

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

TERRY BISHOP, DVM; RODNEY, JANEEN,
CHAD, and AARON NAEDLER, and
NAEDLER FARMS II; DANIEL and ERIN
RICHARDS; BERNARD and DENISE
ROBILLARD, and ROBILLARD FLAT
FARMS, INC., on behalf of themselves and all
others similarly situated

v.

DELAVAL INC., DELAVAL
INTERNATIONAL AB, and DELAVAL
HOLDING AB.

Case No. 5:19-cv-06129

Hon. Stephen R. Bough

AMENDED CLASS ACTION COMPLAINT

Plaintiffs Daniel and Erin Richards, Rodney, Janeen, Chad, Aaron Naedler and Naedler Farms II, Terry Bishop, Bernard and Denise Robillard and Robillard Flat Farms, Inc. (“Plaintiffs”) bring this action individually and on behalf of all others similarly situated against DeLaval Inc., DeLaval International AB, and DeLaval Holding AB (collectively, “DeLaval” or “Defendants”) and state as follows:

NATURE OF THE ACTION

1. DeLaval designed, manufactured, marketed, sold, distributed, and installed the DeLaval classic model voluntary milking system (the “classic model VMS”), which is an automatic milking system purportedly designed to optimize quality milk yield in the most cow-friendly, hygienic and efficient way. As uniformly marketed and represented by DeLaval, “[t]his reliable system, with its unique robotic arm, can cost-efficiently improve your farm and quality of life.”

2. The classic model VMS consists of a complete feeding, milking, cooling, and cleaning system, which draws cows to the system for milking by offering feed. As uniformly marketed and represented by DeLaval, once the cow enters the classic model VMS, the “fast, flexible and gentle hydraulic robot arm, guided by dual lasers and the optical camera, finds teats quickly for dependable cup attachment – even with teats at 45° angles.”

3. DeLaval uniformly marketed and represented that the classic model VMS provides for “true quarter milking,” which means that each quarter of a cow is fully milked one hundred percent (100%) of the time that it is milked by a classic model VMS robot without any of the four quarters being over milked.¹ DeLaval admits that “true quarter milking is a must” to “maximize milk extraction in the most effective and healthy manner possible.”

4. DeLaval further uniformly marketed and represented that the classic model “VMS provides superior milking hygiene, which includes thorough automated teat preparation and sanitation pre-milking, and all cups rinsed inside and out between each cow and before reattachment.” DeLaval uniformly marketed and represented that the classic model VMS replaces labor otherwise performed by farmers, thereby “increasing productivity and profitability.”

5. Purportedly drawing on the past performance of the classic model VMS, DeLaval uniformly represented that the thousands of dairy farmers who purchased and transitioned to the classic model VMS “now enjoy a more flexible lifestyle every single day,” because the classic

¹ A dairy cow has four (4) individual glands known as quarters, each of which has a teat. The classic model VMS has four (4) teat cups that are supposed to attach to each of the four (4) teats of the cow, so that each quarter of the cow is fully milked. When one or more teat cups fail to properly attach and remain attached until that quarter is fully milked, true quarter milking does not occur since one or more quarters of the cow are not fully milked or, as frequently is the case, not milked at all. This failure is commonly referred to as “missed quarters,” which results in cows becoming ill and developing mastitis, an inflammation and infection in the udder.

model VMS “takes care of [their] milking,” while providing “50% labour savings, improved morale and job satisfaction, as well as considerably lower milk-harvesting costs.”

6. DeLaval also uniformly marketed and represented that classic model VMS robots “come as standard” with a Mastitis Detection index (“MDi”) that supposedly alerts dairy farmers “of potential mastitis at least 3-4 days ahead, giving [the farmer] time to react before a cow is in trouble.” This feature, however, did not come as standard and was not provided to dairy farmers in the United States, despite the representations to the contrary.

7. DeLaval also uniformly represented that classic model VMS robots are equipped with an Online Cell Counter (“OCC”), which, according to DeLaval, does “accurately identify acute mastitis cases and follow-up closely on sub-clinical cases.” This feature is supposed to permit dairy farmers to detect and treat infected cows at an earlier stage of infection, but was not provided to dairy farmers in the United States, despite the representations to the contrary.

8. As part of its uniform marketing scheme, DeLaval further represented that the classic model “VMS is fully upgradeable so [farmers] will always have access to the latest technology,” and that the classic model VMS is “upgradeable over time as further advances are made in this sophisticated milking system.” This was a key selling point since the upgradeability feature was not offered by manufacturers of other automatic milking systems.

9. Despite these representations, the classic model VMS was not upgradeable, utilized outdated technology that could not be upgraded as further advancements were made and, if purchasers of the classic model VMS wanted to upgrade to the latest technology (or add a MDi or OCC), their only option was to replace their classic model VMS robots by purchasing new robots and equipment at a substantial, prohibitive expense.

10. In reliance on these and other representations made to them by DeLaval, Plaintiffs and many other dairy farmers purchased classic model VMS robots at costs exceeding hundreds of thousands of dollars, and expended additional costs to design, modify, retrofit and/or build new barns to install the system, which did not perform as advertised, marketed or represented and, instead, caused economic harm to purchasers and physical harm to their property.

11. After inducing dairy farmers to purchase classic model VMS robots, DeLaval delivered a product that was defectively designed, was not free from defects in material and workmanship, failed to conform to the express and implied warranties of DeLaval, and failed to perform as uniformly advertised, marketed and represented by DeLaval. Among other defects, the classic model VMS has:

- a. a defective guidance system that fails to accurately and consistently find and attach the teat cups to each teat of the cow due to, among other defects, camera and encoder defects;
- b. a defective, slowed, and/or delayed teat cup detachment process, which causes the teat cups and hoses to be consistently dragged across the deck mat, as well as through the water and manure that accumulate thereon;
- c. a defective teat cleaning system that fails to dry teats before the start of the milking process, is unable to discriminate between a dirty and clean udder, and only performs a successful teat cleaning a mere sixty-seven percent (67%) of the time; and
- d. a defective cleaning and washing system that fails to adequately clean and wash, among other things, the dirt, manure and other unsanitary substances that penetrate, become trapped and clogged in, and/or infiltrate the hoses, belting and/or vents of the classic model VMS.

12. As a result of these defects and others specified herein, the classic model VMS fails to provide for “true quarter milking,” as uniformly advertised, marketed and represented by DeLaval, while causing overall milk production to decrease, milk value and quality to decrease

due to increased bacteria and somatic cell counts, increases the mastitis and culling rates of the herds of cows, and property damage to cows, milk and farms.

13. DeLaval knew of these defects and the problems with the classic model VMS no later than 2007 when the Journal of Dairy Science published an article, which, among other things, noted that the management software for the classic model VMS to which DeLaval had access revealed that only 89.7% of all milkings were successful, meaning that the classic model VMS missed quarters and did not provide for true quarter milking 10.3% of the time.

14. Moreover, in or around August of 2009, Terry R. Smith, Ph.D. (a purported expert retained by DeLaval) analyzed the classic model VMS robots that were then operational on a dairy farm in New York known as Chambers Dairy. The analysis identified the same defects and problems referenced above, as well as several others, which are common to all classic model VMS robots and caused the financial ruin of that dairy farm (the “Smith Report”).

15. DeLaval likely knew of the defects and problems with the classic model VMS much earlier than 2007-2009 based on the data its robots collected and maintained – which was concealed from the dairy farmers to whom the classic model VMS was sold – detailing the abilities, capabilities, defects, failures, functions, past performance and problems with the classic model VMS robots that had been in operation across the world (the “VMS Data”).²

16. A former employee of DeLaval, Alain Ethier (“Ethier”), with extensive experienced with milking equipment has come forward as a whistleblower “due to [his] dissatisfaction with the poor quality of its milking equipment, systems and services, as well as the false representations DeLaval made about the abilities, benefits and capabilities of its milking

² The VMS Data is electronic data collected by DeLaval from the onboard monitoring software of each of the classic model VMS robots that are installed across the world.

equipment, systems and services.” Affidavit of Alain Ethier (Exhibit A) (“Ethier Affidavit”), ¶ 2.

17. Ethier confirms that the above representations made by DeLaval, among others specified herein, were part of a “standard DeLaval sales practice . . . used to convince dairy farmers to purchase classic model VMS units from DeLaval,” which were “unrealistic and misleading based on [his] review and evaluation of the classic model VMS and extensive experience with milking equipment . . .” Exhibit A, Ethier Affidavit, ¶¶ 9, 17.

18. To induce dairy farmers to purchase the classic model VMS, DeLaval knowingly engaged in a deceptive, fraudulent and negligent marketing scheme, which misrepresented the past performance of classic model VMS robots that had been in operation across the world, despite knowing those representations were ambiguous, deceptive, false, misleading and, at best, half-truths based on its unique, peculiar and superior knowledge thereof.

19. Once DeLaval induced the sale of a classic model VMS robot, it systematically breached its contractual promises and failed to honor its express and implied warranties, failed to correct or repair the defects and problems with the classic model VMS, refused to refund the purchase price paid by purchasers for the system, and actively concealed the defects and problems with the classic model VMS by blaming purchasers for its failures.

20. DeLaval had unique, peculiar and superior knowledge of the defects and problems with the classic model VMS from, among other non-public sources, the VMS Data, the Smith Report and the experiences relayed to DeLaval by purchasers of the classic model VMS, all of which DeLaval concealed from Plaintiffs and the other dairy farmers to whom the classic model VMS was sold in furtherance of its deceptive, fraudulent and negligent marketing scheme.

21. The defects and problems with the classic model VMS were latent in nature, not disclosed by DeLaval to purchasers of the classic model VMS, not readily apparent, obvious or visible to purchasers before the classic model VMS was operational and incorporated into a barn that was either newly built or retrofitted to accommodate its use, and could not have been discovered by purchasers upon reasonable diligence and inspection.

22. The defects and problems with the classic model VMS were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of DeLaval or in the control of the farmers who purchased classic model VMS robots and, instead, were caused by the defects with the classic model VMS that DeLaval created, over which it had control and of which it had peculiar, unique and superior knowledge.

23. The defects and problems with the classic model VMS could not be corrected through a repair or replacement of the classic model VMS and, despite the foregoing, DeLaval systematically and uniformly refused to provide purchasers of classic model VMS robots, including, but not limited to, Plaintiffs, with a refund or any other minimum adequate remedy sufficient to compensate them for their actual damages caused by the classic model VMS.

24. Due to the defects and problems with the classic model VMS, each of which DeLaval had knowledge at all times relevant herein, DeLaval introduced an upgraded model of the classic model VMS known as the V300, which was designed by DeLaval in an attempt to address and correct at least some of the numerous defects and problems specified herein that plagued the classic model VMS.

25. However, since the classic model VMS was not upgradable and could not be upgraded as further advancements were made by DeLaval, such as those incorporated into the V300, the only way for purchasers of classic model VMS robots to upgrade to the latest technology

is to replace their outdated, defective classic model VMS robots by purchasing V300 robots at substantial and, often times, prohibitive expense.

26. As a result of the foregoing and the other misconduct alleged herein in which DeLaval engaged, numerous dairy farmers have been seriously injured, many of whom are on the brink of financial ruin. Consequently, these farmers look to their legal remedies in the hopes of obtaining the compensation they are rightfully and legally entitled to recover for the property damage and pecuniary losses they suffered as a result of the acts and omissions of DeLaval.

27. Those dairy farmers that continue to milk their cows with classic model VMS robots are completely dependent on DeLaval to provide parts and service just to keep the robots functioning, even though they do not function as uniformly advertised, marketed and represented by DeLaval. This dependence is heightened by the fact that dairy cows must be timely milked each day or else they will develop mastitis and other serious health issues or death.

28. Another reason that these farmers are so dependent on DeLaval is that their barns were designed and then newly constructed or retrofitted at the behest of DeLaval to accommodate the classic model VMS and cannot be used to milk cows by any alternative method; that is, DeLaval knowingly created a situation where dairy farmers are incapable of milking their cows through any system other than its classic model VMS.

29. DeLaval created and manufactured this system of dependency to further its deceptive, fraudulent and negligent uniform marketing scheme, knowing that it would deter dairy farmers to whom classic model VMS robots were sold from seeking legal recourse out of fear of retaliation by DeLaval, which DeLaval threatened against Plaintiff Terry Bishop. As a result, the only recourse for farmers still using classic model VMS robots is to join a class action.

JURISDICTION AND VENUE

30. Jurisdiction and venue are proper in this Court.

31. This Court has jurisdiction over this lawsuit under the Class Action Fairness Act, 28 U.S.C. § 1332, because this is a proposed class action in which: (1) there are at least 100 class members; (2) the combined claims of class members exceed \$5,000,000.00, exclusive of interest, attorneys' fees, and costs; and (3) DeLaval and class members are domiciled in different states.

32. This Court has personal jurisdiction over Defendants. DeLaval Inc. is a corporation with its principal place of business at 11100 N Congress Ave, Kansas City, Missouri 64153, and, therefore is "at home" in this District with sufficient minimum contacts in Missouri to render the exercise of jurisdiction by this Court proper and necessary.

33. Further, as alleged in detail herein, this Court has personal jurisdiction over DeLaval Int'l and DeLaval Holding because DeLaval Inc. is a mere division of DeLaval Int'l and DeLaval Holding. DeLaval Int'l and DeLaval Holding control and dominate the affairs of DeLaval Inc., including its affairs in Kansas City, Missouri, such that DeLaval Int'l and DeLaval Holding are the legal "alter egos" of DeLaval Inc., who directed their actions to the State of Missouri by selling, marketing, and advertising the classic model VMS robots through DeLaval Inc. using misleading, inaccurate, negligent and false representations.

34. Venue is proper pursuant in this District under 28 U.S.C. § 1391(b) because a substantial part of the conduct at issue in this case occurred in this District.

PARTIES

Plaintiffs

35. Plaintiffs Daniel and Erin Richards (collectively, "Richards") are dairy farmers, who reside at 167 Bunker Hill Road, Cossayuna, New York, and operate a dairy farm at that same

address (the “Richards Farm”). The Richards purchased two classic model VMS robots that went into operation on or about April 17, 2017.

36. Plaintiffs, Rodney, Janeen, Chad, and Aaron Naedler (collectively, “Naedlers”) are dairy farmers who reside at N5129 Romadka Ave., Granton Wisconsin 54436, and operate a dairy farm through Naedler Farms II at Pine Creek Road, Granton, WI 54436 (the “Naedler Farm”). The Naedlers purchased five classic model VMS robots that went into operation in or about May 2015.

37. Plaintiff Terry Bishop (“Bishop”) is a dairy farmer, who resides at 8258 US-411, Benton, Tennessee, and operates a dairy farm at 295 Antioch Church Road, Benton, Tennessee (the “Bishop Farm”). Bishop purchased four classic model VMS robots that went into operation on or about November 4, 2014.

38. Plaintiffs Bernard and Denise Robillard (collectively, “Robillards”) are dairy farmers, who reside at 5 Sanville Road, Irasburg, Vermont, and operate a dairy farm at that same address through Robillard Flat Farms, Incorporated (the “Robillard Farm”). The Robillards purchased four classic model VMS robots through Robillard Flat Farms, Incorporated that went into operation on or about November 11, 2014.

Defendants

39. DeLaval International AB (“DeLaval Int’l”) is a company founded under the laws of Sweden with its principal place of business located in Tumba, Sweden. DeLaval Int’l is a wholly owned subsidiary of DeLaval Holding AB. DeLaval Int’l registered itself to do business in the State of Missouri.

40. On December 7, 2007, DeLaval Int’l filed an Application for Certificate of Authority for a Foreign For-Profit Corporation with the Missouri Secretary of State, stating that

the purpose of its business in Missouri is as the “[o]wner of inventory at the Missouri physical location of 11100 North Congress Avenue, Kansas City MO 64153.” DeLaval Int’l has continuously renewed that application since 2007 and remains registered to do business in Missouri.

41. DeLaval Incorporated (“DeLaval Inc.”) is a Delaware corporation with its principal place of business at 11100 North Congress Avenue, Kansas City, Missouri 64153, which develops, designs, manufactures, advertises, sells, promotes, services, maintains, repairs, distributes, and installs equipment and systems for milk production and animal husbandry markets, including, but not limited to, voluntary milking systems. DeLaval Inc. is also a wholly owned subsidiary of DeLaval Holding AB.

42. DeLaval Holding AB (“DeLaval Holding”) is the parent company for DeLaval Inc. and DeLaval Int’l. On information and belief, DeLaval Holding AB is a wholly owned subsidiary of Tetra Laval Group.

43. Defendants (collectively, “DeLaval”) hold themselves out as a single enterprise and a single entity despite the technical existence of separate corporate structures. First, DeLaval Int’l and DeLaval Inc. are mere divisions of DeLaval Holding, which is a division of the Tetra Laval Group (despite the existence of technically, separate corporate structures). Second, there is a close, synergistic relationship between the Defendants.

44. DeLaval maintains a single website in which it promotes “DeLaval” without regard to its corporate form. The U.S. Facebook page for DeLaval points to this website: www.delaval.com. The website describes “DeLaval” as “worldwide leaders in milking equipment and solution for dairy farms.” Although it claims it is “headquartered in Tumba,” it says it has “offices in more than 40 countries and employ over 4,500 staff globally.” It does not distinguish

employment based on corporate structure. Moreover, it solicits employees for “DeLaval” generally without regard to corporate form. This includes seeking employees for work in Kansas City, Missouri. For example, as of October 29, 2019, DeLaval was soliciting for an accounting manager on its website to work in Kansas City, Missouri whose responsibilities would span “(9) different countries across (11) regions in the Americas region.” The website does not distinguish between any corporate entity, and characterizes the various subsidiaries all as “divisions of the Tetra Laval Group.”

45. In the 2018/2019 annual report (“18/19 Annual Report”) for the Tetra Laval Group, the ultimate parent of all DeLaval entities, Tetra Laval Group describes DeLaval as one of its “three industry groups” where the “head of each industry group has operational management responsibility for the respective industry group and reports directly to the Tetra Laval Group Board,” who is responsible for the overall strategy of the Group and for controlling and supervising all of its business operations.” 18/19 Annual Report at 4.³ That person appears to be Joakim Rosengren (“Rosengren”), who is listed on DeLaval’s website as the President & CEO of “DeLaval” without regard to corporate form. Rosengren is also listed as the President of DeLaval Int’l in its most recent registration filing with the Missouri Secretary of State.

46. There is a commonality of management between and among Defendants. Magnus Berg is a member of the “DeLaval Management Team” on its website, and is also a member of the board of directors of DeLaval Inc., according to its most recent filing with the Missouri Secretary of State. According to corporate documents, Fernando Cuccioli (“Cuccioli”) is the President of

³ See <https://tlcomprod2.azureedge.net/static/documents/tetra-laval-2018-2019.pdf> (last visited Nov. 7, 2019).

DeLaval Inc. He is also a board member. Cuccioli is also a member of Rosengren's "Executive Team" at DeLaval Int'l.⁴

47. Although nominally President of DeLaval Inc., a separate corporation, DeLaval publicly describes Cuccioli as "our Regional President for North America."⁵

48. In its Annual Report, DeLaval lists a single management team without regard for corporate structure. 18/19 Annual Report at 45.

49. In that same report, DeLaval is described as "a full-service supplier to dairy farmers" and referred to as "the" company, which "develops, manufactures and markets equipment and complete systems for milk production and animal husbandry." 18/19 Annual Report at 5. This includes DeLaval's VMS robot products. *Id.* at 6; *see also id.* at 11 (again referring to DeLaval as a single "company").

50. In that same report, DeLaval reports that twenty-one percent (21%) of its net sales were made in the Americas, without regard to corporate form. *Id.* at 13. It refers to its "sales organisation" [British English spelling] as an integrated unit with regard to corporate form, describing it as "[t]he team" and "[o]ur entire sales organization" having been restructured. *Id.* at 43.

51. DeLaval engages in a unified marketing image and corporate branding, including for its classic VMS robots regardless of corporate form. Its corporate insignias, trademarks and logos appear uniform regardless of corporate form, as shown by its website and the Tetra Laval Group annual reports.

⁴ See <http://www.delavalcorporate.com/DeLaval-company-about/how-we-are-organised> (last visited Nov. 7, 2019).

⁵ See <https://www.facebook.com/DeLavalUS/photos/a.805354006217677/998893120197097/?type=1&theater> (last visited Nov. 7, 2019).

52. DeLaval has an integrated sales and distribution system across the nominally distinct corporate entities. For instance, DeLaval Int'l holds the patents on the robots. It purports to have designed and manufactured the classic VMS robots, while DeLaval Inc. marketed, advertised, and sold the robots in the United States from its Kansas City, Missouri principal place of business.

53. DeLaval entities also used the same, or very similar marketing materials, across corporate entities. For instance, marketing brochures distributed to dairy farmers in the United States, including the Plaintiffs, contain British English spellings, suggesting strongly that DeLaval Int'l and/or DeLaval Holding prepared those materials for use by DeLaval Inc. in selling the robots.

54. DeLaval Inc. performs business functions that DeLaval Int'l and/or DeLaval Holding would ordinarily need to perform itself to market and sell its products in the United States but for the existence of DeLaval Inc.

55. On information and belief, DeLaval Inc. and/or DeLaval Holding is the exclusive agent for marketing and sales of classic VMS robots in the United States, and while DeLaval Inc. may distribute the robots through third-party dealers, all dealers in the United States must go through DeLaval Inc. to get and sell the robots.

56. One or more Plaintiffs have heard technicians, who have visited their farms to service their classic VMS robots, refer to the need to consult "Sweden" for technical assistance regarding the robots. This likely refers to persons purportedly or nominally employed by DeLaval Int'l or DeLaval Holding.

57. Moreover, employees of DeLaval Inc. and employees of authorized dealers of classic model VMS robots for DeLaval Inc. receive training on how to install, service and repair classic model VMS robots in Sweden from DeLaval Int'l, confirming that, despite the technical

existence of separate corporate structures, Defendants are, and hold themselves out as, a single enterprise.

58. On information and belief, DeLaval Int'l, as the owner of the patents on the classic VMS robots, enters into a licensing arrangement with anyone who purchased a classic VMS robot, including purchasers in the State of Missouri.

59. The apparent uniformity of the design, marketing and sale of the classic VMS robots strongly suggests that DeLaval Int'l and/or DeLaval Holding exerts substantial control over the Missouri-based DeLaval Inc. in its design, marketing, sale and maintenance of the robots.

60. For these reasons, DeLaval Inc. is a mere division of DeLaval Int'l and DeLaval Holding. It is a mere instrumentality or adjunct of the former and part of a single, unified enterprise. DeLaval Int'l and DeLaval Holding control and dominate the affairs of DeLaval Inc., including its affairs in Kansas City, Missouri, such that DeLaval Int'l and DeLaval Holding are the legal "alter egos" of DeLaval Inc.

61. At all times hereinafter mentioned, DeLaval offers, and holds itself out as specialists with respect to, milking, milk production, herd management, feeding, milk cooling and storage, cow comfort, barn and working environment design and solutions, milking equipment, and systems for milk production, including voluntary milking systems.

62. At all times hereinafter mentioned, DeLaval held itself out to dairy farmers and the general public as specialists providing integrated solutions designed to improve the production, quality and value of milk produced by dairy farmers, the welfare of cows, and the overall quality of life of dairy farmers, while decreasing the labor costs to operate dairy farms.

63. At all times hereinafter mentioned, DeLaval Dairy Service is a division of DeLaval doing business at 1048 New York 197, Argyle, New York 12809 (the "DeLaval Argyle Store").

64. At all times hereinafter mentioned, Mark Passino (“Passino”) was an agent, employee, servant, representative and/or authorized dealer of DeLaval and/or its subsidiaries.

65. At all times hereinafter mentioned, Passino was the General Manager of the DeLaval Argyle Store, whose job duties included, but were not limited to, advertising, promoting, selling, installing and servicing equipment and systems for milk production on behalf of DeLaval, including, but not limited to, voluntary milking systems.

66. At all times hereinafter mentioned, Alain Ethier (“Ethier”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

67. At all times hereinafter mentioned, Ethier was employed by DeLaval as a salesman, whose job duties included, but were not limited to, advertising, promoting, selling, installing and servicing equipment and systems for milk production on behalf of DeLaval, including, but not limited to, voluntary milking systems.

68. At all times hereinafter mentioned, Nick Kunkel (“Kunkel”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

69. At all times hereinafter mentioned, John Baker (“Baker”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

70. At all times hereinafter mentioned, Richard Gill (“Gill”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

71. At all times hereinafter mentioned, Mark Futchre (“Futchre”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

72. At all times hereinafter mentioned, Patrick Lecavalier (“Lecavalier”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

73. At all times hereinafter mentioned, Steve Jones (“Jones”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

74. At all times hereinafter mentioned, Fabian Bernal (“Bernal”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

75. At all times hereinafter mentioned, Derek Zepp (“Zepp”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

76. At all times hereinafter mentioned, Ryan Weiss (“Weiss”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

77. At all times hereinafter mentioned, Francisco Rodriguez (“Rodriguez”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

78. At all times hereinafter mentioned, Jeff Hahn (“Hahn”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

79. At all times hereinafter mentioned, Lizzy French (“French”) was an agent, employee and/or servant of DeLaval and/or its subsidiaries.

80. At all times hereinafter mentioned, the term “DeLaval” refers to and includes its agents, employees, dealers, sales representatives, officers, directors and executives.

FACTUAL BACKGROUND

81. DeLaval Int’l, DeLaval Holding, and the Tetra Laval Group have long had a foothold in the European dairy market, having introduced the first automatic milking system in Europe in or about 1997. The website maintained by DeLaval (which refers only to “DeLaval” without regard to its corporate form and does not distinguish it from DeLaval Int’l or DeLaval Holding) promotes DeLaval as the worldwide leader in milking equipment and solutions for dairy farmers, stating:

DeLaval is the worldwide leader in milking equipment and solutions for dairy farmers, which make sustainable food production possible, ensuring milk quality and animal health. DeLaval solutions are used by millions of dairy farmers around the globe every day. DeLaval was founded more than 130 years ago in Sweden, when the visionary Gustaf de Laval patented the cream separator. Today, DeLaval has 4,500 employees and operates in more than 100 markets. DeLaval, alongside Tetra Pak and Sidel, is part of the Tetra Laval Group.

<https://www.delaval.com/en-us/about-us/> (last visited Nov. 7, 2019).

82. By May of 2008, DeLaval became concerned about its chief competitor, Lely, which was becoming a more dominant seller of robotic milking equipment in the United States. To combat the rate at which the sales of Lely in the robot milking sector were outpacing it in the United States, DeLaval publicly represented on its website that it has “led the milking equipment market with relentless innovation for over 130 years,” and stated:

We’re the only company with a clear vision of the impact integrated robotics will have for the future of dairy producers. And we will continue to make the interaction between you, your cows and our robotics the best option for your farm for years to come.

<https://www.delaval.com/en-us/our-solutions/milking/robotic-milking/> (last visited Nov. 7, 2019).

83. DeLaval also began pushing a uniform sales message that it had the “infrastructure, personnel, and resources in the United States to assist and support purchasers of classic model VMS robots during their transition from conventional milking to robotic milking, as well as all times thereafter, while Lely did not.” Affidavit of Justin Gotham (Exhibit D) (“Gotham Affidavit”), ¶ 11. As set forth in detail herein, DeLaval knew, at all relevant times, that this representation was false.

84. In an attempt to secure a foothold in the United States, DeLaval uniformly advertised, marketed and represented that the classic model VMS produces more milk of a higher quality and value at a lower overall cost of production than any other milking method or

system. DeLaval uniformly claimed that these representations were based on the past performance of the classic model VMS robots that had been operational on dairy farms across the world.

**THE FALSE, STANDARD AND UNIFORM
DELAVAL MARKETING SCHEME**

85. Despite knowledge of the defects and problems with the classic model VMS (as discussed in detail herein), DeLaval continuously and uniformly misrepresented the abilities, benefits, capabilities and past performance of the classic model VMS with the intent to defraud dairy farmers in the United States by inducing them to expend vast sums of money to purchase and install classic model VMS robots.

86. In addition to the undue influence and pressure exerted by DeLaval during in-person sales pitches at which it made false representations about the classic model VMS as part of its “standard [] sales practice” (as discussed in detail herein), DeLaval also induced dairy farmers to purchase classic model VMS robots by publishing and distributing ambiguous, deceptive, false and misleading information intended to serve as marketing and sales materials.

87. Such ambiguous, deceptive, false and misleading information was published by DeLaval on its publicly accessible website, as well as in publicly accessible articles, brochures, catalogs and YouTube videos, which were circulated, distributed or otherwise made available to prospective purchasers by DeLaval with the intent that such prospective purchasers rely thereon by purchasing one or more classic model VMS robots.

A. The Milking at its Best Brochure

88. In a publication titled “DeLaval Voluntary Milking System VMS Automatic Milking at its Best (the “Milking at its Best Brochure”), DeLaval represents that the classic model VMS “is the ultimate automatic milking machine,” which “removes the manual task of milking

from [farmers'] operations, thus freeing up time to focus on . . . factors that contribute to improving the return on investment of [the] herd."

89. DeLaval further represented that the classic model is a "complete dairy farming solution" that is "designed to optimize quality milk yield" and "enables [farmers] to harvest the maximum milk yield from [their] herd[s], while freeing-up time for [farmers] and [their] staff[s] to focus on other duties," while the "different components of the station ensure fast milking, while safeguarding the health of [the] herd."

90. DeLaval represented that these results were purportedly achieved "[t]hanks to the compact robot arm," which makes teat cup "attachment [] a speedy and easy process regardless of teat and udder forms and heights" and provides for "[t]rue quarter milking." This, according to the uniform representations made by DeLaval in the Milking at its Best Brochure, "keeps the culling rate to a minimum, year after year."

91. DeLaval also represented that "[p]rior to milking the teats are treated to remove any impurities" by "spray[ing] [them] with VMS approved teat spray," which "protects teats and udders against bacteria and ensures the skin remains soft and supple." Moreover, DeLaval represented that the "teat cleaning cup and the milking cups are rinsed inside and out between each cow, minimizing the risk of bacteria transfer."

92. In addition to the foregoing, DeLaval represented that the classic model VMS is equipped with a Mastitis Detection index ("MDi") and Online Cell Counter ("OCC"), which provide farmers with notice "of potential mastitis at least 3 – 4 days ahead, giving [farmers] time to react before a cow is in trouble," resulting in mastitis being treated at an earlier stage, "[q]uicker recovery and less production loss," and "[m]ore efficient control of the spread of mastitis."

B. The P&S Catalogue

93. DeLaval made similar representations in the DeLaval Product and Solutions Catalogue (the “P&S Catalogue”), wherein it claimed that “[t]housands of families have already handed over the heavy chore of milking to a DeLaval VMS and they now enjoy a more flexible lifestyle” with “time away from a stringent milking schedule and the freedom to choose how [they] spend [their] time.”

94. DeLaval represented that the classic model “VMS is a complete automatic milking solution designed to optimize quality milk yield in the most cow-friendly, hygienic and efficient way,” while “cost-efficiently improv[ing] [] farm productivity and quality of life.” According to DeLaval, the classic model VMS has “the world’s most advanced hydraulic powered robotic arm,” which “easily accommodates high, wide or low udder irregularities and teats.”

95. As represented by DeLaval, “[t]he fast, flexible and gentle hydraulic robot arm, guided by dual lasers and the optical camera, finds teats quickly for dependable cup attachment – even with teats at 45° angles,” while providing “superior milking hygiene, which includes thorough automated teat preparation and sanitation pre-milking, and all cups rinsed inside and out between each cow and before reattachment,” thereby “minimizing the risk of bacteria transfer.”

96. DeLaval further represented that the classic model “voluntary milking system is about working smarter, not harder,” with “lower labour costs,” as a result of which “[farmers] win greater profitability.” DeLaval claims that the classic model VMS “epitomizes the benefits smart innovation brings to dairy farmers in terms of increased productivity, better milk quality and freeing up time for other bottom line enhancing activities.”

97. In addition, DeLaval represented that the classic model VMS is equipped with a MDi and OCC, while further representing that the classic model “VMS will be upgradable over

time as further advances are made in this sophisticated milking system” – a feature that was not offered by manufactures of other automatic milking systems, including Lely – with “[t]rustworthy 24/7 support” available to address any problems with the classic model VMS.

C. The Freedom to Choose Brochure

98. DeLaval also made similar representations in the DeLaval Voluntary Milking System VMS Freedom to Choose brochure (the “Freedom to Choose Brochure”), wherein DeLaval represented that the classic model VMS has “[t]he most advanced robotic arm,” which “is flexible enough to attach teats at 45° angles,” “allows more cows to be milked,” and, thus, “set[s] DeLaval VMS apart from other automatic milking systems.”

99. DeLaval represented that the classic model VMS has a “high performance teat visualisation system has an optical camera coupled with dual lasers to help ensure fast and accurate teat localisation for quicker and more dependable attachment rates,” going as far as claiming that the classic model “VMS truly sees the teats,” is able to “automatically find the teats without [farmers] having to programme manually” and:

almost instantly detects any fall-offs and initiates retraction then rinsing of the teat cup before re-attaching it.

100. DeLaval represented that the “fast and gentle hydraulic multi-purpose robotic arm takes care of preparing the teats before milking (including optional pre-spray), attaches the teat cups, re-attaches if needed, aligns the milk tube and sprays the teats after milking,” resulting in “more milkings per cow per day and more regular milking intervals, with higher feed intake and reduced labour input.”

101. With respect to teat preparation, DeLaval claimed that “[e]ach teat is individually cleaned with warm water and air, stimulated, pre-milked and dried before milking” with “[o]nly a few seconds [] needed for optimum teat sanitation which results in high milk quality and better

milking capacity.” According to DeLaval, “[t]he teat preparation cup has its own separate line so no dirty pre-milk ever makes contact with the main milk line.”

102. As for cleaning and washing of the system, DeLaval represented that the “integrated cleaning unit reduces cleaning time by 40 percent, which increases milking capacity.” According to DeLaval, “the integrated splashguard” automatically backs-up “behind the animal to divert manure and urine away from the stall and milking area,” and “[p]rogrammable automatic floor cleaning allows [] cows to stand on a clean surface at all times.”

103. DeLaval further represented that all of the teat “cups are rinsed inside and out between each cow,” and “then face down so they can drain and stay free of debris that could otherwise fall inside.” Moreover, DeLaval represented that the “stainless steel manger is ergonomic and self draining so it is easy to keep clean,” which is directly contradicted by the findings and observations noted in the Smith Report.

D. The June 14, 2013 Video

104. DeLaval published a video containing several misrepresentations about the classic model VMS on YouTube, which is titled DeLaval VMS Robotic Milking Machine, is publicly available at <https://www.youtube.com/watch?v=24zwbJhS9kI&t=138s> and was published by DeLaval on June 14, 2013 (the “June 14, 2013 Video”).

105. DeLaval represented that: “[t]he arm easily accommodates high, wide or low irregularities in teats with an inclination of up to 45°;” “only a few seconds are needed for optimum teat sanitation;” “the VMS is fully upgradeable so [farmers] will always have access to the latest technology;” and “the teats are well-stimulated, pre-milked and dried before milking,” resulting in “higher milk flows, shorter milking times, excellent udder health and best milk quality.”

106. DeLaval further represented that the classic model VMS “uses daily milk samples to detect signs of mastitis or ketosis long before any signs are visible on the cow,” and delivers milk production of “3,000 kilos per day combined with the shortest milking times and low energy and water consumption,” which it claims “makes it the best performing automated milking solution and the most sustainable choice for [a dairy] farm.”

E. The March 3, 2009 Video

107. DeLaval published another video containing several misrepresentations about the classic model VMS on YouTube, which is titled DeLaval VMS Voluntary Milking System, is publicly available at <https://www.youtube.com/watch?v=24zwbJhS9kI&t=240s> and was published by DeLaval on March 3, 2009 (the “March 3, 2009 Video”). In that video, DeLaval again represented that:

Thousands of families have already handed over the heavy chores of milking to a DeLaval VMS and they now enjoy a more flexible lifestyle every single day.

108. DeLaval represented that the classic model VMS “easily accommodates, high, wide or low udder irregularities and teats with an inclination of up to 45°” and “ensure[s] optimum milking hygiene” by “cleaning each teat “individually using a unique teat preparation cup,” which “has its own only separate line so no dirty milk ever makes contact with the main milk line” and “leads to higher milk flows, shorter unit on time, excellent milk health and quality.”

F. The Rodriguez Article


109. Francisco Rodriguez (“Rodriguez”), a Dairy Management Adviser and Marketing Manager employed by DeLaval, published an article intended to serve as marketing and sales material for the classic model VMS, which was titled “Thinking about buying robots? Talk money,

strategies, first” and published in Progressive Dairyman on November 1, 2013, Vol. 27 No. 16 (the “Rodriguez Article.”).

110. Rodriguez represented that the technology of the classic model VMS “has proven to be equal or more efficient than conventional milking systems (CMS), not only in terms of productivity but also profitability” with “labor savings ranging from 20 to 40 percent.” He further represented that the “culling rates are lower in robotic herds” than those herds milked by conventional milking systems.

111. According to Rodriguez, dairy farms can increase the number of times a day each cow is milked “[g]oing from 2X to 3X,” which has “a positive impact on milk production between 10 and 15 percent.” For those dairy farms already milking each of their cows three times a day, Rodriguez claims that the “benefits in milk production [] occur mainly due to better cow handling and overall management.”

112. Rodriguez represents that “[i]t is a fact that AMS dairies can hit 100 or more pounds per cow per day, but in general 80 pounds can be used as a standard,” while “[p]roductivity per robot can go as high as 7,000 pounds per robot per day” with 5,000 pounds per day being a “general goal.” Rodriguez also made representations about the “[l]abor efficiency with robotic milking” through Table 1 of the article, which is depicted below:

 **Table 1** Labor efficiency with robotic milking

No. of robots	No. of cows	No. of employees	Robots: employee	Cows: employee
1	60	1	1.0	60
2	120	1.5	1.3	80
4	240	2	2.0	120
8	480	3	2.7	160
20	1,200	5	4.0	240

113. Rodriguez concludes the article by making the following representation: “Last but not least, remember you may buy robots because of labor efficiency, higher milk production, higher profitability and some other economic aspects, but in the end you will love your robots because they can offer better quality of life, higher flexibility and more time to manage your herd to a higher level.”

G. The DeLaval Website

114. DeLaval made numerous representations about the classic model VMS on its publicly accessible website, which were intended to serve as marketing and sales materials. It represented that classic model VMS “robots are renowned for their operating efficiency and robust, around the clock performance,” which frees-up “time for [farmers] and [their] staff[s] to focus on other duties.”

115. DeLaval represented that the classic model VMS provides “[s]eamless integration of: Human+Cow+Technology” and a “solid upgrade path,” which results in “[m]ore milk harvested,” “[b]etter cow health,” “50% labour savings, improved morale and job satisfaction, as well as considerably lower milk-harvesting costs,” while enabling “[farmers] to harvest the maximum milk yield from [their] herd[s].”

116. With respect to milk yield, DeLaval represented that the classic model VMS enables farmers “to harvest up to 3,000 liters of milk per day per robot and come as standard with four quarter milking and mastitis detecting index (MDi) milk analysis technology,” and provides for “true quarter milking” with “[p]recise and gentle cup attachment regardless of teat shape or size – 98% attachment rate.” DeLaval further represented as follows:

- a. The hydraulic arm is unique to the DeLaval VMS automatic milking system – allowing more cows to be milked. Fast, gentle and flexible, the robot arm is able to attach teats at 45° angles. Even more cows can be milked than with other

systems thanks to various attachment options. And the hydraulic arm delivers greater reliability and reduced service needs to pneumatic systems.

- b. The high performance teat visualisation system for faster, more dependable attachment rates. The high performance teat visualisation system has an optical camera coupled with dual lasers to help ensure fast and accurate teat localization for quicker and more dependable attachment rates. DeLaval VMS truly sees the teats. To further enhance your comfort and save time, Auto-Teach gives DeLaval VMS the ability to automatically find the teats without you having to programme manually.

117. DeLaval admits that “[c]leanliness is vital to the success of any automated milking system” and represents that the classic model VMS provides “[f]ast and effective cleaning and pre-milking [to] promote[] healthy teats and stimulate[] fast milk let-down,” and keeps the “[r]isk of cross-contamination between cows . . . to a minimum,” which “promotes teat health and calmer cows and can result in improved milk quality and quantity.”

118. DeLaval represented that the classic model VMS “is equipped with mastitis detection index MDi technology and a cow calendar as standard,” which “measures conductivity per quarter, blood per quarter and milking interval per quarter of a cow, and alerts you if the animal is at risk of developing mastitis in that quarter.” DeLaval further represented that the steam backflush provides added protection against mastitis, stating that this:

steam unit, specifically designed to work with VMS, sanitises the teat preparation cup and the four teat cups between each milking in order to reduce the potential of cross-contamination from one cow to another.

119. Moreover, DeLaval represented that “[e]ach teat is individually cleaned with warm water and air, stimulated, premilked and dried before milking” with “[o]nly a few seconds [] needed for optimum teat sanitation, which results in high milk quality and better milking capacity.” DeLaval also represented that the “teat preparation cup has its own separate line so no dirty pre-milk ever makes contact with the main milk.”

THE DELAVAL MEETING

120. To advance its uniform marketing scheme and further its campaign of deception and fraud, DeLaval hosted a meeting in Syracuse, New York (the “DeLaval Meeting”), the purpose of which was to instruct and train its employees to repeat and enhance the ambiguous, false and misleading information published in its marketing and sales materials to advertise, promote and sell the classic model VMS to dairy farmers in the United States. Upon information and belief, DeLaval hosted other similar meetings over the years that the classic model VMS was being sold in the United States.

121. During the DeLaval Meeting, DeLaval made representations about the classic model VMS and its past performance – which were purportedly based on data collected by, and accessible only to, DeLaval that detailed the abilities, capabilities, defects, failures, functions, performance and/or problems with the classic model VMS robots that had been and were then operational across the world (i.e., the VMS Data) – including:

- a. Cows milked by a classic model VMS produce at least eight (8) to ten (10) pounds of milk a day more than cows milked by alternative methods, such as manual milking.
- b. The classic model VMS reduces the somatic cell count of milk by at least ten to fifteen percent (10-15%) from that of milk that was procured by alternative methods, such as manual milking.
- c. Each classic model VMS unit has the capacity to milk at least sixty (60) to sixty (69) cows at least 3.2 times a day.
- d. The labor costs to operate a dairy farm using classic model VMS units to milk cows is fifty percent (50%) less than the labor costs to operate a dairy farm on which cows are milked by alternative methods, such as manual milking.
- e. Only one (1) person is needed to oversee the operation of a single classic model VMS unit, two (2) or less persons are needed to oversee the operation of up to four (4) classic model VMS units, and less than (3) persons are needed to oversee the operation of up to eight (8) classic model VMS units.

- f. The classic model VMS provides for true quarter milking, reduces mastitis rates and has a ninety-eight percent (98%) teat cup attachment rate, with teat cup attachment being successfully achieved in less than three (3) minutes and a total unit on time of less than five (5) minutes regardless of teat shape or size.
- g. The costs to service, maintain and repair each classic model VMS unit is \$4,200.00 or less a year with competent support and service available 24/7 to cure any issues or problems with the classic model VMS and system upgrades provided as further advancements are made.
- h. The classic model VMS is fully upgradeable and will be upgraded by DeLaval as further advancements are made so that dairy farmers will always have access to the latest technology without having to replace their existing, or purchase new, units, equipment, machines or robots.

Exhibit A, Ethier Affidavit, ¶ 7.

122. DeLaval further represented that the above-referenced abilities, benefits, capabilities, performance and results had been consistently, routinely and without exception achieved and obtained by the classic model VMS robots that had been and were operational on dairy farms in the United States and across the world up to, through and including the date on which those representations were made.

123. At the time of the DeLaval Meeting, DeLaval knew that the aforementioned representations were false. For example, DeLaval knew that the classic model VMS robots that had been and were then operational did not operate or perform as represented, and that many dairy farms on which classic model VMS robots were operational experienced numerous problems, which caused significant financial hardship and ruin for the owners of those dairy farms.

124. Nevertheless, during the DeLaval Meeting, DeLaval instructed its employees to relay those representations to dairy farmers in the United States, knowing its employees would rely on and use those representations, to advertise and promote the classic model VMS with the ultimate objective of convincing and inducing dairy farmers to purchase classic model VMS robots from DeLaval instead of purchasing robotic milking systems from a competitor.

125. During the DeLaval Meeting, at least two employees of DeLaval with extensive experience with equipment and systems for milk production advised DeLaval of material facts establishing and proving that the aforementioned representations made by DeLaval during the DeLaval Meeting were deceptive, false and misleading based on their experience with, and review and evaluation of, the classic model VMS and other similar systems.

126. Moreover, nearly a decade before the DeLaval Meeting, DeLaval knew that the representations it made, and instructed its employees to repeat were ambiguous, deceptive, negligent, false, misleading and, at best, half-truths designed to conceal the contradictory, non-public data of which it had peculiar, unique and specialized knowledge, as well as that the classic model VMS was not free from defects and did not function or operate as uniformly represented.

**DELAVAL KNEW THAT ITS UNIFORM ADVERTISEMENTS, MARKETING
AND REPRESENTATIONS WERE FALSE**

127. DeLaval knew no later than 2007 (and, likely, much earlier based on non-public information of which it had peculiar, unique and superior knowledge), that the uniform advertisements, marketing and representations it made to dairy farmers as part of its standard sales practice were ambiguous, deceptive, false, negligent and misleading, and that the classic model VMS was not free from defects and did not function or operate as uniformly represented.

128. DeLaval, however, likely knew or should have known that its uniform advertisements, marketing and representations were false much earlier than 2007 based on its customer interactions; involvement in the design, manufacture and installation of classic model VMS robots around the world; and the automated data collected by the classic model VMS robots in operation across the world (i.e., the VMS Data).

A. The 2007 Journal of Dairy Science Article

129. In or about September of 2007, the Journal of Dairy Science published an article titled “Comparison of Functional Aspects in Two Automatic Milking Systems and Auto-Tandem Milking Parlors,” a copy of which is annexed hereto as Exhibit B (the “2007 Journal of Dairy Science Article”). The two automatic milking systems analyzed were the Lely Astronaut (referred to as “AMS-1”) and the DeLaval classic model VMS (referred to as “AMS-2”).

130. The 2007 Journal of Dairy Science Article notes that “the most important functional difference between AMS and conventional milking parlors is the automatic teat-cup attachment process, which is controlled in AMS by ultrasonic, laser, or optical sensors.” The 2007 Journal of Dairy Science Article then confirmed the abecedarian principle that consistent and reliable teat-cup attachment is crucial for the success of any AMS-equipped farm, stating:

Consistent and reliable teat-cup attachment is crucial for the success of any AMS-equipped farm. Malfunctions of this process may lead to milk leakage, because udder stimulation leads to the onset of milk ejection. Milk leakage is a risk factor for mastitis because of germ proliferation at the teat orifice. Failed milkings should be avoided on economic grounds, because unsuccessful teat-cup attachment reduces the capacity of an AMS.

Exhibit B, p. 4265 (internal citations omitted).

131. The two Automatic Milking Systems (“AMS”) analyzed differed in their design in several ways: “in AMS-1 the arm held the teat-cleaning brushes, the teat-location device, and the teat cups, whereas only the teat location system was mounted on the service arm of AMS-2. The teat-cleaning cup and teat cups were obtained in succession from a mounting at the side of the milking stall in AMS-2.” *Id.* at 4266.

132. “In AMS-1, the floor of the milking stall was made of metal (with a profiled surface), whereas a rubber mat was used in AMS-2.” *Id.* at 4266. Moreover, “[a]utomatic milking

system-1 had an electric exit drive, which was deactivated because of a ban on such equipment in Switzerland, and AMS-2 had a working pressurized-air jet to prompt cows to leave the milking box.” *Id.*

133. The study distilled in the 2007 Journal of Dairy Science Article found that an “average daily milking frequency of 2.5 was found . . . on farms with AMS-1 and a frequency of 2.4 . . . was found on farms with AMS-2,” *id.* at 4268, which directly contradicts the representation made by DeLaval, through its agents, servants and/or employees, that the classic model VMS milks at least sixty (60) cows at least three (3) times a day each.

134. “The percentage of successful teat-cup attachments, and hence milkings, for the focal cows was higher in AMS-1 (97.8%) than in AMS-2 (93.5% . . .). The same pattern was found when only milkings that failed for technical reasons (and not owing to the cow’s behavior, e.g., kicking) were taken into account, with 98.4% of milkings in AMS-1 compared with 94.3% of milkings in AMS-2 being successful.” *Id.* at 4269-70.

135. The study also analyzed and evaluated the management software of the two AMS models, finding that the “management software of the 2 AMS models recorded a higher proportion of successful milkings for all cows in AMS-1 than in AMS-2 (97.5% compared with 89.7% . . .),” *Id.* at 4270, which means that the classic model VMS missed quarters and did not provide for true quarter milking 10.3% of the time.

136. The aforementioned results of the study were recorded in Table 2 of the article and, as Table 2 clearly shows, the classic model VMS (AMS-2) does not fully milk each quarter of the cow one hundred percent (100%) of the time, even when only those milkings that failed for technical reasons not owing to the behavior of the cows were considered. Table 2 is depicted below with the pertinent information highlighted:

Table 2. Characteristics (median and range over 4 farms each) for intermilking intervals, teat-cup attachment success, and milking phase lengths in 2 types of automatic milking systems (AMS-1, AMS-2) and auto-tandem parlors (ATM)

Variable	Milking system		
	AMS-1	AMS-2	ATM
Intermilking intervals <6 h (%)	13.5 (6–23)	9.5 (3–16)	—
Intermilking intervals 6–12 h (%)	65.5 (58–77)	69 (61–83)	—
Intermilking intervals >12 h (%)	19.5 (16–23)	22.5 (13–23)	—
Milkings/d, all cows (n)	122 (90–125)	118.5 (72–132)	—
Teat-cup attachment success, focal cows (%)	99 (96–100)	95.5 (92–96)	—
Teat-cup attachment success, focal cows, technical (%)	97.5 (96–100)	94.5 (92–95)	—
Proportion of focal cows with unsuccessful milkings	15 (5–20)	34.5 (10–50)	—
Teat-cup attachment success, all cows (%)	96.5 (95–99)	91 (89–94)	—
Median length of unsuccessful milkings, focal cows (s)	348 (269–455)	497.5 (385–521)	—
90% quantile, length of preparation phase (s)	122.5 (110–125)	82.5 (175–250)	40 (30–80)
Maximum length of preparation phase (s)	311.5 (243–617)	324 (207–358)	79 (71–144)
90% quantile, length of exit phase (s)	21 (18–44)	27 (17–38)	29.5 (17–41)

Id. at 4270 (highlighting added).

137. The results of the study “were similar to other studies carried out with the same AMS models (AMS-1: 95 to 98% . . . ; AMS-2: 90 to 95% . . .).” *Id.* at 4271. This means that for every one hundred twenty (120) milkings with a classic model VMS robot, twelve (12) milkings fail and there are one hundred (100) minutes of unproductive occupation of the milking stall, which directly reduces its capacity by at least seven percent (7%):

Given a median of 120 milkings/d and farm, we would expect, on average, 4 and 12 failed milkings/d on farms with AMS-1 and AMS-2, respectively. This translates to about 25 and 100 min of unproductive occupation of the milking stall per day in AMS-1 and AMS-2, respectively, which directly reduces the capacity of an AMS by at least 2 and 7%, respectively.

Id.

138. The 2007 Journal of Dairy Science Article cautioned that the results of the study “may present an overly optimistic picture, in that more milkings would fail (Table 2) in a broader range of cows and thus reduce the capacity of the AMS by additional visits to the milking

unit shortly after failed milkings.” *Id.* at 4272. This means that the representations made by DeLaval are more deceptive, false and misleading than the results of the study prove.

B. The 2009 Smith Report

139. No later than approximately August of 2009, Terry R. Smith, Ph.D. (the President and CEO of Dairy Strategies, LLC) prepared an analysis for DeLaval of the classic model VMS robots that were then operational on Chambers Dairy, a dairy farm in Potsdam, New York. The analysis, entitled “An Initial Review: VMS System – Risks, Returns & Realities” and dated August 4, 2009, is annexed hereto as Exhibit C and is incorporated herein (the “Smith Report”).

140. The Smith Report was prepared following a site visit to Chambers Dairy on July 27-28, 2009, as well as a teleconference with DeLaval management personnel on July 31, 2009 and communications with Chambers Dairy. The Smith Report notes that the implementation of the classic model VMS took several months longer than planned, and that Chambers Dairy defaulted on its lease agreement for the classic model VMS, stating:

a number of installation, calibration and quality of service issues, resulted in a dissatisfied VMS customer that defaulted on their lease agreement with Wells Fargo Financial Leasing . . .

Exhibit C, p. 6.

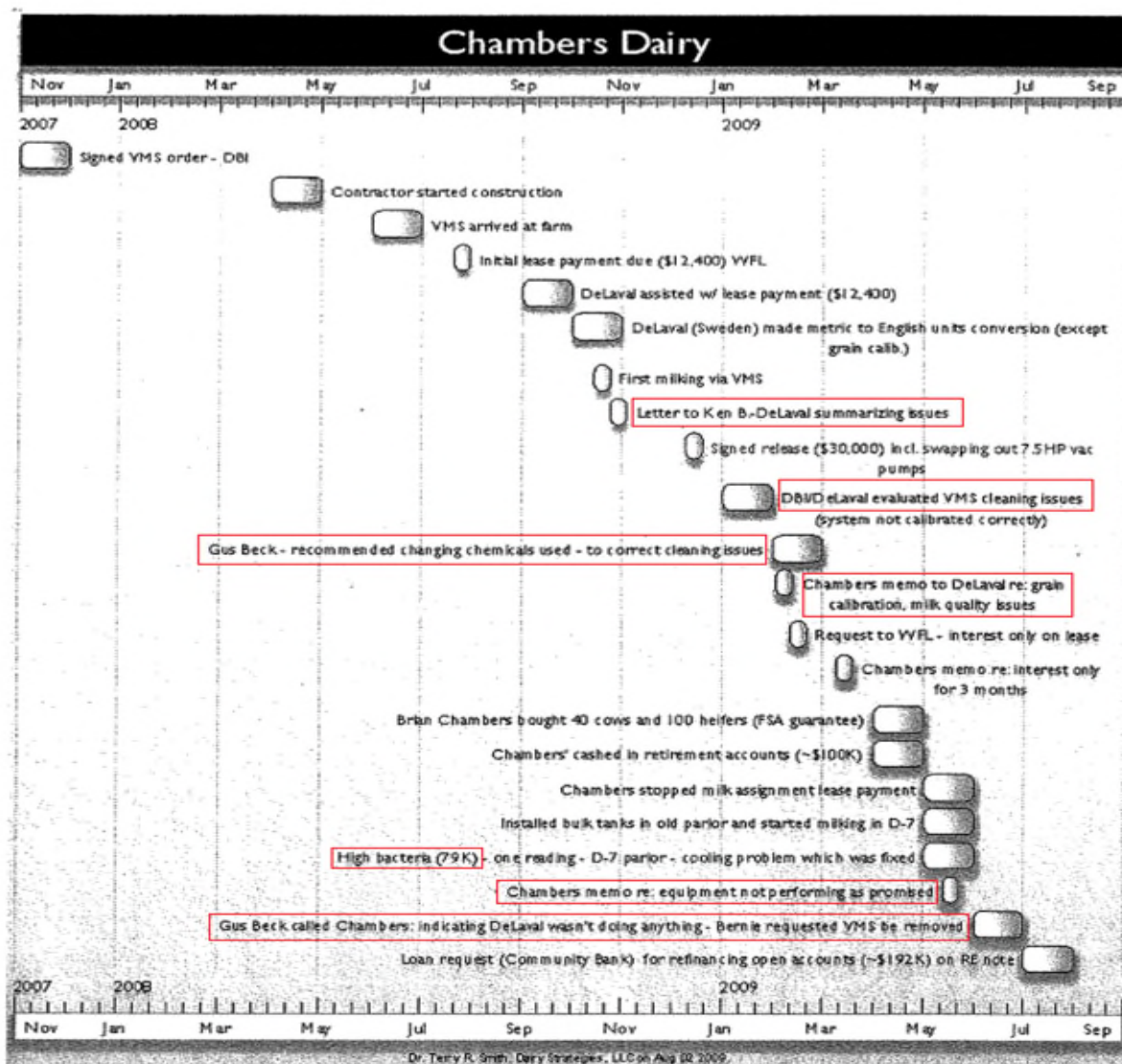
141. Chambers Dairy decided to stop payment of the lease agreement “to further amplify their dissatisfaction with the performance of the VMS, and associated performance of the portion of their herd being milked through the four VMS units.” *Id.* This poor performance of the classic model VMS was observed by Dr. Smith firsthand, who reported his observations as follows:

the operation of the units during detachment, cleaning of the teat cups and the automatic deck-wash, have and are continuing to contribute to reduced milk quality and udder health as evidenced by the elevated bacteria counts and somatic cell counts.

Id. at 7.

142. The Smith Report included a “Timeline Overview of the VMS Implementation Process,” which identifies several defects and problems with the classic model VMS, as well as memos from Chambers Dairy to DeLaval about “milk quality issues” and “equipment not performing as promised.” The “Timeline Overview of the VMS Implementation Process” is depicted below and the pertinent parts are enclosed in red rectangles:

Chambers Dairy – A Timeline Overview of the VMS Implementation Process



Id. at 9.

143. While DeLaval uniformly advertised, marketed and represented that the classic model VMS provides for “labor efficiency, higher milk production, higher profitability and [] other economic aspects” and offers a “better quality of life, higher flexibility and more time to manage your herd to a higher level,” the Smith Report directly contradicts those representations, stating, in pertinent part, as follows:

While the Chambers focus was on reducing labors costs associated with conventional milking systems, thereby allowing the management team to focus more on animal health and performance, quality of forages and overall business optimization, . . . the expected outcomes have not been realized to date.

Id. at 10.

144. Dr. Smith opines that the classic model VMS is plagued by “a number of design and performance issues that need to be addressed,” as evidenced by a video that was taken of the classic model VMS robots that were then operational on Chambers Dairy. While the video clip is in the possession of DeLaval and unavailable to Plaintiffs, the Smith Report describes what is depicted in the video clip, stating as follows:

As can be seen in the video clip, the detachment process appears to be delayed/slow and as a result the teat cups and hoses are fairly consistently being dragged across the deck mat, which is accumulating water and manure, likely impacting overall milk quality and udder health (bacteria count and SCC). The accumulation of milk solids on the belting, against which the teat cup rest following detachment may also be a contributing factor to milk quality issues.

Id. at 11- 12.

145. Prior to the installation of the classic model VMS, the milk sales of Chambers Dairy were historically trending upward, yet due to the foregoing defects and problems with the classic model VMS, “[t]he level of milk sales took a major drop following the installation of the

VMS.” *Id.* at 14. The Smith Report further notes that cows were only being milked an average of 2.3 to 2.6 times a day, not three (3) times a day as represented by DeLaval.

146. The Smith Report also analyzed the number of electronic alarms issued by the classic model VMS robots from February of 2009 through July of 2009, which “are important alerts to the functionality and resulting performance of the VMS.” *Id.* at 18. Dr. Smith found that the “number of alarms became excessive,” averaging over 576 alarms a month during the time period analyzed, as indicated by the chart below:

Month	VMS Alarms
Feb. 2009	440 (estimate)
Mar. 2009	411
Apr. 2009	807
May 2009	697
June 2009	601
July 2009	504

Id.

147. The number of alarms indicated above equates to an average of almost nineteen (19) alarms a day on average (3406 alarms divided by the 181 day period analyzed). The import of the excessive number of alarms is that “when one VMS unit goes down, all animals on that side of the free-stall barn are impacted in terms of access, as the demand for the remaining operational VMS unit is doubled.” *Id.*

148. In light of the fact that Chambers Dairy defaulted on the lease of the classic model VMS, Dr. Smith analyzed whether DeLaval should consider “refinancing/leasing VMS to Chambers” or “removing and re-selling VMS.” *Id.* at 7. The first reason given in favor of refinancing/leasing the classic model VMS to Chambers Dairy was the “[p]otential negative publicity for VMS in the Northeast and beyond.” *Id.*

149. In analyzing whether DeLaval should remove and re-sell the classic model VMS, Dr. Smith found that if DeLaval removed the classic model VMS from Chambers Dairy and re-

sold it, Chambers Dairy “would likely file a lawsuit against . . . DeLaval for non-performance of VMS.” *Id.* This means that DeLaval has known of defects and problems with the classic model VMS since August of 2009 at the latest.

C. The Affidavit of Justin Gotham

150. Justin Gotham (“Gotham”), a former employee of Don Beck Inc. (“Don Beck”), an authorized DeLaval dealer that sold and serviced classic model VMS robots for DeLaval, who was involved in the installation and subsequent servicing of the classic model VMS robots installed on Chambers Dairy, confirms that DeLaval had actual notice of the defects and problems with the classic model VMS experienced by Chambers Dairy.

151. Gotham explained that “[o]nce the classic model VMS robots were . . . installed on Chambers Dairy, it was immediately apparent . . . that the classic model VMS robots were defective and, as a result of their numerous defects, consistently experienced problems and failures that directly contradicted the representations that DeLaval made to consumers . . . about the classic model VMS,” which defects included the following:

- a. The classic model VMS was unable to and/or failed to provide for true quarter milking due to defects with the classic model VMS and often failed to milk quarters.
- b. The detachment process was slow and/or delayed, as a result of which the teat cups and hoses were consistently dragged across the deck mat, as well as through the water and manure that had accumulated thereon, resulting in decreased milk quality, increased somatic cell count, standard plate count and raw bacteria, increased mastitis and culling rates, decreased udder health, less milk production, and caused other problems.
- c. Milk solids accumulated on the belting against which the teat cup rested following detachment, which decreased milk quality and value, decreased udder health, increased somatic cell count, standard plate count and raw bacteria, increased mastitis and culling rates, decreased the amount of usable milk produced, and caused other problems.

- d. The labor costs to operate a dairy farm on which a classic model VMS is used to milk cows is higher than the labor costs to operate a dairy farm that milks cows through an alternative method, such as manual milking.
- e. The classic model VMS was not upgraded as further advancements are made with the milking system, and was not upgradeable or capable of being upgraded without dairy farmers having to purchase new robots and equipment.
- f. The VMS constantly set off excessive alarms, which resulted in system shutdowns and required the operator to be on alert 24/7 to respond to the constant, repeated alarms.

Exhibit D, Gotham Affidavit.

152. Gotham confirmed that DeLaval had actual notice of the aforementioned defects and problems, stating that during and after the classic model VMS robots were installed on Chambers Dairy, Derek Zepp (“Zepp”), the DeLaval VMS Technical Manager for North America at that time, and John Baker (“Baker”), an employee of DeLaval who held himself out as an expert with respect to the classic model VMS, were:

involved on a frequent basis with the multiple problems and issues experienced by Chambers Dairy as a result of the numerous defects with the classic model VMS robots they purchased from DeLaval.

Id. ¶ 19; *see also id.* ¶ 26 (“Despite . . . our constant communication with DeLaval through Zepp, Baker and other employees at the DeLaval headquarters in Sweden, including frequent emails, the defects and problems with the classic model VMS were unable to be fixed by repairing or replacing the classic model VMS or its components.”).

153. Gotham further states that, based on his employment with Don Beck, during which he was extensively involved with the installation and servicing of classic model VMS robots, the training he received directly from DeLaval, and the endless communications he had with Zepp and Baker, “DeLaval knew of substantial defects with the classic model VMS . . . as early as 2008 and likely much earlier.” *Id.* ¶ 32.

D. The 2011 Journal of Dairy Science Article

154. In or about February of 2011, the Journal of Dairy Science published an article titled, “Invited review: The impact of automatic milking systems on dairy cow management, behavior, health, and welfare,” a copy of which is annexed hereto as Exhibit E (the “2011 Journal of Dairy Science Article”). The objective of the article was to analyze the impact of automatic milking systems on cow management, behavior, health and welfare.

155. The article noted that, as of 2009, only about one percent (1%) of automatic milking systems operational across the world were located in the United States. The article attributed this to “the lack of readily available service providers to assist with mechanical problems,” Exhibit E, p. 2228, as well as the ability to find and hire cheap labor relative to other countries, which decreases the appeal of an automatic milking system.

156. The article noted several disadvantages of automatic milking systems, including that dairy farms on which automatic milking systems are operational are dependent on sensors to detect estrus, abnormal milk, mastitis and other health parameters, thereby taking detection out of the hands of the farm manager and shifting it to a machine. The article went on to explain that this is a disadvantage because:

As the focus shifts from traditional management methods and skills to a system reliant on new technology, the opportunity for, and impact of, computer and machine malfunctions increase.

Id. at 2229.

157. In discussing additional disadvantages, the article noted that, “[i]n a survey of fifteen (15) North American dairy producers, all reported difficulties with teat variation and cluster attachment, resulting in 0 to 3 extra culls per year from herds with an average of 94 cows,” while

in a herd of cows in New Zealand, “8% of potential new cows were rejected due to conformations that were anticipated to result in cleaning and milking difficulties.” *Id.* at 2230.

158. The article noted that “[t]he success rate of AMS cluster attachment in commercial herds ranges from 85 to 98%,” meaning that two to fifteen percent (2-15%) of the time true quarter milking was not achieved. *Id.* The import of the foregoing is that “[f]ollowing teat cup attachment failure, milk production by the quarter that failed to be milked was 26% lower during the subsequent milking . . .,” *id.*:

Therefore, any anticipated increase in milk production with an AMS may not be fully realized . . .

Id. at 2235.

159. With respect to udder health and hygiene, the article noted that there are presently four different devices for teat cleaning used by various automatic milking systems. The four different devices are summarized in the article as follows, with the third device being the only used by the classic model VMS:

- 1) simultaneous cleaning of all teats by a horizontal rotating brush,
- 2) sequential cleaning by brushes or rollers, 3) simultaneous cleaning of all teats in the same teat cups as used for milking, and 4) sequential cleaning of individual teats by a separate cleaning device.

Id. at 2237.

160. According to the article, extra care is “needed to clean teats in AMS, as none of the 4 systems dries teats before the start of the milking process, thus eliminating another opportunity to remove bacteria from the teat orifice.” *Id.* This missed opportunity is important since there is “an association between udder contamination with manure and the number of mastitis bacteria on teat ends,” *id.*, and the:

detachment process [of the classic model VMS] appears to be delayed/slow and as a result the teat cups and hoses are fairly consistently being dragged across the deck mat, which is accumulating water and manure . . .

Exhibit C, Smith Report, pp. 11-12.

161. A study discussed in the article observed “130 teat-cleaning periods in AMS and found that only 67% of the cleanings were technically successful,” while another study discussed found “approximately 10 to 20% of the teat cleanings per cow failed technically.” Exhibit E, p. 2237. A third study discussed in the article, compared the following two different types of automatic cleaning systems, the first of which is used by the classic model VMS:

the first included a cleaning cup, which used warm water, variable air pressure, and a vacuum process that dried the teats, and the second included wet rotating brushes to clean the teats from the apex to base and back.

Id.

162. The results of that study found that “the brushes had better technical success compared with cleaning cups,” and that “one-third of all cows in their trial had an unsatisfactory teat cleaning from the AMS.” *Id.* The article then noted that “[o]ne of the potential problems with AMS is their inability to discriminate between a dirty and clean udder” and, thus:

programming AMS to stimulate teats based on the anticipate degree of udder fill could make milk removal more effective.

Id.

163. Another problem with automatic milking systems is that “the constant visual and auditory stimuli from AMS could stimulate ongoing oxytocin release and milk letdown, which may increase the risk for milk leakage.” Milk leakage occurs “significantly more often and in a larger proportion of cows being milked in the AMS,” which is problematic because [milk leakage] places a cow at increased risk for mastitis.” *Id.* at 2238. The article noted that:

In general, increased in SCC and decreased in milk quality have been observed in epidemiological studies following the transition to AMS.

Id. at 2239.

164. The article notes that the number one reason dairy farmers invest in an automatic milking system is often frustrated by the need for manual labor to fetch cows, stating: “Dairy farmers have indicated that the number 1 reason for investing in an AMS was the potential savings in labor. However, a reduction in labor is not always possible due to a substantial number of cows that need to be fetched to the AMS each day.” *Id.* at 2241-2242.

E. The 2017 Journal of Dairy Science Article

165. In or about March of 2017, the Journal of Dairy Science published an article titled, “Effect of transitioning to automatic milking systems on producers' perceptions of farm management and cow health in the Canadian dairy industry,” a copy of which is annexed hereto as Exhibit F (the “2017 Journal of Dairy Science Article”). The objective of the study was to document the effect of transitioning to AMS with respect to, *inter alia*, cow health.

166. The study distilled in the 2017 Journal of Dairy Science Article drew comparisons between “Lely and DeLaval users.” With respect to rates of mastitis, the study “found a difference in the distribution of producers who reported a change in bacterial count between Lely and DeLaval producers []. The largest proportion of DeLaval producers reported an increase in bacterial count (55% DeLaval vs. 21% Lely) . . .” Exhibit F, p. 2408.

167. As for culling rates, “more DeLaval than Lely producers perceived an increase in culling rate (17 vs. 7%).” *Id.* at 2409. In sum, the study found that “[a] larger proportion of DeLaval respondents found health detection more difficulty with AMS, perceived an increase in bacterial count, and reported a higher culling rate compared with Lely respondents.” *Id.* at 2412.

**DELAVAL NEVERTHELESS CONTINUED, AND INSTRUCTED ITS EMPLOYEES
TO CONTINUE, MAKING MISREPRESENTATIONS AND CONCEALING
MATERIAL FACTS ABOUT THE CLASSIC MODEL VMS**

168. Even after becoming aware of, and receiving, the aforementioned articles, the Smith Report, and other information, DeLaval continued to make misrepresentations and conceal material facts about the classic model VMS robots and, instead of ceasing sales of the classic model VMS continued its ambiguous, deceptive and fraudulent uniform marketing scheme with the intention of defrauding dairy farmers in the United States.

169. Despite its knowledge to the contrary, DeLaval continued to uniformly represent that the classic model VMS worked as represented and dismissed any concerns therewith as unfounded, while concealing the documents, records and/or logs it maintains of the defects and problems with the classic model VMS robots that had been and were then operational, which it knew would prove each representation specified herein to be deceptive, false and misleading.

170. DeLaval had knowledge of the defects and problems with the classic model VMS that was superior to Plaintiffs and other dairy farmers. First, DeLaval (through itself, its parent or a related company) designed, patented and manufactured the classic model VMS, was responsible for programming the software that operated the classic model VMS and controlled the functions thereof and, thus, created the defects and problems with the classic model VMS.

171. Second, the Journal of Dairy Science Articles and the Smith Report were available to, and in the possession of, DeLaval and, as noted in the 2007 Journal of Dairy Science Article, the management software for the classic model VMS (i.e., the VMS Data), which DeLaval had access to and possession of, yet concealed from Plaintiffs and other dairy farmers, revealed that the uniform representations made by DeLaval were deceptive, false and misleading.

172. Third, at all times relevant herein, including before even a single classic model VMS robot was sold by DeLaval, DeLaval knew from testing the classic model VMS, or would have known had adequate and proper testing of the classic model VMS been performed for a sufficient period of time, that the classic model VMS was defectively designed, not free from defects in material and workmanship, and did not function or operate as represented.

173. Once DeLaval began selling classic model VMS robots, it had numerous product feedback sources from which to learn that the classic model VMS was defective and did not operate as represented.

174. First, DeLaval collects, and/or has access to, real-time data from the classic model VMS robots that are in operation on dairy farms in the United States and across the world, detailing the defects and problems with, as well as the performance and failures of, those classic model VMS robots (i.e., the VMS Data), which consistently revealed that the classic model VMS was defectively designed, not free from defects in material and workmanship, and did not function or operate as represented.

175. Second, since DeLaval only sells the classic model VMS through approved, authorized and/or wholly owned dealers, some of which are also DeLaval service technicians, DeLaval knew or, in the absence of willful blindness, would have known that the classic model VMS was defective and did not operate as represented from dealers and service technicians, as well as from service and/or repair order information.

176. Third, since it is the sole discretion of DeLaval to determine whether a repair or replacement of defective classic model VMS equipment is covered by warranty, it necessarily analyzes, assesses and evaluates every claimed defect with classic model VMS equipment that is

experienced by dairy farmers across the world and, thus, knew of the defects and operational problems with the classic model VMS from this source of information.

177. DeLaval concealed the foregoing articles, data, information and material facts, establishing – in contradiction to the representations made by DeLaval – that the classic model VMS did not provide “true quarter milking,” did not have a “98% attachment rate,” did not have a MDi or OCC, was not upgradable without farmers purchasing new robots and equipment at substantial costs, was defectively designed and defective in material and workmanship.

178. In light of its access to and possession of such non-public information, DeLaval has and held itself out as having peculiar, unique and specialized knowledge about the abilities, benefits, capabilities, defects, failures, performance, problems, operation and workings of the classic model VMS, which was not available to, and was concealed from, Plaintiffs and other dairy farmers to whom the classic model VMS was sold.

179. DeLaval concealed its peculiar, unique and specialized knowledge about the classic model VMS to prevent the unearthing of data and facts it knew would prove each of the representations it made, and instructed its employees to make, about the classic model VMS to be false, so that it could continue to deceive, mislead, and fraudulently induce dairy farmers to purchase classic model VMS robots.

180. DeLaval knew that Plaintiffs and most of the dairy farmers to whom the representations specified herein were made, were not technologically sophisticated and, in light of the peculiar, unique and specialized knowledge about the classic model VMS that DeLaval has and held itself out as having, would reasonably rely thereon to their detriment by purchasing one or more classic model VMS robots.

181. No Plaintiff or dairy farmer would have purchased the classic model VMS had the aforementioned information and material facts been disclosed to them and not concealed by DeLaval with the intent to defraud them and for the purpose of inducing them to rely and act in reasonable reliance on the ambiguous, deceptive, false, misleading, incomplete and/or partial information and facts that were disclosed through the representations specified herein.

THE V300

182. On or about June 27, 2018 in Stockholm, Sweden, DeLaval introduced an upgrade to the classic model VMS known as the V300 and, on its publicly accessible website (the “Press Release”).⁶ The announcement stated that the “new DeLaval VMS™ milking system V300 is available now worldwide” and “ensures that dairy farming is a profitable option not only today but also for generations to come,” as well as:

With up to 99% teat spray hit rate, real quarter milking, up 10% higher capacity from previous model with also lower running cost, up to 99.8% attachment rate, up to 50% faster attachment time, and with a potential of over 3,500kg of milk per day, the DeLaval VMS V300 system proves that the future of milking is already here.

183. Contrary to the uniform advertisements, marketing and representations of DeLaval, the classic model VMS was not upgradeable to the “latest technology” and advancements made by DeLaval in its milking system, and DeLaval systematically and uniformly refused to provide Plaintiffs and other dairy farmers with the “latest technology” by providing them with the V300 as an upgrade, as it had uniformly represented.

184. As a result, the classic model VMS robots continued to experience repeated operational failures – which were not addressed by DeLaval, and were not capable of being

⁶ See <http://www.delavalcorporate.com/news-media/news/delaval-introduces-its-new-robotic-milking-system-the-delaval-vms-milking-system-v300/> (last visited Nov. 7, 2019).

corrected through a repair or replacement with another classic model VMS robot – system downtime, increased labor costs, decreased milk production, lost business, property damage to cows and milk, and lower profits than before the classic model VMS became operational.

**THE DECEPTIVE, FALSE AND MISLEADING REPRESENTATIONS MADE BY
DELAVAL TO PLAINTIFFS DANIEL AND ERIN RICHARDS**

185. On or about December 1, 2016, Daniel and Erin Richards (the “Richards”) were fraudulently induced, as described herein, into entering an agreement with DeLaval (the “Richards Agreement”), pursuant to which Richards agreed to purchase from DeLaval two defect-free classic model VMS robots and other related equipment, which were designed, developed, manufactured, distributed and installed by DeLaval for the purpose of milking cows, for the sum of \$339,589.20.

186. At the behest of DeLaval, Richards incurred substantial costs to design and construct a new barn that was specifically and necessarily designed to accommodate and facilitate the use of the classic model VMS based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval. Since the barn was specifically designed to be a voluntary milking facility, it was not optimized to be used to milk cows by any alternative method.

187. The costs incurred by Richards to design and construct the barn included, but were not limited to, costs for building, construction, design, architectural work, site work, electrical work, concrete work and other necessary work, which brought the total costs incurred by Richards for the purchase and installation of the classic model VMS robots and equipment to an amount well exceeding \$500,000.00.

188. Before the Richards Agreement was effectuated, Passino and Ethier met with Richards in the Fall of 2016 to convince them to purchase classic model VMS robots from the DeLaval Argyle Store. During that meeting, Richards told Passino and Ethier that they intended

to purchase a robotic milking system from Lely, a competitor of DeLaval that was a more dominant seller in the United States and had many more milking systems operational in the area.

189. Since Lely had so many robotic milking systems in the area and was a more dominant seller in the United States, it was imperative to DeLaval that Richards purchase the classic model VMS from the DeLaval Argyle Store. To achieve its objective, DeLaval, through its agents, servants and/or employees, told Passino and/or Ethier to do whatever it took to make sure Richards purchased the classic model VMS from the DeLaval Argyle Store.

190. To that end, from the Fall of 2016 up to, through and including the time when the Richards Agreement was executed on December 1, 2016, Passino and Ethier met with Richards approximately twenty-five (25) times at both the DeLaval Argyle Store and the Richards Farm, including three (3) times at the Richards Farm on or about December 1, 2016 before the Richards Agreement was entered into between Richards and DeLaval (the “Sales Pitches”).

191. During the Sales Pitches, Richards asked Passino and Ethier questions and requested information about the ability, benefits and capability of the classic model VMS to increase milk efficiency, production and quality, improve cow health, be upgraded as advancements are made, decrease labor costs, and increase profits, as well as for information about the past performance of classic model VMS robots on other similar dairy farms.

192. Richards also asked questions and for information about the ability, capability and intention of DeLaval to provide system upgrades, maintenance, service and support. During the Sales Pitches, Passino and Ethier made the following representations to Richards, both voluntarily and in response to the direct questions asked, and requests for information made, by Richards, to defraud Richards by inducing them to enter into the Richards Agreement:

- a. The classic model VMS increases milk quality by lowering the somatic cell count, standard plate count and raw bacteria, resulting in increased milk value and profits.
- b. Cows milked by a classic model VMS produce at least eight (8) to ten (10) pounds of milk a day more than cows milked by alternative methods, such as manual milking, resulting in improved cow health and increased profits.
- c. The classic model VMS reduces the somatic cell count of milk by at least ten to fifteen percent (10-15%) from that of milk that was procured by alternative methods, such as manual milking, resulting in increased milk quality, value and profits.
- d. Each classic model VMS unit has the capacity to milk at least sixty (60) to sixty-nine (69) cows at least 3.2 times a day, resulting in increased milk production, improved cow health and increased profits.
- e. The labor costs to operate a dairy farm using classic model VMS robots to milk cows is fifty percent (50%) less than the labor costs to operate a dairy farm on which cows are milked by alternative methods, such as manual milking, resulting in increased profits.
- f. Only one (1) person is needed to oversee the operation of a single classic model VMS unit, two (2) or less persons are needed to oversee the operation of up to four (4) classic model VMS units, and less than (3) persons are needed to oversee the operation of up to eight (8) classic model VMS units, resulting in decreased labor costs and increased profits.
- g. The classic model VMS is equipped with a Mastitis Detection Index, reduces mastitis rates and provides notification of potential mastitis at least three (3) to four (4) days before any physical signs are visible, which allows cows to be treated at an earlier stage, resulting in quicker recovery times, decreased culling, less milk production loss and increased profits.
- h. The classic model VMS provides for true quarter milking, reduces mastitis rates and has a ninety-eight percent (98%) teat cup attachment rate, with teat cup attachment being successfully achieved in less than three (3) minutes and a total unit on time of less than five (5) minutes regardless of teat shape or size, resulting in decreased mastitis and culling rates, increased milk production and increased profits.
- i. The costs to service, maintain and repair each classic model VMS unit is \$4,200.00 or less a year with competent support and service available 24/7 to cure any issues or problems with the classic model VMS and system upgrades provided as further advancements are made.

- j. The classic model VMS is fully upgradeable and will be upgraded by DeLaval as further advancements are made so that dairy farmers will always have access to the latest technology without having to replace their existing, or purchase new, units, equipment, machines or robots.

193. At one meeting at the DeLaval Argyle Store in the Fall of 2016 (the “Whiteboard Presentation”), Passino repeated a number of representations previously made during the Sales Pitches and wrote them on a dry erase whiteboard so there would be no record thereof, which was done to insulate DeLaval from liability for making deceptive, false and misleading representations, including, but not limited to:

- a. Cows milked by a classic model VMS produce at least eight (8) to ten (10) pounds of milk a day more than cows milked by alternative methods, such as manual milking.
- b. The classic model VMS reduces the somatic cell count of milk by at least ten to fifteen percent (10-15%) from that of milk that was procured by alternative methods, such as manual milking.
- c. Each classic model VMS unit has the capacity to milk at least sixty (60) to sixty-nine (69) cows at least 3.2 times a day.
- d. The labor costs to operate a dairy farm using classic model VMS units to milk cows is fifty percent (50%) less than the labor costs to operate a dairy farm on which cows are milked by alternative methods, such as manual milking.
- e. Only one (1) person is needed to oversee the operation of a single classic model VMS unit, two (2) or less persons are needed to oversee the operation of up to four (4) classic model VMS units, and less than (3) persons are needed to oversee the operation of up to eight (8) classic model VMS units.
- f. The classic model VMS provides for true quarter milking, reduces mastitis rates and has a ninety-eight percent (98%) teat cup attachment rate, with teat cup attachment being successfully achieved in less than three (3) minutes and a total unit on time of less than five (5) minutes regardless of teat shape or size.
- g. The costs to service, maintain and repair each classic model VMS unit is \$4,200.00 or less a year with competent support and service available 24/7 to cure any issues or problems with the classic model VMS and system upgrades provided as further advancements are made.

- h. The classic model VMS is fully upgradeable and will be upgraded by DeLaval as further advancements are made so that dairy farmers will always have access to the latest technology without having to replace their existing, or purchase new, units, equipment, machines or robots.

Exhibit A, Ethier Affidavit, ¶ 16.

194. These representations were the same ones DeLaval directed its salespersons to relay to dairy farmers during the DeLaval Meeting. Conveying those representations in that manner was a standard DeLaval sales practice designed to prevent creating a record of the deceptive, false and misleading representations that DeLaval intentionally made to fraudulently induce dairy farmers to purchase classic model VMS robots.

195. DeLaval, through Passino and Ethier, made the aforementioned representations to Richards knowing the quantity, quality and value of the milk produced by Richards, the number of cows on the Richards Farm that needed to be milked each day and the number of times a day each cow needed to be milked, the amount of money Richards spent on labor to operate the Richards Farm, and the mastitis rates of the herd on the Richards Farm.

196. During the Whiteboard Presentation, Passino used that information to make representations of the increased profits Richards would yield from using the classic model VMS, which he wrote on the dry erase whiteboard and represented were based on, among other things, information collected and maintained by DeLaval concerning the increased profits that other similar dairy farmers yielded from using the classic model VMS.

197. Passino told Richards that the representations of the increased profits they would yield from using the classic model VMS were also based on the guarantee that the classic model VMS would increase the production, quality and value of the milk produced by Richards, while decreasing their labor costs to operate the Richards Farm. Passino further represented that the classic model VMS had consistently achieved such results on other similar dairy farms.

198. DeLaval, through its agents, servants and/or employees, including Passino and/or Ethier, told Richards that the representations made during the Sales Pitches and Whiteboard Presentation were based on data collected and maintained by, and accessible only to, DeLaval, which detailed the performance and profits yielded by dairy farmers using, the classic model VMS robots that had been and were then operational.

199. DeLaval, through Passino and/or Ethier, represented that the abilities, benefits, capabilities, performance and results conveyed through the aforementioned representations were consistently, routinely and without exception obtained by similar dairy farms on which classic model VMS robots had been and were in operation up to, through and including the date on which each of those representations were made.

200. In the Fall of 2016 before the Richards Agreement was signed, DeLaval further attempted to induce Richards to enter the Agreement by providing and/or making available to Richards additional materials falsely advertising, and/or containing misrepresentations and concealing material facts about, the classic model VMS, including the P&S Catalogue, the Milking at its Best Brochure, and the Freedom to Choose Brochure.

201. During that same time period, Richards also viewed representations published by DeLaval on its publicly accessible website, as well as advertisements and sales pitches published by DeLaval on YouTube, including the June 14, 2013 Video and the March 3, 2009 Video, and in Progressive Dairyman, including the Rodriguez Article, all of which were viewed and/or read by Richards prior to the date on which the Richards Agreement was consummated.

202. Having not yet fully induced Richards to purchase the classic model VMS, Passino made at least three (3) trips to the Dairy Farm on December 1, 2016 to pressure them to purchase the classic model VMS instead of a milking system from Lely. During those meetings, Passino

repeated the prior representations discussed above and repeatedly assured Richards that DeLaval would provide plenty of competent help to make sure the classic model VMS worked as previously represented.

203. Passino also told Richards that, unlike the robotic milking system that Richards originally intended to purchase from Lely, the classic model VMS was capable of being and, in fact, would be upgraded by DeLaval as further advancements were made without having to replace the existing system by purchasing new equipment or robots. This was a key selling point to Richards since the robotic milking system sold by Lely was not upgradeable.

204. DeLaval also told Richards that, if they purchased a classic model VMS from DeLaval instead of a robotic milking system from Lely, DeLaval would turn the dairy farm into a renowned “show-place” to show other dairy farmers how well the classic model VMS worked, while advertising and promoting the milk produced by Richards and the Richards Farm as the new standard for quality against which all other milk would be judged.

205. Passino represented that he and others from DeLaval would oversee the installation of the classic model VMS to ensure it was properly installed without damaging the new barn or the classic model VMS, and that DeLaval would provide competent 24/7 support and service to cure any defects, issues or problems with the classic model VMS when, at the time those representations were made, DeLaval had no such intentions.

206. Acting in reasonable reliance on these false and misleading representations, especially those detailing the past performance of classic model VMS robots on other similar dairy farms, Richards entered into the Richards Agreement and incurred substantial costs to design and construct a barn to house the classic model VMS based on blueprints, plans, specifications,

suggestions and/or other recommendations provided by DeLaval, all of which was to their detriment.

207. Despite the representation made to Richards by Passino that he and others from DeLaval would oversee the installation of the classic model VMS to ensure that it was properly installed without damaging the newly constructed barn erected by Richards, no such oversight was provided and the agents, servants and/or employees of DeLaval that installed the classic model VMS caused substantial damage to the newly constructed barn.

208. On or about January 10, 2017, DeLaval delivered the classic model VMS robots and equipment, and installed all of the foregoing inside the newly constructed barn. When DeLaval delivered the classic model VMS robots and equipment to Richards, it knew that it was delivering a defective product and had made false, deceptive, and misleading representations to Richards to induce them to sign the Richards Agreement.

209. On or about April 17, 2017, Richards began using the classic model VMS.

210. The classic model VMS failed to work as represented, was defective, had defects in material and workmanship, and had numerous, repeated operational problems and failures of which DeLaval knew at or prior to the time the aforementioned representations were made and the Richards Agreement was entered into between Richards and DeLaval.

211. For instance, the classic model VMS failed and lacked the capacity to milk sixty (60) cows per robot three (3) times a day and, in fact, only milked each cow an average of 1.9 to 2.1 times a day. Even when cows were milked, the classic model VMS routinely experienced teat cup attachment failures, with attachment rates below ninety-eight percent (98%), due to camera and encoding defects, resulting in missed quarters and delays in the milking process.

212. As a result and contrary to the representations of DeLaval, the classic model VMS failed to: increase overall milk production and, certainly, not by ten to fifteen percent (10-15%), as represented by DeLaval; increase the amount of milk produced by eight (8) to ten (10) pounds per cow a day; produce five thousand (5,000) to seven thousand (7,000) pounds of milk per robot a day; and produce eighty (80) to one hundred (100) pounds of milk per cow a day.

213. The foregoing caused damage to the cows owned by Richards in that their mastitis and culling rates increased due to the failure of the classic model VMS to provide for true quarter milking due to its camera, encoder and guidance system defects. This was exacerbated by the fact that, contrary to the uniform representations of DeLaval, the classic model VMS was not equipped with, and could not be upgraded to add, a MDi and OCC.

214. As a result, Richards were not provided with notification of potential mastitis infections at least three (3) to four (4) days before any physical signs were visible or otherwise, resulting in infected cows being treated at a later stage of infection, having longer recovery times during which they could not produce useable milk, having quarters removed and, in numerous cases, dying, all of which resulted in decreased milk production, cow value and herd size.

215. Moreover, due to its defective detachment process, defective cleaning and washing system, and the other defects identified herein at paragraph 216, the classic model VMS failed to reduce the somatic cell count of the milk it produced by ten to fifteen percent (10-15%) and, instead, caused unacceptably high somatic cell counts, standard plate counts, raw bacteria levels and lab pasteurization counts, which damaged said milk by decreasing its quality and value.

216. These and the other operational problems identified herein were caused by the defects with the design and manufacture of the classic model VMS, as well as the defects in its material and workmanship, all of which DeLaval had peculiar, unique and superior knowledge at

all times relevant herein, yet concealed from, and failed to disclose to, Plaintiffs and other purchasers of classic model VMS robots, including, but not limited to, the following:

- a. a defective guidance system that fails to accurately and consistently find and attach the teat cups to each teat of the cow due to, among other defects, camera and encoder defects, causing numerous teat attachment issues, including repeated failures to attach properly, missed quarters, improper delays in the milking process and failure to completely milk cows, which causes numerous health problems for cows, increases mastitis and culling rates, decreases milking productivity and efficiency, lessens milk production, and causes the other problems and/or failures identified herein.
- b. a defective detachment process that is slow and/or delayed, as a result of which the teat cups and hoses are consistently dragged across the deck mat, as well as through the water and manure that accumulates thereon, resulting in decreased milk quality, increased somatic cell count, lab pasteurization count, standard plate count and raw bacteria, increased mastitis and culling rates, decreased udder health, less milk production, and causes the other problems and/or failures identified herein.
- c. a defective teat cleaning system that fails to dry teats before the start of the milking process, is unable to discriminate between a dirty and clean udder, and only performs a successful teat cleaning a mere sixty-seven percent (67%) of the time, resulting in numerous health problems for cows, increased mastitis and culling rates, increased somatic cell count, lab pasteurization count, standard plate count and raw bacteria, and decreased udder health.
- d. a defective cleaning and washing system that fails to adequately clean and wash, among other things, the dirt, manure and other unsanitary substances that penetrate, become trapped and clogged in, and/or infiltrate the hoses, belting and/or the vents of the classic model VMS, resulting in decreased milk quality, increased somatic cell count, standard plate count and raw bacteria, and causes the other problems and/or failures identified herein.
- e. the defective design of the classic model VMS, which allows, permits and causes milk solids accumulate on the belting against which the teat cup rests following detachment, which decreases milk quality and value, decreases udder health, increases somatic cell count, standard plate count and raw bacteria, increases mastitis and culling rates, decreases the amount of usable milk produced, and causes the other problems and/or failures identified herein.
- f. the defective design of the classic model VMS, which allows, permits and causes dirt, manure and other unsanitary substances to penetrate, become trapped and clogged in, and/or infiltrate the hoses, belting and/or the vents thereof due to its defective design and lack of any mechanisms or safeguards to

prevent such substances from penetrating, becoming trapped and clogged in, and/or infiltrating the hoses, belting and/or the vents thereof, resulting in dirt, manure and other unsanitary substances contacting the main milk line, decreased milk quality, increased somatic cell count, standard plate count and raw bacteria, and causes the other problems and/or failures identified herein.

217. In addition, during a three-day period starting on October 15, 2018 and ending on October 18, 2018, the classic model VMS robots experienced a staggering one thousand thirty-six (1,036) alarms, equating to over three hundred forty-five (345) alarms each day or over fourteen (14) alarms every hour, which is significantly more alarms during a significantly shorter period of time than the amount experienced by Chambers Dairy that Dr. Smith found to be “excessive.”

218. The documents, records and/or logs of the problems experienced by Richards with the classic model VMS on each day it was in operation on the Richards Farm, other than from October 16, 2018 through October 18, 2018, were deleted and/or made unavailable to Richards by DeLaval in a likely attempt to conceal and spoliage evidence of the defects and problems with, as well as the failures of, the classic model VMS.

219. DeLaval deleted and/or made such documents, records and/or logs unavailable to Richards which may prevent the unearthing of material facts that it knew would prove that the classic model VMS did not function, operate and/or work as represented and guaranteed by DeLaval, so that it could continue to deceive, mislead, and fraudulently induce dairy farmers to purchase the classic model VMS, while frustrating the rights of Richards to seek legal recourse.

220. While a classic model VMS robot is experiencing an alarm, cows cannot be milked by that robot. Assuming the only other classic model VMS robot purchased by Richards remained in operation, the demand for that robot was doubled, the amount of milk that could be produced was reduced by fifty percent (50%), and cow health was negatively impacted, resulting in decreased milk production, increased mastitis rates, and thousands of dollars in lost profits.

221. The classic model VMS robots provided by DeLaval to Richards frequently experienced “alarms” at the same time, during which time cows were not milked at all or Richards was forced to expend money on labor to manually milk cows. As a result of having to expend money on such labor, the classic model VMS did not decrease labor costs and, certainly, not by fifty percent (50%) or even twenty to forty percent (20-40%), as represented by DeLaval.

222. When no labor could be found on short notice, the amount of milk produced was reduced by virtually one-hundred percent (100%) and cow health was negatively impacted in that cows developed mastitis and other health conditions from not being fully milked in a timely manner, resulting in decreased milk production, increased mastitis and culling rates, and thousands of dollars in lost profits.

223. Despite its representations to contrary, DeLaval failed to provide “24/7” support or any adequate support to address the numerous defects and problems with the classic model VMS identified herein and more than two (2) persons were needed to oversee the operation of two classic model VMS robots, forcing Richards to expend additional and substantial costs for labor to oversee the classic model VMS and address its repeated operational failures.

224. Due to the defects and operational problems of the classic model VMS identified herein, the costs to service, maintain, repair and operate each classic model VMS robot far exceeded \$4,200.00 with incompetent or no support or service being available or provided to address the numerous, repeated defects, issues and problems with the classic model VMS, which caused financial turmoil for Richards and worsened their quality of life.

225. The defects and problems with, and failures of, the classic model VMS are the same defects, problems and failures of which DeLaval had peculiar, unique and superior knowledge from the VMS Data, the Smith Report, information from other dairy farmers, and from the other

sources identified herein, including, but not limited to, dealers, service technicians, and/or warranty claims, all of which was concealed from Richards and other dairy farmers.

226. The defects, problems and failures are representative of the problems and failures of which DeLaval knew other dairy farmers had consistently and routinely experienced with the classic model VMS from the Fall of 2008 (at the latest) up to, through and including the date on which DeLaval, through its agents, servants and employees, induced Richards to enter into the Agreement.

227. The defects, problems and failures of the classic model VMS are latent defects of which Richards were unaware prior to them being manifested, which were not disclosed to Richards by DeLaval, were not readily apparent, obvious or visible to Richards before the classic model VMS became operational, and could not have been discovered by Richards upon reasonable diligence and inspection.

228. The defects, problems and failures of the classic model VMS were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of DeLaval or in the control of Richards and, instead, were caused by the defects with the classic model VMS created by DeLaval, over which it had control and of which it had peculiar, unique and superior knowledge at all times relevant herein.

229. In a likely attempt to fraudulently dissuade, deter and prevent Richards from seeking recourse and/or revoking acceptance of the defective, non-conforming classic model VMS robots furnished by DeLaval, DeLaval, through its agents, servants and/or employees, including, but not limited to, Passino and Ethier, repeatedly guaranteed Richards that it would cure its breach of the Agreement, as well as that:

- a. the defects and problems with, and failures of, the classic model VMS they were experiencing were only temporary;

- b. the defects and problems with, and failures of, the classic model VMS they were experiencing would be cured by DeLaval;
- c. the defects and problems with, and failures of, the classic model VMS were due to the Dairy Farm transitioning to a voluntary milking system and would cure themselves over time;
- d. the defects and problems with, and failures of, the classic model VMS were not the result of any defects with the classic model VMS;
- e. the defects and problems with, and failures of, the classic model VMS experienced by Richards were not being experienced by other dairy farmers using the classic model VMS; and
- f. a system upgrade would soon be available to cure the problems with and failures of the classic model VMS experienced by Richards.

230. After becoming aware of the V300 in or about the Fall of 2018, Richards reasonably believed that the advancements DeLaval made to the classic model VMS cured the defects with, problems with and failures of the classic model VMS that they were experiencing and, thus, reasonably believed and relied upon the prior assurances and guarantees made by DeLaval that the aforementioned problems and failures were only temporary, and would be cured.

231. In or about the Fall of 2018, Richards requested that their classic model VMS robots be upgraded with the “latest technology,” as DeLaval previously represented. DeLaval informed Richards that, contrary to their prior representations, their classic model VMS robots were not capable of being upgraded and, if Richards wanted to upgrade to the latest technology, they would have to purchase new robots and equipment from DeLaval.

232. As a result of the inability and incapability of the classic model VMS to be upgraded and the refusal of DeLaval to replace the classic model VMS robots with V300 robots to provide Richards with the “latest technology,” the classic model VMS robots continued to experience

repeated operational failures, system downtime, increased labor costs, decreased milk production, lost business and lower profits than before the classic model VMS became operational.

233. DeLaval failed to refund the purchase price of the defective classic model VMS robots (within a reasonable time or otherwise), which were defective and failed to conform with the uniform advertisements, marketing and representations detailed herein, despite having knowledge of each defect and problem with the classic model VMS robots purchased by Richards, which delivered, installed and repeatedly serviced by DeLaval.

234. The classic model VMS was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Richards Farm; caused Richards to suffer significant property damage in that the health of the cows was negatively impacted, while numerous cows were lost due to culling and mastitis, thereby reducing their herd size and milk production capacity; and, overall, worsened Richards' quality of life.

**THE DECEPTIVE, FALSE AND MISLEADING REPRESENTATIONS
MADE BY DELAVAL TO PLAINTIFFS NAEDLERS**

235. On or about June 12, 2014, the Naedlers were fraudulently induced, as described herein, into entering an agreement with DeLaval (the "Naedler Agreement"), pursuant to which the Naedlers agreed to purchase from DeLaval five defect-free classic model VMS robots and other related equipment, which were designed, developed, manufactured, distributed and installed by DeLaval for the purpose of milking cows, for the sum of \$1,152,879.23.

236. The Naedlers were fraudulently induced into entering the Naedler Agreement after suffering a catastrophic fire on their farm. On July 18, 2013, the Naedlers suffered a barn fire in which they lost their barn, their milking system, and many of their cows. They had a design for a new barn prepared that was intended to house a parlor milking system to accommodate up to 360 cows.

237. However, DeLaval, though Hahn, pressured the Naedlers to construct a DeLaval-designed barn to house classic model VMS robots instead of proceeding with their original plan to construct a milking parlor. Specifically, on two occasions in May and June of 2014, Hahn met with, and aggressively marketed the purported benefits, features and past performance of the classic model VMS to, Naedlers at the Naedler Farm (the “Sales Pitches”).

238. During the Sales Pitches, the Naedlers asked Hahn questions and requested information about the ability, benefits and capability of the classic model VMS to increase milk efficiency, production and quality, improve cow health, be upgraded as advancements are made, decrease labor costs, and increase profits, as well as for information about the past performance of classic model VMS robots on other similar dairy farms.

239. The Naedlers also asked questions and for information about the ability, capability and intention of DeLaval to provide system upgrades, maintenance, service and support. During the Sales Pitches, Hahn relayed the uniform representations comprising the standard DeLaval sales practice, including, but not limited to those representations identified at paragraph 192.

240. DeLaval, through its agents, servants and/or employees, including Hahn, told the Naedlers that the representations were based on data collected and maintained by, and accessible only to, DeLaval, which detailed the performance and profits yielded by dairy farmers using, the classic model VMS robots that had been and were then operational on similar dairy farms.

241. DeLaval further induced Naedlers to purchase the classic model VMS by providing and/or making available to Naedlers additional materials falsely advertising, and/or containing misrepresentations and concealing material facts about, the classic model VMS.

242. Naedlers also viewed and relied upon the representations published by DeLaval on its publicly accessible website, as well as advertisements and sales pitches published by DeLaval

on YouTube, including the June 14, 2013 Video and the March 3, 2009 Video, and in Progressive Dairyman, including the Rodriguez Article, all of which were viewed and/or read by Naedlers prior to the date on which the Naedler Agreement was signed.

243. Acting in reasonable reliance on these false representations, especially those detailing the past performance of classic model VMS robots on other similar dairy farms, Naedlers entered into the Naedler Agreement and incurred substantial costs to design and construct a barn to house the classic model VMS based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval, all of which was to their detriment.

244. At the behest of DeLaval, the Naedlers incurred an additional approximately \$3,600,000.00 to design and construct a new barn that was specifically and necessarily designed to accommodate and facilitate the use of the classic model VMS based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval. Since the barn was specifically designed to be a voluntary milking facility, it was not optimized to milk cows by any alternative method.

245. The costs incurred by the Naedlers to design and construct the barn included, but were not limited to, costs for building, construction, design, architectural work, site work, electrical work, concrete work and other necessary work, which brought the total costs incurred by the Naedlers for the purchase and installation of the classic model VMS robots and equipment to an amount exceeding \$4,700,00.00.

246. During December of 2014, Chad, Aaron, and Austin Naedler attended a three-day class organized and hosted by DeLaval, which was taught by Weiss and French of DeLaval in Madison, Wisconsin. During the class, these DeLaval employees repeated the purported benefits,

features and past performance of the classic model VMS discussed above, while concealing their knowledge of its defects and problems.

247. In or about January or February 2015, DeLaval delivered the classic model VMS robots and equipment, and installed all of the foregoing inside the newly constructed barn. When DeLaval delivered the classic model VMS robots and equipment to the Naedlers, it knew that it was delivering a defective product and had made false, deceptive, and misleading representations to the Naedlers to induce them to sign the Naedlers Agreement.

248. In or around May of 2015, the Naedlers began using the classic model VMS.

249. During the first six months that the classic model VMS was in operation, Chad and Aaron Naedler spent most of their time in the barn addressing constant, repeated alarms, depriving them of the “more flexible lifestyle” with “time away from a stringent milking schedule and the freedom to choose how [they] spend [their] time” that DeLaval had guaranteed them through the representations it made as part of its uniform marketing scheme.

250. The Naedlers made numerous, repeated requests to DeLaval for the classic model VMS robots to be repaired, replaced or otherwise cured of their numerous defects and problems, yet it was not until in or about November of 2015, approximately six months after the classic model VMS went into operation, that French finally paid a visit to the Naedler Farm.

251. The Naedlers informed French that, among the other uniform defects and problems identified herein, the classic model VMS routinely experienced teat cup attachment failures, with attachment rates of approximately eighty-eight to ninety percent (88-90%), which is far below the ninety-eight percent (98%) teat cup attachment rate uniformly advertised, marketed and represented by DeLaval.

252. French told Naedlers that this was a one-of-a-kind problem that no other purchaser of a classic model VMS had experienced or was experiencing. She further told Naedlers that she found the ten to twelve percent (10-12%) teat cup attachment failure rate to be satisfactory and, thus, did not attempt to repair, replace or other cure defects and problems causing the unsatisfactory teat cup attachment rate.

253. As a result of the foregoing and the other defects identified herein, the classic model VMS failed to: increase overall milk production and, certainly, not by ten to fifteen percent (10-15%), as represented by DeLaval; increase the amount of milk produced by eight (8) to ten (10) pounds per cow a day; produce five thousand (5,000) to seven thousand (7,000) pounds of milk per robot a day; and produce eighty (80) to one hundred (100) pounds of milk per cow a day.

254. The foregoing caused damage to the cows owned by the Naedlers in that their mastitis and culling rates increased due to the failure of the classic model VMS to provide for true quarter milking due to its camera, encoder and guidance system defects. This was exacerbated by the fact that, contrary to the uniform representations of DeLaval, the classic model VMS was not equipped with, and could not be upgraded to add, a MDi and OCC.

255. As a result, the Naedlers were not provided with notification of potential mastitis infections at least three (3) to four (4) days before any physical signs were visible or otherwise, resulting in infected cows being treated at a later stage of infection, having longer recovery times during which they could not produce useable milk, having quarters removed and, in numerous cases, dying, all of which resulted in decreased milk production, cow value and herd size.

256. French visited the Naedler Farm several additional times during their first year of operation, including visiting the farm in January of 2016, but was unable or unwilling to help fix the problems and repeatedly represented that the robots' performance was satisfactory.

257. In 2017, after repeated requests for assistance by the Naedlers, Weiss finally paid a visit to the Naedler. Weiss changed some settings on the computer, including milk permissions, and promised the Naedlers that all of the problems they were experiencing would get better over time. The problems, however, continued to get increasingly worse over time.

258. Following the visit by Weiss, another DeLaval computer technician visited the farm in 2017. Chad Naedler asked the technician whether DeLaval would buy back or refund the robots and was told to “try Craig’s List.”

259. The technician visited the farm again sometime after June of 2018, at which time Chad Naedler asked for the classic model VMS robots to be upgraded with parts from the newly released V300, as DeLaval had previously promised. The DeLaval technician informed Chad Naedler that, contrary to the prior representations of DeLaval, classic model VMS robots are not capable of being upgraded and said that attempting to do so would be like taking a part from a 2019 truck and using it to upgrade a 1980 truck, despite the fact that the Naedlers robots were only a couple years old.

260. On August 8, 2019, the DeLaval “main” representative visited the Naedler Farm, examined the robots, and made a list of items that needed to be fixed. She promised to provide the list to Chad Naedler and to visit the farm again, but never did.

261. As a result of the inability and incapability of the classic model VMS to be upgraded and the refusal of DeLaval to replace the classic model VMS robots with V300 robots to provide Naedlers with the “latest technology,” the classic model VMS robots continued to experience repeated operational failures, system downtime, increased labor costs, decreased milk production, lost business and lower profits than before the classic model VMS became operational.

262. These and the other operational problems identified herein were caused by the uniform defects with the classic model VMS, none of which were capable being corrected or cured through a repair or replacement, and all of which DeLaval had peculiar, unique and superior knowledge at all times relevant herein, yet concealed from, and failed to disclose to, purchasers of classic model VMS robots, including those identified herein at paragraph 216.

263. DeLaval refused to refund the purchase price of the defective classic model VMS robots (within a reasonable time or otherwise), which were defective and failed to conform with the uniform advertisements, marketing and representations detailed herein, despite the fact that DeLaval had knowledge of each defect and problem with the classic model VMS robots purchased by the Naedlers.

264. The classic model VMS was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Naedlers Farm; caused the Naedlers to suffer significant property damage in that the health of the cows was negatively impacted, while numerous cows were lost due to culling and mastitis, thereby reducing their herd size and milk production capacity; and, overall, worsened the Naedlers' quality of life.

**THE DECEPTIVE, FALSE AND MISLEADING REPRESENTATIONS
MADE BY DELAVAL TO PLAINTIFF TERRY BISHOP**

265. On or about December 27, 2013, Bishop was fraudulently induced, as described herein, into entering an agreement with DeLaval (the "Bishop Agreement"), pursuant to which Bishop agreed to purchase from DeLaval four defect-free classic model VMS robots and other related equipment, which were designed, developed, manufactured, distributed and installed by DeLaval for the purpose of milking cows, for the sum of \$800,000.00.

266. At the behest of DeLaval, Bishop incurred an additional \$500,000.00, at a minimum, to retrofit a barn that was specifically and necessarily designed to accommodate and

facilitate the use of the classic model VMS based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval. Since the barn was retrofitted to be a voluntary milking facility, it could not be used to milk cows by any alternative method.

267. The costs incurred by Bishop to design and retrofit the barn included, but were not limited to, costs for building, construction, design, architectural work, site work, electrical work, concrete work and other necessary work, which brought the total costs incurred by Bishop for the purchase and installation of the classic model VMS robots and equipment to an amount exceeding \$1,300,000.00.

268. Bishop first became aware of, and interested in, the classic model VMS in or about 2010, when he viewed the uniform marketing materials discussed in detail herein. To induce Bishop to purchase the classic model VMS, DeLaval organized, and arranged for him to take, a three-day trip to Canada September 15-17, 2010 (the “Canada trip”), during which it aggressively marketed the purported benefits, features and past performance of the classic model VMS.

269. DeLaval planned the trip to coincide with the 2010 Canada Farm Show, which was held in Canada’s Outdoor Park, Woodstock, Ontario. The DeLaval employees that were present on the trip and aggressively marketed the classic model VMS included: Kunkel, Baker, Gill, Futchre, Lecavalier, and Rodriguez. Also present was Eric Risser, a dairy division manager of AgCentral Coop, a DeLaval authorized dealer in Tennessee.

270. The classic model VMS was on display at the 2010 Canada Farm Show and, while Bishop and his wife were observing the classic model VMS and other robotic milking systems on display, the aforementioned DeLaval employees singled out Bishop and spent a lot of time with him to convince him to purchase the classic model VMS by making the false and misleading representations identified above in paragraph 192.

271. Those DeLaval employees also took Bishop to six dairy farms in Canada that had recently installed classic model VMS robots, all the while continuing to aggressively market the purported benefits, features and past performance of the classic model VMS by, among other things, making the uniform representations discussed herein.

272. Following the Canada trip, Bishop told Risser that he did not want to construct a new barn in which to install the classic model VMS and, instead, desired to retrofit his existing barn to accommodate a robotic milking system. DeLaval and/or Risser then organized, paid and arranged for Bishop to take, a two-day trip to Michigan and Wisconsin from March 8-9, 2011 to observe the classic model VMS on farms that recently retrofitted their barns to accommodate its use.

273. The DeLaval employees that were present on the trip to Michigan and Wisconsin included Gill and Kunkel, both of whom were also present on the Canada trip. On this trip, Gill and Kunkel continued to aggressively market the purported benefits, features and past performance of the classic model VMS and, in addition to repeating the uniform representations discussed above, told Bishop that the classic model VMS “is going to save your farm.”

274. On both of these trips, the DeLaval employees identified above repeatedly emphasized that the classic model VMS, unlike other robotic milking systems, was fully upgradeable and would be upgraded with the latest improvements and technology without having to purchase an entirely new milking system. This was a key marketing point since the robotic milking system sold by Lely was not upgradeable.

275. The ability to upgrade was a particular point of emphasis on the Canada trip, during which the DeLaval sales lead, Futchre, emphasized that the classic model VMS was upgradeable to the latest technology. Bishop was unequivocally and emphatically told that any updates and

upgrades were capable of being adopted by and put on his existing robots. Bishop relied on this representation in purchasing a robotic milking system from DeLaval instead of Lely.

276. Another point of emphasis on both trips was that the purported “50% labour savings” afforded by the classic model VMS combat the ever-increasing labor costs needed to operate a dairy farm. The purported labor savings – together with the uniform misrepresentations concerning service and maintenance costs, true quarter milking, and the increased milk production, quality and value – also induced Bishop to purchase the classic model VMS.

277. Following the trip to Michigan and Wisconsin, DeLaval, though Baker and Kunkel, provided Bishop with various design blueprints, plans, specifications, suggestions and/or other recommendations for the retrofit of his barn, each of which they claimed were necessary to ensure that the classic model VMS robots performed as uniformly advertised, marketed and represented.

278. By January of 2013, a design for the retrofit of the barn that was acceptable to Bishop was approved and finalized by DeLaval. Once the design was finalized, Bishop – acting in reasonable reliance on the aforementioned representations, including those detailing the past performance of the classic model VMS – incurred substantial costs to retrofit his barn in accordance with the design approved by DeLaval and entered into the Bishop Agreement.

279. On or about June 18, 2014, DeLaval delivered the classic model VMS robots and equipment, at which time the retrofit of the barn had not yet been completed. When DeLaval delivered the classic model VMS robots and equipment to Bishop, it knew that it was delivering a defective product and had made false, deceptive, and misleading representations to Bishop to induce him to sign the Bishop Agreement.

280. Once the retrofit was complete, the classic model VMS robots were installed and incorporated into the newly retrofitted barn and, on or about November 4, 2014, the classic model

VMS robots went into operation. When the robots went into operation, the following DeLaval employees were present and remained onsite until the night of November 6, 2014: Baker, Gill and two North American Technicians (Ryan Weiss and a male named “Zack”).

281. While those DeLaval employees were present, one or more sensors (on which the operation of automatic milking systems are dependent) failed and had to be replaced, as did a meter and/or pulsator. The DeLaval employees onsite told Bishop that this was a “normal” occurrence due to the jostling that occurs when the robots are transported to the United States from Sweden or elsewhere.

282. The very next week other components of the classic model VMS robots began to fail, including certain valves that were necessary to the operation of the system. DeLaval, through Weiss and/or Zack, again told Bishop that this was a “normal” occurrence that happens on every start up, because there are going to be factory defects. Bishop was further told that once they found all of the factory defects, he would be home free.

283. Nevertheless, the classic model VMS robots continued to experience constant problems and alarms, which are important alerts to the functionality and performance of the robots, despite representatives of DeLaval constantly attempting to correct the problems therewith. At one point, Bishop did not leave his barn for two straight weeks and, by the third year the robots were in operation, there were only four nights he was not kept awake by constant alarms.

284. Among other defects and problems, the classic model VMS failed and lacked the capacity to milk sixty (60) cows per robot three (3) times a day and, even when cows were milked, the classic model VMS routinely experienced teat cup attachment failures, with attachment rates below ninety-eight percent (98%), due to camera and encoding defects, resulting in missed quarters and delays in the milking process.

285. As a result and contrary to the representations of DeLaval, the classic model VMS failed to: increase overall milk production and, certainly, not by ten to fifteen percent (10-15%), as represented by DeLaval; increase the amount of milk produced by eight (8) to ten (10) pounds per cow a day; produce five thousand (5,000) to seven thousand (7,000) pounds of milk per robot a day; and produce eighty (80) to one hundred (100) pounds of milk per cow a day.

286. The foregoing caused damage to the cows owned by Bishop in that their mastitis and culling rates increased due to the failure of the classic model VMS to provide for true quarter milking due to its camera, encoder and guidance system defects. This was exacerbated by the fact that, contrary to the uniform representations of DeLaval, the classic model VMS was not equipped with, and could not be upgraded to add, a MDi and OCC.

287. Moreover, due to its defective detachment process, defective cleaning and washing system, and the other defects identified herein at paragraph 216, the classic model VMS failed to reduce the somatic cell count of the milk it produced by ten to fifteen percent (10-15%) and, instead, caused unacceptably high somatic cell counts, standard plate counts, raw bacteria levels and lab pasteurization counts, which damaged said milk by decreasing its quality and value.

288. Bishop made numerous, repeated requests to DeLaval for the classic model VMS robots to be repaired, replaced or otherwise cured of their numerous defects and problems, yet DeLaval failed to repair, replace or cure the defects and problems with the classic model VMS robots or refund the purchase price thereof, leaving Bishop to his own devices to even keep the robots functioning at an unsatisfactory level.

289. DeLaval failed to provided Bishop with adequate and proper service, maintenance and support to address the defects and problems with the classic model VMS robots, despite its uniform representation and guarantee that competent, trustworthy support was available 24/7 to

cure any problems with or failures of the classic model VMS, which resulted in repeated operational problems and failures therewith.

290. During the year of 2017, the third year that the robots were in operation, Bishop spent over \$90,000.00 in repairs, maintenance and chemicals in a desperate attempt to repair the classic model VMS robots and correct the defects and problems he was experiencing therewith. Despite these efforts, the classic model VMS robots consistently, repeatedly and routinely experienced operational problems and alarms that could not be corrected or cured.

291. During 2017, one of the robots frequently stopped operating and, to even function at a suboptimal level, had to be constantly restarted. This caused substantial system downtime during which cows could not be milked at all by that robot and, on numerous occasions, the robot still did not operate after going through the lengthy process of restarting the system.

292. A technician from AgCentral Coop, the local DeLaval authorized dealership, was unable to correct the problem with the aforementioned robot and, after spending an entire month switching out all of the computer boards for that robot and attempting other remedial measures to no avail, contacted Weiss, Zepp and/or Zack, all of whom are DeLaval technicians for the North American region and none of whom were able to cure the problems experienced by Bishop.

293. The DeLaval technicians then turned to the technicians in their headquarters in Sweden for assistance. Engineers employed by DeLaval in Sweden spent approximately one week downloading all of the data and information from Bishop's classic model VMS robots, after which the only purported solution they could come up with was a software update for the robots, which did not correct or cure the aforementioned problem.

294. After spending more than a month with a robot that did not operate and could not milk cows, not to mention expending about \$3,000.00 to service that robot since no one from

DeLaval was able to correct the problem, Bishop discovered that the problem was caused by a failed hydraulic valve, which costs a mere \$6.00 to replace, yet cost Bishop five hundred (500) times that amount to fix due to DeLaval's failure to provide competent service and support.

295. The substantially higher-than-represented maintenance and service costs were driven by, among other things, the uniform defects in material and workmanship of the critical parts on which the operation classic model VMS was dependent. In addition to the above hydraulic valve example, the material and workmanship of the flow regulating valve ("FRV"), which is supposed to have a seven to twelve-year life span, was defective and repeatedly failed.

296. The FRV for each classic model VMS robot failed one or more times a year and, when the FRV failed until such time as it was replaced at a cost of \$1,600.00, the cleaning and washing system of the classic model VMS could not be used, which caused unacceptable high somatic cell counts, standard plate counts, raw bacteria levels and lab pasteurization counts, while negatively impacting the cow and udder health by increasing mastitis and culling rates.

297. In or about 2015 at the Bishop Farm, Baker told Bishop that the FRV (and the other parts of which the classic model VMS is comprised) repeatedly fails because DeLaval routinely accepted the lowest bid from manufactures of such parts, so the material and workmanship of those parts were "cheap," defective, and not suitable to serve their essential and intended purpose, resulting in higher-than-represented maintenance, repair, and service costs.

298. Toward the end of 2018, Baker eventually admitted to Bishop that, despite the uniform representations made about the maintenance, repair and service costs, DeLaval knew that the true costs to maintain, repair and service each classic model VMS robot was between \$16-20,000 a year. Baker told Bishop that DeLaval fired him, at least in part, because he refused to continue concealing the true maintenance, repair and service costs from prospective purchasers.

299. The foregoing problems were exacerbated by the fact that the classic model VMS robots were not equipped with both a MDi and OCC, as uniformly represented by DeLaval. During the Canada trip and thereafter, Baker and other DeLaval employees told Bishop that the OCC would be available in the United States within a year of when the Bishop Agreement was executed and, once available, his robots would be upgraded to add an OCC.

300. The robots, however, were not upgradeable and were never upgraded to add an OCC. As a result, Bishop was not provided with notification of potential mastitis infections at least three to four days before physical signs were visible or otherwise, resulting in, among other things, infected cows being identified at a later stage of infection, all the while continuing to produce high bacteria milk that decreased the quality of his overall milk yield.

301. As a result of the foregoing and the other defects with the classic model VMS detailed herein, including at paragraph 216, the lab pasteurization count (“LPC”) (i.e., the bacteria in the milk that survives pasteurization) of the milk produced by Bishop reached levels as high as 2,000 by the end of 2017. This was problematic since Bishop operated an organic dairy farm and, to be considered acceptable, the LPC had to be below 200.

302. DeLaval attempted to conceal their superior, peculiar and unique knowledge of this problem by telling Bishop that no other dairy farm on which classic model VMS robots were in operation had ever encountered this problem. At the time this representation was made, DeLaval knew that it was false and that exceedingly high LPC is one of the most common, widespread problems caused by the classic model VMS.

303. Due to the high LPC of the milk being produced, the company to which Bishop sells his milk, Organic Valley, issued him a warning that his milk quality was unacceptable and needed to improve or else a penalty would be imposed. DeLaval finally got involved in or around

November of 2018, at which time Jones, a purported cleaning expert employed by DeLaval, told Bishop that “there were issues and lots of things not working right.”

304. DeLaval, through Jones and other employees, claimed that Bishop did not keep up on his maintenance (despite having spent over \$90,000.00 in maintenance in 2017, the third year that the robots were in operation, which far exceeds the uniformly represented annual service, maintain and repair costs), which was inaccurate and expressed to conceal the defects with the classic model VMS and the fraud perpetrated by DeLaval.

305. From in or around November of 2018 through January 1, 2019, Jones was on the Bishop Farm every three weeks, during which time Bishop paid DeLaval \$50,000.00 to replace parts of the classic model VMS robots, which Jones told him was necessary to improve his milk quality and bring the LPC within acceptable limits. The replacement parts did not solve or improve the problem.

306. On or about January 1, 2019, Organic Valley imposed a penalty on the milk produced by Bishop due to the excessive high LPC of his milk. At this point, Jones started visiting the Bishop Farm every other week and, in addition to Jones, DeLaval also sent another one of its employees, Fabian Bernal (“Bernal”) to the farm. Bernal told Bishop that he was hired by DeLaval to correct similar and other problems experienced by at least seventeen other farms.

307. Jones and Bernal attempted to lower the LPC of the milk produced by increasing the amount of chemicals used during the cleaning and washing cycles, among other failed remedial measures. This failed to lower the LPC count of the milk produced, while further increasing the Bishop’s maintenance and service costs since he was unequivocally told that the uniformly represented maintenance and service costs included the costs of such chemicals.

308. Jones and Bernal then started taking cultures before and after cleaning and washing cycles and, after receiving the results of the cultures, attempted to blame the high LPC count on the presence of bacillus bacteria, which they told Bishop has not been found on any other dairy farm, despite that bacillus bacteria is commonly found in milk, soil and even water, not to mention that it is an approved probiotic for lactating dairy cows.

309. Due to the penalty imposed by Organic Valley and the obvious attempts by DeLaval to mislead him by concealing the defects with the classic model VMS, Bishop told Bernal that he had to contact a lawyer, to which Bernal responded: if you contact a lawyer, DeLaval will never come back on your farm. Bernal made this representation to threaten Bishop and deter him from seeking legal recourse, knowing that he was dependent on DeLaval.

310. Bernal knew that since Bishop retrofitted his barn specifically to accommodate the use of the classic model VMS, he was unable to milk his cows by any alternative method making him reliant on DeLaval to continue servicing the classic model VMS, even though the service provided by DeLaval was inadequate and not what it had uniformly advertised, marketed and represented, because he had no alternative way to milk his cows.

311. In the hopes of avoiding financial ruin due to the what now-appeared to be incurable defects and problems with the classic model VMS, Bishop contacted a milk quality expert from Washington regarding his excessively high LPC in Spring of 2019. The expert, who was made known to Bishop by Organic Valley, told Bishop that he had seen a lot of similar and other problems with the classic model VMS robots, the cause of which was not bacillus bacteria.

312. The expert told Bishop that, based on his extensive experience with the classic model VMS, the problem was caused by a defective cleaning and washing system, and that the only solution is to perform four cleaning and washing cycles a day with double the amount of

chemicals, each of which required a complete system shutdown, during which cows were not milked, dramatically decreasing overall milk production and negatively impacting cow health.

313. While performing four cleaning and washing cycles a day improved the LPC enough to avoid further penalties, the cleaning and washing system was defective (as discussed herein at paragraph 216 and never completed a full cycle without experiencing an error, which further increased already excessive labor costs and took an excessive amount of time to correct, during which time no cows could be milked by that robot, causing a host of new problems.

314. Since the only way anyone found to bring the LPC of the milk produced within acceptable limits was to perform four cleaning and washing cycles a day (which increased the amount of system downtime), Bishop was unable to milk any more than fifty (50) cows per robot and, certainly, not the sixty (60) cows per robot uniformly advertised, marketed and represented by DeLaval, a concern that Bishop expressed to Jones.

315. After informing Jones of what the Washington expert told Bishop, Jones simply told Bishop that he needed to sell forty (40) cows (which equates to ten (10) cows per robot). Bishop then told Jones that since he could not milk all of his cows a sufficient number of times a day, as DeLaval had uniformly advertised, marketed and represented that he could, he now had to contact an attorney. Jones repeated the same threat made by Bernal and told Bishop that if he contacted an attorney, DeLaval would never come back to his farm.

316. On or about May 7, 2019, Bishop met with Risser and Jones, at which point he owed \$11,000.00 for repairs and \$7,000.00 for parts. In a tacit admission that the classic model VMS robots were defective and failed to operate, perform and function as uniformly represented, DeLaval waived the labor costs. Within two weeks, all of the defects and problems with the classic model VMS resurfaced and, in July of 2019, Bishop stopped using the classic model VMS.

317. During the time the classic model VMS robots were in operation, there were approximately 2.6 million alarms, equating to approximately 1,502 alarms per day or 62 alarms per hour, a is significantly higher frequency of alarms than that experienced by Chambers Dairy, which Dr. Smith found to be “excessive.” The alarms were caused by, among other things, the uniform defects and problems detailed herein.

318. These and the other operational problems identified herein were caused by the uniform defects with the classic model VMS, none of which were capable being corrected or cured through a repair or replacement, and all of which DeLaval had peculiar, unique and superior knowledge at all times relevant herein, yet concealed from, and failed to disclose to, purchasers of classic model VMS robots, including those identified herein at paragraph 216.

319. DeLaval failed to refund the purchase price of the defective classic model VMS robots (within a reasonable time or otherwise), which were defective and failed to conform with the uniform advertisements, marketing and representations detailed herein, despite having knowledge of each defect and problem with the classic model VMS robots purchased by Bishop, which delivered, installed and repeatedly serviced by DeLaval.

320. The classic model VMS was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Bishop Farm; caused Bishop to suffer significant property damage in that the health of the cows was negatively impacted, while numerous cows were lost due to culling and mastitis, thereby reducing their herd size and milk production capacity; and, overall, worsened Bishop’s quality of life.

**THE DECEPTIVE, FALSE AND MISLEADING REPRESENTATIONS MADE BY
DELAVAL TO PLAINTIFFS BERNARD AND DENISE ROBILLARD**

321. On or about November 26, 2013, Robillards were fraudulently induced, as described herein, into entering an agreement with DeLaval (the “Robillard Agreement”), pursuant

to which Robillards agreed to purchase from DeLaval four defect-free classic model VMS robots and other related equipment, which were designed, developed, manufactured, distributed and installed by DeLaval for the purpose of milking cows, for the sum of \$646,000.00.

322. At the behest of DeLaval, Robillards incurred an additional \$200,000-300,000 or more to retrofit a barn that was specifically and necessarily designed to accommodate and facilitate the use of the classic model VMS based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval. Since the barn was retrofitted to be a voluntary milking facility, it was not optimized to milk cows by any alternative method.

323. The costs incurred by Robillards to design and retrofit the barn included, but were not limited to, costs for building, construction, design, architectural work, site work, electrical work, concrete work and other necessary work, which brought the total costs incurred by Robillards for the purchase and installation of the classic model VMS robots and equipment to an amount exceeding \$800,000.00.

324. In early November of 2013, Baker met with Robillards at their farm with the intent to induce them to purchase classic model VMS robots. During this meeting, Baker aggressively marketed the purported benefits, features and past performance of the classic model VMS by, among other things, making the uniform representations detailed in paragraph 192.

325. In addition to the other representations comprising the “standard DeLaval sales practice,” Robillards were induced to purchase classic model VMS robots by DeLaval’s uniform representations that, among other things, the robots were: upgradeable, provided for true quarter milking, equipped with a MDi and OCC, and allowed farmers to enjoy more flexible lifestyles every day, while providing “50% labour savings” and lower overall operational costs.

326. DeLaval further induced Robillards to purchase the classic model VMS by providing and/or making available to Robillards additional materials falsely advertising, and/or containing misrepresentations and concealing material facts about, the classic model VMS, including the P&S Catalogue, the Milking at its Best Brochure, and the Freedom to Choose Brochure (or versions that were substantially similar to those described herein).

327. Robillards also viewed and relied upon the representations published by DeLaval on its publicly accessible website, as well as advertisements and sales pitches published by DeLaval on YouTube, including the June 14, 2013 Video and the March 3, 2009 Video, and in Progressive Dairyman, including the Rodriguez Article, all of which were viewed and/or read by Robillards prior to the date on which the Robillard Agreement was signed.

328. Acting in reasonable reliance on these false representations, especially those detailing the past performance of classic model VMS robots on other similar dairy farms, Robillards entered into the Robillard Agreement and incurred substantial costs to retrofit a barn to house the classic model VMS based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval, all of which was to their detriment.

329. Once DeLaval finalized the barn design, the classic model VMS robots were installed and incorporated into the retrofitted barn and, on or about November 11, 2014, Robillards began using the classic model VMS.

330. The classic model VMS failed to work as represented, was defective, and had numerous, repeated operational problems and failures of which DeLaval knew at or prior to the time the aforementioned representations were made to Robillards.

331. The classic model VMS failed and lacked the capacity to milk sixty (60) cows per robot three (3) times a day and, even when cows were milked, the classic model VMS routinely

experienced teat cup attachment failures, with attachment rates below ninety-eight percent (98%), due to camera and encoding defects, resulting in missed quarters, delays in the milking process and health problems for the cows.

332. Due to the inability of each classic model VMS robot to milk sixty (60) cows per robot three (3) times a day, as uniformly represented by DeLaval, Robillards were forced to sell twenty to twenty-five cows, not including the numerous cows that they due to mastitis as a result of the classic model VMS (as discussed below) and, in particular, the absence of a MDi and OCC to provide timely notice of such infections, so that cows could be timely treated.

333. As a result and contrary to the representations of DeLaval, the classic model VMS failed to: increase overall milk production and, certainly, not by ten to fifteen percent (10-15%), as represented by DeLaval; increase the amount of milk produced by eight (8) to ten (10) pounds per cow a day; produce thousand (5,000) to seven thousand (7,000) pounds of milk per robot a day; and produce eighty (80) to one hundred (100) pounds of milk per cow a day.

334. The foregoing caused damage to the cows owned by Robillards in that their mastitis and culling rates increased due to the failure of the classic model VMS to provide for true quarter milking due to its camera, encoder and guidance system defects. Baker admitted to Robillards that the teat cup attachment failures were caused by, among other defects identified herein, defects and problems with the software that DeLaval incorporated into the robots.

335. The problems created by the teat cup attachment failures, which resulted in true quarter milking not being achieved, were exacerbated by the fact that, contrary to the uniform advertisements, marketing and representations of DeLaval, the classic model VMS was not equipped with a MDi and OCC and, despite the uniform representation that the classic model VMS was fully upgradeable, was not capable of being upgraded to add a MDi and OCC.

336. As a result, Robillards were not provided with notification of potential mastitis infections at least three (3) to four (4) days before any physical signs were visible or otherwise, resulting in infected cows being treated at a later stage of infection, having longer recovery times during which they could not produce useable milk, having quarters removed and, in numerous cases, dying, all of which resulted in decreased milk production, cow value and herd size.

337. Moreover, due to its defective detachment process, defective cleaning and washing system, and the other defects identified herein at paragraph 216, the classic model VMS failed to reduce the somatic cell count of the milk it produced by ten to fifteen percent (10-15%) and, instead, caused unacceptably high somatic cell counts, standard plate counts, raw bacteria levels and lab pasteurization counts, which damaged said milk by decreasing its quality and value.

338. The classic model VMS robots experienced frequent and, often times, simultaneous alarms, forcing them to constantly return to the barn throughout the night and depriving them of the “more flexible lifestyle” with “time away from a stringent milking schedule and the freedom to choose how [they] spend [their] time” that DeLaval had guaranteed them through the representations it made as part of its uniform marketing scheme.

339. On or about November 11, 2014, Baker told Robillards that the robots would get better over time, because they “learn every day,” even though he knew that the classic model VMS was plagued with defects and operational problems that were incapable of being corrected or cured. Baker made this representation to conceal such defects and problems, which he knew Robillards would experience, in furtherance of DeLaval’s fraudulent, uniform marketing scheme.

340. The robots, however, did not get better over time and Robillards made numerous, repeated requests to DeLaval for the classic model VMS robots to be repaired, replaced or otherwise cured of their numerous defects and problems, yet DeLaval failed to adequately repair,

replace or cure the defects and problems with the classic model VMS robots and refused to refund the purchase price paid by Robillards for the robots.

341. DeLaval failed to provide the Robillards with adequate and proper service, maintenance and support to address the defects and problems with the classic model VMS robots, despite its uniform representation and guarantee that competent, trustworthy support was available 24/7 to cure any problems with or failures of the classic model VMS, which resulted in repeated operational problems and failures therewith.

342. Between January and March of 2015, DeLaval hosted a meeting in New Hampshire to address the problems with the classic model VMS that were being experienced by a handful of dairy farmers such as Robillards. The dairy farmers present at the meeting relayed the same defects and problems with their classic model VMS that plagued the classic model VMS robots purchased by Robillards.

343. A few days after that meeting, two DeLaval computer experts went to the Robillard Farm, accessed their computer system and reviewed all of the data and information concerning their classic model VMS robots. The computer experts refused to disclose their findings in an effort to conceal the defects and problems with the classic model VMS robots.

344. Over the months that followed, DeLaval updated their computer software for the robots three or four times in an attempt to address their defects and problems. The software updates did not correct or improve any of the defects and problems with the classic model VMS robots and, in fact, worsened the teat cup attachment rate and associated problems.

345. On or about August 15, 2015, in a likely attempt to fraudulently dissuade, deter and prevent Robillards from seeking legal recourse and/or stop using the classic defective classic model VMS robots furnished by DeLaval, Baker told Robillards that a new software update was

forthcoming, which would purportedly correct the defects and problems with the classic model VMS experienced by Robillards and other dairy farmers.

346. The Robillards did not learn until October of 2015, when they visited the farm of Edward and Theresa Fortin to view the software update and evaluate whether it fixed the problems as promised, that the promised software update would not improve the problems. At this point, the Robillards decided to sell their VMS classic robots and to permanently return to parlor-style milking.

347. The Robillards were ignorant, by no fault of their own or due to any failure of them to exercise due diligence, of the incurable defects and problems with the classic model VMS, which DeLaval concealed from them and of which DeLaval had superior, peculiar and unique knowledge.

348. DeLaval knew the defects and problems with the classic model VMS were incapable of being corrected by a software update or otherwise, and only made that representation to continue concealing the true, incurable nature of the defects and problems with the classic model VMS, and to convincing Robillards to continue using the classic model VMS, so that DeLaval could continue capitalizing on the higher-than-represented service and maintenance costs.

349. DeLaval never disclosed the true, incurable nature of the defects and problems with the classic model VMS and, at all times relevant herein, actively concealed the defects and problems with the classic model VMS from Robillards and other purchasers of classic model VMS robots by uniformly representing such defects and problems to be temporary to achieve its dual objective of evading legal liability and furthering its fraudulent, uniform marketing scheme.

350. The foregoing and the other operational problems identified herein were caused by the uniform defects with the classic model VMS, none of which were capable being corrected or

cured through a repair or replacement, and all of which DeLaval had peculiar, unique and superior knowledge at all times relevant herein, yet concealed from, and failed to disclose to, purchasers of classic model VMS robots, including those identified herein at paragraph 216.

351. DeLaval failed to refund the purchase price of the defective classic model VMS robots (within a reasonable time or otherwise), which were defective and failed to conform with the uniform advertisements, marketing and representations detailed herein, despite having knowledge of each defect and problem with the classic model VMS robots purchased by Robillards, which delivered, installed and repeatedly serviced by DeLaval.

352. The classic model VMS was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Robillard Farm; caused Robillards to suffer significant property damage in that the health of the cows was negatively impacted, while numerous cows were lost due to culling and mastitis, thereby reducing their herd size and milk production capacity; and, overall, worsened Robillards' quality of life.

**THE CLASSIC MODEL VMS WAS DEFECTIVE AND PLAGUED WITH
REPEATED OPERATIONAL PROBLEMS AND FAILURES**

353. The classic model VMS is defective, has numerous, uniform defects in material and workmanship, and is plagued with numerous, repeated operational problems that are uniformly experienced by purchasers, including those set forth herein at paragraph 216, all of which are incapable of being corrected, prevented the classic model VMS from functioning, operating and performing as uniformly advertised, marketed and represented by DeLaval.

354. DeLaval had peculiar, unique and superior knowledge of each of the foregoing defects and operational problems since 2007-2009 (at the latest) and, in furtherance of its deceptive, fraudulent, negligent, misleading and uniform marketing scheme, concealed and, up to

the present day, continues to conceal each such defect and operational problem from Plaintiffs and the other dairy farmers who purchased classic model VMS robots.

355. No Plaintiff or dairy farmer would have purchased the classic model VMS had the aforementioned defects and operational problems been disclosed to them and not concealed by DeLaval with the intent to defraud them and for the purpose of inducing them to rely and act in reasonable reliance on the ambiguous, deceptive, false, misleading, incomplete and/or partial information and facts that were disclosed through the representations specified herein.

**THE LIMITED REMEDY IS UNCONSCIONABLE AND
FAILED ITS ESSENTIAL PURPOSE**

356. The classic model VMS robots were sold to Plaintiffs pursuant to standard form purchase agreements drafted by DeLaval, which were not subject to negotiation and were offered on a take-it-or-leave-it basis. The purchase agreements are respectively referred to herein as the Richards Agreement, Naedler Agreement, Bishop Agreement and Robillard Agreement (collectively, the “Purchase Agreements”).

357. In the Purchase Agreements, DeLaval expressly warrantied that the classic model VMS robots and related equipment were “free from defects in material and workmanship” for a period of one year from the date of installation (the “Warranty Period”), and that the services performed by DeLaval, through its agents, servants and/or employees, would be provided in a good and workmanlike manner (the “Limited Warranty”).

358. During the Warranty Period, DeLaval was contractually obligated to repair or replace any equipment, parts or service that failed to comply with the Limited Warranty, provided that written notice is received by DeLaval within thirty (30) days of discovery (the “Limited Remedy”). DeLaval was required to perform any such repairs and provide any such replacements within a reasonable time.

359. The Limited Remedy further provides as follows: “If DeLaval determines that repair or replacement of the defective Equipment, part or Service is not an effective remedy, DeLaval shall refund to Buyer the purchase price (excluding the cost of installation labor) of the defective item.”⁷ DeLaval was required to provide any such refunds for the purchase price within a reasonable time.

360. The Purchase Agreements then purport to disclaim all other remedies and warranties that would otherwise be available aggrieved purchasers, as well as to disclaim consequential, incidental and other damages that such purchasers would otherwise be entitled to recover from DeLaval, stating, in pertinent part, as follows:

IN CONSIDERATION OF THIS LIMITED WARRANTY AND
THE REMEDIES SET OUT ABOVE, THE BUYER WAIVES
ANY AND ALL OTHER CLAIMS AND CAUSES OF ACTION
AGAINST DELAVAL . . .

* * *

THE REMEDIES SET OUT ABOVE ARE BUYER’S
EXCLUSIVE REMEDIES FOR BREACH OF THIS LIMITED
WARRANTY. IN NO EVENT SHALL BUYER BE ENTITLED
TO OR DELAVAL BE LIABLE FOR DAMAGES OF ANY
KIND, WHETHER DIRECT, INDIRECT, SPECIAL,
INCIDENTAL OR CONSEQUENTIAL . . .

(the “Remedy Exclusion & Damages Limitation Provisions”). The only difference between the Remedy Exclusion & Damages Limitation Provisions set forth in the respective Purchase

⁷ The language quoted is set forth in the Richards Agreement. The other Purchase Agreements are identical in substance and virtually identical in form. The other Purchase Agreements state: “If DeLaval determines that repair or replacement of the item of Equipment is not an effective remedy, DeLaval shall refund to the Equipment Purchaser the purchase price (excluding the cost of installation labor) of the defective item of Equipment and any other Equipment which cannot be used in the absence of the defective item of Equipment.”

Agreements is that the Richards Agreement refers to the purchaser of a classic model VMS robot as a “BUYER,” while the other Purchase Agreements refer to the purchase as an “OWNER.”

361. Plaintiffs repeatedly advised DeLaval, within the time and in the manner required by the Limited Remedy, and DeLaval otherwise had knowledge of each aforementioned defect and problem with the classic model VMS. Plaintiffs also made repeated requests to DeLaval for repairs and replacements of the defective classic model VMS robots, as well as for service, maintenance and/or support to cure the defects plaguing the classic model VMS.

362. Plaintiffs made numerous, repeated requests to DeLaval for the classic model VMS to be repaired, replaced and/or upgraded as previously guaranteed by DeLaval, through its agents, servants and/or employees, in light of the advancements made with the milking system, which were incorporated into the V300 for the purpose of correcting the defects and problems with the classic model VMS experienced by Plaintiffs and other dairy farmers.

363. DeLaval failed to repair, provide an adequate replacement for, or refund the purchase price of the defective classic model VMS robots (within a reasonable time or otherwise), which were defective and failed to conform with the Limited Warranty, despite having knowledge, and receiving adequate notice, of each defect and problem with the classic model VMS robots within the time and in the manner required by the Limited Remedy.

364. DeLaval has not adequately covered by warranty the repair or replacement of any of the countless classic model VMS defects, problems and failures experienced by Plaintiffs, and failed to provide adequate and proper service, maintenance and support to address such defects, problems and failures, despite its representation and guarantee that competent, trustworthy support was available 24/7 to cure any problems with or failures of the classic model VMS.

365. The failure of DeLaval to correct the defective condition of the classic model VMS robots purchased by Plaintiffs resulted in repeated operational problems and failures therewith, which continued to persist until Plaintiffs were forced to take the classic model VMS robots out of operation, system downtime during which cows could not be milked, increased labor costs, decreased milk production, lost business and lost profits.

366. The limited repair or replacement remedy is of no value to Plaintiffs or other purchasers of defective classic model VMS robots and equipment. When a classic model VMS robot experiences an “alarm” (i.e., failure or problem), all cows are impacted in terms of access and their ability to be milked and, assuming at least one other robot remained in operation and was not experiencing an alarm, the demand for that robot dramatically increased.

367. While a classic model VMS robot is experiencing an alarm, cows cannot be milked by that robot. For example, when one of the two classic model VMS robots purchased by Richards experienced an alarm, the demand for the remaining robot doubled, the amount of milk produced was reduced by fifty percent (50%), and cow health was negatively impacted, resulting in decreased milk production, increased mastitis rates, and thousands of dollars in lost profits.

368. The classic model VMS robots provided by DeLaval to Plaintiffs frequently experienced “alarms” at the same time, during which time cows were not milked at all or Plaintiffs were forced to expend money on labor to manually milk cows. When no labor could be found on short notice, the amount of milk produced was reduced by virtually one-hundred percent (100%) and cow health was negatively impacted, resulting in decreased milk production, increased mastitis rates, and thousands of dollars in lost profits.

369. The limited repair or replacement remedy does not adequately protect purchasers of defective classic model VMS robots. Even after repairs are performed or replacements are

provided at the sole discretion of DeLaval, purchasers are still left with a defectively designed and manufactured product that consistently, repeatedly and routinely experiences operational problems and failures that cannot be corrected or cured by a repair or replacement.

370. DeLaval knew that the limited repair or replacement remedy does not adequately protect purchasers of defective classic model VMS robots since at least the Fall of 2008 based on the inability of DeLaval to correct the defects with the classic model VMS robots that were then installed on Chambers Dairy, which had the same defects and problems as the classic model VMS robots provided to Plaintiffs by DeLaval.

371. Gotham explained that despite “efforts to repair, recalibrate, and otherwise attempt to correct the defects with the classic model VMS and [] constant communication with DeLaval through Zepp, Baker and other employees at the DeLaval headquarters in Sweden, including frequent emails, the defects and problems with the classic model VMS were unable to be fixed by repairing or replacing the classic model VMS or its components,” and that:

[t]he defects and problems with the classic model VMS experienced by the Chambers persisted throughout the entire time the robots remained in operation. It did not matter what the Chambers did or what DeLaval recommended be done to fix those defects and problems. The problems with the classic model VMS were clearly related to defects in the design and manufacture of the classic model VMS, which were unable to be corrected or repaired.

Exhibit D, Gotham Affidavit ¶¶ 26, 27.

372. The Limited Remedy Section in all four agreements, the Exclusion of Other Remedies in the Bishop, Naedler, and Robillard Agreements, and the Richards’ Agreement’s Limitation of Damages and Limitation of Liability Sections (collectively the Limited Remedy and

Remedy Exclusion & Damages Limitation Provisions”),⁸ are unconscionable and fail of their essential purpose because – at all times relevant herein, including at and before the Purchase Agreements were entered into – DeLaval knew that the defects and problems with the classic model VMS of which it had peculiar, unique and superior knowledge were incapable of being corrected or cured by the limited repair or replacement remedy.

373. Since DeLaval knew that the defects and problems with the classic model VMS of which it had peculiar, unique and superior knowledge (yet concealed from Plaintiffs) were incapable of being corrected or cured by the limited repair or replacement remedy, there was an inequality of bargaining positions so strong, gross and manifest that it is impossible to state it to one with common sense without producing an exclamation at the inequality of it.

374. The Limited Remedy and Remedy Exclusion & Damages Limitation Provisions are unconscionable and fail of their essential purpose since the determination of whether to repair, replace or refund the purchase price of a defective classic model VMS robot is within the sole discretion of DeLaval, which systematically fails to honor the Limited Remedy and fails to exercise good faith when determining whether to provide a repair, replacement or refund.

375. Although the Limited Remedy provides DeLaval with the discretion to refund the purchase price, such refund fails to make Plaintiffs and other purchasers of defective classic model VMS robots, whole for several reasons, each of which DeLaval had knowledge at all times relevant

⁸ The section in the Bishop, Naedler, and Robillard Agreements entitled “Exclusion of Other Remedies” is substantially the same as the section in the Richards Agreement entitled “Limitation of Damages.” The section in the Bishop, Naedler, and Robillard Agreements entitled “Exclusion of Other Claims” is substantially the same as the section in the Richards Agreement entitled “Exclusion of Other Remedies.” The Richards Agreement contains a “Limitation of Liability Section” that does not appear in the other agreements and which essentially repeats the purported “Limitation of Damages” section.

herein, including before the Purchase Agreements entered into. Thus, even in light of the backup refund remedy, the Limited Remedy fails of its essential purpose and is unconscionable.

376. First, the refund is limited to the purchase price of the classic model VMS robots and excludes the cost of installation labor, as well as the several hundreds of thousands of dollars that Plaintiffs incurred to design and construct an entirely new or retrofit an existing barn in which to install the classic model VMS at the behest of DeLaval – not to mention the significant financial losses Plaintiffs suffered as a result of using the classic model VMS robots.

377. Second, the latent character of the defects and problems with the classic model VMS robots did not allow said defects and problems to be discovered by Plaintiffs upon tender of delivery, or prior to either installation of the classic model VMS robots or the design and construction of the barn in which the classic model VMS robots were installed, which could not be used to milk cows by any alternative method.

378. By limiting the refund to the purchase price, DeLaval improperly attempts to avoid refunding the hundreds of thousands of dollars it would cost to remove the classic model VMS robots, and either modify the barn that was specifically built to accommodate and facilitate their use or demolish the newly constructed or retrofitted barn, then design and reconstruct an entirely new barn that is suitable for an alternative milking method.

379. Third, DeLaval was either unable or unwilling to provide Plaintiffs with an appropriate refund that was sufficient to provide them with the substantial value of the bargain of the Purchase Agreements or, for that matter, any refund at all. It provided no Plaintiff with a reasonably timely refund or replacement, and in fact provided them with nothing at all. Moreover, even if a refund of the purchase price had been provided, that still would not be sufficient to make

Plaintiffs whole since it would not extinguish their obligations to the company that financed the purchase.

380. The Limited Remedy and Remedy Exclusion & Damages Limitation Provisions are unconscionable and fail of their essential purpose since DeLaval knew at and before the dates on which the Purchase Agreements were entered into that those provisions deprived Plaintiffs of a minimum adequate remedy for damages due to the constant, long-term malfunctioning of the defective classic model VMS, which DeLaval knew it was incapable of correcting.

381. The Limited Remedy and Remedy Exclusion & Damages Limitation Provisions are unconscionable and fail of their essential purpose since they are inadequate to cover Plaintiffs' actual damages – including the purchase, installation and service costs of the classic model VMS, increased labor costs, value of the cows lost to culling and mastitis, and lost business and profits – and, thus, deprive Plaintiffs of the benefit of their bargain.

382. Those provisions are further unconscionable and fail of their essential purpose because – at all times relevant herein, including at and before the Purchase Agreements were entered into – DeLaval had peculiar, unique and superior knowledge of the defects and problems with the classic model VMS and knew that those provisions deprived purchasers of defective classic model VMS robots of a minimum adequate remedy.

383. The foregoing is evidenced by the fact that Chambers Dairy defaulted on its lease agreement for the classic model VMS and was forced to file for bankruptcy due to the absence of a minimum adequate remedy and the repeated problems with the defective classic model VMS robots purchased from DeLaval, which were incapable of being corrected and were the same defects and problems continuously and repeatedly experienced by Plaintiffs.

384. Indeed, based on the Smith Report and its firsthand knowledge of the financial ruin to which Chambers Dairy was subjected as a result of the defective classic model VMS, DeLaval knew since August of 2009 (at the latest) that the Limited Remedy and Remedy Exclusion & Damages Limitation Provisions did not provide a minimum adequate remedy to purchasers of defective classic model VMS robots and were inadequate to protect such purchasers.

385. DeLaval also knew that the Limited Remedy and Remedy Exclusion & Damages Limitation Provisions routinely operated to deprive purchasers of classic model VMS robots of the benefits of their bargain by subjecting them to financial hardship and/or ruin, with numerous purchasers, such as Chambers Dairy, being forced to sell their dairy farms and/or file for bankruptcy, which would not occur if those provisions provided an adequate remedy.

386. Plaintiffs sustained consequential and incidental damages that would not have been sustained but for DeLaval designing, marketing and selling defective classic model VMS robots, were not within the contemplation of Plaintiffs and DeLaval at the time they entered into the Purchase Agreements and, thus, should not be prohibited when the bargained for remedy (*i.e.*, the Limited Remedy) fails of its essential purpose and is unconscionable.

CLASS ACTION ALLEGATIONS

387. Class Definition: Plaintiffs bring this action on behalf of themselves and other similarly situated individuals. Pursuant to Federal Rules of Civil Procedure 23(b)(3), Plaintiffs seek certification of Nationwide Class (the “Nationwide Class”) and the following Subclasses defined as follows:

All Persons who purchased, financed, leased, and/or rented a classic model VMS robot (the “Nationwide Class”).

All Persons who are residents of New York and who purchased, financed, leased, and/or rented a classic model VMS robot (the “New York Subclass”).

All Persons who are residents of Tennessee and who purchased, financed, leased, and/or rented a classic model VMS robot (the “Tennessee Subclass”).

All Persons who are residents of Vermont and who purchased, financed, leased, and/or rented a classic model VMS robot (the “Vermont Subclass”).

All Persons who are residents of Wisconsin and who purchased, financed, leased, and/or rented a classic model VMS robot (the “Wisconsin Subclass”).

388. Excluded from the Class are the Court and its officers, employees, and relatives; Defendants and their subsidiaries, officers, directors, employees, and agents; and governmental entities.

389. Numerosity: the Class consists of members so numerous and geographically dispersed that joinder of all members is impracticable, as Defendants admit that, at a minimum, one hundred sixty five (165) Persons or entities purchased at least six hundred (600) classic model VMS robots, which Persons and entities are spread across several states.

390. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiffs and Class members, and those questions substantially predominate over any questions that may affect individual Class members. Common questions of law and fact include:

- a. Are the classic model VMS robots defectively designed?
- b. Do the classic model VMS robots have defects in material and workmanship?
- c. Were Defendants on notice of the defective nature of the classic model VMS robots and, if so, as of what date?
- d. Do the classic model VMS robots meet the past performance data and statistics uniformly represented by Defendants?
- e. Did Defendants breach an express and/or implied warranty of merchantability?
- f. Were the classic model VMS robots merchantable at the time of sale?
- f. Did Defendants breach an implied warranty of fitness for a particular purpose?

- g. Did Defendants owe a duty of care to Plaintiffs and the Class?
- h. Were Defendants negligent?
- i. Did Defendants make material misrepresentations in advertising, marketing and selling the classic model VMS?
- j. Did Defendants conceal facts regarding the classic model VMS robots?
- k. Did Defendants breach their contracts with Plaintiffs and the Class?
- l. Were Plaintiffs and the Class damaged by Defendants' actions?

391. All members of the Class are ascertainable by reference to objective criteria. DeLaval has access to addresses and other contact information for Class members which can be used for notice purposes.

392. Typicality: Plaintiffs claims are typical of other members of the Class because all of the claims arise from the same course of conduct by DeLaval, the same defects and operational problems with the classic model VMS and are based on the same legal theories.

393. Adequacy of Representation: Plaintiffs are adequate class representatives because their interests do not conflict with the interests of the Class members whom they seek to represent. Plaintiffs have retained counsel with substantial experience in prosecuting complex and class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of class members and have the financial resources to do so. The Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

394. Superiority of Class Action: Class treatment is superior to individual treatment, as it will permit a large number of similarly situated persons to prosecute their respective class claims in a single forum, simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce.

395. To the extent not all issues or claims, including the amount of damages, can be resolved on a class-wide basis, Plaintiffs invoke Federal Rule of Civil Procedure 23(c)(4), reserving the right to seek certification of a class action with respect to particular issues, and Federal Rule of Civil Procedure 23(c)(5), reserving the right to divide the class into subclasses.

TOLLING

396. Any applicable statute of limitations that might otherwise bar any claim of any Plaintiff or member of the Class has been tolled by Defendants' knowing and active concealment of the facts alleged above. Plaintiffs and the Class were ignorant, by no fault of their own or due to any failure by them to exercise due diligence, of vital information essential to the pursuit of their claims and of which Defendants had superior, unique and particular knowledge.

397. Plaintiffs and the Class could not reasonably have discovered and filed suit regarding their claims, because Defendants misled them into believing that the classic model VMS was free of defects, performed as uniformly represented, that other dairy farmers were not having problems with the classic model VMS, and that any problems were of their own making, all the while Defendants had exclusive possession and superior, unique and particular knowledge of material facts to the contrary to which Plaintiffs and the Class did not have access.

398. DeLaval used improper means to prevent Plaintiffs and the Class from filing suit. For example, as described in more detail herein for example, throughout 2015 and as late as August 2015, DeLaval represented to the Robillards that software updates were forthcoming that would solve the issues they were experiencing. Upon information and belief, such promises of forthcoming updates and failure to disclose the unsolvable problems with the classic model VMS were not unique to the Robillards and, instead, were systematically employed by Defendants to

deter purchasers of the classic model VMS from timely recognizing and pursuing their legal remedies.

399. Moreover, as described in more detail herein, in or around January of 2019, before the applicable statute of limitations expired, two DeLaval representatives, Jones and Bernal, told Bishop that if he contacted a lawyer and sued DeLaval, DeLaval would immediately cease servicing his classic model VMS robots, which would have decimated his farming operation. Upon information and belief, such threats were not unique to Bishop and, instead, were systematically employed by Defendants to deter purchasers of the classic model VMS from pursuing their legal remedies.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

400. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

401. Pursuant to the Purchase Agreements, DeLaval agreed to provide Plaintiffs with classic model VMS robots that were “free from defects in material and workmanship” and, pursuant to the uniform advertisements, marketing and representations detailed herein, performed and, in fact, had performed in the past on other dairy farms in a manner consistent with the substance of those uniform advertisements, marketing and representations. Plaintiffs and the Class paid substantial consideration in exchange for the foregoing promises made by DeLaval.

402. DeLaval breached its contractual obligations and promises by furnishing classic model VMS robots that, without exception, had numerous defects in material and workmanship,

including those detailed herein at paragraph 216, and were plagued with numerous, repeated operational problems that are uniformly experienced by purchasers.

403. The aforementioned defects and operational problems, which were incapable of being corrected, cured or otherwise remedied, prevented the classic model VMS from functioning, operating and performing as uniformly advertised, marketed and represented by DeLaval. At all times relevant herein, DeLaval knew that it was delivering classic model VMS robots that had the defects in material and workmanship detailed herein.

404. The aforementioned defects and operational problems with the classic model VMS are latent defects of which Plaintiffs and the Class were unaware prior to them being manifested, which were not disclosed to Plaintiffs or the Class by DeLaval, were not readily apparent, obvious or visible to Plaintiff or the Class before the classic model VMS became operational, and could not have been discovered by Plaintiff or the Class upon reasonable diligence and inspection.

405. The aforementioned defects and operational problems with the classic model VMS were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of DeLaval or in the control of Plaintiffs or the Class and, instead, were caused by the defects with the classic model VMS created by DeLaval, over which it had control and of which it had peculiar, unique and superior knowledge.

406. DeLaval systematically breached the Purchase Agreements by failing to provide Plaintiffs and the Class with classic model VMS robots and equipment that were free from defects in material and workmanship and conformed to the specifications set forth in the Purchase Agreements, as well as by failing to install the classic model VMS robots in a good and workmanlike manner, despite full contractual performance by Plaintiffs and the Class.

407. The classic model VMS robots furnished by DeLaval, through its agents, servants and/or employees, were defective and did not conform to the specifications set forth in the Purchase Agreements in that, among other defects, problems and failures alleged herein, they failed to work properly, were defective and faulty, and had numerous, repeated operational problems of which DeLaval had peculiar, unique and specialized knowledge.

408. To fraudulently and improperly dissuade, deter and prevent Plaintiffs and the Class from seeking legal recourse and/or revoking acceptance of the defective, non-confirming classic model VMS robots furnished to them by DeLaval, DeLaval, through its agents, servants and/or employees, including, but not limited to, those specifically identified herein, repeatedly guaranteed Plaintiffs and the Class that it would cure its breaches, as well as that:

- a. the defects and problems with, and failures of, the classic model VMS they were experiencing were only temporary;
- b. the defects and problems with, and failures of, the classic model VMS they were experiencing would be cured by DeLaval;
- c. the defects and problems with, and failures of, the classic model VMS were due to the dairy farm transitioning to a voluntary milking system and would cure themselves over time;
- d. the defects and problems with, and failures of, the classic model VMS were not the result of any defects with the classic model VMS;
- e. the defects and problems with, and failures of, the classic model VMS experienced by Plaintiffs were not being experienced by other dairy farmers using the classic model VMS; and
- f. a system upgrade would soon be available to cure the problems with and failures of the classic model VMS experienced by Plaintiffs.

409. In addition to the express terms, the Purchase Agreements contain an implied covenant of good faith and fair dealing, which, among other things, serves to prevent one party from unfairly taking advantage of the other party, evading the spirit of the transaction, and denying

the other party the expected benefit of the contract. This implied covenant of good faith and fair dealing also emphasizes faithfulness to an agreed common purpose and consistency for the justified expectations of the other party. As a result of the aforementioned conduct, DeLaval not only breached the express terms of the Purchase Agreements, but also breached the implied covenant of good faith and fair dealing contained therein.

410. By reason of the foregoing, Plaintiffs and the Class have been damaged and seek all remedies in the aggregate or in the alternative, including revocation of the contract and return of the purchase price and consequential damages and losses, including, but not limited to, the costs incurred in installing the equipment and building or remodeling their bards, increased labor costs, lost business profits, and all other damages permitted by law.

SECOND CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

411. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

412. A warranty that the classic model VMS shall be merchantable was implied in the Agreement because DeLaval is a merchant who deals in goods of that kind and hold itself out as having knowledge and skill peculiar to the robotic and/or voluntary milking industry by advertising, marketing and representing themselves to be the worldwide leader in milking equipment and solutions for dairy farmers.

413. The classic model VMS robots delivered and installed by DeLaval do not pass without objection in the dairy farming trade under the description set forth in the Purchase Agreements and are not fit for the ordinary purpose for which such devices are used in that the

classic model VMS, when used in the customary, usual and reasonably foreseeable manners, was defective, failed to milk cows and suffered from other serious operational deficiencies and errors, which are alleged herein and incorporated by reference.

414. The classic model VMS robots delivered and installed by DeLaval do not run of even kind, quality and quantity within each unit and among all units involved, and do not conform to the promises and/or affirmations of fact made on the container, label and/or accompanying catalogues, manuals and/or brochures, including, but not limited to, the promises and/or affirmations of fact made in the P&S Catalogue, the Milking at its Best Brochure, the Freedom to Choose Brochure, the Rodriguez Article and elsewhere.

415. By reason of the foregoing, DeLaval breached the implied warranty of merchantability and Plaintiffs and the Class are entitled to recover all of their damages from DeLaval.

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

*On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the
Statewide Subclasses*

416. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

417. Plaintiffs and the Class specified to DeLaval, through its agents, servants and/or employees, that they required classic model VMS robots capable of, among other things, milking at least sixty cows per robot three times a day, increasing their milk production, increasing the quality of the milk produced by lowering the somatic cell count, LPC, standard plate count and raw bacteria, and providing true quarter milking without missing quarters.

418. Plaintiffs and the Class relied on the skill and judgment of DeLaval, who holds itself out to be the worldwide leader in milking equipment and solutions for dairy farmers, to select and furnish a suitable voluntary milking system capable of meeting or exceeding their aforementioned requirements, a fact that was conveyed by Plaintiffs and the Class to DeLaval, through their agents, servants and/or employees.

419. Plaintiffs and the Class relied on the skill and judgment of DeLaval in purchasing classic model VMS robots, which were not fit for the particular purpose for which they were required in that, among other things detailed herein, it failed to: milk at least sixty cows three times a day; increase the milk production of each cow; increase the quality of the milk produced by lowering the somatic cell count, LPC, standard plate count and raw bacteria; and provide for true quarter milking, as it routinely missed quarters.

420. By reason of the foregoing, DeLaval breached the implied warranty of fitness for a particular purpose and Plaintiffs and the Class are entitled to recover all of their damages from DeLaval.

FOURTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

421. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

422. In all four Agreements, DeLaval expressly warranted that the classic model VMS robots and equipment provided to Plaintiffs and the Class were “free from defects in material and workmanship,”

423. The classic model VMS robots failed to conform to the express warranty of DeLaval in that they had numerous, uniform defects in material and workmanship, including, but not limited to, those detailed herein at paragraph 216, which cause the classic model VMS robots to experience the numerous, repeated operational problems detailed herein, which were uniformly experienced by Plaintiffs and the Class, without exception.

424. Among other defects in material and workmanship, the hoses and vents of the classic model VMS were defective in material and workmanship in that they had holes, gaps and/or openings in which dirt, manure and other unsanitary substances penetrated, became trapped or clogged, and/or otherwise infiltrated, resulting in decreased milk quality, increased somatic cell count, standard plate count and raw bacteria, and increased mastitis and culling rates.

425. Moreover, the flow regulating valve (“FRV”) of the classic model VMS (as well as other valves and parts of the classic model VMS) were defective in material and workmanship in that they routinely failed and had to be replaced one or more times a year when, in the ordinary course and under the stress to which they were subjected, such valves that are not defective in material and workmanship have a life span of seven to twelve years.

426. In addition, DeLaval expressly warranted in their sales pitches and via their sales materials that the classic model VMS robots and equipment provided would at the time of sale and at all times thereafter, perform as advertised and represented, and would possess the features represented by DeLaval, including, but not limited to, a MDi and OCC, as well as the ability to upgrade as further advancements were made without purchasing new equipment or robots.

427. The classic model VMS was defective and failed to live up or conform to even the most basic of the affirmations of fact, promises, representations and descriptions made by DeLaval about the abilities, benefits, capabilities and past performance of the classic model VMS, all of

which are alleged in detail herein, specifically incorporated by reference and formed part of the basis of the bargain to which the Purchase Agreements relate.

428. The classic model VMS, among other defects and problems detailed herein, failed to milk cows, was defective and not fit for its intended purpose, did not function as represented by DeLaval, had higher-than-represented maintenance, service and repair costs, never worked properly, increased labor and energy consumption costs, decreased milk production, quality and value, did not provide for true quarter milking and decreased profitability.

429. At all times relevant herein, including before it made the aforementioned express warranty, DeLaval knew of material facts establishing, indicating and/or proving that the classic model VMS was not “free from defects in material and workmanship” and that the dairy farms on which it had been and was operational experienced numerous problems as a result of its defects, which were incapable of being corrected, cured or otherwise remedied.

430. The natural tendency of the express warranty was to induce Plaintiffs and the Class to purchase the classic model VMS and, in reasonable reliance on the foregoing, Plaintiffs and the Class purchased classic model VMS robots from DeLaval, which, to their detriment, were defective and failed to live up or conform to even the most basic of the affirmations of fact, promises, representations and descriptions made by DeLaval.

431. Further, in the Purchase Agreements, DeLaval warrantied that all installation services performed by DeLaval, though its agents, servants and/or employees, would be performed in a workmanlike manner.

432. DeLaval failed to install the classic model VMS in a workmanlike manner in that its agents, servants and employees routinely caused property damage the barns in which the classic model VMS robots were installed due to their failure to install the same in a workmanlike manner.

It also routinely failed to properly calibrate the classic model VMS, causing the defects and problems set forth herein, including repeated teat cup attachment failures.

433. Once the classic model VMS robots were installed, DeLaval, through its agents, servants and employees, failed to perform repairs in a workmanlike manner, which resulted in repeated operational failures of the classic model VMS, operational failures not being addressed, system downtime, increased labor costs, decreased milk production, lost business and lower profits than before the dairy farms began using the classic model VMS.

434. By reason of the foregoing, DeLaval breached the express warranty created by the aforementioned affirmations of fact, promises, representations and descriptions, entitling Plaintiffs and the Class to recover all of their damages from DeLaval.

FIFTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

435. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

436. DeLaval failed to properly design and manufacture the classic model VMS, which it placed on the market despite knowing that, as designed, it posed a substantial likelihood of harm to dairy farmers in that it decreases the quality and value of their milk by increasing somatic cell count, LPC, standard plate count and raw bacteria, decreases their milk production by failing to milk cows, increases mastitis and culling rates of their herds, physically damages cows and the barns in which it is installed, and causes other damages as alleged herein.

437. At all times relevant herein, DeLaval knew that the classic model VMS was defectively designed and manufactured, and that the dairy farms on which it had been and was

operational experienced numerous problems as a result of its defects, which were incapable of being corrected or cured, were conveyed to DeLaval before the aforementioned express warranties were made and Plaintiffs and the Class purchased their respective classic model VMS robots, and are distilled in the Smith Report, including, but not limited to:

- a. a defective guidance system that fails to accurately and consistently find and attach the teat cups to each teat of the cow due to, among other defects, camera and encoder defects, causing numerous teat attachment issues, including repeated failures to attach properly, missed quarters, improper delays in the milking process and failure to completely milk cows, which causes numerous health problems for, and damage to, cows, increases mastitis and culling rates, decreases milking productivity and efficiency, lessens milk production, and causes the other problems and/or failures identified herein.
- b. a defective detachment process that is slow and/or delayed, as a result of which the teat cups and hoses are consistently dragged across the deck mat, as well as through the water and manure that accumulates thereon, resulting in decreased milk quality, increased somatic cell count, lab pasteurization count, standard plate count and raw bacteria, increased mastitis and culling rates, decreased udder health, less milk production, and causes the other problems and/or failures identified herein.
- c. a defective teat cleaning system that fails to dry teats before the start of the milking process, is unable to discriminate between a dirty and clean udder, and only performs a successful teat cleaning a mere sixty-seven percent (67%) of the time, resulting in numerous health problems for cows, increased mastitis and culling rates, increased somatic cell count, lab pasteurization count, standard plate count and raw bacteria, and decreased udder health.
- d. a defective cleaning and washing system that fails to adequately clean and wash, among other things, the dirt, manure and other unsanitary substances that penetrate, become trapped and clogged in, and/or infiltrate the hoses, belting and/or the vents of the classic model VMS, resulting in decreased milk quality, increased somatic cell count, standard plate count and raw bacteria, and causes the other problems and/or failures identified herein.
- e. the defective design of the classic model VMS, which allows, permits and causes milk solids accumulate on the belting against which the teat cup rests following detachment, which decreases milk quality and value, decreases udder health, increases somatic cell count, standard plate count and raw bacteria, increases mastitis and culling rates, decreases the amount of usable milk produced, and causes the other problems and/or failures identified herein.

- f. the defective design of the classic model VMS, which allows, permits and causes dirt, manure and other unsanitary substances to penetrate, become trapped and clogged in, and/or infiltrate the hoses, belting and/or the vents thereof due to its defective design and lack of any mechanisms or safeguards to prevent such substances from penetrating, becoming trapped and clogged in, and/or infiltrating the hoses, belting and/or the vents thereof, resulting in dirt, manure and other unsanitary substances contacting the main milk line, decreased milk quality, increased somatic cell count, standard plate count and raw bacteria, and causes the other problems and/or failures identified herein.

438. The aforementioned defects with the classic model VMS, among other defects of which DeLaval had peculiar, unique and specialized knowledge at all times relevant herein, including at and before each of the aforementioned representations were made, caused the problems with and failures of the classic model VMS robots experienced by Plaintiffs and the Class, including those set forth above in paragraph 216.

439. It was feasible for DeLaval to design the classic model VMS in a better, safer and more effective manner and, in fact, DeLaval designed such a voluntary milking system known as the V300, which addressed the defects, failures and problems alleged herein with the classic model VMS that was placed on the market and sold to Plaintiffs and the Class by DeLaval, and which DeLaval began and/or completed designing, developing and manufacturing while the classic model VMS was still on the market and before it was sold to Plaintiffs and the Class.

440. It was feasible for DeLaval to design the classic model VMS purchased by Plaintiffs and the Class in a better, safer and more effective manner by designing it similar to the one designed by Lely and/or by having a teat preparation cup with its own separate line to prevent dirty pre-milk from contacting and contaminating the main milk line, which, despite the representations of DeLaval to the contrary, the classic model VMS did not have or, alternatively, had, but was defective and failed to function, operate and/or work as designed and represented.

441. It was feasible for DeLaval to design the classic model VMS purchased by Plaintiffs and the Class in a better, safer and more effective manner by equipping it with a mastitis detection index, online cell counter or other similar feature that gives notice of potential mastitis, which, despite the representations of DeLaval to the contrary, the classic model VMS purchased by Plaintiffs and the Class did not have or, in the alternative, did have, but was defective and failed to function, operate and/or work as designed and represented.

442. It was feasible for DeLaval to design the classic model VMS purchased by Plaintiffs and the Class in a better, safer and more effective manner by increasing the rate of speed of the detachment process and/or eliminating the delay of the detachment process to prevent the teat cups and hoses from being consistently dragged across the deck mat, as well as through the water and manure that accumulates thereon, and/or by otherwise preventing the teat cups and hoses from being consistently dragged across the deck mat.

443. It was feasible for DeLaval to design the classic model VMS in a better, safer and more effective manner by designing it to prevent milk solids from accumulating on the belting against which the teat cup rests following detachment, equipping the classic model VMS with the ability to clean off any milk solids that do accumulate on the belting against which the teat cup rests and/or designing the teat cup to not rest against belting or other equipment, especially equipment on which milk solids accumulate or which are dragged across the deck mat.

444. It was feasible for DeLaval to design the classic model VMS in a better, safer and more effective manner by designing it to prevent dirt, manure and other unsanitary substances from penetrating, becoming trapped and clogged in, and/or infiltrating the hoses, belting and/or the vents thereof by, among other things, using a bigger and/or stronger vacuum pump or by increasing the rate of speed of the detachment process and/or eliminating the delay of the

detachment process to prevent the hoses, belts and vents from being consistently dragged across the deck mat, as well as through the dirt, water and manure that accumulates thereon.

445. It was feasible for DeLaval to design the classic model VMS in a better, safer and more effective manner by designing it to prevent cows from being milked unless and until all quarters are attached and/or equipping it with a mechanism or safeguard to prevent cows from being milked unless and until all quarters are attached, as well as by correcting, curing and/or eliminating the camera and encoder defects, which caused the aforementioned teat attachment issues and resulted in missed quarters, and/or using a camera that was suitable for the environment in which it was intended to be used, specifically a dairy farm.

446. The aforementioned defects caused significant damage to Plaintiffs' and Class members' property. The defects with the classic model VMS caused damage to the cows owned by Plaintiffs and the Class in that caused their mastitis rates to increase due to, among other things, the failure to properly and fully milk each quarter of every cow during every milking in a sanitary manner, which resulted in injury and death to the cows.

447. As a result, many cows owned by Plaintiffs and the Class either had to be culled or died due to the severity of their infections, thereby depriving Plaintiffs and the Class of the value of those cows, while others had to have one or more entire quarters removed, which permanently reduced the milk producing capacity of those cows by approximately twenty-five percent (25%) per quarter that had to be removed, causing the value of those cows to decrease significantly.

448. The aforementioned defects with the classic model VMS also damaged the quality of the milk produced by the cows owned by Plaintiffs and the Class by causing its somatic cell count, raw bacteria, standard plate count and laboratory pasteurization count to increase

significantly. Moreover, the classic model VMS caused the cows owned by Plaintiffs and the Class to produce less milk than previously, which also decreased the value of their cows.

449. Further, the defects also caused damage to Plaintiffs' and Class members barns and farms including, but not limited to, causing Plaintiffs and Class members to destroy or retrofit barns that were then only fit to use the classic model VMS after which Plaintiffs' and Class members' had to rebuild barns or repair the damage to their respective dairy farms and barns caused by the installation of the defective classic model VMS.

450. By reason of the foregoing, Richards are entitled to recover all of their damages from DeLaval.

SIXTH CAUSE OF ACTION

NEGLIGENCE

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

451. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

452. It was foreseeable, if not foreseen, by DeLaval that if its product did not perform as represented, Plaintiffs and the Class would suffer personal injury and property damage. Plaintiffs and the Class designed and either constructed an entirely new barn or retrofitted an existing barn to accommodate the use of the classic model VMS at the behest of DeLaval; the classic model VMS caused damage to the herds of Plaintiffs and the Class in the form of mastitis and bacterial infections; the classic model VMS caused damage to the dairy produced by Plaintiffs and the Class by dramatically increasing bacteria counts. These injuries, and the way they occurred, were entirely foreseeable, and even foreseen, by DeLaval before it delivered the

classic model VMS robots to Plaintiffs and the Class. Consequently, DeLaval owed a duty of ordinary care to prevent said injuries.

453. DeLaval, by its agents, servants and/or employees, was reckless, careless and negligent in failing to properly design the classic model VMS, which it placed on the market despite knowing that the classic model VMS, as designed, posed a substantial likelihood of harm and that it was feasible to design the classic model VMS in a safer manner; in designing, developing, manufacturing, advertising, selling, promoting, servicing, maintaining, installing, repairing and distributing the classic model VMS; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that failed to milk cows; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that decreased milk efficiency, production, quality and/or value; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that increased somatic cell count, standard plate count and raw bacteria; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that was not capable of and/or failed to milk cows three times a day; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that was not capable of and/or failed to increase the milk production of each cow by eight to ten pounds or otherwise; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that was not capable of and/or failed to milk at least sixty-nine cows per unit; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that increased labor, energy consumption and operational costs; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that had repeated operational failures, including, but not limited to, sensor issues, the robot arm not attaching to teats at 45° angles, improper and inadequate attachments, slower and less dependable teat attachment rates,

increased teat cleaning time, and the failure to milk cows; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that increased mastitis rates of the herd on the Dairy Farm and failed to give notice of potential mastitis, which resulted in cows being treated at a later stage, longer recovery times for cows, death of cows, increased culling, less milk production, lost business and lower profits than before the dairy farms began using the classic model VMS; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that had numerous, repeated cup attachment failures with cup attachment rates below ninety-eight percent (98%); in designing, developing, manufacturing, selling, providing and installing a classic model VMS that decreased the health of cows and killed cows; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that did not have an adequate and/or properly designed separate line for the teat preparation cup to prevent dirty pre-milk from making contact with the main milk line; in failing to prevent dirty pre-milk from making contact with the main milk line; in designing, developing, manufacturing, selling, providing and installing a classic model VMS with a robotic arm that takes excessively long to perform teat sanitation; in designing, developing, manufacturing, selling, providing and installing a classic model VMS with a robotic arm that fails to adequately and properly perform teat sanitation; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that decreases milk flows; in designing, developing, manufacturing, selling, providing and installing a classic model VMS with excessively long unit on time; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that increases cleaning time; in designing, developing, manufacturing, selling, providing and installing a classic model VMS that fails to adequately and properly clean and/or sanitize; in failing to upgrade the classic model VMS as further advancements were made; in failing to provide support, service, maintenance, repairs

and/or other assistance; in abandoning Plaintiffs and the Class despite assurances and promises of “24/7” support; in failing to adequately, properly and timely service, maintain, repair and/or replace the classic model VMS and/or its components and parts; in misrepresenting the abilities, capabilities and ease of use of the classic model VMS; in failing to warn; in decreasing milk efficiency, production, quality and value; in increasing labor and energy consumption costs; in failing to provide skill and judgment in furnishing and selecting the classic model VMS; in failing to make proper recommendations; in failing to exercise the standard of care and skill required of a provider of milking equipment; in failing to have adequate, sufficient and properly trained employees, personnel, staff and salesmen; in failing to provide a milking system that worked as necessary, promised, warranted, and agreed; in falsely representing and promising that the classic model VMS had a Mastitis Detection index; in damaging the Dairy Farm during the installation of the classic model VMS; in inducing Plaintiffs and the Class to purchase the classic model VMS; in causing Plaintiffs and the Class to lose business and profits; in failing to provide a classic model VMS that worked, was fit for its intended purpose, and/or operated as represented and advertised; in creating a trap, hazard and/or nuisance; in launching a force and/or instrument of harm; in failing to exercise reasonable, necessary, proper and adequate care; in violating applicable laws, rules and regulations, including, but not limited to, New York General Business Law §§ 349 and 350, T.C.A. §§ 47-18-101, *et seq.*, 9 V.S.A. § 2451A, *et seq.*, Wis. Stat. § 100.18, and Missouri Uniform Commercial Code §§ 400.2-313, 400.2-314, 400.2-315, 400.2-608 and 400.2-714; and DeLaval was otherwise reckless, careless and negligent.

454. The egregious conduct of DeLaval – which caused the damages sustained by Plaintiffs and the Class and was part of a pattern of similar conduct aimed and directed not only at Plaintiffs and the Class, but at the public generally – amounts to such gross, wanton and willful

fraud, dishonesty and malicious wrongdoing as to involve a high degree of moral culpability and turpitude, which demonstrates such wanton fraud, dishonesty and malicious wrongdoing as to imply a criminal indifference to civil obligations.

455. As a result of DeLaval's breach of its duty to act with reasonable care, Plaintiffs and the Class suffered economic injuries, as well as property injuries to their herds in the form of increased mastitis, death and decreased herd size and to their barns which were retrofitted or rebuilt solely for use of the defective VMS class model robots. They also suffered property injuries to their milk in the form of increased bacteria counts and lower milk quality.

456. By reason of the foregoing, Plaintiffs and the Class are entitled to recover all of their damages from DeLaval, including, but not limited to, punitive damages.

SEVENTH CAUSE OF ACTION

FRAUDULENT INDUCEMENT

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

457. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

458. DeLaval fraudulently induced Plaintiffs and the Class to enter into the Purchase Agreements by making the representations alleged herein on or around the dates specified herein, which it knew were incorrect at the time those representations were made based on, among other things, the VMS Data, the Smith Report, its internal data and studies, and complaints received from other dairy farmers, including the owner of Chambers Dairy.

459. DeLaval represented that the abilities, benefits, capabilities, performance and results conveyed through the aforementioned representations had been consistently, routinely and without exception achieved and obtained by the classic model VMS robots that had been and were

operational on other similar dairy farms up to, through and including the date on which the aforementioned representations were made.

460. That is, the aforementioned deceptive, false and misleading representations made by DeLaval to Plaintiffs and the Class concerned and falsely detailed the past performance and results of, as well as the lack of defects with, the classic model VMS robots that had been in operation on other similar dairy farms up to, through and including the date on which each of the aforementioned representations were made.

461. Acting in reasonable reliance on the aforementioned deceptive, false and misleading representations, Plaintiffs and the Class purchased classic model VMS robots and incurred substantial costs to design, construct and/or retrofit barns within which to install their respective classic model VMS robots based on blueprints, plans, specifications, suggestions and/or other recommendations provided by DeLaval, all of which was to their detriment.

462. DeLaval made the aforementioned representations to Plaintiffs and the Class knowing the quantity, quality and value of the milk produced by Plaintiffs and the Class, the number of cows on their respective dairy farms that needed to be milked each day and the number of times a day each cow needed to be milked, the amount of money Plaintiffs and the Class spent on labor to operate their respective dairy farms, and the mastitis rates of their respective herds.

463. DeLaval represented to Plaintiffs and the Class and/or led them to believe that the aforementioned representations were based on presently existing data collected and maintained by, and accessible only to, DeLaval, detailing the defects and problems with, the performance and failures of, and the profits yielded by similar dairy farmers using the classic model VMS robots that had been and were then operational.

464. DeLaval made the aforementioned representations knowing that Plaintiffs, the Class and other members of the general public desired the information conveyed for the serious purpose of deciding whether to expend significant sums of money to purchase the classic model VMS, design and construct an entirely new barn in which to install it, and place their financial welfare in the hands of DeLaval.

465. DeLaval made the aforementioned representations knowing that Plaintiffs, the Class and other members of the general public intended to rely and act in reasonable reliance on those representations by purchasing classic model VMS robots from DeLaval, designing, constructing and/or retrofitting barns within which to install their classic model VMS robots, and placing their financial welfare in the hands of DeLaval.

466. DeLaval had and held itself out as having peculiar, unique and superior knowledge of the performance of, defects and problems with and/or failures of the classic model VMS and, in light of holding itself out to Plaintiffs and the Class as having such knowledge, anticipated, hoped and/or knew that Plaintiffs and the Class would trust in and justifiably rely on the aforementioned representations to their detriment by purchasing classic model VMS robots.

467. DeLaval made the aforementioned representations with the intent to defraud Plaintiffs and the Class, and for the purpose of inducing Plaintiffs and the Class to rely and act in reasonable reliance thereon by purchasing classic model VMS robots from DeLaval, entering into the Purchase Agreements, designing, constructing and/or retrofitting barns within which to install their classic model VMS robots, and placing their financial welfare in the hands of DeLaval.

468. DeLaval owed a duty to Plaintiffs and the Class to disclose the material facts of which it had peculiar, unique and superior knowledge and provide them with accurate information at all times relevant herein, yet knew that the aforementioned representations made to Plaintiffs

and the Class were false and incorrect based on information, including the VMS Data and the Smith Report, that it knew when the aforementioned representations were made.

469. At all times relevant herein, DeLaval knew of material facts establishing, indicating and/or proving that the classic model VMS did not function or operate as represented, as well as that many dairy farms on which it was operational experienced numerous defects and problems therewith, including those identified above in paragraph 216, as well as those identified in the Ethier Affidavit (Exhibit A), Smith Report (Exhibit C), and Gotham Affidavit (Exhibit D).

470. At all times relevant herein, DeLaval also knew of material facts establishing, indicating and/or proving that the classic model VMS was not “free from defects in material and workmanship” and that the dairy farms on which it was operational experienced numerous problems as a result of its defects, including those identified above in paragraph 216, as well as those identified in the Ethier Affidavit (Exhibit A), Smith Report (Exhibit C), and Gotham Affidavit (Exhibit D).

471. The aforementioned defects with the classic model VMS, among other defects of which DeLaval had peculiar, unique and specialized knowledge at all times relevant herein, including at and before each of the aforementioned representations were made, caused the problems with and failures of the classic model VMS robots experienced by Plaintiffs and the Class, which are detailed herein and incorporated herein by reference.

472. DeLaval, through its agents, servants and/or employees, concealed from Plaintiffs and the Class the aforementioned material facts of which it had and held itself out to Plaintiffs, the Class and the general public as having peculiar, unique and superior knowledge based on, among other things, the VMS Data, the Smith Report, its internal data and studies, and complaints from dairy farmers, none of which was available to Plaintiffs and the Class.

473. DeLaval, through its agents, servants and/or employees, concealed its peculiar, unique and superior knowledge of the aforementioned material facts to prevent the unearthing of facts and information establishing that it knew the aforementioned representations were false at the time they were made, so they could continue to deceive, defraud, mislead, and fraudulently induce dairy farmers to purchase the classic model VMS.

474. Had the aforementioned material facts been disclosed and not concealed by DeLaval with the intent to defraud Plaintiffs and the Class and for the purpose of inducing Plaintiffs and the Class to rely and act in reasonable reliance on the deceptive, false, misleading, incomplete and/or partial information and facts disclosed in the aforementioned representations, no Plaintiff or member of the Class would have purchased a classic model VMS robot.

475. DeLaval, through its agents, servants and/or employees, knew of the aforementioned material facts based on, among other things, the VMS Data, the Smith Report and information provided by and/or gathered from dairy farms on which classic model VMS robots had been and were operational up to, through and including the date on which Plaintiffs and the Class were induced to purchase their respective classic model VMS robots.

476. The aforementioned defects and problems with, and failures of, the classic model VMS experienced by Plaintiffs and the Class are the same defects, problems and failures of which DeLaval had peculiar, unique and superior knowledge from the VMS Data, the Smith Report, information from dairy farmers, and from the other sources identified herein, including dealers, service technicians, and/or warranty claims, yet concealed from Plaintiffs and the Class.

477. The aforementioned defects, problems and failures are representative of the problems and failures of which DeLaval knew other dairy farmers had consistently and routinely experienced with the classic model VMS from the Fall of 2008 (at the latest) up to, through and

including the dates on which DeLaval induced Plaintiffs and the Class to purchase their respective classic model VMS robots.

478. The aforementioned defects, problems and failures of the classic model VMS are latent defects of which Plaintiffs and the Class could not have been aware prior to them being manifested, which were not disclosed to Plaintiffs and the Class by DeLaval, were not readily apparent, obvious or visible to Plaintiffs and the Class before the classic model VMS was incorporated into either a newly constructed or retrofitted barn and became operational, and could not have been discovered by Plaintiffs and the Class upon reasonable diligence and inspection.

479. The aforementioned defects, problems and failures of the classic model VMS were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of DeLaval or in the control of Plaintiffs and the Class and, instead, were caused by the defects with the classic model VMS created by DeLaval over which it had control and of which it had peculiar, unique and superior knowledge at all relevant times.

480. The egregious conduct of DeLaval – which caused the damages sustained by Plaintiffs and the Class and was part of a pattern of similar conduct aimed and directed not only at Plaintiffs and the Class, but at the public generally – amounts to such gross, wanton and willful fraud, dishonesty and malicious wrongdoing as to involve a high degree of moral culpability and turpitude, which demonstrates such wanton fraud, dishonesty and malicious wrongdoing as to imply a criminal indifference to civil obligations.

481. All of the aforementioned representations are extraneous to the terms and conditions of the Purchase Agreements, were statements of present fact that DeLaval knew were false at the time they were made based on then existing data and facts of which DeLaval had peculiar, unique and specialized knowledge, including, but not limited to, the VMS Data and the

Smith Report, the Purchase Agreements do not address the substance of the aforementioned representations, and the aforementioned representations do not relate to performance of the terms, conditions and/or obligations set forth in the Purchase Agreements.

482. By reason of the foregoing, Plaintiffs and the Class have sustained damages, including, but not limited to, having purchased and made expenditures to install the classic model VMS robots that failed to perform as uniformly represented, lost profits, and increased operational and labor costs, as well as substantial damage to their property, including, but not limited to, damage to and loss of cows, damage to their milk in form of increased bacteria counts rendering said milk less valuable or unusable, and damage to their farms.

EIGHTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

483. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

484. DeLaval made the representations specified herein – including those regarding the historical performance of the classic model VMS, as well as those regarding the features possessed by the classic model VMS, such as a MDi and OCC – to Plaintiffs and the Class for the purpose of selling them the classic model VMS, all the while expecting and/or knowing that they would rely thereon by purchasing classic model VMS robots.

485. DeLaval was reckless or, at a minimum, careless in making the aforementioned representations, as it knew those representations were false based on, among other sources, the VMS Data, the Journal of Dairy Science Articles, the Smith Report, and complaints received from

other dairy farmers or, at a minimum, should have known that those representations were false in the absence of willful blindness had it exercised reasonable care and diligence.

486. DeLaval intentionally made the aforementioned representations and supplied the aforementioned information to Plaintiffs and the Class to falsely advise them of the purported benefits, cost-savings and increased profits that they would obtain (and that other dairy farmers had obtained) by purchasing the classic model VMS. Plaintiffs and the Class justifiably relied on the foregoing to their detriment, as DeLaval had superior, specialized, unique and peculiar knowledge of the design, performance and existence of defects in the classic model VMS.

487. Plaintiffs and the Class justifiably relied on the foregoing information since DeLaval cultivated a relationship of confidence and trust with Plaintiffs and the Class. For example, Passino and Ethier met with Richards approximately twenty-five (25) times during the Fall of 2016 and, on the date Passino and Ethier finally succeed in inducing Richards to purchase the classic model VMS, visited the Dairy Farm three (3) times in their final high-pressure, in-person sales push, during which they would not take no for an answer.

488. Ethier admits that such aggressive, high-pressure sales tactics were part of a uniform and “standard DeLaval sales practice . . . used to convince dairy farmers to purchase classic model VMS” robots. Exhibit A, Ethier Affidavit, ¶ 17. Moreover, DeLaval provided Plaintiffs and the Class with blueprints, plans, specifications, suggestions and/or other recommendations to assist them in building or retrofitting a barn specifically designed to house and accommodate the use of their classic model VMS robots.

489. Due to their justifiable reliance, Plaintiffs and the Class purchased classic model VMS robots from DeLaval, as a result of which they uniformly suffered injuries and damages caused by the aforementioned false representations made by DeLaval. Plaintiffs and the Class

sustained not only economic damages, but also substantial damage to their property, including, but not limited to, damage to and loss of cows, damage to their milk in form of increased bacteria counts rendering said milk less valuable or unusable, and damage to their farms.

490. By reason of the foregoing, Plaintiffs and the Class have sustained damages, including, but not limited to, having purchased and made expenditures to install the classic model VMS robots that failed to perform as uniformly represented, lost profits, and increased operational and labor costs, as well as substantial damage to their property, including, but not limited to, damage to and loss of cows, damage to their milk in form of increased bacteria counts rendering said milk less valuable or unusable, and damage to their farms.

NINTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

491. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

492. DeLaval had unique, peculiar and superior knowledge of the defects and problems with the classic model VMS, as well as material facts contradicting the representations it made to Plaintiffs and the Class, from, among other non-public sources, the VMS Data, the Smith Report and experiences relayed to it by other dairy farmers, all of which DeLaval had a duty to disclose, yet concealed with the intent to defraud Plaintiffs and the Class thereby.

493. DeLaval had a duty to disclose the aforementioned defects, problems and material facts concerning the classic model VMS, because, among other reasons specified herein, it had peculiar, unique and superior knowledge of such defects, problems and materials facts, which was

not available to Plaintiffs and the Class and could not have been discovered by Plaintiffs and the Class with the exercise of reasonable diligence.

494. DeLaval also had a duty to disclose the aforementioned defects, problems and material facts, because it made representations to Plaintiffs and the Class – both voluntarily and in response to direct inquiries – that were ambiguous, deceptive, false, misleading and, at best, half-truths, which required additional disclosure, specifically of the aforementioned defects, problems and material facts, to avoid misleading Plaintiffs and the Class.

495. DeLaval intended to defraud Plaintiffs and the Class by concealing and failing to disclose the aforementioned defects, problems and material facts, each of which it had unique, peculiar and superior knowledge. The concealed and undisclosed defects, problems and material facts were material, unknown by Plaintiffs and the Class, and could not have been discovered or known by Plaintiffs and the Class with the exercise of reasonable diligence.

496. Had the aforementioned defects, problems and material facts been disclosed to Plaintiffs and the Class and not concealed by DeLaval with the intent to defraud them, no Plaintiff or member of the Class would have purchased a classic model VMS robot. As a result of the foregoing, Plaintiffs and the Class sustained not only economic damages, but also damage to their property, including their cows, milk and farm, as alleged in detail herein.

497. By reason of the foregoing, Plaintiffs and the Class have sustained damages, including, but not limited to, having purchased and made expenditures to install the classic model VMS robots that failed to perform as uniformly represented, lost profits, and increased operational and labor costs, as well as substantial damage to their property, including, but not limited to, damage to and loss of cows, damage to their milk in form of increased bacteria counts rendering said milk less valuable or unusable, and damage to their farms.

TENTH CAUSE OF ACTION

VIOLATION OF NEW YORK GENERAL BUSINESS LAW §§ 349 & 350

On Behalf of Plaintiffs Daniel and Erin Richards and the New York Subclass

498. Plaintiffs Daniel and Erin Richards (“Plaintiffs,” for purposes of this Count), individually and on behalf of the New York Subclass hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

499. As described herein, DeLaval, through its agents, servants and/or employees, engaged in unlawful, consumer-oriented deceptive acts and practices by falsely advertising and making material misrepresentations about the abilities, benefits, capabilities and ease of use of the classic model VMS, as well as the service and support that would be provided to dairy farmers purchasing a classic model VMS from DeLaval.

500. The egregious conduct of DeLaval amounts to such gross, wanton and willful fraud, dishonesty and malicious wrongdoing as to involve a high degree of moral culpability and turpitude, which demonstrates such wanton fraud, dishonesty and malicious wrongdoing as to imply a criminal indifference to civil obligations.

501. DeLaval has been and is continuing perpetrating a fraud upon dairy farmers in New York, by acting as aforesaid, their conduct is in bad faith, their deceptive acts and practices are in violation of Section 349 of the General Business Law of the State of New York, and their false advertisements are in violation of Section 350 of the General Business Law of the State of New York. These claims are supported by a former employee of DeLaval, who admits to such deceptive acts, advertising and practices:

2. I was employed by DeLaval Inc. (“DeLaval”) as a salesman for approximately two and a half (2½) years from the Fall of 2015 until February of 2017, when I ended my employment with DeLaval due to my dissatisfaction with the poor quality of its milking equipment,

systems and services, as well as the **false representations DeLaval made about the abilities benefits and capabilities of its milking equipment, systems and services.**

* * *

25. As someone with extensive experience with milking equipment and systems for milk production, including voluntary milking systems such as the classic model VMS, even I was deceived and misled by the repeated assurances and guarantees of DeLaval and, **to prevent myself from ever being part of a company that deceives and misleads dairy farmers, I chose to end my employment with DeLaval.**

Exhibit A, Ethier Affidavit, ¶¶ 2, 25 (emphasis added).

502. The deceptive, false and misleading acts, advertisements and practices alleged herein were engaged, and/or directed at consumers such as Plaintiffs and the New York Subclass, in New York by employees, agents and/or servants of DeLaval, including, but not limited to, Passino and Ethier, who were stationed in and operating out of the DeLaval Argyle Store in New York, which is owned by DeLaval and through which DeLaval does business in New York. New York has an interest in regulating the subject transaction since it took place in New York and involved New York citizens.

503. As a direct and proximate result of DeLaval's deceptive and unlawful acts and practices, Plaintiffs and the New York Subclass members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages as described herein.

504. By reason of the foregoing, Plaintiffs are entitled to recover all of their damages from DeLaval, including treble damages, interest, costs and attorneys' fees.

ELEVENTH CAUSE OF ACTION

**VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT
T.C.A. § 47-18-101 ET SEQ.**

On Behalf of Plaintiff Terry Bishop and the Tennessee Subclass

505. Plaintiff Terry Bishop (“Plaintiffs,” for purposes of this Count), individually and on behalf of the Tennessee Subclass, hereby repeats, reiterates and re-alleges each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

506. DeLaval engaged in unfair or deceptive acts or practices affecting the conduct of trade or commerce through the means described above, including using deceptive, false and misleading representations; representing that the classic model VMS robots are suited for a particular purpose, standard, grade, or quality; advertising the classic model VMS robots without the intent to supply reasonably expectable public demand; making deceptive, false and misleading advertisements when there was no bona fide effort to sell the advertised goods or services as advertised; and engaging in other acts that are deceptive.

507. Plaintiffs suffered ascertainable loss of money or property by reason of the illegal acts of DeLaval, including, but not limited to, the purchase price and cost to install of the classic model VMS robots. The illegal acts were willful and/or in knowing violation of the Act and Plaintiff is entitled to recover all of his damages from DeLaval, including, but not limited to, treble damages, interest, costs and attorneys’ fees.

TWELFTH CAUSE OF ACTION

VIOLATION OF VERMONT CONSUMER PROTECTION ACT, 9 V.S.A. § 2451A ET SEQ.

On Behalf of Plaintiffs Bernard and Denise Robillard and the Vermont Subclass

508. Plaintiffs Bernard and Denise Robillard (“Plaintiffs,” for purposes of this Count), individually and on behalf of the Vermont Subclass, hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

509. Plaintiffs are consumers within the meaning of the 9 V.S.A. § 2451a(a).

510. DeLaval engaged in the aforementioned unfair methods of competition in commerce and unfair, deceptive acts and practices in commerce in violation of 9 V.S.A. § 2457.

511. DeLaval violated 9 V.S.A. § 2457 by, among other violations detailed herein, failing to provide classic model VMS robots in the manner and nature advertised and/or offered and have refused to provide services as advertised and marketed, as explained above.

512. As a direct and proximate result of DeLaval’s deceptive acts or practices, Plaintiffs have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages.

513. Plaintiffs seek all monetary and non-monetary relief allowed under the Act.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF WISCONSIN DECEPTIVE TRADE PRACTICES ACT, WIS. STAT. § 100.18 ET SEQ.

On Behalf of Plaintiffs Naedlers and the Wisconsin Subclass

514. Plaintiffs Naedlers, (“Plaintiffs,” for purposes of this Count), individually and on behalf of the Wisconsin Subclass, hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

515. DeLaval is a “person, firm, corporation or association” as defined by Wis. Stat. § 100.18(1).

516. Plaintiffs are members of “the public” as defined by Wis. Stat. § 100.18(1).

517. As described herein, with the intent to sell, distribute, or increase consumption of merchandise, services, or anything else offered by DeLaval to members of the public for sale, use, or distribution, DeLaval made, published, circulated, placed before the public or caused (directly or indirectly) to be made, published, circulated, or placed before the public in Wisconsin advertisements, announcements, statements, and representations to the public which contained assertions, representations, or statements of fact which are untrue, deceptive, and/or misleading, in violation of Wis. Stat. § 100.18(1).

518. As a direct and proximate result of DeLaval’s deceptive acts or practices, Plaintiffs have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages.

519. Plaintiffs seek all monetary and non-monetary relief allowed by law, including damages, reasonable attorneys’ fees, and costs under Wis. Stat. § 100.18(11)(b)(2), and punitive damages.

FOURTEENTH CAUSE OF ACTION

PUNITIVE DAMAGES

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Statewide Subclasses

520. Plaintiffs and the Class hereby repeat, reiterate and re-allege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

521. Because DeLaval's actions were deliberate and willful, and because DeLaval acted with deliberate indifference to the rights of Plaintiffs and the Class, punitive damages should be awarded.

REQUEST FOR RELIEF

Plaintiffs, individually and on behalf of members of the Class and Subclasses, respectfully request that the Court enter judgment in their favor and against DeLaval, as follows:

1. That the Court certify this action as a class action, proper and maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure; declare that Plaintiffs are proper class representatives, and appoint Plaintiffs' counsel as Class Counsel;
2. That the Court award Plaintiffs and Class members compensatory, consequential, general, nominal, and punitive damages in an amount to be determined at trial;
3. That the Court award statutory damages, trebled, and punitive or exemplary damages, to the extent permitted by law;
4. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses;
5. That the Court award pre- and post-judgment interest at the maximum legal rate;
6. That the Court grant all such other relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims so triable.

Respectfully Submitted,

/s/ Patrick J. Stueve

Patrick J. Stueve (MO BAR 37682)

Bradley T. Wilders (MO BAR 60444)

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