

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ROBERT PATRICK, PATRICK  
FLECK, GARY and DONNA  
MCINTYRE, RHEA CLARK and  
DUSTIN JOHNSON, Individually and  
on behalf of all others similarly situated,**

Plaintiffs,

v.

**GENTEK BUILDING PRODUCTS,  
INC., ASSOCIATED MATERIALS,  
LLC, and DOES 1-10,**

Defendants.

Case No.:

Judge:

**CONSOLIDATED MASTER  
CLASS ACTION COMPLAINT**  
(Jury Demanded)

Plaintiffs Robert Patrick, Patrick Fleck, Gary and Donna McIntyre, Rhea Clark and Dustin Johnson (collectively, "Plaintiffs"), individually and on behalf of themselves and all others similarly situated, by their undersigned attorneys, upon personal knowledge as to themselves, upon information and belief, and based upon the investigation of their Counsel, allege as follows:

## I. INTRODUCTION

1. This is a consumer class action on behalf of all persons, organizations, municipalities, corporations and entities that own property which incorporated exterior aluminum or steel siding that was designed, manufactured, marketed, warranted, sold and/or distributed by Gentek Building Products, Inc., (“Gentek”) and/or Gentek’s parent company, Associated Materials, LLC (“Associated Materials”) or their predecessors, successors or subsidiaries (collectively “Defendants”). Defendants manufactured and marketed their Siding under various brands and product names including, but not limited to: Steel-Gard, SteelTek, SteelSide Steel, Driftwood Steel and Universal Steel, Alside, Gentek, Revere, Ultraguard, Preservation, Alpine and other brand names for sale nationwide (“Siding” or “Gentek Siding”).

2. Upon information and belief, Defendants manufacture their Siding using the same basic formula as they have been using since at least 1988 when they first began designing, manufacturing, marketing, selling and distributing their Siding in North America. The Siding has been manufactured, marketed and distributed by Defendants both directly to consumers and through Defendants network of distributors and contractors.

3. Defendants market and warrant all the Siding as a “durable product that’s engineered to last a lifetime on the home.” This is a “Lifetime Warranty.” Gentek’s website,<sup>1</sup> which was generally available to Plaintiffs and the Class at the time of sale(s), states that its Siding “won’t chip, peel, or rot like painted wood and requires very minimal upkeep.”

4. Gentek’s marketing and advertising materials claim to provide a Lifetime Warranty for the Siding. Gentek represented to Plaintiffs and Class Members that its Siding

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<sup>1</sup> <http://www.gentekinc.com>, last visited April 19, 2012.

would last a lifetime, with 50 year hail and 15 year chalk and color change protection. (See, e.g., Exhibits 1-6, Warranties from Defendants) The warranty may be transferred to a subsequent purchaser, in which case it remains in effect for 50 years from the date of the original installation. Gentek made this representation before purchase and at the time of purchase via its website, other sales brochures and other marketing and advertising materials (including but not limited to store displays, sales seminars, and training materials). Defendants have failed to provide such a Lifetime Warranty to consumers who purchased the Siding.

5. The Siding manufactured and sold by Defendants is defectively designed and manufactured such that it fails prematurely causing unsightly delaminating, chipping and peeling of the paint on the Siding of Plaintiffs and Class Members. The outward manifestation of the Siding deterioration includes, among other things, cracking, flaking, peeling, and delaminating. In short, the Siding does not perform in accordance with the reasonable expectations of consumers that such products be durable and suitable for use as building products and does not perform as Defendants represented it would perform.

6. The defects present in Defendants' Siding are so severe that Plaintiffs and Class Members must repair or replace their Siding sooner than reasonably expected, at significant cost. Moreover, Defendants' Siding is uniformly defective such that Plaintiffs' and Class Members' Siding fails well before the time periods advertised, marketed, and guaranteed by the Defendants.

7. Defendants knew or reasonably should have known that the Siding is defective and that such defects would cause damage to the homes of Plaintiffs and the Class Members.

Moreover, Defendants concealed the defective nature of the Siding from the Plaintiff and Class Members and refused to honor warranties on the Siding.

## **II. JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this proposed class action pursuant to 28 U.S.C. § 1332(d)(2). The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and some of the Plaintiffs and Class Members are citizens of states other than Ohio, which is Defendants' state of citizenship.

9. This Court has personal jurisdiction over Defendants because their principal places of business are in the State of Ohio.

10. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) and (b) because a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this judicial district. Venue is also proper under 18 U.S.C. §1965(a) because the Defendants transact substantial business in this district.

## **III. PARTIES**

### **A. Plaintiffs**

11. The term "Plaintiffs" includes the Named Plaintiffs in this litigation. The Plaintiffs are purchasers and/or owners of the defective Siding. Defendants have refused to replace or properly repair Plaintiffs' defective Siding in accordance with the terms of its representations and warranties. The Plaintiffs have each suffered damages as a result of Defendants' fraud, concealment, deceptive practices, and refusal to honor the Siding warranties. Among other things, Plaintiffs' Siding is defective, cracking, peeling, delaminating and/or the value of their homes have been diminished. Many of the Plaintiffs were forced to repair and/or replace the Siding as a result of the latent defects which only

became apparent sometime after installation of the Siding. Plaintiffs made numerous requests to Defendants for repair, replacement or reimbursement of costs relating to their defective Siding. Defendants refused to repair, replace or reimburse Plaintiffs for the costs associated with remedying the defective Siding in contravention for the terms of Defendants' warranties and the law.

**B. Plaintiff Robert Patrick**

12. Plaintiff Robert Patrick ("Patrick") is a resident of Wentzville, Missouri who owns a structure which incorporated Gentek Siding.

13. Patrick, through his contractor, had 12.5 squares of steel "Super-Gard" 4 inch – Bright/ Glacier white Siding installed on his house in June 2002. The cost was \$8,660. In 2010, Patrick noticed that his Siding was deteriorating in numerous locations. In August 2010, Patrick filed Warranty Claim 127263 with Gentek. Upon filing his warranty claim, Gentek instructed Patrick to pay Defendants the \$100 deductible/proration under the warranty to have repairs made pursuant to the purported Siding "Lifetime Warranty" (whereby a "refinishing process" would be conducted). Patrick promptly did so. Since September 2010, Plaintiff has had no repairs made to his house by Defendants. Instead Patrick's warranty claim has been ignored by Defendants, even after sending the requested \$100.00 deductible and over a year of repeated correspondence and phone calls to the Defendants.

14. In August 2011, Gentek, for unknown reasons, reissued Patrick another warranty claim number – #00181744 but has failed to remedy the problems with Patrick's defective Siding. In fact, Patrick's Siding has further deteriorated since 2010 when he filed his warranty claim that was ignored by the Defendants. Defendants' failure to timely remedy the problems with Patrick's siding has caused Patrick to incur additional losses.

15. Recent photographs of the Patrick's defective Siding include:



16. Patrick, the other Plaintiffs and Class Members have suffered damages, including but not limited to the fact that (i) they paid excessive amounts for defective Siding that would have cost much less had the defects been known; (ii) their Siding has been damaged and the value of their homes have been diminished, as a result of Defendants' deceptive practices; and (iii) additional damage to their Siding has occurred as a result of the Defendants' failure to timely remedy the defective Siding on their structures. Patrick, the other Plaintiffs and Class Members are forced to repair and/or replace Defendants' defective Siding, and they have not been reimbursed for the associated costs, in contravention of the terms of Defendants' warranties. Nor has Patrick's deductible been returned even though Defendants have failed to honor their end of the bargain.

**C. Plaintiff Patrick Fleck**

17. Plaintiff Patrick Fleck ("Fleck") is a resident of Foley, Minnesota who owns a structure which incorporated Gentek Siding.

18. In 2001, Fleck, had steel “Super-Gard” 4 inch – Bright/ Glacier white Siding installed on his house. In 2010 Fleck noticed, through his contractor, that his Siding was deteriorating in numerous locations and notified Gentek. Fleck filed Warranty Claim 127395 with Defendants. On January 14, 2011, in response to his warranty claim, Defendants informed Fleck that they would either repair the siding for \$3933.00 or perform a “refinishing” of the siding for the \$100.00 deductible/proration under the warranty. Correctly realizing that he should not have to pay \$3933.00 to repair the Defendants’ defective Siding, Fleck rejected that offer and instead opted to have the “refinishing” done for \$100.00. Since making the \$100.00 payment, no “refinishing” or any other type of work has been performed on Fleck’s defective Siding.

19. Recent photographs of Fleck’s defective Siding include:



20. Fleck, the other Plaintiffs and Class Members have suffered damages, including but not limited to the fact that (i) they paid excessive amounts for defective Siding that would have cost much less had the defects been known; (ii) their Siding has been damaged and the value of their homes have been diminished, as a result of Defendants’ deceptive practices; and (iii) additional damage to their Siding has occurred as a result of the Defendants’ failure to timely remedy the defective Siding on their structures. Fleck, the other Plaintiffs and Class Members are forced to repair and/or replace Defendants’ defective Siding,

and they have not been reimbursed for the associated costs, in contravention of the terms of Defendants' warranties. Nor has Fleck's deductible been returned even though Defendants have failed to honor their end of the bargain.

**D. Plaintiffs Gary and Donna McIntyre**

21. Plaintiffs Gary and Donna McIntyre (the "McIntyres") are residents of Parker, Colorado who own a structure which incorporated Defendants' Siding.

22. In 1997, Mr. McIntyre had Driftwood Steel (Poplar) steel Siding installed on his house and detached garage. The Siding was purchased with the belief that it was a quality product, free of defects. In 2002, Mr. McIntyre discovered that the Siding on the south side of his home was chipping and peeling. Mr. McIntyre informed Defendants of the defect and filed Warranty Claim 108124. After Mr. McIntyre provided the original receipts for his purchase of the Siding to prove it was subject to warranty, Defendants replaced the Siding on the south side of the McIntyre's home.

23. In 2005, Mr. McIntyre discovered the same type of chipping and peeling of the Siding on the west side of his home, as well as on the east, west, and south sides of his detached garage. Mr. McIntyre filed another Warranty Claim 115248, which Defendants acknowledged by letter on November 18, 2005. Defendants replaced the Siding on the west side of the house and the east, west, and south sides of the garage. The replacement Siding used for both Warranty Claims (numbers 108124 and 115248) was the Driftwood Steel (Poplar) steel siding, the same as had been originally installed in 1997.

24. In 2008, Mr. McIntyre discovered that the Siding on the east side his home was peeling. Mr. McIntyre filed a third Warranty Claim 123098, which Defendants acknowledged by letter on September 17, 2008. After Mr. McIntyre filed his third Warranty Claim 123098,

Defendants requested that Mr. McIntyre show additional receipts. This was the first time that Gentek requested additional receipts, despite having not raised any problems with the receipts he provided in 2002 in connection with either of his first two Warranty Claims (108124 and 115248). Mr. McIntyre conducted an exhaustive search for those receipts, including contacting the original builder and wholesaler, which lasted well into 2009. However those records were destroyed in the ordinary course of the builder's and wholesaler's businesses. Additionally, Defendants advised Mr. McIntyre that they no longer produce the Driftwood Steel (Poplar) steel siding and could replace it only with a different Siding. The new Siding looks noticeably different than the Driftwood Steel (Poplar) steel Siding. Thus, any Siding that Defendants replace will appear inconsistent with any Siding that remains.

25. Since Mr. McIntyre filed his third Warranty Claim 123098 in 2008, the replacement Siding on the south side of his home began peeling. Similarly, the original Siding on the north side of his home is now peeling. Mr. McIntyre has filed multiple Warranty Claims and engaged in substantial correspondence to resolve his third Warranty Claim 123098. Mr. McIntyre recently contacted Defendants on June 17, 2011, stating, "I have made numerous calls to your warranty department, trying to resolve the problems I am experiencing with my Driftwood Steel (Poplar) siding." On July 28, 2011, Defendants responded by email, in part, "I will reply to you shortly in regards to your east wall and likely call you to discuss the claim." On September 19, 2011, Defendants further responded by email, "My apologies. I assumed that this had been passed along for response. I will look into this matter in the morning." To date, Gentek has not resolved Mr. McIntyre's third Warranty Claim 123098.

26. Defendants have not repaired or replaced the Siding that Defendants originally installed in 1997 that is now failing, nor have Defendants repaired or replaced the Siding that Defendants replaced in 2002 that is now failing.

27. Recent photos of the McIntyres Siding include:



28. The McIntyres, the other Plaintiffs and Class Members have suffered damages, including but not limited to the fact that (i) they paid excessive amounts for defective Siding that would have cost much less had the defects been known; (ii) their Siding has been

damaged and the value of their homes have been diminished, as a result of Defendants' deceptive practices; and (iii) additional damage to their Siding has occurred as a result of the Defendants' failure to timely remedy the defective Siding on their structures. The McIntyres, the other Plaintiffs and Class Members are forced to repair and/or replace Defendants' defective Siding, and they have not been reimbursed for the associated costs, in contravention of the terms of Defendants' warranties.

**E. Plaintiff Rhea Clark**

29. Plaintiff Rhea Clark ("Clark") is a resident of Haviland, Kansas who owns a structure which incorporated Defendants' Siding.

30. Clark, through her contractor, had 15.5 squares of steel "Supergard" 4 inch – Glacier white Siding installed on her house on May 31, 2002. The cost was \$16,525.15. As a result of premature deterioration of the Siding, Clark provided notice to Defendants when she filed Warranty Claim 127717 with the Defendants in November 2010. Upon filing her warranty claim, Defendants instructed Clark to pay \$100.00 to have repairs made pursuant to the Siding's purported "Lifetime Warranty" (whereby a "refinishing process" would be conducted). As an alternative to the "refinishing process" Defendants offered Clark a cash settlement in the amount of \$708.00. Clark refused both of Gentek's offers since neither would resolve her defective Siding's deterioration. The problems with Clark's Siding have worsened since she filed Warranty Claim 127717 in November 2010.

31. Clark, the other Plaintiffs and Class Members have suffered damages, including but not limited to the fact that (i) they paid excessive amounts for defective Siding that would have cost much less had the defects been known; (ii) their Siding has been damaged and the value of their homes have been diminished, as a result of Defendants'

deceptive practices; and (iii) additional damage to their Siding has occurred as a result of the Defendants' failure to timely remedy the defective Siding on their structures. Clark, the other Plaintiffs and Class Members are forced to repair and/or replace Defendants' defective Siding, and they have not been reimbursed for the associated costs, in contravention of the terms of Defendants' warranties.

**F. Plaintiff Dustin Johnson**

32. Plaintiff Dustin Johnson ("Johnson") is a resident of Moorhead, Minnesota who owns a structure with white Revere steel Siding manufactured by Defendants installed on the structure, including an attached garage.

33. In July 2011, Johnson noticed that the Siding was cracking and peeling in numerous places on the house's exterior. In August 2011, Johnson filed a detailed warranty claim with the Defendants concerning the defective Siding. Defendants improperly denied Johnson's Warranty Claim in October 2011 claiming that he could not assert a warranty claim and, therefore, Defendants indicated that they would not provide assistance in paying for the repair or replacement of the defective Siding.

34. Photographs of Johnson's Siding show its severe deterioration:



35. Johnson, the other Plaintiffs and Class Members have suffered damages, including but not limited to the fact that (i) they paid excessive amounts for defective Siding that would have cost much less had the defects been known; (ii) their Siding has been damaged and the value of their homes have been diminished, as a result of Defendants' deceptive practices; and (iii) additional damage to their Siding has occurred as a result of the Defendants' failure to timely remedy the defective Siding on their structures. Johnson, the other Plaintiffs and Class Members are forced to repair and/or replace Defendants' defective Siding, and they have not been reimbursed for the associated costs, in contravention of the terms of Defendants' warranties.

**G. Defendants**

36. Defendant Gentek Building Products, Inc. ("Gentek") is a Delaware corporation with its principal place of business located in Beachwood, Ohio. Gentek is a leading North American manufacturer of building materials including steel exterior siding.

37. Defendant Associated Materials, LLC ("Associated Materials") is a Delaware limited liability corporation with its principal place of business located in Cuyahoga Falls, Ohio. Associated Materials, is the parent company of Gentek.

38. Defendants Does 1-10 ("Does 1-10") are persons or entities whose identity is only known to the other Defendants, and will be identified through discovery in this litigation. Does 1-10 are jointly and individually liable with the other Defendants for the acts complained of herein.

39. At all times relevant hereto, all misrepresentations and omissions made to Plaintiffs, and Members of the Class defined below arise from a scheme or artifice devised and orchestrated primarily in Ohio. All marketing of Defendants' Siding is in the United

States, including distribution of advertising as well as marketing and promotional materials, is managed by its offices located in the State of Ohio. Defendants sell and distribute the Siding throughout Ohio and the United States.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. Background**

40. Defendants sell or distribute their Siding throughout the United States for installation on homes, commercial buildings, and other structures. The Siding is or was installed on Plaintiffs' homes and other structures, and is or was installed on the homes and other structures of the members of the Class defined below.

41. Gentek's website markets and warrants its Siding as durable. The Siding is sold with a "Lifetime Warranty." Gentek made this representation before purchase and at the time of purchase via sales brochures and marketing materials (including but not limited to store displays, sales seminars, and training materials). The industry and consumers appropriately rely on the warranty and marketing nomenclature.

42. According to the National Association of Home Builders ("NAHB") Economics Department, consumers reasonably expect steel siding to last a minimum of 50 years to lifetime. This figure is based on a survey of manufacturers, trade associations and product researchers.<sup>2</sup>

43. Gentek's Lifetime Warranty for Super-Gard Steel Siding, in part, states:

Revere brand Super-Gard Steel Siding is warranted to you, the original property owner(s), by the manufacturer, Gentek Building Products, Inc. Gentek warrants against the siding containing manufacturing defects which result in cracking, chipping, flaking, peeling or splitting, as well

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<sup>2</sup> <http://www.oldhouseweb.com/how-to-advice/life-expectancy.shtml> (last visited January 1, 2012).

as manufacturing defects which cause perforation or deterioration of the steel substrate due to rust.

44. Gentek's website, which is available to its building professionals and Members of the Class defined below, at and before the time of sale, states, among other things:

Quality-crafted with attention to detail, Gentek products combine outstanding beauty and strength with the luxury of a low-maintenance finish. Backed by nearly 50 years of manufacturing expertise, it is our company-wide commitment and never-ending ambition to produce the very best building materials - products deserving of our good name and worthy of the place you call home.

45. The website further states:

When compared to wood, brick, stone and stucco, siding can provide several advantages in terms of maintenance costs, appearance, durability and value.

Gentek offers a broad range of sidings in vinyl, steel and aluminum, so you can choose the style and finish that best suits your home and climate area. Siding beautifully combines the Property Owner Classic appeal of a freshly painted wood with high-performance materials that are easy to maintain. Built weather-tough, Gentek siding won't chip, peel, or rot like painted wood and requires very minimal upkeep. Just rinse occasionally with a garden hose to restore the siding's like-new beauty. With a variety of materials, profile designs, textures and colors to choose from, you can design a beautiful home exterior that will stand the test of time.

46. Concerning SteelSide steel Siding, the Gentek website states:

**Powerful Steel Protection**

Pounding rain, freezing temperatures, and blistering heat are no match for SteelSide. It's built to stand up strong against the worst of Mother Nature's arsenal. Each pretreated galvanized steel panel is virtually "weather sealed" in a thick PVC finish that's three and one-half times thicker than most conventional coatings.

### **High Dimensional Stability**

You also can depend on SteelSide's rigid steel core to provide high dimensional stability for resistance to buckling and the wavy appearance that can result from extreme weather changes. Unlike other sidings, SteelSide will retain its graceful, uniform finish year after year.

### **Simple Upkeep**

Not only is SteelSide exceptionally strong and beautiful, it's easy to maintain. There's no need for time-consuming scraping and painting or struggling with ladders. Just a simple rinse with your garden hose will remove most airborne dust and dirt. In most cases, your siding will clean up quickly and easily.

47. Defendants' Siding has not lived up to Defendants' representations and, given the early and severe deterioration that requires unexpected maintenance and premature repair and replacement – at significant cost to consumers – has not proven to be of value when compared to other siding products.

48. The Siding manufactured, marketed, advertised and sold by Defendants is defectively designed and manufactured such that it prematurely fails, causing premature chipping, cracking, peeling and other damage that diminishes the value of the structures owned by Plaintiffs and other members of the Class defined below. Plaintiffs and other members of the Class defined below sustain a loss in property value that is attributable to the damage caused by Defendants' defective Siding.

49. Gentek's Product Directory for steel siding states:

#### **COATING PROPERTIES**

Gentek galvanized steel siding products are manufactured with G90 or equivalent. Both sides of the steel are cleaned with a specially formulated acid cleaner, water rinsed and then coated with an environmentally safe chemical pretreatment to enhance corrosion protection and coating adhesion.

The Pretreated galvanized surface is coated with a thermoset corrosion-resistant polymer. This corrosion-resistant polymer is top coated with the following polymeric systems:

Plastisol (PVC) Topcoat: This highly weatherable, flexible, chemical-resistant thermoplastic polymer is melted and fused at temperatures of >390°F. The coating is applied with a striated pattern or smooth finish having an average film thickness of 3.0 mils.

Fluoropolymer (PVDF2): This thermoplastic polymer has excellent chemical and fade resistance. The coating thickness is 0.9 mil. The system is cured at a minimum temperature of 475°F. This polymer system conforms to the high industry standards of Kynar 500 and Hylar 5000. The main criteria for these standards is that the paint formulation must contain a minimum of 70% PVDF2. Many fluoropolymer coating on the market do not meet the high quality and performance standards required by Kynar 500 and Hylar 5000 specifications.

50. The defects present in Gentek Siding are so severe that Plaintiffs and the Class must repair or replace their Siding, in some cases, less than ten years after purchasing siding generally and by consumers who purchased Gentek's Siding product specifically.

51. Defendants' Siding is uniformly defective such that Plaintiffs' and Class Members' Siding is failing before the time periods advertised, marketed, and guaranteed by Defendants or otherwise expected by ordinary consumers purchasing siding.

52. Defendants knew or reasonably should have known that the Siding is defective as designed and manufactured such that the product fails prematurely. The outward manifestation of the Siding deterioration and deformation is cracking, buckling, flaking, peeling, splitting discoloration, and other damage. In short, the Siding does not perform in accordance with the reasonable expectations of consumers that such products be durable and suitable for use as building products.

**B. Defendants' Fraudulent Concealment and On-going Refusal to Notify Customers That Defects and Failures are Associated with the Siding**

53. Defendants have received thousands of warranty claims alleging a manufacturing or design defect in the Siding. Many of these warranty claims have been improperly rejected, dismissed or handled.

54. Despite receiving complaints from consumers, such as Plaintiffs and other members of the Class defined below, Defendants have refused to convey effective notice to consumers concerning the defects associated with the Siding, and has refused to fully repair the damage caused by the premature failure(s) of its product.

55. The following represents a small sampling of complaints by Defendants' Siding purchasers and installers' general frustrations with the defective Siding:

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We too have Gentek Steel Siding and it is blistering off. I was told by the original installer that supposedly a bad batch of primer was used and that is why it is blistering. Currently one side of our garage is blistering and it will cost \$2000 plus to replace. Gentek is paying 10% of that. Wow! This is a defect of their doing and this shouldn't be happening to Steel siding. No way to fix except replace and they don't make that color anymore. Warn your friends.

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After 10 years, the paint peels off of the steel siding. Warranty no longer good. Buy anything for your house but Gentek siding. It's crap and you'll be out thousands of dollars to replace it.

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This is the worst company to ever deal with. The steel siding on my house started to peel back in 2006. It took almost two years to resolve and they gave me a check for \$300 to paint two sides of my house. Now the paint is peeling on the other two sides and I took pictures of the damage in July and filed another claim. In October I hired a person to re-paint my entire house and it cost me \$4000.00. I just heard back from Gentek - 6 Months later that I voided my warranty by not getting authorization from them to paint the other

two sides. That they acknowledge the defect but I had to wait for their approval to paint and since I didn't - no warranty on the two sides.

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Just take my word - do not ever purchase anything from this company. The warranty department will have you jump thru way to many hoops. I had to resubmit pictures, contractor bid information and tax information to them several times - because they would not look at the details on the paperwork and when I would call for a progress update they would state "we were going to mail you a request for clarification on that".

Not worth even calling a lawyer - but it is just the point that they will not do the right thing and stand by their product.

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We had Alside Steel Siding installed on our home in 2001 it is chipping and lifting off due to their defective manufacturing process. We have been in contact with them for over a year and all they will do is to repaint it. They say that that is the Only thing they will do. We feel that they should be responsible for selling a defective product and pay for replacement. When you talk to their warranty department they are very pushy as to what they will do and not offer the replacement period. We are sure they knew about this problem and did nothing to correct it, yet kept selling this to the public. Their refinishing also is using regular house paint and only doing the areas that are lifting off, the remaining areas will lift off later so you keep needing to have the house refinished again and again. Someone needs to make Gentek replace their defective materials.

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We had Alside Steel Siding (Hawthorne Blue color) installed on our home in Casper WY in 2003 and the paint is peeling bad on two sides and I question whether the rest will eventually peel, also. The color is no longer available I am told. Anyway we have been dealing with Gentek for over a year and today all they are willing to do is have us get someone to paint it. I think since this was obviously defective that the whole house be resided in a quality product. There is no way that anyone can paint with the wood grain look that we have or the price would be more than new siding and regardless whether resided or painted the whole house needs to be done to have it all look decent. Have been disappointed in how long all this have taken and have lost confidence in this company and their products.

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I PUT GENTEK STEEL SIDING ON MY NEW HOME IN 2004. WITHIN 3 YEARS THE PAINT WAS FADEING AND BLISTERING. NOW IT IS PEELING OFF IN SHEETS. WE HAVE BEEN WORKING TO RESOLVE THE PROBLEM WITH GENTEK FOR OVER A YEAR. THEY CLAIM I HAVE NO RIGHTS AND LEGALLY THEY DON'T HAVE TO REPLACE THE SIDING. THEY SAY THEY DISCONTINUED THE COLOR ALSO. I'VE CONTACTED THE BETTER BUSINESS BUREAU AND THE SOUTH DAKOTA STATES ATTORNEY AND CONSULTED WITH A LOCAL ATTORNEY. I BELIEVE THEY GROSSLY MISREPRESENTED THE PRODUCT AND SHOULD PAY TO HAVE THE ENTIRE HOUSE AND SHOP RESIDED WITH A QUALITY STEEL SIDING. DEFINITELY NOT THEIRS.

56. Defendants have been aware that the Siding contained a substantial defect that causes the paint to prematurely peel since at least 2001. In November 2002, Defendant Gentek filed suit against the Sherwin Williams Company alleging that Sherwin Williams sold Gentek defective paint coatings for use on Gentek's Siding. *Gentek v. Sherwin Williams*, Case No. 1:02-cv-00013 (N.D. Ohio E.D.). The suit also alleged that Gentek had received over 1,100 warrant claims related to paint prematurely peeling on Gentek Siding. The lawsuit was resolved with no determination as to which party was at fault.

**C. Gentek's Acts and Omissions Have Damaged Plaintiffs and the Members of the Class**

57. As a result of the defects and failures complained of herein, Plaintiffs and Members of the Class defined below have suffered actual damages. The Siding on their homes, buildings, and other structures has failed and will continue to fail prematurely compared to the time expected by ordinary consumers, the time marketed by Defendants, and the time warranted by Defendants, resulting in and requiring them to expend large sums of

money to repair the damage associated with the incorporation of the Siding into their homes, buildings, and other structures, and to prevent such damage from continuing.

58. Defendants have engaged in a uniform practice of denying warranty claims. Specifically, Defendants' agents represent that the defects alleged herein constitute normal wear and tear or were installation-related problems.

59. At all relevant times, Defendants had a duty to disclose to Plaintiffs and Members of the Class defined below that its Siding was defective, prone to foreseeable and uniform problems, such as the problems described herein, and otherwise was inherently flawed in its design such that the Siding was not suitable for use as an exterior building material.

60. Because the defects in the Siding are latent and not detectable until manifestation, Plaintiffs and members of the Class defined below were not reasonably able to discover that their Siding was defective until after installation, despite the exercise of due diligence. Indeed, at the time of first sale, building and construction professionals would not be able to detect the latent defect unless they subjected the Siding to their own testing, modeling or analysis. However, Defendants possessed the resources and information necessary to determine that the Siding was defective. Moreover, Defendants possessed the complaints necessary to know that the Siding was uniformly defective and subject to premature wear.

61. The Siding manufactured and sold by Defendants is defectively designed and manufactured such that it fails prematurely, causing damage to the property of Plaintiffs and members of the Class defined below and forcing them to repair or replace their Siding sooner than reasonably expected, than marketed and/or warranted.

62. In Gentek's Complaint against Sherwin Williams Company (Case No.: 1:02-cv-00013-JRA, Northern District of Ohio, Eastern Division, Dkt. No. 1), Gentek admitted that the Siding is "susceptible to premature film integrity loss age[s], additional cracks, chips and peels will occur."

63. Plaintiffs seeks to recover, for themselves and members of the Class defined below, the costs of repairing the damage to their property and replacing their Siding, the costs of this action, including attorneys' fees and expenses, and injunctive relief requiring Defendants to replace their defective Siding and modify their warranty claims process to uniformly provide relief in accordance with its obligations under the law, and any other relief determined appropriate.

#### V. CLASS ACTION ALLEGATIONS

64. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as Class Members pursuant to Rule 23(a) and (b)(3) on behalf of the following classes:

**Nationwide class:** All persons, organizations, municipalities, corporations and entities that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding. Excluded from the Nationwide Class are Defendants, Defendants' employees, Defendants' subsidiaries, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

65. In the alternative to the Nationwide Class Plaintiffs bring this action on behalf of the following state classes:

**Ohio-only Class:** All persons, organizations, municipalities, corporations and entities residing in Ohio that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding.

**Colorado-only Class:** All persons, organizations, municipalities, corporations and entities residing in Colorado that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding.

**Kansas-only Class:** All persons, organizations, municipalities, corporations and entities residing in Kansas that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding.

**Minnesota-only Class:** All persons, organizations, municipalities, corporations and entities residing in Minnesota that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding.

**Nebraska-only Class:** All persons, organizations, municipalities, corporations and entities residing in Nebraska that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding.

**Missouri-only Class:** All persons, organizations, municipalities, corporations and entities residing in Missouri that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding.

Excluded from the state classes are Defendants, Defendants' employees, Defendants' subsidiaries, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

66. Plaintiffs also bring this lawsuit as a class action on behalf of themselves and all others similarly situated as Class Members pursuant to Rule 23(a) and 23(b)(2) on behalf of the following classes:

**23(b)(2) Declaratory Relief Class:** All persons, organizations, municipalities, corporations and entities that own or owned property, whether commercial or residential, which incorporated Gentek Steel Siding. Excluded from the Declaratory Relief Class are Defendants, Defendants' employees, Defendants' subsidiaries, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned.

67. Plaintiffs are members of the Class that they seek to represent.

68. The proposed Class is so numerous that the individual joinder of all its members, in this or any action, is impracticable. The exact number of Class Members is presently unknown to Plaintiffs, but it is believed to comprise hundreds, if not thousands, of individuals and entities, thereby making joinder impractical. The proposed Class is composed

of an easily ascertainable, self-identifying set of individuals and entities who purchased Gentek Siding or have Gentek Siding incorporated on their structures. The number of Class Members can be determined through appropriate discovery.

69. Common questions of fact and law exist as to all Class Members which predominate over questions affecting only individual members. These include, but are not limited to, the following:

- a. Whether Defendants have breached the express warranty pertaining to the Siding;
- b. Whether Defendants were aware of the defect in the Siding before the Siding left the Defendants' control;
- c. Whether Defendants have breached the implied warranties pertaining to the Siding;
- d. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in unfair or unlawful business practices with respect to the sale of the subject Siding;
- e. Whether the Defendants have breached contracts entered with Class Members;
- f. Whether Defendants have been unjustly enriched by the sale of the Siding to the Plaintiffs and Class Members;
- g. Whether Defendants had a duty to disclose the defect to the Plaintiffs and the Class;
- h. Whether Defendants were negligent in selling Defendants' Siding;

- i. Whether the Plaintiffs and the Class Members are entitled to declaratory and injunctive relief.

70. Plaintiffs' claims are typical of the claims of the Members of the Class because they and all Class Members have purchased Defendants' Siding, or own or have owned a structure that incorporated Gentek Siding and have been placed in the stream of commerce by Defendants all of which are substantially identical.

71. The factual bases of Defendants' misconduct are common to all of the Class Members and represent a common thread of fraudulent misconduct, deceptive trade practices, negligence and breach of warranty resulting in injury to all members. Plaintiffs are asserting the same rights, making the same claims, and seeking the same relief for themselves and all other Members of the Class.

72. Plaintiffs are adequate representatives of the Class because they are members of the Class and do not have interests that conflict with those of the Class Members they seek to represent. Plaintiffs are represented by experienced and able counsel who have litigated numerous class action lawsuits, and Plaintiffs' counsel intend to prosecute this action vigorously for the benefit of the Class. Plaintiffs and their counsel will fairly and adequately protect the interests of the members of the Class.

73. A class action is the best available method for the efficient adjudication of this litigation. It would be impracticable and undesirable for each Class Member who has suffered or may suffer harm to bring a separate action for these claims. In addition, the commencement of separate actions would put a substantial and unnecessary burden on the courts, while a single class action can determine the rights of all Members of the Class with judicial economy. The prerequisites to maintaining a class action for injunctive and equitable relief

pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendants have acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. Defendants' actions are generally applicable to the Class as a whole, and Plaintiffs, on behalf of the Class, seek damages and injunctive relief described herein. Defendants' systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

## **VI. CAUSES OF ACTION**

### **COUNT ONE BREACH OF EXPRESS WARRANTY (On Behalf of Plaintiffs and the Class)**

74. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

75. Defendants marketed and sold their Siding into the stream of commerce with the intent that the Siding would be purchased by Plaintiffs and members of the Class.

76. Defendants expressly warranted that the Siding is permanent, impact resistant, and would maintain its structural integrity. Defendants' representatives through its written warranties regarding the durability and quality of the Siding created express warranties which became part of the bargain Plaintiffs and Members of the Class entered into when they purchased the Siding.

77. Express warranties created by Gentek go beyond the limited warranties Gentek relies upon. Gentek also creates express warranties on the Siding's packaging and in product brochures and marketing materials.

78. Defendants expressly warranted that the structural integrity of the Siding purchased by Plaintiffs and Class Members would last at least 50 years and as long as a lifetime.

79. Defendants breached their express warranties to Plaintiffs and the Class in that Defendants' Siding is not permanent as it did not, and does not, maintain its exterior coating and perform as warranted. Defendants' Siding prematurely fails and is subject to premature peeling, cracking and chipping. Defendants knew that the Siding was subject to premature failure and yet they continued to market, distribute and sell the Siding.

80. Defendants' warranties fail their essential purpose because they purport to warrant the Siding will be free from structural breakdowns for 50 years to a lifetime when, in fact, Defendants' Siding fails far short of the applicable warranty period. Moreover, because the warranties limit Plaintiffs' and Class Members' recovery to replacement of the Siding piece by piece, with replacement labor not included, Defendants' warranties are woefully inadequate to repair and replace failed siding, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the Siding. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy. Moreover, because the warranties limit Plaintiffs' and Class Members' recovery to replacement of the Siding piece by piece, with replacement labor not included, Defendants' warranties are woefully inadequate to repair and replace failed siding, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the Siding. Further, the Defendants' warranty refinishing process fails to remedy the defective condition of the Siding as the Siding continues to peel, crack and excessively

deteriorate after the refinishing process. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

81. The limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

82. Defendants have denied or failed to pay in full the warranty claims or have not responded to warranty claims.

83. Plaintiffs and the Class Members are in privity with Defendants because Defendants' sale of their Siding was either direct or through an authorized distributor.

84. As a result of Defendants' breach of its express warranties, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes and other structures an exterior Siding product that is defective and that has failed or is failing prematurely due to improper design. This failure has required or is requiring Plaintiffs and the Class to incur significant expense in repairing or replacing their Siding. Replacement is required to prevent on-going and future damage to the structures or interiors of Plaintiffs' and the Class Members' homes and structures.

85. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorneys' fees, interest and costs.

**COUNT TWO**  
**BREACH OF IMPLIED WARRANTY**  
**(On Behalf of Plaintiffs and the Class)**

86. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

87. At all times mentioned herein, Defendants manufactured or supplied Gentek Siding, and prior to the time said Siding was purchased by Plaintiffs, Defendants impliedly warranted to Plaintiffs, and to Plaintiffs' agents, that the product was of quality and fit for the use for which it was intended.

88. Plaintiffs and Plaintiffs' agents relied on the skill and judgment of the Defendants in using the aforesaid product.

89. The product was unfit for its intended use and it was not of merchantable quality, as warranted by Defendants, in that it had a propensity to break down and fail to perform and protect when put to its intended use. The aforesaid product did cause Plaintiffs to sustain damages as herein alleged.

90. The Siding was similarly unfit for its particular purpose; that is, to provide durable, long-lasting, suitable protection.

91. After Plaintiffs were made aware of Plaintiffs' damages as a result of the aforesaid Siding, notice was duly given to Defendants of the breach of said warranty.

92. Defendants failed to provide adequate remedy and added additional terms to the warranties which independently caused the purported warranty to fail its essential purpose, thereby permitting remedy under implied warranties.

93. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class Members suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

94. Plaintiffs on behalf of themselves and all others similarly situated, demand judgment against defendants for compensatory damages for themselves and each Member of the Class, for the establishment of the common fund, plus attorneys' fees, interest and costs.

**COUNT THREE**  
**VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT AND  
SUBSTANTIALLY SIMILAR LAWS OF CERTAIN OTHER STATES  
(On Behalf of Persons Who Purchased for Personal, Family or Household Use)**

95. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

96. Defendants are manufacturers, marketers, sellers and/or distributors of the Siding.

97. The conduct described above and throughout this Complaint constitutes unfair or deceptive acts or practices in violation of §1345.02 of the Ohio Consumer Sales Practices Act (hereinafter, “CSPA”), Ohio Rev. Code Ann. §1345.02, *et seq.*

98. Alternatively, similar statutes, identical in their material respects, are in effect in many jurisdictions within the United States.<sup>3</sup>

99. In violation of the CSPA, Defendants omitted and/or concealed facts from Plaintiffs and members of the Class regarding the quality, characteristics, benefits and/or uses of the Siding.

100. The omissions described herein were likely to deceive consumers into purchasing the Siding.

101. As a direct and proximate cause of the violations of the CSPA, described above, Plaintiffs and other Members of the Class have been injured in that they have

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<sup>3</sup> The consumer fraud claims of resident absent class members are brought under the Ohio Consumer Protection Act, Ohio Rev. Code Ann. §1345.02, *et seq.* The consumer fraud claims of Plaintiffs and nonresident absent class members are brought, in the alternative, under the consumer protection statute(s) of their respective states of residence. *See e.g.*, Colo. Rev. State. §§ 6-1-101 *et seq.* (COLORADO); Kan. Stat. Ann. §§ 50-626, *et seq.* (KANSAS); Minn. Stat. §§ 325F.68 *et seq.* (MINNESOTA); Mo. Rev. Stat. §§ 407.010 *et seq.* (MISSOURI); Neb. Rev. Stat. §§ 59-1601 *et seq.* (NEBRASKA); substantially similar state consumer protection statutes, identical in their material respects; and the state statutes of any additional or future plaintiffs.

purchased the defective Siding for personal, family or household purposes based on nondisclosure of material facts alleged above.

102. Defendants knew or should have known that the Siding was defective, would fail prematurely, was not suitable or use as an exterior siding product, and otherwise was not as warranted and represented by Defendants.

103. Defendants deceived and continue to deceive consumers. This conduct constitutes unfair or deceptive acts or practices within the meaning of the CSPA. This illegal conduct is continuing, with no indication that Defendants will cease.

104. Defendants acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when it committed these acts of consumer fraud.

105. As a direct and proximate result of Defendants' unfair and deceptive acts and practices, Plaintiffs and other Members of the Class will suffer damages, which include, without limitation, cost to inspect, repair and/or replace their Siding and other property in an amount to be determined at trial.

106. As a result of the acts of consumer fraud described above, Plaintiffs and the Class have suffered ascertainable loss – actual damages that include the purchase price of the products – for which the Defendants are liable to the Plaintiffs and the Class for their ascertainable losses, plus attorneys' fees and costs, along with equitable relief prayed for herein in this Complaint.

**COUNT FOUR**  
**BREACH OF CONTRACT**  
**(On Behalf of Plaintiffs and the Class)**

107. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

108. Plaintiffs and the Class Members have entered into certain contracts and warranty agreements with Defendants, including an express warranty. Pursuant to these contracts and agreements, including the express warranty, Defendants would provide Plaintiffs and the Class Members with Shingles that were of merchantable quality and fit for the use or which they were intended. Defendants were further obligated pursuant to the express warranty to repair or replace any defects or problems with the Siding that Plaintiffs and the Class Members experienced. In exchange for these duties and obligations, Defendants received payment of the purchase price for the Siding from Plaintiffs and the Class.

109. Plaintiffs and the Class satisfied their obligations under these contracts, warranties, and agreements.

110. Defendants failed to perform as required by the express warranty and breached said contracts and agreements because they provided Plaintiffs and the Class with Siding that was defective and unfit for their intended use and failed to appropriately repair or replace the Siding.

111. As a result of the foregoing, Plaintiffs and the Class Members are entitled to compensatory damages in an amount to be proven at trial.

**COUNT FIVE**  
**FRAUDULENT CONCEALMENT**  
**(On Behalf of Plaintiffs and the Class)**

112. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

113. At all times mentioned herein, Defendants, through their experience, were in a position of superiority to Plaintiffs and the Class and had the duty and obligation to disclose

to Plaintiffs the true facts and their knowledge concerning the Siding; that is that said product is defective, would prematurely fail, and otherwise was not as warranted and represented by Defendants. Defendants made the affirmative representations as set forth in this Complaint to Plaintiffs, the Class, and the general public prior to the date Plaintiffs purchased the Siding, while at the same time concealing the material defects described herein. All of these facts were material to consumers' (such as Plaintiffs') purchase decisions.

114. The material facts concealed or not disclosed by Defendants to Plaintiffs and the Class are material facts in that a reasonable person would have considered those facts to be important in deciding whether or not to purchase Gentek Siding.

115. At all times mentioned herein, Defendants intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiffs and with the intent to defraud as herein alleged.

116. At all times mentioned herein, Plaintiffs and Members of the Class reasonably relied on Defendants to disclose those material facts set forth above. If Defendants had disclosed the above facts to Plaintiffs and Class and had they been aware of the said facts, they would have negotiated additional warranty coverage, negotiated a lower price to reflect the risk, or simply avoided the risk all together by purchasing different siding.

117. Defendants continued to conceal the defective nature of its Siding even after members of the Class began to report problems. Indeed, Defendants continue to cover up and conceal the true nature of the problem.

118. As a result of the previous and continued concealment or suppression of the facts set forth above, Plaintiffs and the Class Members sustained damages in an amount to be determined at trial.

**COUNT SIX**  
**UNJUST ENRICHMENT**  
**(On Behalf of Plaintiffs and the Class)**

119. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

120. Plaintiffs and the Class have conferred substantial benefits on Defendants by purchasing Gentek Siding, and Defendants have knowingly and willingly accepted and enjoyed these benefits.

121. Gentek either knew or should have known that the payments rendered by Plaintiffs and the Class were given and received with the expectation that the Gentek Siding would perform as represented and warranted. For Gentek to retain the benefit of the payments under these circumstances is inequitable.

122. Defendants' acceptance and retention of these benefits under the circumstances make it inequitable for Defendants to retain the benefit without payment of the value to the Plaintiffs and the Class.

123. Plaintiffs and the Class are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants, plus interest thereon.

124. As a direct and proximate result of Defendants' wrongful conduct and unjust enrichment, Plaintiffs and the Class are entitled to an accounting, restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Gentek, plus attorneys' fees, costs, and interest thereon.

**COUNT SEVEN**  
**INTENTIONAL MISREPRESENTATION**  
**(On Behalf of Plaintiffs and the Class)**

125. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

126. Defendants willfully, falsely, and knowingly misrepresented material facts relating to the character and quality of its Siding, as well as on websites, in various media advertising, and point of sale materials disseminated or caused to be disseminated by Defendants and their officers, agents, representatives, servants, or employees of Defendants, acting within the line and scope of their authority, so employed to merchandise and market the Siding.

127. Defendants made intentional misrepresentations to Class Members who sought to have Defendants honor their warranty. Defendants represented to Class Members by affirmative misrepresentations and omissions that the defective Siding was not covered by the warranty given by the Defendants.

128. Defendants misrepresented and omitted to inform Class Members of the defects that the Defendant knew existed in the Siding.

129. Defendants' representations were made with the intent that the general public, including Plaintiffs and Class members, rely upon them.

130. Defendants' representations were made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.

131. In actual and reasonable reliance upon Defendants' misrepresentations, Plaintiffs and Class Members purchased Siding for their intended and reasonably foreseeable purposes. Plaintiffs and Class Members were unaware of the true facts concerning the

effectiveness of the Siding, which have not been disclosed. If Plaintiffs and Class Members had been aware of the suppressed facts, Plaintiffs and Class Members would not have purchased the Siding at such a price premium.

132. Plaintiffs and Class members are informed and believe, and thereon allege, that Defendants misrepresented material facts with the intent to defraud Plaintiffs and Class Members. Plaintiffs and Class Members were unaware of the intent of Defendants and relied upon these representations in agreeing to purchase the Siding.

133. In actual and reasonable reliance upon Defendants misrepresentations, Plaintiffs and Class Members purchased Siding and did not benefit from the durability benefits as represented, the direct and proximate result of which was injury and harm to Plaintiffs and Class Members because:

- (a) they would not have purchased Siding priced higher than competing brands if the true facts concerning its likelihood of failing prematurely had been known;
- (b) they paid a price premium due to the mislabeling of the Siding as more beneficial to their houses and other properties than they actually were;
- (c) the Siding did not perform as promised; and
- (d) Plaintiffs and Class Members have paid and will continue to pay higher costs for the Siding as long as they continue to use the unsupported durability claims and lifetime warranty representations on its packaging.

**COUNT EIGHT**  
**NEGLIGENCE**  
**(On Behalf of Plaintiffs and the Class)**

134. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

135. Defendants had a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Siding.

136. Defendants breached their duty to Plaintiffs and the Class by designing, manufacturing, advertising, and selling to Plaintiffs and the Class a product that is defective and will fail prematurely, and by failing to promptly remove the Siding from the marketplace or to take other appropriate remedial action.

137. Defendants knew or should have known that the Siding was defective, would fail prematurely, was not suitable for use as an exterior siding product, and otherwise was not as warranted and represented by Defendants.

138. As a direct and proximate cause of Defendants' negligence, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes, residences, buildings, and other structures an exterior siding product that is defective and that fails prematurely. These failures have caused and will continue to cause Plaintiffs and the Class to incur expenses repairing or replacing their siding as well as the resultant progressive property damage.

139. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for establishment of a common fund, plus attorneys' fees, interest and costs.

140. In addition to compensatory damages, Plaintiffs and other members of the

Class are entitled to punitive damages because Defendants' conduct was gross, oppressive, aggravated or involved a breach of trust or confidence.

**COUNT NINE**  
**DECLARATORY AND INJUNCTIVE RELIEF**  
**(On Behalf of Plaintiffs and the Class)**

141. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

142. Plaintiffs, on behalf of themselves and putative Class Members, seek a Court declaration of the following:

- a. All Defendants' Siding has a defect in workmanship and material that causes failures;
- b. Defendant knew of the defects in their Siding and that the limitation contained in the warranties are unenforceable;
- c. Defendants shall re-audit and reassess all prior warranty claims on their Siding, including claims previously denied in whole or in part, where the denial was based on warranty or other grounds; and
- d. Defendants shall establish an inspection program and protocol to be communicated to Class members, which will require Defendants to inspect upon request, a Class Member's structure to determine whether a Siding failure is manifest.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for judgment to be entered upon Defendants as follows:

1. For economic and compensatory damages on behalf of Plaintiffs and all members of the Class;
2. For restitution;
3. For actual damages sustained or treble damages;
4. For punitive damages, as otherwise applicable;
5. For injunctive and declaratory relief, as claimed herein;
6. For reasonable attorneys' fees and reimbursement of all costs for the prosecution of this action; and
7. For such other and further relief as this Court deems just and appropriate.

Respectfully submitted:

s/ John R. Climaco

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*Counsel for the Plaintiffs and the Class*

**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: May 3, 2012

/s/John R. Climaco

John R. Climaco (0011456)