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10 [Additional Counsel Appear On Signature Page]

11
 12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF WASHINGTON

14 ROBERT and DANELLE
 15 BLANGERES, individually and on
 16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 UNITED STATES SEAMLESS, INC.,
 20 K.B.P. COIL COATERS, INC., and
 21 KAYCAN LIMITED,

22 Defendants.

Case No. 2:13-cv-00260-LRS

**AMENDED CLASS ACTION
 COMPLAINT**

DEMAND FOR JURY TRIAL

23
 24 Plaintiffs Robert and Danelle Blangeres (“Plaintiffs”), individually and on
 25 behalf of themselves and all others similarly situated, by their undersigned
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1 attorneys, upon personal knowledge as to themselves, upon information and belief,
2 and based upon the investigation of their Counsel, allege as follows:
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4 **I. INTRODUCTION**

5 1. This is a consumer class action on behalf of all persons, organizations,
6 municipalities, corporations and entities that own property which incorporated
7 seamless coated steel coil siding (“Siding”) that was designed, manufactured,
8 marketed, warranted, sold and/or distributed by United States Seamless, Inc.,
9 K.B.P. Coil Coaters, Inc., and KAYCAN Limited (“Defendants”).
10

11 2. Defendants market their Siding as durable and warrant against rusting,
12 blistering, chipping, peeling, or flaking, as well as certain other manufacturing
13 defects. Defendants offer a Lifetime Non-Prorated, Transferable Limited Warranty
14 for their Siding.
15

16 3. The Siding manufactured and sold by Defendants is defectively
17 designed and manufactured such that it peels within the original warranty period.
18

19 4. The defects present in Defendants’ Siding are so severe that Plaintiffs
20 and Class Members must repair or replace their Siding sooner than reasonably
21 expected, at significant cost. Moreover, Defendants’ Siding is uniformly defective
22 such that Plaintiffs’ and Class Members’ Siding fails well before the time period
23 advertised, marketed, and guaranteed by Defendants.
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1 5. Defendants knew or reasonably should have known that the Siding is
2 defective and that such defects would cause damage to the homes of Plaintiffs and
3 the Class Members. Moreover, Defendants concealed the defective nature of the
4 Siding from the Plaintiffs and Class Members and refused to honor warranties on
5 the Siding.
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8 **II. JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction over this proposed class
10 action pursuant to 28 U.S.C. § 1332(d)(2). The amount in controversy, exclusive
11 of interest and costs, exceeds the sum or value of \$5,000,000 and some of the
12 Plaintiffs and Class Members are citizens of states other than North Dakota and
13 Colorado, which are the Defendants' states of citizenship.
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16 7. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) and (b)
17 because a substantial part of the events or omissions giving rise to the Plaintiffs'
18 claims occurred in this judicial district. Venue is also proper under 18 U.S.C.
19 §1965(a) because the Defendants transact substantial business in this district.
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III. PARTIES

Plaintiffs Robert and Danelle Blangeres

8. Plaintiffs Robert and Danelle Blangeres are residents of Spokane, Washington.

9. Plaintiffs purchased their Siding from Defendants in March, 1999 for approximately \$20,000. In 2011, Plaintiffs started to notice that the coating on the Siding was peeling off on various sections of their house. Upon noticing these problems, Plaintiffs reasonably contacted Defendants to make a claim under their life-time warranty. Defendants, instead of honoring Plaintiffs' warranty upon notice of the failure, informed Plaintiffs they did not properly follow the registration directions on their warranty and denied the claim. Plaintiffs have filed numerous letters with the Washington State Attorney General's office and the Better Business Bureau to no avail.

10. The following photos are a sampling of the external problems Plaintiffs have experienced as a result of using Defendants' Siding:

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Defendants United States Seamless, Inc., K.B.P. Coil Coaters, Inc., and KAYCAN Limited

11. Defendant United States Seamless, Inc. (“U.S. Seamless”) is a North Dakota corporation with its principal place of business located in Fargo, North Dakota. In addition to marketing coated seamless steel coil siding, U.S. Seamless develops and franchises businesses that sell and install its Siding and similar products.

12. Defendant KAYCAN Limited (“KAYCAN Limited”) is a Colorado corporation with its principle place of business located in Pointe-Claire Quebec,

1 Canada. KAYCAN Limited, together with K.B.P. Coil Coaters, Inc., designs,
2 manufactures, and warrants coated steel coil Siding.
3

4 13. K.B.P. Coil Coaters, Inc. (“KBP”) is a Colorado corporation with its
5 principle place of business located in Denver, Colorado. KBP, together with
6 KAYCAN Limited, designs, manufactures, and warrants coated steel coil siding.
7

8 IV. FACTUAL ALLEGATIONS

9 **Background**

10 14. Defendants sell or distribute their Siding throughout the United States
11 for installation on homes, commercial buildings, and other structures. The Siding
12 is or was installed on Plaintiffs’ home and is or was installed on the homes and
13 other structures of the members of the Class defined below.
14

15 15. Defendant U.S. Seamless’s website markets and warrants its Siding as
16 durable. The Siding is sold with a “Lifetime Non-Prorated, Transferable Limited
17 Warranty.” Defendant made this representation before purchase and at the time of
18 purchase via sales brochures and marketing materials (including but not limited to
19 store displays, sales seminars, and training materials). The industry and consumers
20 appropriately rely on the warranty and marketing nomenclature.
21

22 16. Defendant U.S. Seamless’s website, which is available to its building
23 professionals and Members of the Class defined below, at and before the time of
24 sale, states, among other things:
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1 Seamless steel siding is the number one choice for the
2 homeowner who wants durability and beauty, along with
3 the time-saving benefits of a completely maintenance-free
4 exterior. Trust your home to a United States Seamless
5 professional and you'll never have to worry about the
6 exterior of your home again.

6 17. The website further states:

7 Unmatched performance, element resistance, seamless
8 appearance, unparalleled durability, maintenance freedom, full
9 product line, a superior warranty and earth friendly products are
10 just a few of the reasons United States Seamless is the best
11 siding money can buy.

11 Best of all, you will never have to paint or stain your home
12 again.

13 Our seamless steel siding will help your home retain its beauty
14 year after year, and will add value.

15 18. Concerning Platinum Series steel siding, Defendant U.S.

16 Seamless's website states:

17
18 Whether you're remodeling or building a new home, United
19 States Seamless®' exclusive Platinum Series™ will provide
20 you with a beautiful, durable and energy efficient exterior that
21 performs better than any vinyl, wood or fiber cement products.

21 Platinum Series™ Seamless Steel Siding from United States
22 Seamless® not only frees you from time consuming
23 maintenance you are free from seams, fading, chipping, flaking,
24 cracks, dents, warping, bubbles and so much more.

24 With the Platinum Series™ from United States Seamless Steel
25 Siding there's no need for priming, caulking, painting or
26 patching to maintain the appearance of your home. Your siding
27 will look like freshly painted wood for years to come with little
28 more than routine cleaning.

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2 19. Defendant KAYCAN Limited's website, which is available to its
3 building professionals and Members of the Class defined below, at and before the
4 time of sale, states, among other things:

- 5 • Unparalleled quality.
- 6 • State of the art manufacturing.
- 7 • Kaycan is a market leader because of our passion for quality,
8 which delivers exceptional value to our customers. The
9 standards of excellence that distinguish Kaycan products
10 include superior performance, outstanding beauty, durability
11 and low maintenance.
- 12 • As a family owned and operated company for over four
13 decades, quality care, reliability and trust remain our most
14 important values.
- 15 • Kaycan as always been extremely committed to research and
16 development. Being a market leader means always searching
17 for new ways to provide better value to our customers.

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

- 21 • Rigorous control standards assure quality and consistency.
- 22 • Our two-coat paint system extends the life of the coil and
23 finished products, offers a wider range of color options, better
24 solar reflectance, and better protection for your products. The
25 system involves applying a primer and topcoat on the same side
26 of the aluminum or steel sheet. Using top quality primers we
27 ensure adhesion between the aluminum substrate and the
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1 topcoat, as well as provide additional protection against
2 corrosion.

3 21. Defendants' Siding has not lived up to Defendants' representations
4 and given the unexpected maintenance and premature repair and replacement – at
5 significant cost to consumers – has not proven to be of value when compared to
6 other siding products.
7

8 22. The Siding manufactured, marketed, advertised and sold by
9 Defendants is defectively designed and manufactured such that it prematurely fails,
10 causing premature peeling of the coating and other damage that diminishes the
11 value of the structures owned by Plaintiffs and other members of the Class defined
12 below. Plaintiffs and other members of the Class sustain a loss in property value
13 that is attributable to the damage caused by Defendants' defective Siding.
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16 23. The defects present in Siding are so severe that Plaintiffs and the
17 Class must repair or replace their Siding, causing damage to the Plaintiffs' and the
18 Class' structures during the repair or replacement process.
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20 24. Defendants' Siding is uniformly defective such that Plaintiffs' and
21 Class Members' Siding is failing before the time period advertised, marketed, and
22 guaranteed by Defendants or otherwise expected by ordinary consumers
23 purchasing siding.
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25 25. Defendants knew or reasonably should have known that the Siding is
26 defective as designed and manufactured such that the product fails prematurely.
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1 The outward manifestation of the Siding failure is peeling of the coating and other
2 damage. In short, the Siding does not perform in accordance with the reasonable
3 expectations of consumers that such products be durable and suitable for use as
4 building products.
5

6 **Defendants' Acts and Omissions Have Damaged Plaintiffs and the Members**
7 **of the Class**

8 26. As a result of the defects and failures complained of herein, Plaintiffs
9 and Members of the Class defined below have suffered actual damages. The
10 Siding on their homes, buildings, and other structures has failed and will continue
11 to fail prematurely compared to the time expected by ordinary consumers, the time
12 marketed by Defendants, and the time warranted by Defendants, requiring them to
13 expend large sums of money to repair the damage associated with the
14 incorporation of the Siding into their homes, buildings, and other structures, and to
15 prevent such damage from continuing.
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19 27. At all relevant times, Defendants had a duty to disclose to Plaintiffs
20 and the Class that their Siding was defective, prone to foreseeable and uniform
21 problems, such as the problems described herein, and otherwise was inherently
22 flawed in its design such that the Siding was not suitable for use as an exterior
23 building material.
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26 28. Because the defects in the Siding are latent and not detectable until
27 manifestation, Plaintiffs and members of the Class defined below were not
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1 reasonably able to discover that their Siding was defective until after installation,
2 despite the exercise of due diligence. Indeed, at the time of first sale, building and
3 construction professionals would not be able to detect the latent defect unless they
4 subjected the Siding to their own testing, modeling or analysis. Defendants,
5 however, possessed the resources and information necessary to determine that the
6 Siding was defective. Moreover, Defendants possessed the complaints necessary
7 to know that the Siding was uniformly defective and subject to premature wear.
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10 29. The Siding manufactured and sold by Defendants is defectively
11 designed and manufactured such that it fails prematurely, causing damage to the
12 property of Plaintiffs and members of the Class defined below and forcing them to
13 repair or replace their Siding sooner than reasonably expected, marketed and/or
14 warranted.
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17 30. Plaintiffs seek to recover, for themselves and members of the Class
18 defined below, the costs of repairing the damage to their property and replacing
19 their Siding, the costs of this action, including attorneys' fees and expenses, and
20 injunctive relief requiring Defendants to replace their defective Siding and modify
21 their warranty claims process to uniformly provide relief in accordance with their
22 obligations under the law, and any other relief determined appropriate.
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1 **V. CLASS ACTION ALLEGATIONS**

2 31. Plaintiffs bring this lawsuit as a class action on behalf of themselves
3 and all others similarly situated as Class Members pursuant to Rule 23(a) and
4 (b)(3) on behalf of the following classes:
5

6 a. **Nationwide class:** All persons, organizations,
7 municipalities, corporations and entities that own or
8 owned property, whether commercial or residential,
9 which incorporated Defendants' Siding since 1986.
10 Excluded from the Nationwide Class are Defendants,
11 Defendants' employees, Defendants' subsidiaries, the
12 Judge to which this case is assigned and the immediate
13 family of the Judge to which this case is assigned.

14 **or**

15 b. **State of Washington class:** All persons, organizations,
16 municipalities, corporations and entities that own or
17 owned property, whether commercial or residential,
18 which incorporated Defendants' Siding since 1986.
19 Excluded from the State of Washington Class are
20 Defendants, Defendants' employees, Defendants'
21 subsidiaries, the Judge to which this case is assigned and
22 the immediate family of the Judge to which this case is
23 assigned.

24 32. In the alternative to these Classes, Plaintiffs bring this action on behalf
25 of the following subclasses:
26

27 a. **Nationwide class:** All persons, organizations,
28 municipalities, corporations and entities that own or
owned property, whether commercial or residential,
which incorporated Defendants' Siding since 1986 and
that did not register their warranty. Excluded from the
Nationwide Class are Defendants, Defendants'
employees, Defendants' subsidiaries, the Judge to which

1 this case is assigned and the immediate family of the
2 Judge to which this case is assigned.

3 or

4 b. **State of Washington class:** All persons, organizations,
5 municipalities, corporations and entities that own or
6 owned property, whether commercial or residential,
7 which incorporated Defendants' Siding since 1986 and
8 that did not register their warranty. Excluded from the
9 State of Washington Class are Defendants, Defendants'
10 employees, Defendants' subsidiaries, the Judge to which
11 this case is assigned and the immediate family of the
12 Judge to which this case is assigned.

13 33. Plaintiffs reserve the right to re-define these Classes prior to class
14 certification.

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

16 35. The proposed Class is so numerous that the individual joinder of all its
17 members in this or any action is impracticable. The exact number of Class
18 Members is presently unknown to Plaintiffs, but it is believed to comprise
19 hundreds, if not thousands, of individuals and entities, thereby making joinder
20 impractical. The proposed Class is composed of an easily ascertainable, self-
21 identifying set of individuals and entities that purchased Defendants' Siding or
22 have Defendants' Siding incorporated on their structures. The number of Class
23 Members can be determined through appropriate discovery.

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

2 a. Whether Defendants have breached the express warranty
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4 pertaining to the Siding;

5 b. Whether Defendants were aware of the defect in the Siding
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7 before the Siding left the Defendants' control;

8 c. Whether Defendants have breached the implied warranties
9
10 pertaining to the Siding;

11 d. Whether, by the misconduct set forth in this Complaint,
12
13 Defendants have engaged in unfair or deceptive business practices with respect to
14
15 the sale of the subject Siding;

16 e. Whether the Defendants have breached contracts entered with
17
18 Class Members;

19 f. Whether Defendants have been unjustly enriched by the sale of
20
21 the Siding to Plaintiffs and Class Members;

22 g. Whether Defendants had a duty to disclose defects to Plaintiffs
23
24 and the Class;

25 h. Whether Defendants were negligent in selling their Siding; and

26 i. Whether Plaintiffs and Class Members are entitled to
27
28 declaratory and injunctive relief.

1 37. Plaintiffs' claims are typical of the claims of the Members of the Class
2 because they and all Class Members have purchased Defendants' Siding, or own or
3 have owned a structure that incorporated Siding and have been placed in the stream
4 of commerce by Defendants, all of which are substantially identical.
5

6 38. The factual basis of Defendants' misconduct is common to all of the
7 Class Members and represents a common thread of fraudulent misconduct,
8 deceptive trade practices, negligence and breach of warranty resulting in injury to
9 all members. Plaintiffs are asserting the same rights, making the same claims, and
10 seeking the same relief for themselves and all other Members of the Class.
11

12 39. Plaintiffs are adequate representatives of the Class because they are
13 members of the Class and do not have interests that conflict with those of the Class
14 Members they seek to represent. Plaintiffs are represented by experienced and able
15 counsel who have litigated numerous class action lawsuits, and Plaintiffs' counsel
16 intend to prosecute this action vigorously for the benefit of the Class. Plaintiffs
17 and their counsel will fairly and adequately protect the interests of the members of
18 the Class.
19

20 40. A class action is the best available method for the efficient
21 adjudication of this litigation. It would be impracticable and undesirable for each
22 Class Member who has suffered or may suffer harm to bring a separate action for
23 these claims. In addition, the commencement of separate actions would put a
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1 substantial and unnecessary burden on the courts, while a single class action can
2 determine the rights of all Members of the Class with judicial economy. The
3 prerequisites to maintaining a class action for injunctive and equitable relief
4 pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendants have acted or refused to
5 act on grounds generally applicable to the Class thereby making appropriate final
6 injunctive and equitable relief with respect to the Class as a whole. Defendants'
7 actions are generally applicable to the Class as a whole, and Plaintiffs, on behalf of
8 the Class, seek damages and injunctive relief described herein. Defendants'
9 systemic policy and practices make declaratory relief with respect to the Class as a
10 whole appropriate.
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14 **VI. CAUSES OF ACTION**

15 **COUNT ONE**

16 **BREACH OF EXPRESS WARRANTY**

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18 41. Plaintiffs incorporate by reference each of the allegations contained in
19 all of the preceding paragraphs of this Complaint.
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21 42. Defendants designed, developed, tested, manufactured, distributed,
22 marketed and sold their Siding into the stream of commerce with the intent that the
23 Siding would be purchased by Plaintiffs and members of the Class.
24

25 43. Defendants expressly warranted that the Siding is durable and long
26 lasting. Defendants' representations through its written warranties regarding the
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1 durability and quality of the Siding created express warranties which became part
2 of the bargain Plaintiffs and Members of the Class entered into when they
3 purchased the Siding.
4

5 44. Defendants expressly warranted that the structural integrity of the
6 Siding purchased by Plaintiffs and Class Members would last a lifetime.
7

8 45. Defendants breached their express warranties to Plaintiffs and the
9 Class in that Defendants' Siding is not permanent as it did not, and does not,
10 maintain its exterior coating and perform as warranted. Defendants' Siding
11 prematurely fails and is subject to premature peeling of the coating. Defendants
12 knew that the Siding was subject to premature failure and yet they continued to
13 market, distribute and sell the Siding.
14

15 46. Defendants' warranties fail their essential purpose because they
16 purport to warrant that the Siding will be free from structural breakdowns for a
17 lifetime when, in fact, Defendants' Siding fails far short of the applicable warranty
18 period.
19

20 47. Moreover, because the warranties limit Plaintiffs' and Class
21 Members' recovery to replacement of the Siding piece by piece, with replacement
22 labor not included, Defendants' warranties are woefully inadequate. The remedies
23 available in Defendants' warranties are limited to such an extent that they do not
24 provide a minimum adequate remedy.
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1 48. The limitations on remedies and the exclusions in Defendants'
2 warranties are unconscionable and unenforceable.

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4 49. Defendants have denied or failed to pay in full the warranty claims or
5 have not responded to warranty claims.

6 50. Plaintiffs and the Class Members are in privity with Defendants
7 because Defendants' sale of its Siding was either direct or through an authorized
8 distributor. In addition, privity exists because Defendants made express
9 representations to Plaintiffs and the Class about the nature and quality of the Siding
10 and Plaintiffs and Class Members are either directly in contract with Defendants
11 through Defendants' express warranty or are third party beneficiaries to the
12 contracts between Defendants and its distributors.

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16 51. As a result of Defendants' breach of their express warranties,
17 Plaintiffs and the Class have suffered actual damages in that they purchased and
18 installed on their homes and other structures an exterior Siding product that is
19 defective and that has failed or is failing prematurely due to improper design. This
20 failure has required or is requiring Plaintiffs and the Class to incur significant
21 expenses in repairing or replacing their Siding. Replacement is required to prevent
22 on-going and future damage to the structures or interiors of Plaintiffs' and Class
23 Members' homes and structures.
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1 52. Plaintiffs, on behalf of themselves and all others similarly situated,
2 demand judgment against Defendants for compensatory damages for themselves
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4 and each member of the Class, for the establishment of a common fund, plus
5 attorneys' fees, interest and costs.

6 **COUNT TWO**

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8 **BREACH OF IMPLIED WARRANTY**

9 53. Plaintiffs incorporate by reference each of the allegations contained in
10 all of the preceding paragraphs of this Complaint.
11

12 54. At all times mentioned herein, Defendants manufactured or supplied
13 Siding, and prior to the time said Siding was purchased by Plaintiffs, Defendants
14 impliedly warranted to Plaintiffs, and to Plaintiffs' agents, that the product was of
15 quality and fit for the use for which it was intended.
16

17 55. Plaintiffs and Plaintiffs' agents relied on the skill and judgment of the
18 Defendants in using the aforesaid product.
19

20 56. The product was unfit for its intended use and it was not of
21 merchantable quality, as warranted by Defendants, in that it had a propensity to
22 break down and fail to perform and protect when put to its intended use. The
23 aforesaid product did cause Plaintiffs to sustain damages as herein alleged.
24

25 57. The Siding was similarly unfit for its particular purpose; that is, to
26 provide durable, long-lasting, suitable protection.
27

1 58. Plaintiffs and the Class are in privity with Defendants because
2 Defendants made express representations to Plaintiffs and the Class about the
3 nature and quality of the Siding and Plaintiffs and Class Members are either
4 directly in contract with Defendants through Defendants express warranty or are
5 third party beneficiaries to the contracts between Defendants' and its distributors.
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8 59. After Plaintiffs were made aware of Plaintiffs' damages as a result of
9 the aforesaid Siding, notice was duly given to Defendants of the breach of said
10 warranty.
11

12 60. Defendants failed to provide adequate remedy and added additional
13 terms to the warranties which independently caused the purported warranty to fail
14 its essential purpose, thereby permitting remedy under implied warranties.
15

16 61. As a direct and proximate result of the breach of said warranties,
17 Plaintiffs and the Class Members suffered and will continue to suffer loss as
18 alleged herein in an amount to be determined at trial.
19

20 62. Plaintiffs, on behalf of themselves and all others similarly situated,
21 demand judgment against Defendants for compensatory damages for themselves
22 and each Member of the Class, for the establishment of a common fund, plus
23 attorneys' fees, interest and costs.
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COUNT THREE

**VIOLATION OF THE WASHINGTON
CONSUMER PROTECTION ACT**

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

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

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65. The conduct described above and throughout this Complaint constitutes unfair or deceptive acts or practices in violation of §19.86.010 of the Washington Consumer Protection Act (hereinafter, “WCPA”), RCW §19.86.010, *et seq.*

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66. Alternatively, similar statutes, identical in their material respects, are in effect in many jurisdictions within the United States.

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

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

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69. As a direct and proximate cause of the violations of the WCPA, described above, Plaintiffs and other Members of the Class have been injured in

1 that they have purchased the defective Siding for personal, family or household
2 purposes based on nondisclosure of material facts alleged above.
3

4 70. Defendants knew or should have known that the Siding was defective,
5 would fail prematurely, was not suitable for use as an exterior siding product, and
6 otherwise was not as warranted and represented by Defendants.
7

8 71. Defendants deceived and continue to deceive consumers. This
9 conduct constitutes unfair or deceptive acts or practices within the meaning of the
10 WCPA. This illegal conduct is continuing with no indication that Defendants will
11 cease and/or has a substantial likelihood of being repeated. The acts complained of
12 herein were and are capable of deceiving a substantial portion of the public.
13

14 72. Defendants acted willfully, knowingly, intentionally, unconscionably
15 and with reckless indifference when they committed these acts of consumer fraud.
16

17 73. Defendants' unfair and deceptive acts and practices affect the public
18 interest. Further, the unfair and deceptive acts and practices were committed in the
19 general course of Defendants' business and have already injured thousands of
20 individuals nationwide. There is a likelihood Defendants' practices will injure
21 other members of the public.
22

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

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4 75. As a result of the acts of consumer fraud described above, Plaintiffs
5 and the Class have suffered ascertainable loss – actual damages that include the
6 purchase price of the products – for which the Defendants are liable to the
7 Plaintiffs and the Class for their ascertainable losses, exemplary damages, plus
8 attorneys’ fees and costs, along with equitable relief prayed for herein.
9

10 **COUNT FOUR**

11 **BREACH OF CONTRACT**

12
13 76. Plaintiffs incorporate by reference each of the allegations contained in
14 all of the preceding paragraphs of this Complaint.
15

16 77. Plaintiffs and the Class Members have entered into certain contracts
17 and warranty agreements with Defendants, including an express warranty.
18 Pursuant to these contracts and agreements, including the express warranty,
19 Defendants would provide Plaintiffs and Class Members with Siding that was of
20 merchantable quality and fit for the use for which it was intended. Defendants
21 were further obligated pursuant to the express warranty to repair or replace any
22 defects or problems with the Siding that Plaintiffs and Class Members experienced.
23 In exchange for these duties and obligations, Defendants received payment of the
24 purchase price for the Siding from Plaintiffs and Class Member.
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1 78. Plaintiffs and the Class satisfied their obligations under these
2 contracts, warranties, and agreements.
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4 79. Defendants failed to perform as required by the express warranty and
5 breached said contracts and agreements because they provided Plaintiffs and the
6 Class with Siding that was defective and unfit for its intended use and failed to
7 appropriately repair or replace the Siding.
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9 80. As a result of the foregoing, Plaintiffs and the Class are entitled to
10 compensatory damages in an amount to be proven at trial.
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12 **COUNT FIVE**

13 **FRAUDULENT CONCEALMENT**

14 81. Plaintiffs incorporate by reference each of the allegations contained in
15 all of the preceding paragraphs of this Complaint.
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17 82. At all times mentioned herein, Defendants, through their experience,
18 were in a position of superiority to Plaintiffs and the Class and had the duty and
19 obligation to disclose to Plaintiffs the true facts and their knowledge concerning
20 the Siding; that is that said product is defective, would prematurely fail, and
21 otherwise was not as warranted and represented by Defendants. Defendants made
22 the affirmative representations as set forth in this Complaint to Plaintiffs, the Class,
23 and the general public prior to the date Plaintiffs purchased the Siding, while at the
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1 same time concealing the material defects described herein. All of these facts were
2 material to consumers' (such as Plaintiffs') purchase decisions.
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4 83. The facts concealed or not disclosed by Defendants to Plaintiffs and
5 the Class are material facts in that a reasonable person would have considered
6 those facts to be important in deciding whether or not to purchase Siding.
7

8 84. At all times mentioned herein, Defendants intentionally, willfully, and
9 maliciously concealed or suppressed the facts set forth above from Plaintiffs with
10 the intent to defraud as herein alleged.
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12 85. At all times mentioned herein, Plaintiffs and Members of the Class
13 reasonably relied on Defendants to disclose those material facts set forth above. If
14 Defendants had disclosed the above facts to Plaintiffs and Class and had they been
15 aware of the said facts, they would have negotiated additional warranty coverage,
16 negotiated a lower price to reflect the risk, or simply avoided the risk all together
17 by purchasing different siding.
18

19 86. Defendants continued to conceal the defective nature of their Siding
20 even after members of the Class began to report problems. Indeed, Defendants
21 continue to cover up and conceal the true nature of the problem.
22

23 87. As a result of the previous and continued concealment or suppression
24 of the facts set forth above, Plaintiffs and the Class Members sustained damages in
25 an amount to be determined at trial.
26
27
28

COUNT SIX

UNJUST ENRICHMENT

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2
3
4 88. Plaintiffs incorporate by reference each of the allegations contained in
5 all of the preceding paragraphs of this Complaint.

6 89. Plaintiffs and the Class have conferred substantial benefits on
7 Defendants by purchasing Siding, and Defendants have knowingly and willingly
8 accepted and enjoyed these benefits.

9
10 90. Defendants either knew or should have known that the payments
11 rendered by Plaintiffs and the Class were given and received with the expectation
12 that the Siding would perform as represented and warranted. For Defendants to
13 retain the benefit of the payments under these circumstances is inequitable.
14

15
16 91. Defendants' acceptance and retention of these benefits under the
17 circumstances make it inequitable for Defendants to retain the benefit without
18 payment of the value to the Plaintiffs and the Class.
19

20 92. Plaintiffs and the Class are entitled to recover from Defendants all
21 amounts wrongfully collected and improperly retained by Defendants, plus interest
22 thereon.
23

24 93. As a direct and proximate result of Defendants' wrongful conduct and
25 unjust enrichment, Plaintiffs and the Class are entitled to an accounting, restitution
26 from, and institution of, a constructive trust disgorging all profits, benefits, and
27

1 other compensation obtained by Defendants, plus attorneys' fees, costs, and
2 interest thereon.

3
4 **COUNT SEVEN**

5 **INTENTIONAL MISREPRESENTATION**

6 94. Plaintiffs incorporate by reference each of the allegations contained in
7
8 all of the preceding paragraphs of this Complaint.

9 95. Defendants had a duty to Plaintiffs and the Class to not engage in
10 fraud in the course of marketing, selling, and warranting the Siding.

11
12 96. Defendants willfully, falsely, and knowingly misrepresented material
13 facts relating to the character and quality of their Siding, as well as on websites, in
14 various media advertising, and in point of sale materials disseminated or caused to
15 be disseminated by Defendants and their officers, agents, representatives, servants,
16 or employees of Defendants, acting within the line and scope of their authority, so
17 employed to merchandise and market the Siding.

18
19
20 97. Defendants misrepresented and failed to inform Class Members of the
21 defects the Defendants knew existed in the Siding.

22
23 98. Defendants' representations were made with the intent that the general
24 public, including Plaintiffs and Class members, rely upon them.

25 99. Defendants' representations were made with knowledge of the falsity
26 of such statements, or in reckless disregard of the truth thereof.
27
28

1 100. In actual and reasonable reliance upon Defendants'
2 misrepresentations, Plaintiffs and Class Members purchased Siding for its intended
3 and reasonably foreseeable purposes. Plaintiffs and Class Members were unaware
4 of the true facts concerning the effectiveness of the Siding, which had not been
5 disclosed. If Plaintiffs and Class Members had been aware of the suppressed facts,
6 Plaintiffs and Class Members would not have purchased the Siding at such a price
7 premium.
8

9
10 101. Plaintiffs and Class members are informed and believe, and thereon
11 allege, that Defendants misrepresented material facts with the intent to defraud
12 Plaintiffs and Class Members. Plaintiffs and Class Members were unaware of the
13 intent of Defendants and relied upon these representations in agreeing to purchase
14 the Siding.
15

16
17 102. In actual and reasonable reliance upon Defendants'
18 misrepresentations, Plaintiffs and Class Members purchased Siding and did not
19 benefit from the durability benefits as represented, the direct and proximate result
20 of which was injury and harm to Plaintiffs and Class Members because:
21

22 a. they would not have purchased Siding priced higher than
23 competing brands if the true facts concerning its likelihood of failing prematurely
24 had been known;
25
26
27
28

1 b. they paid a price premium due to the mislabeling of the Siding
2 as more beneficial to their houses and other properties than they actually were;

3
4 c. the Siding did not perform as promised; and

5 d. Plaintiffs and Class Members have paid and will continue to
6 pay higher costs for the Siding as long as they continue to use the unsupported
7 durability claims and lifetime warranty representations on its packaging.
8

9 **COUNT EIGHT**

10 **NEGLIGENCE**

11
12 103. Plaintiffs incorporate by reference each of the allegations contained in
13 all of the preceding paragraphs of this Complaint.

14
15 104. Defendants had a duty to Plaintiffs and the Class to exercise
16 reasonable and ordinary care in the formulation, testing, design, manufacture, and
17 marketing of the Siding.

18
19 105. Defendants breached their duty to Plaintiffs and the Class by
20 designing, manufacturing, advertising, and selling to Plaintiffs and the Class a
21 product that is defective and will fail prematurely, and by failing to promptly
22 remove the Siding from the marketplace or to take other appropriate remedial
23 action.
24
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1 106. Defendants knew or should have known that the Siding was defective,
2 would fail prematurely, was not suitable for use as an exterior siding product, and
3 otherwise was not as warranted and represented by Defendants.
4

5 107. As a direct and proximate cause of Defendants' negligence, Plaintiffs
6 and the Class have suffered actual damages in that they purchased and installed on
7 their homes, residences, buildings, and other structures an exterior siding product
8 that is defective and that fails prematurely. These failures have caused and will
9 continue to cause Plaintiffs and the Class to incur expenses repairing or replacing
10 their siding, including the resulting damage to their structures caused by replacing
11 or repairing the Siding.
12
13

14 108. Plaintiffs, on behalf of themselves and all others similarly situated,
15 demand judgment against Defendants for compensatory damages for themselves
16 and each member of the Class, for establishment of a common fund, plus
17 attorneys' fees, interest and costs.
18
19

20 **COUNT NINE**

21 **DECLARATORY AND INJUNCTIVE RELIEF**

22 109. Plaintiffs incorporate by reference each of the allegations contained in
23 the preceding paragraphs of this Complaint.
24

25 110. Plaintiffs, on behalf of themselves and putative Class Members, seek a
26 Court declaration of the following:
27
28

1 a. All Defendants' Siding has a defect in workmanship and material
2 that causes failures;

3
4 b. Defendants knew of the defects in its Siding and that the
5 limitations contained in the warranties are unenforceable;

6
7 c. Defendants shall re-audit and reassess all prior warranty claims
8 on its Siding, including claims previously denied in whole or in part, where the denial
9 was based on warranty or other grounds; and

10
11 d. Defendants shall establish an inspection program and protocol to
12 be communicated to Class members, which will require Defendants to inspect upon
13 request, a Class Member's structure to determine whether a Siding failure is
14 manifest.

15
16 **VII. PRAYER FOR RELIEF**

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

19
20 A. For economic and compensatory damages on behalf of Plaintiffs and
21 all members of the Class;

22 B. For restitution;

23
24 C. For actual damages sustained or treble damages;

25 D. For injunctive and declaratory relief, as claimed herein;

1 E. For reasonable attorneys' fees and reimbursement of all costs for the
2 prosecution of this action; and
3

4 F. For such other and further relief as this Court deems just and
5 appropriate.
6

7 **VIII. DEMAND FOR JURY TRIAL**

8 Plaintiffs hereby demand a trial by jury on all claims so triable.

9 RESPECTFULLY SUBMITTED AND DATED this 24th day of September,
10 2014.
11

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13 & WILLIE PLLC

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1
2 CERTIFICATE OF SERVICE

3 I, Beth E. Terrell, hereby certify that on September 24, 2014, I electronically
4 filed the foregoing with the Clerk of the Court using the CM/ECF system which
5 will send notification of such filing to the following:
6

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17 DATED this 24th day of September, 2014.

18
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