that the dishwasher had a manufacturer recall,*
11 *and they wouldn't address anything until that was met. The second and*
12 *biggest problem was with my air handler unit. AHS sent a contractor*
13 *out and it was clearly his goal to find something that would disqualify*
14 *the unit from being covered. Once the technician got here, he noted*
15 *that the unit was dirty, and then proceeded to call the warranty*
16 *company and communicate that. He said that the unit hadn't been*
17 *properly maintained, and even though I had lived there less than a*
18 *year, they wouldn't cover the unit because it had missed a yearly*
19 *cleaning. When I detailed to the customer service personnel that I was*
20 *within the terms laid out on the contract that specified that I maintain*
21 *the unit to manufacturer specifications throughout the duration of our*
22 *contract, they still refused to acknowledge that they had any*
23 *responsibility to warranty the air handler. Damage: I'll fight AHS,*
24 *seeking legal counsel if necessary, but it looks like I'll have to come out*
25 *of pocket to replace the air handler. AHS will get no more of my*
26 *business.*

27

28 23. As a result of Defendants' systematic wrongful and deceptive

1 practices, consumers have routinely paid \$40-\$55 to service repairmen without
2 receiving a benefit in return. Instead, as a result of AHS's failure to adhere to its
3 contractual obligations, consumers have had to pay AHS or other contractors to fix
4 systems and appliances which AHS should have deemed covered by their
5 warranties.

6 7 **AHS's Deceptive Upgrade Program**

8 24. In early 2006, AHS commenced a marketing program offering its
9 customers an "upgrade" to their home warranty contract purportedly to meet higher
10 energy efficiency standards imposed on the manufacturer of new air conditioning
11 and heating systems.

12
13 25. These new standards called a Seasonal Energy Efficiency Rating
14 ("SEER") were promulgated by the United States Department of Energy ("DOE").
15 By their terms, the DOE mandated that after January 23, 2006 all new air
16 conditioners manufactured must have a 13 SEER rating. This mandate excluded
17 systems manufactured before that date, and did not encompass the manufacture of
18 component parts or the repair of systems manufactured prior to that date.

19
20 26. Nevertheless, in a letter to customers signed by AHS's Vice President
21 Joe Charno and in related promotional brochures in print and available on line on
22 AHS's website, AHS advised its customers that these new regulations prohibited the
23 production of "components" with a rating below 13 SEER and that "the law will
24 ultimately result in a phase-out of less efficient components."

25
26 27. These materials were designed to imply, and did in fact imply, that
27 AHS customers could not obtain a repair or replacement parts for their air
28 conditioning system without purchasing an upgrade offered at the price of \$30 for

1 the remaining period on their one year contract.

2
3 28. This offering was false and misleading. First, AHS's standard contract,
4 without the upgrade, required AHS to make repairs on an air-conditioning system
5 that failed regardless of the change in the SEER rating. Second, the increase in
6 SEER rating to 13 applied by its terms to newly manufactured systems only and did
7 not encompass systems manufactured prior to that date, or replacement components.
8 Third, even if the new SEER applied to component parts, it is inconceivable that
9 component parts would be unavailable within less than a year. Further, many if not
10 most repairs would not even require the replacement of parts.

11
12 29. Rather than considering the needs of its customers, AHS's program was
13 simply an effort to enhance revenues from existing customers.

14
15 **Facts Specific to Kathie Aamodt Ward**

16 30. Ward has for several years purchased annual home warranty
17 agreements from AHS, the most recent of which covered the period of February 18,
18 2006 through February 18, 2007. (A copy of the latest contract is attached hereto,
19 marked Exhibit "A," and incorporated as though fully set forth at length herein.)
20 Pursuant to the contract, Ward was required to pay monthly payments of \$36.00 to
21 AHS, and in return received a warranty on her home's ceiling fans, air conditioning,
22 refrigerator, plumbing, water heater, dishwasher, garage door opener, garbage
23 disposal, range/oven, ductwork, clothes washer, built in microwave, cooktop,
24 electrical system, clothes dryer, heating, and stoppages.

25
26 31. Upon request, AHS was to contact an authorized service contractor
27 who would schedule an appointment with the customer in order to inspect and
28 determine the repairs necessary to repair the malfunctioning system or appliance.

1 Ward, the customer, was required to pay \$45.00 for each trade service call, or the
2 actual cost, whichever is less.

3
4 32. In the spring of 2006, Ward received written notification from AHS
5 that the DOE had "raised the heating and air conditioning efficiency standard from
6 10 to 13 SEER."

7
8 33. A brochure enclosed with the letter included the following relevant
9 information:

10
11 How will 13 SEER affect you?

12
13 An A/C system includes two units – one inside and one
14 outside. If the outside unit of a 10 SEER system breaks
15 down and there are no 10 SEER parts left to repair it, there
16 may be no other option than to replace the outside unit
17 with a 13 SEER unit and install the related system
18 modifications or to upgrade the entire system to 13 SEER.
19 In other words, if the inside and outside units are not
20 compatible, you may need to replace both units in order to
21 maintain system compatibility.

22
23 34. As a result of the information provided by AHS, Ward believed that she
24 needed to purchase the upgrade otherwise the warranty on her heating and air
25 conditioning units would be worthless.

26
27 35. Accordingly, she opted to upgrade her home warranty coverage in
28 April of 2006 for the \$30.00 fee advertised by AHS.

1 36. In June of 2006, Ward had her air conditioning unit serviced for routine
2 maintenance by Southland Mechanical.

3
4 37. On or about August 11, 2006 and in the midst of a record heat wave,
5 Ward's central air conditioning unit unexpectedly broke down due to normal wear
6 and tear.

7
8 38. Consistent with her obligations under the warranty contract she had
9 entered into with AHS, Ward contacted AHS so that her air conditioning unit could
10 be serviced.

11
12 39. AHS advised Ward that West Coast Chief Repair, Inc. had been
13 assigned to her service request.

14
15 40. On or about August 14, 2006, a repairman from West Coast Chief
16 Repair, Inc. came to Ward's home to repair the air conditioning unit. The repairman
17 informed Ward that it would cost more to fix the unit than to replace it. Ward
18 advised AHS of the foregoing in order to find out how to proceed. Ward paid West
19 Coast Chief Repair, Inc. a \$40 fee for its trade service call.

20
21 41. On or about August 18, 2006, Ward learned AHS had denied her claim.
22 The AHS representative Ward spoke with advised her that AHS had determined that
23 the air conditioning unit had failed due to lack of maintenance and was not,
24 accordingly, covered under the warranty.

25
26 42. To no avail, Ward attempted to explain to AHS that the unit had been
27 maintained at the beginning of the summer.

28

1 43. AHS informed Ward that she could appeal the finding and then sent out
2 a second repair company, Absolute Air Conditioning Co., to provide a second
3 opinion.

4
5 44. Ward was required to pay yet another \$40 service call fee in connection
6 with Absolute Air Conditioning Co.'s inspection of her air conditioning unit.

7
8 45. The Absolute Air Conditioning Co. repairman who inspected Ward's
9 air conditioning unit confirmed that the unit was not dirty, had in fact been
10 maintained and had broken down due to normal wear and tear. For these reasons,
11 the repairman informed Ward that repairs to her air conditioning unit should be
12 covered by AHS's warranty.

13
14 46. Despite the fact that Ward was able to demonstrate that she had had her
15 air conditioning unit maintained only two months before it failed and
16 notwithstanding the findings of Absolute Air Conditioning Co., AHS reached the
17 conclusion that the problems with Ward's air conditioning unit were caused by lack
18 of maintenance and were not, accordingly, covered by the home warranty.

19
20 47. By letter dated August 21, 2006, AHS advised Ward that the damage to
21 her air conditioning was not covered by the contract since it was due to her
22 purported failure to routinely maintain the machine. Quoting the warranty
23 agreement, the letter stated that "AHS is not liable for repair of conditions caused
24 by... failure to clean or maintain..."

25

26 **CLASS ACTION ALLEGATIONS**

27 48. Plaintiff brings this action as a class action pursuant to Federal Rule of
28 Civil Procedure 23 on behalf of herself and the following two classes of individuals:

Class A

All persons who purchased a home warranty from AHS of California from 2002 to the present which covers home systems and appliances located within the State of California and failed to receive any services despite paying a service fee.

Class B

All persons who purchased a 13 SEER home warranty upgrade from AHS and/or any of its subsidiaries as a result of Defendants' representation that DOE regulations required customers to upgrade their current warranty in order to retain full coverage.

49. Certification of the Classes is appropriate pursuant to Fed. R. Civ. P. 23, in that (a) each Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to each Class; (c) the claims or defenses of the representative party is typical of the claims or defenses of each Class; and (d) the representative party will fairly and adequately protect the interests of each Class.

50. The members of Class A and Class B are so numerous that joinder of all members would be impracticable. Plaintiff estimates that there are thousands of purchasers of the AHS home warranties and 13 SEER upgrades at issue.

51. The common questions of law or fact to Class A, among others, include:

a. Whether AHS engages in a pattern or practice of denying legitimate customer complaints;

1 b. Whether AHS uses pretextual reasons to delay or deny legitimate
2 customer claims;

3
4 c. Whether AHS negligently selected local contractors and/or failed
5 to supervise their work;

6
7 d. Whether AHS knowingly consented to, or facilitated, the denial
8 of valid claims for repairs by its local contractors;

9
10 e. Whether AHS offered incentives to its local contractors for
11 denying claims;

12
13 f. Whether AHS violated California Insurance Code Section 12740,
14 et seq.

15
16 g. Whether, by its misconduct as set forth herein, AHS has engaged
17 in unfair, deceptive, untrue or misleading advertising;

18
19 h. Whether the alleged conduct violated Business & Professions
20 Code § 17200, et seq.;

21
22 i. Whether AHS' conduct constitutes deceptive or unfair acts in
23 violation of the Business & Professions Code § 17500, et seq.;

24
25 j. Whether AHS' conduct constitutes fraudulent misrepresentation,
26 concealment and failure to disclose;

27
28 k. Whether AHS' conduct constitutes negligent misrepresentation;

1 and

2
3 1. Whether, as a result of AHS' misconduct, Plaintiff and the Class
4 are entitled to damages, restitution, equitable relief and other relief, and the amount
5 and nature of such relief.

6
7 52. The common questions of law or fact to Class B, among others,
8 include:

9
10 a. Whether AHS made false and/or misleading statements of fact to
11 the Class concerning DOE/SEER standards and their impact on AHS' contractual
12 obligations;

13
14 b. Whether AHS knew, or was reckless in not knowing, that its
15 statements of fact to the Class and the public regarding DOE/SEER standards and
16 their effect on AHS' contractual obligations was misleading;

17
18 c. Whether, by its misconduct as set forth herein, AHS has engaged
19 in unfair, deceptive, untrue or misleading advertising;

20
21 d. Whether the alleged conduct violated Business & Professions
22 Code § 17200, et seq.;

23
24 e. Whether AHS' conduct constitutes deceptive or unfair acts in
25 violation of the Business & Professions Code § 17500, et seq.; and

26
27 f. Whether, as a result of AHS' misconduct, Plaintiff and the Class
28 are entitled to damages, restitution, equitable relief and other relief, and the amount

1 and nature of such relief.
2

3 53. Plaintiff's claims are typical of the claims of both Classes, because
4 Plaintiff and the members of both Classes injured by the same wrongful practices in
5 which AHS engaged. Upon information and belief, all members of each Class
6 entered into materially similar, if not identical, warranty agreements and upgrade
7 solicitations with AHS. Plaintiff's claims arise from the same practices and course
8 of conduct that gave rise to the claims of the members of Class A and Class B, and
9 are based on the same legal theories. The only difference between Plaintiff and
10 individual members of Class A could be the amount of damages sustained, which is
11 an amount that can be readily determined, and does not bar or in any way impair
12 class certification.
13

14 54. Plaintiff will fairly and adequately represent the interests of the
15 members of the Classes. Plaintiff's interests are the same as, and not in conflict
16 with, the members Class A and Class B. Plaintiff's counsel is experienced in both
17 class action and complex litigation.
18

19 55. A class action is superior to other available methods for the fair and
20 efficient adjudication of this lawsuit, because individual litigation of the claims of
21 the members of Class A and Class B is economically unfeasible and procedurally
22 impracticable. While the aggregate damages sustained by the Classes are likely to
23 be in the millions of dollars, the individual damages incurred by each member of
24 Class A and Class B resulting from AHS' wrongful conduct are, as a general matter,
25 too small to warrant the expense of individual suits. The likelihood of individual
26 members of the Classes prosecuting separate claims is remote and, even if every
27 class member could afford individual litigation, the court system would be unduly
28 burdened by individual litigation of such cases. Individualized litigation would also

1 present the potential for varying, inconsistent, or contradictory judgments and would
2 magnify the delay and expense to all parties and to the court system resulting from
3 multiple trials of the same factual issues. Plaintiff knows of no difficulty to be
4 encountered in the management of this action that would preclude its maintenance
5 as a class action. Relief concerning Plaintiff's rights under the laws herein alleged
6 and with respect to the Classes would be proper. AHS has acted or refused to act on
7 grounds generally applicable to both Classes, thereby making appropriate final
8 injunctive relief or corresponding declaratory relief with regard to members of the
9 Classes as a whole.

10
11 56. Defendants' conduct described in this Complaint was not isolated or
12 unique to Plaintiff but was widespread, affecting thousands of consumers, and was a
13 regular and intended business practice of Defendants, which was instituted and
14 implemented with a view towards unfairly profiting at the expense of AHS's
15 consumers.

16
17 **ESTOPPEL FROM PLEADING AND TOLLING**
18 **OF APPLICABLE STATUTES OF LIMITATION**

19 57. The applicable statutes of limitation are tolled by virtue of Defendants'
20 failure to comply with the California Code of Regulations in addition to Defendants'
21 knowledge, active concealment and denial of the facts alleged herein.

22
23 58. The failure to timely commence this action, if any, was caused by
24 Defendants' conduct of negotiating in bad faith with customers regarding coverage
25 under their warranty agreements and reimbursement for costs associated with
26 repairing or replacing their home systems and/or appliances, which conduct was
27 designed to induce the members of the Classes from refraining from or postponing
28 commencement of the action.

1 59. Defendants were and are under a continuing duty to disclose the true
2 character, quality and nature of the warranties and 13 SEER upgrades to Plaintiff
3 and members of Class A and Class B. Defendants are therefore estopped from
4 relying on any statutes of limitation because of their concealment of the true
5 character of their warranties and upgrades.

6
7 **COUNT I – Class A and Class B v. Defendants**
8 **Violations of Bus. & Prof. Code § 17200 et seq.**

9 60. Plaintiff repeats and realleges the allegations set forth above as if fully
10 contained herein.

11
12 61. Plaintiff brings this cause of action on behalf of herself and on behalf of
13 the members of Class A and Class B, all of whom lost money or property as a result
14 of Defendants' unfair, fraudulent and/or unlawful acts.

15
16 62. Defendants have engaged in unfair, unlawful, and fraudulent business
17 practices which include, but are not limited to, the practices set forth throughout this
18 Complaint. Defendants provided plaintiff and the class with "home protection
19 contracts" as defined in California Insurance Code Section 12740(a). Under
20 Insurance Code Section 12743, defendants were and are at all times material
21 required to comply with Article 6.5 commencing with Insurance Code Section 790
22 and the Fair Claims Settlement Practices Regulations promulgated under the
23 authority of the Commissioner. (California Code of Regulations, Title 10, Chapter 5,
24 Subchapter 7.5 "Fair Claims Settlement Practices Regulations" *see*
25 Section 2695.1(c). Plaintiff is informed and believes and thereon alleges that
26 defendants have a business practice of routinely violating the Insurance Code and
27 the Regulations by (a) not adopting and communicating to all its claims agents
28 written standards for the prompt investigation and processing of claims in violation

1 of Section 2695.6 of the Regulations; (b) not providing adequate training to its
2 claims personnel in violation of Section 2695.6 of the Regulations; (c) not providing
3 claimants with written notice of denial listing all bases for such rejection or denial in
4 violation of Section 2695.7(b)(1) of the Regulations; (d) not providing written notice
5 to claimants that he or she may have the matter reviewed by the California
6 Department of Insurance in violation of Section 2695.7(b)(3) of the Regulations;
7 (e) making deceptive representations regarding the need for additional coverage in
8 violation of Ins. Code Section 790.03(b); (f) misrepresenting to claimants pertinent
9 facts or insurance policy provisions in violation of Ins. Code Section 790.03(h)(2);
10 (g) failing to acknowledge and act reasonably promptly upon communications with
11 respect to claims arising under the home protection contracts in violation of
12 Insurance Code Section 790.03(h)(2); (h) not attempting in good faith to effectuate
13 prompt, fair, and equitable settlements of home warranty claims in which liability
14 has become reasonably clear in violation of Insurance Code Section 790.03(h)(5); (i)
15 compelling insureds to institute litigation to recover amounts due under home
16 protection contracts in violation of Insurance Code 790.03(h)(6); (j) failing to
17 provide promptly a reasonable explanation of the basis relied on in the home
18 protection contract, in relation to the facts or applicable law, for the denial of claims
19 in violation of Insurance Code Section 790.03(h)(13); and (k) violating the
20 Insurance Adjuster Act commencing at Insurance Code Section 14000 by appointing
21 service technicians to make coverage recommendations or decisions although the
22 technicians have more than a three percent financial interest in the repair of the item
23 under warranty in violation of Insurance Code Section 14039(c).

24
25 63. By engaging in the above-described acts and practices, Defendants
26 have committed one or more acts of unfair competition within the meaning of
27 Business and Professions Code § 17200, et seq.
28

1 64. Defendants' acts and practices have deceived and/or are likely to
2 deceive members of the consuming public and impact the public interest.

3
4 65. The utility of Defendants' conduct is outweighed by the gravity of
5 harm to Plaintiff and the Class members.

6
7 66. Defendants' acts and practices are unlawful because they constitute a
8 breach of contract and violate various provisions of the Insurance Code, California
9 Code of Regulations and the Civil Code including, but not necessarily limited to,
10 §§ 1572, 1709, 1710, 1770(a)(5), 1770(a)(7), and 1770(a)(9). Defendants' acts and
11 practices are also unlawful because they violated Business and Professions Code
12 § 17500, et seq. Defendants' deceptive marketing and sales practices, including
13 affirmative misrepresentations and omissions, were material and substantial.

14
15 67. Plaintiff has suffered an injury in fact and has lost the value of her
16 home warranty and her air conditioner.

17
18 68. Plaintiff, on behalf of herself and on behalf of Class A and Class B,
19 seeks an order of this Court awarding restitution, disgorgement, injunctive relief and
20 all other relief allowed under § 17200, et seq., plus interest, attorneys' fees and costs
21 pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

22
23 **COUNT II - Class B v. Defendants**

24 **Violations of Bus. & Prof. Code § 17500 et seq.**

25 69. Plaintiff repeats and realleges the allegations set forth above as if fully
26 contained herein.

27
28 70. Plaintiff brings this cause of action on behalf of herself and on behalf of

1 Class A and Class B.

2

3 71. Defendants have engaged in the advertising and marketing alleged
4 herein with the intent to directly and indirectly induce the purchase of the warranties
5 and 13 SEER upgrades at issue.

6

7 72. Defendants' advertisements and marketing representations regarding
8 the nature of the warranties and 13 SEER upgrades are false, misleading and
9 deceptive as set forth more fully above.

10

11 73. At the time they made and disseminated the statements alleged herein,
12 Defendants knew or should have known that the statements were untrue or
13 misleading, and acted in violation of Cal. Bus. & Prof. Code §17500 et seq.

14

15 74. Defendants actively concealed their knowledge of the untrue and
16 misleading statements.

17

18 75. Plaintiff, on behalf of herself and on behalf of the Class, seeks
19 restitution, disgorgement, injunctive relief, and all other relief allowable under
20 §17500 et seq.

21

22 **Count III – Class A v. Defendants**

23

Breach of Contract

24 76. Plaintiff repeats and realleges the allegations set forth above as if fully
25 contained herein.

26

27 77. Plaintiff and each member of Class A entered into a warranty
28 agreement with AHS.

1 78. Defendants have uniformly breached the warranty agreements with
2 Plaintiff and the members of Class A by failing to provide repairs to home systems
3 and/or appliances as promised and as set forth above in greater detail.
4

5 79. As a proximate result of the aforementioned wrongful conduct and
6 breach committed by Defendants, Plaintiff and the members of Class A have
7 suffered and will continue to suffer damages and economic loss in an amount to be
8 proven at trial. Plaintiff and Class A members are entitled to damages and
9 injunctive and declaratory relief as claimed below.
10

11 **Count IV - Class A and Class B vs. Defendants**
12 **Unjust Enrichment**

13 80. Plaintiff repeats and realleges the allegations set forth above as if fully
14 contained herein.
15

16 81. As the intended and expected result of their conscious wrongdoing,
17 Defendants have profited and benefited from the purchase of warranties for home
18 systems and appliances by Plaintiff and the members of Class A and Class B.
19

20 82. Defendants have voluntarily accepted and retained these profits and
21 benefits, derived from Plaintiff and the members of Class A and Class B, with full
22 knowledge and awareness that, as a result of their misconduct, Plaintiff and the
23 members of the Classes were not receiving services of the quality, nature, fitness or
24 value that had been represented by Defendants, and that Plaintiff and the members
25 of the Classes, as reasonable consumers, expected.
26

27 83. Defendants have been unjustly enriched by their fraudulent and
28 deceptive withholding of benefits to Plaintiff and the Classes, at the expense of

1 Plaintiff and the Classes.

2
3 84. Plaintiff and the members of the Classes seek the disgorgement and
4 restitution of Defendants' wrongful profits, revenue, and benefits, to the extent and
5 in the amount deemed appropriate by the court, and such other relief as the Court
6 deems just and proper to remedy Defendants' unjust enrichment.

7
8 **Count V –Class and B v. Defendants**

9 **Fraudulent Misrepresentation, Concealment and Failure to Disclose**

10 85. Plaintiff repeats and realleges the allegations set forth above as if fully
11 contained herein.

12
13 86. During the Class period, Defendants knowingly, fraudulently and
14 actively misrepresented, omitted and concealed from consumers material facts
15 relating to Defendants' systematic practice of concealing the procedures pursuant to
16 which warranty claims are assessed and then denied, as well as material facts
17 relating to the 13 SEER upgrade program, and more specifically Defendants'
18 concealment of the limited scope of the DOE policy, which only covers air and
19 heating units manufactured after January 2006.

20
21 87. Defendants intentionally concealed and/or suppressed the facts with the
22 intent to defraud the Plaintiff and the members of Class A and B.

23
24 88. Defendants' knowledge of the true nature of the warranty claims
25 procedure and the circumstances in which a 13 SEER upgrade would actually serve
26 to benefit warranty holders, coupled with their knowledge that these facts were
27 neither known nor readily accessible to Plaintiff and Class A and B, creates a legal
28 obligation on Defendants' part to disclose the foregoing to Plaintiff and the Classes.

1 89. The misrepresentations, omissions and concealments complained of
2 herein were material and were made on a uniform and market-wide basis. As a
3 direct and proximate result of these misrepresentations, omissions and
4 concealments, Plaintiff and the members of Class A and B have been damaged, as
5 alleged herein. Plaintiff and the members of the Class reasonably and actually
6 relied, and continue to rely, upon Defendants misrepresentations, omissions and
7 concealments. Such reliance may also be imputed, based upon the materiality of
8 Defendants' wrongful conduct.

9
10 90. Based on such reliance, Plaintiff and members of the Classes purchased
11 warranties and 13 SEER upgrades from Defendants and, as a result, suffered and
12 will continue to suffer damages and economic loss in an amount to be proven at
13 trial.

14
15 91. Had Plaintiff and the members of Class A and B been aware of the true
16 nature of Defendants' business practices, they would not have purchased the
17 warranties and/or the 13 SEER upgrades.

18
19 92. Defendants' acts and misconduct, as alleged herein, constitute
20 oppression, fraud, and/or malice entitling Plaintiff and members of Class A and B to
21 an award of punitive damages to the extent allowed in an amount appropriate to
22 punish or to set an example of Defendants.

23
24 93. Plaintiff and the members of the Classes are entitled to damages and
25 injunctive relief as claimed below.

Count VI – Class A and Class B v. Defendants

Negligent Misrepresentation

94. Plaintiff repeats and realleges the allegations set forth above as if fully contained herein.

95. Defendants negligently and/or recklessly misrepresented, omitted and concealed from consumers material facts relating to Defendants' systematic practice of concealing the procedures pursuant to which warranty claims are assessed and then denied, as well as material facts relating to the 13 SEER upgrade program, and more specifically Defendants' concealment of the limited scope of the DOE policy, which only covers air and heating units manufactured after January 2006.

96. Defendants' knowledge of the true nature of the warranty claims procedure and the circumstances in which a 13 SEER upgrade would actually serve to benefit warranty holders, coupled with their knowledge that these facts were neither known nor readily accessible to Plaintiff and the Classes, creates a legal obligation on Defendants' part to disclose the foregoing to Plaintiff, Class A and Class B.

97. The misrepresentations, omissions and concealments complained of herein were negligently or recklessly made to potential customers and the general public on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiff and the members of the Classes have been damaged, as alleged herein.

98. Plaintiff and the members of Class A and Class B reasonably and actually relied upon Defendants' representations, omissions and concealments. Such reliance may also be imputed, based upon the materiality of Defendants'

1 wrongful conduct.

2
3 99. Based on such reliance, Plaintiff and the members of the Classes
4 purchased warranties and 13 SEER upgrades from Defendants and, as a result,
5 suffered and will continue to suffer damages and economic loss in an amount to be
6 proven at trial.

7
8 100. Had Plaintiff and the members of Class A and Class B been aware of
9 the true nature of Defendants' business practices, they would not have purchased
10 either the warranties or the 13 SEER upgrades.

11
12 101. Defendants' acts and misconduct, as alleged herein, constitute
13 oppression, fraud and/or malice entitling Plaintiff and the members of the Classes to
14 an award of punitive damages to the extent allowed in an amount appropriate to
15 punish or to set an example of Defendants.

16
17 102. Plaintiff and members of the Classes are entitled to damages and
18 injunctive relief as claimed below.

19
20 **Count VII – Class A and Class B v. Defendants**

21 **Breach of the Covenant of Good Faith and Fair Dealing**

22 103. Plaintiff repeats and realleges the allegations set forth above as if fully
23 contained herein.

24
25 104. The warranties entered into between Plaintiff, the Classes and
26 Defendants are contracts that contain an implied covenant of good faith and fair
27 dealing, which obligated Defendants to perform the terms and conditions of the
28 contracts fairly and in good faith and to refrain from doing any act that would

1 prevent or impede Plaintiff and the members of Class A and Class B from
2 performing any or all conditions of the contracts that they agreed to perform, or any
3 acts that would deprive Plaintiff and the members of the Classes of their benefits.
4

5 105. Plaintiff and the Classes performed all conditions, covenants and
6 promises to be performed on their part in accordance with the contracts.
7

8 106. Defendants knew Plaintiff and the Classes fulfilled all their duties and
9 conditions under the contracts.
10

11 107. Defendants breached the implied covenant of good faith and fair
12 dealing under the contracts by engaging in the conduct complained of herein,
13 including failing providing warranty services to the Class and representing that
14 SEER upgrade coverage was necessary when the DOE mandate actually did not
15 encompass the manufacture of component parts or the repair of systems
16 manufactured before January 2006.
17

18 108. Plaintiff and members of the Classes retained counsel to obtain benefits
19 due under the home protection contracts.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays that this case be certified and maintained as a
23 class action and for judgment to be entered upon Defendants as follows:
24


- 25 1. For economic and compensatory damages on behalf of Plaintiff and all
26 members of the Class;
27 2. For restitution;
28 3. For punitive damages, as otherwise applicable;

- 1 4. For injunctive and declaratory relief, as claimed herein;
2 5. For reasonable attorneys' fees and reimbursement of all costs for the
3 prosecution of this action; and
4 6. For such other and further relief as this Court deems just and
5 appropriate.

6
7 DATED: March 1, 2007

CHAVEZ & GERTLER LLP
PEARSON, SIMON, SOTER, WARSHAW &
PENNY, LLP
SEEGER WEISS LLP
CUNEO, GILBERT & LaDUCA, LLP

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9
10
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28
Attorneys for Plaintiff KATHIE AAMODT WARD,
on behalf of herself and all others similarly situated

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues so triable.

DATED: March 1, 2007

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Attorneys for Plaintiff KATHIE AAMODT WARD,
on behalf of herself and all others similarly situated



CONTRACT AGREEMENT

OWNER:

Kathie Aamodt-Ward
19025 Parthenia
Northridge, CA 91324

MONTHLY RATE: \$36.00
ANNUAL RATE: \$432.00
RENEWAL TERM: 02/18/2006-02/18/2007 12:01 am
CONTRACT NUMBER: 76160011
COVERED PROPERTY: 18630 Hart St
Reseda, CA 91335
DWELLING TYPE: Single Family Residence under 5,000 sq. ft.
PAYMENT SELECTED: 12 Monthly Payments

Notice of Applicable Rate and Terms for Renewal If you authorized the monthly payment option through your mortgage company, or you authorized AHS to automatically charge your credit card or checking account for payment of your current contract, your first monthly payment for this renewed contract will be considered an authorization for another 12 month contract. For your convenience, the same method of payment will be applied to this renewed contract unless you specify otherwise. If you elect not to renew, please notify AHS 30 days prior to the expiration of your current contract. If you have any questions, or need further assistance, please call AHS at 1-800-345-9796.

Congratulations on owning this outstanding protection!

Nothing can enhance the value of your home — or your home life — like your American Home Shield home warranty. It protects the most complex appliances and systems in your home — saving you time and money on covered repairs. Plus, it provides for replacement of products we can't fix — or the option to receive cash instead. With outstanding protection like this, we think you'll see why U.S. homeowners choose AHS more than any other home warranty company.

Your home warranty protects all of these important home appliances and systems:

CEILING FANS	DISHWASHER	DUCTWORK	ELECTRICAL SYSTEM
AIR CONDITIONING	GARAGE DOOR OPENER	CLOTHES WASHER	CLOTHES DRYER
REFRIGERATOR	GARBAGE DISPOSAL	BUILT-IN MICROWAVE	HEATING
PLUMBING	RANGE/OVEN	COOKTOP	STOPPAGES
WATER HEATER			

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for a modest fee by phoning 1-866-373-8059.

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WELL PUMP

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SPA ONLY

ADDITIONAL SPA

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AMERICAN HOME SHIELD OF CALIFORNIA, INC.



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We appreciate the opportunity to serve you. And to

1. SCOPE AND OF SPECIALTY EQUIPMENT

AHS is not responsible for any upgrades, work or costs required to comply with any federal, state, or local laws, regulations or ordinances or utility regulations, or to meet current building or zoning code requirements, or to correct for code violations. AHS is not responsible for service when permits cannot be obtained, nor will it pay any costs relating to permits. AHS will not contract to perform service nor pay costs involving hazardous or toxic materials including, but not limited to, asbestos, lead, radon, or mold.

2. WELL PUMP COVERAGE

AHS is not responsible for any repairs or replacement of well pumps or well pump components for electrical or mechanical malfunctions. AHS is not responsible for any repairs or replacement of well pump components for any other reasons.

3. LIMITATIONS OF LIABILITY

AHS is not responsible for any damages or costs resulting from the use of any equipment or appliance. AHS is not responsible for any damages or costs resulting from the use of any equipment or appliance.

4. CANCELLATION

AHS reserves the right to cancel this contract at any time. AHS reserves the right to cancel this contract at any time.

5. MISCELLANEOUS

AHS reserves the right to modify this contract at any time. AHS reserves the right to modify this contract at any time.

6. BUILDING AND ZONING CODE REQUIREMENTS OR VIOLATIONS

AHS is not responsible for any upgrades, work or costs required to comply with any federal, state, or local laws, regulations or ordinances or utility regulations, or to meet current building or zoning code requirements, or to correct for code violations. AHS is not responsible for service when permits cannot be obtained, nor will it pay any costs relating to permits. AHS will not contract to perform service nor pay costs involving hazardous or toxic materials including, but not limited to, asbestos, lead, radon, or mold.

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we're committed to ensure your satisfaction.