

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

JARED KRUGER, MARK VAN ESSEN,
LYNN KIRSCHBAUM, DONNA and
ROBERT KOON, and SCHUMACHER
DAIRY FARMS OF PLAINVIEW, LLC, on
behalf of themselves and all others similarly
situated,

v.

LELY NORTH AMERICA, INC.

Case No. 0:20-cv-00629-KMM-DTS

JURY TRIAL DEMANDED

THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs Jared Kruger (“Kruger”), Mark Van Essen (“Van Essen”), Lynn Kirschbaum (“Kirschbaum”), Donna and Robert Koon (“Koon”), and Schumacher Dairy Farms of Plainview, LLC (“Schumacher Dairy Farms”) (collectively, “Plaintiffs”) bring this action individually and on behalf of all others similarly situated against Lely North America, Inc. (“Lely” or “Defendant”)¹ and states as follows:

NATURE OF THE ACTION

1. Lely, an “international” business in the agricultural sector with its origins in The Netherlands, purportedly seeks to “provide advice on how to organize a dairy farm smartly with the use of management systems” with the self-proclaimed mission to “create innovative solutions that help [its] customers excel in sustainable milk production to feed the world.” Lely boasted that

¹ Plaintiffs’ Amended Complaint alleged claims against Maasland N.V., Lely Industries N.V., Lely International N.V., and Lely Holding B.V. (the “Dutch Entities”)—the corporate parents and siblings of Lely North America, which operate with Lely North America as the “Lely Group.” Doc. 47. At the motion to dismiss stage, the Court denied the Dutch Entities’ motion to dismiss on the basis of personal jurisdiction and permitted jurisdictional discovery into whether Lely North America was an alter ego of its international parents and siblings. Doc. 95, Order (denying motion to dismiss). Subsequently, the parties entered into an agreement whereby the Dutch Entities provided merits discovery and Lely North America agreed to certain stipulations. In exchange, Plaintiffs dismissed the Dutch Entities without prejudice. Docs. 112, 115. Because Plaintiffs have reserved the right to re-assert alter ego at a later stage in the case, Plaintiffs maintain their alter ego allegations in their Third Amended Complaint, even though the Dutch Entities have been dismissed without prejudice.

it “[o]riginat[ed] from a farm” to induce dairy farmers to trust in and rely on its uniform promise to provide them with “[a] sustainable, profitable and enjoyable future in farming.”

2. Lely systematically misuses the trust endowed to it by dairy farmers by virtue of the company “[o]riginating from a farm” to benefit its bottom-line at the expense of dairy farmers in the United States and across the world to whom it uniformly represented that the only way for them to grow their businesses, remain viable and combat ever-increasing labor costs is to “switch towards automated milking,” which it uniformly claimed is “the best way to achieve optimal results with [] available labour while maintaining maximum respect for [] cows.”

3. The “automated milking” solution proposed by Lely is the Lely Astronaut A4 – an automatic milking system purportedly designed to optimize quality milk yield in a cow-friendly, hygienic and efficient way – which was designed, manufactured, marketed, sold, distributed and installed by Lely. To promote the Lely Astronaut A4, Lely proclaimed that the “Lely Astronaut A4 revolutionized robotic milking as we know it today and has been the global leader in effective and efficient milk harvesting.”

4. The Lely Astronaut A4 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 Lely, once the cow enters the Lely Astronaut A4, “the 3D camera determines the approximate position of the cow’s udder,” then “the robot arm is positioned so the cleaning brushes can clean and massage the teats” in a process known as pre-stimulation, after which “the robot arm is positioned to attach the teat cups to the teats.”

5. Drawing on its past performance and historical data from its T4C management system (the “T4C Data”),² Lely uniformly promised dairy farmers that the cleaning and pre-

² The T4C management system collects “real-time” data and information detailing the abilities, benefits, capabilities, defects, failures, functions, past performance and problems with the Lely Astronaut A4, which is analyzed

stimulation performed by the Lely Astronaut A4 provides “40% more effective cleaning and stimulation as compared to conventional situations” when, in actuality, it only brushes all four teats of each cow a mere sixty-seven percent (67%) of the time and, even then, fails to remove ten to twenty percent (10-20%) of the bacteria present, or adequately dry each teat.

6. Lely also uniformly marketed and promised that “[a]fter attachment of the teat cups, the Lely robot . . . ensures that . . . milk is taken from each quarter[.]” all the while concealing its unique, peculiar and superior knowledge that there is a two to five percent (2-5%) teat cup attachment failure rate. When a teat cup attachment failure occurs, one or more teats of the cow are either not fully milked or, as frequently is the case, not milked at all. This failure is commonly referred to as “missed quarters,” which, among other things, results in cows becoming ill and developing mastitis, an inflammation and infection in the udder.

7. Again drawing on past performance and the T4C Data, Lely uniformly promised that the Lely Astronaut A4 also: (a) provides “production increases of 10 to 15%” with labor productivity increases “to 1.2 million kg of milk per year per employee[;]” (b) “milk[s] 60 cows per robot or more, with an average of 2.6 milkings per cow per day[;]” (c) “achieve[s] 180 milkings per day[;]” (d) “harvest[s] 5,000 pounds (2,268 kg) of milk per day[;]” (e) “offer[s] the lowest costs of ownership,” “[t]he lowest service costs,” and a “reduction of feed costs[;]” (f) has “an extra 10-15%” of “robot capacity,” resulting in “more milk in the tank;” (g) reduces box time by 4%; and (h) and requires only “a maximum of four maintenance calls per year.”

8. Lely also uniformly promised that the Lely Astronaut A4 is equipped with a “Milk Quality Control” feature referred to as the “MQC,” which, according to Lely, continuously “examines the quantity and quality of the milk received from the cows” by measuring its electrical

and reviewed by the Research and Development Departments of Lely North America, Inc., Maasland N.V., Lely Industries N.V., Lely International N.V., and Lely Holding B.V.

conductivity (“EC”) and color “and, if necessary, [] separates milk that is contaminated or is not to the correct standard.” EC and color are inadequate and unsatisfactory methods for detection of clinical mastitis, abnormal milk or subclinical mastitis and, when relied on to separate abnormal milk, fail to separate thirty percent or more (30%+) of the abnormal milk produced.

9. Lely further uniformly represented that the “whole system is thoroughly disinfected after cleaning each cow, preventing cross-contamination,” that the A4 “guarantees the highest achievable milk quality,” that the teat detection system “ensures quick and accurate detection of teats,” and that the milk pump provided a “gently and hygienic method of pumping milk [which] ensure[d] the highest possible milk quality.”

10. In reliance on these and other representations made to them by Lely, Plaintiffs and many other dairy farmers purchased Lely Astronaut A4 robots at costs exceeding hundreds of thousands of dollars and, at the behest of Lely, 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, were plagued by numerous, incurable and latent defects that Lely concealed and, contrary to the uniform representations of Lely, caused economic harm to purchasers and physical harm to their property, including to their cows and milk product.

11. After inducing dairy farmers to purchase Lely Astronaut A4 robots, Lely 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 Lely, and failed to perform as uniformly advertised, marketed and represented by Lely. Among other defects, the Lely Astronaut A4 was plagued with the following defects and operational problems:

- a. Pre-Stimulation: the pre-stimulation performed by the Lely Astronaut A4 is defective and fails to operate properly in that all four (4) teats of a cow are not brushed approximately thirty-three percent (33%) of the time and, even when brushed, only eighty to ninety percent (80-90%) of the bacteria present on the

teats and udder is removed, a defect which is compounded by the failure of the robot to adequately and properly dry each teat before the start of the milking process, or discriminate between a dirty and clean udder.

- b. Teat Cup Attachment: Lely Astronaut A4 robots routinely experience teat cup attachment failures with a teat cup attachment failure rate of two to five percent (2-5%), due to camera, design, encoder, programming and other defects, causing about twenty-five (25) minutes of unproductive occupation of the robot a day, reducing the capacity of each robot by at least two percent (2%) and, after an unsuccessful milking attempt, reducing milk yield of the quarter that was not milked by twenty-six percent (26%).
- c. Vacuum Capacity/Reserve: the Lely Astronaut A4 has inadequate vacuum capacity and reserve – a defect exacerbated by the friction caused by the corrugated vacuum supply tube, the need to operate the milk pump bladder, and the unnecessary expenditure of energy needed to lift milk from the robot arm vertically upwards into the milk measurement system – and multiple vacuum regulators that oscillate against each other, causing vacuum instability and fluctuations, resulting in, among other issues, liner slips, which cause bacteria-contaminated milk droplets, slugs of milk, and other contaminants (e.g., soil, manure, and dust) to impact against the teat end at speeds of 20 m/s, penetrate the teat canal and enter the teat, all of which adversely affects cow health.
- d. Liners: the liners prematurely and without warning develop cracks, openings, penetrations and tears, and are too large to fit the average teat size of the herds in the United States, resulting in uneven pressure distribution over the surface of the teats with pressure concentrated at the top of the teat where the mouthpiece is located, causing the top of the teat to have prolonged exposure to vacuum, which, among other things, impedes blood flow with blood pooling at the end of the teats, blood engorgement, and severe callosity.
- e. Milk Quality Control: the mastitis detection methods and milk quality control measures of the Lely Astronaut A4, which evaluate the milk being produced by measuring its EC and color, are defective, inadequate and unsatisfactory in that the sensitivities and specificities of these evaluation methods for automatic diversion of milk are too low, the use of EC and milk color as detection methods are inadequate for detection of clinical mastitis, abnormal milk, or subclinical mastitis, and thirty percent or more (30%+) of the abnormal milk produced is not automatically diverted away from the milk tank.
- f. Milk Flow/Removal: the Lely Astronaut A4 is programmed to, or otherwise does, overmilk teats, as the end of milking and time delay for removal of the teat cups from each teat is such that udders are milked too dry, resulting in trauma and hyperkeratosis at the teat end.

- g. Post-Stimulation: the Lely Astronaut A4 fails to accurately spray and cover teats with disinfectant of the proper viscosity during post-stimulation due to camera, encoder, programming and other defects, which prevent the robots from accurately determining teat location, and fails to account for the decreased diameter of teats after they have been milked.
- h. Milk Pump Bladder: the silicone milk pump bladder of the Lely Astronaut A4, which transports milk to the milk tank, is made of defective materials insufficient to withstand their intended, foreseeable and normal use, which cause the milk pump bladder to routinely fail sooner than the life-span of forty-thousand (40,000) milkings uniformly represented by Lely in the Lely A4 Astronaut Owners Maintenance schedule.
- i. Radio Frequency Filter: the radio frequency filter of the Lely Astronaut A4, which is responsible for preventing the occurrence of stray voltage, routinely fails resulting in stray voltage issues due to, among defects with the radio frequency filter, the fact that it is never scheduled to be checked or tested and is never scheduled for maintenance, all of which is beyond the capability of a dairy farmer, as it requires specialized equipment.

12. As a result of these defects and others specified herein, the Lely Astronaut A4 failed to, among other things: provide production increases of ten to fifteen percent (10-15%) with labor productivity increases; milk sixty (60) cows per robot an average of 2.6 times a day; achieve one-hundred eighty (180) milkings a day; harvest five-thousand (5,000) pounds of milk a day; reduce feed and labor costs; provide lower costs of ownership and service than conventional milking systems or Lely's predecessor robots, the Astronaut 3 ("A3") and Astronaut A3Next ("A3Next"); have an extra robot capacity of ten to fifteen percent (10-15%); disinfect the whole system after milking each cow; and eliminate bacteria or prevent cross-contamination.

13. Moreover, as a result of the foregoing, the Lely Astronaut A4 also: failed to remove ten to twenty percent (10-20%) of the bacteria present on the teats and udder before attaching the teat cups, allowing that bacteria to contaminate the end milk product, increase cross-contamination rates, and impact against teat ends, increasing udder health problems; failed to provide adequate protection from contamination by not having a fail-safe valve system, resulting in water being

added to the milk, which adversely impacted milk quality; and caused vacuum instability and fluctuations, resulting in bacteria-contaminated milk droplets, slugs of milk, and other contaminants impacting against teat ends, penetrating the teat canal and entering the teat, which caused physical damage to, and increased the infection rates of, herds over the long term.

14. The maintenance and feed costs required to operate the Lely Astronaut A4 were also much higher than uniformly represented by Lely. Despite uniformly representing that each Lely Astronaut A4 robot “only requires a maximum of four maintenance calls per year” with annual maintenance costs of no more than four-thousand dollars (\$4,000) and reduces feed costs, each robot required more than four maintenance calls a year with annual maintenance costs of approximately ten to fifteen thousand dollars a year (\$10-15,000) per robot, and the cost of feed increased due to the need to use only pelleted feed, a fact that Lely uniformly concealed.

15. Lely knew, or should have known, of these defects and the problems with the Lely Astronaut A4 before a single robot was sold. Since Lely designed, patented and manufactured the Lely Astronaut A4, it was aware of the defects and problems with the Lely Astronaut A4 by virtue of having created them. Lely also knew from testing the Lely Astronaut A4, or would have known had adequate and proper testing of the Lely Astronaut A4 been performed for a sufficient period of time, that the Lely Astronaut A4 was defectively designed, not free from defects in material and workmanship, and did not function or operate as represented.

16. Moreover, Lely also knew or should have known there would be defects and problems with the Lely Astronaut A4 no later than 2007 (and likely earlier), when the Journal of Dairy Science published an article, which, among other things, revealed that the software and technology ultimately incorporated into the Lely Astronaut A4 suffered from a devastating teat cup attachment failure rate of two to five percent (2-5%), which it cautioned “present[s] an overly

optimistic picture, in that more milkings would fail . . . in a broader range of cows.” Exhibit A, p. 4271-72. That is, Lely knowingly incorporated defective software and technology into the Lely Astronaut A4 that had previously proven to be defective and inadequate.

17. The same is true of the MQC, which was the subject of a study published by the *Acta Agriculturae Scandinavica Journal* before a single Lely Astronaut A4 robot was sold. That study and others discussed therein concluded that the detection methods of the MQC are inadequate, finding that abnormal “milk was not diverted automatically on the day on which the farmer diagnosed clinical mastitis,” with thirty percent or more (30%+) of the abnormal milk produced not being automatically diverted in direct contradiction to the uniform representation of Lely that abnormal milk is “easily traced and, if required, automatically separated.”

18. Once Lely began selling the Lely Astronaut A4 in or around the year 2010, it had numerous product feedback sources from which to learn, and from which it did learn, that the Lely Astronaut A4 was plagued with defects and did not operate as uniformly represented by Lely, all of which Lely intentionally concealed and failed to disclose in furtherance of its deceptive, fraudulent and misleading marketing scheme. First, pursuant to standard form agreements entered into between Lely and each dealership selling the Lely Astronaut A4, Lely receives monthly reports from each such dealership stating:

- a. milk-quality data for the milk obtained from cows or herds having been milked with a Lely Robotic Milking System, including the Lely Astronaut A4;
- b. the number of breakdowns per Lely Robotic Milking System, including the Lely Astronaut A4, per week; and
- c. the number of breakdowns per type of failure.

19. Second, Lely has access to and collects real-time data from the Lely Astronaut A4 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 Lely Astronaut A4 robots (i.e., the T4C Data), which consistently revealed that the Lely Astronaut A4 was defective, and did not function or operate as uniformly represented. This data is analyzed by the numerous research and development departments of Lely in The Netherlands, to which the “Lely Group” devotes six percent (6%) of its revenue.

20. Third, all warranty service of the Lely Astronaut A4 is subject to the prior examination and approval of Lely, which then has the sole discretion to determine whether a repair or replacement of a defective Lely Astronaut A4 is covered by warranty and, if so, either repairs or, at its option, replaces any such defective equipment. This means that Lely necessarily analyzes, assesses and evaluates every claimed defect with the Lely Astronaut A4 that is experienced by dairy farmers across the world and, thus, knew of the defects and operational problems with the Lely Astronaut A4 from this source of information.

21. Further, no later than 2017, Lely was informed at its United States headquarters in Pella, Iowa, that the Lely Astronaut A4 has inadequate vacuum capacity and reserve, and fails every recognized test used to assess vacuum capacity and reserve – a defect of which Lely was already well-aware, yet failed to correct or cure and, instead, intentionally concealed from prospective purchasers, because increasing vacuum capacity and reserve would increase electrical costs, thereby preventing Lely from pushing its key selling point that the Lely Astronaut A4 “offer[s] the lowest cost of ownership” and:

has a much lower electric, water and natural gas usage rate, resulting in a lower annual energy cost compared to the milking parlor system.

22. Once Lely induced the sale of a Lely Astronaut A4 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 Lely Astronaut A4, did not offer to refund the purchase price paid by purchasers for the system, not to mention the vast sums of money purchasers spent to design, modify, retrofit and/or build new barns to install the system, and actively concealed the defects and problems with the Lely Astronaut A4 by blaming purchasers for its failures, despite its unique, peculiar and superior knowledge to the contrary.

23. Each Lely entity had unique, peculiar and superior knowledge of the defects and problems with the Lely Astronaut A4 from, among other non-public sources, the T4C Data, product testing, its internal data and studies, expert consultations, scientific journal articles that were not accessible to or obtainable by Plaintiffs or other dairy farmers upon reasonable diligence, warranty claims, the monthly reports provided by its authorized dealerships, and the experiences relayed to it by other dairy farmers, all of which each Lely entity concealed from Plaintiffs and the other dairy farmers to whom the Lely Astronaut A4 was sold.

24. The defects and problems with the Lely Astronaut A4 were latent in nature, not disclosed by Lely to purchasers of the Lely Astronaut A4, not readily apparent, obvious or visible to purchasers before the Lely Astronaut A4 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.

25. The defects and problems with the Lely Astronaut A4 were not caused or contributed to by any variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of the farmers who purchased Lely Astronaut A4 robots and, instead, were caused by the defects with the Lely Astronaut A4 that Lely created, over which it had control and of which it had peculiar, unique and superior knowledge.

26. The defects and problems with the Lely Astronaut A4 could not be corrected through a repair or replacement of the Lely Astronaut A4 and, despite the foregoing, Lely systematically and uniformly refused to provide purchasers of the Lely Astronaut A4, 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 Lely Astronaut A4.

27. As a result of the foregoing and the other misconduct alleged herein in which Lely 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 Lely.

28. Among other uniform harms suffered by Plaintiffs and other purchasers of Lely Astronaut A4 robots, each purchaser of a Lely Astronaut A4 robot was automatically subjected to a uniform, single source of harm, specifically the effect that the misconduct of Lely in advertising and marketing the Lely Astronaut A4 had on its purchase price, which caused it to be inflated far beyond its market value due to the fact that the purchase price inappropriately reflected the false information uniformly represented by Lely to dairy farmers in the United States.

29. Every purchaser of a Lely Astronaut A4 robot was necessarily injured by Lely's conduct – including the concealment of known defects Lely had a legal duty to disclose – which caused the purchase price of each robot to be artificially and fraudulently inflated far beyond its actual value, meaning every purchaser was injured by paying too much when, had the truth been known, they would have paid a lower price or not purchased at all.

30. Those dairy farmers that continue to milk their cows with Lely Astronaut A4 robots are completely dependent on Lely to provide parts and service just to keep the robots functioning,

even though they do not function as uniformly advertised, marketed and represented by Lely. 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.

31. Another reason that these farmers are so dependent on Lely is that their barns were designed and either newly constructed or retrofitted at the behest of Lely to accommodate the Lely Astronaut A4 and cannot be used to milk cows by any alternative method; that is, Lely knowingly created a situation where dairy farmers are incapable of milking their cows through any system other than its Lely Astronaut A4.

32. Lely 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 Lely Astronaut A4 robots were sold from seeking legal recourse out of fear of retaliation by Lely. As a result, the only recourse for farmers still using Lely Astronaut A4 robots is to join a class action.

JURISDICTION AND VENUE

33. Jurisdiction and venue are proper in this Court.

34. 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) Lely and class members are domiciled in different states.

35. This Court has personal jurisdiction over Defendants.³ Lely North America, Inc. maintains Lely Centers in Minnesota, one of which is located in Pipestone, Minnesota and is the

³ Plaintiffs reserve the right to assert alter ego at a later stage of this case pursuant to the Parties' agreement, and therefore have left in the allegations pertaining to alter ego and the Dutch Entities while recognizing that the Parties stipulated to their dismissal without prejudice.

center from which Plaintiff Mark Van Essen purchased his Lely Astronaut A4 robots and another of which is located Plainview, Minnesota and is the center from which Plaintiffs Kruger and Schumacher Dairy Farms purchased their Lely Astronaut A4 robots. Defendants directed their actions to the State of Minnesota by selling, marketing, and advertising the Lely Astronaut A4 robots and, therefore, have sufficient minimum contacts to render the exercise of jurisdiction by this Court proper and necessary. Lely maintains its principal place of business at 775 250th Avenue, Pella, Iowa 50219.

36. Lely North America, Inc. and Lely Industries N.V. reached out and affirmatively established a substantial and continuing relationship with Plaintiffs Kruger, Van Essen and Schumacher Dairy Farms, residents of the State of Minnesota. First, Lely Industries N.V. entered into a standard form written contract with Plaintiffs Kruger and Schumacher Dairy Farms bearing the title “Limited Product Warranty,” in which Lely Industries N.V. is identified as the “Manufacturer” of the Lely Astronaut A4 system purchased by Plaintiffs Kruger and Schumacher Dairy Farms. That contract obligates Lely Industries N.V. to perform ongoing warranty service for that system in the State of Minnesota for up to ten (10) years for certain components and parts identified in the “Extended Warranty Periods” section of the “Limited Product Warranty.” Moreover, the contract obligates both Lely North America, Inc. and Lely Industries N.V. to provide Plaintiffs Kruger and Schumacher Dairy Farms with “24 hour ongoing support” in Minnesota.

37. Second, on April 18, 2007, Lely North America, Inc. entered into a standard form written contract with Leedstone, Inc. (formerly known as Dairyland Equipment Services), the Lely Center from which Plaintiffs Kruger and Schumacher Dairy Farms purchased their Lely Astronaut A4 robots, which still remains in effect. Pursuant to that contract, Lely North America, Inc.

extended an express written warranty to purchasers of the Lely Astronaut A4 located in Minnesota, including, but not limited to, Plaintiffs Kruger and Schumacher Dairy Farms, obligating it to perform ongoing warranty service for that system at a Leedstone, Inc. facility in the State of Minnesota. That contract also obligated Lely North America, Inc. to provide Leedstone, Inc. with “training on the application service and repair” of that system, as well as “technical assistance respecting application or servicing” of that system.

38. Lely North America entered into the same dealer agreements with all of its Lely Centers, including, but not limited to, Gorter’s Clay and Dairy Equipment of Minnesota, Fitzgerald, Inc. and Fischer & Thompson Inc., all of which included substantially the same provisions as detailed above.

39. Lely North America, Inc., Maasland N.V., Lely Industries N.V., Lely International N.V. and Lely Holding B.V. each reached out and affirmatively established a substantial and continuing relationship with Plaintiffs Kruger, Van Essen and Schumacher Dairy Farms, and Lely Astronaut A4 purchasers in the State of Minnesota by making affirmations of fact and promises relating to the Lely Astronaut A4, which became part of the basis of the bargain and created express warranties. By making binding express warranties relating to the Lely Astronaut A4, Lely North America, Inc., Maasland N.V., Lely Industries N.V., Lely International N.V. and Lely Holding B.V. each created a direct contract with Plaintiffs Kruger, Van Essen and Schumacher Dairy Farms, as well as each other Lely Astronaut A4 purchaser in Minnesota. As alleged in detail herein, the claims asserted herein arise out of the substantial and continuing relationship that Lely North America, Inc., Maasland N.V., Lely Industries N.V., Lely International N.V. and Lely Holding B.V. each affirmatively established with Minnesota.

40. Further, as alleged in detail herein, this Court has personal jurisdiction over Maasland N.V., Lely Industries N.V., Lely International N.V. and Lely Holding B.V., because Lely North America, Inc. is a mere division of those entities, which control and dominate the affairs of Lely North America, Inc., including its affairs in Pella, Iowa, such that Maasland N.V., Lely Industries N.V., Lely International N.V. and Lely Holding B.V. are the legal “alter egos” of Lely North America, Inc., all of which directed their actions to the State of Minnesota by selling, marketing, and advertising the Lely Astronaut A4 robots through Lely North America, Inc. using misleading, inaccurate, negligent and false representations.

41. 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

42. Plaintiff Jared Kruger (“Kruger”) is a dairy farmer, who resides, and operates a family-run dairy farm, in Wabasha, Minnesota (the “Kruger Farm”). Kruger purchased one A4 robot that went into operation on or about November 13, 2015 from Dairyland Equipment Services, now known as Leedstone, Inc., a Lely Center located at 24650 County Road 27, Plainview, Minnesota 55964.

43. Plaintiff Mark Van Essen (“Van Essen”) is a dairy farmer who resides and operates a family-run dairy farm in Edgerton, Minnesota (the “Van Essen Farm”). Van Essen purchased two A4 robots that went into operation on or about January 26, 2017 from Gorter’s Clay & Dairy Equipment of Minnesota, a Lely Center located at 1400 7th St SE, Pipestone, Minnesota 56164.

44. Plaintiff Lynn Kirschbaum (“Kirschbaum”) is a dairy farmer, who resides in and operates a family-run dairy farm in Glen Haven, Wisconsin (the “Kirschbaum Farm”).

Kirschbaum purchased two A4 robots that went into operation on or about September 29, 2016 from Fitzgerald, Inc., a Lely Center with a principal place of business located at 24548 Highway 13, PO Box 148, Elkader, Iowa 52043.

45. Plaintiffs Donna and Robert Koon (the “Koons”) are dairy farmers, who reside in and operate a family-run dairy farm in Berryville, Virginia (the “Koon Farm”). The Koons purchased two A4 robots that went into operation on or about April 25, 2018 from Fisher & Thompson Inc., a Lely Center with a principal place of business located at 15 Newport Road, Leola, Pennsylvania 17540.

46. Plaintiff Schumacher Dairy Farms of Plainview, LLC (“Schumacher Dairy Farms”) is a dairy farm located and operating in Plainview, MN (“Schumacher Dairy Farm”). Schumacher Dairy Farms purchased two A4 robots that went into operation on or about December 18, 2014 from Dairyland Equipment Services, now known as Leedstone, Inc., a Lely Center located at 24650 County Road 27, Plainview, Minnesota 55964.

Defendant

47. Lely North America, Inc. (“Lely NA”) is a Delaware corporation with its principal place of business at 775 250th Avenue, Pella, Iowa 50219, which advertises, designs, develops, distributes, installs, maintains, manufactures, promotes, repairs, sells, and services equipment and systems for milk production in the agricultural sector, including, but not limited to, the Lely Astronaut A4. Lely maintains three “Lely Centers” in Minnesota, one in Plainview, Minnesota, one in Pipestone, Minnesota, and one in Melrose, Minnesota.⁴

48. Lely NA is a wholly owned subsidiary of Maasland N.V. (“Maasland”), an entity incorporated under the laws of The Netherlands with its principal place of business located in

⁴ See Lely Center Locator, available at <https://www.lely.com/locator/us> (last visited Aug. 19, 2022).

Maassluis, Netherlands, which is in turn a wholly owned subsidiary of Lely Holding B.V. (“Lely Holding”), an entity also incorporated under the laws of The Netherlands with its principal place of business located in Maassluis, Netherlands. Lely Holding is the parent company of Lely Industries N.V. (“Lely Industries”), an entity incorporated under the laws of The Netherlands with its principal place of business located in Maassluis, Netherlands, and Lely International N.V. (“Lely International”), an entity also incorporated under the laws of The Netherlands with its principal place of business located in Maassluis, Netherlands.

49. Lely NA, Maasland, Lely Holding, Lely Industries and Lely International (collectively, “Lely” or the “Lely entities” or each “Lely entity”) hold themselves out as a single enterprise and a single entity despite the technical existence of separate corporate structures. First, Lely NA is a mere division of Maasland, which, in turn, is a mere division of Lely Holding, as are both Lely Industries and Lely International, despite the existence of technically separate corporate structures. Second, there is a close, synergistic relationship between each Lely entity.

50. Lely maintains a single website on which it promotes “Lely” and the “Lely Group” without regard to any corporate form. The Lely website (www.lely.com) describes Lely as “[a]n international family business in the agricultural sector.” A December 26, 2018 article in The Pella Chronicle, titled “Lely growth plan gets state, city support,” stated that “Lely Industries has 1,300 employees in 40 nations around the world.”

51. Up until January 1, 2020, the CEO of Lely was Alexander van der Lely, after which time he became the chairman of the “newly formed Supervisory Board for Lely.” The purpose of the Supervisory Board is to “ensure that Lely remains a healthy family business.” In an interview entitled “Feed the Future by Lely,” posted on the Lely YouTube channel on or about September 3, 2019, Mr. Lely describes Lely as a family business, which “from 70 years ago till now, [is]

distributing [] products in over 40 countries worldwide . . . mainly in the western countries of the world where labour is an issue.”

52. Mr. Lely gave an interview with Progressive Dairy, a publication based in the United States, which was posted on the Progressive Dairy YouTube channel on or about April 27, 2012. In that interview, Mr. Lely commented that he saw “big potential in the U.S.” for Lely automatic milking systems. Mr. Lely explained that Lely has “a lot of sensors” in the equipment, which “get a lot of information into a management system” known as the Lely T4C management system. That information is then, according to Mr. Lely, reviewed by Lely’s Research and Development Department in The Netherlands, which “analyzes all the figures . . .”

53. In the same April 27, 2012 interview, Mr. Lely explained the corporate structure of the so-called “Lely Group” – in response to the following prompt: “With all these different locations internationally how do you plan to divide your time between facilities?” – stating, in pertinent part, as follows:

In the group, we are organized in an executive board of five people. One of the board members is focusing on the operations and looks after the different factories and IT systems. I personally take care of the engineering, R&D, and the marketing aspect . . . so we split ourselves five board members each having responsibility.

54. On its sole website, Lely boasts a single “Board of Management” for the “Lely Group” without regard to any corporate form. The Board of Management touts itself as having “worldwide” responsibilities for “Lely,” generally promoting the purpose of the Board of Management with the all-encompassing statement that “[f]armers all over the world make choices about how they set up and run their farms . . . [e]very day, we help them make the best choices for themselves and their farms . . .”

55. There is a commonality of management between and among the Lely entities. The individuals on the “executive board of five people” referenced by Mr. Lely during his April 27, 2012 interview is identical for each Lely entity with the exception of Lely NA, consisting of the following: (1) Martinus Johannes Maria (“Martijn”) Boelens; (2) Ronald Paul (“Ronald”) Eikelenboom; (3) Gijsbertus Johannes (“Gijs”) Scholman; (4) Maria Mathilde (“Marijke”) Jansen; and (5) Adrianus Petrus (“Andre”) van Troost.

56. According to the declaration of Jerry Bacon, the Director of Finance and Administration for Lely NA, sworn to on June 10, 2020 (Dkt. No. 31), the board of directors for Lely NA consists only of the following three individuals, each of whom are also on the executive board of each other Lely entity: (1) Martinus Johannes Maria (“Martijn”) Boelens; (2) Ronald Paul (“Ronald”) Eikelenboom; and (3) Gijsbertus Johannes (“Gijs”) Scholman. There is no director of Lely NA, who does not also serve on the executive board of each other Lely entity.

57. Martijn Boelens is listed as a member of the Lely Board of Management as “Vice President Customer Solutions.” Mr. Boelens describes his role with “Lely” as one “[t]o make farmers lives around the world enjoyable.” Although Mr. Boelens listed his address in Pella, Iowa, with the Iowa Secretary of State, his LinkedIn page indicates he is based out of Maassluis, The Netherlands, where he served as the “VP Customer Solutions” for “Lely” until January 2020 and now serves as the “Chief Technical Officer” for “Lely,” without regard to any corporate form.

58. Ronald Eikelenboom is listed as a member of the Lely Board of Management as Chief Financial Officer, the self-described “leader of the Finance, IT, Legal & Risk & Compliance teams, [] represent[ing] the compass function to value creation and protection on strategic plans and operational execution which – in the end – will help [Lely] realizing [their] goal.” Despite an address in Pella, Iowa, filed with the Iowa Secretary of State, Mr. Eikelenboom’s LinkedIn page

lists him in the Rotterdam Area, The Netherlands, where he serves as “Member of the Board / CFO of Lely Group,” without regard to any corporate form, and “leverages [his] international experience for value creation and business development.”

59. Gijs Scholman is listed as a member of the Lely Board of Management as “Vice President Sales.” Mr. Scholman states that he is “responsible for [Lely’s] distribution channel and the availability of Lely Solutions, Service and Support worldwide” with a focus on “deliver[ing] an unmatched experience to farmers globally.” Although Mr. Scholman listed his address in Pella, Iowa, with the Iowa Secretary of State, his LinkedIn page indicates he is based out of Maassluis, The Netherlands, serving as the “Chief Commercial Officer” of “Lely Holding.”

60. Peter Langebeeke was listed as President of Lely NA in the last publicly available filing with the Iowa Secretary of State on March 28, 2018, with an address in Pella, Iowa. While he is not listed as a current member of the board of directors for Lely NA, Mr. Langebeeke’s LinkedIn page has him listed as serving dual roles – President of Lely NA and “Regional Director America’s” for Lely International. Prior to his current positions, Mr. Langebeeke served as Vice President Sales & Marketing for Lely Industries.

61. The remainder of the individuals on the Lely Board of Management also confirm that their roles are on behalf of Lely as a worldwide entity, without distinction or specificity as to corporate form. Andre van Troost, former Vice President of Customer Care who became Chief Executive Officer in January 2020, touts he is “personally responsible for Business Development and Marketing” and, as of February 28, 2020, boasted the he was responsible for “ensur[ing] [Lely] deliver[s] optimum care for [Lely] customers worldwide.” Troost claims that together with his “colleagues from the Executive Board, [they] determine the course of [their] great company.”

62. Marijke Jansen is the Chief Services Officer for “Lely,” “[a] great place to work, where everyone feels connected to our mission and our customers.” She claims that “[w]orking at Lely means working at an ambitious international family owned business.” Jansen further states that she and her team “support [] dairy farmers worldwide with a wide variety of services for managing their business and maintaining their machines, and a wide range of consumables and machine parts.”

63. Moreover, a September 4, 2019 press release states: “Chad Huyser has been named a regional director of Lely International and President of Lely North America . . . Huyser will lead all of Lely’s North American efforts and serve as one of five Lely regional directors worldwide.” As the Regional Director of Lely International and President of Lely NA, Mr. Huyser describes the Lely organization in an “About Lely North America” section on his LinkedIn page as follows:

Lely North America, based in Pella, Iowa, is part of the Lely Group, founded in 1948. Lely directs all effort (sic) toward creating a sustainable, profitable and enjoyable future in farming for its customers. Using the cow as a center point, the company develops premium robotics and data systems that increase animal welfare, flexibility and production on dairy farms.

For more than 25 years, Lely has been the leader in the sale and service of automated milking systems to successive generations of dairy farmers across the globe. Every day, Lely inspires its employees to offer customers innovative solutions and be reliable partners for long-term advice and support. With its head office in The Netherlands and a worldwide network of dedicated Lely Center locations for tailor-made sales and support, the Lely Group is active in more than 40 countries and employs around 1,500 people.

64. According to Lely North America’s Rule 30(b)(6) deposition testimony, Mr. Huyser, the President of Lely North America, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. Lely engages in a unified marketing image and corporate branding, including for marketing and branding the Lely Astronaut A4, regardless of corporate form. Its corporate insignias, trademarks and logos appear uniform regardless of corporate form, as shown by its contracts, website and marketing materials.

66. Lely has an integrated sales and distribution system across the nominally distinct corporate entities. First, there is substantial overlap of personnel, without any regard or reference to corporate entities or distinction, in the primary departments responsible for worldwide marketing and distribution of the Lely Astronaut A4. Importantly, there are not any Lely NA directors or officers responsible for marketing and distributing the Lely Astronaut A4 that are not also executive board members of each other Lely entity or responsible for marketing and distributing the Lely Astronaut A4 to customers worldwide.

67. Second, Lely Industries manufactured the Lely Astronaut A4 systems that were sold in North America through Lely NA. While the declaration of Arnold Caius Ort, the General Counsel and Director of Legal and Business Affairs for Lely Holding, sworn to on June 11, 2020 (Dkt. No. 32), states that “after 2012 all Astronaut A4s sold to third-party dealers in North America were manufactured by Lely North America, Inc., not Lely Industries N.V.,” Lely Industries entered into a standard form written contract with Schumacher Dairy Farms on July 23, 2014 and another with Kruger on April 6, 2015, in both of which Lely Industries is identified as the “Manufacturer” of the Lely Astronaut A4 systems purchased by Schumacher Dairy Farms and Kruger.

68. Lely NA performs business functions that Maasland, Lely Industries, Lely International and Lely Holding would ordinarily need to perform themselves to market and sell their products in the United States but for the existence of Lely NA. For instance, Lely NA is the exclusive agent for marketing and sales of the Lely Astronaut A4 in the United States, and while Lely NA may distribute Lely Astronaut A4 robots through third-party dealers, all dealers in the United States must go through Lely NA to get and sell the robots.

69. This is confirmed by the standard form contracts into which Lely NA enters with dealerships in the United States, each of which then become known as a “Lely Center.” Each of those contracts contain exclusivity clauses, pursuant to which only Lely Centers appointed by, and under contract with, Lely NA may sell Lely Astronaut A4 systems. And, as long as each Lely Center meets the sales objectives imposed by Lely, Lely agrees not to appoint any other dealerships in the territory as Lely Centers, thereby eliminating any competition.

70. Employees of Lely NA and authorized dealers of the Lely Astronaut A4 (i.e., Lely Centers) receive assistance and training how to advertise, install, market, service and repair the Lely Astronaut A4 in The Netherlands from Maasland, Lely Industries, Lely International, and/or Lely Holding, confirming that, despite the technical existence of separate corporate structures, Defendants are, and hold themselves out as, a single enterprise. For example, the standard form contract relating to the Lely Astronaut A4 purchased by Schumacher Dairy Farms states that it will receive “24 hour ongoing support from Dairyland and Lely USA and Lely Industries,” and that:

Dairyland policy is to only start up milking with the Robots on Monday thru Thursday due to technical support from Lely and Lely Industries in Holland.

71. The apparent uniformity of the design, marketing and sale of the Lely Astronaut A4 strongly suggests that Maasland, Lely Industries, Lely International, and/or Lely Holding exert

substantial control over Lely NA in its advertisement, design, installation, marketing, sale, service, and maintenance of Lely Astronaut A4 robots. For example, the standard form contracts with each Lely Center use the British English spelling of words (e.g., “organised”), suggesting strongly that the other Lely entities prepared those contracts for Lely NA to facilitate the sale of the Lely Astronaut A4 in the United States.

72. For these reasons and those set forth in detail elsewhere herein, Lely NA is a mere division of Maasland, Lely Industries, Lely International, and Lely Holding. It is a mere instrumentality or adjunct of the latter and part of a single, unified enterprise. Maasland, Lely Industries, Lely International, and Lely Holding, through its identical overlap of executive board members and otherwise, control and dominate the affairs of Lely NA, including its affairs in Pella, Iowa and at the Lely Centers in Minnesota, such that Maasland, Lely Industries, Lely International, and Lely Holding are the legal “alter egos” of Lely NA.

73. At all times hereinafter mentioned, Greg Luebke (“Luebke”) was an agent, authorized dealer, employee, employee of an authorized dealer, and/or servant of Lely.

74. At all times hereinafter mentioned, Michael Fitzgerald (“Fitzgerald”) was an agent, authorized dealer, employee, employee of an authorized dealer, and/or servant of Lely.

75. At all times hereinafter mentioned, Leah Lange (“Lange”) was an agent, authorized dealer, employee, employee of an authorized dealer, and/or servant of Lely.

76. At all times hereinafter mentioned, Alfred Kamps (“Kamps”) was an agent, authorized dealer, employee, employee of an authorized dealer, and/or servant of Lely.

77. At all times hereinafter mentioned, Gary Walton (“Walton”) was an agent, authorized dealer, employee, employee of an authorized dealer, and/or servant of Lely.

78. At all times hereinafter mentioned, Leedstone, Inc. (formerly known as Dairyland Equipment Services) was a Lely Center with the authority to market and sell the A4 and other Lely products.

79. At all times hereinafter mentioned, Gorter's Clay and Dairy Equipment of Minnesota was a Lely Center with the authority to market and sell the A4 and other Lely products.

80. At all times hereinafter mentioned, Fitzgerald, Inc. was a Lely Center with the authority to market and sell the A4 and other Lely products.

81. At all times hereinafter mentioned, Fischer & Thompson Inc. was a Lely Center with the authority to market and sell the A4 and other Lely products.

82. At all times hereinafter mentioned, the term "Lely" refers to and includes Lely NA, Maasland, Lely Industries, Lely International, and Lely Holding, as well as their agents, employees, dealers, sales, representatives, officers, directors, executives and Lely Centers, and shall be interpreted as though each and every one of those entities were specifically listed.

FACTUAL BACKGROUND

83. Lely is an "international" business in the agricultural sector, which purportedly seeks to "provide advice on how to organize a dairy farm smartly with the use of management systems." The website maintained by Lely boasts that since being founded in 1948, Lely has introduced many "innovations with only one purpose: making agrarian life easier and working together for a sustainable, profitable and enjoyable future in the agricultural sector." In a likely attempt to gain credibility in the agricultural sector and gain the trust of dairy farmers across the world, so that it could subsequently defraud them, Lely proclaimed as follows:

Originating from a farm, we know what it is like to wake up early in the morning. To spend hours in the barn, day in, day out, ensuring optimal treatment of your herd. Feeling the challenge of increasing scale with a view to ensuring a sustainable future. Dairy farming is

something we live to do. And we understand how you work, and why.

84. Lely systematically misuses the trust endowed to it by dairy farmers by virtue of the company “[o]riginating from a farm” to induce dairy farmers to: (a) rely on its promise of providing them with “[a] sustainable, profitable and enjoyable future in farming,” and (b) believe in its self-proclaimed mission to “create innovative solutions that help [its] customers excel in sustainable milk production to feed the world.” Lely even credits itself as having introduced the most important invention of the 20th century, when it introduced a prototype of the Lely Astronaut in 1992, stating as follows:

A prototype of the Lely Astronaut milking robot is introduced. Farmers acknowledge this as the most important invention of the 20th century for dairy farmers.

<https://www.lely.com/us/about-lely/our-company/history/> (last visited Aug. 19, 2022).

85. Lely brought the Lely Astronaut to market in 1995 and, in 2005, it introduced the Lely Astronaut A3, which it represented “offers a state-of-the-art design with advanced milking robot technology to ensure greater reliability and flexibility with the Lely Astronaut.” The Lely Astronaut A4 was subsequently introduced and, as represented by Lely, the “Astronaut A4 is set up in a modular concept” with “[a] central unit featur[ing] a central vacuum and cleaning system for up to two cow units,” as well as a “unique milk quality control (MQC),” which “allows [farmers] to supply only first class milk.”

86. Lely then employed a uniform marketing scheme, pursuant to which it began pushing a uniform sales message to dairy farmers in the United States (and across the world) to promote the Lely Astronaut A4, which it knew or should have known was false before a single robot was sold, all the while concealing its peculiar, unique and superior knowledge of the defects and problems with the Lely Astronaut A4, each of which were latent in nature, were not readily

apparent, obvious or visible, and could not have been discovered by Plaintiffs or other purchasers through the exercise of reasonable diligence.

87. Alexander van der Lely, former CEO of the Lely Group and current chairman of the Supervisory Board for the Lely Group, which comprises all of the Lely entities, including, but not limited to, Lely NA, Maasland, Lely Industries, Lely International and Lely Holding, was personally responsible for that marketing scheme. As the Chairman of the unified Lely Group, Alexander van der Lely caused marketing and sales materials to be publicly disseminated to promote the Lely Astronaut A4 and “Lely.”

88. As set forth in detail below, those marketing and sales materials promote a single, unified business (i.e., “Lely”) to achieve the stated objective of Alexander van der Lely, which is to “ensure that Lely remains a healthy family business.” The marketing and sales materials were published and disseminated on behalf of each individual entity within the Lely Group, as well as on behalf of the single, unified “family business” of which each of those entities are nothing more than mere divisions.

LELY MARKETING SCHEME

89. Despite knowledge of the defects and problems with the Lely Astronaut A4 (as discussed in detail herein), Lely continuously and uniformly made affirmations of fact and promises relating to the abilities, benefits, capabilities and past performance of the Lely Astronaut A4 with the apparent intent to induce dairy farmers in the United States to expend vast sums of money to purchase and install one or more Lely Astronaut A4 robots, which were each plagued by uniform, incurable defects in design, material and workmanship.

90. Lely distributed data, facts and other information intended to serve as marketing and sales materials, all the while concealing its peculiar, unique and superior knowledge of the

defects and problems with the Lely Astronaut A4, each of which were latent defects of which Plaintiffs and other purchasers could not have been aware prior to them being manifested, were not readily apparent, obvious or visible, and could not have been discovered through the exercise of reasonable diligence.

91. Such information was published on the publicly accessible website shared by all of the Lely entities, as well as in publicly accessible articles, brochures, and catalogs, which were circulated, distributed or otherwise made available to prospective purchasers by Lely to inflate the price point of Lely Astronaut A4 robots and with the intent that such prospective purchasers rely thereon by purchasing robots, and constructing or retrofitting a barn to accommodate their use, leaving them incapable of milking their cows by any other means.

A. The Lely Astronaut A4 Brochure

92. In a publication titled “Lely Astronaut Robotic milking system” (the “Lely Astronaut A4 Brochure”), signed by Alexander van der Lely, CEO Lely Group, which comprises all of the Lely entities named as Defendants herein, Lely represented that “the new Lely Astronaut A4 milking robot . . . guarantees the highest achievable milk quality while its unique management tools ensure that you have full control over your herd,” representing further as follows:

Better milk quality, higher milk production together with lower costs lead to higher profits. The Lely Astronaut A4 makes it possible to manage these three aspects to achieve the optimum results.

93. Lely represented that for farmers to grow their businesses, “this will inevitably require automation” with “[t]he switch towards automated milking [being] a major step” in that direction, stating that it is “convinced that automation is the best way to achieve optimal results with your available labour while maintaining maximum respect for your cows.” To facilitate that,

Lely represented that it “developed management software dedicated to robotic farming, allowing [farmers] to spend [their] valuable time on the cows that really require attention[.]”

94. A key, uniform selling point repeatedly emphasized by Lely is that the Lely Astronaut A4 “improves [dairy farmers’] quality of life while safeguarding optimum animal welfare and [their] return on investment.” Lely further represented that the Lely Astronaut A4 was actually “designed to improve animal health and well-being[.]” while “offer[ing] [dairy farmers] the most reliable employee [they] can imagine[.]” stating:

This robot employee is there to milk for you 24/7 for years to come. It is flexible and fully trained to prepare the cow for milking, to attach the teat cups, to reattach in the event that this is required, to detach after milking and to carry out post-treatment.

95. Lely acknowledges that the success (or, more appropriately, failure) of the Lely Astronaut A4 depends almost entirely on the reliability of the “robot employee,” i.e., the robot itself, not the dairy farmers it induced to purchase Lely Astronaut A4 robots, because, in this “new style of farm management[.] . . . the decisions are transferred [away] from the farmer[.]” which Lely represented, seemingly based on its historical data, “results in improved cow health, shorter calving intervals and reduction of feed costs, just to mention a few.”

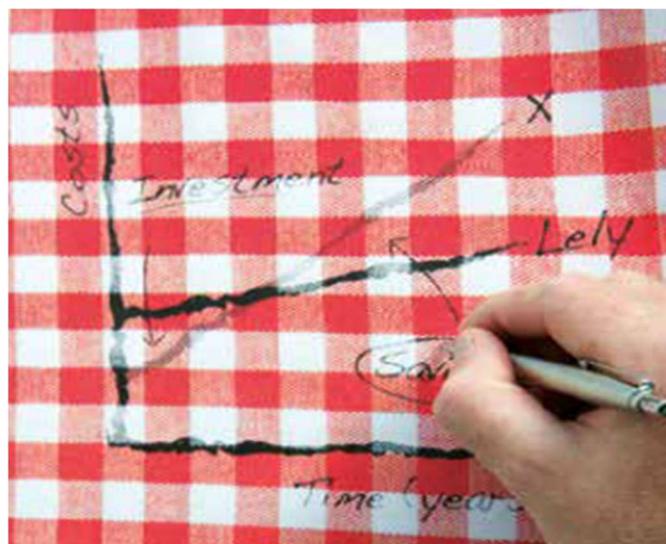
96. Being “aware of the fact that a Lely Astronaut milking robot initially is quite an investment,” Lely represented that “[t]hrough the use of first-class materials and by limiting the number of moving parts we guarantee a long lifetime and a significant trade-in value” and, “[b]ased on the first twenty years of Lely Astronaut robots in the field, it can be concluded that in financial terms the robots should be depreciated over a fifteen-year period[.]” during which time farmers can “manage the[ir] herd with no more than ten touches per cow per lactation.”

97. Knowing dairy farmers are desperate to combat ever-increasing operating costs, Lely touted that it “offer[s] the lowest cost of ownership” and, since the Lely Astronaut A4 “only

requires a maximum of four maintenance calls per year[,]” it also purportedly offers “[t]he lowest service costs.” Lely further represented that the farmers who have already transitioned from a conventional milking system to the Lely Astronaut A4 benefited from “production increases of 10 to 15%” and produced “two million litres [of milk] per year by only one man.”

98. In an effort to secure a foothold in the United States dairy market, Lely represented that the box time of the Lely Astronaut A4 is “reduced by almost 4% per cow visit[,]” as compared to the robotic milking systems of its competitors, which it claimed “has a direct effect on the capacity of the milking robot.” To use the example provided by Lely, “[o]n a farm with 120 cows this represents an extra production capacity of 150 kg per day.” Lely also represented that the Lely Astronaut A4 has “an extra 10-15%” of “robot capacity,” resulting in “more milk in the tank.”

99. To illustrate its uniform representations that purchasing a Lely Astronaut A4 is a better financial investment than purchasing any alternative milking system, either conventional or robotic, Lely made financial projections about the costs of ownership over time for the Lely Astronaut A4 compared to other milking systems, which were designed to show that even though a Lely Astronaut A4 “milking robot initially is quite an investment,” the “costs in the years to come” make it the more profitable investment:



100. Aware of the expense and financial strain caused by an unhealthy herd, Lely represented that “[t]eat treatment and attachment of the teat cups are done very hygienically to improve udder health[,]” and that “[e]xtensive data is also gathered, which will help the farmer to prevent diseases and improve the animal health status of the whole herd.” Lely further represented that its “teat detection system (TDS) features three-level scanning technology which ensures quick and accurate detection of the teats[,]” which is necessary to avoid missing quarters.

101. Drawing on the past performance of the Lely Astronaut A4, Lely represented that its “[r]esearch has proved that the unique counter-rotating brushes – together with the precise arm movements – guarantee up to 40% more effective cleaning and stimulation as compared to conventional situations.” Lely further represented that the “whole system is thoroughly disinfected after cleaning each cow,” as a result of which “bacteria [is] eliminated and cross contamination [is] avoided before each milking.”

102. Lely also boasted the Milk Quality Control (“MQC”) feature of the Lely Astronaut A4, which is located inside the robotic arm and, among other things, purportedly measures milk EC and color. As represented by Lely, the MQC continuously monitors the milk being produced “per quarter” during the milking process, and provides “vital information on mastitis, fat and protein and lactose for managing milk quality and cow health, allowing [the farmer] to respond quickly and achieve optimal milk quality.”

103. Finally, Lely represented that the “whole system is thoroughly disinfected after cleaning each cow, preventing cross-contamination,” that the A4 “guarantees the highest achievable milk quality,” and that the milk pump provided a “gently and hygienic method of pumping milk [which] ensure[d] the highest possible milk quality.”

B. The Lely Dairy Equipment Brochure

104. Lely made similar representations in the “Lely Dairy Equipment Milking, feeding and barn solutions” brochure (the “Lely Dairy Equipment Brochure”), wherein it represented that it “create[s] concepts that are a great help to . . . dairy farmer[s],” which “are turned into first-class, reliable and sustainable products, always designed with respect for the farmer, the animals and our environment.” Lely acknowledged that the “cow is key” to the success of a robotic milking system, making “an easy assess (sic) entrance and exit for cows” and a comfortable, “quiet and peaceful milking time” of paramount importance.

105. Drawing on the past performance of the Lely Astronaut A4 and its other robotic milking systems, Lely represented that “since 1992 the Astronaut robotic milking system has provided substantial financial and lifestyle benefits for dairy farmers,” which has “never been an excuse for [Lely] to rest on [its] laurels[,]” representing that “innovation continues” and “has resulted in an impressive range of products[,]” all of which were “developed to assist the farmer in optimizing all essential factors around the milking process.”

106. In an attempt to justify the exorbitant purchase price of the Lely Astronaut A4 and induce dairy farmers to purchase one or more Lely Astronaut A4 robots, Lely represented the trade-in value and operating costs of that system, stating: “Thanks to our focus – throughout product development – on reliability and durability we offer you a range of products with the highest trade-in value, ensuring the lowest energy and water consumption, as well as limited service requirements.”

107. The importance of the foregoing to prospective purchasers cannot be overstated since most of the dairy farmers to whom Lely advertised, marketed and sold Lely Astronaut A4 robots operated family-run farms with very tight profit margins. In a seeming further attempt to

defraud this vulnerable demographic, the members of which consistently “spend hours in the barn, day in, day out” away from their families, Lely represented that the Lely Astronaut A4 provides dairy farmers with the “[f]reedom to enjoy [their] social life,” stating further as follows:

Originally from a farming background, we know what it is like to wake up early in the morning. To spend hours in the barn, day in, day out, managing your herd in the most optimal way. It is the motivation behind our product development; to ease your workload during the daily routine and to take your dairy operation to new heights of consistency, economy and efficiency, while respecting animal welfare as well as the environment. We understand that better machines, help you to be more productive and we understand that if routine activities are taken over by reliable solutions, you have more time to enjoy a fulfilled life.

108. Lely represented that “[t]wo decades of robotic milking have made it clear to [its] customers that by allowing the cow to make her own decisions, both comfort and productivity are optimized[,]” because “[t]he cows make their own choice for either resting, being milked or fed, ensuring maximum performance for all cows across the herd.” Drawing on historical data, Lely represented that Lely Astronaut A4 provides “[c]ow production increases of more than 10%” with labor productivity increases “to 1.2 million kg of milk per year per employee.”

109. Lely knows that “[a]nimal wellbeing and an excellent milk quality are [also] keys to successful robotic milking,” which is “why Lely started working on measuring milk quality right from the start and . . . [made] this cutting edge technology available to farmers worldwide[,]” allowing them to “measure[] essential parameters such as: fat and protein, conductivity, milk colour, milk time per quarter and dead milk time.” As represented by Lely, “[t]he result is healthier cows which leads to lower costs due to maximum productivity and lower veterinary costs.”

C. The Lely Website

110. Lely made numerous representations about the Lely Astronaut A4 on the publicly accessible website shared by all of the Lely entities, which were intended to serve as marketing

and sales materials. Lely represented that “the Lely Astronaut milking robot” is acknowledged by farmers “as the most important invention of the 20th century for dairy farmers[,]” which offers “[f]lexibility, freedom of choice and well-being for [farmers] and [their] cows while retaining optimal production and high-quality milk,” as evidenced by the purported statement of then-existing fact that “[d]airy farmers all over the world have been successful using [Lely] (automated) systems for over twenty years.”

111. Lely represented that a Lely Astronaut A4 robot: (a) “achieve[s] an average of 10% more milk per year than conventional milking systems and 4% more compared to other milking robot manufacturers[;]” (b) “milk[s] 60 cows per robot or more, with an average of 2.6 milkings per cow per day[;]” (c) “achieve[s] 180 milkings per day[;]” and (d) “harvest[s] 5,000 pounds (2,268 kg) of milk per day.” Lely also represented that the Lely Astronaut A4 “has a much lower electric, water and natural gas usage rate, resulting in a lower annual energy cost compared to the milking parlor system.”

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

112. Lely knew even before it first introduced or sold a single unit of the Lely Astronaut A4 (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 false or misleading, and that the Lely Astronaut A4 was not free from defects and did not function or operate as uniformly represented.

A. The Journal of Dairy Science Article

113. 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 A (the “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”).

114. That article notes that “the most important functional difference between [Automatic Milking Systems] and conventional milking parlors is the automatic teat-cup attachment process, which is controlled in AMS by ultrasonic, laser, or optical sensors.” The 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 A, p. 4265 (internal citations omitted).

115. 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.

116. The study distilled in the Journal of Dairy Science Article notes that an “average daily milking frequency of 2.5 was found . . . on farms with AMS-1,” *id.* at 4268, which directly refutes the uniform representation made by Lely, through its agents, servants and/or employees and on its publicly accessible website, that each Lely Astronaut A4 robot milks at least sixty (60) cows at least 2.6 times a day each.

117. The article also noted that the “percentages of successful milkings observed in the current study were similar to other studies carried out with the same AMS models (AMS-1 95 to 98% . . .),” *id.* at 4271, which means that the Lely Astronaut missed quarters two to five percent (2-5%) of the time. This contradicts the uniform representation of Lely that the Lely Astronaut A4 “ensures” that “milk is taken from each quarter” (i.e., without missing a quarter).

118. This means that for every one-hundred twenty (120) milkings with a Lely Astronaut A4 robot, four (4) milkings fail and there are twenty-five (25) minutes of unproductive occupation of the milking robot, which directly reduces the capacity of each Lely Astronaut A4 robot by at least two percent (2%). *Id.* Capacity is further reduced when cows return to the robot “after nonmilking visits and failed milkings” with there being a reduction in milk yield. *Id.*

119. The Journal of Dairy Science Article cautioned that the results of the study “may present an overly optimistic picture, in that more milkings would fail . . . 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 4271-72.

120. While the Journal of Dairy Science Article predates the release of the Lely Astronaut A4, the design, materials, software, technology and workmanship of the Lely AMS referenced in that article were incorporated into the Lely Astronaut A4, meaning Lely knowingly designed the Lely Astronaut A4 in a defective manner, and incorporated software and technology into the Lely Astronaut A4 that had previously proven to be defective and inadequate.

B. The 2011 Journal of Dairy Science Article

121. 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 B (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.

122. 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 B, 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.

123. 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, a disadvantage Lely mistakenly touted as a benefit. 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.

124. 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.

125. The article noted that “[t]he success rate of AMS cluster attachment in commercial herds ranges from 85 to 98%,” meaning that there was a two to fifteen percent (2-15%) teat cup attachment failure rate, resulting in one or more missed quarters. *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.

126. 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 second device being the one used by the Lely Astronaut A4:

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.

127. 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 a strong “association between udder contamination with manure and the number of mastitis bacteria on teat ends.” *Id.*

128. A study discussed in the article observed that “130 teat-cleaning periods in AMS and found that only 67% of the cleanings were technically successful (i.e., all 4 teats were completely brushed).” *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 anticipated degree of udder fill could make milk removal more effective.” *Id.*

129. 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, increases in SCC and decreases in milk quality have been observed in epidemiological studies following the transition to AMS.

Id. at 2239.

130. 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.

C. Lely’s Own Internal Studies and Admissions

131. Although discovery is ongoing, the documents and testimony provided to date show that Lely was fully aware of the defects with its A4 robot before and shortly after its release, yet it continued to sell the defective A4 for years to unsuspecting farmers. Discovery also shows that Lely knew that its marketing representations to farmers regarding the A4 robot were inaccurate and misleading. Several of the following examples are illustrative of Lely’s knowledge of the A4’s defects and the misrepresentations it was making to farmers in its marketing literature.

132. In 2011, the first year in which A4s were sold in the United States, Lely’s [REDACTED]

[REDACTED]

[REDACTED]

Internal emails from 2011 contain admissions that: “[REDACTED]”
[REDACTED]
[REDACTED]” (Dep. Ex. 47) and “[REDACTED]”
[REDACTED]” (Dep. Ex. 48). This information was
concealed from Plaintiffs and the Class.

133. An internal study in 2012 – the first year A4s were installed in the United States –
also [REDACTED]
[REDACTED]
[REDACTED]. Dep. Ex. 9. This study was sent
to [REDACTED]. Yet, Lely continued to represent to farmers that
that A4 offered the “lowest cost of ownership” – despite the fact that [REDACTED]
[REDACTED]. Lely did not disclose this fact to Plaintiffs
or the Class, and it was not otherwise available to Plaintiffs or the Class.

134. Also, in 2012, and in contradiction of the representations that the A4 could typically
achieve 180 milkings per robot per day and 5,000 lbs of milk per robot per day, internal Lely
documents [REDACTED]
[REDACTED]
[REDACTED]. Dep. Ex. 53 at Slide 3. Lely did not disclose these facts to Plaintiffs or the
Class, and they were not otherwise available to Plaintiffs or the Class.

135. In 2013, Lely requested [REDACTED]
[REDACTED]. Dep. Ex. 60. The [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]” That the A4 [REDACTED] was not disclosed to Plaintiffs or the Class, and the data evidencing this fact was not otherwise available to Plaintiffs or the Class.

136. Also, in 2013, internal benchmark data showed that [REDACTED] [REDACTED] – not the “maximum” of four, as represented. Lely did not disclose this fact to Plaintiffs or the Class, and this data was not otherwise available to Plaintiffs or the Class before they purchaser their A4s.

137. Lely conducted another [REDACTED] [REDACTED] [REDACTED]. Dep. Ex. 18. The study was based on [REDACTED] [REDACTED] [REDACTED] [REDACTED]” Again, these findings were not disclosed to Plaintiffs or the Class.

138. In 2014, Lely conducted an internal investigation that resulted in a 115-page internal report entitled “[REDACTED] A4.” Dep. Ex. 11. This study found [REDACTED] [REDACTED] [REDACTED]” *Id.* at -048. The internal study concluded that the [REDACTED] [REDACTED]” *Id.* The study indicates that improper design methodology caused, at least in part, these deficiencies, stating:

[REDACTED]

[REDACTED]

Id. at -055.

139. The report further concluded that Lely had “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” *Id.* at -055. These findings were contrary to Lely’s representation that that the A4’s “whole system is thoroughly disinfected after cleaning each cow.”

None of these findings were disclosed to Plaintiffs or the Class.

140. In 2015, in contradiction to its representation that the A4’s milk pump “ensure[s] highest possible milk quality,” [REDACTED]

[REDACTED]

[REDACTED]” Dep. Ex. 56. Lely did not disclose these findings to Plaintiffs or the

Class.

141. In 2016, Lely prepared an internal report entitled “[REDACTED]

[REDACTED]. Dep. Ex. 52. In the report, Lely

[REDACTED]

[REDACTED]

[REDACTED]” *Id.* at -645. Moreover, in

contradiction of its representations that the A4 could achieve 5,000 lbs per robot per day, [REDACTED]

[REDACTED]

[REDACTED] *Id.* at -664. The data also showed [REDACTED]

[REDACTED]. *Id.* Lely did not disclose these findings to Plaintiffs or the Class.

142. It is no wonder that the A4 performed so poorly, given that internal documents show that the [REDACTED]. Shortly after the A4's introduction in 2011, a [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]” Dep. Ex. 4.

143. Contemporaneous internal Lely documents from 2010, including a memorandum [REDACTED]
[REDACTED]”
Dep. Ex. 5. This would certainly explain why, in 2011, internal emails [REDACTED]

[REDACTED]
[REDACTED]” Dep. Ex. 6. Lely placed profits over the wellbeing of its farmer customers, and farmers, like the Plaintiffs and putative class, suffered.

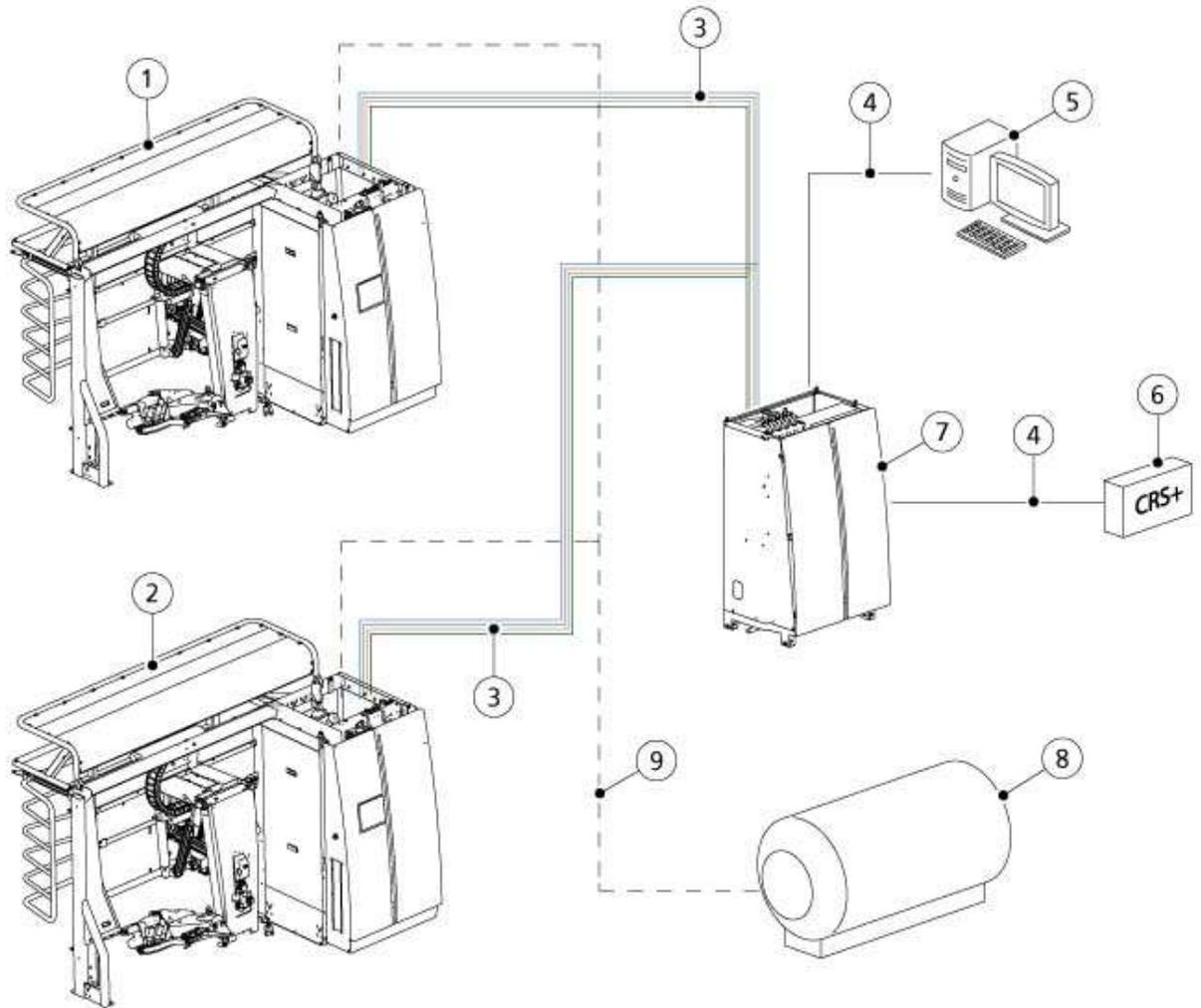
**THE LELY ASTRONAUT A4 ROBOTIC
MILKING SYSTEM**

144. The “E-Manual: Lely Astronaut A4 Operator Manual” (the “E- Manual”), which is only made available to farmers online, states that “[t]he ASTRONAUT A4 Milking Robot is part of an automated milking system that milks, feeds, and monitors the health of cows.” According to the E-Manual, the MQC of “[t]he milking system also examines the quantity and quality of the milk received from the cows, and if necessary, it separates milk that is contaminated or is not to the correct standard.”

145. The E-Manual states that “[a] transmitter on each cow enables the system to identify the cow via a unique number, and a management system maintains specific records for each cow[,]” which “[t]he milking system uses . . . to manage the milking and feeding of a cow when it enters the milking robot.” The milking system has “four primary parts[,]” consisting of the milking robot (one or more), milk storage tank, control system, and compressor. The milking system also has three operator interfaces: E-Link, CRS+ and T4C.⁵

146. A Lely Astronaut A4 robot has two primary parts: (a) “[a] central unit that supplies power, water, cleaning solutions, regulates pressurized air and applies a vacuum[,]” and (b) “[o]ne or two robot units where the cows are milked[.]” The central unit is self-contained and a configuration with two (2) robots can span a distance of up to thirty (30) meters, according to the E-Manual. The schematic below depicts the manner in which a central unit is connected to the other components and parts of a milking system with two (2) robots:

⁵ The E-Link controls the Lely Astronaut A4, the CRS+ user interface controls and monitors the cleaning and reporting system of all connected Lely Astronaut A4 milking robots, and the T4C farm management software manages the herd, while managing and controlling the milking system and all connected devices.



KEY: (1) Robot unit one; (2) Robot unit two; (3) T4C network cable, power supply cable, water supply tube, hot cleaning solution supply tube, brush cleaner supply tube, vacuum supply tube, pressurized air supply tube, blow empty milk line tube; (4) T4C network cable; (5) PC with T4C farm management software; (6) CRS+; (7) Central unit; (8) Milk tank; (9) Milk delivery line.

147. The milking process begins when a cow enters the Lely Astronaut A4 robot through the entry gate. The cow detection system detects that a cow has entered the robot, and a 3D camera detects the position of the cow. The tag reader identifies the cow by the tag attached to her neck, ear or leg. According to the E-Manual, the robot arm then moves to the correct position in two steps: (1) “the 3D camera determines the approximate position of the cow’s udder[;]” and (2) “the

robot arm is positioned so the cleaning brushes can clean and massage the teats (pre-treatment)” and, “[a]fter that[,] the robot arm is positioned to attach the teat cups to the teats.”

148. The E-Manual states: “When the teat cups are attached to the teats, they are held in place by suction of the vacuum in the teat cups. The space between the shell and the liner is alternately brought under vacuum (liner open) and under atmospheric pressure (liner closed). When the liner is open the milk flows from the teat. When the liner is closed, no milk flows. The pressure changes stimulate the teat and massages the teat during milking.” “After milking, the teats are sprayed with udder care liquid[,] [t]hen the robot arm is retracted to the start position[,] and] [t]he exit gate of the box opens and the cow leaves the box[,]” as per the E-Manual.

THE LELY ASTRONAUT A4 WAS DEFECTIVE AND PLAGUED WITH REPEATED OPERATIONAL PROBLEMS AND FAILURES

149. The Lely Astronaut A4 is defective, has numerous, latent and uniform defects in design, material and workmanship, and is plagued with numerous, repeated operational problems that are uniformly experienced by purchasers – all of which Lely had unique, peculiar and superior knowledge even before a single robot was sold, are incapable of being corrected, prevented the Lely Astronaut A4 from functioning, operating and performing as uniformly advertised, marketed and represented by Lely, and caused physical damage to cows and the end milk product produced by the cows – including, but not limited to:

- a. Pre-Stimulation: the pre-stimulation phase of the Lely Astronaut A4 is defective and fails to operate properly in that all four (4) teats of a cow are not brushed approximately thirty-three percent (33%) of the time and, even when brushed, only eighty to ninety percent (80-90%) of the bacteria present on the teats and udder is removed, a defect which is further compounded by the failure of the robot to adequately and properly dry each teat before the start of the milking process, or discriminate between a dirty and clean udder.
- b. Teat Cup Attachment: Lely Astronaut A4 robots routinely experience teat cup attachment failures with a teat cup attachment failure rate of two to five percent (2-5%), due to camera, design, encoder, programming and other defects,

causing, on average, about twenty-five (25) minutes of unproductive occupation of the robot a day, reducing the capacity of each robot by at least two percent (2%) and, after an unsuccessful milking attempt, reducing milk yield of the quarter that was not milked by twenty-six percent (26%).

- c. Vacuum Capacity/Reserve: the Lely Astronaut A4 has inadequate vacuum capacity and reserve – a defect exacerbated by the friction caused by corrugated vacuum supply tube, the need to operate the milk pump bladder, and the unnecessary expenditure of energy needed to lift milk from the robot arm vertically upwards into the milk measurement system – and multiple vacuum regulators that oscillate against each other, causing vacuum instability and fluctuations with significant vacuum drops and spikes, resulting in slow milking, reduced milk flow, teat-end issues, delayed milking, longer box times, and liner slips caused by air admission into the teat cups, as a result of which bacteria-contaminated milk droplets, slugs of milk, and other contaminants (e.g., soil, manure, and dust) move backward and impact against the teat end at speeds of 20 m/s (or 44 mph), penetrate the teat canal and enter the teat, all of which adversely affects cow health.
- d. Liners: the liners prematurely and without warning develop cracks, openings, penetrations and tears, and are too large to fit the average teat size of the herds in the United States, resulting in uneven pressure distribution over the surface of the teats with pressure concentrated at the top of the teat where the mouthpiece is located, causing the top of the teat to have prolonged exposure to vacuum, which, among other things, impedes blood flow with blood pooling at the end of the teats, blood engorgement, and severe callosity.
- e. Milk Quality Control: the mastitis detection methods and milk quality control measures of the Lely Astronaut A4, which evaluate the milk being produced by measuring its EC and color, are defective, inadequate and unsatisfactory in that the sensitivities and specificities of the evaluation methods for automatic diversion of milk are too low, the use of EC and milk color as detection methods have been concluded to be inadequate for detection of clinical mastitis, abnormal milk, or subclinical mastitis, and thirty percent or more (30%+) of the abnormal milk produced is not automatically diverted away from the milk tank.
- f. Milk Flow/Removal: the Lely Astronaut A4 is programmed to, or otherwise does, overmilk teats, as the end of milking and time delay for removal of the teat cups from each teat is such that udders are milked too dry, resulting in trauma and hyperkeratosis at the teat end.
- g. Post-Stimulation: the Lely Astronaut A4 fails to accurately spray and cover teats with disinfectant of the proper viscosity during post-stimulation due to camera, encoder, programming and other defects, which prevent the robots from determining teat location, and fails to account for the decreased diameter of teats after they have been milked.

- h. Milk Pump Bladder: the silicone milk pump bladder of the Lely Astronaut A4, which transports milk to the milk tank, is made of defective materials insufficient to withstand their intended, foreseeable and normal use, which cause the milk pump bladder to routinely fail sooner than the life-span of forty-thousand (40,000) milkings uniformly represented by Lely in the Lely A4 Astronaut Owners Maintenance schedule.
- i. Radio Frequency Filter: the radio frequency filter of the Lely Astronaut A4, which is responsible for preventing the occurrence of stray voltage, routinely fails resulting in stray voltage issues due to, among defects with the radio frequency filter, the fact that it is never scheduled to be checked or tested and is never scheduled for maintenance, all of which is beyond the capability of a dairy farmer, as it requires specialized equipment.

150. Lely had peculiar, unique and superior knowledge of these defects and operational problems before a single Lely Astronaut A4 robot was sold based on, among other non-public information, product testing, expert consultations, and the virtually identical defects and problems with the Lely Astronaut A3, which were carried over to the Lely Astronaut A4. To further its deceptive, fraudulent, negligent, misleading and uniform marketing scheme, Lely 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 Lely Astronaut A4 robots.

151. Plaintiffs and Class members would not have purchased a Lely Astronaut A4 robot had the aforementioned defects and operational problems – all of which were latent in nature, and not readily apparent obvious or visible to purchasers before their respective Lely Astronaut A4 robots were operational and incorporated into their barns – been disclosed to them and not concealed by Lely for the purpose of inducing them to rely and act in reasonable reliance on the deceptive, false, misleading, incomplete and/or partial information and facts that were disclosed through the representations specified herein.

A. Pre-Stimulation

152. The milking process and technique of the Lely Astronaut A4 is explained by Lely in the “Farm Management Milk production robotic farms” manual (the “Farm Management Manual”), wherein the first step in the milking process is identified as pre-stimulation, which involves “the removal of dirt [using two brushes], the stimulation of milk ejection, and the monitoring of the udder and the milk for any abnormalities.” When dirt and other contaminants are not sufficiently removed from the teats and udder, the milk becomes contaminated with, for example, soil, manure or dust, not to mention that:

contamination of the teat orifice can occur easily through bacteria on teat surfaces or on contact surfaces of milking equipment[,] . . . [making] the cleanliness of the teat and equipment before milking [] essential.

Exhibit B, p. 2237.

153. Studies and testing show that even thorough cleansing by a Lely Astronaut A4 robot removes only eighty to ninety percent (80 to 90%) of the bacteria present on teats and udder. This means that ten to twenty percent (10-20%) of the bacteria present on the teats and udder of each cow survives pre-stimulation and is left on the teats and udder when the teat cups are attached, allowing that bacteria to: (a) contaminate the end milk product, (b) increase cross-contamination rates between different cows and/or between different teats of the same cow, and (c) impact against teat ends and penetrate teat canals, increasing udder health problems (as described *supra* herein).

154. This ten to twenty percent (10-20%) failure rate is compounded by the fact that, as found by a study discussed in the 2011 Journal of Dairy Science Article, “only 67% of the cleanings were technically successful (i.e., all 4 teats were completely brushed),” Exhibit B, p. 2237, and, even then, only eighty to ninety (80 to 90%) of the bacteria present on teats and udder is removed. This is further compounded by the fact that the teat cleaning system of the Lely

Astronaut A4 does not adequately and properly “dr[y] teats before the start of the milking process, thus eliminating another opportunity to remove bacteria from the teat orifice.” Exhibit B, p. 2237.

155. According to the National Mastitis Council (“NMC”), one way a milking machine causes the development of mastitis is through the transfer of infectious organisms from cow to cow on teat cup liners (i.e., cross-contamination). The risk of cross-contamination is unreasonably and unnecessarily increased when all of the bacteria present on the teats and udder of each cow is not completely removed during pre-stimulation before coming into contact with the teat cup liners, as well as when there is improper udder preparation, such as failing to adequately and properly dry teats before the start of the milking process.

B. Teat Cup Attachment

156. The Farm Management Manual explains that the “Lely Astronaut applies laser technique to attach the teat cups[,]” which “are detected from different angles by means of a three-beam laser.” The front teats are detected first and, once their location is known, the position of the rear teats is determined. The teat cups are attached to the rear teats first followed by the front teats. According to Lely, “[t]he fact that the laser is located further from the teats and at a certain angle also allows the attachment of abnormally shaped teats.” Sapphire glass is positioned in front of the laser purportedly to provide protection.

157. In the Farm Management Manual, Lely represented that “[a]fter attachment of the teat cups, the Lely robot . . . ensures that . . . milk is taken from each quarter.” Lely conceals and fails to disclose to dairy farmers that there is a two to five percent (2-5%) teat cup attachment failure rate (Exhibit A, p. 4271), on which occasions one or more teats are either not fully milked or, as frequently is the case, not milked at all. This failure is commonly referred to as “missed

quarters” in the dairy farming industry, and results in cows becoming ill, developing mastitis, and often dying or having to be culled.

158. This teat cup attachment failure rate means that for every one-hundred twenty (120) milkings, four (4) milkings fail, which translates to about twenty-five (25) minutes of unproductive occupation of the milking robot a day, and directly reduces the capacity of each robot by at least two percent (2%). Exhibit A, p. 4271. Capacity is further reduced when cows return to the robot “after nonmilking visits and failed milkings” and, since the unsuccessful milking attempts involved stimulation of the udder without subsequent milking, a reduction in milk yield also results. Exhibit A, p. 4271. Studies have further found that:

Following teat cup attachment failure, milk production by the quarter that failed to be milked was 26% lower during the subsequent milking . . . Therefore, any anticipated increase in milk production with an AMS may not be fully realized . . .

Exhibit B, pp. 2230, 2235.

C. Vacuum Capacity/Reserve

159. A principle of cow milking is that milk should be removed under vacuum, then transported by gravity. As represented by Lely in the Farm Management Manual, the Lely Astronaut A4 “vacuum is delivered by the vacuum pump [located in the central unit, and] is applied to the teats to extract milk from the udder” under vacuum. In the Farm Management Manual, Lely represented that the Lely Astronaut A4 has a “standard vacuum height [of] 44 kPa” (which equates to approximately 13 inHg). The NMC guidelines provide that vacuum height stability should vary by no more than 2 kPa (0.6 inHg).

160. To maintain vacuum stability, the NMC mandates that the vacuum pump capacity of the system must be a minimum of 35 cfm, plus an additional 3 cfm per milking unit (1 cfm of which represents the effective reserve required per robot to maintain vacuum stability). This

means a Lely Astronaut A4 robotic milking system requires a minimum vacuum pump capacity of at least 38 cfm to operate one robot, and 41 cfm to operate two. The vacuum capacity of the Lely Astronaut A4 falls below the minimum required capacity and is otherwise inadequate, as found by testing performed on behalf, and at the direction, of Lely.

161. This was communicated to Lely no later than 2017 (by which time Lely already knew that the Lely Astronaut A4 lacked adequate vacuum capacity and reserve). Lely was informed that the Lely Astronaut A4 failed every recognized test used to assess vacuum capacity and reserve – a defect of which Lely indicated it was already well-aware, yet failed to correct or cure, because doing so would increase electrical and operational costs and, thus, prevent Lely from pushing its key selling point that the Lely Astronaut A4 “offer[s] the lowest cost of ownership” with “a lower annual energy cost compared to the milking parlor system.”

162. The lack of adequate vacuum capacity is exacerbated by: (a) the use of a corrugated hose, as opposed to a smooth one, as the vacuum supply tube, which increases the friction when moving air through the vacuum supply tube; (b) the need for the vacuum to operate the milk pump bladder; and (c) the expenditure of energy to overcome gravity when lifting milk from the robot arm, through the milk tubes, and vertically upwards into the milk measurement system, which strains the vacuum pump and causes the vacuum level behind the milk to drop. The image below depicts the milk tubes, and the vertical path the milk is forced to travel.



https://www.lely.com/media/filer_public/23/d9/23d9ee83-fc7e-4c84-acb9-50a30e2d96d0/webres_lely_astronaut_lhqb06416_en.pdf (last visited Aug. 19, 2022).

163. The design, installation and layout of the milk tubes depicted above also results in bacteria-laden milk and water from the Lelywash performed between milkings – which travels through the milk tubes and is supposed to be drained through the pre-milk device and the milk jar – pooling at the bottom of the U-shaped milk tubes, which contaminates the end milk product and dilutes the end milk product by watering it down, resulting in high bacteria and preliminary incubation counts due to non-hygienic milking and milk processors concluding that the milk product was watered down.

164. The foregoing is further exacerbated by the fact that the Lely Astronaut A4 has a vacuum regulator in the central unit, and an additional vacuum regulator in each robot connected to the central unit. A vacuum regulator is an automatic valve designed to maintain vacuum stability by admitting air into the pipeline when the vacuum increases above the predetermined level. The

presence of more than one vacuum regulator in the Lely Astronaut A4 causes the vacuum regulators to oscillate against each other, thereby causing vacuum instability and fluctuations with significant vacuum drops and spikes.

165. The foregoing results in, among a host of other issues, slow milking, reduced milk flow, teat-end issues, delayed milking, longer box times, and liner slips caused by air admission into the teat cups. As the liner slips (i.e., opens to allow air admission), a reverse pressure gradient is created across the teat canal that causes bacteria-contaminated milk droplets, slugs of milk, and other contaminants (e.g., soil, manure, and dust) to move backward and impact against the teat end at speeds of 20 m/s (or 44 mph), penetrate the teat canal and enter the teat. This phenomenon is commonly known as an “impact” or “reverse impact.”

166. Impacts increase the infection rate of a herd over the long term by causing bacteria and mastitis-causing organisms to enter the teat canal and access the udder, while also damaging and changing the resistance of the cow’s first line of defense: teat skin, teat canal, and mucosal tissue. This ultimately causes conditions referred to as teat orifice eversion or hyperkeratosis, teat-end lesions, hemorrhagic blisters on teat ends, and teat chapping, all of which allow organisms and pathogenic bacteria to colonize and multiply in the damaged or changed tissue, leading to intramammary infections, among other health issues.

167. The lack of adequate vacuum capacity and the other issues identified above also result in cow discomfort, vacuum spikes increasing liner overpressures (i.e., liner pinch on the teat ends), and the cow being exposed to high vacuum levels during fluctuation spikes, causing cow discomfort and preventing an opportunity to safely increase vacuum levels to milk cows faster. In addition, local discomfort and pain caused by vacuum fluctuation spikes due to inadequate vacuum

capacity and reserve lead to neurohormonal responses, which suppress immune function and increase the likelihood of disease, as well as interfering with milk ejection or “letdown.”

D. Liners

168. The liner is composed of a barrel and mouthpiece, which is used to hold the liner onto the teats when vacuum pressure is not being applied. When the liner is inserted in the teat cup an annular space is created between the liner and the shell of the teat cup, which is referred to as the pulsation chamber. The opening and closing of the liner to remove milk from the udder is controlled by the pulsation system and, according to the Farm Management Manual, “[t]he combination of vacuum and the opening and closing of the liners plays an important role in the removal of milk from the udder.”

169. The factors affecting liner performance and quality include the diameter of the liner in relation to the diameter of the teats, the shape of the mouthpiece and barrel, wall thickness, and elasticity. The liner should be adapted to fit the average teat size of the herd. Lely manufacturers and sells two types of liners – a silicone liner with a life-span of 10,000 milkings, and a rubber liner with a life-span of 2,500 milkings, according to the representations of Lely in the Farm Management Manual – neither of which are adapted to fit the average teat size of herds in the United States, or the herds of purchasers of Lely Astronaut A4 robots.

170. Liner size is important because when the liner is closed, it massages the teat and neutralizes the sucking effect in the opening phase of the liner. The liners offered by Lely are too large to fit the average teat size of the herds in the United States, resulting in an uneven pressure distribution over the surface of the teats with pressure concentrated at the top of the teat where the mouthpiece is located. This causes the top of the teat to have prolonged exposure to vacuum,

which, among other things, impedes blood flow with blood pooling at the end of the teats, blood engorgement, and severe callosity (i.e., bulging teat orifices).

171. The liners offered by Lely are also defective and suffer from operational problems in that they develop cracks, openings, penetrations and tears well-before the expiration of the life-span represented by Lely, resulting in milk escaping into the pulsation chamber and, ultimately, the vacuum supply tube where a thick layer of milk solids remains after the water in the milk evaporates, which causes blockages, and increases the friction, in the vacuum supply tube (which Lely never schedules for cleaning, maintenance, or service), exacerbating the problems stemming from the lack of adequate vacuum capacity and reserve.

E. Milk Quality Control (MQC)

172. The MQC is supposed to continuously monitor the milk being produced “per quarter” during the milking process, and provide “vital information on mastitis, fat and protein and lactose for managing milk quality and cow health, allowing [the farmer] to respond quickly and achieve optimal milk quality” by measuring, among other things, the EC and color of the milk being produced. Lely uniformly represented that the MQC functions as a mastitis detection device, allowing farmers “to follow the udder health of each cow per quarter via the management software,” according to the Farm Management Manual, while:

[b]lood milk, colostrum and milk with a colour deviation (caused by mastitis, for example) are easily traced and, if required, automatically separated.

173. The mastitis detection methods and milk quality control measures used by the Lely Astronaut A4 are defective, inadequate and unsatisfactory. First, the sensitivities and specificities of the evaluation methods for automatic diversion of milk used in this milking system have been found to be too low. Second, the use of EC as a detection method “has been concluded to be

inadequate for detection of clinical mastitis, abnormal milk, or subclinical mastitis.” Exhibit C, p. 121 (internal citations omitted). Third, studies have “concluded that mastitis detection based on milk colour was unsatisfactory.”

174. The Acta Argiculturae Scandinavica Journal published an article titled, “Accuracy and reliability of mastitis detection with electrical conductivity and milk colour measurement in automatic milking,” a copy of which is annexed hereto as Exhibit C. That article distilled the results of a study analyzing two different mastitis detection systems, including the “mastitis detection system . . . compris[ing] quarter-based EC and milk colour measurements with MQC® (Lely Industries NV, Maasland, The Netherlands).” The article discussed the results of the study, stating, in pertinent part, as follows:

The sensitivity of EC in detecting quarters with high [somatic cell count] was fairly low, agreeing with earlier research on subclinical mastitis. The correlation between [somatic cell count] and EC was low, as also shown earlier.

* * *

In our study, none of the methods was completely satisfactory in identifying clinically affected quarters. Most of the clinical cases were detected, but the milk was not diverted automatically on the day on which the farmer diagnosed clinical mastitis. The proposed goal of 70% sensitivity for diverting abnormal milk automatically was not achieved.

Exhibit C, pp. 124-25.

175. The detection methods of the MQC used by Lely Astronaut robots, including Lely Astronaut A4 robots, only detected “14/17 cases” of clinical mastitis on the day of diagnosis by the farmer, which equates to a detection failure rate of approximately 17.65% and, even in those cases that were detected, “the milk was not diverted automatically on the day on which the farmer diagnosed clinical mastitis” and, as a result, thirty percent or more (30%+) of the abnormal milk

produced was not automatically diverted in direct contradiction to the uniform representation of Lely that abnormal milk is “easily traced and, if required, automatically separated.”

176. This results in dairy farmers not being able “to supply only first class milk,” as uniformly represented by Lely. There are four classes of milk. First class or Class I milk is the highest valued milk used for fluid consumption, according to the American Dairy Products Institute. To qualify as Class I, milk must meet the minimum standards and requirements for Grade A milk production and processing outlined in the Grade A Pasteurized Milk Ordinance published by the Food and Drug Administration. So, the phrase “first class milk” is not mere puffery, but a term of art in the dairy industry that refers to Grade A milk.

F. Milk Flow/Removal

177. According to the Farm Management Manual, “[t]he teat cups are removed depending on the milk flow[,]” which “is monitored through a milk flow indicator.” Once a quarter has been completely milked, the teat no longer fills with milk and the diameter of the teat remains small, resulting in more space between the wall and the teat. This causes the vacuum pressure at the mouthpiece of the liner to build-up, while the robot continues to attempt to milk the teat even though milk is no longer being secreted from the udder (i.e., overmilking), resulting in trauma and hyperkeratosis at the teat end.

178. To avoid overmilking, the well-accepted industry standard is that there should be an easily obtainable stream of milk remaining in each quarter after the milking process has been completed and the teat cups have been removed. In contravention to this industry standard, the Lely Astronaut A4 is programmed to overmilk teats for up to forty-five (45) seconds or more; that is, the end of milking and the time delay for removal of the teat cups is such that udders are milked

too dry to the point where a quarter has been completely milked with either no milk remaining in that quarter, or no easily obtainable stream of milk remaining.

G. Post-Stimulation

179. The risk of udder infection is increased when teats are not sprayed and well-covered with a disinfectant of the proper viscosity directly after milking. The Lely Astronaut A4 fails to accurately spray and cover teats during post-stimulation due to camera, encoder, programming and other defects, which prevent A4 robots from determining teat location, and fails to account for the decreased diameter of teats after they have been milked. Moreover, the disinfectant fluid that Lely manufacturers, sells and requires purchasers to use under the threat of ceasing maintenance and service is highly viscous and, thus, fails to adequately cover and disinfect teats.

180. The failure to accurately and adequately spray and cover teats with a disinfectant of the proper viscosity directly after milking increases the risk of cross-contamination, while adversely affecting teat and udder health by causing chapped teats, failing to remove contagious mastitis-causing pathogens on the teat surface – including, but not limited to, any just inside the opened teat canal that were transferred during milking from infected milk residues from inside the liner, or that penetrated the teat canal as a result of impacts during the milking process, before they have a chance to colonize and infect the teats – mastitis, and other health conditions.

H. Milk Pump Bladder

181. The milk pump bladder of the Lely Astronaut A4 transports milk from the milk jar to the milk tank, using “[a]lternating vacuum and pressurized air, applied on the outside of the silicone bladder in the milk pump cartridge,” according to the E-Manual, which further strains the vacuum pump and contributes to vacuum fluctuations. Moreover, the bladder is made of defective materials insufficient to withstand their intended, foreseeable and normal use, which cause the

milk pump bladder to routinely fail sooner than the life-span of forty-thousand (40,000) milkings uniformly represented by Lely in the Lely A4 Astronaut Owners Maintenance schedule.

I. Radio Frequency Filter

182. The radio frequency filter of the Lely Astronaut A4 is responsible for preventing the occurrence of stray voltage. The radio frequency filter routinely fails resulting in stray voltage issues due to, among defects with the radio frequency filter, the fact that it is never scheduled to be checked or tested, and is never scheduled for maintenance, all of which is beyond the capability of a dairy farmer, as it requires specialized equipment. The only way in which a dairy farmer exercising reasonable diligence learns that the radio frequency filter has failed is when a stray voltage event occurs by which time any resultant damage cannot be prevented.

LELY CONCEALED MATERIAL FACTS ABOUT THE LELY ASTRONAUT A4

183. Even after becoming aware of, and receiving, the aforementioned articles and other information, performing its own internal studies, and consulting with experts, all of which established that the Lely Astronaut A4 was defective and failed to conform to its express and implied warranties, Lely continued to make representations and conceal material facts about the Lely Astronaut A4 and, instead of ceasing sales of the Lely Astronaut A4, continued its deceptive and fraudulent uniform marketing scheme.

184. Despite its knowledge to the contrary, Lely continued to uniformly represent that the Lely Astronaut A4 worked as represented, while concealing the data, documents, information, logs and/or records they maintain, and the monthly reports that are provided by its authorized dealerships (i.e., Lely Centers) of the defects and problems with the Lely Astronaut A4 robots that had been and were then operational, which they knew would prove each representation specified herein to be deceptive, false and misleading.

185. Lely had knowledge of the defects and problems with the Lely Astronaut A4 that was superior to Plaintiffs and other dairy farmers. First, Lely (through itself, its parent or a related company) designed, patented and manufactured the Lely Astronaut A4, was responsible for calibrating and programming the software that operated the Lely Astronaut A4 and controlled its functions and, thus, created the defects and problems with the Lely Astronaut A4, which were known by each Lely entity.

186. For example, the operations of Lely Industries center on the development and manufacture of new agricultural equipment products, including the Lely Astronaut A4. This is done in tandem with Lely International, which manufactures and sells the parts of which such agricultural equipment products are comprised. Thus, Lely Industries and Lely International were both aware of the defects and problems with the Lely Astronaut A4, including the defects with its design, materials and workmanship, by virtue of having created them.

187. The five-person executive board of Lely Industries and Lely International, which respectively oversaw the development and manufacture of the Lely Astronaut A4 and its parts, is the same five-person executive board of each other Lely entity, except Lely NA, which has a three-person executive board consisting only of individuals on the boards of each other Lely entity. The knowledge of the defects with the Lely Astronaut A4 possessed by the executive board members of Lely Industries and Lely International is thus imputed to each other Lely entity.

188. Moreover, Alexander van der Lely – former CEO of the Lely Group and current chairman of the Supervisory Board for the Lely Group comprising Lely NA, Maasland, Lely Industries, Lely International and Lely Holding – admitted that he “personally take[s] care of the engineering [and] R&D” for the Lely Group. He thus had knowledge of the defects with the Lely

Astronaut A4 through his engineering and R&D involvement and, since he personally oversees the Lely entities, his knowledge is imputed to each Lely entity.

189. Second, at all times relevant herein, including before even a single Lely Astronaut A4 robot was sold, Lely knew from testing the Lely Astronaut A4, or would have known had adequate and proper testing of the Lely Astronaut A4 been performed for a sufficient period of time, that the Lely Astronaut A4 was defectively designed, not free from defects in material and workmanship, and did not function or operate as represented. For the reasons detailed above, such knowledge is properly imputed to each Lely entity.

190. For example, since special testing equipment and careful measurement techniques are required to measure vacuum capacity and reserve, no dairy farmer or purchaser of a Lely Astronaut A4 exercising reasonable diligence could determine that the Lely Astronaut A4 has inadequate vacuum capacity and reserve, whereas each Lely entity is fully capable of, and equipped to, assess and test vacuum capacity and, based on their representations of “robot capacity,” have seemingly done so.

191. Third, the Journal of Dairy Science and Acta Argiculturae Scandinavica Journal articles were available to, and in the possession of, each Lely entity and, as noted therein, the management software for, and studies conducted of the components, equipment, programming and software of, the Lely Astronaut robots analyzed revealed that the design, materials, software and technology that were ultimately incorporated into the Lely Astronaut A4 was defective and failed to conform to the express and implied warranties extended by each Lely entity.

192. Fourth, the Lely Astronaut A3 was plagued by virtually identical defects and operational problems, which Lely then carried over to, and incorporated into, the Lely Astronaut A4. Since the Lely Astronaut A3 was introduced in 2005, each Lely entity had unique, peculiar

and superior knowledge of the defects and operational problems specified herein – including, but not limited to, those identified in paragraphs 149-182 – before even a single Lely Astronaut A4 robot was sold.

193. Once Lely began selling the Lely Astronaut A4, it had numerous product feedback sources from which to learn, and from which it did learn, that the Lely Astronaut A4 was plagued with defects and did not operate as uniformly represented by Lely, all of which Lely intentionally concealed and failed to disclose in furtherance of its deceptive, fraudulent and misleading marketing scheme. The information gathered from these product feedback sources was possessed and concealed by each Lely entity.

194. First, functioning as a façade for the “Lely Group” in the United States, Lely NA entered into standard form contracts with each dealership selling the Lely Astronaut A4, including, but not limited to, the dealerships from which Plaintiffs purchased their Lely Astronaut A4 system, pursuant to which each of those dealerships became a “Lely Center.” Those contracts required each Lely Center to furnish Lely NA with reports within five (5) days after the end of each calendar month, stating:

- a. milk-quality data for the milk obtained from cows or herds having been milked with a Lely Robotic Milking System, including the Lely Astronaut A4;
- b. the number of breakdowns per Lely Robotic Milking System, including the Lely Astronaut A4, per week; and
- c. the number of breakdowns per type of failure.

195. The monthly reports were further “divided as per each individual Lely Robotic Milking System installed” by each Lely Center. In addition, each Lely Center was required to furnish Lely NA with information regarding the “quality of the milk obtained from cows or herds prior to the installation and use of the Lely Robotic Milking System, with conventional milk

extraction methods,” giving Lely NA data and information establishing that the MQC feature of the Lely Astronaut A4 did not work as expressly warranted.

196. Since the three executive board members of Lely NA also serve on the executive boards of each other Lely entity, the information provided to Lely NA by each Lely Center in the United States, which was available to, and in the possession of, each executive board member of Lely NA, was also available to, and possessed by, each other Lely entity by and through the three executive board members of Lely NA, each of whom was on the executive board of each other Lely entity, including Maasland, Lely Industries, Lely International and Lely Holding.

197. Second, in addition to the monthly reports furnished by each Lely Center, each Lely entity has access to and collects real-time data from the Lely Astronaut A4 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 Lely Astronaut A4 robots (i.e., the T4C Data), which consistently revealed that the Lely Astronaut A4 was defective, and did not function or operate as uniformly represented.

198. The T4C Data is provided to, and analyzed by, the numerous, shared research and development departments of Lely in both the United States and The Netherlands, to which the entities within the “Lely Group” devote six percent (6%) of their annual revenue. The research and development departments are personally overseen by Alexander van der Lely, the Chairman of the Supervisory Board for the Lely Group, which comprises all of the Lely entities, including Lely NA, Maasland, Lely Industries, Lely International and Lely Holding.

199. Third, all warranty service of the Lely Astronaut A4 is subject to the prior examination and approval of Lely, which has the sole discretion to determine whether a repair or replacement is covered by warranty and, if so, either repairs or, at its option, replaces any defective

equipment. This means that Lely necessarily analyzes, assesses and evaluates every claimed defect with the Lely Astronaut A4 that is experienced by dairy farmers across the world and, thus, knew of the defects and problems with the Lely Astronaut A4 from this source of information.

200. For example, the standard form contracts that Lely NA entered into with each Lely Center obligate Lely NA to perform ongoing warranty service of Lely Astronaut A4 robots. The warranty service is subject to the “prior examination and approval” of Lely NA, meaning it must first analyze, assess and evaluate any claimed defects. Similarly, the standard form contract that Lely Industries enters into with its customers, like Plaintiffs, obligates it to “repair or, at its option, replace any defective product or part thereof.”

201. Fourth, no later than 2017, Lely was informed at its United States headquarters in Pella, Iowa, that the Lely Astronaut A4 has inadequate vacuum capacity and reserve, and fails every recognized test used to assess vacuum capacity and reserve – a defect of which each Lely entity was already well-aware, yet failed to correct or cure and, instead, intentionally concealed from prospective purchasers, so they could continue pushing their key selling point that the Lely Astronaut A4 has a “lower annual energy costs compared to the milking parlor system.”

202. Fifth, since Lely only sells the Lely Astronaut A4 through approved, authorized and/or wholly owned dealers (i.e., Lely Centers), each Lely entity knew or, in the absence of willful blindness, would have known that the Lely Astronaut A4 was defective and did not operate as represented from Lely Centers and service technicians, as well as from service and/or repair order information, not to mention the monthly reports that each Lely Center provided to Lely detailing the specifics of each breakdown experienced by each Lely Astronaut A4 robot in operation.

203. Each Lely entity possessed and concealed the foregoing articles, data, information and material facts, establishing – in contradiction to their representations – that, among other

things, the Lely Astronaut A4: did not achieve an average of ten percent (10%) more milk a year than conventional milking systems; did not milk sixty (60) or more cows per robot an average of 2.6 times a day; did not achieve one-hundred eighty (180) milkings per robot a day; did not harvest five thousand (5,000) pounds of milk a day; only brushed all four (4) teats of a cow a mere sixty-seven percent (67%) of the time and, even then, only removed eighty to ninety percent (80-90%) of the bacteria present on the teats and udder; failed to adequately dry teats before the start of the milking process; could not discriminate between a dirty and clean udder; routinely experienced teat cup attachment failures resulting in missed quarters; and did not improve cow health, reduce feed costs, detect cases of mastitis, automatically divert abnormal milk away from the milk tank, adequately disinfect teats during post-stimulation, or have adequate vacuum capacity and reserve. Lely further concealed that it knew the A4 did not offer, as represented, the “lowest cost of ownership.”

204. Lely compiled some of this data and information into an internal document, which was not publicly distributed to dairy farmers, referred to as an “FMS Farm Scan.” An FMS Farm Scan dated March 29, 2017 reveals that the Lely Astronaut A4 suffered from repeated failures and critical alarms and, in direct contradiction to its uniform representations, does not: milk sixty (60) or more cows per robot an average of 2.6 times a day; achieve one-hundred eighty (180) milkings per robot a day; or harvest five thousand (5,000) pounds of milk a day.

205. In light of their access to and possession of such non-public information, Lely NA, Maasland, Lely Industries, Lely International and Lely Holding have and held themselves out as having peculiar, unique and specialized knowledge about the abilities, benefits, capabilities, defects, failures, performance, problems, operation and workings of the Lely Astronaut A4, which

was not available to, and was concealed from, Plaintiffs and other dairy farmers to whom the Lely Astronaut A4 was sold.

206. Lely NA, Maasland, Ley Industries, Lely International and Lely Holding concealed their peculiar, unique and specialized knowledge about the Lely Astronaut A4 to prevent the unearthing of data and facts they knew would prove each of the representations they made, and instructed their agents, servants and/or employees to make, about the Lely Astronaut A4 to be false, so that they could continue to deceive, mislead, and fraudulently induce dairy farmers to purchase Lely Astronaut A4 robots.

207. Lely NA, Maasland, Ley Industries, Lely International and Lely Holding each knew that Plaintiffs and most of the dairy farmers to whom the representations specified in detail herein were made, were not technologically sophisticated and, in light of the peculiar, unique and specialized knowledge about the Lely Astronaut A4 that each of them have and held themselves out as having, would reasonably rely thereon to their detriment by purchasing one or more Lely Astronaut A4 robots.

208. No Plaintiff or dairy farmer would have purchased the Lely Astronaut A4 had the aforementioned information and material facts been disclosed to them and not concealed by Lely NA, Maasland, Ley Industries, Lely International and Lely Holding with the intent to defraud them and for the purpose of inducing them to rely and act in reasonable reliance on the deceptive, false, misleading, incomplete and/or partial information and facts that were disclosed through the representations specified herein.

THE LELY ASTRONAUT A5

209. On or about April 10, 2018, Lely introduced an upgrade to the Lely Astronaut A4 known as the Lely Astronaut A5 “at their head office in The Netherlands,” according to the

announcement posted on its publicly accessible website (the “Press Release”). The announcement states that the Lely Astronaut A5 now provides “consistent milking,” which is an implicit admission of the inconsistent milking provided by the Lely Astronaut A4 due to the vacuum fluctuations caused by its inadequate vacuum capacity and reserve.

210. The Press Release also boasted that “[w]ith the new Teat Detection System (TDS), post-milking teat spraying has been improved by pre-scanning the udder before spraying, ensuring optimal udder hygiene and limiting the risk of contamination,” tacitly admitting the existence and its knowledge of the defective post-stimulation provided by the Lely Astronaut A4 – which, among the other defects specified herein, failed to pre-scan the udder after milking a cow to determine teat location and account for the decreased diameter of teats after they have been milked.

PLAINTIFF JARED KRUGER

211. On or about March 31, 2015, Plaintiff Kruger was induced, as described herein, into entering an agreement with Lely (the “Kruger Agreement”), pursuant to which Kruger agreed to purchase from Lely one (1) defect-free Lely Astronaut A4 robot and other related milking equipment, which were designed, developed, manufactured, distributed and installed by Lely for the purpose of milking cows, for the sum of approximately \$214,142.00.

212. At the behest of Lely, Kruger incurred substantial costs to design and construct an addition to his existing barn that was specifically and necessarily designed to accommodate and facilitate the use of the Lely Astronaut A4 based on blueprints, plans, specifications, suggestions and/or other recommendations provided by Lely, through its agents, servants, employees, and/or authorized dealers, including Luebke. 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.

213. The costs incurred by Kruger to design and construct the addition to his existing 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 Kruger for the purchase and installation of the Lely Astronaut A4 robot and equipment to an amount well exceeding \$300,000.00.

214. To induce Kruger to purchase the Lely Astronaut A4, Lely, through its agents, servants, employees, and/or authorized dealers, including Luebke, organized, and arranged for him to take a trip to two dairy farms in Winona County, Minnesota, both of which had recently installed Lely Astronaut A4 robots within the preceding six (6) to eight (8) weeks, during which it aggressively marketed the purported benefits, features and past performance of the Lely Astronaut A4 by, among other things, repeating the uniform representations specified herein.

215. Kruger was only taken to dairy farms on which Lely Astronaut A4 robots were recently installed, where the defects and problems with the robots, which are latent in nature and take several months or more to manifest, were not evident. For example, the lack of adequate vacuum capacity and reserve causes liner slips, which, among other things, cause bacteria-contaminated milk droplets, slugs of milk, and other contaminants to move backward and impact against the teat end at high speeds, penetrate the teat canal, and enter the teat.

216. These impacts increase the infection rate of a herd over the long term by causing bacteria and mastitis-causing organisms to enter the teat canal and access the udder, while also damaging and changing the resistance of the cow's teat skin, teat canal, and mucosal tissue, which allows organisms and pathogenic bacteria to colonize and multiply in the damaged or changed tissue, leading to intra-mammary infections, among other health issues. The consequences of impacts take time to manifest, and do not automatically occur as the result of every impact.

217. There is, however, a positive correlation between the number of times a cow is milked by a Lely Astronaut A4 robot and the occurrence of liner slips resulting in impacts, as well as the number of impacts a cow experiences and the incidence of the foregoing adverse consequences caused by impacts. This means that the more times a cow is milked by a Lely Astronaut A4 robot, the more impacts it will experience and, with each passing impact, the more likely the cow is to suffer the adverse consequences set forth above and elsewhere herein.

218. In sum, Lely chose to only showcase recently installed Lely Astronaut A4 robots to make it appear as though the robots were defect-free and operated as uniformly represented, all the while knowing that it was simply showcasing the robots during their latency period before the defects and problems therewith manifested, which allowed Lely to further its deceptive, fraudulent and negligent marketing scheme, and sell the Lely Astronaut A4 at an inflated price point far exceeding its actual value.

219. Acting in reasonable reliance on the foregoing – as well as the representations detailing the past performance of Lely Astronaut A4 robots, and expressing their purported abilities, capabilities and performance in terms specific numbers or percentages (e.g., “10% more milk per year”) and given the material facts concealed by Lely – Kruger, to his detriment, entered into the Kruger Agreement and incurred substantial costs to purchase a Lely Astronaut A4 robot and to design and build an addition to his barn to house the Lely Astronaut A4.

220. Once the barn addition was complete, the Lely Astronaut A4 robot was installed and incorporated into the addition and, on or about November 13, 2015, Kruger began using the Lely Astronaut A4 robot. The Lely Astronaut A4 failed to work as represented, was defective, and had numerous, repeated operational problems and failures of which Lely had unique, peculiar

and superior knowledge at or prior to the sale and delivery of the Lely Astronaut A4 to Kruger, including the defects and operational problems discussed in detail herein at paragraphs 149-182.

221. The defects and problems with the Lely Astronaut A4 robot did not manifest until in or about March of 2016, when the somatic cell count of the milk produced by the cows being milked by the robot began to steadily increase, reaching levels exceeding 1,000,000 cells/mL by August of 2016 – which exceeds the legal maximum for Grade A milk in the United States – due to the high incidence of mastitis caused by the defects with the Lely Astronaut A4 robot identified herein, including, but not limited to, the lack of adequate vacuum capacity and reserve.

222. The high incidence of mastitis was also caused and exacerbated by the defective pre-stimulation – which, among other defects, failed to properly brush all four (4) teats of each cow approximately thirty-three percent (33%) of the time and, even when it brushed each teat, failed to remove a staggering ten to twenty percent (10-20%) of the bacteria present on the teats and udder – and the defective post-stimulation, which failed to accurately and adequately spray and cover teats with a disinfectant of the proper viscosity directly after milking.

223. This was further exacerbated by failure of the MQC to detect cases of clinical and subclinical mastitis, or adequately and properly examine the quantity and quality of the milk received from the cows, and when necessary, separate milk that was contaminated or was not to the correct standard, all of which resulted in an end milk product that was contaminated by high somatic cell count levels, which prevent Kruger from being able to “supply only first class” or Grade A milk, as uniformly promised by Lely.

224. When the somatic cell counts of his milk product spiked by August of 2016, Kruger contacted the Lely Center from which he purchased his Lely Astronaut A4, Leedstone, Inc. (formerly Dairyland Equipment Services), on or about August 3, 2016. Kruger told the Lely

Center that his robot was not performing as warranted in that, among other things, it was not detecting mastitis, adequately examining milk quality, or separating contaminated milk, as a result of which his end milk product was contaminated by high somatic cell count levels.

225. In response to receiving such notice, three individuals from the Lely Center made numerous trips to Kruger Farm on or about August 3, 22, 25 and 31, 2016. Kruger told those individuals about his high somatic cell counts and mastitis rates, in response to which they washed the system, and checked the vacuum pump. The service performed by the Lely Center failed to correct or cure these or any of the other problems with the Lely Astronaut A4 stemming from its numerous, incurable defects, including those identified herein at paragraphs 149-182.

226. Since the Lely Center was unable and failed to cure the defects and problems with the Lely Astronaut A4 robots, the somatic cell counts of the milk product produced by Kruger remained excessively high, as did the mastitis rates of his herd. The only solution to the problems caused by the numerous, incurable defects with the Lely Astronaut A4 was to permanently take it out of operation and revert back to the conventional milking system that he used to milk his cows before purchasing the Lely Astronaut A4.

227. As a result of the defects with the Lely Astronaut A4 specified herein, the Lely Astronaut A4 robot also failed to: provide production increases of ten to fifteen percent (10-15%) with labor productivity increases; milk sixty (60) cows 2.6 times a day; achieve one-hundred eighty (180) milkings or harvest five-thousand (5,000) pounds of milk a day; reduce feed or labor costs; have an extra robot capacity of ten to fifteen percent (10-15%); disinfect the whole system after milking each cow; and eliminate bacteria or prevent cross-contamination.

228. The foregoing, among other things, caused: damage to the cows owned by Kruger by damaging their teats, while also increasing their mastitis and culling rates; damage to the end

milk product supplied by Kruger by increasing the somatic cell count thereof to levels exceeding 1,000,000 cells/mL, which exceeds the legal maximum for Grade A milk in the United States and, thus, prevented Kruger from supplying only first-class milk; and decreased milk production, all of which resulted in thousands of dollars of property damage and lost profits.

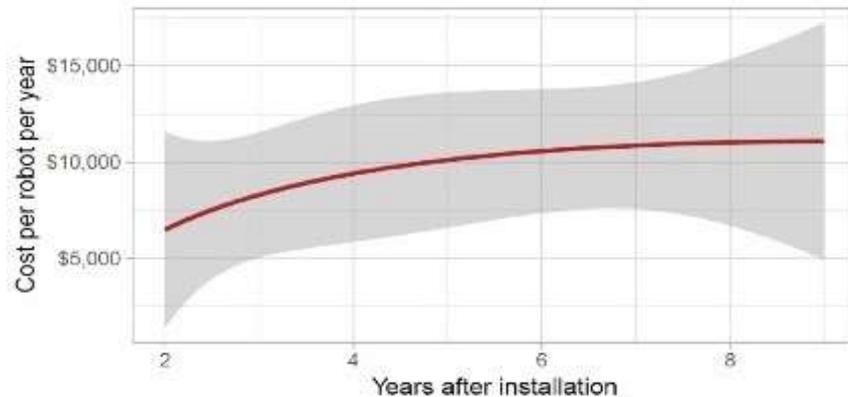
229. The foregoing also caused excessively high preliminary incubation counts in the milk produced by Kruger, because the Lely Astronaut A4 robots failed to thoroughly disinfect the “whole system” “after cleaning each cow” in direct contradiction to the uniform representations of Lely. In addition, the Lely Astronaut A4 robots had drastically higher-than-represented box times, which adversely effected the capacity of each Lely Astronaut A4 robot, causing further financial harm to Kruger.

230. As a result of the foregoing, Kruger stopped using the Lely Astronaut A4 robot on or about December 18-19, 2016. During the thirteen months it was in operation, the Lely Astronaut A4 robot required far more than the “maximum of four maintenance calls per year” uniformly represented by Lely, and the annual costs to service, maintain, repair and operate robot during that time period exceeded fifteen thousand dollars (\$15,000), which far exceeds the four thousand (\$4,000) annual amount of those costs uniformly represented by Lely.

231. A survey of dairy farmers – jointly conducted by dairy extension educators at the University of Wisconsin, University of Minnesota and Penn State University, which was published in *Hoard’s Dairyman* on or about August 26, 2019 in an article titled “Robot’s annual costs nearly double with age” – confirms that the excessively high costs incurred by Kruger to service, maintain and repair the Lely Astronaut A4 were uniformly experienced by other similarly situated dairy farmers in the United States, a material fact that Lely concealed.⁶ The article states:

⁶ *Robot’s annual costs nearly double with age*, HOARD’S DAIRYMAN (Aug. 26, 2019), available at <https://hoards.com/article-26149-robots-annual-costs-nearly-double-with-age.html>.

The estimated average repair and maintenance costs, as a function of the age of the AMS units, are shown in the figure.



232. The defects and problems with, and failures of, the Lely Astronaut A4 robot are the same defects, problems and failures of which Lely had peculiar, unique and superior knowledge from the T4C Data, the journal articles specified herein, expert consultations, information from other dairy farmers, the firsthand observations of its authorized dealers, service technicians and other employees, and the other sources identified herein, all of which was concealed from Kruger and other dairy farmers.

233. The defects, problems and failures experienced by Kruger are representative of the problems and failures of which Lely knew or should have known other dairy farmers had consistently and routinely experienced with the Lely Astronaut A4 from even before a single robot was sold up to, through and including the date on which Lely, through its agents, servants, employees and/or authorized dealers, induced Kruger to enter into the Kruger Agreement, yet concealed from Kruger and other similarly situated dairy farmers with the intent to defraud them.

234. The defects and problems with the robot were latent in nature, not disclosed by Lely to Kruger, not readily apparent, obvious or visible to Kruger before the robot was operational and incorporated into his barn, and could not have been discovered by Kruger upon reasonable diligence and inspection prior to the defects manifesting themselves in or about March of 2016

and thereafter, when the physical damage to his cows become observable and the quality of his milk product began to steadily decline.

235. The defects, problems and failures of the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of Kruger and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control, of which it had peculiar, unique and superior knowledge at all times relevant herein, and all of which it concealed from Kruger with the intent to defraud him and other similarly situated dairy farmers.

236. Lely did not offer to provide Kruger with any minimum adequate remedy sufficient to compensate him for his actual damages caused by the Lely Astronaut A4 robot (within a reasonable time or otherwise), which was defective and failed to conform with the uniform advertisements, marketing and representations detailed herein, despite having knowledge of each defect and problem with the Lely Astronaut A4 robot purchased by Kruger, which were delivered, installed and serviced by Lely.

237. The Lely Astronaut A4 was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Kruger Farm; caused Kruger 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 caused financial turmoil for Kruger and worsened his quality of life, as well as that of his wife and four young children.

238. Kruger was also damaged in that he paid an artificially and fraudulently inflated purchase price for the Lely Astronaut A4 robot, which inappropriately reflected the false information uniformly represented by Lely to Kruger, other dairy farmers in the United States, and

the general public. This caused the purchase price of the Lely Astronaut A4 to be inflated beyond its value, meaning every purchaser, including Kruger, was injured by paying too much when, had the truth been known, they would have paid a lower price or not purchased at all.

PLAINTIFF MARK VAN ESSEN

239. On or about July 18, 2016, Van Essen was induced, as described herein, into entering an agreement with Lely (the “Van Essen Agreement”), pursuant to which Van Essen agreed to purchase two (2) defect-free Lely Astronaut A4 robots and other related milking equipment, which were designed, developed, manufactured, distributed and installed by Lely for the purpose of milking cows, for the sum of approximately \$364,703.00

240. At the behest of Lely, Van Essen incurred substantial costs to design and construct an addition to his barn that was specifically and necessarily designed to accommodate and facilitate the use of Lely Astronaut robots based on blueprints, plans, specifications, suggestions and/or other recommendations provided by Lely. Since the barn was specifically designed to be an automatic milking facility, it was not optimized to be used to milk cows by any alternative method.

241. The costs incurred by Van Essen to design and construct the aforementioned barn addition included, but were not limited to, costs for building, construction, design, architectural work, site work, electrical work, concrete work and other necessary work, which cost over one million dollars and brought the total costs incurred by Van Essen for the purchase and installation of the Lely Astronaut A4 robots and equipment to an amount exceeding \$1,364,703.00.

242. Prior to entering into the Van Essen Agreement, Van Essen had purchased and been using since in or about March 2011 two (2) Lely Astronaut A3Next robots. Lely induced Van Essen to increase the number of Lely Astronaut robots on his farm by purchasing two (2) Lely

Astronaut A4 robots through the deceptive, false and misleading representations that it made in its uniform marketing materials, as discussed herein.

243. For instance, to induce Van Essen to purchase Lely Astronaut A4 robots, Lely represented and warranted that those robots: (a) produce “[b]etter milk quality, higher milk production together with lower costs lead[ing] to higher profits”; (b) “offer the lowest cost of ownership”; and (c) offer “[t]he lowest service costs.” That is, Lely represented and warranted that the A4 produces more and higher quality milk at a lower cost than the A3Next.

244. Lely further induced Van Essen to purchase Lely Astronaut A4 robots by touting the improvements from its predecessors, including, but not limited to, the A3Next, such as “[t]he gentle milk-friendly pump,” which was represented to “transport[] the milk to the tank without rotating impellers which can damage the milk” and “ensure the highest possible milk quality”, and the new I-flow concept, which was represented to reduce box time by “almost 4% per cow visit” and “represents an extra production capacity of 150 kg per day” on “a farm with 120 cows.”

245. Acting in reasonable reliance on the foregoing – including the representations detailing the past performance of Lely Astronaut A4 robots, and expressing their purported abilities, capabilities, improvements from prior models, and performance in terms of specific numbers or percentages (e.g., “10% more milk per year”) and given the material facts concealed by Lely – Van Essen, to his detriment, entered into the Van Essen Agreement and incurred substantial costs to purchase and install two (2) Lely Astronaut A4 robots.

246. Once the barn addition was complete, the Lely Astronaut A4 robots were installed and incorporated into the addition and, on or about January 26, 2017, Van Essen began using the robots. The Lely Astronaut A4 robots failed to work as represented, were defective, and had numerous, repeated operational problems and failures of which Lely had unique, peculiar and

superior knowledge at or prior to the sale and delivery of the Lely Astronaut A4 to Van Essen, including the defects and operational problems discussed in detail herein at paragraphs 149-182.

247. The Lely Astronaut A4 robots failed to produce better milk quality, achieve higher milk production or offer the lowest cost of ownership and service, as warranted. In fact, the “gentle milk-friendly pump” increased milk turbulence compared to the centrifugal pump of the A3Next, damaging the milk fat globule membrane and, thus, negatively impacting the butterfat component of the milk produced. Moreover, the new I-flow concept failed to reduce box times by “almost 4% per cow visit” or otherwise and, to the contrary, increased the box times of the Lely Astronaut A4 robots due to the inability of the milk pump to transport milk timely.

248. Moreover, the Lely Astronaut A4 was not designed to conduct milking operations to prevent contamination of milk, as required by Item 14r. of the Grade “A” Pasteurized Milk Ordinance, due to its lack of an automatic fail-safe system, which results in water being added to the milk during each LelyWash, a backflush or rinse performed between each milking of all cow-contact surfaces, and cluster cleaning. This has caused Van Essen to experience consistent issues with the freezing point and lowered the butterfat levels of his milk, resulting in warnings from the cooperative to which he sells his milk, including the following:

Water is in the milk. Since Nov 1 the range is 2% up to 16%. It is affecting the [butterfat] results and we will have to deduct the added water from the pounds shipped.

249. Prior to receiving the above warning, Van Essen contacted the Lely Center from which he purchased his Lely Astronaut A4 robots, Gorter’s Clay & Dairy Equipment of Minnesota, Inc., in or about October 2019 about the excessive water in his milk. Van Essen told the Lely Center that his robots were not performing as warranted in that, among other things, they were not producing “[b]etter quality milk” due to the water being added into the milk, as a result of

which the butterfat levels of the milk decreased, thereby worsening the overall milk quality in direct contradiction to the warranties extended by Lely in its marketing materials.

250. However, to this day, Lely and the Lely Center have been unable and failed to cure the defects and problems with the Lely Astronaut A4 robots, the water added to the milk produced has remained excessively high, and Van Essen has not received the benefit of his bargain, as the Lely Astronaut A4 robots do not conform to the warranties created and extended by Lely through its promises of “[b]etter milk quality, higher milk production . . . [and] lower costs lead[ing] to higher profits.” Moreover, the new I-flow concept failed to reduce box times, in part, because the “gentle milk-friendly pump,” which worsened milk quality, dramatically increased them.

251. To the contrary, the Lely Astronaut A4 robots produced worse milk quality, lower milk production and higher cost of ownership than his A3Next robots. As a result of the defects with the Lely Astronaut A4 specified herein, the A4 also failed to: provide production increases of ten to fifteen percent (10-15%) with labor productivity increases; achieve one-hundred eighty (180) milkings or harvest five-thousand (5,000) pounds of milk a day; reduce feed or labor costs; have an extra robot capacity of ten to fifteen percent (10-15%); disinfect the whole system after milking each cow; and eliminate bacteria or prevent cross-contamination.

252. The foregoing, among other things, caused: damage to the cows owned by Van Essen by damaging their teats, while also increasing their mastitis and culling rates; damage to the end milk product supplied by Van Essen by, *inter alia*, increasing the water and, thus, decreasing the butterfat content thereof, as well as causing excessively high laboratory pasteurization counts. In addition, the Lely Astronaut A4 robots had drastically higher-than-represented box times, due, in part, to excessively long treatment times approaching 2-minutes, which adversely effected the capacity of each Lely Astronaut A4 robot, causing further financial harm to Van Essen.

253. Since his barn was specifically designed to facility to the use of Lely Astronaut robots, Van Essen is forced to continue milking his cows with the Lely Astronaut A4 since the financial harm he suffered, which is continuing in nature, has made it impossible for him to retrofit his barn and purchase an alternative milking system. During the time Van Essen has been operating the Lely Astronaut A4 robots, they have required far more than the “maximum of four maintenance calls per year” uniformly represented by Lely, and the annual costs to service, maintain, repair and operate those robots exceeded that of his A3Next robots, despite Lely’s uniform promise that the A4 “offer[s] the lowest costs of ownership,” and “[t]he lowest service costs.”

254. The defects and problems with, and failures of, the Lely Astronaut A4 robots are the same defects, problems and failures of which Lely had peculiar, unique and superior knowledge from the T4C Data, the journal articles specified herein, expert consultations, information from other dairy farmers, the firsthand observations of its authorized dealers, service technicians and other employees, and the other sources identified herein, all of which was concealed from Van Essen and other dairy farmers.

255. The defects, problems and failures experienced by Van Essen are representative of the problems and failures of which Lely knew or should have known other dairy farmers had consistently and routinely experienced with the Lely Astronaut A4 from even before a single robot was sold up to, through and including the date on which Lely, through its agents, servants, employees and/or authorized dealers, induced Van Essen to enter into the Van Essen Agreement, yet concealed from him and other similarly situated dairy farmers with the intent to defraud.

256. The defects and problems with the Lely Astronaut A4 robots were latent in nature, not disclosed by Lely to Van Essen, not readily apparent, obvious or visible to Van Essen before the robots were operational and incorporated into his barn, which was specifically and necessarily

designed to accommodate and facilitate the use of Lely Astronaut A4 robots, and could not have been discovered by Van Essen or other similarly situated dairy farmers upon reasonable diligence and inspection.

257. The defects, problems and failures of the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of Van Essen and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control, of which it had peculiar, unique and superior knowledge at all times relevant herein, and all of which it concealed from Van Essen with the intent to defraud him and other similarly situated dairy farmers.

258. Lely did not offer to provide Van Essen with any minimum adequate remedy sufficient to compensate him for his actual damages caused by the Lely Astronaut A4 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 Lely Astronaut A4 robot purchased by Van Essen, which were delivered, installed and serviced by Lely.

259. The Lely Astronaut A4 was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Van Essen Farm; caused Van Essen 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, caused financial turmoil for Van Essen and worsened his quality of life, as well as that of his wife and children.

260. Van Essen was also damaged in that he paid an artificially and fraudulently inflated purchase price for the Lely Astronaut A4 robot, which inappropriately reflected the false information

uniformly represented by Lely to Van Essen, other dairy farmers in the United States, and the general public. This caused the purchase price of the Lely Astronaut A4 to be inflated beyond its value, meaning every purchaser, including Van Essen, was injured by paying too much when, had the truth been known, they would have paid a lower price or not purchased at all.

PLAINTIFF LYNN KIRSCHBAUM

261. On or about December 24, 2015, Plaintiff Kirschbaum entered into an agreement with Lely (the “Kirschbaum Agreement”), pursuant to which he agreed to purchase from Lely two (2) defect-free Lely Astronaut A4 robots and other related milking equipment, which were designed, developed, manufactured, distributed and installed by Lely for the purpose of milking cows, for the sum of approximately \$388,365.00.

262. At the behest of Lely, Kirschbaum incurred substantial costs to design and construct a new barn that was specifically and necessarily designed to accommodate and facilitate the use of the Lely Astronaut A4 based on blueprints, plans, specifications, suggestions and/or other recommendations provided by Lely, through its agents, servants, employees, and/or authorized dealers, including Fitzgerald and Lange. 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.

263. The costs incurred by Kirschbaum 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 Kirschbaum for the purchase and installation of the Lely Astronaut A4 robots and equipment to an amount well exceeding \$1,100,000.00.

264. Kirschbaum became interested in the Lely Astronaut A4 in Late 2014, when he viewed the marketing materials discussed herein (or substantially similar versions). To induce

Kirschbaum to purchase the Lely Astronaut A4, Lely through its agents, servants, employees, and/or authorized dealers, including, but not limited to, Fitzgerald and Lange, arranged for him to visit two (2) farms on which Lely Astronaut A4 robots were in operation in or about November-December 2015, during which it aggressively marketed the purported benefits, features and past performance of the Lely Astronaut A4 by repeating the uniform representations specified herein.

265. Acting in reasonable reliance on the foregoing – as well as the representations detailing the past performance of Lely Astronaut A4 robots, and expressing their purported abilities, capabilities and performance in specific numbers or percentages (e.g., “10% more milk per year,” “harvest[s] 5,000 pounds (2,268 kg) of milk per day,” “achieve[s] 180 milkings per day,” etc.) and given the material facts concealed by Lely – Kirschbaum, to his detriment, entered into the Kirschbaum Agreement and incurred substantial costs to purchase two Lely Astronaut A4 robots and to design and build a new barn to house the Lely Astronaut A4.

266. Once the new barn was completed, the Lely Astronaut A4 robot was installed and incorporated into the new barn and, on or about September 29, 2016, Kirschbaum began using the Lely Astronaut A4 robots. The Lely Astronaut A4 robots failed to work as represented, were defective, and had numerous, repeated operational problems and failures of which Lely had unique, peculiar and superior knowledge at or prior to the sale and delivery of the Lely Astronaut A4 to Kirschbaum, including the defects and operational problems discussed in detail herein at paragraphs 149-182.

267. The defects and problems with the Lely Astronaut A4 robots manifested in or about August-September of 2018, when the preliminary incubation count of the milk produced by the cows began to steadily increase, reaching levels exceeding 130,000 cfu/mL by October of 2019 – due to the failure of the Lely Astronaut A4 robots to thoroughly disinfect the “whole system” “after

cleaning each cow” in direct contradiction to the uniform representations of Lely – as a result of which Prairie Farms Dairy, the cooperative to which Kirschbaum supplies his milk, began imposing a penalty on his milk product in or about September of 2019.

268. The defects and problems with the Lely Astronaut A4 robots further manifested in or about Fall of 2018, when the somatic cell count of the milk produced by the cows began to steadily increase, reaching levels exceeding 900,000 cells/mL by October of 2019 – which exceeds the 750,000 cells/mL limit for Grade A milk in Wisconsin – due to the high incidence of mastitis caused by the defects with the Lely Astronaut A4 robots identified herein, including, but not limited to, the lack of adequate vacuum capacity and reserve, as a result of which Prairie Farms Dairy began imposing a separate penalty on his milk product in or about September of 2019.

269. The high incidence of mastitis was also caused and exacerbated by the defective pre-stimulation – which, among other defects, failed to properly brush all four (4) teats of each cow approximately thirty-three percent (33%) of the time and, even when it brushed each teat, failed to remove a staggering ten to twenty percent (10-20%) of the bacteria present on the teats and udder – and the defective post-stimulation, which failed to accurately and adequately spray and cover teats with a disinfectant of the proper viscosity directly after milking.

270. This was further exacerbated by failure of the MQC to detect cases of clinical and subclinical mastitis, or adequately and properly examine the quantity and quality of the milk received from the cows, and when necessary, separate milk that is contaminated or is not to the correct standard, all of which resulted in an end milk product that was contaminated by high somatic cell count levels, which prevent Kirschbaum from being able to “supply only first class” or Grade A milk, as uniformly promised by Lely.

271. As a result of the defects with the Lely Astronaut A4 specified herein, the Lely Astronaut A4 robots also failed to: provide production increases of ten to fifteen percent (10-15%) with labor productivity increases; milk sixty (60) cows 2.6 times a day; achieve one-hundred eighty (180) milkings or harvest five-thousand (5,000) pounds of milk a day; reduce feed or labor costs; have an extra robot capacity of ten to fifteen percent (10-15%); disinfect the whole system after milking each cow; and eliminate bacteria or prevent cross-contamination.

272. The foregoing, among other things, caused: damage to the cows owned by Kirschbaum by damaging their teats, while also increasing his mastitis and culling rates; damage to the end milk product by increasing the somatic cell count thereof to levels exceeding 900,000 cells/mL, which exceeds the legal maximum for Grade A milk in Wisconsin and, thus, prevented Kirschbaum from supplying only first-class milk; and decreased milk production, all of which resulted in thousands of dollars of property damage and lost profits.

273. The foregoing also caused excessively high preliminary incubation counts in the milk produced by Kirschbaum, because, among other defects specified herein, the Lely Astronaut A4 robots failed to thoroughly disinfect the “whole system” “after cleaning each cow” in direct contradiction to the uniform representations of Lely. In addition, the Lely Astronaut A4 robots had drastically higher-than-represented box times, which adversely effected the capacity of each Lely Astronaut A4 robot, causing further financial harm to Kirschbaum.

274. As a result of the defects and operational problems with the Lely Astronaut A4 robots, each robot required more than the “maximum of four maintenance calls per year” uniformly represented by Lely, and the costs to service, maintain, repair and operate robot far exceeded the four thousand (\$4,000) annual amount of those costs uniformly represented by Lely. The annual

energy costs incurred to operate the robots nearly doubled that incurred to operate their former milking parlor, depriving them of the “lowest cost of ownership” promised by Lely.

275. The defects and problems with, and failures of, the Lely Astronaut A4 robots are the same defects, problems and failures of which Lely had peculiar, unique and superior knowledge from the T4C Data, the journal articles specified herein, expert consultations, information from other dairy farmers, the firsthand observations of its authorized dealers, service technicians and other employees, and the other sources identified herein, all of which was concealed from Kirschbaum and other dairy farmers.

276. The defects, problems and failures experienced by Kirschbaum are representative of the problems and failures of which Lely knew or should have known that other dairy farmers had consistently and routinely experienced with the Lely Astronaut A4 from even before a single robot was sold up to, through and including the date on which Lely, through its agents, servants, employees and/or authorized dealers, induced Kirschbaum to enter into Kirschbaum Agreement, yet concealed from Kirschbaum and other similarly situated dairy farmers with the intent to defraud them.

277. The defects and problems with the robots were latent in nature, not disclosed by Lely to Kirschbaum, not readily apparent, obvious or visible to Kirschbaum before the robots were operational and incorporated into his barn, and could not have been discovered by Kirschbaum upon reasonable diligence and inspection prior to the defects manifesting themselves in or about March-April of 2018 and thereafter, when the physical damage to their cows become observable and the quality of their milk product began to steadily decline.

278. The defects, problems and failures of the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the

control of Lely or in the control of Kirschbaum and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control, of which it had peculiar, unique and superior knowledge at all times relevant herein, and all of which it concealed from Kirschbaum with the intent to defraud them and other similarly situated dairy farmers.

279. Lely did not offer to provide any minimum adequate remedy to compensate him for his actual damages caused by, the Lely Astronaut A4 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 Lely Astronaut A4 robots purchased by Kirschbaum, which were delivered, installed and repeatedly serviced by Lely.

280. The Lely Astronaut A4 was less efficient, productive and profitable than the conventional milking system previously used to milk cows on Kirschbaum Farm; caused Kirschbaum 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 caused financial turmoil for Kirschbaum and worsened their quality of life.

281. Kirschbaum were also damaged in that he paid an artificially and fraudulently inflated purchase price for the Lely Astronaut A4 robots, which inappropriately reflected the false information uniformly represented by Lely, other dairy farmers in the United States, and the general public. This caused the purchase price of the Lely Astronaut A4 to be inflated beyond its value, meaning every purchaser, including Kirschbaum, was injured by paying too much when, had the truth been known, they would have paid a lower price or not purchased at all.

PLAINTIFFS DONNA AND ROBERT KOON

282. On or about December 23, 2015, Plaintiffs Koons were induced, as described herein, into entering an agreement with Lely (the “Koons Agreement”), pursuant to which Koons agreed to purchase from Lely two (2) defect-free Lely Astronaut A4 robots and other related milking equipment, which were designed, developed, manufactured, distributed and installed by Lely for the purpose of milking cows, for the sum of approximately \$371,777.00.

283. At the behest of Lely, the Koons incurred substantial costs to design and construct an addition to their existing barn that was specifically and necessarily designed to accommodate and facilitate the use of the Lely Astronaut A4 based on blueprints, plans, specifications, suggestions and/or other recommendations provided by Lely, through its agents, servants, employees, and/or authorized dealers, including Kamps and Walton. 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.

284. The costs incurred by the Koons to design and construct the addition to their existing 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 Koons for the purchase and installation of the Lely Astronaut A4 robots and equipment to an amount well exceeding \$600,000.00.

285. The Koons became interested in the Lely Astronaut A4 in or about August of 2013, when they viewed the marketing materials discussed herein (or substantially similar versions). To induce the Koons to purchase the Lely Astronaut A4, Lely through its agents, servants, employees, and/or authorized dealers, including, but not limited to, Walton, arranged for them to visit eight (8) or more farms on which Lely Astronaut A4 robots were in operation from in or about

September of 2013 to Spring of 2015, during which it aggressively marketed the purported benefits, features and past performance of the Lely Astronaut A4 by repeating the uniform representations specified herein.

286. Not only did Lely employ high-pressure sales tactics during each of the dairy farm visits it organized and arranged, it also refused to allow the Koons to speak privately with the owners of those dairy farms to conceal the defects and operational problems with the Lely Astronaut A4 – which, as specified herein, were latent in nature and, thus, not readily apparent, obvious or visible during the few select visits to farms on which that milking system was in operation – and further its deceptive, fraudulent and negligent marketing scheme, so that it could sell the Lely Astronaut A4 at an inflated price point far exceeding its actual value.

287. Acting in reasonable reliance on the foregoing – as well as the representations detailing the past performance of Lely Astronaut A4 robots, and expressing their purported abilities, capabilities and performance in terms specific numbers or percentages (e.g., “10% more milk per year,” “harvest[s] 5,000 pounds (2,268 kg) of milk per day,” “achieve[s] 180 milkings per day,” etc.) and the material facts concealed by Lely – the Koons, to their detriment, entered into the Koons Agreement and incurred substantial costs to purchase a Lely Astronaut A4 robot and to design and build an addition to their barn to house the Lely Astronaut A4.

288. Once the addition to the barn was completed, the Lely Astronaut A4 robot was installed and incorporated into the new addition to the barn and, on or about April 25, 2018, the Koons began using the Lely Astronaut A4 robot.

289. The Lely Astronaut A4 failed to work as represented, was defective, and had numerous, repeated operational problems and failures of which Lely had unique, peculiar and

superior knowledge at or prior to the sale and delivery of the Lely Astronaut A4 to the Koons, including the defects and operational problems discussed in detail herein at paragraphs 149-182.

290. The defects and problems with the Lely Astronaut A4 robot manifested in or about October of 2018, when the somatic cell count of the milk produced by the cows being milked by the robot began to steadily increase, reaching levels exceeding 700,000 cells/mL by August of 2019 – which exceeds the legal maximum of 500,000 cells/mL for Grade A milk in Virginia – due to the high incidence of mastitis caused by the defects with the Lely Astronaut A4 robot identified herein, including, but not limited to, the lack of adequate vacuum capacity and reserve.

291. Moreover, due to the high somatic cell count of the milk being produced by the Koons, the cooperative to which the Koons supply their milk, the Cooperative Milk Producers Association (“CMPA”), began imposing a penalty on their milk product in January of 2019 when its somatic cell count reached and continued to exceed 450,000 cells/mL, a level that more than doubles the somatic cell count of the milk produced by the Koons before they began using the Lely Astronaut A4 and, instead, milked their cows in a conventional milking parlor.

292. The high incidence of mastitis was also caused and exacerbated by the defective pre-stimulation – which, among other defects, failed to properly brush all four (4) teats of each cow approximately thirty-three percent (33%) of the time and, even when it brushed each teat, failed to remove a staggering ten to twenty percent (10-20%) of the bacteria present on the teats and udder – and the defective post-stimulation, which failed to accurately and adequately spray and cover teats with a disinfectant of the proper viscosity directly after milking.

293. This was further exacerbated by failure of the MQC to detect cases of clinical and subclinical mastitis, or adequately and properly examine the quantity and quality of the milk received from the cows, and when necessary, separate milk that is contaminated or is not to the

correct standard, all of which resulted in an end milk product that was contaminated by high somatic cell count levels, which prevented the Koons from being able to “supply only first class” or Grade A milk, as uniformly promised by Lely.

294. As a result of the defects with the Lely Astronaut A4 specified herein, the Lely Astronaut A4 robots also failed to: provide production increases of ten to fifteen percent (10-15%) with labor productivity increases; milk sixty (60) cows 2.6 times a day; achieve one-hundred eighty (180) milkings or harvest five-thousand (5,000) pounds of milk a day; reduce feed or labor costs; have an extra robot capacity of ten to fifteen percent (10-15%); disinfect the whole system after milking each cow; and eliminate bacteria or prevent cross-contamination.

295. The foregoing, among other things, caused: damage to the cows owned by the Koons by damaging their teats, while also increasing their mastitis and culling rates; damage to the end milk product supplied by the Koons by increasing the somatic cell count thereof to levels exceeding 700,000 cells/mL, which exceeds the legal maximum for Grade A milk in Virginia and, thus, prevented the Koons from supplying only first-class milk; and decreased milk production, all of which resulted in thousands of dollars of property damage and lost profits.

296. The foregoing also caused excessively high preliminary incubation counts in the milk produced by the Koons, because, among other defects specified herein, the Lely Astronaut A4 robot failed to thoroughly disinfect the “whole system” “after cleaning each cow” in direct contradiction to the uniform representations of Lely. In addition, the Lely Astronaut A4 robots had drastically higher-than-represented box times, which adversely effected the capacity of each Lely Astronaut A4 robot, causing further financial harm to the Koons.

297. As a result of the defects and operational problems with the Lely Astronaut A4 robots, each robot required more than the “maximum of four maintenance calls per year” uniformly

represented by Lely, and the costs to service, maintain, repair and operate robot far exceeded the four thousand (\$4,000) annual amount of those costs uniformly represented by Lely. The annual energy costs incurred to operate the robots nearly doubled that incurred to operate their former milking parlor, depriving them of the “lowest cost of ownership” promised by Lely.

298. The defects and problems with, and failures of, the Lely Astronaut A4 robots are the same defects, problems and failures of which Lely had peculiar, unique and superior knowledge from the T4C Data, the journal articles specified herein, expert consultations, information from other dairy farmers, the firsthand observations of its authorized dealers, service technicians and other employees, and the other sources identified herein, all of which was concealed from the Koons and other dairy farmers.

299. The defects, problems and failures experienced by the Koons are representative of the problems and failures of which Lely knew or should have known other dairy farmers had consistently and routinely experienced with the Lely Astronaut A4 from even before a single robot was sold up to, through and including the date on which Lely, through its agents, servants, employees and/or authorized dealers, induced the Koons to enter into the Koons Agreement, yet concealed from the Koons and other similarly situated dairy farmers with the intent to defraud them.

300. The defects and problems with the robot were latent in nature, not disclosed by Lely to the Koons, not readily apparent, obvious or visible to the Koons before the robot was operational and incorporated into their barn, and could not have been discovered by the Koons upon reasonable diligence and inspection prior to the defects manifesting themselves in or about October of 2018 and thereafter, when the physical damage to their cows become observable and the quality of their milk product began to steadily decline.

301. The defects, problems and failures of the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of the Koons and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control, of which it had peculiar, unique and superior knowledge at all times relevant herein, and all of which it concealed from the Koons with the intent to defraud them and other similarly situated dairy farmers.

302. Lely did not offer to provide the Koons with any minimum adequate remedy to compensate them for their actual damages caused by, the Lely Astronaut A4 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 Lely Astronaut A4 robots purchased by the Koons, which were delivered, installed and repeatedly serviced by Lely.

303. The Lely Astronaut A4 was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Koons Farm; caused the Koons 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 caused financial turmoil for the Koons and worsened their quality of life.

304. The Koons were also damaged in that they paid an artificially and fraudulently inflated purchase price for the Lely Astronaut A4 robot, which inappropriately reflected the false information uniformly represented by Lely to the Koons, other dairy farmers in the United States, and the general public. This caused the purchase price of the Lely Astronaut A4 to be inflated

beyond its value, meaning every purchaser, including the Koons, was injured by paying too much when, had the truth been known, they would have paid a lower price or not purchased at all.

PLAINTIFF SCHUMACHER DAIRY FARMS

305. On or about July 23, 2014, Schumacher Dairy Farms was induced, as described herein, into entering an agreement with Lely (the “Schumacher Agreement”), pursuant to which it agreed to purchase two (2) defect-free Lely Astronaut A4 robots and other related milking equipment, which were designed, developed, manufactured, distributed and installed by Lely for the purpose of milking cows, for the sum of approximately \$395,047.00.

306. At the behest of Lely, Schumacher Dairy Farms incurred substantial costs to design and construct a barn that was specifically and necessarily designed to accommodate and facilitate the use of Lely Astronaut robots based on blueprints, plans, specifications, suggestions and/or other recommendations provided by Lely. Since the barn was specifically designed to be an automatic milking facility, it was not optimized to be used to milk cows by any alternative method.

307. The costs incurred by Schumacher Dairy Farms 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 cost over one million dollars and brought the total costs incurred by Schumacher Dairy Farms for the purchase and installation of the Lely Astronaut A4 robots and equipment to an amount exceeding \$1,395,047.00.

308. Schumacher Dairy Farms began to be interested in the Lely Astronaut A4 in or about January-February 2014, when Chad Schumacher, the Vice Present of Schumacher Dairy Farms, viewed the marketing materials discussed herein (or substantially similar versions). To induce Schumacher Dairy Farms to purchase the Lely Astronaut A4, Lely, through its agents, servants, employees, and/or authorized dealers, including Luebke, organized, and arranged for

Chad Schumacher to take a trip to a dairy farm in Winona County, Minnesota, and two dairy farms in Wisconsin, during which it aggressively marketed the purported benefits, features and past performance of the Lely Astronaut A4 by, among other things, repeating the uniform representations specified herein.

309. Acting in reasonable reliance on the foregoing – as well as the representations detailing the past performance of Lely Astronaut A4 robots, and expressing their purported abilities, capabilities and performance in terms specific numbers or percentages (e.g., “10% more milk per year,” “harvest[s] 5,000 pounds (2,268 kg) of milk per day,” “achieve[s] 180 milkings per day,” etc.) and the material facts concealed by Lely – the Schumacher Dairy Farms, to its detriment, entered into the Schumacher Agreement and incurred substantial costs to purchase two Lely Astronaut A4 robots and to design and build a barn to house the Lely Astronaut A4.

310. Once the new barn was completed, the Lely Astronaut A4 robots were installed and incorporated into the new barn and, on or about December 18, 2014, Schumacher Dairy Farms began using the Lely Astronaut A4 robots.

311. The Lely Astronaut A4 robots failed to work as represented, were defective, and had numerous, repeated operational problems and failures of which Lely had unique, peculiar and superior knowledge at or prior to the sale and delivery of the Lely Astronaut A4 to Schumacher Dairy Farms, including the defects and operational problems discussed in detail herein at paragraphs 149-182.

312. The defects and problems with the Lely Astronaut A4 robot did not manifest until in or about May of 2016, when the treatment time began to steadily increase, resulting in excessive box times, lost capacity and, thus, lower production. For example, in May 2016 the treatment time

reached 1.89-minutes per cow, then increased to 2.06-minutes in January 2017 and to 2.22-minutes in February of 2017, which is an increase of 17.46% from May 2016.

313. As a result of the defects with the Lely Astronaut A4, the robots failed to: provide production increases of ten to fifteen percent (10-15%) with labor productivity increases; reduce box times by four percent (4%); milk sixty (60) cows 2.6 times a day; achieve one-hundred eighty (180) milkings or harvest five-thousand (5,000) pounds of milk a day; reduce feed or labor costs; have an extra robot capacity of ten to fifteen percent (10-15%); disinfect the whole system after milking each cow; and eliminate bacteria or prevent cross-contamination.

314. The foregoing, among other things, caused: damage to the cows owned by Schumacher Dairy Farms by damaging their teats, while also increasing its mastitis and culling rates; damage to the end milk product by increasing the bacteria and somatic cell counts thereof; and excessive box times, resulting in lost capacity, lower milk production and damage to the cow stemming from incomplete and improper milk removal, all of which resulted in thousands of dollars of property damage and lost profits.

315. The foregoing also caused excessively high bacteria counts in the milk produced by Schumacher Dairy Farms, because, among other defects specified herein, the Lely Astronaut A4 robots failed to thoroughly disinfect the “whole system” “after cleaning each cow” in direct contradiction to the uniform representations of Lely. In addition, the Lely Astronaut A4 robots had drastically higher-than-represented box times, which adversely effected the capacity of each Lely Astronaut A4 robot, causing further financial harm to Schumacher Dairy Farms.

316. As a result of the foregoing, Schumacher Dairy Farms stopped using the Lely Astronaut A4 robots on or about September 27, 2022. While they were in operation, the robots required far more than the “maximum of four maintenance calls per year” uniformly represented

by Lely, and the annual costs to service, maintain, repair and operate robots during that time period far exceeded the four thousand (\$4,000) annual amount of those costs uniformly represented by Lely, depriving it of the “lowest cost of ownership” promised by Lely.

317. The defects and problems with, and failures of, the Lely Astronaut A4 robots are the same defects, problems and failures of which Lely had peculiar, unique and superior knowledge from the T4C Data, the journal articles specified herein, expert consultations, information from other dairy farmers, the firsthand observations of its authorized dealers, service technicians and other employees, and the other sources identified herein, all of which was concealed from Schumacher Dairy Farms and other dairy farmers.

318. The defects, problems and failures experienced by Schumacher Dairy Farms are representative of the problems and failures of which Lely knew or should have known other dairy farmers had consistently and routinely experienced with the Lely Astronaut A4 from even before a single robot was sold up to, through and including the date on which Lely, through its agents, servants, employees and/or authorized dealers, induced Schumacher Dairy Farms to enter into the Schumacher Agreement, yet concealed from it and other similarly situated dairy farmers with the intent to defraud.

319. The defects and problems with the Lely Astronaut A4 robots were latent in nature, not disclosed by Lely to Schumacher Dairy Farms, not readily apparent, obvious or visible to Schumacher Dairy Farms before the robots were operational and incorporated into its barn, and could not have been discovered by Schumacher Dairy Farms upon reasonable diligence and inspection prior to the defects manifesting themselves in or about May 2016 and thereafter, when the treatment and box times began to increase, the capacity of the system began to decrease and the damage to their cows became observable.

320. The defects, problems and failures of the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of Schumacher Dairy Farms and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control, of which it had peculiar, unique and superior knowledge at all times relevant herein, and all of which it concealed from Schumacher Dairy Farms with the intent to defraud it and other similarly situated dairy farmers.

321. Lely did not offer to provide Schumacher Dairy Farms with any minimum adequate remedy sufficient to compensate him for its actual damages caused by the Lely Astronaut A4 robots (within a reasonable time or otherwise), which was defective and failed to conform with the uniform advertisements, marketing and representations detailed herein, despite having knowledge of each defect and problem with the Lely Astronaut A4 robots purchased by Schumacher Dairy Farms, which were delivered, installed and serviced by Lely.

322. The Lely Astronaut A4 was less efficient, productive and profitable than the conventional milking system previously used to milk cows on the Schumacher Dairy Farm; caused Van Essen 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, caused financial turmoil for Schumacher Dairy Farms and worsened their quality of life.

323. Schumacher Dairy Farms was also damaged in that it paid an artificially and fraudulently inflated purchase price for the Lely Astronaut A4 robots, which inappropriately reflected the false information uniformly represented by Lely to Schumacher Dairy Farms, other dairy farmers in the United States, and the general public. This caused the purchase price of the

Lely Astronaut A4 to be inflated beyond its value, meaning every purchaser, including Schumacher Dairy Farms, was injured by paying too much when, had the truth been known, they would have paid a lower price or not purchased at all.

EXPRESS WARRANTY

324. The Lely Astronaut A4 was sold to Plaintiffs and other purchasers by the Lely Centers in their geographical areas, pursuant to standard form buy-sell contractual relationships between Lely NA and each Lely Center, including the Lely Centers from which Plaintiffs purchased their Lely Astronaut A4 robots (the “Dealer Agreement”). In the Dealer Agreement, Lely expressly warranted that the Lely Astronaut A4 was free from defects in design, material and workmanship, and that any repairs, parts and service provided by Lely will be free from defects in material and workmanship (the “Limited Express Warranty”).

325. The Dealer Agreement requires each Lely Center to “extend to its customers the Limited Express Warranty,” which is done pursuant to standard form purchase agreements entered into between the Lely Center and each purchaser. The Lely Astronaut A4 robots were sold to Plaintiffs and other purchasers by the Lely Centers in their geographical areas pursuant to standard form purchase agreements drafted by Lely or on its behalf, which were not subject to negotiation and were offered on a take-it-or-leave-it basis (the “Customer Agreements”).⁷

326. The Customer Agreements contain an express warranty that is substantially similar to the Limited Express Warranty that Lely required each Lely Center to extend to its customer. The principal difference between those express warranties is that the express warranty in the Customer Agreements were extended by Lely Industries, which is identified as the manufacturer

⁷ The “Customer Agreements” include, but are not limited to, the Van Essen Agreement, Kirschbaum Agreement, Koons Agreement and Schumacher Agreement.

of the Lely Astronaut A4s purchased by Plaintiffs. Since those provisions are substantially similar, they are collectively referred to herein as the Limited Express Warranty.

327. To advertise, market and sell the Lely Astronaut A4 to dairy farmers, including Plaintiffs and members of the Class, Lely NA, Maasland, Lely Industries, Lely International and Lely Holding also made specific guarantees, promises and representations, including, but not limited to, those set forth above in paragraphs 89-111, all of which were affirmations of fact or promises made by Lely relating to the Lely Astronaut A4, became part of the basis of the bargain and, thus, created express warranties.

328. Plaintiffs and members of the Class would not have purchased the Lely Astronaut A4 and/or replaced their existing milking systems with the Lely Astronaut A4 had they known that the Lely Astronaut A4 did not conform to those express warranties. In fact, it would have been illogical and implausible for them to expend significant sums of money to purchase the Lely Astronaut A4, unless it conformed to those express warranties and the terms of the Limited Express Warranty.

329. The express warranties to which the Lely Astronaut A4 did not conform caused the market price of the Lely Astronaut A4 to be fraudulently-inflated far beyond its actual market value, as a result of which Plaintiffs and other members of the Class were necessarily injured because the deceptive, fraudulent and negligent marketing scheme pushed by Lely caused the purchase price of the Lely Astronaut A4 to be inflated beyond its value, meaning every purchaser paid too much.

330. Lely knew that the Lely Astronaut A4 did not conform to its express warranties based on, among other things, the onboard monitoring system, the T4C Data, its internal studies, the Journal of Dairy Science and Acta Agriculturae Scandinavica Journal articles, expert

consultations informing Lely that the vacuum capacity and reserve were inadequate, the monthly reports provided by each Lely Center, and the numerous complaints made by Plaintiffs and members of the Class regarding the system, as well as other customers worldwide.

331. At the time of sale, Lely knew that the Lely Astronaut A4 robots and equipment were defective in the manner described herein, that they were not free from defects in design, material and workmanship, and that they did not perform as uniformly represented or even to a minimal degree of merchantability. Indeed, dairy farmers like Plaintiffs, who transitioned to Lely Astronaut A4 robots, saw productivity decrease and costs increase, which is the opposite of any reason to purchase Lely Astronaut A4 robots.

332. In sum, Lely induced Plaintiffs to purchase Lely Astronaut A4 robots by falsely advertising, concealing, misrepresenting, and negligently stating material facts and information about the ability, benefits and capability of the Lely Astronaut A4 to, among other things, increase milk efficiency, production and quality, ensure only Grade A milk was produced, improve quality of life, and decrease feed, maintenance, operational, service, labor and other costs, as well as its then-existing intention to provide maintenance, service and support.

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

333. Pursuant to the Limited Express Warranty, Lely was contractually obligated to correct any defects in design, material or workmanship with either new or used replacement parts within a reasonable time (the “Limited Remedy”). The Limited Remedy further provides that if Lely is unable to repair the Lely Astronaut A4 to conform to the warranty after a reasonable number of attempts, it will provide, at its option, either a replacement for such equipment or full refund of the purchase price. The Limited Remedy then states:

These remedies are your exclusive remedies for breach of warranty.

* * *

... WE DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU AGREE THAT THE WARRANTIES SET FORTH IN SUBPARAGRAPHS (a) THROUGH (c) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

334. The Customer Agreements also contain a limited remedy that is substantially similar to the Limited Remedy in the Dealer Agreement, pursuant to which Lely Industries or its representatives was contractually required to “repair or, at its option, replace any defective product or part thereof without charge.” Since the Limited Remedy in the Dealer Agreement and the limited remedy set forth in the Customer Agreements are substantially similar, those provisions are hereinafter collectively referred to as the “Limited Remedy.”

335. Within the time and in the manner required by the Limited Remedy, Plaintiffs repeatedly advised Lely (through the Lely Center from which he purchased the Lely Astronaut A4), and Lely otherwise knew, that the Lely Astronaut A4 did not conform to the Limited Express Warranty due to each defect and problem with the Lely Astronaut A4 specified herein. Plaintiffs also made repeated requests for repairs and replacements of the defective Lely Astronaut A4, as well as for service, maintenance and support to cure the defects plaguing that system.

336. Lely failed to repair, provide an adequate replacement for, or refund the purchase price of the defective Lely Astronaut A4 robot (within a reasonable time or otherwise) purchased by Plaintiffs, which was defective and failed to conform with either the express or implied warranties discussed herein, despite having knowledge, and receiving adequate notice, of each defect and problem with the Lely Astronaut A4 robot within the time and in the manner required by the Limited Remedy.

337. Lely has not adequately covered by warranty the repair or replacement of any of the countless Lely Astronaut A4 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 “24 hour ongoing support” was available to correct and cure any defects or problems with, or failures of, the Lely Astronaut A4.

338. The failure of Lely to correct the defective condition of the Lely Astronaut A4 robot purchased by Plaintiffs resulted in repeated operational problems and failures therewith, which continued to persist until Plaintiff Schumacher Dairy Farms was forced to take the Lely Astronaut A4 robot out of operation but which persist today for Plaintiff Van Essen who has been forced to continue milking with his A4s, system downtime during which cows could not be milked, increased labor costs, decreased milk production, lost business and lost profits.

339. The limited repair or replacement remedy is of no value to Plaintiffs or other purchasers of defective Lely Astronaut A4 robots and equipment. When a Lely Astronaut A4 experiences a problem or failure, all cows are impacted in terms of access and their ability to be milked and, assuming at least one Lely Astronaut A4 robot remained in operation and was not experiencing an alarm, the demand for that robot dramatically increased.

340. While a Lely Astronaut A4 robot is experiencing a problem or failure, cows cannot be milked by that robot. For example, when the Lely Astronaut A4 robot purchased by Plaintiffs experienced a problem or failure, cows were not milked at all or Plaintiffs was forced to expend time and/or money on labor to manually milk cows, as a result of which cow health was negatively impacted, milk production decreased, and mastitis rates increased.

341. The limited repair or replacement remedy does not adequately protect purchasers of defective Lely Astronaut A4 robots. Even after repairs are performed or replacements are provided at the sole discretion of Lely, 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.

342. The Limited Remedy is unconscionable and fails of its essential purpose because – at all times relevant herein, including at and before the Plaintiffs purchased their respective Lely Astronaut A4 robots – Lely knew that the defects and problems with the Lely Astronaut A4 of which it had peculiar, unique and superior knowledge were incapable of being corrected or cured by the limited repair or replacement remedy.

343. Since Lely knew that the defects and problems with the Lely Astronaut A4 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.

344. The Limited Remedy is unconscionable and fails of its essential purpose since the determination of whether to repair, replace or refund the purchase price of a defective Lely Astronaut A4 robot is within the sole discretion of Lely, which systematically fails to honor the Limited Remedy and fails to exercise good faith when determining whether to provide a repair, replacement or refund.

345. Although the Limited Remedy gives Lely the discretion to refund the purchase price, such refund fails to make Plaintiffs and other purchasers of defective Lely Astronaut A4 robots whole for several reasons, each of which Lely had knowledge at all times relevant herein,

including before Plaintiffs purchased their respective robots. Thus, even in light of the backup refund remedy, the Limited Remedy fails of its essential purpose and is unconscionable.

346. First, the refund is limited to the purchase price of the Lely Astronaut A4 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 Lely Astronaut A4 at the behest of Lely – not to mention the significant financial losses Plaintiffs suffered as a result of using the Lely Astronaut A4 robots.

347. Second, the latent character of the defects and problems with the Lely Astronaut A4 did not allow said defects and problems to be discovered by Plaintiffs upon tender of delivery, or prior to either installation of the Lely Astronaut A4 or the design and construction of the barn in which the Lely Astronaut A4 was installed, which could not be used to milk cows by any alternative method.

348. By limiting the refund to the purchase price, Lely improperly attempts to avoid refunding the hundreds of thousands of dollars it would cost to remove the Lely Astronaut A4, and either modify the barn that was specifically built to accommodate and facilitate its 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.

349. Third, Lely was either unable or unwilling to provide Plaintiffs with an appropriate refund that was sufficient to provide them with the substantial value of his bargain or, for that matter, any refund at all. It did not provide Plaintiffs with a reasonably timely refund or replacement and, in fact, provided him with nothing at all. 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 his obligation to the company that financed the purchase.

350. The Limited Remedy is unconscionable and fails of its essential purpose since Lely knew at and before the date on which Plaintiffs purchased his Lely Astronaut A4 robot that the Limited Remedy deprived Plaintiffs of a minimum adequate remedy for damages due to the constant, long-term malfunctioning of the defective Lely Astronaut A4, which Lely knew it was incapable of correcting.

351. The Limited Remedy is unconscionable and fails of its essential purpose since that remedy is inadequate to cover Plaintiffs' actual damages – including the purchase, installation and service costs of the Lely Astronaut A4, increased labor costs, value of the cows lost to culling and mastitis, and lost business and profits, among other damages specified herein – and, thus, deprive Plaintiffs of the benefit of their bargain.

352. The Limited Remedy is unconscionable and fails of its essential purpose because – at all times relevant herein, including at and before Plaintiffs purchased their respective Lely Astronaut A4 robots – Lely had peculiar, unique and superior knowledge of the defects and problems with the Lely Astronaut A4 and knew that the Limited Remedy deprived purchasers of defective Lely Astronaut A4 robots of a minimum adequate remedy.

353. The Limited Remedy is further unconscionable and unenforceable since Plaintiffs and other purchasers of Lely Astronaut A4 robots were not parties to the Dealer Agreement in which the Limited Remedy is contained, nor were Plaintiffs provided with notice, conspicuous or otherwise, of the Limited Remedy or other purported disclaimers, limitations or restrictions set forth in the Dealer Agreement.

354. Lely knew that the Limited Remedy, and its failure to provide a minimum adequate remedy sufficient to compensate purchasers for their actual damages, deprived purchasers of Lely Astronaut A4 robots of the benefits of their bargain by subjecting them to financial hardship and/or

ruin, with numerous purchasers being forced to sell their dairy farms and/or file for bankruptcy, which would not occur if those provisions provided an adequate remedy.

355. Lely has failed to provide any minimum adequate remedy sufficient to compensate Plaintiffs for their actual damages caused by the Lely Astronaut A4 – including, but not limited to, the purchase, installation and service costs of the Lely Astronaut A4, feed, maintenance, operational, service, labor and other costs, value of the cows lost to culling and mastitis, and lost business and profits.

356. Plaintiffs sustained consequential and incidental damages that would not have been sustained but for Lely designing, marketing and selling defective Lely Astronaut A4 robots, were not within the contemplation of Plaintiffs or Lely at the time Plaintiffs purchased their respective Lely Astronaut A4 robots and, thus, Plaintiffs is entitled to recover all of his damages from Lely without limitation, including, but not limited to, consequential and incidental damages.

CLASS ACTION ALLEGATIONS

357. Class Definition: Plaintiffs bring this action on behalf of himself and other similarly situated individuals. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek certification of a Nationwide Class (the “Nationwide Class”) and the following Subclass defined as follows:

All Persons in the United States or its territories who purchased or leased a new Lely Astronaut A4 robot (the “Nationwide Class”).

All Persons who are residents of Minnesota and who purchased or leased a new Lely Astronaut A4 robot (the “Minnesota Subclass”).

358. 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.

359. Numerosity: the Class consists of members so numerous and geographically dispersed that joinder of all members is impracticable, as Plaintiffs believe there are over 400 members in the Class with over 1,400 A4 robots spread across several states.

360. 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 including:

- a. Are the Lely Astronaut A4 robots defectively designed?
- b. Do the Lely Astronaut A4 robots have defects in material and workmanship?
- c. Were Defendants on notice of the defective nature of the Lely Astronaut A4 robots and, if so, as of what date?
- d. Do the Lely Astronaut A4 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 Lely Astronaut A4 robots merchantable at the time of sale?
- g. Did Defendants breach an implied warranty of fitness for a particular purpose?
- h. Did Defendants owe a duty of care to Plaintiffs and the Class?
- i. Were Defendants negligent?
- j. Did Defendants make material misrepresentations in advertising, marketing and selling the Lely Astronaut A4?
- k. Did Defendants conceal facts regarding the Lely Astronaut A4 robots?
- l. Did Defendants breach their contracts with Plaintiffs and the Class?
- m. Were Plaintiffs and the Class damaged by Defendants' actions?

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

362. Typicality: Plaintiffs' claims are typical of other members of the Class because all of the claims arise from the same course of conduct by Lely, the same defects and operational problems with the Lely Astronaut A4 and are based on the same legal theories.

363. 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. Plaintiff 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.

364. 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.

365. 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 if necessary.

TOLLING

366. Any applicable statute of limitations that might otherwise bar any claim of any Plaintiffs or members of the Class have 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.

367. Plaintiffs and the Class could not reasonably have discovered and filed suit regarding their claims, because Defendants misled them into believing that the Lely Astronaut A4 was free of defects, performed as uniformly represented, that "[its other] customers excel in sustainable milk production," 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.

368. Moreover, the defects and problems with the Lely Astronaut A4 were latent in nature, take several months to years or more to manifest and, thus, Plaintiffs and other members of the Class could not have been aware of them prior to them being manifested. For example, as set forth in detail above, the problems stemming from the inadequate vacuum capacity and reserve, among others, damaged and increased the infection rates of cows over the long term with damage to, and infection rates of, cows increasing over time.

369. The defects and problems with the Lely Astronaut A4 robot purchased by Kruger did not manifest until after it had been in operation for approximately four or more months, at which time the somatic cell count of the milk produced by the cows being milked by the robot began to steadily increase and the damage to his cows became observable. By way of further example, the defects and problems with the Lely Astronaut A4 robots purchased by Kirschbaum

could not have been discovered by Kirschbaum upon reasonable diligence and inspection prior to the defects manifesting themselves in or about March-April of 2018 and thereafter, when the physical damage to their cows become observable and the quality of their milk product began to steadily decline. Prior to that time, Plaintiffs were ignorant, by no fault of their own or due to any failure by them to exercise due diligence, of vital information concerning those defects, which Defendants concealed from Plaintiffs and of which they had superior, unique and particular knowledge.

FIRST CAUSE OF ACTION⁸

BREACH OF CONTRACT

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Minnesota Subclass

370. 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.

371. Pursuant to the Customer Agreements, Lely agreed to provide Plaintiffs and the Class with Lely Astronaut A4 robots that were free from defects in design, material and workmanship and, pursuant to the uniform advertisements, marketing and representations detailed herein, performed and, in fact, had performed in the past 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 Lely.

372. Lely breached its contractual obligations and promises in the Customer Agreements by furnishing Lely Astronaut A4 robots that, without exception, had numerous defects in design, material and workmanship, including, but not limited to those detailed herein at paragraphs 149-

⁸ The Court dismissed Count 1 at the motion to dismiss stage. Plaintiffs include it here for the sole purpose of preserving it for any appeal.

182, and were plagued by numerous, repeated operational problems that are and were uniformly experienced by purchasers of Lely Astronaut A4 robots.

373. These defects and operational problems were incapable of being corrected, cured or otherwise remedied, and prevented the Lely Astronaut A4 from functioning, operating and performing as uniformly advertised, marketed and represented by Lely. At all times relevant herein, Lely knew that it was delivering Lely Astronaut A4 robots that had the defects in design, material and workmanship, and suffered from the operational problems, detailed herein.

374. The aforementioned defects and operational problems with the Lely Astronaut A4 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 Lely, were not readily apparent, obvious or visible to Plaintiffs or the Class before the Lely Astronaut A4 became operational, and could not have been discovered by Plaintiffs or the Class upon reasonable diligence and inspection.

375. The aforementioned defects and operational problems with the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of Plaintiffs or the Class and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control and of which it had peculiar, unique and superior knowledge.

376. Lely systematically breached its contractual obligations and promises by failing to provide Plaintiffs and the Class with Lely Astronaut A4 robots and equipment that were free from defects in design, material and workmanship, as well as operational problems, and failed to conform to the uniform advertisements, marketing and representations detailed herein, despite full contractual performance by Plaintiffs and the Class.

377. The Lely Astronaut A4 robots furnished by Lely, through its agents, servants and/or employees, were defective and did not conform to the uniform advertisements, marketing and representations detailed herein in that, among other defects, problems and failures detailed herein, they failed to work properly, were defective and faulty, and had numerous, repeated operational problems of which Lely had peculiar, unique and specialized knowledge.

378. Lely was duty-bound to abide by 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, Lely not only breached its contractual obligations and promises, but also breached the implied covenant of good faith and fair dealing.

379. As a direct and proximate result of these breaches, 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 barns, increased labor costs, lost business profits, and all other damages permitted by law.

SECOND CAUSE OF ACTION⁹

BREACH OF CONTRACT AS THIRD PARTY BENEFICIARY

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Minnesota Subclass

⁹ The Court dismissed Count 2 at the motion to dismiss stage. Plaintiffs include it here for the sole purpose of preserving it for any appeal.

380. 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.

381. The Dealer Agreements expressly create rights for Plaintiffs and the Class as a third parties to the agreements. For instance, the Dealer Agreements require the Lely Centers to “extend to its customers the Limited Express Warranty” of Lely, evidencing a clear intent to benefit, and create contractual rights for, each purchaser of a Lely Astronaut A4, including Plaintiffs and the Class. The Dealer Agreements also require Lely to provide “training on the application, service and repair” of the Lely Astronaut A4, as well as “technical assistance respecting applications or servicing [thereof].”

382. Moreover, the Dealer Agreements require the Lely Centers to “furnish and regularly update to [Lely] all addresses of ASTRONAUT Robotic Milking System End Users,” so that Lely can “invite the End Users to the Company Ambassadors Club and other centrally organised activities.” As evidenced by the foregoing, the Dealer Agreements expressly create rights for Plaintiffs and the Class as third parties to the agreements, such that Plaintiffs and the Class are intended beneficiaries privy to the promises, and entitled to enforce the terms, conditions and promises, contained therein.

383. Lely breached its contractual obligations and promises in the Dealer Agreements by furnishing Lely Astronaut A4 robots that, without exception, had numerous defects in design, material and workmanship, including, but not limited to those detailed herein at paragraphs 149-182, and were plagued by numerous, repeated operational problems that are and were uniformly experienced by purchasers of Lely Astronaut A4 robots.

384. These defects and operational problems were incapable of being corrected, cured or otherwise remedied, and prevented the Lely Astronaut A4 from functioning, operating and

performing as uniformly advertised, marketed and represented by Lely. At all times relevant herein, Lely knew that it was delivering Lely Astronaut A4 robots that had the defects in design, material and workmanship, and suffered from the operational problems, detailed herein.

385. The aforementioned defects and operational problems with the Lely Astronaut A4 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 Lely, were not readily apparent, obvious or visible to Plaintiffs or the Class before the Lely Astronaut A4 became operational, and could not have been discovered by Plaintiffs or the Class upon reasonable diligence and inspection.

386. The aforementioned defects and operational problems with the Lely Astronaut A4 were not caused or contributed to by variation in farm animals, management practices or other conditions beyond the control of Lely or in the control of Plaintiffs or the Class and, instead, were caused by the defects with the Lely Astronaut A4 created by Lely, over which it had control and of which it had peculiar, unique and superior knowledge.

387. Lely systematically breached its contractual obligations and promises by failing to provide Plaintiffs and the Class with Lely Astronaut A4 robots and equipment that were free from defects in design, material and workmanship, as well as operational problems, and failed to conform to the uniform advertisements, marketing and representations detailed herein, despite full contractual performance by Plaintiffs and the Class.

388. The Lely Astronaut A4 robots furnished by Lely, through its agents, servants and/or employees, were defective and did not conform to the uniform advertisements, marketing and representations detailed herein in that, among other defects, problems and failures detailed herein, they failed to work properly, were defective and faulty, and had numerous, repeated operational problems of which Lely had peculiar, unique and specialized knowledge.

389. Lely was duty-bound to abide by 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, Lely not only breached its contractual obligations and promises, but also breached the implied covenant of good faith and fair dealing.

390. As a direct and proximate result of these breaches, Plaintiffs and the Class have been damaged and seek all remedies in the aggregate or in the alternative, including 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 barns, increased labor costs, lost business profits, and all other damages permitted by law.

THIRD 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 Minnesota Subclass

391. 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.

392. A warranty that the Lely Astronaut A4 shall be merchantable was implied in its sale because Lely 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 an “international” business in the agricultural sector, which provides advice “on how to organize a dairy farm smartly with the use of management systems[,]” and claims that “[d]airy farming is something [it] live[s] to do.”

393. The Lely Astronaut A4 robots purchased by Plaintiffs and the Class do not pass without objection in the dairy farming trade under the description conveyed in the uniform marketing scheme carried out by Lely and are not fit for the ordinary purpose for which such devices are used in that the Lely Astronaut A4, 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.

394. The Lely Astronaut A4 robots purchased by Plaintiffs and the Class 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 Lely Astronaut A4 Brochure, the Lely Dairy Equipment Brochure, the E-Manual, the Farm Management Manual and elsewhere.

395. Plaintiffs complied with the statutory notice requirements of adopted by Minnesota, as codified in Minn. Stat. § 336.2-607(3)(a). That statutory notice requirement is adopted from the Uniform Commercial Code. In response to receiving such notice, Lely acknowledged its warranties and responsibilities thereunder by attempting to repair the defects of which Plaintiffs complained. Plaintiffs commenced this action only after Lely proved unable to cure the defects with the Lely Astronaut A4. Moreover, Lely received monthly notice of each breakdown of a Lely Astronaut A4 robot, pursuant to the Dealer Agreements, meaning Lely received notice each time a member of the Class experienced a breakdown of a Lely Astronaut A4 robot.

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

FOURTH 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 Minnesota Subclass

397. 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.

398. Plaintiffs and the Class specified to Lely, through its agents, servants and/or employees, that they required Lely Astronaut A4 robots capable of, among other things: milking at least sixty cows per robot 2.6 times a day or more; increasing their milk production; achieving one-hundred eighty (180) milkings a day or more; harvesting at least five thousand (5,000) pounds of milk a day; offers lower feed, ownership, operation, maintenance, service and labor costs than traditional parlor milking systems; offers more effective cleaning, pre-stimulation and post-stimulation than traditional parlor milking systems; thoroughly disinfects the whole system after each cow is milked to eliminate bacteria and prevent cross-contamination; consistently and reliably attaching teat cups to each teat and ensuring that there are no missed quarters; and increasing the quality of the milk produced by lowering the somatic cell count, lab pasteurized count, standard plate count and raw bacteria.

399. Plaintiffs and the Class relied on the skill and judgment of Lely, who holds itself as experts “on how to organize a dairy farm smartly with the use of management systems,” to select and furnish a suitable voluntary or other milking system capable of meeting or exceeding their aforementioned requirements, a fact that was conveyed by Plaintiffs and the Class to Lely, through their agents, servants and/or employees.

400. Plaintiffs and the Class relied on the skill and judgment of Lely in purchasing Lely Astronaut A4 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 per robot 2.6 times a day or more; increase their milk production; achieve one-hundred eighty (180) milkings a day or more; harvest at least five thousand (5,000) pounds of milk a day; offer lower feed, ownership, operation, maintenance, service and labor costs than traditional parlor milking systems; offer more effective cleaning, pre-stimulation and post-stimulation than traditional parlor milking systems; thoroughly disinfect the whole system after each cow is milked to eliminate bacteria and prevent cross-contamination; consistently and reliably attach teat cups to each teat and ensure that there are no missed quarters; and increase the quality of the milk produced by lowering the somatic cell count, lab pasteurized count, standard plate count and raw bacteria.

401. Plaintiffs complied with the statutory notice requirements of adopted by Minnesota, as codified in Minn. Stat. § 336.2-607(3)(a). That statutory notice requirement is adopted from the Uniform Commercial Code. In response to receiving such notice, Lely acknowledged its warranties and responsibilities thereunder by attempting to repair the defects of which Plaintiffs complained. Plaintiffs commenced this action only after Lely proved unable to cure the defects with the Lely Astronaut A4. Moreover, Lely received monthly notice of each breakdown of a Lely Astronaut A4 robot, pursuant to the Dealer Agreements, meaning Lely received notice each time a member of the Class experienced a breakdown of a Lely Astronaut A4 robot.

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

FIFTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Minnesota Subclass

403. 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.

404. In the Dealer Agreements and Customer Agreements, Lely expressly warranted that the Lely Astronaut A4 robots and equipment provided to Plaintiffs and the Class were free from defects in design, material and workmanship.

405. The Lely Astronaut A4 failed to conform the express warranties of Lely in that it had numerous, uniform defects in design, material and workmanship, including, but not limited to, those identified in paragraphs 149-182 above, which caused the Lely Astronaut A4 robots to experience the numerous, repeated operational problems detailed herein, which were uniformly experienced by Plaintiffs and the Class, without exception.

406. In addition, Lely expressly warranted in their marketing and sales materials that the Lely Astronaut A4 robots and equipment would, at the time of sale and thereafter, perform as represented, conform to its specific guarantees, promises and representations, including, without limitation, those set forth above in paragraphs 89-111, and be free of the defects and operational problems identified in paragraphs 149-182 above.

407. The Lely Astronaut A4 was defective and failed to live up or conform to even the most basic affirmations of fact, promises, representations and descriptions made by Lely, as to the abilities, benefits, capabilities and past performance of the Lely Astronaut A4, all of which are alleged in detail herein, specifically incorporated by reference and formed part of the basis of the bargain to which the sale of the Lely Astronaut A4 relate.

408. The Lely Astronaut A4, 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 Lely, had higher-than-represented maintenance, service and repair costs, never worked properly, increased labor and energy consumption costs, decreased milk production, quality and value, caused physical damage to the cows it milked, and decreased profitability.

409. The purchase price of the Lely Astronaut A4 also formed part of the basis for the bargain in that it reflected the aforementioned affirmations of fact, promises, representations and descriptions made by Lely – the falsity of which caused the purchase price to be fraudulently-inflated far beyond its actual value – and, thus, Plaintiffs and each other purchaser ipso facto relied on those affirmations of fact, promises, representations and descriptions, because, had the truth been known, they would have paid a lower price or not purchased at all.

410. At all times relevant herein, Lely knew of material facts establishing, indicating and/or providing that the Lely Astronaut A4 was defective, 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, and were conveyed to Lely before the express warranties were made and Plaintiffs and the Class purchased their respective Lely Astronaut A4 robots, including, but not limited to, those identified above in paragraphs 149-182.

411. The natural tendency of the express warranties was to induce Plaintiffs and the Class to purchase the Lely Astronaut A4 and, in reasonable reliance on the foregoing, Plaintiffs and the Class purchased Lely Astronaut A4 robots from Lely, 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 Lely.

412. Further, in the Dealer Agreements and Customer Agreements, Lely warranted that any repairs, parts and service provided by Lely, through its agents, servants and/or employees, will be free from defects in material and workmanship.

413. Lely failed to install the Lely Astronaut A4 in a workmanlike manner in that it routinely failed to properly calibrate the system, causing the numerous defects and problems set forth herein, including, but not limited to, repeated teat cup attachment failures, as well as the failure of the system to accurately spray and cover teats with disinfectant of the proper viscosity during post-stimulation.

414. Once the Lely Astronaut A4 was installed, Lely, through its agents, servants and employees, failed to perform repairs in a workmanlike manner, which resulted in repeated operational failures of the Lely Astronaut A4, 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 Lely Astronaut A4.

415. Plaintiffs complied with the statutory notice requirements of adopted by Minnesota, as codified in Minn. Stat. § 336.2-607(3)(a). That statutory notice requirement is adopted from the Uniform Commercial Code In response to receiving such notice, Lely acknowledged its warranties and responsibilities thereunder by attempting to repair the defects of which Plaintiffs complained. Plaintiffs commenced this action only after Lely proved unable to cure the defects with the Lely Astronaut A4. Moreover, Lely received monthly notice of each breakdown of a Lely Astronaut A4 robot, pursuant to the Dealer Agreements, meaning Lely received notice each time a member of the Class experienced a breakdown of a Lely Astronaut A4 robot.

416. By reason of the foregoing, Lely 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 Lely.

SIXTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Minnesota Subclass

417. 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.

418. Lely failed to properly design and manufacture the Lely Astronaut A4, which it placed on the market despite knowing that, as designed, it posed a substantial likelihood of harm to dairy farmers and their property in that it decreases the quality and value of their milk by increasing somatic cell count, lab pasteurized count, standard plate count and raw bacteria, decreases their milk production, increases mastitis and culling rates of their herds, physically damages cows, and causes other damages as alleged herein.

419. At all times relevant herein, Lely knew that the Lely Astronaut A4 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, and were conveyed to Lely before the aforementioned express warranties were made and Plaintiffs and the Class purchased their respective Lely Astronaut A4 robots, including, but not limited to, those identified herein at paragraphs 149-182.

420. The aforementioned defects with the Lely Astronaut A4, among other defects of which Lely 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 Lely Astronaut A4 robots experienced by Plaintiffs and the Class, including, but not limited to, those identified herein at paragraphs 149-182.

421. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by designing and programming it to: completely brush all four (4) teats of each cow during pre-stimulation, be able to discriminate between a dirty and clean udder, completely dry each teat before any of the teat cups are attached and the milking process commences, and not attach any of the teat cups unless and until one-hundred percent (100%) of the bacteria present on the teats and udder is removed.

422. It was feasible for Lely to design the Lely Astronaut A4 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, design, encoder, programming and other 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.

423. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by: equipping it with a more powerful vacuum pump that meets the minimum capacity and reserve requirements of the NMC discussed above in paragraphs 149-182; having a separate vacuum pump for each robot with only one vacuum regulator located near the milking units, as opposed to having two robots share one vacuum pump controlled by three separate vacuum regulators, all of which is located in a central unit up to thirty (30) meters away; using a larger, smoother vacuum supply tube, as opposed to a corrugated one, to reduce the friction of moving air through the vacuum supply tube; having a separate motor to operate the milk pump

bladder; designing the milk tubes to transport milk by gravity, as opposed to unnecessarily expending energy to overcome gravity when lifting milk from the robot arm, through the milk tubes, and vertically upwards into the milk measurement system; and reducing the distance – and, thus, the friction caused by air moving – between the vacuum pump and the teat cups.

424. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by using more durable liners of a material that does not prematurely and without warning develop cracks, openings, penetrations and tears, and which are adapted to fit the average teat size of herds in the United States and of purchasers of Lely Astronaut A4 robots.

425. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by equipping it with a milk quality control device or feature that gives notice of clinical mastitis, abnormal milk, or subclinical mastitis, which despite the representations of Lely to the contrary, the Lely Astronaut A4 did not have or, in the alternative, did have, but was defective and failed to function, operate and/or work as designed and represented.

426. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by programming it not to overmilk cows by ensuring that there is still an easily obtainable stream of milk remaining in each quarter after the milking process has been completed and the teats cups have been removed, as opposed to permitting the robot to continue to attempt to milk the teats of the cow even though milk is no longer being secreted from the udder for periods of time up to and/or exceeding forty-five (45) seconds.

427. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by programming it to: accurately and adequately spray and cover teats with a disinfectant of the proper viscosity directly after milking; account for the decreased diameter of teats after they have been milked; repeat the process of detecting the location of each teat after

milking, but before attempting to spray and cover the teats with disinfectant, so the decreased teat size may be accounted for and the location of the teats may accurately be determined.

428. It was feasible for Lely to design the Lely Astronaut A4 in a better, safer and more effective manner by eliminating the silicone milk pump bladder and, instead, using the alternative milk pump system to transport milk from the milk jar to the milk tank, which the Lely Astronaut A3 used to transport milk and, due to the defects and problems with the silicone milk pump bladder of the Lely Astronaut A4 discussed in detail herein, was reincorporated by Lely into the Lely Astronaut A5 to correct the defects with the milk pump bladder of the Lely Astronaut A4.

429. The aforementioned defects caused significant damage to Plaintiffs' and Class members' property. The defects with the Lely Astronaut A4 caused damage to the cows owned by Plaintiffs and the Class in that it caused damage to their teats, and caused their mastitis and infection rates to increase, all of which resulted in injury and death to cows, due to, among other things, the failure to: properly clean their teats and udder during pre-stimulation; properly and fully milk each quarter of every cow during every milking in a sanitary manner; maintain vacuum stability during milking to prevent impacts; provide appropriate liners adapted to the average teat size of the herd; and perform appropriate post-stimulation by spraying and covering each teat with a disinfectant of the proper viscosity directly after milking.

430. 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.

431. The aforementioned defects with the Lely Astronaut A4 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 significantly increase. Moreover, the Lely Astronaut A4 caused the cows owned by Plaintiffs and the Class to produce less milk than previously, while causing significant damage to their teats over time to the point where they could not be milked or produce milk at all, which decreased their value.

432. 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 Lely Astronaut A4 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 Lely Astronaut A4.

433. The egregious conduct of Lely – 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.

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

SEVENTH CAUSE OF ACTION

NEGLIGENCE

On Behalf of Plaintiffs and the Nationwide Class, or Alternatively, on Behalf of Plaintiffs and the Minnesota Subclass

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. Due to its unique, peculiar and superior knowledge of the defects and problems with the Lely Astronaut A4, it was foreseeable, if not foreseen, by Lely that if its product did not perform as represented, Plaintiffs and the Class would suffer personal injury, economic loss 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 Lely Astronaut A4 at the behest of Lely; the Lely Astronaut A4 damaged the herds of Plaintiffs and the Class in the form of teat damage, mastitis, and bacterial infections; the Lely Astronaut A4 caused damage to the end milk product 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 Lely before it delivered the Lely Astronaut A4 robots to Plaintiffs and the Class, even though such injuries were not foreseeable to Plaintiffs and the Class. Consequently, Lely owed a duty of care to prevent said injuries.

437. Lely, by its agents, servants and/or employees, was reckless, careless and negligent in failing to properly design the Lely Astronaut A4, which it placed on the market despite knowing that the Lely Astronaut A4, as designed, posed a substantial likelihood of harm and that it was feasible to design the Lely Astronaut A4 in a safer manner; in designing, developing, manufacturing, advertising, selling, promoting, servicing, maintaining, installing, repairing and distributing the Lely Astronaut A4; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that failed to milk cows; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that decreased milk efficiency, production, quality and/or value; in designing, developing, manufacturing, selling,

providing and installing a Lely Astronaut A4 that increased somatic cell count, standard plate count and raw bacteria; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that was not capable of and/or failed to milk at least sixty cows an average of 2.6 times a day; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that was not capable of and/or failed to increase milk production by ten percent or otherwise; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that increased feed, labor, energy consumption and operational costs; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that had repeated operational failures, including, but not limited to, sensor issues, 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 Lely Astronaut A4 that increased mastitis rates of the herd on the Dairy Farms 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 Lely Astronaut A4; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that had numerous, repeated cup attachment failures; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that decreased the health of cows and killed cows; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 with a robotic arm that fails to adequately and properly perform teat sanitation; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that decreases milk flow; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 with excessively long unit on time; in designing, developing, manufacturing, selling, providing and installing a Lely

Astronaut A4 that increases cleaning time; in designing, developing, manufacturing, selling, providing and installing a Lely Astronaut A4 that fails to adequately and properly clean and/or sanitize; in failing to provide support, service, maintenance, repairs and/or other assistance; in abandoning Plaintiffs and the Class despite assurances and promises of support; in failing to adequately, properly and timely service, maintain, repair and/or replace the Lely Astronaut A4 and/or its components and parts; in misrepresenting the abilities, capabilities and ease of use of the Lely Astronaut A4; 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 Lely Astronaut A4; 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, warrantied, and agreed; in falsely representing and promising that the Lely Astronaut A4 had a Milk Quality Control feature capable of accurately identifying cases of mastitis; in inducing Plaintiffs and the Class to purchase the Lely Astronaut A4; in causing Plaintiffs and the Class to lose business and profits; in failing to provide a Lely Astronaut A4 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; and Lely was otherwise reckless, careless and negligent.

438. The egregious conduct of Lely – 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.

439. As a result of Lely'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 Lely Astronaut A4 robots. They also suffered property injuries to their milk in the form of increased bacteria counts and lower milk quality.

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

EIGHTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

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

441. 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.

442. Lely NA, Maasland, Lely Industries, Lely International and Lely Holding each had unique, peculiar and superior knowledge of the defects and problems with the Lely Astronaut A4, as well as material facts contradicting the representations they each made to Plaintiffs and the Class, from, among other non-public sources identified herein, the T4C Data, their own internal data and studies, and the experiences relayed to them by other dairy farmers, all of which they each had a duty to disclose, yet concealed with the intent to defraud Plaintiffs and the Class thereby.

443. Lely NA, Maasland, Lely Industries, Lely International and Lely Holding each had a duty to disclose the aforementioned defects, problems and material facts concerning the Lely Astronaut A4, because, among other reasons specified herein, they each 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.

444. For example, Alexander van der Lely – former CEO of the Lely Group and current chairman of the Supervisory Board for the Lely Group comprising Lely NA, Maasland, Lely Industries, Lely International and Lely Holding – admitted that he “personally take[s] care of the engineering, R&D, and the marketing aspect” for each Lely entity. He thus had knowledge of the defects with the Lely Astronaut A4 through his engineering and R&D involvement and review of the T4C Data analyzed by the research and development departments of the Lely Group.

445. Lely NA, Maasland, Lely Industries, Lely International and Lely Holding also each had a duty to disclose the aforementioned defects, problems and material facts, because they each made representations to Plaintiffs and the Class at the direction of Alexander van der Lely, who admits to being personally responsible for marketing, and otherwise that were deceptive, false, misleading and, at best, half-truths, requiring additional disclosure of the aforementioned defects, problems and material facts to avoid misleading Plaintiffs and the Class.

446. Lely NA, Maasland, Lely Industries, Lely International and Lely Holding each intended to defraud Plaintiffs and the Class by concealing and failing to disclose the aforementioned defects, problems and material facts, each of which they each 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.

447. Had the aforementioned defects, problems and material facts been disclosed to Plaintiffs and the Class and not concealed by Lely NA, Maasland, Lely Industries, Lely International and Lely Holding with the intent to defraud them, no Plaintiffs or member of the Class would have purchased a Lely Astronaut A4 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 and milk products, as alleged in detail herein.

448. 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 Lely Astronaut A4 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

VIOLATION OF MINN. STAT. § 325F.67 (False Statement in Advertising Act enforced through Minn. Stat. § 8.31)

On Behalf of Plaintiffs Jared Kruger, Mark Van Essen, Schumacher Dairy Farms, and the Minnesota Subclass

449. Plaintiffs Jared Kruger, Mark Van Essen and Schumacher Dairy Farms (“Plaintiffs”), individually and on behalf of the Minnesota Subclass, and 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.

450. Lely is a “person, firm, corporation, or association” as defined by Minn. Stat. § 325F.67.

451. Plaintiffs are members of “the public” as defined by Minn. Stat. § 325F.67.

452. As described herein, with the intent to sell or dispose of merchandise, services, or anything else offered by Lely (directly or indirectly) to the public for sale or distribution, and/or with the intent to induce the public in any manner to enter into any obligation relating thereto, or to acquire any interest therein, Lely made, published, disseminated, circulated and placed before the public, or caused (directly or indirectly) to be made, published, disseminated, circulated, or placed before the public in Minnesota advertisements, announcements, statements, and representations regarding the Lely Astronaut A4, which, as set detailed herein, were untrue, deceptive, and/or misleading in violation of Minn. Stat. § 325F.67.

453. As a direct and proximate result of Lely’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. Since Lely continues to publicly market the Lely Astronaut A4 in the manner described above in violation of Minn. Stat. § 325F.67, Plaintiffs seek not only monetary damages, but also injunctive relief to enjoin Lely from continuing to make, publish, disseminate, circulate and/or place before the public in Minnesota advertisements, announcements, statements, and representations regarding the Lely Astronaut A4, which, as set forth herein, are untrue, deceptive, and/or misleading in violation of Minn. Stat. § 325F.67.

454. This cause of action benefits the public in several ways. First, by enjoining Lely from continuing to make, publish, disseminate, circulate and/or place before the public in Minnesota untrue, deceptive and misleading advertisements, announcements, statements, and representations regarding the Lely Astronaut A4 in violation of Minn. Stat. § 325F.67, the public

will benefit in that other members of the public will not fall victim to the deceptive acts and practices of Lely by expending immense sums of money to purchase a defective product that, without exception, causes pecuniary losses and property damage.

455. Second, by awarding monetary damages to Plaintiffs for the injuries they suffered due to the deceptive acts and practices of Lely, this cause of action may cause Lely to redress the harm it caused to the public caused through its numerous violations of Minn. Stat. § 325F.67 described herein, while deterring and dissuading Lely from violating Minn. Stat. § 325F.67 in the future and/or causing Lely to redress other violations of Minn. Stat. § 325F.67 committed in connection with the marketing of its other products, as a result of which members of the public will be spared from falling victim to, and suffering injuries as a result of, its deceptive acts and practices.

456. Plaintiffs seek all monetary and non-monetary relief allowed by law, including damages, reasonable attorneys' fees, injunctive relief, costs under Minn. Stat. § 325F.67 and Minn. Stat. § 8.31, and punitive damages.

TENTH CAUSE OF ACTION

VIOLATION OF MINN. STAT. §§ 325F.68, 325F.69, 325F.70 (Prevention of Consumer Fraud Act enforced through Minn. Stat. § 8.31)

On Behalf of Plaintiffs Jared Kruger, Mark Van Essen, Schumacher Dairy Farms, and the Minnesota Subclass

457. Plaintiffs Jared Kruger, Mark Van Essen and Schumacher Dairy Farms (“Plaintiffs”), individually and on behalf of the Minnesota Subclass, and 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.

458. Lely is a “person” as defined by Minn. Stat. § 325F.68.

459. The Lely Astronaut A4 is “merchandise” as defined by Minn. Stat. § 325F.68.

460. As described herein, Lely acted, used and/or employed fraud, false pretense, false promise, misrepresentations, misleading statements and/or deceptive practices with the intent that others, including Plaintiffs, rely thereon in connection with the sale of merchandise, including the Lely Astronaut A4 that it sold to Plaintiffs in violation of Minn. Stat. § 325F.69.

461. Defendants’ misrepresentations and deceptive practices adversely affected dairy farmers in Minnesota and, consequentially, the general public for whom the dairy farmers produce milk by, among other things, decreasing the quality of the milk available to them, resulting in members of the general public consuming milk with higher bacteria, somatic cell and lab pasteurization levels.

462. As a direct and proximate result of Lely’s unlawful practices, Plaintiffs have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages. Since Lely continues to act, use and employ fraud, false pretense, false promise, misrepresentations, misleading statements and deceptive practices to induce sales of the Lely Astronaut A4 in violation of Minn. Stat. § 325F.69, Plaintiffs seek not only monetary damages, but also injunctive relief to enjoin Lely from continuing to act in the aforesaid manner to induce sales of the Lely Astronaut A4 in violation of Minn. Stat. § 325F.69

463. This cause of action benefits the public in several ways. First, by enjoining Lely from continuing to act, use and employ fraud, false pretense, false promise, misrepresentations, misleading statements and deceptive practices to induce sales of the Lely Astronaut A4 in violation of Minn. Stat. § 325F.69, the public will benefit in that other members of the public will not fall victim to such unscrupulous practices that violate Minn. Stat. § 325F.69 by expending immense

sums of money to purchase a defective product that, without exception, causes pecuniary losses and property damage.

464. Second, by awarding monetary damages to Plaintiffs for the injuries he suffered due to the aforesaid acts and practices of Lely, this cause of action may cause Lely to redress the harm it caused to the public caused through its numerous violations of Minn. Stat. § 325F.69 described herein, while deterring and dissuading Lely from violating Minn. Stat. § 325F.69 in the future and/or causing Lely to redress other violations of Minn. Stat. § 325F.69 committed in connection with the marketing of its other products, as a result of which members of the public will be spared from falling victim to, and suffering injuries as a result of, such unscrupulous acts and practices.

465. Plaintiffs seek all monetary and non-monetary relief allowed by law, including damages, reasonable attorneys' fees, and costs under Minn. Stat. §§ 325F.68, 325F.69 and Minn. Stat. § 8.31, and punitive damages.

ELEVENTH CAUSE OF ACTION

VIOLATION OF MINNESOTA DECEPTIVE TRADE PRACTICES ACT, MINN. STAT. § 325D.43 *ET SEQ.*

*On Behalf of Plaintiffs Jared Kruger, Mark Van Essen, Schumacher Dairy Farms, and the
Minnesota Subclass*

466. Plaintiffs Jared Kruger, Mark Van Essen and Schumacher Dairy Farms (“Plaintiffs”), individually and on behalf of the Minnesota Subclass, and 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.

467. Lely is a “person” as defined by Minn. Stat. § 325D.43 *et seq.*

468. Lely engaged in deceptive trade practices in the course of its business, vocation and/or occupation in violation of Minn. Stat. § 325D.44.

469. As detailed herein, Lely violated Minn. Stat. § 325D.44, by among other violations set forth in detail herein, falsely representing that goods or services are of a particular standard, quality, or grade, when they are of another, as well as by engaging in conduct which similarly creates likelihood of confusion or misunderstanding.

470. As a direct and proximate result of Lely's deceptive trade practices, Plaintiffs have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages.

471. Plaintiffs seek all monetary and non-monetary relief allowed by law, including damages, reasonable attorneys' fees, and costs under the Minnesota Deceptive Trade Practices Act, and punitive damages.

REQUEST FOR RELIEF

Plaintiffs, individually and on behalf of members of the Class and Subclass, respectfully requests that the Court enter judgment in their favor and against Lely, 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 Plaintiffs be granted the injunctive relief sought herein;

5. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, costs, and expenses;
6. That the Court award pre- and post-judgment interest at the maximum legal rate;
7. 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

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