

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**THIS DOCUMENT RELATES TO:**

**DENNIS KILKENNY and PATRICIA KILKENNY**

**Plaintiffs,**

**-against-**

**ALL ACQUISITION, LLC F/K/A ALL ACQUISITION:  
CORP., F/K/A ATHLONE INDUSTRIES, INC.,  
F/K/A HOLLAND FURNACE COMPANY *et al.*,**

**Defendants.**

**INDEX NO. 190011/2024**

**ACKNOWLEDGMENT  
OF SERVICE OF  
SUMMONS AND  
ANSWER TO VERIFIED  
COMPLAINT**

Defendant Dunphey Smith Supply, incorrectly named as Dunphey Smith Company, (hereinafter “Dunphey” or “Answering Defendant”), by and through its attorneys Wilbraham, Lawler & Buba, P.C., hereby acknowledges receipt of the Summons and Verified Complaint in this action, and answers Plaintiff(s)’ Complaint as follows:

1. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and leaves the plaintiff(s) to their proofs.

2. Defendant Dunphey only admits that it is a corporation, but denies it conducts business in the State of New York, and denies all other allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and leaves the plaintiff(s) to their proofs.

3. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations

concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

4. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and leaves the plaintiff(s) to their proofs.

5. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and leaves the plaintiff(s) to their proofs.

6. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

7. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

8-9. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

### **ANSWER TO FIRST CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

10-35. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against plaintiffs and requests dismissal of the Complaint and crossclaims with prejudice.

**ANSWER TO SECOND CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

36-39. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against plaintiffs and requests dismissal of the Complaint and crossclaims with prejudice.

**ANSWER TO THIRD CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

40-41. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against plaintiffs and requests dismissal of the Complaint and crossclaims with prejudice.

**ANSWER TO FOURTH CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

42-68. Defendant Dunphey denies all allegations, refers all questions of law to the Court,

concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against plaintiffs and requests dismissal of the Complaint and crossclaims with prejudice.

**ANSWER TO FIFTH CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

69-82. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and crossclaims with prejudice.

**ANSWER TO SIXTH CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

83-98. The allegations contained in paragraphs 83 through 98 are directed to premise owners and thus no response is required as to Dunphey. To the extent a response is required, Answering Defendant denies all allegations to the extent they are directed to Dunphey, and this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations to the extent they are related to parties other than Dunphey and on that basis denies them.

By way of further response, Defendant Dunphey denies it is a Premise Owner as defined in this cause of action.

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and crossclaims with prejudice.

**ANSWER TO SEVENTH CAUSE OF ACTION**

Defendant Dunphey incorporates by reference the preceding paragraphs as though stated fully herein.

99. Defendant Dunphey denies all allegations, refers all questions of law to the Court, and demands that plaintiff prove the truth of these allegations at trial. As for the allegations concerning other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

**WHEREFORE**, Defendant Dunphey hereby demands judgment and costs in its favor and against Plaintiffs and requests dismissal of the Complaint and crossclaims with prejudice.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

This defendant acted reasonably and with due cares toward the plaintiff(s) and violated no duty owed to the plaintiff(s).

**THIRD AFFIRMATIVE DEFENSE**

The injuries and damages complained of were the proximate result of the negligence of third parties over whom this defendant had no control or right of control.

**FOURTH AFFIRMATIVE DEFENSE**

This defendant denies that it was guilty of any negligence or breach of warranty which directly caused or proximately contributed to plaintiff(s)' alleged damages.

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