**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA**

BARBARA J. POWELL, and CATHERINE POWELL, indivdually and on behalf of all similarly situated, Plaintiff, v. AROUND THE CLOCK A/C SERVICE, LLC dba AIR AROUND THE CLOCK, a Florida limited liability company, Defendant.	))))))))))	CIVIL NO. **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff, BARBARA J. POWELL ("B. POWELL") and CATHERINE POWELL ("C. POWELL"), individually and on behalf of the putative class (collectively the "Plaintiffs"), hereby sue AROUND THE CLOCK A/C SERVICE, LLC dba AIR AROUND THE CLOCK ("ATC"), (the "Defendant"), and states that it is entitled to relief upon the following facts:

PARTIES

1. At all times material to this action, BARBARA J. POWELL resided in Delray Beach, FL 33446 (the "Property"), and owned the property located at 13662 Weyburne Drive, Delray Beach, FL 33446, and is otherwise *sui juris*.

2. At all times material to this action, CATHERINE POWELL resided in Hummondsport, NY 33446 (the "Property"), and is otherwise *sui juris*.

3. At all times material to this action, AROUND THE CLOCK A/C SERVICE, LLC dba AIR AROUND THE CLOCK was and is a Florida limited liability company with its principal

place of business located at 13801 NW 4th Street, Sunrise, Florida 33325, and is authorized to do business in Broward County, Florida.

JURISDICTION AND VENUE

4. This is an action for damages greater than $50,000, exclusive of interest, attorneys' fees and costs; therefore, this Court has jurisdiction over the subject matter of this action pursuant to Section 26.012 of the Florida Statutes.

5. Defendant is subject to personal jurisdiction in Florida because it directed its tortous conduct into the State of Florida. *See* § 48.193(1)(a)(2), Fla. Stat. In addition, Defendant is subject to personal jurisdiction in Florida because, at all material times, it has "engaged in solicitation or service activities" within this State. § 48.193(1)(A)(6), Fla. Stat.

6. Venue is proper in Palm Beach County, Florida, because the Property out of which this action arose is located in Palm Beach County, Florida, the lien was filed in this County, and Defendant regularly conducts business in this County.

7. Plaintiffs have retained BERENSON LLP to represent it in this matter and is obligated to pay it a reasonable fee.

GENERAL ALLEGATIONS

8. In or about 2016, ATC sold to B. POWELL a complete replacement of her HVAC unit, and installed a 4 ton Rheem unit at the Property ("First Unit").

9. On or about June 24, 2024, C. POWELL retained ATC to clean the coils at the Property. ATC advised C. POWELL that the price to perform the work on the coils would be approximately $125, and C. POWELL provided her credit card information for ATC to perform this scope of work.

10. Unbeknowest to Plaintiffs, who were out of state and absent from the Property at the time, ATC obtained access to the Property and installed an entirely new unit. Neither of the Plaitniffs ever authorized this work, and no contract was ever entered into by the parties for this scope of work. Indeed, ATC never informed the Platiniffs that this work was being done, and never sent an invoice or other paperwork identifying this scope of work to either of the Plaintiffs.

Failure to Honor Warranty

11. The ATC technician who spoke with C. POWELL only indicated that the coils needed to be cleaned. The unit that had already been installed was only eight (8) years old and had a ten (10) year warranty. Thus, there was no need to charge the Plaintiffs for an entire new unit.

12. This is not an isolated event where ATC. For example, the following customer reports a similar incident where ATC failed to honor the warranty obligations in an effort to sell a replacement unit:

Meg L., Pompano Beach, September 28, 2023, Yelp Review

> Was told the unit was 'grounded' and beyond repair and too expensive to repair and I needed to purchase a new unit. I couldnt believe it. The unit was installed 2016 because the one they installed in 2014 kept breaking down and not cooling and I fought for a new replacement. And that replacement dies after only 7 years? Never heard of such nonsense. They sell garbage and then force you to buy another unit. Like I had to. Spent another $6800 on new unit. Called American Standard and was told I was still covered under Warranty until 2028 and part would have been sent to AATC for free. No one at Aatc ever mentioned that or informed me of that. Just to buy another unit was the answer. I feel I was ripped off. Refused to do anymore business with this company. Run dont walk from this awful awful company. Just read all the bad reviews for yourself. Negative zero rating I give them. Garbage. Defective junk.

Failure to Pull Permit

13. ATC never pulled a permit for the HVAC installation of the First Unit or the Second Unit.

Fraudulent Lien

14. After C. POWELL noticed the unauthorized charged placed by ATC on her credit card, she disputed the credit charge with her credit card company.

15. In retaliation for the dispute, on July 22, 2024, ATC executed a claim of lien against B. POWELL's Property in the amount of $7,595, which was in greatly in excess of the amount work that the Plaintiffs agreed for ATC to perform. Moreover, ATC had already charged B. POWELL's credit card, and thus, even assuming that this charge was accurate, ATC had no right to impress a lien on the Property.

16. Shortly thereafter, B. POWELL sold her Property. ATC's false and fraudulent lien caused the title company to withhold funds from her at closing, and retain the funds in escrow. ATC refused to release the lien, and the title company refused to release the funds to B. POWELL that she greatly needed.

17. In doing so, ATC inflicted distress and mental anguish upon Plaintiffs, and placed them in a position of duress and coercion as Plaintiffs could not access the funds from the sale of the home with the false and fraudulent lien placed on the Property. ATC financially exploited B. POWELL in violation of Fla. Stat. § 825.103, an elderly woman, by placing the unauthorized transction on the credit card, recording the fraudulent and wrongful lien and cloud on title on her Property, refusing the release the lien, and coercing her signature on a false document.

The Lack of Disclosures.

18. The transaction between ATC and Plaintiff was a "door-to-door sale" as defined by the Cooling-Off Rule. 16 CFR § 429(a) ("A sale, lease, or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a

place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges), and which has a purchase price of $25 or more if the sale is made at the buyer's residence or a purchase price of $130 or more if the sale is made at locations other than the buyer's residence, whether under single or multiple contracts.")

19. The transaction performed by ATC was for the sale of consumer goods for the replacement of an HVAC system.

20. ATC violated the Cooling-Off Rule because it failed to furnish (2) notices of cancellation to Plaintiffs "at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract. The notice must be substantially like the following:

> Notice of Cancellation
> [enter date of transaction]
> (Date)
> You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.
> If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.
>
> If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you

> may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.
>
> If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.
>
> To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [Narne of seller], at [address of seller's place of business] NOT LATER THAN MIDNIGHT OF
> [date].
>
> I HEREBY CANCEL THIS TRANSACTION.
>
> (Date)
>
> (Buyer's signature)
>
> 16 CFR § 429.1(b)

21. ATC also did not comply with the Cooling-Off Rule: "before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation." 16 CFR § 429.1(c).

22. Further, ATC's representative never orally informed Plaintiffs of their right to cancel. 16 CFR § 429.1(e) ("Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.").

23. ATC also did not comply with Section 501.031 of Florida's Home Solicitation statute that requires the following statement to be provided to the buyer in any written agreement

involving a home solicitation sale, that includes a conspicuous caption "BUYER'S RIGHT TO CANCEL":

> "This is a home solicitation sale, and if you do not want the goods or services, you may cancel this agreement by providing written notice to the seller in person, by telegram, or by mail. This notice must indicate that you do not want the goods or services and must be delivered or postmarked before midnight of the third business day after you sign this agreement. If you cancel this agreement, the seller may not keep all or part of any cash down payment."

24. In addition, ATC did not comply with Section 501.046 requirements and duties involved in conducting a home solicitation sale because it failed to:

> (b) Direct all employees engaged in home solicitation sales to leave with the buyer a "business card," contract, or receipt, which shall include:
> 1. The disclosure required in s. 501.031.
> 2. The name, address, and telephone number of the parent company or sponsor.
> 3. The name, address, and telephone number of the employee making the home solicitation sale.

25. ATC also did not comply with Section 713.015 of the Florida Statutes, which requires the following notice to be provided in a direct contract greater than $2,500, "printed in no less than 12-point, capitalized, boldfaced type on the front page of the contract or on a separate page, signed by the owner and dated:

> ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT

YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

The Damages.

26. ATC caused damage to Plaintiffs by discarding the First Unit, refusing to repair the First Unit under warranty and in accord with the Plaintiffs' authorization to clean the coils, installing a Second Unit without authorization, executing a fraudulent lien in excess of the amount of the transaction agreed upon between the parties, and causing emotional distress.

27. All duties, conditions precedent, and statutory requisites to this action have been performed, waived, and/or been excused.

28. Plaintiffs have retained the undersigned attorneys and is obligated to pay their reasonable attorneys' fees in connection with this lawsuit.

Class Representation Allegations.

29. Plaintiffs bring this action on behalf of themselves and the following classes (the "Classes") pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3).

30. Plaintiffs propose the following Class definitions, subject to amendment as appropriate:

Fraudulent Lien Class: All persons with the State of Florida: (1) upon whom ATC recorded or sought to impress a lien (2) in excess of amounts owed by the consumer under contract at the time the lien was placed (3) within four years prior to the filing of the Complaint.

FCCPA Class. All persons with the State of Florida: (1) upon whom ATC threatened or recorded or sought to impress a lien (2) in excess of amounts owed by the consumer under contract at the time the lien was placed (3) within two years prior to the filing of the Complaint.

<u>FDUTPA Class – Lack of Disclosures Class</u>. All persons within the State of Florida: (1) who ATC charged for replacement of and/or installation of an HVAC unit, and (2) who did not previously receive the 3 day notice to cancel in compliance with the Cooling-Off Rule under Section 16CFR 429.1 and/or Florida's Home Solicitation Act under Fla. Stat. § 501.031, and/or did not receive lien disclosures in compliance with Fla. Stat. § 713.015, (3) within four years prior to the filing of the Complaint.

<u>FDUPTA/Breach of Building Code Class – Failure to Pull Permit</u>. All persons within the State of Florida: (1) who ATC charged for replacement of and/or installation of an HVAC unit, (2) upon whose Property ATC did not pull a permit, (3) within four years prior to the filing of the Complaint.

<u>Breach of Warranty Class</u>. All persons within the State of Florida: (1) who ATC charged for repair, replacement of and/or installation of an HVAC unit, (2) who, at the time of ATC's services, had a pending warranty in place with ATC or the manufacturer, (3) within four years prior to the filing of the Complaint.

31. Plaintiffs are a member of and will fairly and adequately represent and protect the interests of the Classes as he has no interests that conflict with any of the Class members.

32. Excluded from the Classes are counsel, Defendant, and any entities in which Defendant has a controlling interest, the Defendant's agents and employees, any judge to whom this action is assigned, any member whom has previously entered into a general release with ATC, and any member of such judge's staff and immediate family.

33. Plaintiffs and all members of the Classes have been harmed by the acts of Defendant, including, but not limited to, damages from the placement of a fraudulent lien and wrongful and illegal collection practices, damages for failure to allow a customer to cancel within three business days, and damages incurred for services that should have been covered under warranty.

34. This Class Action Complaint seeks injunctive relief and money damages.

35. The Classes as defined above, are identifiable through Defendant's billing and lien and warranty records, and customer databases.

36. Plaintiff does not know the exact number of members in the Classes, but Plaintiffs reasonably believe Class members number, at minimum, in the thousands, if not more.

37. The joinder of all Class members is impracticable due to the size and relatively modest value of each individual claim.

38. Additionally, the disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits.

39. There are well defined, nearly identical, questions of law and fact affecting all parties. The questions of law and fact, referred to above, involving the class claims predominate over questions that may affect individual Class members.

40. There are numerous questions of law and fact common to Plaintiff and to the proposed Classes, including, but not limited to, the following:

a. Whether ATC willfully and knowingly exaggerated a lien against a customer's property;

b. Whether ATC engaged in wrongful collection practices, including by threatening and/or recording of a fraudulent lien;

c. Whether ATC failed to provide proper disclosures under the Cooling-Off Rule under Section 16CFR 429.1 and/or Florida's Home Solicitation Act under Fla. Stat. § 501.031, and Fla. Stat. § 713.01;

d. Whether ATC failed to pull a permit before installing an HVAC unit on the Plaintiffs' property; and

e. Whether ATC's conduct entitles the Class members to damages, including statutory and punitive damages, and/or injunctive relief.

41. Further, Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have no interests which are antagonistic to any member of the Classes.

42. Plaintiffs has retained counsel with substantial experience in complex litigation and class actions. Plaintiffs' counsel is Board Certified in Construction Law by the Florida Bar. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the other members of the Classes, and have the financial resources to do so.

43. Plaintiffs' claims are typical of the Class members. Common questions of law and fact predominate over questions affecting only individual Class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of Class members, which will be ascertainable from records maintained by Defendant.

44. The likelihood that individual members of the Classes will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case, and even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

45. Plaintiffs, individually and on behalf of the Class, bring this action against Defendant seeking injunctive relief, statutory and actual damages, punitive damages, costs, and attorneys' fees for its violations as alleged below.

46. Unless otherwise indicated, the use of any Defendant's name in this Complaint includes all agents, employees, officers, members, directors, qualifiers, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that Defendant named.

47. Plaintiffs are not aware of any prior litigation brought on a class action basis concerning this controversy who meet the criteria for class membership described above.

COUNT I – FRAUDULENT LIEN
(AGAINST ATC)

Plaintiffs hereby re-alleges paragraphs 1-47 above as if fully set forth herein, and further alleges:

48. This is an action for fraudulent lien filed pursuant to Section 713.31 of the Florida Statutes.

49. Section 713.31(2)(a) of the Florida Statutes provides:

> (2)(a) Any lien asserted under this part in which the lienor has willfully exaggerated the amount for which such lien is claimed or in which the lienor has willfully included a claim for work not performed upon or materials not furnished for the property upon which he or she seeks to impress such lien or in which the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration shall be deemed a fraudulent lien.

50. ATC wrongfully sought to impress a lien upon Plaintiffs' Property and the member of the Class when it did not have a contract with Plaintiffs for the work that was performed in the replacement of the HVAC unit.

51. ATC wrongfully willfully exaggerated the amount for which it sought to impress a lien upon Plaintiff's Property and the member of the Class by seeking to impress a lien the property in excess of the amount due.

52. ATC wrongfully placed a lien upon Plaintiffs' Property and the member of the Class as a result of the Plaintiffs' dispute of the credit card charge, and *after* ATC had already charged Plaintiffs' card for part or all of the sums sought under the lien.

53. On July 22, 2024, ATC recorded a false and exaggerated executed lien against Plaintiff's Property. Similarly, ATC recorded false and exaggerated liens against the members of the Class.

54. ATC delivered the fraudulent and exaggerated liens with the intent to intimidate and threaten Plaintiffs and members of the Class.

55. Plaintiffs and the members of the Class are entitled to actual damages, plus punitive damages under Section 713.31(2)(c) for "in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due" or $58,401.

56. Plaintiffs and the members of the Class as the prevailing party are also entitled to recovery of her attorneys' fees under Fla. Stat. § 713.31(c).

WHEREFORE, Plaintiffs and all Class members demand judgment for damages against Defendant, ATC, for statutory damages, actual damages, consequential damages, incidental damages, punitive damages, plus interest thereon, and attorneys' fees and costs of bringing this action.

COUNT II – VIOLATION OF THE FLORIDA COLLECTION CONSUMER PROTECTION ACT (AGAINST ATC)

Plaintiffs hereby re-alleges paragraphs 1-56 above as if fully set forth herein, and further alleges:

57. This is an action for Florida Consumer Protection Act filed pursuant to Section 713.31 of the Florida Statutes.

58. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., to eliminate abusive debt collection practices

by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

59. Our Legislature supplemented and buttressed the Fair Debt Collection Practices Act by passing the Florida Consumer Collections Practices Act, Chapter 559, Part IX, Florida Statutes (the "FCCPA"). It enacted the FCCPA to protect consumers from both creditors and debt collectors who seek to collect debts through illegal means of threats, intimidation, and coercion. See § 559.552, Fla. Stat. ("Nothing in this part shall be construed to limit or restrict the continued applicability of the federal Fair Debt Collection Practices Act to consumer collection practices in this state. This part is in addition to the requirements and regulations of the federal act. In the event of any inconsistency between any provision of this part and any provision of the federal act, the provision which is more protective of the consumer or debtor shall prevail.").

60. Plaintiffs bring this lawsuit to challenge the actions of Defendant, who unlawfully and abusively attempted to collect a debt allegedly owed by Plaintiffs and members of the class, which conduct caused damages.

61. Upon information and belief, the violations by Defendant were knowing and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violation.

62. Plaintiffs and members of the Class are "consumer"(s) as defined by Fla. Stat. 559.55(8) because they are natural persons allegedly obligated to pay for the debt for the purchase of an HVAC.

63. Defendant is a "person" as defined under the FCCPA because it attempted to collect a consumer debt from Plaintiff.

64. Defendant attempted to collect a "consumer debt" from Plaintiffs and the class members as defined by Florida Statute § 559.55(6) because Plaintiffs and the class members were allegedly obligated to pay a debt for personal, family, or household purposes.

65. Defendant had no legal right to attempt to collect on the payment of funds from Plaintiffs or members of the Class.

66. Defendant actively and knowingly participated in the illegal collection activity directed at the Plaintiffs and members of the Class by threatenting or delivering or recording false and willfully exaggerated liens in excess of the amounts owed, charging unauthorized amounts on credit cards, and improperly charging cancellation fees.[1]

67. Defendant had no legal right to use unfair, deceptive, and abusive collection activity directed at the Plaintiffs and/or members of the Class.

68. Mr. Eric Pereira, the President of ATC, not only engaged in the illegal collection activity, he condoned it and ratified it by placing his signature on the fraudulent lien.

69. Because of the Defendant's FCCPA violations, Plaintiffs and member of the Class suffered substantial damage, including but not limited to out-of-pocket monetary loss, interest, funds to discharge and/or remove the cloud on title to their properties, and emotional distress.

[1] As one customer noted on the BBB website, ATC charged a fee of $785 to cancel:
Date: 06/19/2024
1 star
I called Around the Clock and they came to my condo. After quoting me the cost for a new A/C unit, I called and cancelled the order the next day. I never received a bill or statement and I checked my credit card statement and they charged me $7,850 for a new unit, then credited $7, 065, leaving me with a $785 bill. They never contacted me or sent me a bill but told me it was for cancellation fees and permit fees for a unit I never purchased. I can see charging a service call fee, but $785 is a total scam. DO NOT CALL OR USE THEM. I am disputing the charge with my bank today!

70. Plaintiffs and the members of the Class are entitled to actual damages, statutory damages, punitive damages, and attorney's fees and costs because of Defendant's violation of the FCCPA. Fla. Stat. § 559.72(9).

WHEREFORE, Plaintiffs and all Class members demand judgment for damages against Defendant, ATC, for the actual damages, statutory damages, and punitive damages, plus interest thereon, costs of bringing this action, attorneys' fees, and for such further relief as this Court deems proper.

COUNT III – VIOLATION OF THE FLORIDA DECEPTIVE AND TRADE PRACTICES ACT (AGAINST ATC)

Plaintiffs hereby re-alleges paragraphs 1-56 above as if fully set forth herein, and further alleges:

71. This is an action for Florida Deceptive and Trade Practices Act.

72. Defendant engaged in "trade or commerce" as defined by Fla. Stat. Ann. § 501.203(8) when it sold windows to the Plaintiffs during an in-home solicitation sale.

73. Defendant generally violated the FDUTPA under Fla. Stat. Ann. §§ 501.204 including but not limited to when it:

- falsely represented that he was going to clean the coils on B. POWELL's unit, and installed a new unit at the Plaintiffs' property without authorization;
- falsely represented that he was going to charge C. POWELL's credit card for the cleaning of the coils, and instead, without authorization discarded Plaintiffs' First Unit and failed to honor the warranty in place;
- when it failed to disclose to Plaintiffs and the Class members of their right to cancel; and

- when it failed to disclose to Plaintiffs and the Class members of lien disclosures under Florida law;
- when it failed to pull permits for the intstallation of HVAC units as required under Florida law and the requirements of local jurisdictions;
- when it intimidated and threatened the Plaintiffs and members of the Class by placing unauthorized charges, engaging in wrongful disputes as to charges made on customer's credit cards, unlawfully charging cancellation fees, and unlawfully charging amounts in excess of any contract amount; and
- when it intimidated and threatened the Plaintiffs and members of the Class by threatening, delivering or recording a fraudulent lien or engaging in other unlawful collection practices against the Plaintiffs' Property and those of the class members.

74. Defendant committed a *per se* violation of FDUTPA when it violated and failed to provide the required disclosures under:

a. the FTC's Cooling-Off Rule under 16 CFR 429 *et seq*.,
b. Section 501.031 and 501.046 of Florida's Home Solicitation statute,
c. Section 713.015 of the Florida Statutes;
d. Recording of a fraudulent lien under Section 713.31 of the Florida Statutes; and
e. Failure to comply with Florida's Building Code.

75. The Defendant's lack of compliance with the FTC's Cooling-Off Rule, Florida's Home Solicitation Statute, Section 713.015 of the Florida Statutes, Fraudulent Lien statute and Florida Building Code constitutes *per se* FDUTPA violations. Fla. Stat. § 501.203(3) ("Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2017: a) Any rules promulgated pursuant to the Federal

Trade Commission Act, 15 U.S.C. ss. 41 et seq.; (b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or (c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.")

76. Plaintiffs and the class members have suffered substantial damage, including but not limited to, out-of-pocket monetary loss for the wrongful and unathorized charges and/or cancellation fees, damages for inability to enforce their rights in response to any required disclosures, and failure to pull permits.

77. The foregoing acts and omissions of Defendant and/or its affiliates, agents, qualifiers, subcontractors, and/or other persons or entities acting on Defendant's behalf constitute numerous and multiple violations of FDUTPA, for failure to properly provide adequate disclosures, failure to allow customer cancellation, failure to properly comply with permit requirements of the local jurisdictions, and imposition by Defendant of unauthorized charges.

78. Because of Defendant's FDUTPA violations, Plaintiffs and members of the Class are entitled to actual damages, attorney's fees and costs, and declaratory and injunctive relief. Fla. Stat. § 501.211(1)-(2).

WHEREFORE, Plaintiffs and all Class members demand judgment for damages against Defendant, ATC, for the actual damages, damages for any cancellation fees or the costs of any products and services due to the inability to cancel, damages due to ATC discarding the HVAC units, damages from depreciation of the residence, permit fees, plus interest thereon, costs of bringing this action, attorneys' fees, injunctive and declaratory relief, and for such further relief as this Court deems proper.

COUNT IV – BREACH OF BUILDING CODE (AGAINST ATC)

Plaintiffs hereby re-alleges paragraphs 1-47 above as if fully set forth herein, and further alleges:

79. This is an action for the violation of the Florida Building Code filed pursuant to Section 553.84 of the Florida Statutes.

80. ATC undertook the duty to ensure that the construction work on the Property complied with the requirements of the Florida Building Code.

81. ATC materially breached their duties under Section 553.79 and the Florida Building Code by, among other things, failing to pull a permit to perform the work, failing to complete and pass an inspection of the HVAC installation performed by ATC at the Plaintiffs' Property, and on the properties of the members of the Class.

82. ATC knew or should have known that the violation existed, and such violations were willful and knowing.

83. The foregoing acts and omissions of Defendant and/or its affiliates, agents, qualifiers, subcontractors, and/or other persons or entities acting on Defendant's behalf constitute numerous and multiple violations of the building code, for failure to properly comply with permit requirements of the local jurisdictions.

84. As a direct and proximate cause of the aforesaid breaches, Plaintiffs and the members of the Class has suffered damages.

85. Plaintiffs and Class Members are entitled to recovery of its attorneys' fees and costs pursuant to the contract documents and/or terms and conditions then in existence at the time the Defendants' services were performed, and in accord with Fla. Stat. § 57.105(7).

WHEREFORE, Plaintiffs and all Class members demand judgment for damages against Defendant, ATC, for the actual damages, damages from depreciation of the residence, permit fees, consequential damages, and incidental damages, plus interest thereon, costs of bringing this action, attorneys fees, and for such further relief as this Court deems proper.

COUNT V –BREACH OF WARRANTY (AGAINST ATC)

Plaintiffs hereby re-alleges paragraphs 1-47 above as if fully set forth herein, and further alleges:

86. ATC materially breached the Warranty by, *inter alia*, failing to replace the faulty parts and labor of the First Unit under warranty.

87. Instead, ATC engaged in a bait and switch, by refusing to clean the coils and/or repair the First Unit under Warranty, and charging Plaintiffs for the installation of the Second Unit.

88. Upon information and belief, the actions of ATC in failing to honor warranties and charging customers for the labor, materials and services under warranty is a common practice of Defendant.

89. As a direct and proximate cause of the aforesaid breaches, Plaitniffs and all Class Members have been or will be required to expend large sums of money for repair, replacement and/or correction of the work performed by ATC that should have been honored under warranty.

90. Plaintiffs and Class Members are entitled to recovery of its attorneys' fees and costs pursuant to the warranty documents and/or terms and conditions then in existence at the time the Defendants' services were performed, and in accord with Fla. Stat. § 57.105(7).

WHEREFORE, Plaintiffs and all Class members demand judgment for damages against Defendant, ATC, for the actual damages, damages for the cost of new HVAC units, damages due to the HVAC units discarded by ATC, consequential damages, and incidental damages, plus interest thereon, attorneys' fees and costs of bringing this action, and for such further relief as this Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for relief and judgment as follows:

- Determining that this action is a proper class action under Rule 1.220 of the Florida Rules of Civil Procedure;
- Injunctive relief enjoining Defendant from future violations of the Fraudulent Lien statutes, FCCPA, FDUTPA, Building Code, and its Warraty Obligations;
- Awarding Plaintiffs and members of the Class statutory, actual, incidental, concequential and punitive damages;
- Awarding Plaintiffs and members of the Class their reasonable costs and attorneys' fees incurred in this action, including expert fees, pursuant to section Fla. Stat. §§ 713.31(c), 559.77(2), 501.211(1)-(2). Fla. Stat. § 57.105(7), and any other contract or warranty provision;
- Awarding Plaintiffs and the members of the Class any pre-judgment and postjudgment interest as may be allowed under the law; and
- Awarding other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs and all Class members demand a trial by jury of all matters so triable.

DOCUMENT PRESERVATION DEMAND

Plaintiffs and all Class members demand that Defendants take affirmative steps to preserve all invoices, contracts, payments, disputes, disclosures, terms and conditions, communications, evidence, videos, records, lists, documents, electronic mail accounts, text messages, and electronic databases.

DATED this 17th day of July, 2026.

Respectfully Submitted,

/s/ *Diane J. Zelmer*
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