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18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA  
 (OAKLAND DIVISION)

20 KIRK KEILHOLTZ and KOLLEEN  
 21 KEILHOTZ for themselves and on behalf  
 of those similarly situated,  
 22  
 Plaintiffs,  
 23  
 v.  
 24  
 25 LENNOX INDUSTRIES, INC.; LENNOX  
 HEARTH PRODUCTS, INC.; LENNOX  
 26 INTERNATIONAL, INC., and DOES 1  
 through 25, inclusive,  
 27 Defendants.

NO. 4:08-CV-00836CW

**STIPULATION AND ORDER  
 REGARDING FOURTH AMENDED  
 COMPLAINT**

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**Demand for Jury Trial  
 Original Complaint Filed: February 6, 2008**

1 TO THE COURT AND ALL ATTORNEYS OF RECORD:

2 By and through their counsel of record, Plaintiffs Kirk Keilholtz and Kolleen Keilholtz  
3 (collectively “Plaintiffs”), and Defendants Lennox Hearth Products Inc., Lennox International  
4 Inc. and Lennox Industries Inc. (collectively “Defendants”) (together with Plaintiffs, the  
5 “Parties”) hereby stipulate to the following:

6 1. Plaintiffs filed a Second Amended Complaint on June 29, 2009, which Defendants  
7 moved to dismiss on July 9, 2009.

8 2. On September 8, 2009, the Court issued an Order dismissing portions of the  
9 Second Amended Complaint based on the applicable statutes of limitations, without leave to  
10 amend; and granting leave to amend concerning other issues raised in Defendants' Motion to  
11 Dismiss (“Order”).

12 3. On November 30, 2009, Plaintiffs filed a Third Amended Complaint, and on  
13 December 4, 2009, Plaintiffs filed an errata to the Third Amended Complaint.

14 4. Defendants contend that the Third Amended Complaint fails to comply with the  
15 Court's Order granting Defendants' Motion to Dismiss with respect to the applicable statutes of  
16 limitations. Plaintiffs disagree but do not want to trouble the Court with a motion that can be  
17 avoided by this stipulation.

18 5. Plaintiffs and Defendants hereby stipulate that Plaintiffs will file a Fourth  
19 Amended Complaint that alleges a CLRA/Unjust Enrichment Subclass to reflect the three-year  
20 statute of limitations for the CLRA and unjust enrichment claims as opposed to the four-year  
21 statute of limitations for UCL claims.

22 6. By entering into this Stipulation, Defendants do not waive, and have no intention  
23 of waiving, any arguments regarding whether Plaintiffs have complied with the CLRA notice  
24 requirements, the propriety of any amendments, and/or any deficiencies in the Fourth Amended  
25 Complaint. Defendants expressly reserve the right to challenge any amendments and/or  
26 deficiencies via a Motion to Dismiss, Motion for Summary Judgment, or otherwise.

27 7. The Parties hereby stipulate that Defendants shall file their responsive pleading  
28 within twenty-one (21) days after Plaintiffs file their Fourth Amended Complaint. The Parties

1 agree that Defendants need not file an answer to the Third Amended Complaint since Plaintiffs  
2 intend to file a superseding pleading.

3 IT IS HEREBY STIPULATED:

4 Dated: December 11, 2009

5 By: /s/ Michael F. Ram  
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*Attorneys for Plaintiffs and  
the Plaintiff Class*

10 Dated: December 11, 2009

11 By: /s/ William R. Warne as authorized 12/11/09  
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19 *Attorneys for Defendants*

16 SO ORDERED:



18 Dated: 12/21/09

19 \_\_\_\_\_  
20 HONORABLE CLAUDIA WILKEN  
21 UNITED STATES DISTRICT JUDGE  
22 NORTHERN DISTRICT OF CALIFORNIA