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Case No. N15C-10-249 MMJ



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Middleby Marshall Inc. and Viking Range, LLC,
f/k/a VRC Acquisition Company, LLC,

Plaintiffs,

v.

Fred E. Carl, Jr., Brian M. Waldrop, Brenda Durden, Ronald P. Ussery, Elizabeth Campbell Revocable Trust, W.R. Stephens, Jr. Revocable Trust, Arden Jewel Stephens 1992 Trust, W.R. Stephens, III 1992 Trust, Elizabeth Chisum Campbell 1992 Trust, Susan Stephens Campbell 1992 Trust, Craig Dobbs Campbell, Jr. 1992 Trust, Arden Jewel Stephens Trust; W.R. Stephens, III Trust, Jon E. M. Jacoby, Craig Dobbs Campbell, Jr. 96 Trust, Elizabeth Chisum Campbell 96 Trust, Susan Stephens Campbell 96 Trust, W.R. Stephens, Jr. Children's Trust, Warren A. Stephens Trust, Joan Calhoun Stephens Trust, Laura Whitaker Stephens Trust, Warren M. Amerine Stephens Trust, James D. Simpson, III, Douglas H. Martin, Sarah Dickson Bourgeois, Rebecca Dickson, John Calhoun II, Rebecca J. Estes Revocable Trust, Paula C. Ruffin, Caroline A. Stephens, Paula W. Calhoun Living Trust, Jack Calhoun, Cynthia D. Martin, Caroline Allen, Harriet Grimbell, Justin Mathews, Elizabeth Phillips, Sarah Phillips, Lydia Ruffin, Curtis F. Bradbury, Jr., and Andrew J. Collins, III,

Defendants.

C.A. No. _____

COMPLAINT

Plaintiffs Middleby Marshall Inc. ("Middleby Marshall") and Viking Range, LLC, f/k/a VRC Acquisition Company, LLC ("Viking") (collectively, "Plaintiffs" or "Middleby"), by their attorneys, Skadden, Arps, Slate, Meagher & Flom LLP, allege as follows against defendants Fred E. Carl, Jr., Brian M. Waldrop, Brenda Durden, Ronald P. Ussery, Elizabeth Campbell

Revocable Trust, W.R. Stephens, Jr. Revocable Trust, Arden Jewel Stephens 1992 Trust, W.R. Stephens III 1992 Trust, Elizabeth Chisum Campbell 1992 Trust, Susan Stephens Campbell 1992 Trust, Craig Dobbs Campbell, Jr. 1992 Trust, Arden Jewel Stephens Trust; W.R. Stephens, III Trust, Jon E. M. Jacoby, Craig Dobbs Campbell, Jr. 96 Trust, Elizabeth Chisum Campbell 96 Trust, Susan Stephens Campbell 96 Trust, W.R. Stephens, Jr. Children's Trust, Warren A. Stephens Trust, Joan Calhoun Stephens Trust, Laura Whitaker Stephens Trust, Warren M. Amerine Stephens Trust, James D. Simpson, III, Douglas H. Martin, Sarah Dickson Bourgeois, Rebecca Dickson, John Calhoun II, Rebecca J. Estes Revocable Trust, Paula C. Ruffin, Caroline A. Stephens, Paula W. Calhoun Living Trust, Jack Calhoun, Cynthia D. Martin, Caroline Allen, Harriet Grimbell, Justin Mathews, Elizabeth Phillips, Sarah Phillips, Lydia Ruffin, Curtis F. Bradbury, Jr., and Andrew J. Collins, III (collectively, "Defendants" or "Sellers"):

NATURE OF ACTION

1. This is an action for fraud, breach of contract, and declaratory judgment against Sellers of Viking Range Corporation ("VRC" or the "Company"). Middleby acquired VRC from Sellers in December 2012, for a purchase price of \$380 million (the "Acquisition"). After the Acquisition's closing, however, Middleby discovered that Sellers had inflated the purchase price by knowingly and fraudulently concealing important facts about VRC and its products.

2. Viking's value – the reason its residential cooking products command a premium price, and the reason Middleby was willing to pay a premium price to acquire VRC – rests on its reputation for high quality products and for standing behind those products with a level of service that purchasers of luxury goods expect. The information Sellers hid goes to the heart of that reputation. Had Sellers disclosed the truth, Middleby would never have paid anything close to \$380 million for VRC, and may not have undertaken the Acquisition at all.

3. Sellers hid from Middleby, for example, that VRC's senior management, including several Sellers, had learned that certain VRC ranges – the Company's core product – contained a design defect that allowed the ranges to turn on and heat up by themselves, without anyone touching them. Engineers and others at VRC recognized that this defect, which cut across a number of the Company's models, implicated both safety and operational concerns. Despite that Sellers knew of this issue since at least the spring of 2011, Sellers intentionally failed to disclose it to Middleby.

4. This product safety issue has since led to a recall of approximately 60,000 ranges in the United States and Canada. It has also resulted in significant out-of-pocket losses and damage to the brand's reputation and goodwill that will have an ongoing adverse effect on the sales of Viking products.

5. Sellers also concealed that VRC had a widespread practice of underaccruing expenses, including warranty costs and product adjustment costs, and that the Company had intentionally determined not to increase its warranty reserves in the run-up to the Acquisition even after VRC switched from a one-year to a three-year product warranty. Sellers' actions caused the financial statements of VRC at the time of the Acquisition to be severely overstated, further contributing to Middleby's gross overpayment. Indeed, Middleby has suffered actual out-of-pocket warranty and product adjustment costs related to products manufactured before the Acquisition that approach 900% of the amount reserved at the time of the Acquisition.

6. Sellers also downplayed the severity of customer service issues at the Company and the impact those issues had on the Company's relationships with dealers, distributors, and customers. Middleby has been forced to spend millions of dollars in order to rebuild the Viking brand's image and reputation.

7. Through their actions, Sellers knowingly and fraudulently misled Middleby about the current profitability and future prospects for the Company. Had Sellers not concealed the truth about VRC's business, Middleby would have paid tens of millions of dollars less for the Company, if they had bought it at all.

8. Middleby now sues to recover damages for the harm it has suffered as a result of Sellers' fraudulent conduct and for the breaches of representations and warranties contained in the December 31, 2012 Stock Purchase Agreement by and among Middleby Marshall, Viking, VRC, and Sellers (the "SPA"). (See SPA, attached as Ex. 1.)

9. Middleby's damages include not only the direct dollar impact of Sellers' fraudulent actions and the breaches of representations and warranties, but the effect of those breaches on the Viking brand's earnings, prospects, and value – and thus on the purchase price. Middleby has suffered total damages in an amount to be proved at trial, but in excess of \$100 million.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this proceeding pursuant to 6 *Del. C.* § 2708, 10 *Del. C.* § 541, and *Del. C. Ann. Const.*, Art. 4, § 7. In addition, all parties consented to jurisdiction in this Court under Section 8.12 of the SPA.

11. All parties consented to venue in this Court under Section 8.12 of the SPA.

12. Pursuant to Section 8.11 of the SPA, Delaware law applies.

PARTIES

13. Plaintiff Middleby Marshall Inc. is a Delaware corporation with its principal place of business in Elgin, Illinois. Middleby Marshall is a wholly owned subsidiary of The Middleby

Corporation, a Delaware corporation, headquartered in Elgin, Illinois, which is publicly traded on NASDAQ [MIDD].

14. Plaintiff Viking Range, LLC, f/k/a VRC Acquisition Company, LLC, is a Delaware limited liability company, with its principal place of business in Greenwood, Mississippi and is a wholly owned subsidiary of Middleby Marshall. Viking Range, LLC formerly operated as VRC.

15. Defendant Fred E. Carl, Jr. is a former shareholder of VRC, as well as VRC's founder and former President and Chief Executive Officer ("CEO"). Defendant Carl resigned as President and CEO on January 31, 2013, after completion of the Acquisition.

16. Defendant Brian M. Waldrop is a former shareholder of VRC and a former senior officer of VRC. Defendant Waldrop first joined VRC in 1991, and became its senior finance employee beginning in 1996. Defendant Waldrop served as Chief Financial Officer ("CFO") of VRC from January 1, 1999 – January 2013, and as the President of Viking from February 2013 – December 2013.

17. Defendant Brenda Durden is a former shareholder of VRC.

18. Defendant Ronald P. Ussery is a former shareholder of VRC, and a senior officer of Viking, serving as the Vice President of Manufacturing.

19. Defendant Elizabeth Campbell Revocable Trust is a former shareholder of VRC.

20. Defendant W.R. Stephens, Jr. Revocable Trust is a former shareholder of VRC.

21. Defendant Arden Jewel Stephens 1992 Trust is a former shareholder of VRC.

22. Defendant W.R. Stephens, III 1992 Trust is a former shareholder of VRC.

23. Defendant Elizabeth Chisum Campbell 1992 Trust is a former shareholder of VRC.

24. Defendant Susan Stephens Campbell 1992 Trust is a former shareholder of VRC.
25. Defendant Craig Dobbs Campbell, Jr. 1992 Trust is a former shareholder of VRC.
26. Defendant Arden Jewel Stephens Trust is a former shareholder of VRC.
27. Defendant W.R. Stephens, III Trust is a former shareholder of VRC.
28. Defendant Jon E. M. Jacoby is a former shareholder of VRC.
29. Defendant Craig Dobbs Campbell, Jr. 96 Trust is a former shareholder of VRC.
30. Defendant Elizabeth Chisum Campbell 96 Trust is a former shareholder of VRC.
31. Defendant Susan Stephens Campbell 96 Trust is a former shareholder of VRC.
32. Defendant W.R. Stephens, Jr. Children's Trust is a former shareholder of VRC.
33. Defendant Warren A. Stephens Trust is a former shareholder of VRC.
34. Defendant Joan Calhoun Stephens Trust is a former shareholder of VRC.
35. Defendant Laura Whitaker Stephens Trust is a former shareholder of VRC.
36. Defendant Warren M. Amerine Stephens Trust is a former shareholder of VRC.
37. Defendant James D. Simpson, III is a former shareholder and director of VRC.
38. Defendant Douglas H. Martin is a former shareholder of VRC.
39. Defendant Sarah Dickson Bourgeois is a former shareholder of VRC.
40. Defendant Rebecca Dickson is a former shareholder of VRC.
41. Defendant John Calhoun II is a former shareholder of VRC.
42. Defendant Rebecca J. Estes Revocable Trust is a former shareholder of VRC.
43. Defendant Paula C. Ruffin is a former shareholder of VRC.
44. Defendant Caroline A. Stephens is a former shareholder of VRC.
45. Defendant Paula W. Calhoun Living Trust is a former shareholder of VRC.
46. Defendant Jack Calhoun is a former shareholder of VRC.

47. Defendant Cynthia D. Martin is a former shareholder of VRC.
48. Defendant Caroline Allen is a former shareholder of VRC.
49. Defendant Harriet Grimbell is a former shareholder of VRC.
50. Defendant Justin Mathews is a former shareholder of VRC.
51. Defendant Elizabeth Phillips is a former shareholder of VRC.
52. Defendant Sarah Phillips is a former shareholder of VRC.
53. Defendant Lydia Ruffin is a former shareholder of VRC.
54. Defendant Curtis F. Bradbury, Jr. is a former shareholder of VRC.
55. Defendant Andrew J. Collins, III is a former shareholder of VRC.

FACTUAL ALLEGATIONS

A. The Acquisition

56. The Middleby Corporation, through its operating subsidiary Middleby Marshall, is a leading producer of commercial cooking and food processing and packaging equipment for the foodservice industry. Middleby Marshall and its subsidiaries design, manufacture, sell, distribute, and service their products worldwide and, combined, currently offer approximately 41 foodservice brands, 13 food processing equipment brands, and 18 residential cooking equipment brands.

57. Middleby Marshall has a strong track record of acquiring and growing companies. Over the past fifteen years, Middleby Marshall has acquired and successfully integrated into its own business more than forty companies. In not a single one of those instances, has Middleby Marshall had to file litigation against the sellers to resolve issues related to the acquisition.

58. In 2012, Middleby Marshall entered into discussions with Sellers to acquire VRC. This transaction would be the first to extend The Middleby Corporation's business into the high-

end residential market segment. VRC was, and is today (operating as Viking Range, LLC), an appliance company that manufactures high-end professional kitchen appliances for residential and commercial use, including cooking, ventilation, kitchen clean-up and refrigeration appliances, as well as various outdoor appliances.

59. The parties initiated discussions for Middleby Marshall to acquire VRC in August 2012.

60. Upon information and belief, Sellers delegated the negotiations for the sale of VRC to Stephens, Inc., an investment banking company affiliated with several of the Sellers. Representatives of Stephens Inc., together with Defendants Carl and Waldrop, actively participated in the discussions and due diligence sessions leading to the Acquisition.

61. In reliance on the statements made during the due diligence process and certain representations and warranties documented in the SPA, the parties ultimately agreed to the Acquisition's terms, pursuant to which VRC Acquisition Company, LLC (a wholly-owned subsidiary of Middleby Marshall) purchased all of the issued and outstanding shares of common stock of VRC in an all cash transaction for \$380 million, subject to certain post-closing adjustments.

62. The parties executed the SPA and consummated the transaction on December 31, 2012.

B. Indemnification Obligations

63. Article 6 of the SPA addresses the parties' indemnification obligations in connection with the Acquisition.

64. The SPA requires Sellers to compensate Middleby for any "Losses" suffered or incurred on account of, arising from, or in connection with: (i) any inaccuracy or breach of any representation or warranty of VRC or Sellers contained in the SPA; (ii) any breach by VRC or

any Seller of any covenant, undertaking, or other agreement of VRC or Sellers contained in the SPA; (iii) any inaccuracy in any certificate, instrument, or other document delivered by VRC or Sellers as required by the SPA; or (iv) certain matters set forth on Schedule 6.1 to the SPA.

65. Middleby Marshall negotiated a broad definition of covered "Losses," which includes not only actual amounts paid out-of-pocket, but all "Liabilities" of any kind or nature, whether absolute or contingent, accrued or unaccrued, or liquidated or unliquidated, including all costs and expenses related thereto. (SPA, § 6.1; A-5.)

66. For any indemnified matter, covered "Losses" are defined broadly to include:

Any loss, Liability, damage, demand, claim, cost, suit, action or cause of action, judgment, award, assessment, interest, penalty or expense (including reasonable expense of investigations and fees and disbursements of counsel and other professionals).

(SPA, § 6.1.) "Liability" or "Liabilities" are further defined as:

[A]ny and all debts, losses, expenses, liabilities, damages, fines, costs, royalties, proceedings, deficiencies or obligations of any nature (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due, whether direct, indirect or consequential and whether or not resulting from third-party claims) and any out-of-pocket costs and expenses (including, without limitation, any claims under any benefit or compensatory plan, agreement, program or arrangement of the Company or any Subsidiary), including any liability for Taxes.

(SPA at A-5.)

67. In addition, the SPA provides that the rights and remedies provided by the indemnification provisions are cumulative and do not prevent Middleby from asserting other rights or seeking additional remedies. (SPA, § 6.5.)

68. Of the purchase price, \$30 million was deposited in an escrow account as security for potential post-closing indemnification claims of Middleby against Sellers. Although the \$30 million was a source of funds to cover indemnification obligations of Sellers, it was not a cap on indemnification claims.

C. Middleby Discovers Sellers' Fraudulent Conduct and VRC's Breaches of Representations and Warranties

69. After the Acquisition, Middleby learned that Sellers had intentionally inflated the purchase price by concealing important facts and overstating VRC's financial statements. Among other things, Middleby discovered that Sellers had (i) intentionally concealed a product safety issue related to certain ranges; (ii) intentionally underaccrued warranty and product adjustment costs; (iii) failed to account for or disclose other liabilities thereby overstating their financials; and (iv) inflated the value of the Viking brand by downplaying the extent of customer service problems and the loss of confidence and respect at the dealer/distributor level.

70. In connection with this misconduct, Sellers not only intentionally caused VRC to breach several of its representations and warranties in the SPA, but they also fraudulently induced Middleby to enter into the SPA and complete the Acquisition at a grossly unfair purchase price of \$380 million.

71. As demonstrated below, Middleby has suffered actual out-of-pocket losses exceeding \$35 million as a result of Sellers' fraudulent actions and VRC's multiple breaches of representations and warranties.

72. But this \$35 million is not an accurate reflection of the total Losses suffered by Middleby as a result of Sellers' actions. Sellers understood that Middleby based the purchase price not on the book value of VRC's assets, but rather on the value of its projected future earnings calculated by, among other things, applying a multiple of VRC's earnings as represented by Sellers. In overstating those earnings, Sellers knew they would cause Middleby to pay a multiple of the amount of overstatement.

73. What is more, Middleby has been forced to incur tens of millions of dollars to turn Viking around, rebuild its brand image and reputation, and allow it to achieve financial

success. Middleby's most senior executives have been forced to spend a disproportionate amount of their time fixing the issues that Sellers fraudulently hid before the Acquisition. Initiatives undertaken by Middleby include organizational restructuring and headcount reductions, consolidation and disposition of facilities and business operations, and discontinuation of products. Middleby was also forced to spend months and approximately \$100 million to reorganize Viking's distribution channel, which Viking had neglected for many years. Middleby replaced Viking's independent distributors, who had been largely demoralized and unmotivated by Viking's distribution, product quality, and customer service problems, with a company-owned distribution network that allows Middleby to control and enhance Viking's sales, marketing and customer support processes.

74. Through this action, Middleby seeks to recover the total Losses suffered for the following unresolved claims as well as for its reasonable legal, accounting, and other professional fees, and related costs and expenses that Middleby has incurred and will continue to incur in identifying, prosecuting, and seeking recoveries on these and other claims against Sellers:

1	Consumer Product Safety Commission Matters (related to range issues) (excluding legal fees and potential penalty)	\$8,732,000+
2	Underaccrued Warranty Expenses and Product Adjustments as of 7/7/15	\$19,425,885
3	Underaccrued Warranty Expenses and Product Adjustments (estimated continued liability)	\$1,104,378
4	Adjustment for Insufficient Inventory Reserve	\$3,155,447
5	Failure to Maintain Financial Statements of Brazilian subsidiary in accordance with GAAP	\$1,733,548
6	Underaccrued Customer Rebates	\$543,350
7	Failure to Accrue Sales Commission	\$283,805
8	Underaccrued General Liability Expenses	\$191,836
9	Campbell, MacPherson & Milne International Distributor Agreement and related arbitration	TBD
10	Marvel Products	TBD
TOTAL		AT LEAST \$35 million

1. **Fraud, Breaches of Sections 2.8, 2.15, and 2.19, and Losses Based on Product Liability Issues Related to Viking Ranges (Claim 1)**

75. In Section 2.8 of the SPA, Sellers caused VRC to represent and warrant that the Company and its Subsidiaries (as defined in the SPA) had no undisclosed liabilities.

76. In Section 2.15, Sellers caused VRC to represent and warrant that, except as set forth in Schedule 2.15, there were "not presently pending, or, to the knowledge of the Company, threatened, any civil, criminal or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings or demand letters relating to any hazard or alleged Defect in design, manufacture, materials or workmanship, including any failure to warn or alleged breach of express or implied warranty or representation, relating to any Product manufactured, distributed or sold by or on behalf of the Company or any of its Subsidiaries." Schedule 2.15, in turn, identified the existence of product liability issues related to certain VRC refrigerators and dishwashers.

77. In Section 2.19(a), Sellers further caused VRC to represent and warrant that the Company and its Subsidiaries had been operated in accordance with all applicable Laws (as

defined in the SPA). At the time that Sellers caused the Company to make these representations and warranties, Sellers, through the Company's senior management, had knowledge that a design defect in certain ranges – the Company's core product line – allowed the ranges to turn on by themselves thereby creating product safety concerns.

78. Indeed, Middleby learned after the Acquisition that, as early as the spring of 2011, VRC had knowledge that liquid could pool inside the control panels of certain ranges and cause the oven or griddle to come on unexpectedly while the control knobs were in the off position. The Company even created special protocols for customer service representatives and technicians who received complaints of ovens turning on by themselves, highlighting that VRC's senior management (which included certain Sellers) was aware of and concerned about the safety issue.

79. Middleby also learned that in 2011, after receiving multiple customer complaints regarding this safety issue, VRC engineers set out to determine whether they could replicate the problem at VRC's headquarters. They quickly found that they could replicate the issue on VRC ranges, thus confirming that there was a serious design defect with the ranges.

80. Because VRC recognized the self-starting range problem as a safety issue, in October 2012, the VRC Safety Committee included it in a Safety Update presentation and discussed it at a meeting with members of senior management, including the Chief Operating Officer, whom Sellers had designated as a primary point of contact for Middleby Marshall personnel during the due diligence process on the Acquisition.

81. The VRC Safety Committee presentation included only matters that demanded consideration of the Company's obligations to the U.S. Consumer Product Safety Commission

("CPSC")—namely, the dishwasher and refrigerator recalls disclosed in Schedule 2.15 of the SPA and the range defect.

82. After the Acquisition, Middleby also learned that, in 2011 and 2012, VRC's engineers implemented three design changes in an effort to fix the defect, including two changes that were set to go into production just days after the Acquisition.

83. Despite all of this knowledge, Sellers fraudulently hid the range defect during due diligence in order to induce Middleby Marshall to complete the Acquisition at an inflated purchase price.

84. After discovering the issue, receiving additional complaints, and performing safety testing, Middleby reported the design defect to the CPSC pursuant to Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. § 2064(b) (the "CPSA"). The CPSC ultimately approved a product recall affecting approximately 60,000 ranges, all manufactured pre-Acquisition. Viking announced the recall on May 21, 2015.

85. On August 5, 2015, Middleby received notice that the CPSC is investigating Viking to determine whether it complied with the reporting requirements of the CPSA or committed prohibited acts under the CPSA.

86. Based on prior experience, Middleby estimates that it will suffer out-of-pocket losses exceeding \$8,732,000 in connection with the recall of oven ranges and related investigation by the CPSC, as well as related attorneys' fees and costs and a potential penalty. Middleby will also suffer damages to its brand and reputation as a result of the recall.

87. Consistent with the provisions of the SPA, Middleby first provided Sellers with notice of this claim on June 17, 2014. It provided supplemental notice of the claim on September 15, 2014, January 30, 2015, April 29, 2015, May 19, 2015, and August 17, 2015.

88. Under Delaware law, Middleby is entitled to recover damages for Sellers' fraudulent conduct.

89. In addition, under Section 6.1 of the SPA, Middleby is entitled to recover from Sellers all Losses suffered as a result of VRC's breaches of representations and warranties, plus reasonable legal and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries related to the range defect. To date, Sellers have refused to honor these indemnification obligations.

90. Middleby also seeks a declaration that Middleby is entitled to indemnification for all Losses incurred with respect to the CPSC recall of Viking ranges.

2. **Fraud, Breaches of Sections 2.5, 2.6 and 2.8, and Losses Based on Warranty and Product Adjustment Claims (Claims 2-3)**

91. In Section 2.5 of the SPA, Sellers caused VRC to represent and warrant that the "Books and Records of the Company and the Subsidiaries [were] accurate and complete in all material respects and ha[d] been maintained in accordance with sound business practices."

92. In Section 2.6, Sellers caused VRC to represent and warrant, among other things, that the Financial Statements of the Company (as defined in the SPA) had been prepared in accordance with GAAP and were true, complete and accurate and fairly presented, in all material aspects, the financial position of the Company.

93. And in Section 2.8, Sellers caused VRC to represent and warrant that the Company had no undisclosed liabilities.

94. Despite these representations and warranties, after closing, Middleby learned that VRC had failed to prepare its Financial Statements in accordance with GAAP in several respects, most significantly by materially underaccruing expenses for warranty and product adjustment

costs related to products that were manufactured pre-Acquisition, but with the warranty expenses to be paid post-Acquisition.

95. For example, Middleby learned that VRC had knowingly reserved only one-third of its average yearly warranty costs. Middleby also learned that senior management had intentionally determined not to increase VRC's warranty reserves despite changing from a one-year to a three-year product warranty in May 2011.

96. These acts, which led to significant underaccruals in warranty and product adjustment reserves, were known to Sellers at the time of the Acquisition, including through defendant Waldrop who served as VRC's CFO during the relevant time period.

97. Sellers nonetheless failed to disclose to Middleby that VRC had woefully inadequate reserves. Instead, Sellers fraudulently caused VRC to represent and warrant the accuracy of its Financial Statements, upon which Middleby relied.

98. Sellers' deceitful conduct has resulted in Middleby incurring actual warranty and product adjustment costs that approach 900% of the amount reserved by Sellers. Sellers reserved just \$2,102,000 for warranty expenses and \$393,620 for product adjustment expenses in the Financial Statements, yet actual out-of-pocket Losses for warranty and product adjustment claims for pre-Acquisition products, as of July 2015, exceeded the reserved amounts by more than \$19,425,000. In addition, based on claims received to date, Middleby expects that Viking will receive additional claims in excess of \$1.1 million.

99. Middleby provided notice of these claims to Sellers on June 27, 2014, and provided Sellers with extensive supporting materials on December 31, 2014.

100. Under Delaware law, Middleby is entitled to recover damages for Sellers' fraudulent conduct.

101. In addition, under Section 6.1 of the SPA, Middleby is entitled to recover from Sellers all Losses suffered as a result of VRC's breaches of representations and warranties, plus reasonable legal and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries on these claims. To date, Sellers have refused to honor these indemnification obligations.

102. Middleby also seeks a declaration that Middleby is entitled to indemnification for all Losses incurred with respect to the warranty and product adjustment costs related to pre-Acquisition products.

3. **Other Breaches of Sections 2.5, 2.6 and 2.8 (Claims 4-8)**

103. Middleby has also learned that Sellers further caused VRC to breach Sections 2.5, 2.6 and 2.8 of the SPA by failing to meet its obligations to maintain accurate Books and Records (as defined in the SPA) and to prepare Financial Statements (as defined in the SPA) in accordance with GAAP, including by:

- Underaccruing customer rebates related to sales made prior to November 30, 2012, causing actual out-of-pocket Losses of approximately \$543,350;
- Failing to accrue sales commissions related to sales made prior to November 30, 2012, causing actual out-of-pocket Losses of approximately \$283,805;
- Failing to reserve for excess and obsolete inventory, including for parts that are included in finished goods, service parts, and for Marvel inventory withdrawn from distributors prior to the Acquisition, causing total Losses of approximately \$3,155,447;
- Underaccruing general liability expenses, causing Losses of approximately \$191,836; and
- Failing to include a bad debt reserve on their U.S. financials for non-collectible accounts receivable related to Brazil, requiring Viking to write off \$186,980 post-closing.

104. In addition, VRC failed to prepare the financial statements of its Brazilian subsidiary in accordance with GAAP, causing Losses of at least \$1,733,548. Among other things, VRC:

- Failed to properly account for contingent tax liabilities, resulting in Losses of \$343,000;
- Failed to adequately accrue for excess and slow moving inventory that is not saleable, resulting in Losses of \$319,000;
- Overstated accounts receivable, resulting in Losses of \$539,000;
- Failed to properly account for sales orders that were invoiced but not shipped, resulting in Losses of \$313,000; and
- Underaccrued warranty expenses with respect to periods prior to Closing, resulting in Losses of \$32,000.

105. Middleby provided notice of these claims to Sellers on June 27, 2014, and provided extensive supporting materials on December 31, 2014.

106. Under Section 6.1 of the SPA, Middleby is entitled to recover from Sellers all Losses suffered as a result of VRC's breaches of Sections 2.5, 2.6 and 2.8 of the SPA, plus reasonable legal and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries on these claims. To date, Sellers have refused to honor these indemnification obligations.

107. Middleby also seeks a declaration that Middleby is entitled to indemnification for all Losses incurred with respect to VRC's failure to maintain accurate Books and Records and to prepare their Financial Statements in accordance with GAAP.

4. **Breach of Sections 2.8 and 2.20 and Losses Related to the Campbell, MacPherson & Milne International Distributor Agreement (Item 9)**

108. In Section 2.8 of the SPA, Sellers caused VRC to represent and warrant that it had no undisclosed liabilities. In Section 2.20 of the SPA, Sellers caused VRC to represent and warrant that Section 2.20 of the Company Disclosure Schedule included all material Contracts of the Company (as defined in the SPA), including "(x) all Contracts obligating the Company . . . to provide or obtain products or services for a period of one year or more," and "(xvi) any exclusive sales representative or exclusive distribution Contract."

109. Despite these representations and warranties, after the Acquisition, Middleby learned for the first time that VRC had entered into a five-year exclusive international distributorship agreement (the "Distributor Agreement") with Campbell, MacPherson & Milne, LLC ("CMM") on August 12, 2012, for the sale of VRC commercial products.

110. The Distributor Agreement was not disclosed in Section 2.20 of the Company Disclosure Schedule.

111. On February 11, 2013, Middleby terminated the Distributor Agreement after CMM and Viking had failed to establish minimum annual purchasing, marketing, sales and distribution requirements (the "Quotas") by October 1, 2012.

112. Although either party could terminate the Distributor Agreement if the parties failed to establish the required Quotas, (Distributor Agreement, § 11), CMM filed a Demand for Arbitration on August 14, 2014, alleging that Viking wrongfully terminated the Distributor Agreement and further breached the implied duty of good faith and fair dealing (the "CMM Arbitration"). CMM claims damages in excess of \$10,000,000.

113. Middleby originally provided notice to Sellers of the dispute with CMM on June 5, 2013, after CMM threatened litigation against Viking. Although Sellers initially accepted the defense of the matter, they later changed their minds and refused to defend the dispute. When CMM filed for arbitration, Middleby again provided notice and tendered the defense of the CMM Arbitration to Sellers on August 25, 2014. After Sellers again refused to accept the tender, Middleby assumed defense of the CMM Arbitration in good faith and has continued to keep Sellers informed of the progress of the defense.

114. To date, Middleby has incurred Losses in connection with defending the CMM Arbitration and will continue to suffer Losses until the matter is resolved in full.

115. Under Section 6.1 of the SPA, Middleby is entitled to recover from Sellers all Losses suffered as a result of VRC's breaches of Sections 2.8 and 2.20 and the resulting CMM Arbitration, as well as reasonable legal and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries on this claim. To date, Sellers have refused to honor these indemnification obligations.

116. Middleby also seeks a declaration that Middleby is entitled to indemnification for all Losses incurred with respect to the CMM Arbitration.

5. **Breach of Section 2.8 and Losses related to Marvel Products (Claim 10)**

117. In Section 2.8 of the SPA, Sellers caused VRC to represent and warrant that it had no undisclosed liabilities. Despite this representation, subsequent to closing, Middleby learned that Viking had significant exposure to damage claims resulting from its distribution of Marvel products prior to the Acquisition.

118. In accordance with the requirements of the SPA, Middleby provided Sellers with notice of this claim on June 27, 2014.

119. Under Section 6.1 of the SPA, Middleby is entitled to indemnification from Sellers for all Losses arising from the Marvel product claims plus reasonable legal and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries on this claim. To date, Sellers have refused to honor their indemnification obligations.

120. Middleby also seeks a declaration that Middleby is entitled to indemnification for all Losses incurred with respect to the Marvel product claims.

D. **Sellers Have Refused to Honor Their Indemnification Obligations in Breach of the SPA**

121. As required by Section 6.4 of the SPA, each time Middleby learned of an indemnifiable claim, it provided Sellers with notice of the claim, specifying in reasonable detail,

to the extent known, the nature of the Loss, and, if practicable, the estimated amount of the claim. (SPA, § 6.04(a).)

122. In addition, on June 27, 2014, Middleby provided Sellers with a cumulative chart, outlining each claim subject to indemnification with supporting materials, or where previous notice was provided, with updated estimates of Losses. Since that time, Middleby has on several occasions provided Sellers with updates on the progress and cost of the indemnified claims.

123. On October 17, 2014, Middleby received from Sellers' agent, Grant Thornton LLP ("Grant Thornton"), an initial list of questions and information requests in connection with several of the indemnification claims for which Middleby had provided Sellers notice.

124. On December 31, 2014, Middleby posted responsive documents to a secure file transfer Internet site and provided access to those documents once Sellers had completed an agreed-upon confidentiality agreement. Nearly three months after receiving access to extensive information that supported Middleby's claims, Sellers responded to the information by issuing a wide-ranging second set of questions and information requests. Sellers combined this delay tactic with a complete refusal to provide Middleby with any assurances that Sellers would meet their obligations with respect to the matters identified in Middleby's indemnification demands.

125. In addition to the communications through counsel, Middleby's senior executives have repeatedly called Sellers in an effort to meet to resolve these matters. Although Sellers initially promised to meet, they sidestepped repeated requests to schedule the meeting, leaving Middleby with no choice but to file this action.

126. Despite Middleby's repeated attempts to negotiate in good faith with Sellers, Sellers have failed to recognize that they have any liability and have refused to provide the required indemnification.

127. As a result, Middleby has been forced to file litigation to recover for the Losses sustained as a result of Sellers' actions.

COUNT I: FRAUD/FRAUDULENT INDUCEMENT

128. Middleby repeats and re-alleges the foregoing allegations as if fully set forth herein.

129. Sellers fraudulently hid from Middleby the extent of product quality, safety, and customer service issues at VRC, including by (i) failing to disclose that they had discovered product safety issues related to certain ranges— VRC's (and Viking's) core product, and (iii) intentionally underaccruing warranty and product adjustment expenses.

130. Despite that Sellers had knowledge of these issues, Sellers fraudulently caused VRC to represent and warrant that they did not exist.

131. Middleby reasonably relied on VRC's representations and warranties when determining whether to purchase VRC and how much to pay for it, and had no reason at the time to disbelieve the validity of VRC's representations and warranties. Moreover, based on negotiations between the parties leading up to the Closing, Sellers knew that Middleby was relying on the truthfulness of VRC's representations and warranties.

132. Notwithstanding their obligations, Sellers willfully and knowingly concealed VRC's material business problems in order to create an inflated purchase price.

133. Had Middleby been aware of these problems, it would not have paid what it did for VRC— if it had gone forward with the Acquisition at all.

134. Sellers' fraudulent misconduct has caused significant loss to Middleby. The losses caused by Sellers' actions include the expenses associated with remedying the problems

Sellers failed to disclose, as well as the difference in value caused by the ongoing and long-term damage to Viking's brand and concomitant deleterious effect on Viking's revenues.

135. Middleby is entitled to damages in an amount to be determined at trial, plus interest and costs, including attorney and professional fees.

COUNT II: BREACH OF CONTRACT FOR INDEMNIFICATION

136. Middleby repeats and re-alleges the foregoing allegations as if fully set forth herein.

137. The SPA is a valid and enforceable contract between Middleby and Sellers.

138. In the SPA, Sellers caused VRC to make several representations and warranties, including with respect to its books and records, financial statements, undisclosed liabilities, product liability issues, and material contracts.

139. VRC breached these representations and warranties as described in detail in connection with Claims 1-10 above.

140. Pursuant to Section 6.1 of the SPA, Sellers promised to defend, indemnify, and hold harmless Middleby for, among other things, all Losses arising from "any inaccuracy or breach of any representation or warranty of the Company or the Sellers contained in [the SPA]."

141. Middleby complied with all of the SPA's requirements necessary for Sellers to perform their indemnification obligations under Section 6.4, including by providing Sellers with the required indemnification claim notices.

142. Despite their contractual obligations, however, Sellers have, without any legitimate basis or support, refused to indemnify Middleby for VRC's breaches of representations and warranties.

143. Middleby is thus entitled to damages in an amount to be determined at trial, plus interest and costs, including attorney and professional fees.

144. The harm suffered by Middleby due to the breaches of representations and warranties is not adequately remedied through a dollar-for-dollar indemnity. Through its representations and warranties, Sellers caused VRC to misrepresent the cash flows of VRC on which the purchase price was based – and thereby misrepresented the value of VRC.

**COUNT III: DECLARATORY JUDGMENT
FOR CONTRACTUAL INDEMNIFICATION**

145. Middleby repeats and re-alleges the foregoing allegations as if fully set forth herein.

146. The SPA is a valid and enforceable contract between Middleby and Sellers.

147. Pursuant to Section 6.1 of the SPA, Sellers promised to defend, indemnify, and hold harmless Middleby for, among other things, all Losses arising from “any inaccuracy or breach of any representation or warranty of the Company or the Sellers contained in [the SPA].”

148. Middleby has complied with all of the SPA’s requirements necessary for Sellers to perform their indemnification obligations under Section 6.4, including by providing Sellers with the required indemnification claim notices.

149. Sellers have, without any legitimate basis or support, refused to comply with their indemnification obligations, giving rise to a real and present case or controversy between the parties.

150. Middleby is therefore entitled to entry of judgment against Sellers declaring that (i) Sellers are required to indemnify Middleby for all Losses suffered in connection with Claims 1-10 identified above; and (ii) Sellers are obligated to pay Middleby’s reasonable attorneys’ fees and costs incurred in bringing this action.

REQUEST FOR RELIEF

WHEREFORE, Middleby respectfully prays that this Court enter judgment in favor of Middleby and against Sellers:

- (a) Awarding Middleby compensatory damages in an amount to be determined at trial, and including all reasonable legal, accounting, and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries on these claims, including all fees and costs incurred in bringing this action;
- (b) Awarding Middleby exemplary or punitive damages in an amount to be determined at trial;
- (c) Entering a judgment against Sellers declaring that (i) Sellers are required to indemnify Middleby for all Losses suffered in connection with the claims identified above, as well as its reasonable legal, accounting, and other professional fees and expenses incurred in identifying, prosecuting, and seeking recoveries on these and other claims; and (ii) Sellers are obligated to pay Middleby's reasonable attorneys' fees and costs incurred in bringing this action;
- (d) Awarding Middleby pre-judgment interest and post-judgment interest; and
- (e) Awarding Middleby additional damages in an amount to be determined at trial.

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