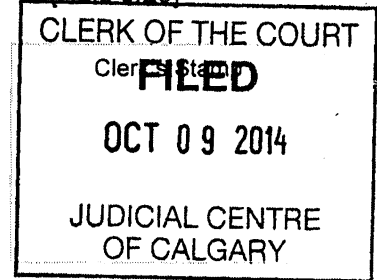


Form 10  
[Rule 3.25]



COURT FILE NUMBER 1401-11108

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) LYLE TREMBLAY as Representative Plaintiff

DEFENDANT(S) HONEYWELL INTERNATIONAL INC. and HONEYWELL LIMITED

DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT DOCKEN KLYM  
900, 800 – 6<sup>TH</sup> AVENUE S.W.  
CALGARY, ALBERTA T2P 3G3  
Phone: 403-269-3612  
Fax: 403-269-8246

**A Class Proceeding pursuant to the *Class Proceedings Act*, Chapter S.A. 2003 ch c-16.5.**

**NOTICE TO DEFENDANT**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

**THE PARTIES**

1. The Plaintiff Lyle Tremblay, resides in the City of Spruce Grove, in the Province of Alberta. As detailed below, Mr. Tremblay was a purchaser and user of the Honeywell TrueSTEAM humidifiers that are the subject of this action.
2. The Defendant, Honeywell International Inc. ("Honeywell International"), is a Delaware corporation that has its headquarters in Morristown, New Jersey. Honeywell International is a large Fortune 100 company that develops and manufactures numerous products for consumers and businesses, including the TrueSTEAM humidifiers.
3. Honeywell International was, at all relevant times, engaged in the design, manufacture, marketing and sale of Honeywell TrueSTEAM humidifiers, model numbers HM506, HM509 and/or HM512 (the "Humidifiers") in Canada.

4. The Defendant, Honeywell Limited, is a corporation registered under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 that has its headquarters in Mississauga, Ontario. Honeywell Limited is a Canadian subsidiary of Honeywell International. Honeywell Limited was, at all material times, engaged in the design, manufacture, marketing and sales of the Humidifiers in Canada.
5. Both Honeywell International and Honeywell Limited have substantial business operations in Canada. Honeywell Limited has a number of offices in Alberta.
6. The business of Honeywell International and Honeywell Limited (collectively, "Honeywell") are inextricably interwoven with that of the other and each is the agent of the other for the design, manufacture, marketing and sale of the Humidifiers.

#### **THE CLASS**

7. The Class is those persons in Canada who purchased the Humidifiers (the "Class").

#### **THE HUMIDIFIERS**

8. The Humidifiers are large, steam-based humidifiers that are touted by the Defendants as providing "whole home humidification" in homes up to 3,000 square feet in size. Unlike traditional consumer humidifiers, the Humidifiers operate by heating water into steam, which is then injected directly into a home's HVAC system. Due to their complexity, the humidifiers are normally installed by an HVAC specialist.
9. The essential design of the Humidifiers is the same in all three models, with the models only varying by the amount of moisture they are capable of injecting.
10. The Humidifiers are prone to premature failure and are not suitable for the use advertised, marketed and warranted by Honeywell. Contrary to Honeywell's representations, the inside of the Humidifiers, including the heating coil used to heat water and various other components, are prone to failure, due to issues that include scaling and the buildup of mineral deposits.
11. Once these problems develop, the Humidifiers are no longer capable of serving their function as they cause the Humidifiers to fail in various ways, including overheating, blockages and cracking of components.
12. These problems can result in hot water leaking from the unit, causing damage to a home and/or bodily injury to a person. Due to the fact that they are normally installed in a basement or other out-of-the-way location, any problem with a Humidifier may go undetected for a significant length of time.
13. As a result of the Humidifiers' defective nature, it is inevitable that purchasers will be required to repair and/or replace the Humidifiers, or certain component parts, often multiple times.
14. As detailed below, the Plaintiff alleges that Honeywell knew or ought to have known that the humidifiers were defective and not fit for use. Honeywell has received numerous complaints and warranty claims from customers relating to the premature failure of the Humidifiers. Humidifier customers have also complained about their defective nature and premature failure on numerous websites.

15. Despite these complaints, Honeywell has failed to alter its design or manufacture of the Humidifiers or the warranty procedure it uses to remedy defects.

#### **THE PLAINTIFF'S EXPERIENCE WITH THE HUMIDIFIERS**

16. Mr. Tremblay purchased a Honeywell HM506 humidifier in May of 2008 from an Alberta HVAC dealer. The humidifier was installed by a certified journeyman HVAC contractor.
17. At least one component on Mr. Tremblay's humidifier has failed every year since the humidifier was purchased. The unit initially failed due to an undetermined component failure sometime between November, 2008 and February, 2009. This first unit was replaced by Mr. Tremblay's HVAC dealer, which agreed to bear the replacement cost.
18. In October 2009, upon starting the replacement unit for the winter heating season, the water level sensor in the unit did not function and required replacement by the HVAC dealer.
19. Subsequently, on four separate occasions between 2010-2013 the water tank in the unit cracked and required replacement by the HVAC dealer.
20. In December, 2012 or January, 2013 Mr. Tremblay's humidifier again failed and was replaced by the HVAC dealer.
21. Finally, sometime in April 2013 it was discovered that the water tank on the humidifier had again cracked. The HVAC dealer advised that he did not believe he would be able to obtain the requisite parts and so the unit was permanently turned off.

#### **THE REPRESENTATIONS**

22. Honeywell's marketing of the Humidifiers has focused on their supposed reliability and ease of use.
23. The features of the Humidifiers that Honeywell touts on its website include:
  - a. "Out of Sight, Out of Mind - TrueSTEAM is installed out-of-sight by your heating and cooling professional into your home's central heating and cooling system. You can forget about having to fill clunky, portable units, because TrueSTEAM automatically fills itself;"
  - b. "TrueSTEAM takes the best features from current steam humidifiers with their efficiency, performance and decreased water consumption, and combines it with the ease of installation, reliability and value of flow-through humidifiers;" and
  - c. "Minimal Maintenance - Simply clean once a year with soap and water and the rest of the time it cleans itself automatically."
24. The Humidifiers operating manual, which was received by all members of the Class, represents that the humidifiers:
  - a. provide "the highest capacity and most efficient steam humidification for whole-house residential applications;"
  - b. are "easy to maintain. Just clean the tank as instructed.;" and
  - c. contain a sediment screen that "keeps the [water] tank clean for a longer period of time, reducing maintenance and ensuring optimum performance."

25. These express representations were false as the Humidifiers did not perform adequately or efficiently and required extensive maintenance, including frequent repair.

## **CONSUMER PROTECTION VIOLATIONS**

### **Provincial Consumer Protection Legislation**

26. The Plaintiff relies upon the Alberta *Fair Trading Act*, R.S.A. 2000, Ch. F-2, ss. 1-6, and pleads that it is unfair practice for a supplier in a consumer transaction to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction. A supplier representation that goods have performance, characteristics, uses, benefits or other attributes that they do not have constitutes an unfair practice.
27. The Plaintiff relies upon the British Columbia *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, ss. 1, 4, 171 and 173, and pleads that it is a deceptive act or practice for a supplier to make an oral, written, visual, descriptive or other representation that has the capability, tendency or effect of deceiving or misleading a consumer. A representation by a supplier that goods are of a particular standard, quality, grade, style or model if they are not constitutes a deceptive act or practice.
28. The Plaintiff relies upon Saskatchewan's *The Consumer Protection Act*, R.S.S. 1996, c. C-30.1, ss. 3, 5, 6, 7, 14, 16, 55, 56, 57, 60, 65 and 70, and pleads that it is an unfair practice for a supplier to do or say anything, if as a result a consumer might reasonably be deceived or misled, to make a false claim, representing that goods are of a particular standard, quality, grade, style or model if they are not.
29. The Plaintiff relies upon Manitoba's *The Business Practices Act*, S.M. 1990-91, c. 6, ss. 1, 2, 4 and 23, and pleads that it is an unfair practice for a supplier to do or say anything, if as a result a consumer might reasonably be deceived or misled, to make a false claim, representing that goods are of a particular standard, quality, grade, style or model if they are not.
30. The Plaintiff relies upon the Ontario *Consumer Protection Act*, S.O. 2002, Ch.30, Sch. A, ss. 1-2, 6-11, 14, 17-19, and pleads that it is an unfair practice for a person to make a false, misleading or deceptive representation. A representation that goods are of a particular standard or quality is an unfair practice as is a representation as is failing to state a material fact if such use or failure deceives or tends to deceive.
31. The Plaintiff relies upon the Quebec *Consumer Protection Act*, R.S.Q., c. P-40.1, s. 1, 37, 38, 41-43, 53-54 and 272, and pleads that goods must conform to the statements or advertisements regarding them made by the manufacturer. The statements or advertisements are binding on that manufacturer. A written or verbal statement by the representative of a manufacturer respecting goods and services is binding on that manufacturer, as is a warranty respects goods or services that is mentioned in a statement or advertisement of the manufacturer. Goods must be fit for the purpose for which they are normally used and must be durable in normal use for a reasonable period of time.
32. The Plaintiff relies upon the New Brunswick *Consumer Product Warranty and Liability Act*, S.N.B. 178, c. C-18.1, s. 1, 4(2), 10, 15, 23 and 27, and pleads that statements made in writing on the product or its container or in a label, tag, sign or document attached to the product are express warranties. It is an implied warranty that products are fit for the purpose for which products of that

kind are normally used and that the product complies with all mandatory federal and provincial standards in relation to health, safety and quality.

### **Honeywell's Breaches of the Consumer Protection Legislation**

33. The Plaintiff pleads that Honeywell is in breach of the above-listed consumer legislation in that:
- a. the Humidifiers were not of merchantable quality, reasonably fit for the intended purpose or durable for a reasonable period of time having regard to the use which they would normally be put; and
  - b. Honeywell engaged in unfair practices by:
    - i. making false, misleading and deceptive representations, including those detailed at paragraphs 23-25, above;
    - ii. representing that the Humidifiers were of a particular standard, quality and grade when they were not;
    - iii. failing to disclose that the Humidifiers were defective and prone to early failure; and
    - iv. making representations about the performance, capability or length of life of the humidifiers that were not based on adequate and proper independent testing that was done before the representation was made and that were not substantiated by the testing.

The representations, detailed at paragraphs 23-25 above, were made with the intention that consumers, including the Plaintiff, would rely upon them and consumers, including the Plaintiff, reasonably relied on these representations when purchasing the Humidifiers.

### **COMPETITION ACT VIOLATION**

34. The Plaintiff relies upon ss. 36 and 52 of the federal *Competition Act*, R.S.C., 1985, c. C-34 and pleads that no person, for the purpose of promoting the supply or use of a product by any means whatever, can knowingly or recklessly make a representation to the public that is false or misleading in a material respect
35. Honeywell has been aware of the defects in the Humidifiers, detailed at paragraphs 10-13, through the processing of warranty claims and other consumer complaints as well as its internal pre-market testing of the Humidifiers, or was reckless in not knowing of the defects.
36. Despite its awareness, or reckless absence of knowledge, Honeywell continued to make the false and misleading representations, detailed at paragraphs 23-25, for the purpose of promoting the sale of the Humidifiers. These false representations were material.

### **NEGLIGENCE**

37. The Plaintiff pleads that Honeywell owed to him and other persons in Canada who are similarly situated the following duties of care:
- a. to ensure that the Humidifiers were designed and manufactured properly;

- b. to engage in adequate pre-marketing testing of the Humidifiers; and
- c. upon discovering that the Humidifiers were defective and prone to premature failure, to promptly remove the Humidifiers from the marketplace and take other appropriate remedial action.

38. The Plaintiff pleads that Honeywell breached its duties of care in that:

- a. the Humidifiers were negligently designed and manufactured in a manner which, under normal conditions, usage and application would cause the Humidifiers to fail prematurely and cause damage to property and/or persons;
- b. Honeywell failed to properly research the design of the Humidifiers;
- c. Honeywell failed to engage in adequate pre-market testing of the Humidifiers to detect the defects;
- d. Honeywell failed to institute an effective products recall upon discovering the defects or the potential for the defects to occur;
- e. Honeywell failed to remedy and/or repair the defects upon discovering them; and
- f. Honeywell acted recklessly in that it knew or ought to have known that the Humidifiers were defective and would fail prematurely when marketed and sold to Canadian consumers, including the Plaintiffs.

39. The Defendants' negligence proximately caused damage to the Class, particularized at paragraph 48 below.

## **WARRANTY**

### **Violation of Express Warranty**

- 40. In the Humidifiers' operating manual, Honeywell expressly warranted that the Humidifiers would be free from defects in the workmanship or materials, under normal use and service, for a period of five years.
- 41. As discussed at paragraph 10-13, above, the Humidifiers are not free from defects in workmanship or materials. In fact, the materials and workmanship used in the Humidifiers were not proper for the Humidifiers' purpose and resulted in scaling and other issues that caused the Humidifiers to fail prematurely, far short of the applicable warranty period.
- 42. The Plaintiff pleads that to the extent that the warranty provided by Honeywell purports to limit the obligations of Honeywell it is invalid in that:
  - a. the terms of the express warranty are unreasonable, unconscionable and were not agreed to at the time that the Humidifiers were purchased; and
  - b. Honeywell knew that the Humidifiers would fail before the expiry of the warranty period as a result of the defects, or in the alternative, acted recklessly or negligently in failing to ascertain this fact.

### **Violation of Implied Warranty under Provincial Sale of Goods Legislation**

43. The Plaintiff relies upon:

- a. Alberta's *Sale of Goods Act*, R.S.A. 2000, Ch. S-2, ss. 3, 16, and 52;
- b. British Columbia's *Sale of Goods Act*, R.S.B.C. 1996, Ch. 410, ss. 1, 16 and 56;
- c. Saskatchewan's *The Sale of Goods Act*, R.S.S. 1978, Ch. S-1, ss. 2, 16, 52;
- d. Manitoba's *The Sale of Goods Act*, C.C.S.M., c. S.10, ss. 1, 16 and 54;
- e. Ontario's *Sale of Goods Act*, R.S.O. 1990, c. S. 1, ss. 1, 15, 51;
- f. New Brunswick's *Sale of Goods Act*, R.S.N.B. 1973, c. S-1, 1, 15, 50; and
- g. Nova Scotia's *Sale of Goods Act*, R.S.N.S. 1989, Ch. 408, s. 2, 17 and 54.

44. The Humidifiers were initially sold by Honeywell to a retailer, who then sold the Humidifiers to the Class. In other instances, Honeywell initially sold the Humidifier to an intermediary distributor who then sold the Humidifiers to a retailer, who in turn sold the Humidifiers to the Class. All of these sales were made under a contract for sale, as defined by the provincial sales of goods legislation detailed at paragraph 43 above.

45. The contracts for sale between Honeywell, any intermediary distributor, retailers and the Class all included the implied conditions, pursuant to the Provincial Sale of Goods legislation detailed at paragraph 43, that the Humidifiers would be reasonably fit for the purpose of humidifying homes and be of merchantable quality.

46. Honeywell, any intermediary distributor and all retailers intended to extend the benefit of the implied conditions to the Class.

47. Honeywell was aware that the Class would be purchasing the Humidifiers for the purpose of humidifying homes and committed a fault or wrongful act by breaching the implied conditions by selling a product that was not reasonably fit for its purpose and not of merchantable quality due to the problems detailed at paragraphs 10-13.

48. The Plaintiffs suffered damage, detailed at paragraph 48, as a result of Honeywell's breaching of the implied conditions.

## **DAMAGES**

49. As a result of the breaches pleaded at paragraphs 26-41, above, the Plaintiff and the Class have suffered loss and damages, the particulars of which include:

- a. damages equivalent to the cost of repair and/or replacing the Humidifiers;
- b. damage for the cost of hiring a specialist to perform a repair and/or replacement of the Humidifiers;
- c. damages for the property damage caused by the premature failure of the Humidifiers, including water damage to a home;
- d. damages for bodily injury caused by the Humidifiers premature failure, including contact with hot water emitted from the Humidifier;

- e. damages for overpayment of the Humidifiers, which contained a latent defect;
- f. damage equivalent to the diminution in value of the Humidifiers;
- g. damages for the full cost of any investigation in connection with this action;
- h. damages pursuant to the consumer protection legislation detailed in paragraphs 26-32 above; and
- i. damages pursuant to s. 36(1) of the federal *Competition Act*.

50. The Plaintiff asserts that Honeywell's conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the rights of the Plaintiff and the rights of other who are similarly situated, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.

#### **REMEDIES SOUGHT**

- 51. An Order for certification pursuant to the *Class Proceedings Act* c15.5 SA 2003 and appointment of the Plaintiff as the Representative Plaintiff.
- 52. General damages in the amount of \$50,000,000.00.
- 53. Punitive damages in the amount of \$10,000,000.00.
- 54. Costs on a complete indemnity basis.
- 55. Interests pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed.
- 56. Such further and other relief as this Court may deem fit.

#### **NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

#### **WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.