

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GREGORY MARONEY AND HENRY H.
HEUMANN, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WOODSTREAM CORPORATION,

Defendant.

CASE NO. 7:19-CV-08294-KMK-JCM

Honorable Kenneth M. Karas

**WOODSTREAM CORPORATION'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant Woodstream Corporation (“Woodstream”) responds to Plaintiffs Henry Heumann and Gregory Maroney’s (“Plaintiffs”) Second Amended Class Action Complaint (ECF No. 52, hereinafter “SAC”) as follows:

INTRODUCTION

Woodstream denies all allegations in Plaintiffs’ SAC unless expressly admitted in the following paragraphs. Woodstream also reserves the right to take further positions and raise additional defenses and counterclaims that may become apparent as a result of additional information discovered subsequent to filing this Answer.

NATURE OF THE ACTION

1. Woodstream admits that Plaintiffs purport to bring this action as a class action lawsuit on behalf of purchasers of Victor PestChaser Rodent Repellers (the “Repellers”) in the United States. Woodstream expressly denies that a class action is proper in this case.

2. Woodstream admits that its Repellers repel rodents through ultrasound technology and Woodstream states that product labels on its Repellers vary, have changed over time, and speak for themselves. Woodstream denies any allegation inconsistent with those labels and otherwise denies the allegations in Paragraph 2.

3. Woodstream denies the allegations in Paragraph 3.

4. Woodstream denies the allegations in Paragraph 4.

5. Woodstream denies the allegations in Paragraph 5.

6. Woodstream denies the allegations in Paragraph 6.

PARTIES

7. Woodstream admits that it received a letter from Mr. Maroney’s counsel about his alleged Repeller purchases and states that the letter speaks for itself. Woodstream is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in

Paragraph 7 and therefore denies them.

8. Woodstream is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies them.

9. Woodstream admits that it corresponded with Mr. Heumann about his alleged Repeller purchases and states that those writings speak for themselves. Woodstream is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies them.

10. Woodstream admits that it is a Pennsylvania corporation with its principal place of business in Pennsylvania. Woodstream admits that it manufactures, advertises, markets, distributes and sells Repellers throughout most of the United States.

11. Woodstream admits that it possesses knowledge regarding the content and effects of the Repellers, and that it knows that the Repellers work as advertised. Woodstream otherwise denies the allegations in Paragraph 11.

JURISDICTION AND VENUE

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent a response is required, Woodstream denies that plaintiffs have been injured by Woodstream or are entitled to any damages or remedy.

13. Woodstream admits that it conducts business in New York, and that it has marketed, promoted, distributed, and sold the Repellers in New York. Paragraph 13 otherwise states a legal conclusion to which no response is required.

14. Woodstream admits that it does business in this judicial district. Paragraph 14 otherwise states a legal conclusion to which no response is required.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations.

FACTS COMMON TO ALL CAUSES OF ACTION

16. Woodstream is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies them. Woodstream expressly denies that Internet videos show that its Repellers do not work.

17. Woodstream is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies them.

18. Woodstream is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies them.

19. Woodstream is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies them.

20. Woodstream denies the allegations in Paragraph 20.

21. The textbook Plaintiffs purport to cite in Paragraph 21 speaks for itself, and Woodstream denies the allegations in Paragraph 21 to the extent they mischaracterize the research or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 21.

22. The document Plaintiffs purport to cite in Paragraph 22 speaks for itself, and Woodstream denies the allegations in Paragraph 22 to the extent they mischaracterize the research or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 22.

23. Woodstream admits that ultrasound is a non-toxic form of pest control, that rodents can hear ultrasound, and that they will be disturbed by the soundwaves. Woodstream denies the remaining allegations in Paragraph 23.

24. The documents Plaintiffs purport to cite in Paragraph 24 speak for themselves, and Woodstream denies the allegations in Paragraph 24 to the extent they mischaracterize the

documents or their implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 24.

25. The paper Plaintiffs purport to cite in Paragraph 25 speaks for itself, and Woodstream denies the allegations in Paragraph 25 to the extent they mischaracterize the paper or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 25.

26. The study Plaintiffs purport to cite in Paragraph 26 speaks for itself, and Woodstream denies the allegations in Paragraph 26 to the extent they mischaracterize the study or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 26.

27. The study Plaintiffs purport to cite in Paragraph 27 speaks for itself, and Woodstream denies the allegations in Paragraph 27 to the extent they mischaracterize the study or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 27.

28. The article Plaintiffs purport to cite in Paragraph 28 speaks for itself, and Woodstream denies the allegations in Paragraph 28 to the extent they mischaracterize the article or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 28.

29. Woodstream denies the allegations in Paragraph 29.

30. The first sentence of Paragraph 30 does not contain factual allegations that require a response. To the extent any response is required as to the remaining allegations, Woodstream denies the allegations in Paragraph 30.

31. The statement Plaintiffs purport to cite in Paragraph 31 speaks for itself, and Woodstream denies the allegations in Paragraph 31 to the extent they mischaracterize the statement

or its implications. To the extent any further response is required, Woodstream denies the allegations in Paragraph 31.

32. Woodstream denies the allegations in Paragraph 32, except that Woodstream admits that some of its products contain the representation “the ultrasound emitted does not travel through walls, furniture, cabinets, or any other object.” Woodstream expressly denies that Defendant markets the Repellers “for these very uses.”

33. Woodstream states that the letters referenced in Paragraph 33 speak for themselves and deny any allegations inconsistent with them. Woodstream states that Plaintiffs do not plead that Woodstream was one of the “manufacturers and retailers” that received a warning letter from the FTC and further denies any implications that any FTC action suggested that Woodstream misrepresented the Repellers.

34. Woodstream states that the actions referenced in Paragraph 34 speak for themselves and deny any allegations inconsistent with them. Woodstream states that Plaintiffs do not plead that the FTC brought any action against Woodstream and further denies any implications that any FTC action suggested that Woodstream misrepresented the Repellers.

35. Woodstream states that the claims referenced in Paragraph 35 speak for themselves and deny any allegations inconsistent with them. Woodstream states that Woodstream does not represent and has not represented that its products will “eliminate rodent infestations, repel insects, or serve as an effective alternative to conventional pest-control products.” Nor do Plaintiffs allege that Woodstream makes such representations.

36. Woodstream admits that it continues to sell Repellers, and denies the remaining allegations in Paragraph 36.

CLASS REPRESENTATION ALLEGATIONS

37. Paragraph 37 characterizes Plaintiffs’ claims and/or legal arguments or conclusions

and therefore requires no response. To the extent any response is required, Woodstream denies the allegations in Paragraph 37, and expressly denies that the putative class is amenable to certification under Fed. R. Civ. P. 23.

38. Paragraph 38 characterizes Plaintiffs' claims and/or legal arguments or conclusions and therefore requires no response. To the extent any response is required, Woodstream denies the allegations in Paragraph 38, and expressly denies that the putative class is amenable to certification under Fed. R. Civ. P. 23.

39. Paragraph 39 characterizes Plaintiffs' claims and/or legal arguments or conclusions and therefore requires no response. To the extent any response is required, Woodstream denies the allegations in Paragraph 39, and expressly denies that the putative class is amenable to certification under Fed. R. Civ. P. 23.

40. Paragraph 40 states legal arguments or conclusions to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 40. Woodstream expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

41. Paragraph 41 states legal arguments or conclusions to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 41. Woodstream expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

42. Paragraph 42 states legal arguments or conclusions to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 42. Woodstream expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

43. Paragraph 43 states legal arguments or conclusions to which no response is required.

To the extent any response is required, Woodstream denies the allegations in Paragraph 43. Woodstream expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

COUNT I

DECEPTIVE ACTS OR PRACTICES, NEW YORK GEN. BUS. LAW § 349

44. Woodstream incorporates by reference Paragraphs 1 through 43 of this Answer as if set forth herein.

45. Woodstream denies Paragraph 45 and expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

46. Paragraph 46 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 46.

47. Paragraph 47 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 47.

48. Paragraph 48 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 48.

49. Paragraph 49 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 49.

50. Paragraph 50 states a legal conclusion to which no response is required. To the extent Paragraph 50 contains a request for injunctive relief, the Court dismissed Plaintiffs' claims for injunctive relief on September 28, 2023. ECF No. 63.

COUNT II

FALSE ADVERTISING, NEW YORK GEN. BUS. LAW § 349

51. Woodstream incorporates by reference Paragraphs 1 through 50 of this Answer as if set forth herein.

52. Woodstream denies Paragraph 52 and expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

53. Paragraph 53 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 53.

54. Paragraph 54 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 54.

55. Paragraph 55 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 55.

56. Paragraph 56 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 56.

57. Paragraph 57 states a legal conclusion to which no response is required. To the extent Paragraph 57 contains a request for injunctive relief, the Court dismissed Plaintiffs' claims for injunctive relief on September 28, 2023. ECF No. 63.

COUNT III

UNJUST ENRICHMENT

58. On September 28, 2023, the Court dismissed Plaintiffs' unjust enrichment claim. *See* ECF No. 63. Therefore, no response is required.

59. On September 28, 2023, the Court dismissed Plaintiffs' unjust enrichment claim. *See* ECF No. 63. Therefore, no response is required.

60. On September 28, 2023, the Court dismissed Plaintiffs' unjust enrichment claim. *See* ECF No. 63. Therefore, no response is required.

61. On September 28, 2023, the Court dismissed Plaintiffs' unjust enrichment claim. *See* ECF No. 63. Therefore, no response is required.

62. On September 28, 2023, the Court dismissed Plaintiffs' unjust enrichment claim. *See*

ECF No. 63. Therefore, no response is required.

63. On September 28, 2023, the Court dismissed Plaintiffs' unjust enrichment claim. *See* ECF No. 63. Therefore, no response is required.

COUNT IV

BREACH OF EXPRESS WARRANTY

64. Woodstream incorporates by reference Paragraphs 1 through 63 of this Answer as if set forth herein.

65. Woodstream denies Paragraph 65 and expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

66. Paragraph 66 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 66. Woodstream also states that the product labels on its Repellers vary, have changed over time, and speak for themselves. Woodstream denies any allegation inconsistent with those labels.

67. Paragraph 67 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 67. Additionally, the Court dismissed Plaintiff Heumann's express warranty claims that predate October 2017. ECF No. 63.

68. Paragraph 68 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 68. Additionally, the Court dismissed Plaintiff Heumann's express warranty claims that predate October 2017. ECF No. 63

69. Paragraph 69 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 69. Additionally, the Court dismissed Plaintiff Heumann's express warranty claims that predate October 2017. ECF

No. 63

70. Paragraph 70 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 70. On September 28, 2023, the Court dismissed Plaintiff Heumann's breach of warranty claims that predate October 2017. ECF No. 63.

COUNT V

FRAUD

71. Woodstream incorporates by reference Paragraphs 1 through 70 of this Answer as if set forth herein.

72. Woodstream denies Paragraph 72 and expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

73. Woodstream denies the allegations in Paragraph 73. Woodstream also states that the product labels on its Repellers vary, have changed over time, and speak for themselves. Woodstream denies any allegation inconsistent with those labels.

74. Paragraph 74 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 74.

75. Paragraph 75 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 75.

76. Paragraph 76 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 69. To the extent Paragraph 76 contains any request for injunctive relief, the Court dismissed Plaintiffs' claims for injunctive relief on September 28, 2023. ECF No. 63

COUNT VI

MAGNUSON-MOSS WARRANTY ACT

77. Woodstream incorporates by reference Paragraphs 1 through 76 of this Answer as if set forth herein.

78. Woodstream denies Paragraph 78 and expressly denies that this action may proceed as a class action under Fed. R. Civ. P. 23.

79. Paragraph 79 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 79.

80. Paragraph 80 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 80.

81. Paragraph 81 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 81.

82. Paragraph 82 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 82. Woodstream also states that the product labels on its Repellers vary, have changed over time, and speak for themselves. Woodstream denies any allegation inconsistent with those labels.

83. Paragraph 83 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 83.

84. Paragraph 84 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 84.

85. Paragraph 85 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 85.

86. Paragraph 86 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 86.

87. Paragraph 87 states a legal conclusion to which no response is required. To the extent any response is required, Woodstream denies the allegations in Paragraph 87. On September 28, 2023, the Court dismissed Plaintiff Heumann's breach of warranty claims that predate October 2017. ECF No. 63.

PRAYER FOR RELIEF

In response to Plaintiffs' Prayer for Relief, Woodstream denies all liability in this case and denies that Plaintiff is entitled to any relief whatsoever. Further, the Court dismissed Plaintiffs' claims for injunctive relief and unjust enrichment on September 28, 2023. ECF No. 63.

AFFIRMATIVE DEFENSES

By stating these affirmative defenses, Woodstream does not assume the burden of proving any facts or elements that are properly borne by Plaintiffs.

FIRST DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs and the putative class lack standing to assert their claims and/or because Plaintiffs have not asserted or sustained a legally cognizable injury.

SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

THIRD DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' and putative class members' alleged injuries and damages were not legally or proximately caused by any acts or omissions of Woodstream and/or were caused, if at all, by the conduct of Plaintiffs, putative class members, and/or third parties.

FOURTH DEFENSE

Without admitting that any act of Woodstream caused damage to Plaintiffs or any other

person, Woodstream asserts that any recovery by Plaintiffs or putative class members must be diminished or barred by reason of Plaintiffs' or putative class members failure to mitigate or attempt to mitigate any alleged damages.

FIFTH DEFENSE

Without admitting that Plaintiffs' claims may be pursued on a class basis, Woodstream asserts that putative class members' claims may be barred by the doctrines of waiver, estoppel, unclean hands, and/or laches and/or by the applicable statutes of limitations.

SIXTH DEFENSE

Plaintiffs' claims are barred by their failure to comply with conditions precedent to bringing their claims, including the procedural requirement of pre-litigation notice, required to bring a claim for breach of express warranty.

SEVENTH DEFENSE

Plaintiffs' claims and/or those by the putative class members are barred by the voluntary payments doctrine because they paid for the products under a claim of right to the payment with full knowledge of the facts.

EIGHTH DEFENSE

Any injury or damage suffered by Plaintiffs would be adequately compensated in an action at law for damages. Accordingly, Plaintiffs have a complete and adequate remedy at law and are not entitled to seek equitable relief.

NINTH DEFENSE

Woodstream reserves all affirmative defenses under Fed. R. Civ. P. 8(c) and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case. Woodstream reserves the right to amend its Answer to assert those defenses. Based on all the foregoing as well as other grounds, Woodstream denies that Plaintiffs are entitled to any relief whatsoever.

WHEREFORE, Woodstream requests that judgment be entered against Plaintiffs as follows: (a) Plaintiffs' SAC be dismissed with prejudice and judgment entered in favor of Woodstream; (b) that Woodstream recover all costs of this suit as allowed by law; and (c) that Woodstream be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Woodstream, by and through its undersigned counsel, hereby demands, pursuant to Fed. R. Civ. P. 38, a trial by jury on all claims so triable in this action.

DATED: June 21, 2024

Respectfully submitted,

/s/ Robyn E. Bladow
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