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UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

IN RE: ELK CROSS TIMBERS DECKING MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to All Actions

Civil Action No. 15-18 (JLL) (JAD) MDL No. 2577

SECOND AMENDED OMNIBUS MASTER CLASS ACTION COMPLAINT and DEMAND FOR JURY TRIAL

Plaintiffs Ken Burger (Ohio), Frederick and Veronica Robertie (North Carolina), John Ross (Missouri), Chad Sheridan (Iowa), Robert Hoover and Judy Cohen (Montana), Thomas McGovern (Michigan), Harrison Warren (Nebraska), Michael Narducci (Michigan), Leanne Claxton (Michigan), Jeff Ernst (Illinois), Dorothy Kaiser (Colorado), John Stidham (Indiana), Arnold Williams and Cathy Phillips (California), James Wolcott (Virginia), Charles Denton

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(Iowa), Dennis Turcheck (Colorado), Christine Tuthill (Colorado), Samir Khanna (New Hampshire), Mark Giovanetti (New York), John Shepherd (North Carolina), Donna and Johnathan Mapp (Mississippi), Dean Christofferson (North Dakota), Troy Koster (Wyoming), Steve Brown (Kansas), Mark Law (Kansas), John Kuropatkin (Massachusetts), Randy King (Alabama), Robert Aspinwall (Massachusetts), George Johnson (Tennessee), Edgar Rachor (South Carolina), Donald Vinson (Washington), Joseph Campbell (Minnesota), and Douglas Smieja and Cheryl Johnson (Wisconsin) (collectively the "Plaintiffs"), each on behalf of himself, herself or themselves as well as on behalf of all others similarly situated, through counsel, bring this Omnibus Second Amended Master Class Action Complaint against Defendant Building Materials Corporation of America d/b/a GAF Materials Corporation ("Defendant" or "GAF"), alleging as follows:

NATURE OF THE ACTION

1. This class action arises from GAF's design, manufacture, marketing, and sale of GAF-Elk CrossTimbers Decking and DuraLife Decking (including, but not limited to deck boards, fascia boards, trim pieces, and stair treads) (collectively, the "Decking") and DuraLife Railways Railing Systems and CrossTimbers Railing Systems (including, but not limited to handrails, balusters, posts, caps, and collars) (collectively, the "Railings"). The Decking and Railings are extruded wood-plastic composite products composed of cellulosic materials such as wood-fiber dust or rice hulls, and a plastic binder such as polypropylene and other proprietary materials.

2. Plaintiffs each purchased the Decking and/or Railings either themselves or through their agents, and they represent others who have purchased the Decking and/or Railings (the "Class," as defined below).

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3. As more fully set forth below, at all relevant times, GAF represented that the Decking and Railings had "superior engineering," that they did not require staining or sealing, that they were easy to install, that they were low-maintenance, that they were long-lasting, and that they would outperform traditional wood decking.

4. At all relevant times, GAF represented and warranted that the Decking and Railings would not warp, crack, splinter, or rot like wood and that they were resistant to scratching and wear and tear—even if they were subjected to high traffic.

5. Contrary to GAF's representations and warranties, the Decking shrinks, cracks, crumbles, warps, swells, expands, and fades at rates well beyond what is acceptable for a product meant for the outdoors, and well beyond what consumers expected based on GAF's representations.

6. Similarly, contrary to GAF's representations and warranties, the Railings crack, crumble, warp, swell, and fade at rates well beyond what is acceptable for a product meant for the outdoors, and well beyond what consumers expected based on GAF's representations.

7. Moreover, the Decking and Railings grow mold, mildew, and fungus (collectively referred to herein as "mold") —resulting in unsightly and extensive discoloration and uniform spotting—regardless of proper installation, maintenance, and cleaning using the methods recommended by GAF.

8. In addition to its unsightliness, the mold growth also lowers the coefficient of friction on the Decking, resulting in a slip hazard which jeopardizes the safety of the inhabitants and their guests.

9. The problems with the Decking and Railings cannot be prevented by consumers, nor remediated. Thus, the problems are incurable.

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10. Despite GAF's actual knowledge of the existence of these defects which it or its predecessor in interest should have known as early 2004 and, at the latest, in 2007, GAF omitted, concealed and failed to disclose this information to consumers or third party testing and certification agencies. This information was material; had Plaintiffs and Class Members been aware of the material facts discussed below, they would not have purchased the Decking or Railings (or would have paid significantly less than they did) because there is a difference in the value of the Decking and Railings as marketed and advertised versus the Decking and Railings as sold and installed on Plaintiffs' and Class Members' homes.

11. Similarly, had GAF disclosed this information and additional information it withheld, to third party testing agencies such as the International Code Council or building code officials, as detailed below, GAF would not have obtained approval to sell the Decking or Railings for installation on Plaintiffs' and Class Members' homes.

12. As a result, Plaintiffs, on behalf of themselves and the proposed Class(es), seek damages to repair and replace the Decking and Railings and restitution from GAF, as well as notification to Class Members about the existence of the defects in the Decking and Railings.

PARTIES

Plaintiffs

Plaintiff Ken Burger ("Burger") is an Ohio citizen who resides in Cincinnati,
 Ohio.

14. Plaintiffs Frederick and Veronica Robertie ("Robertie") are North Carolina citizens who reside in Bolivia, North Carolina.

15. Plaintiff John Ross ("Ross") is a Missouri citizen who resides in Independence,Missouri.

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16. Plaintiff Chad Sheridan ("Sheridan") is an Iowa citizen who resides in Urbandale, Iowa.

17. Plaintiff Charles Denton ("Denton") is an Iowa citizen who resides in West Des Moines, Iowa.

18. Plaintiffs Robert Hoover and Judy Cohen ("Hoover and Cohen") are Montana citizens who reside in Billings, Montana.

19. Plaintiff Thomas McGovern ("McGovern") is an Indiana citizen who resides in Fort Wayne, Indiana, but McGovern owns a vacation home in Michigan with the Decking and Railings.

20. Plaintiff Harrison Warren ("Warren") is a Nebraska citizen who resides in Gering, Nebraska.

21. Plaintiff Michael Narducci ("Narducci") is a Michigan citizen who resides in Lake Orion, Michigan.

22. Plaintiff Leanne Claxton ("Claxton") is a Michigan citizen who resides in Ortonville, Michigan.

23. Plaintiff Jeff Ernst ("Ernst") is an Illinois citizen who resides in Crystal Lake, Illinois.

24. Plaintiff Dorothy Kaiser ("Kaiser") is a Colorado citizen who resides in Colorado Springs, Colorado.

25. Plaintiff Dennis Turcheck ("Turcheck") is a Colorado citizen who resides in Colorado Springs, Colorado.

26. Plaintiff Christine Tuthill ("Tuthill") is a Colorado citizen who resides in Grand Junction, Colorado.

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27. Plaintiff John Stidham ("Stidham") is an Indiana citizen who resides in Vincennes, Indiana.

28. Plaintiffs Arnold and Cathy Phillips ("Williams and Phillips") are California citizens who reside in Sonoma, California.

29. Plaintiff James Wolcott ("Wolcott") is a citizen of Virginia who resides in Powhatan, Virginia.

30. Plaintiff Samir Khanna ("Khanna") is a citizen of New Hampshire who resides in Windham, New Hampshire.

31. Plaintiff Mark Giovannetti ("Giovannetti") is a citizen of New York who resides in Fairhaven, New York.

32. Plaintiffs Donna and Johnathan Mapp ("Mapp") are citizens of Mississippi who reside in Heidelberg, Mississippi.

33. Plaintiff John Shepherd ("Shepherd") is a citizen of North Carolina who resides in Elm City, North Carolina.

34. Plaintiff Paul Barker ("Barker") is a citizen of Colorado who resides in Littleton,Colorado.

35. Plaintiff Michele Megerle ("Megerle") is a citizen of Colorado who resides in Boulder, Colorado.

36. Plaintiff Dean Christofferson ("Christofferson") is a North Dakota citizen who resides in Garrison, North Dakota.

37. Plaintiff Steve Brown ("Brown") is a Kansas citizen who resides in Topeka,Kansas.

38. Plaintiff Mark Law ("Law") is a Kansas citizen who resides in Topeka, Kansas.

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39. Plaintiff John Kuropatkin ("Kuropatkin") is a Massachusetts citizen who resides in Marshfield, Massachusetts.

40. Plaintiff Randy King ("King") is an Alabama citizen who resides in Crane Hill, Alabama.

41. Plaintiffs Douglas Smieja and Cheryl Johnson ("Smieja and Johnson") are Wisconsin citizens who reside in Oregon, Wisconsin.

42. Plaintiff Robert Aspinwall ("Aspinwall") is a Massachusetts citizen who resides in East Walpole, Massachusetts.

43. Plaintiff Troy Koster ("Koster") is a Wyoming citizen who resides in Cody, Wyoming.

44. Plaintiff George Johnson ("Johnson") is a Tennessee citizen who resides in Knoxville, Tennessee.

45. Plaintiff Edgar Rachor ("Rachor") is a Maryland citizen who resides in Hagerstown, Maryland, but he owns a vacation home in Myrtle Beach, South Carolina with the Decking and Railings installed.

46. Plaintiff Donald Vinson ("Vinson") is a Washington citizen who resides in Port Orchard, Washington.

47. Plaintiff Joseph Campbell ("Campbell") is a Minnesota citizen who resides in Burnsville, Minnesota.

Defendant GAF

48. Defendant GAF is a Delaware corporation with its headquarters in Wayne, New Jersey. GAF is a leading manufacturer of exterior building products in North America and has

sold (directly or indirectly through distribution or trade partners) Decking and Railings which have been installed on thousands of homes across the United States.

49. In February 2007, GAF announced its official merger with the Elk Corporation a/k/a Elk Composite Building Products, Inc. ("Elk"), which had originally manufactured, marketed, and sold the CrossTimbers Decking and CrossTimbers Railings. GAF is a mere continuation or a successor-in-interest of Elk.

50. Indeed, upon the merger, GAF continued the same manufacturing, marketing, and sales activities related to the CrossTimbers Decking and CrossTimbers Railings. And GAF held itself out to customers as a continuation of the Elk Decking and Railing lines, trading on and benefiting from the goodwill of Elk. GAF is also a successor-in-liability for any claims that may have arisen prior to the merger between itself and Elk.

51. GAF is also a mere continuation or a successor-in-interest of Correct Building Products. Upon the merger, GAF continued the same manufacture, marketing, and sales activities related to the Decking and Railings. And GAF held itself out to customers as a continuation of the CorrectDeck Decking and Railing lines, trading on and benefiting from the goodwill of Correct Building Products. GAF is also a successor-in-liability for any claims that may have arisen prior to the merger between itself and Correct Building Products.¹

JURISDICTION

52. This Court has, and each transferring court had, subject matter over this class action pursuant to 28 U.S.C. § 1332 because the aggregate amount in controversy exceeds \$5,000,000 exclusive of costs and interest, and because at least one plaintiff and the defendant are citizens of different states.

¹Any reference herein to "GAF" includes its predecessors, Elk and CorrectDeck.

53. This Court has, and each transferring court had, personal jurisdiction over GAF because it regularly transacts and solicits business in this and other districts.

54. Venue is proper in this Court pursuant to the MDL Panel's transfer order, and it was proper in each transferring court pursuant to 28 U.S.C. § 1391 because the relevant Plaintiffs and Class Members owned structures there on which the Decking and/or Railings were installed.

FACTUAL ALLEGATIONS NATURE OF THE DEFECTS

55. GAF - which stands for General Aniline & Film - has been around since the 19th century. On its website, GAF states: "Founded in 1886, GAF has become North America's largest manufacturer of commercial and residential roofing."

56. For a brief time, however, GAF entered the composite decking industry. In 2007, GAF purchased ElkCorp and its Elk CrossTimbers line of decking. Then, in 2009, GAF purchased Correct Building Products and its CorrectDeck CX line (which was sold under the DuraLife name)

57. At its peak, GAF had composite decking manufacturing facilities in Lenexa, Kansas and Biddeford, Maine.

58. Upon information and belief, all design and manufacturing of the CrossTimbers line of Decking was conducted in Lenexa, Kansas, and all design and manufacturing of the DuraLife line was conducted in Biddeford, Maine.

59. At the time, the CrossTimbers and DuraLife Decking lines were the only two polypropylene based wood plastic composite decking lines on the market.

60. Upon information and belief, the formula and manufacturing process for CrossTimbers and DuraLife Decking and Railings were identical.

61. Due to GAF's use of the same or materially similar formulas and manufacturing processes, both product lines are plagued by the same defects, as described below.

62. Despite minor variations in the manufacturing, design, and formulation of the Decking and Railings over time, the changes made failed to remedy any of the four defects discussed throughout this Complaint, and the defects discussed throughout are common to all Decking and Railings.

63. Upon information and belief, due to the overwhelming number of warranty claims that it was receiving and the additional cost to manufacture and produce the Decking and Railing that would actually have a useful life of at least twenty (20) years, in October, 2011, GAF discontinued its manufacture of the Decking and Railings and exited the composite decking industry at that time.

64. Upon information and belief, GAF knew that the Decking and Railings could not meet the express representations and warranties contained in its marketing and advertising documents.

65. Upon information and belief, after exiting the composite decking industry, GAF destroyed and/or disposed of nearly all of its inventory, retaining only a handful of small samples of the Decking and Railings.

66. At all relevant times while it was manufacturing and marketing the Decking and Railing, GAF and its predecessors in interest made several marketing and advertising claims about the Decking and Railings to induce purchase directly or indirectly. Specifically, the following statements were made by GAF (and/or related entities that sold the Decking and Railings) in marketing and advertising materials such as the one attached hereto as **Exhibit A**:

• "For the beauty of a wooden deck with less care and effort, choose Elk CrossTimbers brand composite decking."

- <u>"Its superior engineering and design creates a deck that lasts longer</u> <u>than ordinary wooden decks with less maintenance-no staining or</u> <u>sealing required."</u>
- <u>"CrossTimbers resists sagging, splintering, warping, insects and</u> rotting"
- "No toxic chemicals like treated wood".
- "No matter what your design goals are, you can rely on CrossTimbers to give you the lasting, quality deck of your dreams, with little time and effort."
- "CrossTimbers won't warp, crack, splinter or rot like wood."
- "Resists scratching and high traffic wear and tear."
- "Its **low moisture absorption** and superior longevity make CrossTimbers the right choice for decking, fencing and marine applications."

(emphasis added).

67. In addition to the brochure attached as Exhibit A, GAF also expressly represented that the Decking and Railings had "low moisture absorption," and that it would not have any "cracking/splintering/rotting," and that it was "designed to provide years of enjoyment with **little or no maintenance**." A true and accurate copy of these representations is attached hereto as **Exhibit B**.

68. In other marketing documents, GAF also represented that the Decking and Railings were "the next Generation of Decking," "highly durable," and that it had a "unique mixture of oak and polypropylene which gives it superior strength and longevity;" "Compared to wood, composite building products are designed to last longer with less maintenance, nor will they warp, crack, splinter or rot like wood. Unlike the products offered by many of our competitors, our CrossTimbers products contain no recycled polyethylene products, but consist

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of a combination of recycled wood and polypropylene, which we believe provides performance advantages including strength, longevity and dimensional stability, as compared to most other composite building products in the marketplace."

69. In addition, at all relevant times, GAF represented that the Decking and Railing had a warranty of at least twenty years which lead Plaintiffs to believe that the Decking and Railing should have a useful life of at least twenty (20) years.

70. As discussed herein, these claims are misleading and omit material information concealed from the Plaintiffs and Class Members because they do not disclose the fact that the Decking and Railings contain errors in their design and formulation as well as other manufacturing defects which render the Decking and Railings inherently defective.

71. The brochure attached as Exhibit A is the primary brochure that was published by GAF and that was seen, and relied upon by Plaintiffs, Class Members, and their agents.

72. Plaintiffs' experience and problems with the Decking and Railings, as described herein, is by no means an isolated occurrence and all owners of the Decking and Railings across the country are affected by the design and manufacturing defects described herein.

73. Indeed, GAF has received thousands of warranty claims related to the defects in the Decking and Railings and has been put on notice of the defects in each of the states where Plaintiffs reside by virtue of the numerous warranty claims received as well as in other states and in Canada.

FOUR COMMON DEFECTS IN THE DECKING AND RAILINGS

74. The Decking and Railings are extruded wood-plastic composite materials composed of cellulosic materials such as wood-fiber dust or rice hulls, and a plastic binder such as polypropylene and other proprietary materials.

75. The design and manufacture of the Decking results in four separate defects which

are common to all Decking, three of which also affect the Railings rendering the Decking and

Railings inherently defective. The defects are as follows:

- a. The Decking and Railings contain too much cellulosic material and too little plastic, which allows for excessive water absorption, leading to warping/twisting, swelling, expansion, cracking, and mold growth;
- b. The Decking and Railings do not have enough antioxidants to protect the plastic from premature weathering degradation;
- c. The Decking and Railings do not contain any moldicides and/or other antimicrobial agent to prevent mold; and
- d. The Decking was cooled too fast during the manufacturing process, causing it to shrink once installed.

76. Each of these common defects was preventable by using a proper decking material formulation and a proper cooling process, and was the direct result of GAF's attempts to save money, increase its production speed, and ultimately, increasing profits at the expense of Plaintiffs and Class Members.

77. As described below, GAF had knowledge that each of these common defects would manifest in the manner in which they have reducing the useable life of the Decking and Railings.

Excessive Water Absorption

78. The Decking and Railings are defective in that they contain too much cellulosic material and/or too little plastic permitting excessive water absorption.

79. The rate at which the Decking and Railings absorb water causes the Decking and Railings to warp/twist, swell, expand, and causes the Decking and Railings to experience mold growth.

80. As discussed below, GAF knew that its Decking and Railings were absorbing too much water, yet it expressly represented that the Decking and Railings had low moisture absorption.

81. Furthermore, as also discussed below, GAF knew that its Decking and Railing were absorbing too much water, yet it failed to remedy the defect, omitted, concealed and failed to disclose this defect to consumers, omitted, concealed and failed to disclose this defect to third party testing and certification agencies.

82. Because they are of an improper quantity the cellulosic materials in the Decking and Railings absorb moisture from the atmosphere and rainfall, which causes the materials to swell, that in turn, exerts pressure on the plastic binder, cracking it.

83. The cracking exposes more of the cellulosic materials to moisture, which causes further swelling and cracking, that in turn, causes even more moisture penetration, and leads to a spiraling and continuous degradation cycle.

84. The exposure to moisture also results in mold. These biotics devour the cell structure of the cellulosic materials, decaying them.

85. This mold growth also lowers the slip coefficient of the Decking, rendering the Decking unsafe and unfit for its intended purpose.

86. In order to minimize water absorption by wood plastic composites, the products should have a high density and a high plastic content.

87. The Decking and Railings do not have a high enough density.

88. The Decking and Railings do not have a high enough plastic content.

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89. The density of wood plastic composites can be greatly increased through the use of vented extruders as the vents remove steam from the manufacturing process that leads to moisture in the materials.

90. This steam, if not removed by vented extruders, can cause voids in the product after manufacture, leading to a decreased density in the final product.

91. Upon information and belief, GAF did not use vented extruders.

92. Ultimately, the Decking and Railings were not formulated with a high enough density to prevent excessive water absorption, because GAF sought to cut costs and save money.

93. As a further cost cutting measure, GAF used too high of a percentage of wood flour.

94. The water absorption by the Decking and Railings combined with the high percentage of wood flour has led to the defects described herein, including, but not limited to, warping, twisting, expansion, swelling, cracking, and mold growth.

Insufficient Amount of Antioxidants

95. The Decking and Railings are extruded wood-plastic composite materials composed of cellulosic materials such as wood-fiber dust or rice hulls, and a plastic binder containing polypropylene and other proprietary materials.

96. The Decking and Railing's plastic binder is supposed to encapsulate the cellulosic materials to protect them from deterioration attributable to exposure to air, sunlight, and moisture.

97. Since at least 2005, literature published in the industry and presentations attended by Defendant's employees have pronounced that oxidative degradation is the most common reason for wood-plastic composite deck board failure. *See* attached as **Exhibit C** a true and accurate copy of several slides from a presentation on this topic in 2005 attended by representatives of GAF or its predecessors, who are noted below.

98. Oxidative degradation as a result of thermo- and photooxidation leads to crumbling of deck boards and railings, causing the surface of the deck boards and railings to be easily scratched by a fingernail.

99. The surface of the deck boards and railings become loose, powdery, and weak.

100. With hollow profile deck boards, thermooxidation leads to deterioration of the boards from both outside and inside, and sooner or later the deck board will collapse.

101. Adding to the effects of thermooxidation, photooxidation speeds up an oxidative degradation of composite deck boards and railings.

102. The effect of photooxidation is twofold. First, it adds to the heating of the deck boards and railings, speeding up the thermooxidation. Second, it causes an additional chemical change by creating free radicals on the board surface, which then propogate at some depth into the material.

103. Thus, under direct sunlight, thermooxidation and photooxidation can work in a synergistic manner, reinforcing each other's action toward crumbling, deterioration, weakening, and finally, deck board and/or railing failure.

104. To prevent the effects of thermo- and photooxidation, additives such as antioxidants are typically put into the base polypropylene.

105. Antioxidants increase the plastic's resistance to oxidation and degradation due to ultra-violet (UV) radiation.

106. GAF's Decking and Railings, however, do not contain a sufficient quantity of antioxidants to prevent oxidative degradation because it would have increased GAF's costs in manufacturing the Decking and Railings.

107. As a result, the Decking and Railings are crumbling, deteriorating, weakening, and failing rendering the Decking and Railings useless because the Decking and Railings are falling apart.

108. The following photograph is a true and accurate representation of the result of oxidative degradation experienced by Plaintiff Warren's Decking:



Mold Growth

- 109. The Decking and Railings are also plagued by mold growth.
- 110. Mold growth is accelerated by water absorption.

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111. Wood plastic composite formulations that invite mold growth are those which have a relatively high porosity (typically those made using moist wood fiber), and therefore, have a lower density than they might otherwise have in the final product.

112. Mold growth is particularly common when antioxidants are absent or insufficiently present in wood-plastic composite decking.

113. However, even when wood plastic composites are absorbing too much water, mold growth can be greatly minimized, or even entirely prevented through the use of moldicides and/or other antimicrobial agents.

114. As noted above, GAF's Decking and Railings did not contain enough antioxidants. That insufficiency caused the plastic to break down, increasing the water absorption of the Decking and Railings, and ultimately leading to unsightly and unsafe mold growth.

115. Furthermore, GAF did not introduce any moldicides or other antimicrobial agents in the formulation of the Decking or Railings which could have been introduced at a minimal cost.

116. Consequently, the Decking and Railings are experiencing significant mold growth that could have been prevented by GAF.

Shrinking of the Decking

117. The fourth common defect with the Decking is that it shrinks after installation, causing life/safety issues to exist on the decks.

118. This common defect is caused by the manner in which the Decking is cooled after manufacture.

119. As mentioned above, the Decking is manufactured using a process known as extrusion.

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120. During the extrusion process, the polymer molecules in the deck boards become elongated as they heat up.

121. Towards the end of the manufacturing process, the deck boards proceed through a die, and then are forcibly cooled through a water bath.

122. This forcible cooling prevents the polymer molecules from returning to their thermodynamically favorable coiled form, and causes them to remain "frozen" in an elongated shape.

123. However, the polymer molecules do not remain in this elongated shape, but rather, once heated again, the polymer molecules contract, causing the deck boards to shrink.

124. This shrinking occurs after installation of the Decking, as the sun provides sufficient heat to cause the polymer molecules to contract to their thermodynamically preferred shape.

125. This shrinking can cause serious life/safety issues as the boards may decrease in length so much that they no longer rest on joists, creating a hazard where the end of the board is not supported and may break when an individual steps on it, causing the individual to fall and sustain personal injuries.

126. This is precisely what occurred to a guest of Plaintiff Wolcott, as noted below.

127. Notably, this shrinkage can be prevented both by slowing down the cooling process and through a process known as annealing.

128. Annealing consists of heating up the boards again after completing the manufacturing process, either in a kiln, or in a specially designed heating chamber, or even by submerging them in boiling water.

129. Annealing is a reasonable preventative measure that can be performed after the cooling process to prevent shrinkage of the Decking after it is installed.

130. GAF and its predecessors did not anneal the Decking in order to cut costs at the expense of Plaintiffs and Class Members.

131. Further, despite discussion of this manufacturing defect at industry conferences and through publications which GAF was, or should have been, aware of, GAF has been denying warranty claims for shrinking Decking since at least 2007, characterizing the shrinkage as common contraction of the Decking.

132. However, the claims denied were not common contraction of the Decking, but rather, were a design and manufacturing defect that were the result of GAF's cooling of the Decking too quickly after manufacture in order to cut costs and increase its profit.

CONSEQUENCES OF THE DEFECTS

133. The Decking and Railings' defects reduce their effectiveness and performance and renders them unfit for their ordinary and intended purposes.

134. Specifically, as noted above, the shrinking of the Decking causes it to no longer be supported by joists, creating a life/safety issue for inhabitants and their guests.

135. Similarly, the excessive, unsightly, mold growth creates a slip hazard on the Decking.

136. The warping of the Decking also causes them to become trip hazards, creating further life/safety issues for inhabitants and their guests.

137. The warping of the Railings also causes them to lose their strength as they pull away from the deck substructure, causing them to be unstable and unable to support the weight

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of individuals leaning on them or using them to steady themselves as they walk up stairs resulting in an additional life/safety issue for inhabitants and their guests.

138. The defects in the Decking and Railings cause damage to the decks on which they are installed, including the decks' substructure, and to other property surrounding the decks, such as the columns at Robertie's residence and the pool at Wolcott's residence.

139. Due to the defects in the Decking and Railings, Plaintiffs and Class Members must pay for the labor and material for their removal and replacement. As such, the Decking and Railings do not have the value or quality GAF promised and warranted it would have.

140. Indeed, if GAF had not concealed the defects in the Decking and Railings and marketed and advertised the Decking and Railings with a useful life of only a few years, then Plaintiffs and Class Members would not have purchased the Decking and Railings. Or, Plaintiffs and Class Members would have bought the Decking and Railings at a significantly reduced price.

141. Consumers, including Plaintiffs and Class Members, at the time of purchase, based upon the material representations in GAF's marketing and advertising documents reasonably expected that the Decking and Railings would not warp/twist, crumble, shrink, expand, swell, stain, grow mold, grow fungus, spot, decay, and/or prematurely degrade.

142. Had the Plaintiffs or Class Members known of the defects in the Decking and Railings, they would not have purchased or authorized purchase of the Decking and/or Railings for installation on their homes.

143. Consumers, including Plaintiffs and Class Members, at the time of purchase, reasonably expected that the Decking and Railings would have a useful life of at least 20 years based on the 20 year warranty offered by GAF.

144. Further, this expectation by Consumers was reasonable due to GAF's representations that the Decking and Railings would last longer than traditional wood decking.

145. According to a study of life expectancy of home components published by the National Association of Home Builders ("NAHB") in 2007, the average life expectancy of wood decking is 20 years.

146. Thus, based on GAF's representations that the Decking and Railings would last longer than traditional wood decking, Consumers, including Plaintiffs and Class Members, were reasonable in expecting the Decking and Railings to last at least 20 years.

147. Due to the defects in the Decking and Railings, they will not last 20 years.

148. Plaintiffs and Class Members have been damaged in the amount it will cost (or the amount they have paid) to remove and replace the Decking and/or Railings.

149. Plaintiffs and Class Members have not received the value for which they (or their agents) bargained when purchasing the Decking and/or Railings.

GAF'S NOTICE THAT THE DECKING AND RAILINGS WERE DEFECTIVE

150. Since or around the time GAF and its predecessors began selling the Decking and Railings, it knew or should have known that the Decking and Railings would not meet the claims, promises, and representations affirmatively made to consumers on product packaging, uniform brochures, online marketing, and through other advertisements.

151. Furthermore, GAF has been provided with ample notice of the inherently defective nature of the Decking, including the four common defects discussed above, by Plaintiffs, Class Members, their agents, and through its own testing of the Decking and Railings.

152. GAF uses a variety of early warning systems and statistical analyses to detect problems before they can affect consumers. GAF, in particular, had an extensive quality

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monitoring department that conducted product sampling and testing during production and before sale to ensure product performance, effectiveness, and efficiency. Quality improvement teams in this department also collected and actively monitored performance information and provided feedback and interpretation to management and staff. These teams performed internal corporate quality audits that resulted in quality improvement initiatives. Upon information and belief, when problems were detected, GAF performed root cause analyses and took corrective actions. The results of this testing would have informed GAF (before it began to sell the Decking and Railings) that the Decking and Railings were not suitable for their marketed use.

153. <u>Warranty Claims</u>: Consumers of the Decking and Railings also put GAF on notice of the four common defects by submitting thousands of warranty claims to GAF.

GAF has received warranty claims related to the four common defects in each of the Plaintiffs' respective states, as well as other states and in Canada.

154. <u>Public Complaints</u>: Consumers, as well as decking installers and dealers have been publicly complaining about the defects with the Decking and Railings since at least 2007 and have posted complaints, photos, and videos from all over the United States and Canada on various websites regarding the defects with the Decking and Railings. A representative sample of these complaints is as follows:

Name/Username:	Greg Di	
Date Created:	January 16, 2009	
Site:	http://www.contractortalk.com/f50/elk-crosstimbers-opinions-really-	
	51225/	
"Well I just got back from meeting with the GAF Elk rep Product-wise, they were honest.		
The original Crosstimbers boards had many issues and they knew it The deck boards are		
polypropylene which is eerily reminiscent of Eon. They are hollowed out and extruded. They		
will fade. The rep advised us to store our samples outdoors and only show Hos faded boards -not		

(1 1 1. T1	11 have meaning include the dist dama fairly a LUEO alia (11	
	will be expansion issues, but they think there [sic] new HFS clip will	
solve the walking prob.	lem previously exhibited."	
N /I. I	de deux deuxe	
Name/Username:	deckndave	
Date Created:	January 24, 2009	
Site:	http://www.contractortalk.com/f50/elk-crosstimbers-opinions-really- 51225/	
quickly, chalks badly a	ney are very proud of their product \$\$\$\$. My exp with it is that it fades nd my customer had staining issues wit[sic] it. Fascia boards warped after ranty replacement which doesn't pay diddly."	
Name/Username:	RobertCDF	
Date Created:	January 13, 2009	
Site:	http://www.contractortalk.com/f50/elk-crosstimbers-opinions-really- 51225/	
"I swear the stuff shrinks by the second. I measured and cut a piece and dropped it in 1/8" short The grey color that was picked realy looked more like blue by the time it got done fadingugly Rated to span 24" oc even though we did 16" centers it was sorts of wavy I would turn down a customer that insisted on using it. Let someone else deal with that crap."		
Name/Username:	Autumnwood Inc.	
Date Created:	November 22, 2008	
Site:	http://www.contractortalk.com/f50/elk-decking-48445/	
	d contracts the most I have ever seen There is a condo development	
here where they had the falling off, we added a After about a month the deck. We went out to be top screws that we had our step down platform	e great idea of using Elk Crosstimbers every fascia in the community is set steps to a existing deck there that we had to use Elk crosstimbers. e homeowner called and said, I think you forgot to screw the steps to the bok at the problem, the existing 12" fascia pulled through $3 - 12$ " o.c. split installed on top of the existing GRK T-10 trim heads It looked like a was not attached because the existing fascia bowed over our platform etween the frame and fascia."	
Name/Username:	Rigormortis	
Date Created:	June 16, 2007	
Site:	http://www.contractortalk.com/f50/best-composite-22973/index2/	
-	eimbursement for a failed Elk Cross timbers deck. The hidden clip screws pped off due to the warping and swelling of the boards. Nightmare	
Name/Username:	tob4t9	
Date Created:	October 9, 2010	
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4	
	stained with strange oil marks that seem to be caused by the sun on my	
Cross Timbers, GAF de	eck, that touted as being maintenance free!"	

Name/Username:	T. Farnsworth			
Date Created:	2014			
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4			
	sintegrating. It leaves an orange dust on everything. My cat came in the			
other day covered in o	range dust. It is the worst decking I have ever seen. I wish we could get			
some money to replace	e it. Such a nightmare."			
Name/Username:	B. Hanson			
Date Created:	2014			
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4			
	ecking for nearly twenty years. Crosstimbers is one of the worst I have ever			
dealt with."				
Name/Username:	T. Bartorillo			
Date Created:	2014			
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4			
	king is doing the same exact thing! It is a second story deck with a patio			
	of ventilation. I have cleaned it numerous times and each time the spots			
return, there are more	of them!"			
Name/Username:	D. Wyberg			
Date Created:	2013			
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4			
"built in 08, oil stains	coming out of the deck. In my arid climate there is no mold. Also, if you			
walk on deck or rub ag	ainst the rails, the deck material rubs off on your clothing. Is there any			
solution? This deck rea	ally sucks."			
Name/Username:	thebluick			
Date Created:	2013			
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4			
"My corsstimbers [sic]	deck looks horrible. After 4 years the deck is disintegrating."			
Name/Username:	J. Hurtubise			
Date Created:	2013			
Site:	https://www.youtube.com/watch?v=cOqeS_q5tr4			
"Built in 2009, CrossT	imbers deck is horrendously ugly. Different colour shade qhere [sic]			
exposed to sunlight, st	ubborn stains. At least wood you can sand down and restain GAF			
should be ashamed of	itself but I understand they are not selling the product anymore.			
	d again by a large company."			
Name/Username:	J. Hughes			
Date Created:	(unknown)			
Site:	http://jeffhughes.net/opinions/crosstimbers.html			
" when it was finis	hed there were scuff marks everywhere, possibly from workers' shoes, or			
	from the hoses used by their power tools. I tried various cleaners and a power washing, but			

neither would remove the marks. . . . Eventually the marks did fade after another full year in the sun. . . After the second full year of use, we now have ongoing problems with mildew stains. We have tried deck cleaner and water/bleach together with a power washing. It helps, but the stains are definitely still there."

Name/Username:	Shadeywoods
Date Created:	August 1, 2011
Site:	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
"I bought the product	in 2006 I'm am [sic] still working with GAF to try and resolve issues
	ot warrantable'. The time line is approaching three months since I opened a
	ird since installation) which was denied"
Name/Username:	mt mike
Date Created:	October 3, 2011
Site:	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
"I have a sagging prof	blem, joists on 12" centers."
Name/Username:	BMace
Date Created:	October 10, 2011
Site:	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
	pr./May 2008 and this decking has inflicked [sic] significant damage to the
	ing end to end has expanded approx. 8 inches, you can imagine how the
12' 6x6 post look like	
12 0X0 p0st 100K like	
Name/Username:	Barbaramek
Date Created:	February 5, 2012
Site:	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
	It in 2007 with Cross Timbers decking boards which is [sic] warping."
	it in 2007 with Cross Timbers decking boards which is [ste] warping.
Name/Username:	Woodstock964rs
Date Created:	March 12, 2012
Site:	
	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
	ed in 2008 and is literally tearing off the house. I've never seen anything nds but never comes back. Absolute JUNK."
like it. This stuff expa	nds but never comes back. Absolute JUNK.
Nomo/Licomore	The distance
Name/Username:	Thedblom
Date Created:	June 22, 2012
Site:	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
•	2005 and has significant structural problems as a result of the Decking
expanding."	
Name/Username:	Wags56
Date Created:	April 12, 2015
Site:	http://www.diychatroom.com/f19/cross-timbers-decking-42096/
"We got our deck in 4	-2009 and it is so faded, the trim has all fallen off & broke. It is a mess."

155. As shown through the thousands of warranty claims it has received, its own internal testing, and public complaints that it was receiving, GAF knew or should have known that its Decking and Railings were defective in design, formulation, and manufacture, were not fit for their ordinary and intended use, and were not merchantable, but it continued selling the Decking and Railings to Plaintiffs and Class Members without disclosing the problems or defects.

GAF'S KNOWLEDGE OF THE DEFECTS

156. The Decking and Railings' defects are latent and undetectable until they manifest. Therefore, Plaintiffs and Class Members could not reasonably have discovered, even with the exercise of due diligence, that there was a defect until after the Decking and Railings had been purchased and installed.

157. But GAF knew or should have known of the Decking and Railings' defects, and that the Decking and Railings are not fit for their ordinary and intended use, are not merchantable, and fail to perform in accordance with GAF's own statements, representations and warranties, as well as with the reasonable expectations of ordinary consumers.

158. And GAF knew or should have known that the Decking and Railings had the potential and tendency for swelling, expanding, warping, staining, discoloration, twisting, shrinking, and mold growth.

159. As to the defects in the Decking and Railings, GAF had both actual and constructive knowledge no later than 2006, and most likely prior to that.

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160. In 2006, in response to high levels of water absorption by its fascia boards that led to significant warping, GAF changed the formulation of its fascia boards.

161. When it made the change, it issued a technical bulletin that stated:



162. Yet, GAF and its predecessors did not sufficiently change the formula to remedy the defect, as the fascia boards have continued to warp in the same or similar manner as they did prior to 2006.

163. GAF and its predecessors also had knowledge that its formulation, design, and manufacturing would lead to the four common defects through knowledge gained at conferences and through technical literature.

164. Notably, in 2003, issues of mold growth, water absorption, and dimensional instability were discussed at Intertech's International Business Development Conference, The Global Outlook for Natural & Wood Fiber Composites 2003."

165. This conference took place December 3rd through the 5th in 2003, and was attended by representatives of GAF's predecessor, including, Scott Rega (vice-president of research and development for Elk), Paul Wilson (developmental chemist for Elk), and Lorin Litchen (general manager for GAF Materials).

166. At this conference, several presentations were made regarding the causes of mold growth in wood plastic composite building products, and preventative measures were recommended, including the use of moldicides and other antimicrobial agents.

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167. Presentations were also made at this conference regarding the effects of not having a high enough plastic content which could lead to similar water absorption issues that have manifested in the Decking and Railings at issue in this litigation.

168. Each of the attendees at this conference were provided with a hardcopy of all of the papers presented at the conference, as well as a cd with copies of all of the presentations.

169. As the GAF representatives noted above were in attendance, they were also provided with a hardcopy of the papers presented at the conference, as well as a cd with copies of all of the presentations.

170. The 2005 Intertech International Business Development Conference also focused on similar issues as the 2003 conference.

171. The 2005 conference was attended by representatives of GAF's predecessor, including, Tim Machelski (executive vice president of Elk), and Jeffrey Jacobs (director specialty building products for Elk).

172. In addition to presentations on similar topics as the 2003 conference regarding mold growth and water absorption, presentations were made regarding the durability of natural fiber and wood composites, including the causes and effects of oxidative degradation on wood plastic composite decking.

173. It was specifically noted during a presentation by Dr. Anatole Klyosov ("Klyosov"), a keynote speaker, that thermo- and photooxidation of wood plastic composite decks could be suppressed by the use of antioxidants. Attached hereto as **Exhibit D** and incorporated herein by reference is a true and accurate copy of slides from Klyosov's presentation stating this point.

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174. Each of the attendees at this conference were provided with a hardcopy of all of the papers presented at the conference, as well as a cd with copies of all of the presentations.

175. As the GAF representatives noted above were in attendance at this conference, they were also provided with a hardcopy of all of the papers presented at the conference, as well as a cd with copies of all of the presentations.

176. The 8th International Conference on Woodfiber-Plastic Composites (and other natural fibers) took place May 23-25, 2005, and was also attended by several representatives of GAF.

177. Notably, Charles Baker (vice president, research and development for Elk), Tim Machelski (executive vice president for Elk), David Porter (composite technology project manager for Elk), Denby Snell (vice president/general manager for Elk), Younger Ahluwalia (technical director for Elk), Matti Kiik (senior vice president, research and development for Elk), Paul Wilson (developmental chemist for Elk), Tammy Yang (principal scientist for GAF), and Douglas Pohli (plant manager for GAF) were all in attendance at this conference.

178. This conference also covered very similar topics to the 2003 and 2005 Intertech Conferences, and had a particular focus on durability issues facing wood-plastic composite products.

179. Further, research that was widely-published in 2006 in a textbook titled *Wood Plastic Composites* by Klyosov demonstrated the effects of forcibly cooling hollow-profile wood plastic composite decking. Particularly, that forcible cooling would result in the shrinking of boards after installation on decks, in the same manner in which the Decking has shrunk.

180. Klyosov's textbook also covered each of the other three common defects in great detail and explained the causes of each defect and how to prevent them from occurring.

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181. Through attendance at these conferences, where the attendees were provided with copies of the presentations and papers, GAF and its predecessors knew or should have known of the specific defects which plague the Decking and Railings.

182. Since GAF's representatives were in attendance at these conferences, they were provided with copies of these presentations and papers.

183. Additionally, upon information and belief, GAF had knowledge of these issues through the thousands of warranty claims it had received, public complaints it had received from consumers, and from its own internal testing.

185. Despite GAF's actual or constructive knowledge that the manufacture and design of the Decking and Railings was resulting in the four common defects discussed above, GAF continued to market and sell the Decking and Railings — and failed to disclose, and otherwise concealed, the Decking and Railings' inherent defects.

186. Had the defects or the lack of analysis on the long term performance of the Decking and Railings been disclosed, GAF knew that Plaintiffs and Class Members would not have purchased the Decking or Railings at the price sold by GAF.

187. Despite thousands of complaints from consumers like Plaintiffs and Class Members in 2007, GAF refuses to inform purchasers, homeowners, and Class Members about the Decking and Railings' defects.

GAF'S FRAUDULENT REPRESENTATIONS USED TO OBTAIN CERTIFICATIONS

188. The International Code Council ("ICC") is an association that is dedicated to developing model codes and standards used in the design, building, and compliance process to construct safe, sustainable, affordable, and resilient structures and building products.

189. ICC publishes the International Codes, which have been adopted by all fifty states and the District of Columbia and are a complete set of comprehensive, coordinated building safety and fire prevention codes.

190. Building codes benefit public safety and support the industry's need for one set of codes.

191. The ICC family of companies includes the ICC Evaluation Service (ICC-ES), the Solar Rating and Certification Corporation, and the International Accreditation Service (IAS).

192. Building products such as wood-plastic composite decking are required to conform to certain building codes before they can be installed on homes throughout the country.

193. To establish compliance with applicable building codes or industry standards such as ASTM, building product manufacturers submit their products to ICC and its family of companies, as well as other third party agencies such as Underwriter's Laboratory and Architectural Testing, Inc., for testing.

194. Compliance with applicable codes or industry standards is certified by these agencies on the basis of limited tests they perform on behalf of the manufacturer, as well as on the basis of information supplied by the manufacturer.

195. The building codes require that the manufacturer have its material retested on a regular basis, and especially after any substantive changes to the formulation of the product or of the manufacturing process.

196. To establish compliance with applicable building codes and ASTM standards, GAF submitted the Decking and Railings to ICC and its family of companies for testing beginning in 2003.

197. After obtaining initial certification, it was required to resubmit its Decking and Railings for testing yearly.



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209. Upon information and belief, had GAF disclosed this material change to ICC-ES, ICC-ES would have required GAF to submit its entire line of products to costly re-testing that would have cost GAF in excess of \$100,000.

210. Upon information and belief, GAF fraudulently failed to disclose this material change in an attempt to save money it would have had to pay to retest its entire line of products.

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GAF'S REPRESENTATIONS ABOUT THE DECKING & RAILINGS

214. GAF has had a duty at time of sale, and a continuing duty after sale, to disclose the Decking and Railings' defects, its susceptibility to degradation, and its foreseeable and uniform problems and inherent flaws. Despite these duties, GAF has *not* made appropriate disclosures, but has instead concealed the defects and represented that the Decking and Railings are free of defects and are a superior decking product.

215. GAF's advertising strategy is to present the Decking and Railings as superior to real wood products and as the best material available for exterior decking in high-traffic areas exposed to the elements. GAF also charged a price for its allegedly superior Decking and Railings well in excess of the prices charged for natural lumber.

216. At all relevant times, GAF actively marketed its Decking and Railings through print and internet ads; brochures, promotional documents, and other product literature; catalogs and product labeling.

217. Through these media, while knowing about the defects with the Decking and Railing, as well as by oral affirmations to the Plaintiffs, their agents, and the general public, GAF advertised and warranted that the Decking was merchantable as exterior home decking, fit for the ordinary purpose of serving as exterior home decking in high-traffic areas exposed to the elements, durable, and free from defects.

218. GAF expressly warranted that the Decking would be maintenance free and would last at least 20 years without any degradation, warping or rotting.

219. GAF also expressly represented that the Decking would age by slightly fading in color, but by retaining its grain pattern that emulated the look of real wood. Attached hereto as **Exhibit G and incorporated herein by reference is a true and accurate copy from a brochure produced by GAF that represents the extent of fading to be expected.**

220. In addition to drastic color fading, the Decking at Plaintiffs' and Class Members' residences has in fact degraded to a point where the grain pattern is no longer visible.

221. GAF expressly warranted that the Decking and Railings were resistant to sagging, splintering, warping, rotting, scratching, and normal wear and tear.

222. GAF expressly represented and warranted that the Decking and Railings were durable, reliable, long-lasing, and suitable for their intended use as exterior home decking exposed to the elements and would have a useful life of at least twenty (20) years.

223. As discussed herein, GAF made the following representations in conjunction with the sale of its Decking and Railings to Plaintiffs and Class Members, each of which were

intended to (and did) convey information regarding the durability and performance of the

Decking and Railings, rather than mere puffery:

- a. The Decking's "superior engineering and design creates a deck that lasts longer than ordinary woods decks with less maintenance—no staining or sealing required."
- b. The Decking "won't warp, crack, splinter or rot like wood."
- c. The Decking "[r]esists scratching and high traffic wear and tear."
- d. The Decking "resists sagging, splintering, warping, insects and rotting."
- e. The Decking contains "[n]o toxic chemicals like treated wood."
- f. "For the beauty of a wooden deck with less care and effort, chose Elk Cross Timbers brand composite decking [*viz.*, the Decking]."
- g. The Decking "is designed with the EZ-Build System, which not only makes construction a snap, but also adds beauty with its concealed fasteners hidden below the surface."
- h. "No matter what your design goals are, you can rely on [the Decking] to give you the lasting, quality deck of your dreams, with little time and effort."
- i. "Its low moisture absorption and superior longevity make CrossTimbers the right choice for decking, fencing and marine applications."

224. GAF knew that Plaintiffs, Class Members, and the builders, contractors, subcontractors, and other agents who worked for them, would rely on GAF's representations regarding the quality of the Decking and Railings.

225. Plaintiffs, Class Members, and the builders, contractors, subcontractors, and other agents, relied on GAF's representations regarding the quality of the Decking and Railings.

226. GAF made these representations about the Decking and Railings despite GAF's knowledge that the Decking and Railings were defective.

227. Further, GAF did not adequately test the Decking or Railings to confirm whether they would have a useful life of at least 20 years or if they would resist warping or swelling.

GAF'S LIMITED WARRANTY

228. Despite GAF's knowledge of the Decking and Railings' defects, GAF sold the Decking and Railings under a Limited Warranty, which was limited (a) in remedy, to the cost of replacing the Decking and/or Railings material only unless the homeowner filed a claim within a short two year time frame, and (b) in applicability, to the original owner of the Decking and/or Railings, unless a \$75 warranty transfer fee was paid, which only allowed a one-time transfer of the warranty.

229. Despite GAF's knowledge and concealment of the Decking and Railings' defects, GAF's Limited Warranty does not cover the labor and installation costs associated with replacing the decking unless a warranty claim is made within two years of purchase.

230. In addition, GAF's Limited Warranty is a pre-printed and un-bargained for document that is both substantively and procedurally unconscionable in light of the fact that GAF knew that the Decking and Railings are defective and were defective at the time of sale. GAF's Limited Warranty is a contract of adhesion that resulted from a gross disparity of bargaining power between Plaintiffs and the Classes and GAF.

231. No Plaintiff or Contractor would have purchased the Decking or Railings if they had known about the common defects as discussed herein.

232. By issuing a 20-year warranty, GAF created a reasonable expectation on the part of the Plaintiffs, Class members, and others that the Decking and Railings would be a quality product and have a usable life of at least 20 years.

233. Consumers, including the Plaintiffs and Class Members, reasonably expect that a manufacturer like GAF would have adequately tested the Decking and Railings and made a disclosure if it determined that the Decking and Railings did not have a useful life of at least 20 years.

234. Indeed, even though GAF can likely identify all of its Decking and Railing customers, GAF has never publicized the defective nature of the Decking and Railings, taken affirmative steps to notify its customers or dealers of the defective nature of the Decking and Railings or that the Decking and Railings could cause harm to other property around the Decking and Railings, or recalled the defective Decking and Railings.

235. Since GAF failed to disclose the Decking and Railings' defects prior to sale, the Plaintiffs and Class Members were deprived of the opportunity to negotiate additional warranty coverage, to negotiate a lower price, or to avoid the risk altogether by purchasing a decking material from a different manufacturer.

236. Plaintiffs and Class Members who replaced (or will replace) the Decking and/or Railings after the first two years of the Limited Warranty's period were (or will be) required to pay for the cost of labor to install replacement decking, which is typically at least several thousand dollars.

237. With a stand-alone product, such as a television or toaster, replacement of the defective item gives the consumer the benefit of their bargain, *i.e.*, a non-defective product. However, replacement of defective Decking or Railing material without paying for the labor associated with removing the old, defective Decking or Railing material and installing the new Decking or Railing material, does not give the consumer the benefit of their bargain. Rather, the consumer has to incur the additional expense of paying for both the removal of the old Decking

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and/or Railing and installation of new Decking and/or Railing. Those costs will generally run into thousands of dollars, which are expenses the consumer would not have had to incur had the Decking and/or Railing not been defective in the first instance

238. There is a substantial difference in value between the Decking and Railings as represented and warranted and the Decking and Railings as purchased—coupled with an ineffective Limited Warranty. Indeed, Plaintiffs and Class Members would not have purchased the Decking and Railings if GAF had not omitted or failed to disclose that the Decking and Railings only had a useful life of a few years.

239. Furthermore, the defects in the Decking and Railings are incurable and contacting GAF pursuant to the warranty is futile as the Limited Warranty does not provide for full replacement of all Decking and/or Railings. In addition, if Plaintiffs or Class Members were provided with replacement Decking and Railings, then the Decking and Railings would also be defective.

240. Regardless, the Limited Warranty is also futile and failed of its essential purpose because the Decking and Railings are no longer manufactured, it is not possible to only replace select deck boards, select fascia or trim pieces, or select sections of Railing.

241. In addition, even according to GAF, no other manufacturer is manufacturing a product that matches the Decking or Railings which could be used as a matching replacement for the inherently defective Decking and Railings. Thus, Plaintiffs and Class Members cannot simply use money to surgically replace sections of the Decking and Railings.

242. Plaintiffs and Class Members complied with all conditions precedent by filing their complaints before the running of the applicable statutes of limitations or repose.

243. Further, Plaintiffs and Class Members provided GAF with actual or constructive notice about the defects in the Decking and Railings. Due to the thousands of complaints and warranty claims that GAF received, GAF had actual knowledge about the common defects in the Decking and Railing. Also, for those Plaintiffs and Class Members who have not filed a warranty claim, due to the limitations in the Limited Warranty, it would have been futile to file a claim because GAF would not have provided for labor to fully remove and replace the Decking and Railings.

TOLLING STATUTES OF LIMITATIONS AND REPOSE

244. While Plaintiffs and Class Members complied with all conditions precedent, GAF knew or reasonably should have known that its Decking and Railings were defective at time of sale. But GAF intentionally concealed material information and the truth about the Decking and Railings and instead asserted that the Decking and Railings were a durable, long-lasting product.

245. GAF's affirmative representations that the Decking and Railings carried a 20-year warranty created a reasonable expectation that the Decking and Railings would be a quality product and have a useable life of at least 20 years and that, if there were any defects in the Decking and Railing, GAF would repair or replace the Decking and Railings, including the labor.

246. GAF actively concealed that the Decking and Railings contained design and manufacturing defects and deteriorated well before their expected lifetime. GAF retained exclusive control over other non-public information about the defects of the Decking and Railings and concealed that information.

247. GAF failed to make any disclosure of provide any notice of the known defects of the Decking and Railings.

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248. Given GAF's misconduct, which includes fraudulent concealment of the defect, the Plaintiffs and class members could not reasonably have known that the Decking and Railings were defective. As such, the statutes of limitations and repose should be tolled.

249. In the alternative, GAF should be equitably estopped from raising a defense premised on a statute of limitations or repose.

250. In the alternative, GAF should be equitably estopped from raising a defense premised on a statute of limitations or repose given its affirmative statements that induced the Plaintiffs and Class Members to await whether GAF would provide a remedy for the Decking and Railings' failures.

251. GAF also should be estopped from limiting any claims by Plaintiffs or Class Members for common law and statutory violations based on a defense of lack of privity as GAF is in privity with each of the Plaintiffs and Class Members by law and fact.

252. Specifically, Plaintiffs have had sufficient direct dealings with GAF and/or its authorized dealers, franchisees, representatives, and agents to establish privity of contract. Plaintiffs and Class Members are also intended third-party beneficiaries of contracts, including express warranties, between GAF and its dealers, franchisees, representatives, and agents. Furthermore, GAF's advertisements were directed at Plaintiffs and Class Members, and GAF's warranties were expressly written for the benefit of Plaintiffs and Class Members as end users of the Decking and Railings. GAF's authorized dealers, franchisees, representatives, and agents, on the other hand, were not intended to be the ultimate consumers of the Decking or Railings, and have no rights under the warranty agreements provided by GAF.

PLAINTIFFS' EXPERIENCE

Plaintiff Ken Burger (Ohio)

253. Burger purchased and installed Decking and Railings on his home in the summer of 2010.

254. Prior to purchasing his Decking and Railings, Burger was shown a GAF brochure that expressly represented the Decking and Railings as being low maintenance, long lasting, covered by a 20 year warranty, and high quality.

255. Based on the 20 year warranty, Burger reasonably expected that the Decking and Railings would have a useable life of at least 20 years.

256. After seeing the brochure and the representations contained within, Burger went to the store to view the physical appearance of the Decking and Railings in person.

257. In reliance upon the express representations contained within the brochure, as well as the physical appearance of the Decking and Railings, Burger purchased the CrossTimbers Decking and Railings rather than a competitor's product.

258. Contrary to GAF's representations, the Decking and Railings have not been low maintenance, and will not last 20 years as the Decking and Railings are warping/swelling, cracking, fading, and are experiencing significant mold growth.

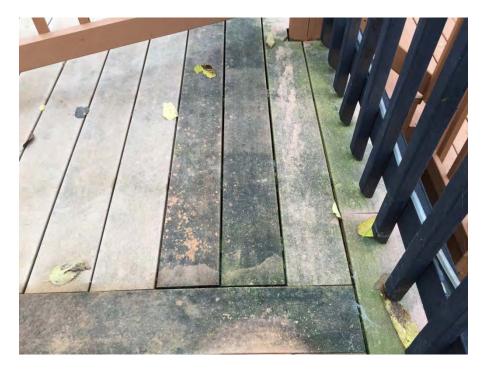
259. Had GAF disclosed the Defects, Burger would not have purchased the Decking or Railings.

260. Due to the manifestation of these defects, Burger contacted GAF to file a warranty claim, and to date, has not received an offer from GAF to repair or replace his inherently defective Decking and Railings.

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261. The following photograph is a true and accurate representation of the discoloration and mold growth experienced by Burger's Decking as of October 25, 2015:



262. The following photograph is a true and accurate representation of the crumbling experienced by Burger's Decking as of October 25, 2015:



263. As a result of the inherently defective nature of his Decking and Railings, Burger's entire deck needs replaced.

264. Due to the inherently defective nature of the Decking and Railings, Burger initially filed a Complaint in the United States District Court of the Southern District of Ohio on June 19, 2014, less than a year after discovering his Decking and Railings were inherently defective.

Plaintiffs Frederick and Veronica Robertie (North Carolina)

265. The Roberties purchased and installed Decking on their home in January/February, 2009.

266. Prior to purchase of their Decking, the Roberties reviewed a flyer/brochure produced by GAF that represented that the Decking was durable, low maintenance, and would not crack, splinter, or rot.

267. The Roberties have retained a copy of the brochure attached hereto as Exhibit B.

268. The Roberties also recall that the Decking was covered by a 20 year warranty, and expected that it would last at least that long with little to low maintenance, as represented in the brochure.

269. The Roberties also considered purchasing Trex decking, but decided to ultimately purchase GAF's Decking because of the Trex decking's past history of mold growth and because of the aforementioned representations by GAF. Therefore, the Roberties relied upon GAF's representations and purchased the Decking.

270. In December 2009/January, 2010, the Roberties had a small portion of their Decking replaced due to warping and swelling with additional Decking.

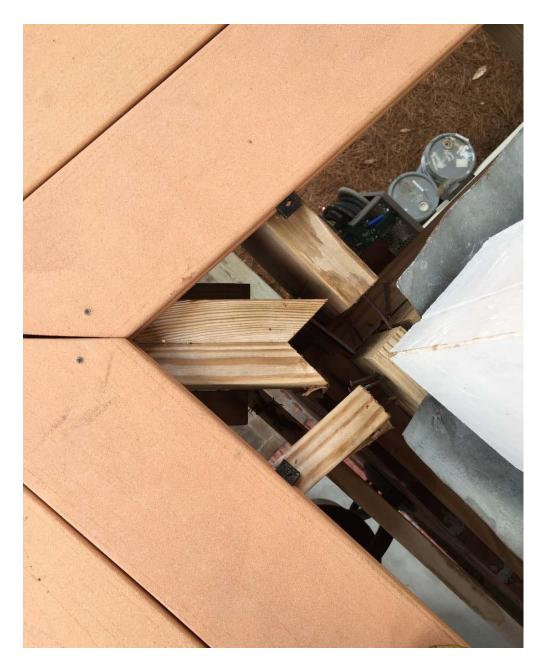
271. The Roberties would not have allowed their Decking to be replaced with further defective Decking had they known that all of the Decking was defective, and not just reasonably thought that several of their decking boards were part of a bad batch of Decking.

272. In October of 2013, the Roberties, upon noticing that the columns supporting their residence had begun to move, contacted an engineer to determine the cause of the movement.

273. Roberties' engineer determined to a reasonable degree of engineering certainty that the movement of these columns, and the resulting damage to the columns and home as a result of the movement, were directly caused by the extreme expansion of the Decking.

274. Due to the Decking's excessive absorption of water, some of Roberties' Decking has expanded linearly as much as an inch and a half.

275. The following photograph is a true and accurate representation of how the Decking's expansion has pushed the deck and columns away from Roberties' residence:



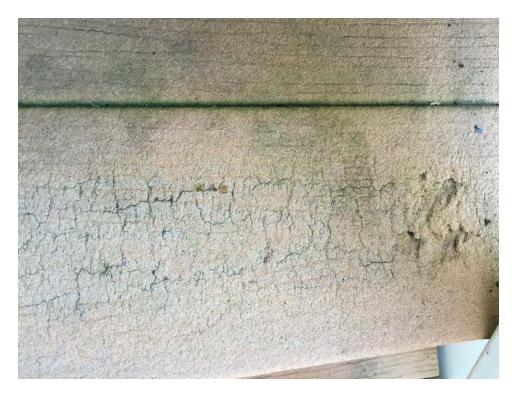
276. As a result of this expansion, the Roberties first realized their Decking was defective in that it warps/swells, expands, as well as shrinks in other locations, and is discolored and experiencing the type of mold growth that they had purchased CrossTimbers Decking to avoid.

277. Had GAF disclosed the defects in the Decking, the Roberties would not have purchased CrossTimbers.

278. The following photograph is a true and accurate representation of the shrinking experienced by Roberties' Decking as of October 15, 2015:



279. The following photograph is a true and accurate representation of the crumbling experienced by the Roberties' Decking as of October 15, 2015:



280. As a result of the inherently defective nature of their Decking, the Roberties need to replace their entire deck and have the property damage to the columns supporting their residence repaired.

281. On August 13, 2014, the Roberties initially filed a Complaint in the United States District Court of the Eastern District of North Carolina, less than a year after engaging an engineer who determined their Decking may be defective.

Plaintiff John Ross (Missouri)

282. Ross purchased and installed Decking and Railings on his home in September,2006.

283. Ross paid approximately \$9,500 for his Decking and Railings, including installation.

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284. Prior to purchasing his Decking, Ross went to three separate hardware stores, Lowes, Home Depot, and Porters Building Centers to review the various composite decking options on the market.

285. He was shown a brochure which advertised the product as low maintenance and long lasting, and was also told of another individual who had purchased CrossTimbers Decking and recently installed it several towns north of where Ross lived.

286. Ross traveled to look at the Decking, and based on the representations contained in the brochure as well as the appearance of the Decking, decided to purchase CrossTimbers Decking.

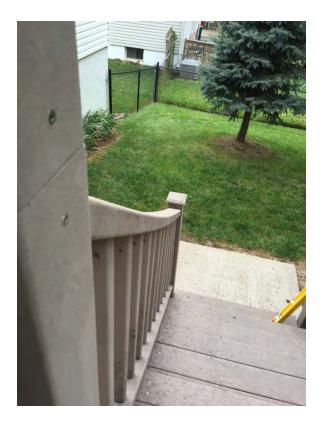
287. However, his Decking and Railings are inherently defective and are warping/swelling, cracking, crumbling, and experiencing mold growth.

288. Had GAF disclosed the defects in the Decking and Railings, Ross would not have purchased CrossTimbers Decking and Railings.

289. The following photograph is a true and accurate representation of the shrinking and warping experienced by Ross's Decking as of September 21, 2015:



290. The following photograph is a true and accurate representation of the sagging experienced by Ross's Railings as of September 21, 2015:



291. Due to the inherently defective nature of his Decking and Railings, Ross needs to replace his entire deck.

292. Based on the manifestation of these defects, Ross initially filed a Complaint in the United States District Court of the Western District of Missouri on December 2, 2014, less than a year after determining his Decking and Railings may be inherently defective.

Plaintiff Chad Sheridan (Iowa)

293. Sheridan purchased and installed Decking and Railings on his home in April, 2006.

294. Sheridan paid approximately \$18,500 for his Decking and Railings, including installation.

295. Prior to purchasing CrossTimbers Decking and Railings, Sheridan reviewed a brochure that was provided to him by his contractor, which represented the Decking and Railings

as durable, long lasting, and that the Decking and Railings would not sag, splinter, warp, rot, scratch, suffer from high traffic wear and tear, were low maintenance, and were warranted for 20 years.

296. Sheridan has retained a copy of the brochure attached hereto as Exhibit A.

297. Relying upon the representations contained in the brochure, Sheridan decided to purchase CrossTimbers Decking and Railings.

298. His Decking and Railings, however, are inherently defective and now are shrinking, warping/swelling, cracking and are experiencing mold growth.

299. Had GAF disclosed the defects in the Decking and Railings, Sheridan would not have purchased the Decking and Railings.

300. The following photograph is a true and accurate representation of the shrinking and mold growth experienced by Sheridan's Decking as of August 20, 2014:



301. The following photograph is a true and accurate representation of the shrinking and fading experienced by Sheridan's Decking as of August 20, 2014:



302. As a result of the inherently defective nature of his Decking and Railings, Sheridan must replace his entire deck.

303. As a result of the inherently defective nature of his Decking and Railings, Sheridan filed a warranty claim with GAF.

304. On August 18, 2014, Sheridan obtained written approval compliant with Iowa Code Ann. § 714H.7 from the Consumer Protection Division of the Iowa Attorney General's Office to file a class action under the Iowa Private Right of Action for Consumer Fraud Act.

305. On August 19, 2014, Sheridan initially filed a Complaint in the United States District Court of the Southern District of Iowa, less than a year after learning his Decking and Railings may be inherently defective.

Plaintiff Charles Denton (Iowa)

306. Denton purchased and installed Decking and Railings on his home in July, 2008 based upon the representations regarding the quality of the Decking and Railings.

307. Denton paid approximately \$7,800 for his Decking and Railings, including installation.

308. Specifically, prior to purchase, Denton was shown a GAF brochure which he reviewed with his sales clerk that advertised the Decking and Railings as being low maintenance, of superior quality to traditional wood decking, and as being covered by a 20 year warranty.

309. Based on these representations, Denton reasonably believed that his Decking and Railings would last at least 20 years, and would be low maintenance and of a superior quality to wood decking and would not warp or swell.

310. However, Denton's Decking and Railings will not last 20 years, and are warping/swelling, cracking, crumbling, and experiencing mold growth.

311. Had GAF disclosed the defects in the Decking and Railings, Denton would not have purchased CrossTimbers Decking or Railings.

312. The following photograph is a true and accurate representation of the warping experienced by Denton's Railings and Decking as of September 20, 2015:

55



313. The following photograph is a true and accurate representation of the crumbling experienced by Denton's Railings as of September 20, 2015:



314. After the defects in his Decking and Railings began to manifest, Denton contacted GAF about a warranty claim.

315. Upon receiving no offer to replace his inherently defective Decking and/or Railings, Denton initially filed a Complaint in the United States District Court of the Southern District of Iowa on August 19, 2014, less than one year after determining his Decking and Railings may be inherently defective.

316. As a direct result of the inherently defective nature of his Decking and Railings, Denton must replace his entire deck.

Plaintiffs Robert Hoover and Judy Cohen (Montana)

317. Hoover and Cohen purchased and installed Decking on their home in July, 2007 based upon the representations regarding the quality of the Decking.

318. Hoover and Cohen paid approximately \$5,100 for their Decking, including installation.

319. Specifically, prior to purchase of their Decking, Hoover and Cohen were provided with a brochure from GAF by their installation contractor. This brochure expressly represented that the Decking was low maintenance, long lasting, and had a twenty year warranty.

320. Hoover and Cohen have retained a copy of the brochure attached hereto as Exhibit A.

321. However, their Decking has failed to comport with these express representations as it is fading beyond the levels it was represented by GAF that it would, and is splintering, crumbling, and/or warping/swelling.

322. Had GAF disclosed these defects, Hoover and Cohen would not have purchased the Decking.

323. The following photograph is a true and accurate representation of the fading and discoloration Hoover and Cohen's Decking is experiencing as of November 29, 2015:



324. Upon first realizing that the Decking was inherently defective, they contacted their contractor in the fall of 2014. In turn, he instructed them to contact GAF, which they did in the spring of 2015.

325. GAF did not offer to provide them with compensation sufficient to replace their Decking, thus, they filed suit on March 4, 2015.

326. Due to the inherently defective nature of their Decking, they must replace their entire deck.

Plaintiff Thomas McGovern (Michigan)

327. Through a contractor, McGovern purchased and installed Decking on his vacation home in Mackinac Island, Michigan during June and July of 2008.

328. McGovern paid approximately \$30,500 for the Decking, including installation.

329. A couple of years after installation, Plaintiff noticed that the Decking had separated due to expansion of the boards. Plaintiff also noticed that the Decking had become stained with mold growth. This required the Decking to be reconfigured and rebuilt using the existing boards. Plaintiff also had to scrub each board with bleach to get the mold and resultant stains off before rebuilding.

330. Despite Plaintiff's efforts, the mold growth returned to the Decking, and the Decking is still warping/swelling, expanding, and experiencing mold growth.

331. The expansion of McGovern's Decking has caused the upright posts for his railing to separate from his deck.

332. Had GAF disclosed the defects in the Decking, McGovern would not have purchased CrossTimbers Decking.

333. The following photograph is a true and accurate representation of the warping McGovern's Decking is experiencing as of August 5, 2014:



334. Decking is The following photograph is a true and accurate representation of warping McGovern's experiencing as of August 5, 2014:



335. Due to his discovery that the Decking is inherently defective and requires replacement, McGovern made a pre-suit demand to GAF, requesting, among other things, that GAF honor its 20 year warranty by either replacing the inherently defective Decking free of charge or by reimbursing him the cost paid for the Decking and its installation.

336. As of the date of filing this Second Amended Omnibus Complaint, GAF has failed to provide an offer to McGovern for the full cost to replace his defective Decking.

337. Due to the inherently defective nature of his Decking, McGovern must replace his entire deck.

338. McGovern initially filed an action against GAF in this Court on August 21, 2014, which is less than a year after discovering his Decking was inherently defective. Before filing that case, Plaintiff submitted a pre-suit demand to Defendant. Defendant has not offered to pay any costs, labor, or damages associated with repairing or replacing the inherently defective CrossTimbers Decking.

Plaintiff Harrison Warren (Nebraska)

339. Warren purchased and installed Decking and Railings on his home in the spring/summer of 2008 because of the representations regarding the quality of the Decking and Railings.

340. Warren paid approximately \$7,800 for his Decking and Railings, including installation.

341. Specifically, prior to purchasing the Decking and Railings, Warren reviewed a GAF brochure that expressly represented that the Decking and Railings were low maintenance, and long lasting, would not warp or swell and that they were covered by a 20 year warranty.

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342. Based on these representations, Warren reasonably believed that the Decking and Railings would last at least 20 years and would only require minimal maintenance.

343. However, his Decking and Railings will not last 20 years due to their inherently defective condition, particularly, due to their photodegradation, but also due to the warping/swelling, cracking, crumbling, shrinking, and mold growth experienced by the Decking and Railings.

344. Had GAF disclosed the defects in the Decking and Railings, Warren would not have purchased CrossTimbers Decking or Railings.

345. The following photograph is a true and accurate representation of the shrinking and cracking experienced by Warren's Decking as of August 25, 2015:



346. The following photograph is a true and accurate representation of the crumbling experienced by Warren's Decking as of August 25, 2015:



347. As a result of the inherently defective condition of his Decking and Railings, Warren filed a warranty claim with GAF, but has not received an offer to compensate him for the cost to repair and/or replace his inherently defective Decking and Railings.

348. On October 15, 2014, Warren initially filed a Complaint in the United States District Court of the District of Nebraska, less than a year after discovering his Decking and Railings were inherently defective.

349. As a result of the inherently defective condition of his Decking and Railings, Warren must replace his entire deck.

Plaintiff Michael Narducci (Michigan)

350. Narducci purchased and installed Decking on his home in the spring/summer of 2008 based upon the quality and ease of use of the Decking.

351. Narducci paid approximately \$7,500 for his Decking, including installation.

352. Prior to the purchase of his CrossTimbers Decking, Narducci reviewed brochures and samples from CrossTimbers and Trex, ultimately deciding to purchase CrossTimbers due to the design of CrossTimbers and its hidden fastener system, the appearance of the woodgrain, and based on representations contained in the GAF brochure that stated that the Decking was low maintenance and would be long lasting.

353. Narducci also reasonably expected that the Decking would last at least twenty years as GAF warranted the Decking for that long.

354. Narducci's Decking, however, will not last 20 years, as it is defective and is warping/swelling, shrinking, crumbling, and is exhibiting mold growth.

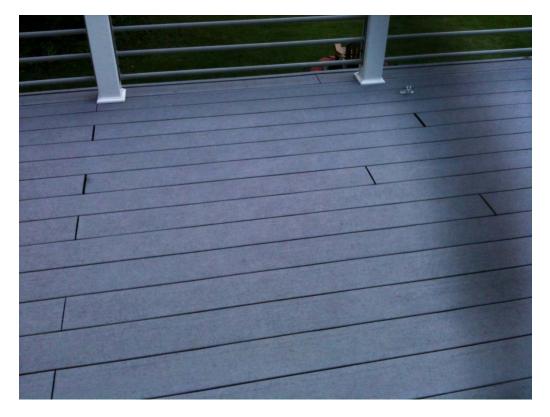
355. Had GAF disclosed the defects in the Decking, Narducci would not have purchased CrossTimbers Decking.

356. The following photograph is a true and accurate representation of the shrinking experienced by Narducci's Decking as of October 24, 2015:

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357. The following photograph is a true and accurate representation of the shrinking experienced by Narducci's Decking as of September 11, 2014:



358. Narducci initially filed within a year of discovering that his Decking was inherently defective, a Complaint in the United States District Court of the Eastern District of Michigan on September 15, 2014.

359. As a result of the inherently defective condition of his Decking, Narducci must replace his entire deck.

Plaintiff Leanne Claxton (Michigan)

360. Claxton purchased and installed Decking and Railings on her home in June, 2006.

361. Claxton paid approximately \$20,300 for her Decking and Railings, including installation.

362. Prior to purchasing CrossTimbers Decking and Railings, Claxton informed her contractor that she was interested in composite decking that would be little to no maintenance.

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363. In turn, her contractor provided her with color samples of CrossTimbers Decking and a brochure containing representations that the Decking and Railings were low maintenance and durable, and recommended that she purchase CrossTimbers based at least in part on those representations. Based on the representations in the brochure and the contractor's recommendation, she purchased the Decking and Railings.

364. However, her Decking and Railings have failed to meet these representations as they are defective and are warping/swelling, shrinking, and are experiencing substantial mold growth.

365. Had GAF disclosed the defects in the Decking and Railings, Claxton would not have purchased CrossTimbers Decking or Railings.

366. The following photograph is a true and accurate representation of the mold, growth Claxton's Decking is experiencing as of October 24, 2015:



367. The following photograph is a true and accurate representation of the warping and mold growth Claxton's Decking is experiencing as of October 24, 2015:



368. As a result of the inherently defective condition of her Decking and Railings, Claxton must replace her entire deck.

369. Claxton initially filed suit September 15, 2014, less than one year after discovering that her Decking was inherently defective.

Plaintiff Jeff Ernst (Illinois)

370. Ernst purchased and installed Decking and Railings on his home in the summer of 2007 based upon the representations regarding the quality of the Decking.

371. Ernst paid approximately \$4,000 for his Decking and Railings, including installation.

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372. Ernst elected to purchase CrossTimbers Decking and Railings as it was represented to his wife, who worked for a building materials wholesaler, that CrossTimbers was a top of the line product. Specifically, they relied on representations that the Decking and Railings were low maintenance and durable.

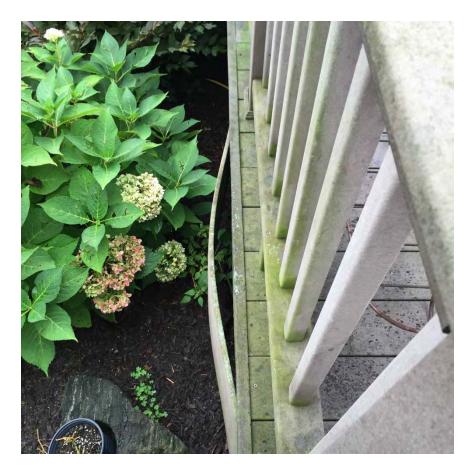
373. However, the Decking and Railings have not been low maintenance. Rather, they have required intensive cleaning due to excessive mold growth, and the Decking and Railings are also warping/swelling, shrinking, and crumbling.

374. Had GAF disclosed the defects in the Decking and Railings, Ernst would not have purchased CrossTimbers Decking or Railings.

375. The following photograph is a true and accurate representation of the warping and mold growth Ernst's Decking is experiencing as of September 19, 2015:



376. The following photograph is a true and accurate representation of the warping and mold growth Ernst's Decking is experiencing as of September 19, 2015:



377. As a result of the inherently defective nature of his Decking and Railings, Ernst must replace his entire deck.

378. As a result of the discovery that his Decking and Railings were inherently defective, Ernst first filed suit August 19, 2014, less than one year after his discovery that the Decking and Railings were inherently defective.

Plaintiff Dorothy Kaiser (Colorado)

379. Kaiser purchased and installed Decking and Railings on her home in September,2006.

380. Kaiser paid approximately \$19,200 for her Decking and Railings, including installation.

381. Prior to purchase, her contractor showed her a brochure that represented the Decking and Railings to be low maintenance, long lasting, and high quality.

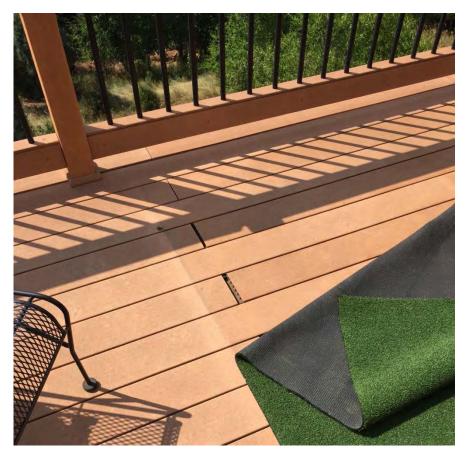
382. Kaiser was also shown color samples and picked one that matched her house.

383. Based on these representations she purchased CrossTimbers Decking and Railings and had them installed at her residence.

384. Now, the Decking and Railings have faded so that they no longer match the house, and are shrinking, warping/swelling, cracking, and experiencing mold growth.

385. Had the defects in the Decking and Railings been disclosed, Kaiser would not have purchased CrossTimbers Decking or Railings.

386. The following photograph is a true and accurate representation of the shrinking Kaiser's Decking is experiencing as of August 24, 2015:



387. The following photograph is a true and accurate representation of the warping Kaiser's Decking is experiencing as of August 24, 2015:



388. Upon discovery that her Decking and Railings were inherently defective, Kaiser filed a Complaint on August 11, 2014, in the United States District Court of the District of Colorado. This was less than a year after discovering her Decking and Railings were inherently defective.

389. Due to the inherently defective nature of her Decking and Railings Kaiser must replace her entire deck.

Plaintiff Dennis Turcheck (Colorado)

390. Turcheck purchased and installed Decking and Railings on his home in the spring of 2006 based upon the representations regarding the quality of the Decking and Railings.

391. Turcheck paid approximately \$22,300 for his Decking and Railings, including installation.

392. Specifically, Turcheck reviewed a brochure that expressly represented that the Decking and Railings were low maintenance, long lasting, and covered by a 20 year warranty.

393. Turcheck has retained a copy of the brochure attached hereto as Exhibit A.

394. In reliance upon the express representations contained within the brochure, Turcheck purchased CrossTimbers Decking and Railings.

395. Turcheck's Decking and Railings, however, have not met the express representations contained within the brochure, as his Decking and Railings are warping/swelling, fading, and experiencing mold growth.

396. Had GAF disclosed the defects in the Decking and Railings Turcheck would not have purchased CrossTimbers Decking and Railings.

397. The following photograph is a true and accurate representation of the warping Turcheck's Decking is experiencing as of August 24, 2015:



398. The following is a true and accurate representation of the mold growth Turcheck's Decking is experiencing as of August 24, 2015:



399. As a result of the manifestation of these defects in his Decking and Railings, Turcheck contacted GAF about a warranty claim, but has not received an offer from GAF to repair and/or replace his inherently defective Decking and Railings.

400. Within one year of discovery of the inherently defective nature of his Decking and Railings, Turcheck initially filed suit on March 4, 2015.

401. Due to the inherently defective nature of his Decking and Railings, Turcheck must replace his entire deck.

Plaintiff Christine Tuthill (Colorado)

402. Tuthill purchased and installed Decking on her home in the spring of 2007.

403. Tuthill paid approximately \$10,900 for her Decking, including installation.

404. When deciding which product to purchase, Tuthill considered CrossTimbers Decking and Trex Decking, but ultimately decided on CrossTimbers after seeing a brochure that was shown to her by her sales clerk.

405. The brochure expressly represented that the Decking was low maintenance, high quality, long lasting, had a matching railing system, had a 20 year warranty, and that it would hold its color over time.

406. Based at least in part on these representations, Tuthill decided to purchase CrossTimbers Decking and have it installed at her residence.

407. Now, however, her Decking is warping/swelling, crumbling, cracking, discoloring, and experiencing mold growth.

408. Had GAF disclosed the defects in the Decking, Tuthill would not have purchased CrossTimbers Decking.

409. The following photograph is a true and accurate representation of the cracking and crumbling Tuthill's Decking is experiencing as of March 14, 2015:



410. The following photograph is a true and accurate representation of the cracking and crumbling Tuthill's Decking is experiencing as of March 14, 2015:



411. As a result of the inherently defective nature of the Decking, Tuthill contacted GAF about a warranty claim, but she has not received an offer to repair or replace her Decking.

412. Within a year of the discovery that her Decking was inherently defective, Tuthill filed suit on March 4, 2015.

413. As a result of the inherently defective nature of her Decking, Tuthill must replace her entire deck.

Plaintiff John Stidham (Indiana)

414. Stidham purchased and installed Decking on his home in the summer of 2008 based upon the representations regarding the quality of the Decking.

415. Stidham paid approximately \$8,100 for his Decking, including installation.

416. Specifically, prior to purchase, Stidham visited the websites of GAF and Trex, and based upon GAF's 20 year warranty against manufacturing defects including warping and staining, and its representations regarding the low maintenance attributes he decided to purchase CrossTimbers Decking.

417. However, the Decking did not live up to these representations, and Stidham's Decking is warping/swelling, shrinking, crumbling, and experiencing mold growth.

418. Had GAF disclosed the defects in the Decking, Stidham would not have purchased CrossTimbers Decking.

419. The following photograph is a true and accurate representation of the warping Stidham's Decking is experiencing as of October 25, 2015:



420. The following photograph is a true and accurate representation of the crumbling Stidham's Decking is experiencing as of October 25, 2015:



421. As a result of the discovery that his Decking was inherently defective, Stidham filed suit within a year, on August 12, 2014.

422. As a result of the inherently defective nature of his Decking, Stidham must replace his entire deck.

Plaintiffs Arnold Williams and Cathy Phillips (California)

423. Arnold Williams and Cathy Phillips ("Williams and Phillips") are California citizens and own a home located in Sonoma, California. Williams and Phillips purchased and installed CrossTimbers Decking on their home in August of 2008 based upon the representations regarding the quality of the Decking.

424. Williams and Phillips paid approximately \$9,200 for their Decking, including installation.

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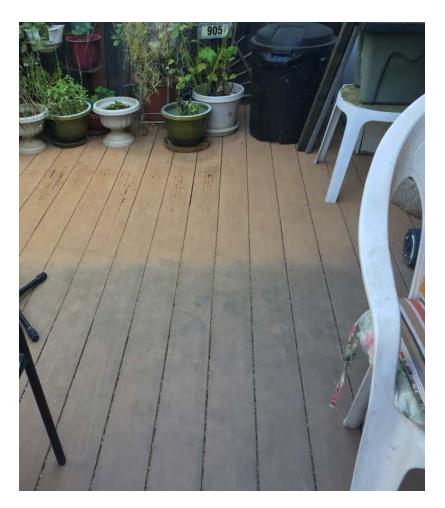
425. Specifically, prior to purchase of the Decking, Williams and Phillips saw an advertisement in a Home Depot flyer/circular and liked the colors GAF offered.

426. Williams and Phillips had a sales clerk from Home Depot come to their home, who showed them a GAF brochure representing that the Decking was long lasting, strong, and required little to no maintenance and also left color samples with them to review. Based upon these representations, Williams and Phillips purchased the Decking.

427. However, the Decking has not lived up to these representations as it has severely faded and crumbled, is warping, and is experiencing mold growth.

428. Had GAF disclosed the defects in the Decking, Williams and Phillips would not have purchased CrossTimbers Decking.

429. The following photograph is a true and accurate representation of the fading Williams and Phillips' Decking is experiencing as of August 27, 2015:



430. The following photograph is a true and accurate representation of the crumbling Williams and Phillips' Decking is experiencing as of August 27, 2015:



431. The crumbling has become so severe that the Decking is no longer safe to walk on and is in danger of collapsing.

432. As a result of the inherently defective nature of the Decking, Williams and Phillips filed a warranty claim with GAF in the spring of 2015.

433. GAF responded by offering Williams and Phillips less than a quarter of what they paid for the Decking, an offer wholly insufficient to repair and/or replace the inherently defective Decking.

434. Due to the inherently defective nature of the Decking, Williams and Phillips filed suit in November of 2014, less than a year after discovery that the Decking was inherently defective.

435. As a result of the inherently defective nature of their Decking, Williams and Phillips must replace their entire deck.

Plaintiff James Wolcott (Virginia)

436. Wolcott purchased and installed Decking and Railings on his home in July, 2006 based upon the quality of the representations regarding the Decking and Railings.

437. Wolcott paid approximately \$26,400 for his Decking and Railings, including installation.

438. Prior to purchasing the Decking, Wolcott reviewed several composite decking manufacturer's websites, including GAF's.

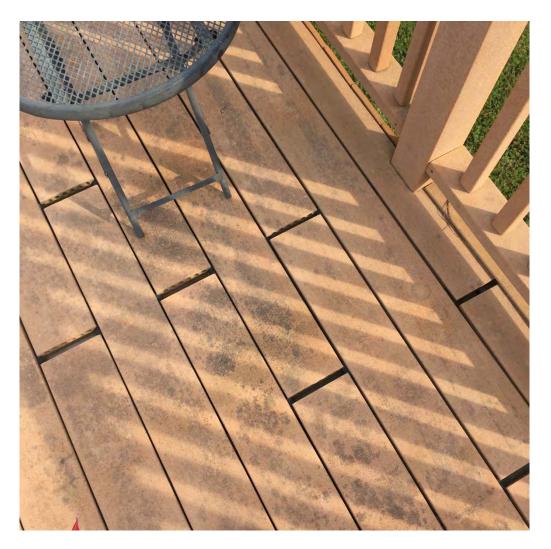
439. He also reviewed and relied upon a GAF brochure that specifically represented the Decking as low maintenance, long lasting, and having at least a 20 year warranty.

440. After installation of his Decking and Railings, a GAF representative requested permission to use photographs of his deck in its advertisements but was unwilling to compensate Wolcott for use of the photographs by GAF, so Wolcott declined.

441. Now, however, his Decking and Railings are shrinking, warping/swelling, crumbling, cracking, and experiencing mold growth.

442. Had GAF disclosed the defects in the Decking and Railings, Wolcott would not have purchased CrossTimbers Decking or Railings.

443. The following photograph is a true and accurate representation of the shrinking and mold growth Wolcott's Decking is experiencing as of August 30, 2015:



444. The following photograph is a true and accurate representation of the warping Wolcott's Decking is experiencing as of August 30, 2015:



445. Wolcott has attempted several cleaning methods to remove the mold, but each method has proven unsuccessful as the mold growth returns each time.

446. Further, Wolcott's Decking is causing damage to the pool his Decking is built around, as the warping is exerting pressure on the pool and causing the caps around the liner to pop off.

447. The shrinkage of Wolcott's Decking has also caused his Decking to be unsafe and unfit for its intended purpose as numerous deck boards no longer end in the middle of joists, making them susceptible to breaking when stepped on.

448. Indeed, a guest of Wolcott's fell through his deck, sustaining injuries, when she stepped on a board that had shrunk and it broke, causing her to fall through the whole in the deck.

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449. Furthermore, Wolcott's Decking has warped so extensively that it presents a trip hazard to Wolcott and his guests, and his Railings are significantly weakened due to their warping and sagging and are insufficient to be used for their intended purpose as support.

450. As a result of the inherently defective nature of his Decking and Railings, Wolcott filed a warranty claim with GAF, who offered him less than half what he paid for the Decking and Railings, an amount grossly insufficient to replace his Decking and Railings.

451. On September 8, 2014, Wolcott initially filed a Complaint in the United States District Court of the Eastern District of Virginia. Within a year prior to filing his complaint, he discovered that the Decking and Railings are defective and must be replaced and that the property damage to his pool caused by the Decking must be repaired.

452. Due to the inherently defective nature of his Decking and Railings, Wolcott must replace his entire deck.

Plaintiff Samir Khanna (New Hampshire)

453. Khanna purchased and installed Decking and Railings on his home in the winter and spring of 2009 based upon representations regarding the quality of the Decking and Railings.

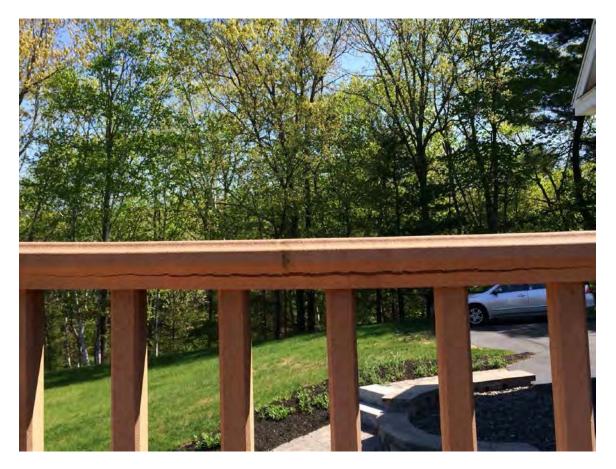
454. Khanna paid approximately \$8,000 for his Decking and Railings including installation.

455. Specifically, prior to purchase, Khanna was told by his contractor that GAF represented the Decking and Railings as low maintenance, long lasting, and that it was covered by a 20 year warranty. Relying upon these representations from GAF, Khanna reviewed samples of the Decking and chose to purchase CrossTimbers Decking and Railings.

456. Contrary to GAF's representations, Khanna's Decking and Railings are inherently defective and are warping/swelling, cracking, shrinking, discoloring, and experiencing mold growth.

457. Had GAF disclosed the defects in the Decking and Railings, Khanna would not have purchased CrossTimbers Decking or Railings.

458. The following photograph is a true and accurate representation of the cracking Khanna's Railings are experiencing as of June 3, 2015:



459. The following photograph is a true and accurate representation of the cracking Khanna's Decking is experiencing as of September 23, 2015:



460. As a result of the manifestation of these defects, Khanna filed a warranty claim with GAF.

461. GAF responded by offering Khanna roughly 60% of what he paid for his Decking and Railings, which is an amount insufficient to replace his inherently defective Decking and Railings.

462. Due to the inherently defective nature of his Decking and Railings, Khanna must replace his entire deck.

463. Khanna filed suit within a year of the discovery that his Decking was inherently defective, on March 4, 2015.

Plaintiff Mark Giovannetti (New York)

464. Giovannetti purchased and installed Decking on two separate areas of his home, first in July, 2009 and then again in November 2009 based upon GAF's representations regarding the quality of the Decking.

465. Giovannetti paid approximately \$8000 for his Decking, including installation.

466. Specifically, prior to purchase of his Decking, Giovannetti was shown a GAF brochure by his sales clerk which expressly represented that the Decking was low maintenance, and was lighter and stronger than other products on the market.

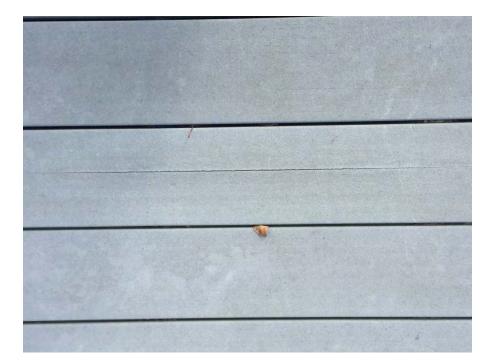
467. However, Giovannetti's Decking is not low maintenance, and is inherently defective as it is warping/swelling, shrinking, cracking, crumbling, and is experiencing mold growth.

468. Had GAF disclosed the defects in the Decking, Giovannetti would not have purchased CrossTimbers Decking.

469. The following photograph is a true and accurate representation of the crumbling Giovannetti's Decking is experiencing as of September 24, 2015:



470. The following photograph is a true and accurate representation of the cracking Giovannetti's Decking is experiencing as of September 24, 2015:



471. Due to the inherently defective nature of the Decking, Giovannetti contacted GAF to file a warranty claim prior to filing suit, but has not received an offer to repair or replace his inherently defective Decking.

472. As a result, Giovannetti filed suit on March 4, 2015, less than a year after discovering that his Decking as inherently defective.

473. Due to the inherently defective nature of his Decking and Railings, Giovannetti must replace his entire deck.

Plaintiffs Donna and Johnathan Mapp (Mississippi)

474. Mr. and Mrs. Mapp purchased and installed Decking on their home in 2010.

475. The Mapps paid in excess of \$5,000 for their Decking, including installation.

476. Prior to purchase of the Decking, Mapps' contractor recommended that they purchase CrossTimbers Decking due to representations GAF had made about its requirements of little to no maintenance and he showed them a GAF brochure which further contained

representations stating specifics about its durability, lack of rotting and that it would require little to no maintenance.

477. However, the Decking has failed to live up to these representations as it is crumbling, warping/swelling, and is experiencing mold growth.

478. Had GAF disclosed the defects in the Decking, the Mapps would not have purchased the Decking.

479. The following photograph is a true and accurate representation of the cracking Mapps' Decking is experiencing as of February 24, 2015:



480. The following photograph is a true and accurate representation of the mold growth Mapps' Decking is experiencing as of February 24, 2015:



481. When the mold began to appear, the Mapps researched cleaning recommendations on GAF's website and tried the methods recommended by GAF.

482. These methods failed, however, as the mold growth returned soon after cleaning.

483. Within a year of filing suit, the Mapps discovered that the Decking is defective and must be replaced.

484. The Mapps first filed suit on March 4, 2015.

Plaintiff John Shepherd (North Carolina)

485. Shepherd purchased and installed Decking on his home in 2007 based upon the representations regarding the quality of the Decking.

486. Shepherd paid approximately \$27,100 for their Decking, including installation.

487. Specifically prior to purchasing his Decking, Shepherd's contractor showed him a GAF brochure which contained express representations regarding the Decking's low maintenance attributes as well as expressly represented that the Decking was long lasting and covered by a 20 year warranty.

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488. Shepherd also asked his contractor to inquire to the supplier if anyone else in the area had recently installed CrossTimbers so that he could go view the appearance of the Decking in person.

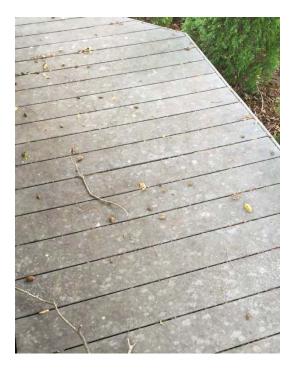
489. His contractor located an individual in Ahoskie, North Carolina, who had recently purchased and installed CrossTimbers Decking, so Shepherd traveled to view that Decking in person.

490. Based upon the express representations contained in the GAF brochure as well as the physical appearance of the Decking, he decided to purchase CrossTimbers.

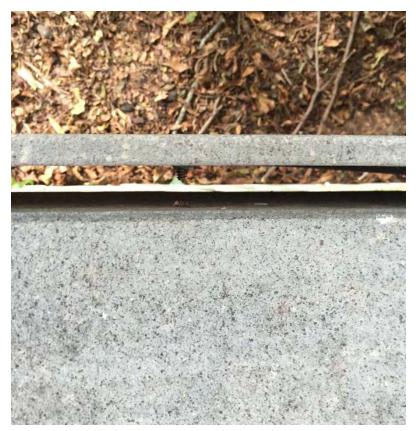
491. Contrary to GAF's express representations, Shepherd's Decking is warping/swelling, shrinking, and is not low maintenance as it is experiencing mold growth.

492. Had GAF disclosed the defects in the Decking, Shepherd would not have purchased CrossTimbers Decking.

493. The following photograph is a true and accurate representation of the mold growth Shepherd's Decking is experiencing as of August 30, 2015:



494. The following photograph is a true and accurate representation of warping Shepherd's Decking is experiencing as of August 30, 2015:



495. As shown in the above photograph, the force of the warping is so severe it has snapped the screws that were holding the fascia in place.

496. Within the year prior to first filing suit, he discovered that the Decking is defective and must be replaced.

497. Shepherd first filed suit on March 4, 2015.

Plaintiff Paul Barker (Colorado)

498. Barker purchased and installed Decking on his home in 2006 based upon the representations regarding the quality of the Decking.

499. Barker paid approximately \$2,000 for his Decking.

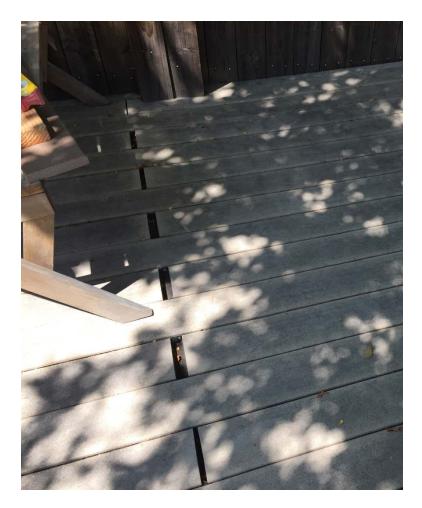
500. Prior to purchasing and installing his Decking, Barker reviewed a brochure that expressly represented the Decking as being low maintenance, durable, and covered by at least a 20 year warranty.

501. Based on the warranty period, Barker reasonably expected the Decking would last at least 20 years with little to no maintenance required.

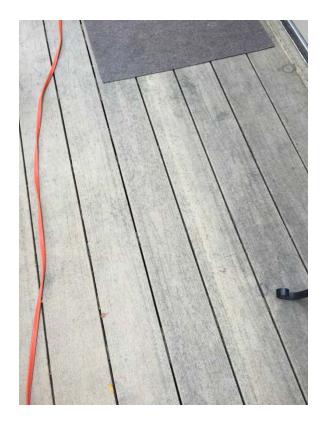
502. Contrary to the express representations, his Decking is shrinking, warping/swelling, crumbling, and experiencing mold growth and will not last 20 years.

503. Had GAF disclosed the defects in the Decking, Barker would not have purchased CrossTimbers Decking.

504. The following photograph is a true and accurate representation of the shrinking Barker's Decking is experiencing as of August 26, 2015:



505. The following photograph is a true and accurate representation of the discoloration and mold growth Barker's Decking is experiencing as of August 26, 2015:



506. Within the year prior to first filing suit, he discovered that the Decking is defective and must be replaced.

507. Barker first filed suit on March 4, 2015.

Plaintiff Michelle Megerle (Colorado)

508. Megerle purchased and installed Decking and Railings on her home in 2008 based upon the representations regarding the quality of the Decking and Railings.

509. Megerle paid approximately \$8,600 for her Decking and Railings, including installation.

510. Specifically, Megerle's contractor showed her samples of the Decking and conveyed to her the representations GAF makes in its brochures regarding the low maintenance attributes of the Decking and Railings, that it was long lasting, and that it was covered by a 20 year warranty.

511. Based on these representations and the 20 year warranty that covered the Decking and Railings, Megerle reasonably expected the Decking and Railings would last at least 20 years.

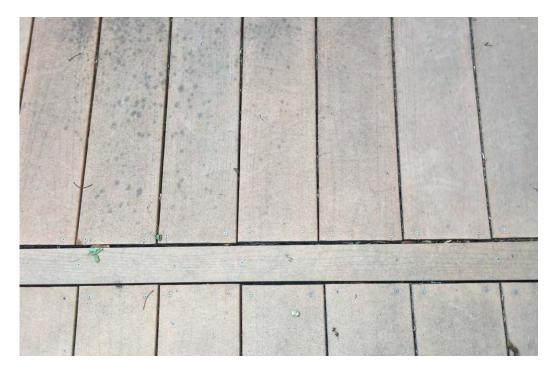
512. However, her Decking and Railings will not last 20 years as they are shrinking, warping, cracking, and experiencing mold growth.

513. Had GAF disclosed the defects in the Decking and Railings, Megerle would not have purchased CrossTimbers Decking or Railings.

514. The following photograph is a true and accurate representation of the cracking Megerle's Decking is experiencing as of August 26, 2015:



515. The following photograph is a true and accurate representation of the discoloration and mold growth Megerle's Decking is experiencing as of August 26, 2015:



516. As a result of the inherently defective nature of her Decking, Megerle first filed suit on March 4, 2015, less than a year after discovering that her Decking and Railings were inherently defective.

517. Due to the inherently defective nature of her Decking and Railings Megerle must replace her entire deck.

Plaintiff Dean Christofferson (North Dakota)

518. Christofferson purchased and installed CrossTimbers Decking on his home in 2010.

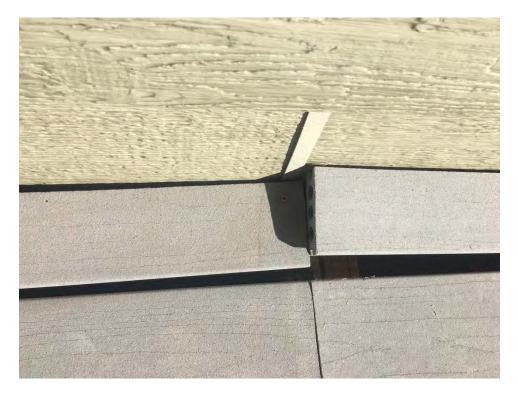
519. Christofferson paid approximately \$23,500 for his Decking, including installation.

520. Christofferson chose CrossTimbers in reliance upon its low maintenance and long lasting attributes that were expressed to him by his contractor, as well as based on its physical appearance, including the color.

521. Christofferson's Decking no longer remains the same color, as it has faded beyond what it was represented by GAF that it would fade, and is also warping, cracking, and experiencing mold growth.

522. Had GAF disclosed the defects in the Decking, Christofferson would not have purchased CrossTimbers Decking.

523. The following photograph is a true and accurate representation of the warping Christofferson's Decking is experiencing as of November 12, 2015:



524. The following photograph is a true and accurate representation of the warping Christofferson's Decking is experiencing as of November 12, 2015:



525. Christofferson first filed suit July 24, 2015, less than a year after discovering that his Decking was inherently defective.

526. Due to the inherently defective condition of his Decking, Christofferson must replace his Decking.

Plaintiff Steve Brown (Kansas)

527. Brown purchased and installed CrossTimbers Decking and CrossTimbers Railings on his home in 2007.

528. Brown paid approximately \$29,000 for his Decking and Railings, including installation.

529. Prior to purchasing the Decking and Railings, Brown reviewed brochures from GAF as well as competitors.

530. After reviewing the brochures, Brown chose to purchase CrossTimbers Decking and CrossTimbers Railings based at least in part on the express representations in GAF's

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brochure that the Decking and Railings would be low maintenance and would last longer than an ordinary wooden deck.

531. However, Brown's Decking and Railings have not been low maintenance and will not last longer than an ordinary wooden deck as his Decking and Railings are cracking, shrinking, crumbling, warping/swelling, and are experiencing mold growth.

532. Had GAF disclosed the defects in the Decking and Railings, Brown would not have purchased CrossTimbers Decking or Railings.

533. The following photograph is a true and accurate representation of the cracking and shrinking experienced by Brown's Decking as of September 21, 2015:



534. The following photograph is a true and accurate representation of the crumbling experienced by Brown's Railings as of September 21, 2015:



535. Based on the defects in his Decking and Railings, Brown filed a warranty claim with GAF in April of 2015.

536. In August of 2015, GAF responded to his warranty claim, offering him approximately one third of what he paid for the Decking and Railings, an amount wholly insufficient to repair or replace his Decking and Railings.

537. Due to the inherently defective nature of his Decking and Railings, Brown must replace his entire deck.

538. As a result of the inherently defective nature of his Decking and Railings, Brown first filed suit July 24, 2015, less than a year after discovery that his Decking and Railings were defective.

Plaintiff Mark Law (Kansas)

539. Law purchased and installed CrossTimbers Decking and CrossTimbers Railings on his home in 2009.

540. Law paid approximately \$23,400 for his Decking and Railings, including installation.

541. Prior to purchasing his Decking and Railings, Law met with a sales representative from his local lumber yard who showed him brochures from GAF as well as various competitors.

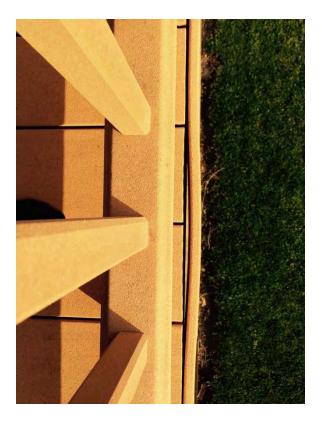
542. Based at least in part on the representations contained in the GAF brochure that expressly represented that the Decking was low maintenance and long lasting, Law decided to purchase CrossTimbers Decking and Railings.

543. However, Law's Decking and Railings have not lived up to these representations by GAF and are inherently defective.

544. Specifically, Law's Decking and Railings are warping, cracking, fading, and experiencing mold growth.

545. Had GAF disclosed the defects in the Decking and Railings, Law would not have purchased CrossTimbers Decking or Railings.

546. The following photograph is a true and accurate representation of the warping experienced by Law's Decking as of April 20, 2015:



547. The following photograph is a true and accurate representation of the cracking experienced by Law's Decking as of April 20, 2015:



548. As a result of the inherently defective nature of his Decking and Railings, Law contacted GAF to file a warranty claim in May of 2015, but GAF has not responded with an offer to repair or replace his inherently defective Decking.

549. Due to his discovery that the Decking and Railings were inherently defective, Law filed suit within a year of his discovery on July 24, 2015.

550. Due to the inherently defective nature of his Decking and Railings, Law must replace his entire deck.

Plaintiff John Kuropatkin (Massachusetts)

551. Kuropatkin purchased and installed CrossTimbers Decking and Railings on his home in 2007.

552. Kuropatkin paid approximately \$26,000 for his Decking and Railings, including installation.

553. Prior to purchasing his Decking and Railings, Kuropatkin met with a salesman who showed him a sample of the Decking, as well as a sheet of paper containing express representations from GAF that the Decking and Railings were low maintenance, long lasting, and covered by a 20 year warranty.

554. Relying upon the representations made by GAF in the flyer he was shown by the salesman, as well as on the appearance of the sample, particularly the appearance of the wood grain, Kuropatkin chose to purchase the CrossTimbers Decking and Railings instead of a competitor's product.

555. Contrary to GAF's representations, Kuropatkin's Decking has lost all of its wood grain, is shrinking, warping/swelling, and is not low maintenance in that it requires substantial cleaning of the mold growth.

556. Despite cleaning, however, the mold growth quickly returns after cleaning.

557. Had GAF disclosed the defects in the Decking, Kuropatkin would not have purchased CrossTimbers Decking or Railings.

558. The following photograph is a true and accurate representation of the shrinking experienced by Kuropatkin's Decking as of September 22, 2015:

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559. The following photograph is a true and accurate representation of the mold growth and discoloration experienced by Kuropatkin's Decking as of September 22, 2015:



560. Kuropatkin initially filed suit July 24, 2015 as a result of his discovery within the previous year that his Decking and Railings were inherently defective.

561. Due to the inherently defective condition of his Decking and Railings, Kuropatkin must replace his entire deck.

Plaintiff Randy King (Alabama)

562. King purchased and installed CrossTimbers Decking and CrossTimbers Railings on his home in 2009.

563. King paid in excess of \$8,300 for his Decking and Railings, including installation.

564. Prior to purchase, King's contractor showed King samples of the Decking and conveyed representations from GAF that were contained in GAF's brochures which stated the Decking and Railings would not crack or warp, would be low maintenance and long lasting, and were covered by a 20 year warranty.

565. Based on these representations by GAF and on the physical appearance of the Decking and Railings, King purchased CrossTimbers.

566. His Decking and Railings have not conformed with these express representations, however, as his Decking and Railings are warping/swelling, cracking, and experiencing mold growth.

567. Had GAF disclosed the defects in the Decking, King would not have purchased CrossTimbers Decking or Railings.

568. The following photograph is a true and accurate representation of the warping King's Railings are experiencing as of March 18, 2015:

110



569. The following photograph is a true and accurate representation of the cracking and warping experienced by King's Decking as of March 18, 2015:



570. Due to the defective nature of his Decking and Railings, King filed a warranty claim with GAF.

571. GAF responded in June of 2015 by offering him less than half of what it will cost him to replace his inherently defective Decking and Railings.

572. Due to the inherently defective condition of his Decking and Railings King must replace his entire deck.

573. As a result, King filed suit July 24, 2015, less than a year after discovering that his Decking and Railings are inherently defective.

Plaintiffs Douglas Smieja and Cheryl Johnson (Wisconsin)

574. Smieja and Johnson purchased and installed CrossTimbers Decking on their home in 2009.

575. Smieja and Johnson paid approximately \$8,400 for their Decking, including installation.

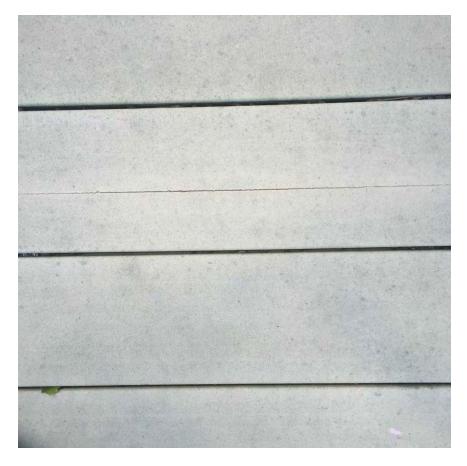
576. They elected to purchase CrossTimbers Decking after reviewing brochures shown to them by their contractor and relying at least in part upon the representations contained within.

577. Specifically, they were shown, and relied upon, a brochure from GAF that represented that CrossTimbers Decking was a high quality Decking product that was low maintenance and would last longer than an ordinary wooden deck.

578. However, contrary to GAF's representations, Smieja and Johnson's Decking is warping, cracking, shrinking, and experiencing mold growth.

579. Had GAF disclosed the defects in the Decking, Smieja and Johnson would not have purchased CrossTimbers Decking.

580. The following photograph is a true and accurate representation of cracking the Decking is experiencing at the Smieja and Johnson residence as of September 19, 2015:



581. The following photograph is a true and accurate representation of warping the Decking is experiencing at the Smieja and Johnson residence as of September 19, 2015:



582. Due to their discovery that the Decking was inherently defective, Smieja and Johnson contacted GAF in April of 2015 to file a warranty claim.

583. GAF did not provide an offer to repair or replace Smieja and Johnson's Decking, so Smieja and Johnson filed suit July 24, 2015, less than a year after discovery that the Decking was defective.

584. As a result of the inherently defective nature of Smieja and Johnson's Decking, their entire deck must be replaced.

Plaintiff Robert Aspinwall (Massachusetts)

585. Aspinwall purchased and installed CrossTimbers Decking and CrossTimbers Railings on his home in 2007.

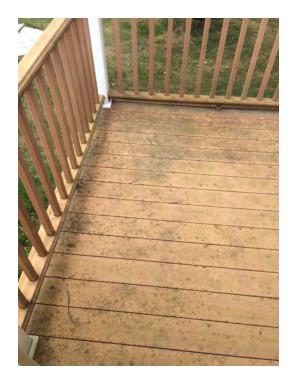
586. Aspinwall paid approximately \$5,000 for his Decking and Railings, including installation.

587. Prior to purchasing his Decking and Railings, Aspinwall reviewed samples of the Decking and Railings that were provided by his salesman, and saw an express representation from GAF on the packaging for the CrossTimbers fasteners that the Decking and Railings were low maintenance.

588. However, his Decking and Railings are not low maintenance, but rather, are experiencing significant mold growth and are also warping/swelling, discoloring, and cracking.

589. Had GAF disclosed the defects in the Decking and Railings, Aspinwall would not have purchased CrossTimbers Decking or Railings.

590. The following is a true and accurate representation of the discoloration and mold growth the Decking is experiencing at Aspinwall's residence as of September 22, 2015:



591. The following is a true and accurate representation of the mold growth the Decking is experiencing as Aspinwall's residence as of September 22, 2015:



592. Due to the defects in his Decking and Railings, Aspinwall filed suit July 24, 2015, less than a year after discovering that his Decking and Railings were defective.

593. Due to the inherently defective nature of his Decking and Railings, Aspinwall must replace his entire deck.

Plaintiff Troy Koster (Wyoming)

594. Koster purchased and installed CrossTimbers Decking on his home in 2008.

595. Koster paid approximately \$10,000 for his Decking, including installation.

596. Prior to purchasing his Decking, Koster considered purchasing both CrossTimbers and Trex decking, but ultimately chose CrossTimbers based on GAF's representations that the Decking was low maintenance and that it was a long lasting, high quality product.

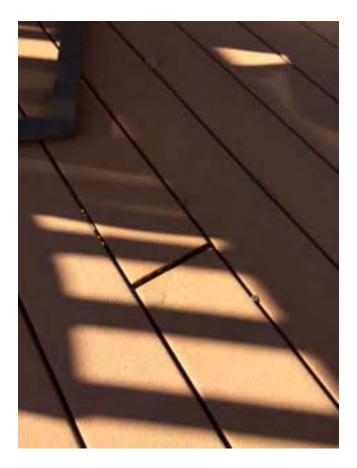
597. Contrary to GAF's representations regarding the quality of CrossTimbers and the its alleged low maintenance requirements, Koster's Decking is warping, shrinking, crumbling, cracking, and experiencing mold growth.

598. Had GAF disclosed the defects in the Decking, Koster would not have purchased CrossTimbers Decking.

599. The following photograph is a true and accurate representation of the crumbling Koster's Decking is experiencing as of November 12, 2015:



600. The following photograph is a true and accurate representation of the shrinking experiencing by Koster's Decking:



601. Due to the inherently defective nature of his Decking, Koster contacted GAF on July 1, 2015 to file a warranty claim, but did not receive an offer from GAF to repair or replace his inherently defective Decking.

602. As a result, Koster filed suit on July 24, 2015, less than a year after discovering his Decking as inherently defective.

603. Due to the inherently defective nature of his Decking, Koster must replace his entire deck.

Plaintiff George Johnson (Tennessee)

604. Johnson purchased and installed CrossTimbers Decking on his home in 2006.

605. Johnson paid approximately \$3,500 for his Decking.

606. Johnson decided to purchase the Decking at least in part on express representations that the Decking was low maintenance as well as representations or affirmations that the Decking would not fade.

607. To date, his Decking has not lived up to these representations, as it is warping/bowing, shrinking, cracking, and experiencing mold growth.

608. Notably, his Decking is shrinking to such a large extent that he had to hire a contractor to readjust the spacing of his Decking to be sure the Decking was still supported by joists.

609. Had GAF or its predecessor disclosed the defects in his Decking Johnson would not have purchased CrossTimbers Decking.

610. The following photograph is a true and accurate representation of the shrinking the Decking is experiencing at Johnson's Residence as of November 20, 2015:



611. As a result of the defects in his Decking, Johnson first filed suit July 24, 2015, less than a year after learning that his Decking is defective.

612. Due to the inherently defective nature of his Decking Johnson must replace his entire deck.

Plaintiff Edgar Rachor (South Carolina)

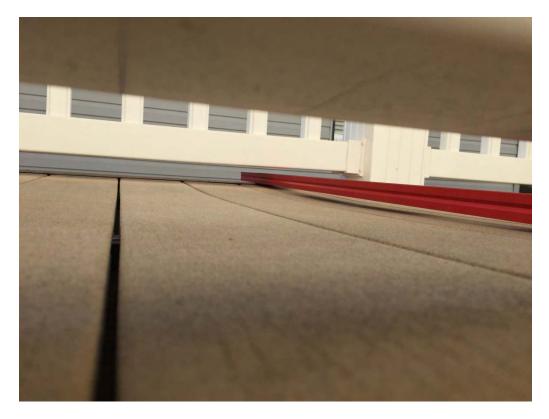
613. Rachor purchased and installed CrossTimbers Decking on his home in 2006 based at least in part on representations made by GAF regarding the Decking's quality.

614. Specifically, Rachor saw a GAF brochure that represented the Decking as low to no maintenance and lasting longer than traditional wood decking.

615. Contrary to these representations, Rachor's Decking will not last longer than traditional wood decking and is not low maintenance as it is shrinking, warping, cracking, crumbling, and experiencing mold growth.

616. Had GAF disclosed the defects in the Decking, Rachor would not have purchased CrossTimbers Decking.

617. The following photograph is a true and accurate representation of the warping Rachor's Decking is experiencing as of October 15, 2015:



618. The following photograph is a true and accurate representation of the crumbling Rachor's Decking is experiencing as of October 15, 2015:



619. Due to the inherently defective nature of his Decking, Rachor must replace his entire deck.

Plaintiff Joseph Campbell (Minnesota)

620. Campbell purchased and installed CrossTimbers Decking at his residence in 2009.

621. When Campbell originally purchased his residence in 2004, the deck on his residence had cedar decking. Desiring a product that was lower maintenance and longer lasting, Campbell decided to purchase new decking to replace the cedar deck boards.

622. He purchased CrossTimbers Decking based upon the recommendation of the salesman at his local lumber yard, Lambert Lumber Yard, a distributor of the Decking.

623. Campbell paid approximately \$6,800 for his CrossTimbers Decking, including installation.

624. The salesman conveyed GAF's representations to Campbell that the Decking was high quality and long lasting.

625. Campbell's Decking, however, is not high quality or long lasting, as it is inherently defective and is shrinking, warping, and experiencing severe discoloration and mold growth.

626. Campbell has used commercially available deck cleaners to regularly clean the Decking in an attempt to remove the mold growth, however, the mold growth reappears after each cleaning.

627. Campbell has spent approximately \$700 on deck cleaners over the life of his deck in an attempt to remove the mold growth.

628. Additionally, some of his boards have faded significantly worse than others, such that his Decking is no longer a uniform color.

629. Had GAF disclosed the defects in the Decking, Campbell would not have purchased CrossTimbers Decking.

630. The following photograph is a true and accurate representation of the shrinking experienced by Campbell's Decking as of November 13, 2015:

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631. The following photograph is a true and accurate representation of the discoloration experienced by Campbell's Decking as of November 13, 2015:



632. As a result of the inherently defective condition of his Decking, Campbell must replace his Decking.

Plaintiff Donald Vinson (Washington)

633. Vinson purchased and installed CrossTimbers Decking at his residence in 2005.

634. Prior to purchase of his Decking, Vinson reviewed a brochure that was provided to him by the salesman at his local lumber yard.

635. He recalls the brochure expressly representing that the Decking was low maintenance and would last longer than traditional wood decking.

636. He relied on the express representations contained in the brochure prior to purchasing the Decking.

637. Contrary to the representations, his Decking will not last longer than traditional wood decking and is not low maintenance as it is experiencing mold growth, warping, shrinking, and discoloration.

638. Had GAF disclosed the defects in the Decking, Vinson would not have purchased CrossTimbers Decking.

639. The following photograph is a true and accurate photograph of the warping Vinson's Decking is experiencing as of December 2, 2015;



640. The following photograph is a true and accurate photograph of the sagging Vinson's Decking is experiencing as of December 2, 2015:



641. As a result of the inherently defective condition of his Decking, Vinson must replace his Decking.

CLASS ALLEGATIONS

642. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23 on behalf of the

following Nationwide Class:

All persons that have purchased or own homes or other structures in the United States on which GAF-ELK CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

a. Alternatively, Plaintiffs propose the following two Nationwide subclasses:

National Subclass 1:

All persons that have purchased or own homes or other structures in the United States on which GAF-ELK CrossTimbers Decking and/or Railings were installed between 2002 and 2012. National Subclass 2:

All persons that have purchased or own homes or other structures in the United States on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

- 643. Alternatively, Plaintiffs propose State Classes for each state as follows:
 - b. Ohio Class:

All persons that have purchased or own homes or other structures in the state of Ohio on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Ohio Subclass 1:

All persons that have purchased or own homes or other structures in the state of Ohio on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Ohio Subclass 2:

All persons that have purchased or own homes or other structures in the state of Ohio on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

c. North Carolina Class:

All persons that have purchased or own homes or other structures in the state of North Carolina on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

North Carolina Subclass 1:

All persons that have purchased or own homes or other structures in the state of North Carolina on which

CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

North Carolina Subclass 2:

All persons that have purchased or own homes or other structures in the state of North Carolina on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

d. Missouri Class:

All persons that have purchased or own homes or other structures in the state of Missouri on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Missouri Subclass 1:

All persons that have purchased or own homes or other structures in the state of Missouri on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Missouri Subclass 2:

All persons that have purchased or own homes or other structures in the state of Missouri on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

e. Iowa Class:

All persons that have purchased or own homes or other structures in the state of Iowa on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Iowa Subclass 1:

All persons that have purchased or own homes or other structures in the state of Iowa on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Iowa Subclass 2:

All persons that have purchased or own homes or other structures in the state of Iowa on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

f. Massachusetts Class:

All persons that have purchased or own homes or other structures in the state of Massachusetts on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Massachusetts Subclass 1:

All persons that have purchased or own homes or other structures in the state of Massachusetts on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Massachusetts Subclass 2:

All persons that have purchased or own homes or other structures in the state of Massachusetts on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

g. Kansas Class:

All persons that have purchased or own homes or other structures in the state of Kansas on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Kansas Subclass 1:

All persons that have purchased or own homes or other structures in the state of Kansas on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Kansas Subclass 2:

All persons that have purchased or own homes or other structures in the state of Kansas on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

h. North Dakota Class:

All persons that have purchased or own homes or other structures in the state of North Dakota on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

North Dakota Subclass 1:

All persons that have purchased or own homes or other structures in the state of North Dakota on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

North Dakota Subclass 2:

All persons that have purchased or own homes or other structures in the state of North Dakota on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Wisconsin Class:

All persons that have purchased or own homes or other structures in the state of Wisconsin on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Wisconsin Subclass 1:

All persons that have purchased or own homes or other structures in the state of Wisconsin on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Wisconsin Subclass 2:

All persons that have purchased or own homes or other structures in the state of Wisconsin on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

j. Tennessee Class:

All persons that have purchased or own homes or other structures in the state of Tennessee on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Tennessee Subclass 1:

All persons that have purchased or own homes or other structures in the state of Tennessee on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Tennessee Subclass 2:

All persons that have purchased or own homes or other structures in the state of Tennessee on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

k. Alabama Class:

All persons that have purchased or own homes or other structures in the state of Alabama on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

<u>Alabama Subclass 1:</u>

All persons that have purchased or own homes or other structures in the state of Alabama on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Alabama Subclass 2:

All persons that have purchased or own homes or other structures in the state of Alabama on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

l. Wyoming Class:

All persons that have purchased or own homes or other structures in the state of Wyoming on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Wyoming Subclass 1:

All persons that have purchased or own homes or other structures in the state of Wyoming on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Wyoming Subclass 2:

All persons that have purchased or own homes or other structures in the state of Wyoming on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

m. Missouri Class:

All persons that have purchased or own homes or other structures in the state of Missouri on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Missouri Subclass 1:

All persons that have purchased or own homes or other structures in the state of Missouri on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Missouri Subclass 2:

All persons that have purchased or own homes or other structures in the state of Missouri on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

n. Montana Class:

All persons that have purchased or own homes or other structures in the state of Montana on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Montana Subclass 1:

All persons that have purchased or own homes or other structures in the state of Montana on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Montana Subclass 2:

All persons that have purchased or own homes or other structures in the state of Montana on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

o. Indiana Class:

All persons that have purchased or own homes or other structures in the state of Indiana on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Indiana Subclass 1:

All persons that have purchased or own homes or other structures in the state of Indiana on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Indiana Subclass 2:

All persons that have purchased or own homes or other structures in the state of Indiana on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

p. Nebraska Class:

All persons that have purchased or own homes or other structures in the state of Nebraska on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Nebraska Subclass 1:

All persons that have purchased or own homes or other structures in the state of Nebraska on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Nebraska Subclass 2:

All persons that have purchased or own homes or other structures in the state of Nebraska on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

q. Michigan Class:

All persons that have purchased or own homes or other structures in the state of Michigan on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Michigan Subclass 1:

All persons that have purchased or own homes or other structures in the state of Michigan on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Michigan Subclass 2:

All persons that have purchased or own homes or other structures in the state of Michigan on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

r. Illinois Class:

All persons that have purchased or own homes or other structures in the state of Illinois on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Illinois Subclass 1:

All persons that have purchased or own homes or other structures in the state of Illinois on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Illinois Subclass 2:

All persons that have purchased or own homes or other structures in the state of Illinois on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

s. Colorado Class:

All persons that have purchased or own homes or other structures in the state of Colorado on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Colorado Subclass 1:

All persons that have purchased or own homes or other structures in the state of Colorado on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Colorado Subclass 2:

All persons that have purchased or own homes or other structures in the state of Colorado on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

t. California Class:

All persons that have purchased or own homes or other structures in the state of California on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

California Subclass 1:

All persons that have purchased or own homes or other structures in the state of California on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

California Subclass 2:

All persons that have purchased or own homes or other structures in the state of California on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

u. Virginia Class:

All persons that have purchased or own homes or other structures in the state of Virginia on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Virginia Subclass 1:

All persons that have purchased or own homes or other structures in the state of Virginia on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Virginia Subclass 2:

All persons that have purchased or own homes or other structures in the state of Virginia on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

v. New Hampshire Class:

All persons that have purchased or own homes or other structures in the state of New Hampshire on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

New Hampshire Subclass 1:

All persons that have purchased or own homes or other structures in the state of New Hampshire on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

New Hampshire Subclass 2:

All persons that have purchased or own homes or other structures in the state of New Hampshire on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

w. New York Class:

All persons that have purchased or own homes or other structures in the state of New York on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

New York Subclass 1:

All persons that have purchased or own homes or other structures in the state of New York on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

New York Subclass 2:

All persons that have purchased or own homes or other structures in the state of New York on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

x. Mississippi Class

All persons that have purchased or own homes or other structures in the state of Mississippi on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Mississippi Subclass 1:

All persons that have purchased or own homes or other structures in the state of Mississippi on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Mississippi Subclass 2:

All persons that have purchased or own homes or other structures in the state of Mississippi on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

y. South Carolina Class

All persons that have purchased or own homes or other structures in the state of South Carolina on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

South Carolina Subclass 1:

All persons that have purchased or own homes or other structures in the state of South Carolina on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

South Carolina Subclass 2:

All persons that have purchased or own homes or other structures in the state of South Carolina on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

z. Minnesota Class

All persons that have purchased or own homes or other structures in the state of Minnesota on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Minnesota Subclass 1:

All persons that have purchased or own homes or other structures in the state of Minnesota on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Minnesota Subclass 2:

All persons that have purchased or own homes or other structures in the state of Minnesota on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

aa. Washington Class:

All persons that have purchased or own homes or other structures in the state of Washington on which CrossTimbers Decking and/or Railings or DuraLife Decking and/or Railings were installed between 2002 and 2012.

i. Alternatively, Plaintiffs propose the following two subclasses:

Washington Subclass 1:

All persons that have purchased or own homes or other structures in the state of Washington on which CrossTimbers Decking and/or Railings were installed between 2002 and 2012.

Washington Subclass 2:

All persons that have purchased or own homes or other structures in the state of Washington on which DuraLife Decking and/or Railings were installed between 2002 and 2012.

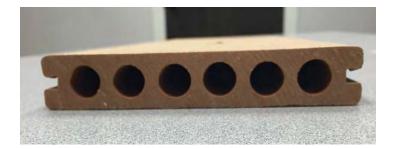
644. Plaintiffs' reserve the right to redefine the Class(es) prior to class certification.

645. Excluded from these Classes are any judge or magistrate presiding over this action, and the members of their families; GAF, entities it owns, their legal representatives, assigns, successors, and employees; and all persons who properly execute and timely file a request for exclusion from the Classes or who are currently in litigation with GAF themselves.

646. <u>Numerosity</u>: The Classes are each composed of thousands of persons geographically dispersed throughout the United States and each State, the joinder of whom in one action would be impracticable. Moreover, the members of the Classes are reasonably ascertainable and identifiable through GAF's records and due to the unique profile of the Decking.

647. The hollow profile of the Decking, which has six circular holes the length of each board, is unique in the wood-plastic composite decking industry and has not been copied by any other manufacturer.

648. The following photograph is a true and accurate representation of the profile of the Decking which permits anyone to easily identify it as the Decking:



649. <u>Commonality</u>: Questions of law and fact common to the Classes exist as to all of their members, and those questions predominate over individual questions. Among the common and predominant questions are:

- a. Whether the Decking and/or Railings are defective;
- b. Whether the Decking and/or Railings have not performed or will not perform in accordance with the reasonable expectations of ordinary consumers;
- c. Whether GAF knew or should have known of the Decking and Railings' defects;
- d. Whether GAF concealed, omitted or failed to disclose the Decking and Railings' defects;
- e. Whether GAF's customers are entitled to compensatory damages to remove and replace the Decking and/or Railings or to otherwise compensate them for damages caused by the Decking and/or Railings' defects;
- f. Whether GAF negligently formulated, designed, or manufactured the Decking and/or Railings;
- g. Whether the Decking and/or Railings fail to perform as advertised or warranted;
- h. Whether GAF marketed the Decking and Railings as a superior, longerlasting alternative to wood;
- i. Whether GAF breached its express warranties about the Decking and/or Railings;

- j. Whether GAF breached its implied warranties about the Decking and/or Railings;
- k. Whether the limitations in GAF's Limited Warranty are unconscionable or otherwise unenforceable;
- 1. Whether GAF's Limited Warranty fails of its essential purpose;
- m. Whether GAF knew or should have known that the Decking and Railings would prematurely fail;
- n. Whether the Decking and Railings' propensity for premature failure would be important to a reasonable consumer;
- o. Whether statutes of limitations should be equitably tolled due to GAF's conduct, or whether GAF should be estopped from raising a defense premised on a statute of limitations;
- p. Whether GAF committed unfair acts or practices;
- q. Whether GAF committed deceptive acts or practices;
- r. Whether GAF should be declared financially responsible for failure to notify all Class Members of the defective nature of the Decking and/or Railings and to pay the full costs and expenses of replacement of the Decking and/or Railings;
- s. Whether GAF knew or became aware that its Decking and/or Railings were defective, yet continued to manufacture, distribute, advertise, market, and sell the Decking and Railings without: (1) informing consumers, purchasers, builders and/or homeowners of the material defects; (2) recalling the defective; or (3) otherwise repairing the defective Decking and/or Railings that had already been purchased;
- t. Whether Plaintiffs and the Class(es) are entitled to compensatory damages, including, among other things: (i) compensation for all outof-pocket monies expended by members of the Class(es) for replacement of Decking and/or Railings and/or installation costs as well as replacement of other property damage caused by the defective Decking and/or Railings; (ii) the failure of consideration in connection with and/or difference in value arising out of the variance between the Decking and/or Railings as warranted and the Decking and/or Railings as purchased; and (iii) the reasonable costs to remove and replace the Decking and/or Railings and to repair consequential damages;

- u. Whether GAF breached its duties to Plaintiffs and the Class(es) by designing, formulating, manufacturing, producing, marketing, advertising and selling defective Decking and Railings to Plaintiffs and the Class(es);
- v. Whether GAF breached its express warranties to Plaintiffs and the Class(es) by selling defective Decking and Railings to Plaintiffs and the Class(es) and then refusing to cover the full costs associated with replacing the Decking and Railings;
- w. Whether GAF breached its implied warranties to Plaintiffs and the Class(es) by selling defective Decking and Railings to Plaintiffs and the Class(es) and then refusing to cover the full costs associated with replacing the Decking and Railings; and
- x. Whether Plaintiffs and the Class(es) are entitled to prejudgment interest, attorneys' fees and costs from GAF.

650. <u>Typicality</u>: Each of the Plaintiffs' claims are typical of those of the members of the Nationwide Class and of each Plaintiffs' home State Class.

651. <u>Adequate Representation</u>: Each Plaintiff will fairly and adequately protect the interests of the members of the Class, and none have interests antagonistic to it. They have retained counsel experienced in the prosecution of this type of litigation.

652. <u>Predominance and Superiority</u>: This class action is appropriate for certification because questions of law and fact common to the Classes predominate over individual questions, and the class vehicle is superior to other available methods for the fair and efficient adjudication of this controversy. To wit, should individual class members be required to bring separate actions, this and other courts would be confronted with a multiplicity of lawsuits that would burden the judicial system and risk inconsistent rulings and contradictory judgments. And, in contrast to the shared and unitary costs of a class action, case-by-case adjudication would greatly magnify the expense and time incurred by the parties and the courts.

653. Class certification is appropriate because GAF engaged in a uniform and common practice and all class members have the same legal right to, and interest in, redress for damages associated with the defective Decking and/or Railings.

FIRST CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY (Express Representations) (All Plaintiffs, Individually and on Behalf of All Others Similarly Situated)

654. Plaintiffs re-allege and incorporate herein by reference each of the preceding paragraphs as though fully set forth herein.

655. GAF marketed and sold the Decking and Railings in the stream of commerce with the intent that it would be purchased by Plaintiffs, class members, their agents, and other consumers for installation on structures owned and bought by Plaintiffs and class members.

656. GAF made express warranties and representations in conjunction with the sale of its Decking and Railings, each of which were intended to (and did) convey information regarding the durability and performance of the Decking and Railings, rather than mere puffery including, but not limited to, the following warranties that:

- a. The Decking and Railings' "superior engineering and design creates a deck that lasts longer than ordinary wood decks with less maintenance no staining or sealing required."
- b. The Decking and Railings "won't warp, crack, splinter or rot like wood."
- c. The Decking and Railings "[r]esists scratching and high traffic wear and tear."
- d. The Decking and Railings "resists sagging, splintering, warping, insects and rotting."
- e. The Decking and Railings "contain "[n]o toxic chemicals like treated wood."
- f. "For the beauty of a wooden deck with less care and effort, choose Elk CrossTimbers brand composite decking [*viz.* the Decking and Railings]."

- g. The Decking "is designed with the EZ-Build System, which not only makes construction a snap, but also ads beauty with its concealed fasteners hidden below the surface."
- h. "Its low moisture absorption and superior longevity make CrossTimbers the right choice for decking, fencing and marine application."

657. GAF also expressly represented that the Decking and Railings had "low moisture absorption," and that it would not have any "cracking/splintering/rotting," and that it was "designed to provide years of enjoyment with **little or no maintenance**."

658. GAF also represented that the Decking and Railings would have a useable life of at least twenty years.

659. Plaintiffs and Class Members relied directly or indirectly on GAF's representations and warranties when purchasing the Decking and Railings.

660. The express statements, promises, and representations by GAF concerning the Decking and Railings as set forth in the preceding paragraph constitute express warranties that the Decking and Railings would conform to GAF's affirmations, representations, and promises.

661. These express warranties by GAF concerning the Decking and Railings became part of the basis of the bargain Plaintiffs and class members entered into when they purchased the Decking and/or Railings and created a collective "express warranty".

662. GAF breached these express warranties to Plaintiffs and the class members in that the Decking and Railings are inherently defective and the Decking and Railings *do* warp, crack, splinter, scratch easily, require more maintenance than ordinary wooden decks, will not last longer than ordinary wooden decks, and do not maintain the physical attributes that Plaintiffs, the class members, and their agents relied upon when purchasing the Decking and Railings. Case 2:15-cv-00018-JLL-JAD Document 81 Filed 12/04/15 Page 146 of 221 PageID: 1010

663. If GAF had not made these representations about the quality of the Decking and

Railings, then Plaintiffs and Class Members would not have purchased the Decking and Railings

and paid to have them installed on their homes.

664. GAF never disclaimed its express representations and warranties regarding the

quality of the Decking and Railings.

665. GAF's conduct described in this complaint constitutes a breach of express warranties under UCC § 2-313, as adopted by the following state statutes:

Ala. Code § 7-2-313, et seq.; Cal. Com. Code § 2313, et seq.; Colo. Rev. Stat. § 4-2-313, et seq.; Ill. Comp. Stat. § 5/2-313, et. seq; Ind. Code § 26-1-2-313, et seq.; Iowa Code § 554.2313, et. seq.; Kan. Stat. § 84-2-313, et seq.; Mass Code § 106, § 2-313, et seq.; Mich. Comp. Laws 440.2313, et seq.; Miss Code § 75-2-313, et seq.; Mo. Rev. Stat. § 400.2-313, et seq.; Mont. Code § 30-2-313, et seq.; Neb. U.C.C. § 2-313, et seq.; N.H. Rev. Stat. § 382-A:2-313, et seq.; N.Y. U.C.C. § 2-313, et seq.; N.C. Gen. Stat. § 25-2-313, et seq.; N.D. Cent. Code § 41-02-30, et seq.; Ohio Rev. Code § 1302.26, et seq.; Tenn. Code § 47-2-313, et seq.; Va. Code § 8.2-313, et seq.; Wis. Stat. § 402.313, et seq.; Wyo. Stat. § 34.1-2-313, et seq.; Wash Rev. Code § 62A.2-313, et seq.; SC Code § 36-2-313, et seq; and Minn Stat. § 336.2-313, et seq.

666. In addition, Plaintiffs and Class Members have had sufficient direct dealings with GAF and/or its authorized dealers, franchisees, representatives, and agents to establish privity of contract.

667. Plaintiffs and class members are also intended third-party beneficiaries of contracts, including express warranties, between GAF and its dealers, franchisees, representatives, and agents.

668. Furthermore, GAF's advertisements were directed at Plaintiffs and class members. GAF's authorized dealers, franchisees, representatives, and agents, on the other hand,

were not intended to be the ultimate consumers of the Decking or Railings, and have no rights under the warranty agreements provided by GAF.

669. Plaintiffs and Class Members complied with all conditions precedent including the warranty terms and application/installation instructions.

670. As a direct result of GAF's breach of its express warranties, Plaintiffs and the class members have suffered actual damages in that they purchased and installed on their homes and other structures an exterior decking product that is defective and that has failed or is failing prematurely due to the defects noted herein. This failure has required or is requiring Plaintiffs and the class members to incur significant expense in replacing their Decking and Railings. Replacement is required to prevent on-going and future damage to the underlying deck substructure, and adjacent items such as columns and pools.

671. Further, there is a difference in value between the Decking and Railings as represented and warranted versus the Decking and Railings sold to Plaintiffs and Class Members.

672. As a direct result of GAF's breach of its express warranties, Plaintiffs and the class members are entitled to a recovery of their compensatory damages, and such attorneys' fees, costs, and interest as allowed by law.

SECOND CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY (Limited Warranty) (Plaintiffs Burger, Ross, Sheridan, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Ernst, Kaiser, Stidham, Williams, Phillips, Wolcott, Denton, Turcheck, Tuthill, Khanna, Giovanetti, Barker, Megerle, Shepherd, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

673. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

674. GAF marketed and sold the Decking and Railings in the stream of commerce with the intent that they would be purchased by Plaintiffs, class members, their agents, and other consumers for installation on structures owned and bought by Plaintiffs and class members.

675. GAF expressly warranted the Decking and Railings through its sales and marketing materials, notwithstanding its attempt to impose a Limited Warranty.

676. GAF expressly warranted that the Decking was well-suited to outdoor decking applications with a useful life of 20 years and further, made the following express representations in conjunction with the sale of its Decking:

- a. The Decking's "superior engineering and design creates a deck that lasts longer than ordinary wood decks with less maintenance no staining or sealing required."
- b. The Decking "won't warp, crack, splinter, or rot like wood."
- c. The Decking "[r]esists scratching and high traffic wear and tear."
- d. The Decking "resists sagging, splintering, warping, insects, and rotting."
- e. The Decking contains "[n]o toxic chemicals like treated wood."
- f. "For the beauty of a wooden deck with less care and effort, choose Elk Cross Timbers brand composite decking [*viz.*, the Decking]."
- g. The Decking "is designed with the EZ-Build System, which not only makes construction a snap, but also adds beauty with its concealed fasteners hidden below the surface."
- h. "No matter what your design goals are, you can rely on [the Decking] to give you the lasting, quality deck of your dreams, with little time and effort."
- i. "Its low moisture absorption and superior longevity make CrossTimbers the right choice for decking, fencing and marine application."

677. GAF also expressly represented that the Decking and Railings had "low moisture absorption," and that it would not have any "cracking/splintering/rotting," and that it was "designed to provide years of enjoyment with **little or no maintenance**."

678. GAF also represented that the Decking and Railings would have a useful life of at least twenty years.

679. The warranties and representations in the preceding paragraphs became part of the basis of the bargain when purchased by Plaintiffs and Class members.

680. GAF knew that Plaintiffs, Class Members, and the builders, contractors, subcontractors, and other agents who worked for them, would rely on GAF's representations regarding the quality of the Decking.

681. Plaintiffs, Class Members, and the builders, contractors, subcontractors, and other agents who worked for them, relied on GAF's representations regarding the quality of the Decking.

682. GAF breached its express warranties because the Decking does not perform as promised and is defective, rendering it unsuitable for use as an exterior home decking product.

683. The remedy provided in GAF's 's Limited Warranty, to replace any defective Decking or Railing materials, but not to pay for labor costs associated with replacement of the Decking or Railing materials fails its essential purpose in that it does not give purchasers of defective Decking or Railing materials the benefit of their bargain.

684. With a stand-alone product, such as a television or toaster, replacement of the defective item gives the consumer the benefit of their bargain, *i.e.*, a non-defective product. However, replacement of defective Decking or Railing material without paying for the labor associated with removing the old, defective Decking or Railing material and installing the new

Decking or Railing material, does not give the consumer the benefit of their bargain. Rather, the consumer has to incur the additional expense of paying for both the removal of the old Decking and/or Railing and installation of new Decking and/or Railing. Those costs will generally run into thousands of dollars, which are expenses the consumer would not have had to incur had the Decking and/or Railing not been defective in the first instance.

685. Moreover, replacement of the old defective Decking and/or Railing with new Decking and/or Railing is not a remedy because the replacement Decking and/or Railing is equally defective as that which it replaced, and notably, is no longer even an option as the Decking and Railings are no longer manufactured or sold.

686. As the Decking and Railings are no longer manufactured and sold, it is not possible to only replace select deck boards, select fascia or trim pieces, or select sections of the Decking or Railing.

687. Furthermore, the defects in the Decking and Railings are incurable and contacting GAF pursuant to the warranty is futile as the Limited Warranty does not provide for full replacement of the entire inherently defective deck.

688. Lastly, there is no other product that matches the Decking or Railings which could be used as a matching replacement for the inherently defective Decking and Railings.

689. The purported limitations in the Limited Warranty, including for the "exclusive remedy" of a refund or replacement, are procedurally and substantively unconscionable and thus fail under UCC § 2-302, as adopted by the various states represented in this Complaint. GAF knew or should have known that the Decking and Railings were susceptible to premature failure, GAF had unequal bargaining power and misrepresented the Decking and Railings' quality and durability, and the limited remedies in the Limited Warranty unreasonably favor GAF and fail

Plaintiffs' and Class Members' reasonable expectations for a product that should have a usable

life of at least twenty years.

690. As a direct and proximate result of GAF's breach of express Limited Warranty, Plaintiffs and the Class have suffered damages as set forth in this Complaint, and Plaintiffs and the Class may seek remedies as otherwise provided in the Uniform Commercial Code.

THIRD CAUSE OF ACTION BREACH OF IMPLIED WARRANTIES

(Plaintiffs Burger, Robertie, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Kaiser, Stidham, Phillips, Turcheck, Tuthill, Barker, Megerle, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

691. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

692. When GAF designed, manufactured, marketed, sold, and distributed the Decking and Railings for use by Plaintiffs and Class Members, GAF knew the Decking and Railings were intended for use as outdoor decking products exposed to the elements, and GAF impliedly warranted the Decking and Railings to be of merchantable quality and reasonably fit for such use.

693. GAF was in the business of manufacturing, designing, supplying, marketing, advertising, warranting, and selling the Decking and Railing. GAF impliedly warranted to Plaintiffs and Class Members the Decking and Railings were of a certain quality, were free from defects, were fit for its ordinary purpose of being used as decks and railings, were low maintenance, were aesthetically pleasing, would have a useful life of at least twenty years, would not rot, swell, warp, crack or permit mold growth, and was fit for its particular purpose of to provide enjoyment as a deck structure on homes.

694. Plaintiffs have had sufficient direct dealings with GAF and/or its authorized dealers, franchisees, representatives, and agents to establish privity of contract.

695. Plaintiffs and Class Members are also intended third-party beneficiaries of contracts, including express warranties, between GAF and its dealers, franchisees, representatives, and agents.

696. Furthermore, GAF's advertisements were directed at Plaintiffs and Class Members, and GAF's warranties were expressly written for the benefit of Plaintiffs and class members as end users of the Decking and Railings. GAF's authorized dealers, franchisees, representatives, and agents, on the other hand, were not intended to be the ultimate consumers of the Decking or Railings, and have no rights under the warranty agreements provided by GAF.

697. Contrary to its implied warranties and representations, the Decking and Railings are not of merchantable quality or fit for their intended use—they are defective and unsuitable for use as exterior Decking products. The Decking and Railings are defective because they have the propensity to warp, rot, swell, crack, permit mold growth and generally degrade. Further, due to the defects and mold growth, the Decking and Railings are not aesthetically pleasing.

698. The Decking and Railings were similarly unfit for their particular purpose. At the time Plaintiffs and Class Members purchased the Decking and Railings, GAF knew, or should have known, that the product would be used as decks. Plaintiffs and Class Members reasonably relied on the skill, judgment and brand of GAF in selecting and furnishing a suitable product for this purpose. However, GAF's product was not suitable for this purpose at the point of sale because it had the propensity to prematurely fail, would warp, swell, permit mold growth and did not last longer than wooden decks and does not have a twenty year usable life.

699. GAF has failed to provide adequate remedies under its Limited Warranty, which has caused the Limited Warranty to fail of its essential purpose, thereby permitting remedies under implied warranties.

700. GAF has not sufficiently disclaimed the implied warranty of merchantability (specifically and conspicuously) or the implied warranty of fitness (in writing and conspicuously). Further, the purported limitations in the Limited Warranty, including limiting the are procedurally and substantively unconscionable and thus fail under UCC § 2-302, as adopted by the States. GAF knew or should have known that the Decking and Railings were susceptible to premature failure, Defendant had unequal bargaining power and misrepresented the Decking and Railings' quality, durability and expected life span, and the limited remedies in in the Limited Warranty unreasonably favor GAF and fail Plaintiffs' and Class Members' reasonable expectations for product performance.

701. GAF's conduct described in this complaint constitutes a breach of implied warranties under UCC §§ 2-314 and 2-315, as adopted by the following state statutes:

Ala. Code §§ 7-2-314, 7-2-315 and 7-2-318, et seq.; Colo. Rev. Stat. Ann. §§ 4-2-314 and 4-2-315, et seq.; Ind. Code §§ 26-1-2-314 and 26-1-315, et seq.; Kan. Stat. Ann. §§ 84-2-314 and 84-2-315, et seq.; Mass. Gen. Laws ch. 106, §§ 2-314 and 2-315, et seq.; Mich. Comp. Laws Ann. §§ 440.2314 and 440.2315, et seq.; Minn. Stat.§§ 336.2-314 and 336.2-315, et seq.; Miss. Code Ann. §§ 75-2-314 and 75-2-315, et seq.; Mo. Rev. Stat. §§ 400.2-314 and 400.2-315, et seq.; Mont. Code Ann. §§ 30-2-314 and 30-2-315, et seq.; N.C. Gen. Stat. §§ 25-2-314, 25-2-315 and 25-2-318, et seq.; Neb. Rev. Stat. Ann. §§ 2-314 and 2-315, et seq.; N.D. Cent. Code §§ 41-02-31 and 41-02-32, et seq.; Ohio Rev. Code Ann. §§ 1302.27 and 1302.28, et seq.; S.C. Code Ann. §§ 36-2-314 and 36-2-315, et seq.; S.D. Codified Laws §§ 57A-2-314 and 57A-2-315, et seq.; Tenn. Code Ann. §§ 47-2-314, 47-2-315 and 47-2-318, et seq.; Wash. Rev. Code §§ 62A.2-314 and 62A.2-315, et seq.; Wis. Stat. §§ 402.314, 402.315 and 402.318, et seq. and Wyo. Stat. Ann. §§ 34.1-2-314 and 34.1-2-315, et seq.

689. Actual and/or constructive notice was duly given to Defendant of the breaches of these warranties, and GAF has yet failed to cure.

702. Plaintiffs and Class Members reasonably relied on GAF's representations of the Decking and Railings' merchantable quality and fitness for intended use, and that the Decking and Railings were in compliance with all applicable requirements.

703. Prior to purchase, Plaintiffs and Class Members could not have readily discovered that the Decking and Railings were not fit for their intended and ordinary purpose as decks, was not of the same quality as those generally acceptable in the industry, and did not conform to the quality as represented by GAF.

704. Further, since they are unsuitable for use as exterior decking products, they would not pass without objection in the trade.

705. Further, as alleged herein, GAF's sales of the Decking and Railings breached the implied warranty of merchantability because the Decking and Railings cracked, swelled, warped, shrunk and permitted mold growth. GAF's Decking and Railings are therefore defective, unmerchantable, and unfit for their intended purpose at the time of sale.

706. The Decking and Railing are also not of low maintenance, will not have a usable life of at least twenty years, and do not resist absorbing water, such that they do not conform to promises or affirmations made. Further, due to the defects, the Decking and Railing are unmerchantable and fail of their essential purpose because they are degrading and creating life/safety hazards for Plaintiffs, Class Members, household members and their guests.

707. After Plaintiffs were made aware of their damages as a result of the aforesaid, they gave reasonable and adequate notice to Defendant that the Decking and Railings were

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defective, unmerchantable, and unfit for their intended use or purpose. GAF has failed to cure because, since it has discontinued manufacturing its Decking and Railings, the problems with the Decking and Railing cannot be cured without removing and replacing the Decking and Railing. Therefore, the problems are incurable.

708. Furthermore, reasonable alternative designs existed to GAF's formulation, design, and manufacture of the Decking and Railings that would have prevented the four common defects described herein.

709. In particular, the shrinking of the Decking could have been reasonably prevented through the annealing process described above, the use of a higher plastic content and more antioxidants would have prevented the excessive water absorption and oxidative degradation, and the use of a moldicide or other antimicrobial agent would have prevented the unsightly and unsafe mold growth experienced by the Decking and Railings. Each of these alternative designs was reasonable and would have prevented the defects in the Decking and Railings.

710. As a direct and proximate result of GAF's breach of implied warranties, Plaintiffs and class members have been damaged as set forth in this Complaint. Plaintiffs and the class members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, including punitive damages and the cost to remove and replace the Decking and Railings, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

FOURTH CAUSE OF ACTION NEGLIGENCE (Plaintiffs Burger, Robertie and Wolcott, Individually and on Behalf of All Others Similarly Situated)

711. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

712. Plaintiff Burger asserts this claim on behalf of himself and all purchasers in the state of Ohio in the alternative if GAF asserts that there was no privity between himself or any other similarly situated and GAF and he has suffered only economic loss which is not covered by the Ohio Products Liability Act.

713. Plaintiff Robertie asserts this claim on behalf of himself and all others in the state of North Carolina because the defects in the Decking and Railings have caused damage to other property. Specifically, the Decking and Railing has caused damage to the columns at Robertie's residence.

714. Plaintiff Robertie also asserts this claim on behalf of himself and all others similarly situated in the State of North Carolina because he never received the purported Limited Warranty, and GAF had an independent duty to ensure that the Decking and Railings complied with all applicable building codes. Further, Plaintiff Robertie and all others similarly situated never saw or had an opportunity to negotiate the Limited Warranty. Therefore, since there was no meeting of the minds and/or assent to the terms of the purported Limited Warranty, Plaintiff Robertie and all others similarly situated disclaimed the Limited Warranty and are not bound by the terms of the Limited Warranty.

715. Plaintiff Wolcott asserts this claim on behalf of himself and all others in the state of Wolcott because the defects in the Decking and Railings have caused damage to other property. Specifically, the Decking and Railing has caused damage to Wolcott's pool.

716. GAF was under a legal duty to exercise reasonable care to design, test, manufacture, warranty, market, sell, and distribute the Decking and Railings for their intended use and in a manner that conformed to all industry standards and codes.

717. GAF breached its legal duty and was negligent in its testing, designing, warranting, manufacturing, distributing, and/or marketing of its Decking and Railings as described herein.

718. GAF's design and/or manufacture of the Decking and Railings is inherently defective, in that the decking does not provide a stable surface, and instead twists and warps, causing damage to Plaintiffs' and the class members' residences/structures.

719. As a result of the defects described herein, decking has warped, twisted, and separated from the house or other structure to which Decking is attached, causing damages to the exterior finishes, columns, walls, and other property on Plaintiffs' and the class members' residences/structures.

720. As a result of GAF's practices, Plaintiffs' and the class members' residences/structures contain defective Decking and Railings that require replacement as well as repair of damages incidental thereto such as Robertie's columns and Wolcott's pool.

721. GAF knew or should have known that the Decking and Railings were negligently tested, designed, and manufactured to allow for twisting and warping, and that such twisting and warping will cause extensive deterioration to building components as well as damage to exterior building finishes and personal property and would not perform as expected by Plaintiffs, class members, and/or a reasonable consumer.

722. GAF knew or should have known that the Decking and Railings were defective, that they would fail prematurely, that they contained the defects described herein, that they were not suitable as exterior products, and that they otherwise did not conform to GAF's warranties and representations. 723. GAF possessed the knowledge to cure the defects in the Decking and Railings,

but it continued to sell, to market, and to advertise the defective Decking and Railings.

724. As a direct and proximate result of GAF's negligence, Plaintiffs and class members have suffered damages, including (but not limited to): (i) the difference between the Decking and/or Railings as warranted and as they are in reality; (ii) the cost of replacing the Decking and/or Railings; (iii) the cost of repairing or replacing any damage to the underlying or adjacent structures or property caused by the deterioration of the Decking and/or Railings; and/or (iv) any other harms and losses to be proven at trial.

725. By reason of the foregoing, Plaintiffs and class members are entitled to all damages, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

FIFTH CAUSE OF ACTION

VIOLATION OF THE INDIANA CONSUMER PROTECTION STATUTE Indiana Code § 24-5-0.5-1 et seq. and Similar State Product Liability Statutes (Plaintiff Stidham Individually and on Behalf of All Others Similarly Situated)

726. Plaintiffs reallege and incorporate each of the preceding allegations as though fully set forth herein.

727. GAF's conduct violates the Indiana Deceptive Consumer Sales Act, Indiana ("IDCSA"). Code § 24-5-0.5-1 *et seq*.

728. GAF is a "supplier" of the Decking and Railings within the meaning of the IDCSA.

729. The Decking and Railings are the "subject of a consumer transaction" within the meaning of the IDCSA, and they are discrete and distinguishable from the structure on which they were installed.

730. Pursuant to the IDCSA, a supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act,

omission, or practice by a supplier is a violation of the IDCSA whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by the IDCSA includes both implicit and explicit misrepresentations.

731. Pursuant to the IDCSA, GAF committed a deceptive act when selling the Decking and Railings to Plaintiff and Class Members by misrepresenting the quality and grade of the Decking and Railings when GAF knew or reasonably should have known that it was not.

732. Specifically, as discussed herein, GAF knowingly or should have known when it was making misrepresentations about the quality of the Decking and Railing by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp, crack, splinter or rot like wood." Further, GAF asserted that it was "low maintenance" and would last for at least 20 years.

733. Plaintiff and Class Members relied on GAF's representations as shown through their purchase.

734. However, GAF omitted, concealed or failed to disclose that the Decking and Railing had not been adequately tested to confirm these representations. GAF omitted, concealed or failed to disclose that it knew that the Decking and Railing would warp, rot, split, check and grow mold.

735. Pursuant to the IDCSA, GAF's deceptive actions are incurable because the Decking and Railings are inherently defective and are no longer manufactured or sold by GAF.

736. GAF defectively manufactured, designed, or constructed the Decking and Railings and is liable under the IDCSA for the defects in their design, manufacture, and construction.

737. GAF defectively designed or formulated the Decking and Railings and is liable under the IDCSA for defects in their design or formulation.

738. GAF did not supply adequate warnings or instructions regarding deficiencies and premature deterioration of the Decking and Railings, as well as the attendant risk of harm that such deficiencies and deterioration poses to the underlying structure and other adjoining property, and is liable under the IDCSA for inadequate warning by omission of defects it knew or should have known of.

739. The Decking does not conform to GAF's representations about the Decking and Railings, including but not limited to GAF's statements regarding the durability of the Decking and Railings and their anticipated useful life.

740. GAF is liable under the IDCSA for the failure of the Decking and Railings to conform to GAF's representations.

741. Because of GAF's violations of the IDCSA, Plaintiffs and the class members suffered damages, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages. Plaintiffs and the class members reserve their right to seek all damages available by statute or law.

<u>SIXTH CAUSE OF ACTION</u> <u>VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT</u> (Plaintiffs McGovern, Narducci, and Claxton Individually and on Behalf of All Others Similarly Situated)

742. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

743. The Michigan Consumer Protection Act ("MCPA"), Mich. Comp. Laws § 445.901, *et. seq.*, is designed to provide a remedy for consumers who are injured by deceptive business practices. The MCPA expressly allows for class actions on behalf of consumers who have suffered a loss as a result of a violation of the act. *See* Mich. Comp. Laws § 445.911(3).

744. Plaintiffs, Class Members and GAF are defined by the MCPA as "person".

745. As discussed in detail herein, by manufacturing, marketing and selling the Decking and Railing, GAF's conduct constitutes unfair, unconscionable, and deceptive acts because GAF:

- a. Caused a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- b. Represented that the Decking and Railings had benefits or quantities that they do not have;
- c. Failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- d. Made representations of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and
- e. Failed to reveal facts which are material to the transaction in light of representations of fact made in a positive manner.

746. Specifically, as discussed herein, GAF knowingly or should have known it was making misrepresentations about the quality of the Decking and Railing by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp, crack, splinter or rot like wood." Further, GAF asserted that it was "low maintenance", would not absorb water and would have a useable life of, at least, 20 years.

747. GAF also concealed, omitted and failed to disclose that the Decking and Railing had not been adequately tested and would rot, warp, split, sag, crack and permit mold growth.

748. As shown through their purchase of the Decking and Railing, Plaintiffs and Class Members reasonably relied on GAF's misrepresentations and omissions of material facts.

749. Because of GAF's violation of the MCPA, Plaintiffs and the Class Members suffered actual damages, including, but not limited to, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages allowed by law.

SEVENTH CAUSE OF ACTION VIOLATIONS OF MISSOURI'S MERCHANDISING PRACTICES ACT (Plaintiff Ross Individually and on Behalf of All Others Similarly Situated)

750. Plaintiffs re-allege and incorporate by reference herein each of the allegations set forth in this Complaint as though fully set forth herein.

751. The Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.020

provides:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . in or from the state of Missouri, is declared to be an unlawful practice . . . Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale advertisement or solicitation.

- 752. Plaintiffs and GAF are defined by the MMPA as "person".
- 753. The Decking and Railing are defined as "merchandise" pursuant to the MMPA.

754. At all relevant times, each of GAF's sales or distributions of Decking and Railings was a "sale" as defined by Mo. Rev. Stat. § 407.010 because each sale or distribution constituted a sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.

755. Pursuant to the MMPA, "advertisement" is the attempt by publication, dissemination, solicitation, circulation or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.

756. GAF engaged in the unlawful practices set forth in this Complaint in the sale of merchandise in trade or commerce of the Decking and Railings.

757. GAF engaged in the unlawful practices set forth in this Complaint in the advertisement of merchandise in trade or commerce of the Decking and Railings.

758. Specifically, as discussed herein, GAF knowingly or should have known it was making misrepresentations in its advertisements about the quality of the Decking and Railing by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp, crack, splinter or rot like wood." Further, GAF asserted that it was "low maintenance", would not absorb water and would last for at least 20 years.

759. Plaintiffs and members of the Missouri Class relied on GAF's representations and purchased GAF's Decking and Railing primarily for personal, family, or household purposes.

760. In connection with the advertisement, marketing and/or sale of the Decking and Railings, GAF made material representations about the Decking and Railings' durability, reliability, lack of defects and compliance with industry standards appropriate for use on the homes, buildings, and other structures of Plaintiffs and the class that were untrue, false, inaccurate, or deceptive.

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761. GAF knew that these material representations would be reasonably relied on by potential purchasers, Plaintiff and Class Members. As such, GAF's conduct constitutes deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact.

762. GAF's concealment, misrepresentations and/or omissions as set forth in this Complaint are material in that they relate to matters which are important to consumers or are likely to affect the purchasing decisions or conduct of consumers, including GAF and members of the Missouri Class regarding GAF's products.

763. GAF uniformly misrepresented to Plaintiffs and the Classes by means of its advertising, marketing, and other promotional materials, the Decking and Railings' true nature and quality because, among other things, the Decking and Railings do not actually conform to GAF's representations of low maintenance, durability, reliability, and compliance with industry standards.

764. GAF has violated the MMPA by engaging in practices that constitute deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of material facts in connection with the sale or advertisement of Decking and Railings.

765. As a direct and proximate result of GAF's improper conduct, Plaintiffs and the class members have suffered damages and ascertainable losses, in amounts to be determined at trial, by paying more for the Decking and/or Railings than they would have or by purchasing the Decking and/or Railings when they would not have if the Decking and/or Railings' attributes had not been misrepresented. Further, Plaintiffs seek the cost to remove and replace the Decking and Railings.

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766. Plaintiffs and the members of the Missouri Class are entitled to recover their actual damages, attorneys' fees, and injunctive or other equitable relief, pursuant to Missouri law, including Mo. Ann. Stat. § 407.025.

767. Furthermore, GAF's unlawful conduct set forth in this Complaint was and is wanton, willful and outrageous, and manifests a reckless disregard for the consequences of GAF's actions and for the rights of Plaintiff and members of the Missouri Class and warrants an award of punitive damages to deter GAF and others in similar circumstances, from committing such actions in the future.

EIGHTH CAUSE OF ACTION VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (Plaintiff Ernst Individually and on Behalf of All Others Similarly Situated)

768. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

769. GAF's conduct, including but not limited to, designing, manufacturing, marketing, promoting the Decking and Railings as described throughout this Complaint was unfair, unlawful, and a fraudulent business practice in violation of the Illinois' Consumer Fraud and Deceptive Business Practices Act ("CFA"), 815 ILCS 505/1 *et seq.*, and materially similar consumer protection statutes of other states.

770. Pursuant to the CFA, the term "advertisement" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise and includes every work device to disguise any form of business solicitation by using such terms as "renewal", "invoice", "bill", "statement", or "reminder", to create an impression of existing obligation when

there is none, or other language to mislead any person in relation to any sought after commercial transaction.

771. GAF committed unfair or deceptive acts and practices through misrepresentations and omissions in its advertisements about the durability and reliability of the Decking and Railings, their suitability and effectiveness, their need for maintenance, and their anticipated useful life, among other representations regarding the fact the Decking and Railing would not warp, crack or swell. These representations were deceptive in that:

- a. GAF represented that the Decking and Railings had uses, benefits, or performance characteristics that they do not have.
- b. GAF represented that the Decking and/or Railings were of a particular quality or grade when they were not, or that they met a particular standard when they did not.

772. GAF's misrepresentations and omissions in the advertisements constitute unfair, unlawful, and fraudulent business acts and practices in violation of CFA.

773. GAF also committed unfair or deceptive acts in its omissions, concealment and failure to disclose information that the Decking and Railing was inadequately tested, would warp, crack, swell and permit mold growth are in violation of the CFA.

774. Plaintiff and Class Members were induced to purchase the Decking and Railing through GAF's advertisements.

775. Through GAF's advertisements and omissions or concealment of material facts,

Plaintiffs and Class Members purchased GAF's Decking and Railing.

776. GAF engaged in unconscionable acts and practices by continuing to market the Decking and Railings after it knew or had reason to know the Decking and Railings were

defective. Because the Decking and Railings were not suitable for their ordinary use, GAF had reason to know that:

- a. The Decking and Railings were priced substantially in excess of the price for similar products.
- b. Plaintiffs and class members would not substantially benefit from the Decking or Railings.
- c. GAF knowingly made misleading statements of opinion, upon which Plaintiffs and class members were likely to rely to their detriment.

777. Because of Defendant's violations of CFA, Plaintiff and the class members suffered damages, including but not limited to purchasing the Decking and Railing, having the Decking and Railing installed, needing the Decking and Railing to be removed and replaced, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

778. Plaintiff and Class Members demand all damages, in addition to costs, interest and fees, including attorney's fees, to which they are entitled under Illinois law set forth in 10a of CFA.

<u>NINTH CAUSE OF ACTION</u> <u>VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT</u> (Plaintiff Wolcott Individually and on Behalf of All Others Similarly Situated)

779. Plaintiff re-alleges and incorporates each of the preceding allegations as though fully set forth herein.

780. The Virginia Consumer Protection Act, VA. CODE § 59.1-196, *et seq.*, ("VCPA") was designed to promote ethical dealings between suppliers and the consuming public.

781. Virginia Code 59.1-198 defines a "Consumer transaction" as "[t]he advertisement, sale, lease, license or offering for sale, lease or license of goods or services to be used primarily for personal, family or household purposes."

782. Furthermore, "Goods" means "all real, personal or mixed property, tangible or intangible."

783. GAF, Plaintiff and Class Members are defined as "person" by the VCPA.

784. GAF is also defined as "supplier" by the VCPA.

785. GAF's sale of the Decking and Railings, either directly or through agents, constitutes a transaction of goods by a supplier under the VCPA.

786. Pursuant to the VCPA, *inter alia*, the following fraudulent acts or practices by a seller in connection with a consumer transaction are declared unlawful:

- a. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- b. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- c. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

787. As discussed herein, GAF's misrepresentations and omissions of material fact constitute violations of the VCPA.

788. In particular, GAF's concealment, omission of the defects with the Decking and Railings, as described more fully in throughout Complaint and incorporated herein by reference, violated the VCPA.

789. In addition, GAF's concealment or omission of the fact that the Decking and Railings were inadequately tested and known to fail constitute violations of the VCPA.

790. Plaintiff and Class Members, through the purchase of the Decking and Railing, relied on GAF's concealment, misrepresentations or omissions of material facts.

791. Plaintiff and Class Members have suffered actual damages as a result of GAF's violations of the VCPA which includes the cost to remove and replace the Decking and Railing.

792. Therefore, Plaintiff and Class Members are entitled to damages from GAF together with its attorneys' fees, interest, and costs including, but not limited to, the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

793. Because GAF's violations were willful, or made with reckless and wanton disregard of the truth, Plaintiff is entitled to increase its damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater.

<u>TENTH CAUSE OF ACTION</u> <u>VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER</u> PROTECTION ACT § 30-14-101 et seq. ("MUTCPA")

(Plaintiffs Cohen and Hoover Individually and on Behalf of All Others Similarly Situated)

794. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

795. Plaintiffs and Class Members are "consumers" as defined by the MUTCPA.

796. GAF, Plaintiffs, and Class Members are "persons" as defined by the MUTCPA.

797. GAF, Plaintiffs and Class Members were involved in "trade" and "commerce" in

the purchasing and selling of the Decking and Railing as defined by the MUTCPA.

798. The MUTCPA declares that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful."

799. GAF's conduct violates the MTUCPA by misrepresenting and omitting information regarding the quality and durability of the Decking and Railings. Such misrepresentations and omission were the cause of Plaintiffs' and Class Members' damages.

800. GAF's conduct violates the MTUCPA because it knew or should have known that the Decking and Railings were not as represented, but GAF concealed, omitted and failed to disclose this information to Plaintiffs and Class Members.

801. As shown through their purchase of the Decking and Railing, Plaintiffs and Class Members relied on GAF's misrepresentations, omissions and concealment of material facts.

802. Had GAF disclosed information the truth about the Decking and Railings, then Plaintiffs and Class Members would not have purchased the Decking and Railings.

803. GAF is liable under Montana Code Annotated 30-14-101 through 30-14-157 for failure of the Decking and Railings to conform to the representations made by GAF.

804. Because of GAF's violations of MTUCPA, Plaintiffs and the class members suffered damages, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

ELEVENTH CAUSE OF ACTION VIOLATION OF COLORADO CONSUMER PROTECTION ACT Colorado Revised Statutes §6-1-105 et seq. (Plaintiffs Kaiser, Turcheck, Barker, Megerle, and Tuthill Individually and on Behalf of All Others Similarly Situated)

805. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

806. GAF's conduct violates the Colorado Consumer Protection Act, Colorado Rev.

Stat. § 6-1-105 et seq. ("CCPA").

807. GAF, Plaintiffs, and Class Members are "persons" as defined by the CCPA.

808. GAF, Plaintiffs and Class Members were involved in "sale" in the purchasing and

selling of the Decking and Railing as defined by the CCPA.

809. Pursuant to the CCPA, "advertisement" includes the attempt by publication,

dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly

any person to enter into any obligation or to acquire any title or interest in any property.

810. The Decking and Railing is "property" as defined by the CCPA.

811. GAF committed a deceptive trade practice through its misrepresentations and omissions about the Decking and Railing when it, *inter alia*:

- a. Represented that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
- b. Failed to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

812. As discussed herein, in violation of the CCPA, GAF represented that the Decking

and Railings had uses, benefits, or performance characteristics that they do not have.

813. GAF represented that the Decking and Railings were of a particular quality or

grade when they were not, or that they met a particular standard when they did not.

814. GAF failed to disclose material information regarding its knowledge about the

Decking and Railings to induce Plaintiffs and Class Members to purchase the Decking.

815. Specifically, as discussed herein, GAF knowingly or should have known when it was making misrepresentations about the quality of the Decking and Railings by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp, crack, splinter or rot like wood." Further, GAF asserted that it was "low maintenance" and would last for at least 20 years.

816. Plaintiffs and Class Members relied on GAF's representations and failure to disclose as shown through their purchase of the Decking.

817. However, GAF omitted, concealed or failed to disclose that the Decking and Railings had not been adequately tested to confirm these representations. GAF omitted, concealed or failed to disclose that it knew that the Decking and Railing would warp, swell, crack, shrink, and grow mold.

818. Further, GAF engaged in unconscionable acts and practices by continuing to market the Decking and Railings after it knew or had reason to know the Decking and Railings were defective. Because the Decking and Railings were not suitable for their ordinary use, GAF had reason to know that:

- a. The Decking and Railings were priced substantially in excess of the price for similar products; and
- b. Plaintiff and class members would not substantially benefit from the Decking and Railings.

819. GAF knowingly made misleading statements of opinion, upon which Plaintiffs and class members were likely to rely to their detriment.

820. At the time of the Decking and Railing's sale, GAF knew of the defects but failed to disclose this material information.

821. In failing to disclose material information about the defects, GAF intended to induce Plaintiffs, Class Members and the public to purchase the Decking and Railings.

822. Plaintiffs and Class Members demand all damages, in addition to costs, interest and fees, including attorneys' fees, to which they are entitled under Colorado law.

<u>TWELFTH CAUSE OF ACTION</u> <u>VIOLATION OF NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE</u> <u>PRACTICES ACT</u> (Plaintiffs Robertie, Individually, and on Behalf of All Others Similarly Situated)

823. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

824. N.C. Gen. Stat. § 75-1.1 makes unlawful, "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

825. By selling the Decking and Railings throughout the State of North Carolina and making representations regarding it's the Decking and Railings, GAF has affected commerce and trade within the State.

826. GAF engaged in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1 when, in selling and advertising the Decking and Railings, GAF failed to give Plaintiffs and class members adequate warnings and notices regarding the defects in the Decking and Railings despite the fact that GAF knew or should have known of the defects described herein.

827. GAF made affirmative misrepresentations with the intent that Plaintiffs and class members would rely upon GAF's failure to disclose and omit the defects when purchasing the Decking and Railings. Thus, GAF knew of the defective nature of the Decking and Railings yet continued to sell and distribute the Decking and Railings to unsuspecting purchasers such as Robertie and other Class Members. 828. GAF engaged in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1 when, in selling and advertising the Decking and Railings, it omitted, concealed and failed to disclose that the Decking and Railings had not been adequately tested, would not last as represented, and would fail within only a few years. These acts constitute aggravating circumstances.

829. GAF's acts and omissions possessed the tendency or capacity to mislead or create the likelihood of deception to Plaintiff and Class Members.

830. GAF knew or should have known that its Decking and Railings were defective, would fail prematurely, were not suitable for use as exterior decking products, and otherwise were not as warranted and represented by GAF.

831. GAF's conduct and omissions described herein repeatedly occurred in GAF's trade or business and were capable of deceiving a substantial portion of the consuming public.

832. GAF's misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive and cause misunderstanding and/or in fact caused Plaintiffs and other members of the class to be deceived about the suitability of GAF's Decking and Railings for use as a long-lasting exterior borne building product that would be backed by warranties of up to 20 years, and that those warranties would in fact be honored by GAF.

833. GAF intended that Plaintiff and class members would rely on their misrepresentations, concealment, warranties, deceptions, and/or omissions regarding the suitability, durability, maintenance requirements, and useful life of its defective Decking and Railings.

834. The facts concealed or not disclosed by GAF are material facts in that Plaintiff and Class Members and any reasonable consumer would have considered those facts important

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in deciding whether to purchase the Decking and/or Railings or purchase homes or structures constructed with the Decking and/or Railings. Had Plaintiff and Class Members known the Decking and Railings were defective and would fail prematurely, they would not have purchased the Decking and/or Railings.

835. As shown through their purchase of the Decking and Railings, Plaintiff and Class Members relied on GAF's misrepresentations, omissions, and concealment of material facts.

836. Additionally, the Decking and Railing has caused other property damage at Plaintiff Robertie's home and at other Class Member's homes.

837. As a direct and proximate result of these unfair, deceptive and unconscionable commercial practices, Plaintiffs and Class Members have been damaged and are entitled pursuant to N.C. GEN. STAT. § 75-16 to recover treble damages as well as attorneys' fees and costs.

<u>THIRTEENTH CAUSE OF ACTION</u> <u>VIOLATIONS OF N.H. REV. STAT. ANN. §358-A et seq.</u> (Plaintiff Khanna Individually and on Behalf of All Others Similarly Situated)

838. Plaintiffs re-allege and incorporate by reference herein each of the allegations set forth in this Complaint as though fully set forth herein.

839. GAF's conduct violates the New Hampshire Consumer Protection Act, Rev. Stat.

§ 358-A et seq. ("NHPA").

840. GAF, Plaintiffs, and Class Members are "persons" as defined by the NHPA.

841. GAF, Plaintiffs and Class Members were involved in "trade" and "commerce" in

the purchasing and selling of the Decking and Railings as defined by the NHPA.

842. Pursuant to the NHPA, GAF committed a deceptive act when selling the Decking and Railings to Plaintiff and Class Members by misrepresenting the quality and grade of the Decking and Railings when GAF knew or reasonably should have known that it was not.

843. Pursuant to the NHPA, GAF has represented to Plaintiffs and Class Members that the Decking and Railings have characteristics, uses, and benefits that they do not have.

844. Specifically, as discussed herein, GAF knowingly or should have known when it was making misrepresentations about the quality of the Decking and Railings by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp, crack, splinter or rot like wood." Further, GAF asserted that it was "low maintenance", would not absorb water and would last for at least 20 years.

845. Plaintiff and Class Members relied on GAF's representations as shown through their purchase. Plaintiff would not have purchased the Decking and Railings if GAF had disclosed the truth about the Decking and Railings.

846. In addition, Plaintiffs and the Class Members have suffered injury in fact and lost money or property as a result of unfair competition and deceptive acts by GAF, as Plaintiffs and the Class Members paid the purchase price for a product which would not have been purchased if GAF had not made misrepresentations and concealed or omitted material information as to the safety of the product and its limitations.

847. Plaintiffs and the Class Members relied upon GAF to disclose all pertinent information about the Decking and Railings.

848. However, despite knowing that the Decking and Railings did not have the qualities represented in its marketing material, GAF omitted, concealed and failed to disclose the fact that the Decking and Railing was inherently defective.

849. The actions of GAF, as complained herein, constitute unfair and deceptive practices committed in violation of the NHPA.

850. Plaintiffs and the Class Members have suffered damages as a result of the conduct of GAF, because Plaintiffs and the Class Members were misled into purchasing a product which was not what GAF advertised the Decking and Railings to be by the fact that GAF omitted material facts about the Decking and Railings.

851. Plaintiffs and the Class Members have each been directly and proximately injured by the conduct of the Defendant, and such injury includes payment for the Decking and Railings.

852. Because of GAF's violations of NHPA, Plaintiffs and the Class Members suffered damages, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

FOURTEENTH CAUSE OF ACTION VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349 ("GBL") (Plaintiff Giovannetti Individually and on Behalf of All Others Similarly Situated)

853. Plaintiffs re-allege and incorporate by reference herein each of the preceding paragraphs of this Complaint as if fully set forth herein.

854. Plaintiffs and Class Members are consumers and as owners of properties with GAF's Decking and Railings and they are the end users and intended beneficiaries of said products.

855. As a seller of the Decking and Railings to the consuming public and whose conduct affects similarly situated consumers and has a broad impact on consumers at large, GAF is engaged in consumer-oriented conduct within the intended ambit of GBL § 349.

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856. GAF's actions and/or omissions as described herein violated GBL §349, which declares as unlawful "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

857. Specifically, GAF knowingly misrepresented and intentionally omitted and concealed material information regarding its Decking and Railings by failing to disclose to Plaintiffs and Class Members the known defects in the Decking and Railings.

858. Furthermore, GAF engaged in materially misleading deceptive acts and practices by continuing to sell its Decking and Railings to the consuming public with knowledge that the Decking and Railings would not perform as intended, represented and warranted, and that the Decking and Railings would prematurely fail causing homeowners to incur significant out of pocket costs and expenses in repairing damaged property. GAF's misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of materials facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and use of GAF's Decking and Railings in violation of GBL §349.

859. GAF violated GBL §349 by knowingly and falsely representing that GAF's Decking and Railings were fit to be used for the purpose for which they were intended, when GAF knew they would only last for a few years and not as represented.

860. GAF's deceptive and misleading actions and omissions as set forth herein have caused and continue to cause injury to Plaintiffs and the Class Members.

861. As a direct and proximate result of GAF's violations of GBL §349, Plaintiffs and the Class Members have suffered and continue to suffer damages.

862. Plaintiffs and the Class Members are entitled to compensatory damages, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

FIFTEENTH CAUSE OF ACTION VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW ("FAL") (Plaintiffs Williams and Phillips Individually and on Behalf of All Others Similarly Situated)

863. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

864. The conduct described herein took place within the State of California and constitutes deceptive or false advertising in violation of California Business and Professions Code § 17500.

865. California Business and Professions Code § 17500 prohibits deceptive or misleading practices in connection with advertising or representations made for the purpose of inducing, or which are likely to induce, consumers to purchase product.

866. GAF, when it marketed, advertised and sold the Decking and Railings, represented to Plaintiffs and Class Members that the Decking and Railings were free of manufacturing defects, despite the fact that the Decking and Railings were defective and prone to failure.

867. At the time of its misrepresentations, GAF was either aware that the Decking and Railings were defective or was aware that it lacked the information and/or knowledge required to make such a representation truthfully. GAF concealed, omitted and failed to disclose this information to Plaintiffs and Class Members.

868. GAF's descriptions of the Decking and Railings were false, misleading, and likely to deceive Plaintiffs and other reasonable consumers.

869. GAF's conduct therefore constitutes deceptive or misleading advertising.

870. Plaintiffs have standing to pursue claims under the FAL as they reviewed and relied on GAF's advertising and marketing materials regarding the Decking and Railings.

871. In reliance on the statements made in GAF's advertising and marketing materials and GAF's omissions and concealment of material facts regarding the quality of the Decking and Railings, Plaintiffs and Class Members purchased the Decking and Railings.

872. Had GAF disclosed the true defective nature of the Decking and Railings, Plaintiffs and Class Members would not have purchased the Decking and Railings.

873. As a direct and proximate result of Defendant's violations of the California Business and Professions Code as set forth above, Plaintiffs and the Class Members seek restitution of any monies wrongfully acquired or retained by Defendants and by means of its deceptive or misleading representations, including monies already obtained from Plaintiffs and the Class Members under § 17500.

SIXTEENTH CAUSE OF ACTION VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (Plaintiffs Williams and Phillips Individually and on Behalf of All Others Similarly Situated)

874. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

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875. The conduct described herein took place in the State of California and constitutes unfair methods of competition or deceptive acts or practices in violation of the Consumers Legal Remedies Act ("CLRA"), Civil Code § 1750, *et seq*.

876. The CLRA applies to all claims of all the Class Members because the conduct which constitutes violations of the CLRA by Defendant occurred within the State of California.

877. Plaintiff and Class Members are "consumers" as defined by Civil Code § 1761(d).

878. GAF is a "person" as defined by Civil Code § 1761(c).

879. The Decking and Railings qualify as "goods" as defined by Civil Code § 1761(a).

880. Plaintiff and the Class Members' purchases of the Decking and/or Railings and/or homes or structures on which the Decking and/or Railings are installed, are "transactions" as defined by Civil Code 25 § 1761(e).

881. As set forth below, the CLRA deems the following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer as unlawful.

882. "Representing that goods ... have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have." Civil Code § 1770(a)(5).

883. "Representing that goods ... are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." Civil Code § 1770(a)(7).

884. GAF engaged in unfair competition or unfair or deceptive acts or practices in violation of civil code §§ 1770(a)(5) and (a)(7) when it represented, through their advertising and other express representations, that the Decking and Railings had benefits or characteristics that they did not actually have.

885. As detailed in the body of this Complaint, GAF has repeatedly engaged in conduct deemed a violation of the CLRA, and has made representations regarding the defective Decking and Railings did not in fact have, and represented the Decking and Railings of a quality that was not true. Indeed, GAF concealed this information from Plaintiff and Class Members.

886. The Decking and Railings were not and are not "reliable," in that the products have a higher failure rate than other products in the industry. As detailed above, Defendant further violated the CLRA when they falsely represented that the Decking and Railings have a certain standard or quality.

887. As detailed above, Defendant violated the CLRA when it advertised the Decking and Railings with the intent not to sell them as advertised and knew that the Decking and Railings were not as represented.

888. Defendant's deceptive practices were specifically designed to induce Plaintiffs and Class Members to purchase or otherwise acquire the Decking and Railings.

889. GAF engaged in uniform marketing efforts to reach Class Members, their agents, and/or third parties upon whom they relied, to persuade them to purchase and install the Decking and Railings manufactured by GAF. GAF's website and brochures contained the numerous false and misleading statements regarding the quality, maintenance requirements, durability, and reliability of the Decking and Railings.

890. GAF also omitted and concealed this information and material facts from Plaintiff and Class Members.

891. Through their purchase of the Decking and Railings, Plaintiff and Class Members relied on GAF's representations and omissions of material facts.

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892. These business practices are misleading and/or likely to mislead Consumers and should be enjoined.

SEVENTEENTH CAUSE OF ACTION UNFAIR AND DECEPTIVE PRACTICES Nebraska Revised Statutes § 59-1601, *et seq.* (Plaintiff Warren Individually and on Behalf of All Others Similarly Situated)

893. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

894. Pursuant to the Nebraska Consumer Protection Act, Nebraska Revised Statutes § 59-1601(2) ("NCPA"), trade and commerce is defined as the sale of assets or services and any commerce directly or indirectly affecting the people of the State of Nebraska.

895. GAF, Plaintiff, and Class Members are "persons" as defined by the NCPA.

896. GAF's Decking and Railings are considered an asset under the NCPA which means any property, tangible or intangible, real, personal, or mixed, and wherever situated, and any other thing of value.

897. Pursuant to NCPA, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce is unlawful.

898. GAF's conduct, including but not limited to, designing, formulating, manufacturing, marketing, promoting the Decking and Railings as described throughout this Complaint was unfair, unlawful, and a fraudulent business practice in violation of the NCPA and materially similar consumer protection statutes of other states.

899. GAF's concealment, omission and failure to disclose material facts regarding the knowledge of the problems with the Decking and Railings, inadequate testing of the Decking and Railings, and knowledge that the Decking and Railings would fail within a few years constitutes unfair, unlawful, and fraudulent business acts and practices in violation of Nebraska law.

900. GAF committed unfair or deceptive acts and practices through misrepresentations and omissions about the maintenance requirements, durability, and reliability of the Decking and Railings, their suitability and effectiveness, their need for maintenance, and their anticipated useful life, among other representations. These representations and omissions were deceptive in that:

- a. GAF represented that the Decking and Railings had uses, benefits, or performance characteristics that they does not have.
- b. GAF represented that the Decking and Railings were of a particular quality or grade when they was not, or that they met a particular standard when they did not.

901. GAF engaged in unconscionable acts and practices by continuing to market the Decking and Railings after it knew or had reason to know the Decking and Railings were defective. Because the Decking and Railings were not suitable for their ordinary use, GAF had reason to know that:

- a. The Decking and Railings were priced substantially in excess of the price for similar products.
- b. Plaintiff and Class Members would not substantially benefit from the Decking and/or Railings.
- c. GAF knowingly made misleading statements of opinion, upon which Plaintiffs and Class Members were likely to rely to their detriment.
- 902. Through their purchase of the Decking and Railings, Plaintiff and Class Members

relied on GAF's omissions and misrepresentations of material facts in violation of the NCPA.

903. As a result of the unfair and deceptive trade practices of Defendant, Plaintiff and the Class Members suffered damages, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

904. GAF was engaged in trade or commerce as defined by Nebraska Revised Statutes § 59-1601, *et seq.*, GAF's conduct or representations were prohibited by one or more provisions of Nebraska Revised Statutes § 59-1601, *et seq.*, and Plaintiff has suffered a loss as a result of GAF's violation of Nebraska Revised Statutes § 59-1601, *et seq.* As such, Plaintiff and Class Members demand all damages, in addition to costs, interest and fees, including attorney's fees, to which they are entitled pursuant to Nebraska Revised Statutes § 59-1601, *et seq.*

EIGHTEENTH CAUSE OF ACTION DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF IOWA CONSUMER FRAUD PRIVATE RIGHT OF ACTION § 714H (Plaintiffs Sheridan and Denton, Individually and on Behalf of All Others Similarly Situated)

905. Plaintiffs re-allege and incorporate each of the preceding allegations as though fully set forth herein.

906. Plaintiffs, Class Members, and GAF are all "person[s]" for purposes of the Iowa Consumer Fraud Private Right of Action ("Private Right Act"). Iowa Code Annotated § 714H.1, *et seq.*

907. The Decking and Railings meet the definition of "merchandise" for purposes of the Private Right Act.

908. Sheridan, Denton, and the Class Members are "consumers" for purposes of the Private Right Act because they purchased the Decking and Railings for personal and household purposes.

909. Iowa Code Ann. § 714H.3 makes unlawful any unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely . . . [on it] . . . in connection with the advertisement, sale, or lease of consumer merchandise.

910. Pursuant to the Private Right Act, the term "advertisement" includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

911. Pursuant to the Private Right Act, "deception" means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.

912. Defendant's conduct, including but not limited to, designing, formulating, manufacturing, advertising, marketing, promoting the Decking and Railings as described throughout this Complaint was unfair, unlawful, and a fraudulent business practice in violation of the Private Right Act.

913. GAF committed unfair and deceptive acts and practices through misrepresentations about the durability and reliability of the Decking and Railings, its suitability and effectiveness, its need for maintenance, and its anticipated useful life, among other representations. These representations were deceptive in that:

- a. Defendant represented that the Decking and Railings had uses, benefits, or performance characteristics that they do not have.
- b. Defendant represented that the Decking and Railings were of a particular quality or grade when they were not, or that it met a particular standard when they did not.
- c. Defendant mislead Sheridan, Denton, and a substantial number of consumers regarding material facts about the quality of the Decking and Railings.

914. Defendant committed unfair or deceptive acts and practices through misrepresentations about the operation of its warranties. These include, but are not limited to, representations discounting the effect or operation of express warranties in its advertising and marketing literature; representations regarding the institution or effect of purported —limited warranties!; and representations that obfuscated the duration of the warranty and the scope of warranty coverage.

915. Defendant engaged in unconscionable acts and practices by continuing to market and advertise the Decking and Railings after it knew or had reason to know the Decking and Railings were defective. Because the Decking and Railings were not suitable for their ordinary use, Defendant had reason to know that:

- a. The Decking and Railings were priced substantially in excess of the price for similar products.
- b. Plaintiffs and Class Members would not substantially benefit from the Decking and/or Railings.
- c. Defendant knowingly made misleading statements of opinion, upon which Plaintiffs and Class Members were likely to rely to their detriment.

916. Further, Defendant did not comply with the Private Right Act which states that a person shall not engage in any practice or act that is in violation of Section 714.16, subsection 2, paragraphs "b" through "n".

917. Section 714.16, subsection 2, paragraph "m" states:

m. It is an unlawful practice for a person to advertise the sale of wood products without disclosing information which may affect the price of the product.

An advertisement for all plywood and dimension lumber products shall include the grade and species, in accordance with federal products standards 1 and 20, and the measure. The products advertised shall also be labeled according to the federal products standards. An advertisement for any other wood product shall include the grade and species, according to the applicable federal product standards, and the measure. These products need not be labeled.

An advertisement for any wood products must also include the following:

(2) Whether the wood product consists of seconds, culls, shop grade, or ungraded material.

Use of any contrived or unrecognized grading standard is prohibited, and any factors affecting the final delivered price of the products shall be disclosed and displayed in a conspicuous place.

This paragraph applies only to persons who offer wood products for sale in the ordinary course of business, except that this paragraph does not apply to any person who produces rough-sawed lumber, commonly referred to as native lumber, in this state. For purposes of this paragraph:

"Dimension lumber" means softwood lumber nominally referred to as "two inch by four inch" or greater.

"Labeling" means all labels and other written, printed, branded, or graphic matter upon any building material.

"Plywood" means a structural material consisting of sheets or chips of wood glued or cemented together.

"Wood products" means any wood products derived from trees as a result of any work or manufacturing process upon the wood, and intended primarily for use as a building material.

918. As discussed herein, the Decking and Railings is a "Wood Product" as defined by

the Private Right Act.

919. Defendant did not comply with the Private Right Act because it concealed, omitted or failed to disclose in its advertisements details about the Decking and Railings which would affect the price of the Decking and Railings.

920. Defendant did not comply with the Private Right Act because it concealed, omitted or failed to disclose or include in its advertisements the grade and species, according to the applicable federal product standards, and the measure of the wood in the Decking and Railings.

921. Defendant did not comply with the Private Right Act because it concealed, omitted or failed to disclose in its advertisements whether the Decking and Railings consisted of seconds, culls, shop grade, or ungraded material.

922. Sheridan, Denton and Class Members were induced directly or indirectly by Defendant's advertisements to purchase the Decking and Railings.

923. As a result of Defendant's failure to comply with the Private Right Act and omissions of material fact discussed herein, Sheridan, Denton and Class Members purchased the Decking and Railings.

924. Because of Defendant's violation of the Private Right Act, Sheridan, Denton, and the Class Members suffered damages because they purchased the inherently defective Decking and/or Railings which must be removed and replaced from the homes on which the Decking is installed.

925. Defendant deceived and mislead Sheridan, Denton, and Class Members regarding material facts about the quality and durability of the Decking and Railings.

926. If Defendant had complied with the Private Right Act and the requirements for advertising "Wood Products" throughout Iowa, then Sheridan, Denton, and Class Members would not have purchased the Decking and Railings.

927. If Defendant had not concealed, omitted or failed to disclose the inadequate testing, its knowledge of the defects with the Decking and Railing, then Sheridan, Denton and Class Members would not have purchased the Decking and Railings.

928. The misrepresentation of Defendant to Sheridan, Denton, and Class Members with material facts regarding the defective and/or fraudulent condition of the Decking and

Railings have caused injury to Sheridan, Denton, and Class Members in that the value of the Decking and Railings is substantially diminished. Further, Sheridan, Denton, and Class Members have suffered a loss equal to the diminished value of the Decking and Railings and/or the cost of removing and replacing the Decking and Railings.

929. Plaintiffs and Class Members demand all damages, in addition to costs, interest and fees, including attorneys' fees, to which they are entitled pursuant to the Private Right Act, including but not limited to the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

930. On August 18, 2014, prior to filing Plaintiffs' Complaint initiating this proposed class action, Plaintiffs obtained written approval compliant from the Iowa Attorney General's Office, Consumer Protection Division, authorizing Plaintiffs to file a class action cause of action pursuant to the Private Right of Action for Consumer Frauds Act.

<u>NINETEENTH CAUSE OF ACTION</u> <u>VIOLATIONS OF THE NORTH DAKOTA CONSUMER FRAUD ACT</u> <u>N.D. cent. code. § 51-15-01 et. seq.</u> (Plaintiff Christofferson, Individually, and on Behalf of All Others Similarly Situated)

931. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

932. North Dakota's Consumer Fraud Act, N.D. Cent. Code §§ 51-15-01 *et seq.* ("NDCFA"), prohibits a person from engaging in "any deceptive act or practice, fraud, false pretense, false promise, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." N.D. Cent. Code §§ 51-15-02.

933. GAF's sale of Decking and Railings constitutes "merchandise" as defined by the

NDCFA. N.D. Cent. Code §§ 51-15-02(3).

934. Christofferson and GAF are "person[s]" for purposes of the NDCFA.

935. The NDCFA provides a private right of action against any person who has acquired money or property "by means of any practice declared to be unlawful" by the NDCFA. N.D. Cent. Code §§ 51-15-09.

936. Pursuant to the NDCFA, "advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, oral or written, to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.

937. In the course of GAF's business and through its advertisements and marketing, it knowingly failed to disclose and actively concealed and omitted material facts and made false and misleading statements regarding the Decking and Railings. In addition, GAF engaged in other unfair or deceptive trade practices, as discussed herein.

938. GAF knowingly omitted, concealed and failed to disclose material facts regarding the testing that was being done on the Decking and Railings and the results of those tests.

939. If GAF had disclosed the results of the tests that were being performed on the Decking and Railings, then Plaintiff and Class Members would not have purchased the Decking and Railings.

940. As shown through the purchase of the Decking and Railings, Plaintiffs and Class Members relied upon GAF's false and misleading advertisements, representations and omissions in deciding whether to purchase the Decking and/or Railings.

941. If GAF had not concealed, omitted or failed to disclose the inadequate testing, its knowledge of the defects with the Decking and Railings, then Plaintiff and Class Members would not have purchased the Decking and Railings.

942. Had Plaintiff or Class Members known of the defective nature of the Decking and Railings, they would not have purchased the Decking and/or Railings (or would have paid significantly less for the Decking and/or Railings).

943. GAF's conduct proximately caused injuries to Plaintiff and the Class Members.

944. Plaintiff and the other Class Members suffered a loss of money or property and were injured as a result of GAF's conduct. These injuries are the direct and natural consequence of GAF's misrepresentations, concealment, and omissions.

945. GAF knowingly committed the conduct described above, and thus, under N.D. Cent. Code § 51-15-09 is liable to Plaintiffs and the Class Members for treble damages, as well as attorneys' fees, costs, and disbursements.

946. As a direct and proximate result of the foregoing, Plaintiff and Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in addition to costs, interest and fees, including, attorneys' fees, the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

<u>TWENTIETH CAUSE OF ACTION</u> <u>VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT ("KCPA"),</u> <u>Kan. Stat. Ann. § 50-623, et. seq.</u> (Plaintiffs Brown and Law, Individually, and on Behalf of All Others Similarly Situated)

947. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

948. The KCPA is designed to, *inter alia*, protect consumers from suppliers who commit deceptive and unconscionable practices. *See* Kan. Stat. Ann. § 50-623(b). It prohibits a supplier from engaging in any deceptive or unconscionable act or practice in connection with a

consumer transaction. See Kan. Stat. Ann. § 50-626, § 50-627.

949. Brown, Law, and Class Members are "consumers" pursuant to the KCPA.

950. GAF is a "supplier" within the meaning of the KCPA. Kan. Stat. Ann. § 50-624(1) (defining a "supplier") as "a manufacturer, distributor, dealer, seller, lessor, assignor, or other person who, in the ordinary course of business, solicits, engages in or enforces consumer transactions, whether or not dealing directly with the consumer.").

951. The Decking and Railings are "property" pursuant to the KCPA.

952. Defendant has engaged in acts and practices which are "deceptive" as that term is described in KCPA § 50-626, in that, among other things, Defendant engaged in consumer transactions wherein Decking and Railings were sold to Plaintiffs and other consumers that, when used as reasonably anticipated, give way, warp, crack, split and fail; defendants did so while willfully failing and omitting to disclose, state or warn Plaintiffs and Class Members and other consumers of such fact which was material to the consumer transactions.

953. KCPA § 50-627 provides, in pertinent part:

50-627. Unconscionable acts and practices. (a) No supplier shall engage in any unconscionable act or practice in connection with a consumer transaction. An unconscionable act or practice violates this act whether it occurs before, during or after the transaction.

(b) The unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to the following that:

> (1) The supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor;

> (2) when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services

were readily obtainable in similar transactions by similar consumers;

(3) the consumer was unable to receive a material benefit from the subject of the transaction;

(4) when the consumer transaction was entered into, there was no reasonable probability of payment of the obligation in full by the consumer;

(5) the transaction the supplier induced the consumer to enter into was excessively one sided in favor of the supplier;

(6) the supplier made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment; and

(7) except as provided by K.S.A. 50-639, and amendments thereto, the supplier excluded, modified or otherwise attempted to limit either the implied warranties of merchantability and fitness for a particular purpose or any remedy provided by law for a breach of those warranties.

954. Defendant has engaged in acts which are "unconscionable" as that term is described in KCPA 50-627 in that, among other things, Defendants engaged in consumer transaction wherein the Decking and Railing were sold to Plaintiffs and Class Members and that, when used as anticipated, crack, split, warp, grow mold and fail; in doing so, Defendant took advantage of Plaintiffs' and Class Members' ignorance of, among other things that, when used as anticipated, warp, crack, split, grow mold and fail.

955. Through their purchase of the Decking and Railings, Plaintiffs and Class Members relied upon GAF's omissions and misrepresentations.

956. Had GAF not omitted and concealed material facts regarding the Decking and Railings and Plaintiffs and Class Members would have known of the defective nature of the Decking and Railings, they would not have purchased the Decking and/or Railings (or would have paid significantly less for the Decking and/or Railings). 957. As a result of the Defendant's unfair trade practices, Plaintiffs and Class Members have suffered damages, and are entitled to recover those damages and all costs of this action, including attorney fees and costs, from GAF under the provisions of the Kansas Consumer Protection Act, KCPA §§ 50-623, et seq.

<u>TWENTY-FIRST CAUSE OF ACTION</u> <u>VIOLATION OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT</u> <u>("ADTPA"), Ala. Code § 8-19-1, et. seq.</u> (Plaintiff King, Individually, and on Behalf of All Others Similarly Situated)

958. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

959. Plaintiffs and Class Members are consumers within the meaning of the ADTPA. *See* Code of Ala. § 8-19-3(2).

960. Pursuant to the ADTPA, the following deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful that GAF committed (1) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have; (2) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; (3) Making a false or misleading statement of fact concerning the reasons for, existence of, or amounts of, price reductions; (4) Intentionally misrepresenting that a warranty or guarantee confers or involves certain rights or remedies; (5) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce; (6) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.

961. As discussed extensively herein, GAF made, published, disseminated, circulated, and/or placed before the public, and/or caused to be made, published, disseminated, circulated, or placed before the public, advertisements, announcements, statements, and representations to the public relating to their Decking and Railings that contained assertions, representations, and statements of fact concerning the qualities and characteristics of the Decking and Railings which affected Trade and Commerce as those terms are defined by the ADTPA.

962. Specifically, as discussed herein, GAF made misrepresentations about the quality of the Decking and Railings by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp, crack, splinter or rot like wood."

963. However, as discussed herein, GAF knowingly omitted, concealed or failed to disclose information that the Decking and Railings were inadequately tested, would warp, crack, splinter and rot, and would not perform as represented.

964. GAF's aforementioned assertions, representations, and statements of fact concerning the qualities and characteristics of their Decking and Railings were untrue, deceptive, and misleading, in violation of the ADTPA.

965. Pursuant to the ADTPA, GAF knew through either actual awareness or such awareness as a reasonable person should have considering all the surrounding circumstances that the statements in its advertisements and marketing were untrue.

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966. Further, as discussed herein, despite its knowledge as defined by the ADTPA, GAF omitted, concealed and failed to disclose to Plaintiff and Class Members that the Decking and Railings had not been adequately tested and would fail prematurely.

967. Through their purchase of the Decking and Railing, Plaintiff and Class Members relied on GAF's omissions and misrepresentations.

968. GAF's deceptive acts and practices caused injuries to Plaintiff and similarly situated Alabama residents, in violation of the ADTPA because Plaintiff and Class Members would not have purchased the Decking and/or Railings if GAF had not omitted or concealed the information that the Decking and Railings were inherently defective.

969. Had Plaintiff and the Class Members known of the defective nature of the Decking and Railings, they would not have purchased the Decking and/or Railings (or would have paid significantly less for the Decking and/or Railings).

970. As a direct and proximate result of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in addition to costs, interest and fees, including attorneys' fees, the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

<u>TWENTY-SECOND CAUSE OF ACTION</u> <u>VIOLATION OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT</u> <u>("WDTPA"), Wis. Stat. § 100.18, et. seq.</u> (Plaintiffs Smieja and Johnson, Individually, and on Behalf of All Others Similarly Situated)

971. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

972. Wis. Stat. § 100.18(1) provides:

No person, firm, corporation or association, or agent or employee thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employee thereof, directly or indirectly, to the public for sale, . . . shall make, publish, disseminate, circulate, or place before the public, . . . in this state, . . . an advertisement, announcement, statement or representation of any kind to the public relating to such . . . sale . . . of such real estate, merchandise, securities, service or employment . . . , which advertisement, announcement, statement or representations contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

973. GAF made, published, disseminated, circulated, and/or placed before the public, and/or caused to be made, published, disseminated, circulated, or placed before the public, advertisements, announcements, statement, and representations to the public relating to its Decking and Railings that contained assertions, representations, and statements of fact concerning the qualities and characteristics of such products.

974. GAF's aforementioned assertions, representations, and statements of fact concerning the qualities and characteristics of its Decking and Railings were untrue, deceptive, and misleading, in violation of the WDTPA.

975. GAF's untrue, deceptive, and misleading assertions, representations, and statements of fact concerning the qualities and characteristics of the Decking and Railings materially induced Plaintiffs, Class Members, and their agent to purchase the Decking and/or Railings.

976. GAF also concealed the defective nature of its Decking and Railings even after members of the class began to report problems, and it knew.

977. Indeed, GAF continued to affirmatively misrepresent, omit, fail to disclose and conceal from their dealers, distributors, and the public, the true nature of its Decking and Railings.

978. These omissions and misrepresentations constitute "advertisement[s], announcement[s], statement[s] or representation[s] contain[ing] . . . assertion[s], representation[s] or statement[s] of fact which [are] untrue, deceptive or misleading" and thus, constitute multiple, separate violations of WDTPA.

979. As discussed in the preceding paragraph, GAF knew that the Decking and Railings was defective, yet GAF's omissions and misrepresentations set forth in this Complaint are material in that they relate to information that would naturally affect the purchasing decisions or conduct of purchasers, including Plaintiffs and Class Members, regarding GAF's Decking and Railings.

980. Through their purchase of the Decking and Railings, Plaintiffs and Class Members relied on GAF's misrepresentations and omissions of the Decking and Railings.

981. Had Plaintiffs, class members, and their agent known of the defective nature of GAF's Decking and Railings, they would not have purchased the Decking and/or Railings (or would have paid significantly less for the Decking and Railings).

982. As a direct and proximate result of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in addition to costs, interest and fees, including attorneys' fees, the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

TWENTY-THIRD CAUSE OF ACTION VIOLATION OF THE TENNESSEE CONSUMER PROTECTION ACT (Plaintiff Johnson Individually, and on Behalf of All Others Similarly Situated)

983. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

984. GAF committed violations of the Tennessee Consumer Protection Act, § 47-18-101 *et seq* ("TCPA").

985. Plaintiffs are consumers as defined by the TCPA.

986. The Decking and Railings are "good[s]" as defined by TCPA.

987. GAF's sale of the Decking and Railings constitutes "trade," commerce," or "consumer transaction" as defined in Tenn. Code Ann. § 47-18-103(a).

988. GAF's knowingly false representations as described herein regarding the quality of the Decking and Railings constitute violations of the TCPA.

989. GAF engaged in the unlawful practices set forth in this Complaint in the sale of merchandise in trade or commerce of the Decking and Railings.

990. GAF engaged in the unlawful practices set forth in this Complaint in the advertisement of merchandise in trade or commerce of the Decking and Railings.

991. GAF knowingly made false representations and omitted material facts as defined by the TCPA which means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a reasonable person would have known or would have had reason to know of the falsity or deception.

992. Specifically, as discussed herein, GAF knowingly or should have known it was making misrepresentations in its advertisements about the quality of the Decking and Railing by stating, *inter alia*, that it "resists sagging, splintering, warping, insects and rotting," "won't warp,

crack, splinter or rot like wood." Further, GAF asserted that it was "low maintenance", would not absorb water and would last for at least 20 years.

993. Plaintiffs and members of the Tennessee purchased GAF's Decking and Railings primarily for personal, family, or household purposes.

994. In connection with the advertisement, marketing and/or sale of the Decking and Railings, GAF made material representations about the Decking and Railings' durability, reliability, lack of defects and compliance with industry standards appropriate for use on the homes, buildings, and other structures of Plaintiffs and the Class Members that were untrue, false, inaccurate, or deceptive.

995. GAF knew that these material representations would be reasonably relied on by potential purchasers, Plaintiff and Class Members. As such, GAF's conduct constitutes deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact.

996. Through their purchase of the Decking and Railing, Plaintiff and Class Members relied on GAF's representations and omissions.

997. Had Plaintiff, the Class Members, and their agents known of the defective nature of the Decking and Railings, they would not have purchased the Decking and/or Railings (or would have paid significantly less for the Decking).

998. The acts of GAF, as described herein, constitute an unfair and deceptive trade practice in violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*

999. As a direct and proximate results of GAF's wrongful acts, which were committed willfully and knowingly, Plaintiffs are entitled to a recovery of treble their damages which

includes the cost to remove and replace the Decking and Railings, the difference in value between the Decking and Railings as represented versus the value of the defective Decking and Railings, and any other compensatory or consequential damages.

TWENTY-FOURTH CAUSE OF ACTION VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (Plaintiff Rachor, Individually, and on Behalf of All Others Similarly Situated)

1000. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1001. At all times relevant herein, GAF engaged in the business of designing, developing, manufacturing, marketing, distributing, and/or selling Decking and Railings in the stream of commerce.

1002. GAF was engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

1003. GAF's above-described activities, including knowingly or recklessly placing a defective product into the stream of commerce, misrepresenting the suitability of the product, concealing knowledge of the defects, misrepresenting the testing that had been done, and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices in the conduct of GAF's trade.

1004. GAF's above-described acts are capable of repetition and adversely affect the public interest.

1005. GAF knew or should have known that its conduct was in violation of the South Carolina Code Section 39-5-20.

1006. As a direct, foreseeable, and proximate result of GAF's unfair trade practices in South Carolina, the Plaintiffs and the members of the class have suffered significant damage.

<u>TWENTY-FIFTH CAUSE OF ACTION</u> <u>VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES-MINN.</u> <u>STAT.§ 325D.13.</u> (Plaintiff Joseph Campbell Individually, and on Behalf of All Others Similarly Situated)

1007. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1008. Minnesota Statutes § 325D.13 provides that, "No person shall, in connection with

the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality,

ingredients or origin of such merchandise."

1009. GAF, in connection with its sale of its Decking and Railings as alleged herein,

knowingly misrepresented, directly and/or indirectly, the true quality of the product alleged in detail in the above counts and, more generally, in its representations regarding the, in violation of

Minn. Stat. § 325D.13.

1010. GAF's wrongful conduct and misrepresentation of the true quality of its Decking and Railings includes, by way of example and not by limitation:

- a. GAF's fraudulent, misleading, and deceptive statements relating to the true quality of the Decking and Railing;
- b. GAF's fraud and misrepresentation by omission, of information about the defective nature of Decking and Railings, the improper design and manufacturing of the Decking and Railings, and GAF's knowledge of those defects; and
- c. GAF's concealment of the true nature of the defective Decking and Railings.

1011. GAF and its agents and distributors also misrepresented and omitted the true quality of the Decking and Railings by making various representations about the quality of the Decking and Railings as referenced herein.

1012. As a result of practices relating to misrepresentation and omissions of the true quality of the Decking and Railings, Plaintiffs and Class Members have suffered actual damages in that they have purchased and installed the Decking and Railings on their homes decking and railings that are defective.

1013. As a result of GAF's practice relating to the misrepresentation and omission regarding the true quality of the Decking and Railings, Plaintiffs and Class Members will suffer damages that include the full cost to remove and replace the Decking and Railings, but also include, consequential and incidental damages.

1014. As a direct, proximate and foreseeable result of GAF's violation of statute, Plaintiffs and Class Members have sustained damages.

<u>TWENTY-SIXTH CAUSE OF ACTION</u> <u>VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES-MINN.</u> <u>STAT.§ 325D.44.</u>

(Plaintiff Joseph Campbell Individually, and on Behalf of All Others Similarly Situated)

1015. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1016. Minnesota Statutes § 325D.44, subd. 1 provides in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
(5) Represents that goods or services have...characteristics, ingredients, uses, benefits...that they do not have...
(7) Represents that goods or services are of a particular standard, quality, or grade,...if they are of another.
(13) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

1017. By engaging in the conduct described herein, GAF violated and continues to violate Minn. Stat. § 325D.44.

1018. GAF's wrongful conduct and misrepresentation of the true quality of its Decking and Railings includes, by way of example and not by limitation:

- a. GAF's fraudulent, misleading, and deceptive statements relating to the true quality of the Decking and Railing;
- b. GAF's fraud and misrepresentation by omission, of information about the defective nature of Decking and Railings, the improper design and manufacturing of the Decking and Railings, and GAF's knowledge of those defects; and GAF's concealment of the true nature of the defective Decking and Railings.

1019. GAF and its agents and distributors also misrepresented and omitted the true quality of the Decking and Railings by making various representations about the quality of the Decking and Railings as referenced herein.

1020. As a result of practices relating to misrepresentation and omissions of the true quality of the Decking and Railings, Plaintiffs and Class Members have suffered actual damages in that they have purchased and installed the Decking and Railings on their homes decking and railings that are defective.

1021. As a result of GAF's practice relating to the misrepresentation and omission regarding the true quality of the Decking and Railings, Plaintiffs and Class Members will suffer damages that include the full cost to remove and replace the Decking and Railings, but also include, consequential and incidental damages.

1022. As a direct, proximate and foreseeable result of GAF's violation of statute, Plaintiffs and Class Members have sustained damages.

<u>TWENTY-SEVENTH CAUSE OF ACTION</u> <u>VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT</u> <u>Wash. Rev. Code Ann. § 19.86.010 *et seq.*</u> (Plaintiff Vinson Individually, and on Behalf of All Others Similarly Situated)

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1023. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1024. This cause of action is brought pursuant to the Washington Consumer Protection Act ("WCPA"), RCW 19.86.010 *et seq*. The stated purpose of the WCPA is "to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition." RCW 19.86.920.

1025. RCW 19.86.020 declares unlawful "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce ..."

1026. Plaintiff and all Class Members are "persons" and the transactions at issue in this Complaint constitute "trade or commerce" as defined by RCW 19.86.010.

1027. GAF violated the WCPA by engaging in the unfair and deceptive actions and/or omissions as described herein by engaging in unfair or deceptive acts or practices that occurred in trade or commerce, had an impact on public interest, and caused injury to property and/or business.

1028. In violation of the WCPA, GAF employed fraud, deception, false promise, misrepresentation and the knowing concealment, suppression, or omission of material facts in its sale and advertisement of the Decking and Railings in the State of Washington.

1029. GAF engaged in the concealment, suppression, or omission in violation of the WCPA when, in selling and advertising the Decking and Railings, it (1) represented that the Decking and Railings were free of defects in materials and workmanship when, at best, it lacked credible evidence to support those claims, and, at worse, knew the Decking and Railings were, in fact, defective in that the Decking and Railings would have the propensity to warp, swell, rot,

crack and permit mold growth causing the Decking and Railings to fail and were therefore not suitable to be used for their intended purpose, and otherwise were not as warranted and represented by GAF, (2) failed to disclose to, or concealed from, consumers material facts about the defective nature of the Decking and Railings, and (3) failed to disclose its own knowledge of the defective nature of the Decking and Railings when GAF knew that there were defects in the Decking and Railings.

1030. GAF engaged in the concealment, suppression, or omission of the aforementioned material facts with the intent that others, such as Plaintiff, Class, and/or the general public would rely upon the concealment, suppression, omission of such material facts and purchase the Decking and Railings with said defect(s).

1031. The concealment, suppression, or omission of the aforementioned material facts had the capacity to and did so deceive a substantial portion of the public, including Plaintiff and the Class Members, into believing the Decking and Railings were free of defects.

1032. Plaintiff and Class Members would not have purchased the Decking and Railings had they known or become informed of the material defects.

1033. GAF's concealment, suppression, or omission of material facts as alleged herein constitutes unfair, deceptive and fraudulent business practices within the meaning of the WCPA.

1034. GAF has acted unfairly and deceptively by misrepresenting and omitting the quality and durability of the Decking and Railings.

1035. GAF either knew, or should have known, that the Decking and Railings were defectively designed and/or manufactured and would fail prematurely and rot, warp, crack and cause mold growth.

1036. GAF knew at the time the Decking and Railings left its control, there were

defects described herein resulting in a failure of the Decking and Railings.

1037. At the time of sale, the Decking and Railings contained design and manufacturing defects.

1038. As a direct and proximate cause of the violation of the WCPA described above, Plaintiff and Class Members have been injured in that they purchased Decking and Railings with the defect based on nondisclosure of material facts alleged above. Had Plaintiff and Class Members known the defective nature of the Decking and Railing, they would not have purchased them and had them installed on their home.

1039. GAF used unfair methods of competition and unfair or deceptive acts or practices in conducting its business.

1040. GAF's actions in connection with the manufacturing, distributing, marketing warranting, and sale of the Decking and Railings set forth herein evidences a lack of good faith, honesty in fact and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of the WCPA.

1041. GAF acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when it committed these acts of consumer fraud

1042. Said acts and practices on the part of GAF were and are illegal and unlawful pursuant to RCW 19.86.020.

1043. As a direct and proximate result of GAF's violations of the WCPA, Plaintiff and Class Members have suffered damages and are entitled to actual damages, including, but not limited to, the difference in value between the Decking and Railings as they were originally delivered and as they should have been delivered, the cost to remove and replace the Decking and Railings, equitable and declaratory relief,

punitive damages, treble damages, costs and reasonable attorney's fees.

TWENTY-EIGHTH CAUSE OF ACTION NEGLIGENT MISREPRESENTATION

(Plaintiffs Burger, Ross, Robertie, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Ernst, Kaiser, Stidham, Williams, Phillips, Turcheck, Tuthill, Khanna, Giovanetti, Barker, Megerle, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

1044. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1045. GAF was in a special relationship with Plaintiffs and Class Members because GAF possessed a specialized expertise regarding the manufacture sale and marketing of the Decking and Railings.

1046. GAF was in a special relationship with Plaintiffs and Class Members because Plaintiffs and Class Members were the intended beneficiaries of the representations and were in privity regarding the quality of the Decking and Railings. Furthermore, GAF's advertisements were directed at Plaintiffs and Class Members.

1047. GAF knew that Plaintiffs and Class Members would be injured and suffer a loss if it did not provide Plaintiffs and Class Members with accurate information regarding the quality and durability of the Decking and Railings.

1048. At all relevant times, GAF was in the business of supplying information regarding the Decking and Railings.

1049. Due to its special relationship with Plaintiffs and Class Members, GAF had a duty to supply correct and truthful information to Plaintiffs and Class Members regarding the Decking and Railings.

1050. Due to its special relationship with Plaintiffs and Class Members, GAF had a duty to not misrepresent or omit material information regarding the quality of the Decking and Railings.

1051. GAF made representations about the Decking and Railings to Plaintiffs, Class Members, and their agents or predecessors, as set forth in this complaint. Specifically, GAF made, *inter alia*, the following misrepresentations:

- a. The Decking's "superior engineering and design creates a deck that lasts longer than ordinary wood decks with less maintenance no staining or sealing required."
- b. The Decking "won't warp, crack, splinter, or rot like wood."
- c. The Decking "[r]esists scratching and high traffic wear and tear."
- d. The Decking "resists sagging, splintering, warping, insects, and rotting."
- e. The Decking contains "[n]o toxic chemicals like treated wood."
- f. "For the beauty of a wooden deck with less care and effort, choose Elk Cross Timbers brand composite decking [*viz.*, the Decking]."
- g. The Decking "is designed with the EZ-Build System, which not only makes construction a snap, but also adds beauty with its concealed fasteners hidden below the surface."
- h. "No matter what your design goals are, you can rely on [the Decking] to give you the lasting, quality deck of your dreams, with little time and effort."
- i. "Its low moisture absorption and superior longevity make CrossTimbers the right choice for decking, fencing and marine application."
- 1052. As discussed throughout this complaint, those representations were false.

1053. When GAF made the representations, it knew they were untrue or it had a reckless disregard for whether they were true, or it should have known they were untrue. Further, GAF concealed and omitted the fact that these representations were false and it had a limited useful life and would fail prematurely.

1054. GAF knew that Plaintiffs, Class Members, and their agents or predecessors, were relying on the representations.

1055. In reliance upon GAF's representations and material omissions, Plaintiffs and Class Members purchased the Decking and Railings and installed on the Plaintiffs' and Class Members' homes.

1056. As a direct and proximate result of GAF's negligent misrepresentations, Plaintiffs and Class Members have been damaged as set forth in this complaint.

1057. As a direct and proximate result of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, including punitive damages, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

<u>TWENTY-NINTH CAUSE OF ACTION</u> <u>FRAUDULENT CONCEALMENT/OMISSION</u>

(Plaintiffs Burger, Ross, Robertie, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Ernst, Kaiser, Williams, Wolcott, Phillips, Turcheck, Tuthill, Khanna, Giovanetti, Barker, Megerle, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

1058. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1059. GAF was in a special relationship with Plaintiffs and Class Members because GAF possessed a specialized expertise regarding the manufacture sale and marketing of the Decking and Railing.

1060. GAF was in a special relationship with Plaintiffs and Class Members because Plaintiffs and Class Members were the intended beneficiaries of the representations regarding the quality of the Decking and Railings.

1061. GAF knew that Plaintiffs and Class Members would be injured and suffer a loss if it did not provide Plaintiffs and Class Members with accurate information regarding the quality and durability of the Decking and Railing.

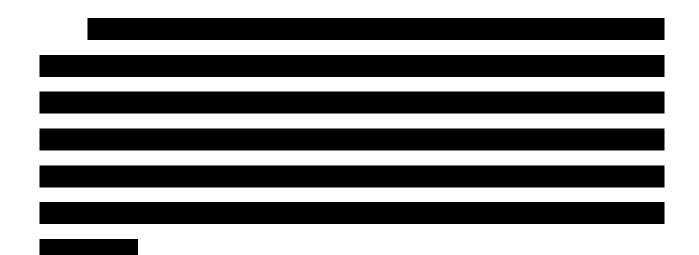
1062. GAF was in the business of supplying information regarding the Decking and Railing.

1063. Due to its special relationship with Plaintiffs and Class Members, GAF had a duty to supply correct and truthful information to Plaintiffs and Class Members regarding the Decking and Railing.

1064. Due to its special relationship with Plaintiffs and Class Members, GAF had a duty to not misrepresent, conceal or omit material information regarding the quality of the Decking and Railings.

1065. GAF breached this duty and instead concealed material information about the Decking and Railings and their defectiveness.

1066. GAF took affirmative steps to prevent Plaintiffs and Class Members from learning of the Decking and Railings' defects, including keeping non-public information and internal knowledge and communications secret.



1068. In addition, GAF continued affirmatively marketing and advertising the Decking promoting the superior quality of the Decking and Railing by stating, *inter alia*:

- a. The Decking's "superior engineering and design creates a deck that lasts longer than ordinary wood decks with less maintenance no staining or sealing required."
- b. The Decking "won't w arp, crack, splinter, or rot like wood."
- c. The Decking "[r]esists scratching and high traffic wear and tear."
- d. The Decking "resists sagging, splintering, warping, insects, and rotting."
- e. The Decking contains "[n]o toxic chemicals like treated wood."
- f. "For the beauty of a wooden deck with less care and effort, choose Elk Cross Timbers brand composite decking [*viz.*, the Decking]."
- g. The Decking "is designed with the EZ-Build System, which not only makes construction a snap, but also adds beauty with its concealed fasteners hidden below the surface."
- h. "No matter what your design goals are, you can rely on [the Decking] to give you the lasting, quality deck of your dreams, with little time and effort."
- i. "Its low moisture absorption and superior longevity make CrossTimbers the right choice for decking, fencing and marine application."

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1069. GAF knowingly and intentionally concealed material facts regarding the Decking and Railings that it would prematurely fail, would crack, swell, shrink, warp, and permits mold growth, was subject to numerous consumer complaints, will require removal and replacement within a few years of installation and is a safety hazard.

1070. Despite the exercise of reasonable diligence, Plaintiffs and Class Members could not have discovered the defective nature of the Decking and Railings because of GAF's actions to conceal the defects.

1071. GAF knew it was omitting material fact at the time it sold the Decking and Railings to Plaintiffs and Class Members and at a time it had a duty to disclose these facts.

1072. In omitting these material facts, GAF had the intent to defraud Plaintiffs and Class Members, and it intended for Plaintiffs and Class Members to rely upon its omissions in purchasing the Decking and Railings.

1073. At the latest, as discussed in the section regarding GAF's knowledge of the defects, GAF and its predecessors knew or should have known that the Decking and Railings were inherently defective that would prematurely fail due to rot, shrink, warp, swell, crack, and permit mold growth in 2006. Yet, GAF continued to market, advertise and sell the Decking and Railing to Plaintiffs and Class Members.

1074. As a direct and proximate result of GAF's fraudulent concealment, Plaintiffs and Class Members have been damaged as set forth in this complaint.

1075. Plaintiffs and Class Members reviewed and reasonably relied on GAF's representations and omissions regarding the Decking and Railings and incurred damages as a direct and proximate result, in an amount to be determined at trial, including replacement costs. Any limitation on economic loss is precluded by GAF's fraudulent omissions.

1076. As a direct and proximate result of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

THIRTIETH CAUSE OF ACTION VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

(Plaintiffs Burger, Ross, Sheridan, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Ernst, Kaiser, Stidham, Williams, Phillips, Wolcott, Denton, Turcheck, Tuthill, Khanna, Giovanetti, Barker, Megerle, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

1077. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1078. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (the "Federal Act"), provides a private right of action to purchasers of consumer products against retailers who, among other things, fail to comply with the terms of a written, express, or implied warranty.

1079. Congress enacted the Federal Act in response to widespread consumer complaints regarding misleading and deceptive warranties.

1080. GAF is an entity regulated by the Federal Act, and the Plaintiffs and Class Members are protected consumers under the Federal Act.

1081. GAF has failed to remedy GAF's propensity to crack, swell, shrink, warp and permit mold growth despite its knowledge and notice of the Decking and Railings propensity to crack, swell, shrink, warp and permit mold growth and generally degrade.

1082. GAF provides a Limited Warranty that purportedly limits liability to only provide a pro rata amount of for the price paid for the material and does not provide for labor costs unless GAF is notified within two years of installation. 1083. At the time GAF issued the Limited Warranty, GAF knew and had notice that the Decking and Railings had the propensity to prematurely fail. GAF's continued misrepresentations and omissions concerning the Decking and Railings are "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce," and, accordingly are unlawful under the Federal Act.

1084. GAF has been given reasonable opportunity to cure its failures to comply with the terms of its warranties of the Decking and Railings, but has failed to do so, and it cannot because it is an incurable defect unless GAF pays for labor to remove and replace the Decking and Railings.

1085. By virtue of its violation of the Federal Act, GAF is liable to the Plaintiffs and class members for the remedies set forth by the Act, including an award of damages, attorneys' fees, and other appropriate relief.

THIRTY-FIRST CAUSE OF ACTION

<u>STRICT PRODUCTS LIABILITY – DEFECTIVE DESIGN & MANUFACTURE</u> (Plaintiffs Burger, Ross, Sheridan, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Ernst, Kaiser, Williams, Phillips, Wolcott, Denton, Turcheck, Tuthill, Khanna, Giovanetti, Barker, Megerle, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

1086. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs

as though fully set forth herein.

1087. The Decking and Railings were designed, manufactured, marketed, promoted, sold, and introduced into the stream of commerce by GAF.

1088. When it left the control of Defendant, the Decking and Railings were expected to,

and did reach Plaintiffs and class members without substantial change from the condition in

which it left GAF's control.

1089. The Decking and Railings were defective when they left GAF's control and were placed in the stream of commerce, in that there were foreseeable defects in the design and/or manufacture of the product.

1090. Specifically, the Decking and Railings were unfit for their intended use, and contained defects which caused the product to warp, twist, and separate from the house or other structure to which the Decking and Railings are attached, causing damages to the exterior finishes, columns, walls, pools surrounded by the Decking, and other property on Plaintiffs' and the class members' residences/structures.

1091. Plaintiffs and the Class Members used and installed the Decking in substantially the same condition it was in when it left the control of Defendant, and in the manner intended.

1092. Had GAF altered its manufacturing process by annealing the boards, the shrinkage currently exhibited by the Decking would not have occurred.

1093. Annealing of the boards is a reasonable method of preventing the shrinkage and is performed by other wood plastic composite decking manufacturers in the industry.

1094. Had GAF increased the density of its Decking and Railings, the Decking and Railings would not have been prone to water absorption which has caused many of the problems discussed herein.

1095. Increasing the density of the Decking and Railings by introducing antioxidants, using vented extruders, and/or by properly drying materials such as cellulosic fibers is a reasonable alternative to GAF's manufacturing process and is done by other wood plastic composite decking manufacturers.

1096. Had GAF introduced moldicides and/or other antimicrobial agents in the formulation of the Decking and Railings, they would not have exhibited the mold growth that the Decking and Railings are exhibiting.

1097. Introducing moldicides and other antimicrobial agents in the formulation of the Decking and Railings is a reasonable alternative to GAF's manufacturing process of the Decking and Railings and is done by other wood plastic composite decking manufacturers.

1098. As a direct and proximate result of Defendant's defective design and/or manufacture of the Decking and Railings, Plaintiffs and Class Members suffered damages and economic loss as set forth herein.

1099. Defendant is strictly liable to Plaintiffs and Class Members for all damages and economic losses resulting from its defective design and/or manufacture of the Decking and Railings.

1100. As a direct and proximate result of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

THIRTY-SECOND CAUSE OF ACTION UNJUST ENRICHMENT (PLEADING IN THE ALTERNATIVE)

(Plaintiffs Sheridan, McGovern, Narducci, Claxton, Ernst, Kaiser, Williams, Phillips, Wolcott, Denton, Turcheck, Tuthill, Khanna, Barker, Megerle, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

1057. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1058. Pleading in the alternative, Plaintiffs and Class Members conferred a benefit on GAF by purchasing the Decking and Railings.

1059. Plaintiffs and Class Members, however, did not receive effective or ordinarily fit exterior decking materials for which they paid.

1060. It would not be inequitable for the Defendant to retain this money because Plaintiffs and Class Members did not, in fact, receive exterior decking materials fit for ordinary use.

1061. By virtue of the wrongdoing alleged in this Complaint, Defendant has been unjustly enriched at the expense of Plaintiffs and Class Members, who hereby seek the disgorgement and restitution of Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.

<u>THIRTY-THIRD CAUSE OF ACTION</u> DECLARATORY JUDGMENT (PLEADING IN THE ALTERNATIVE)

(Plaintiffs Burger, Ross, Sheridan, Hoover, Cohen, McGovern, Warren, Narducci, Claxton, Ernst, Kaiser, Stidham, Williams, Phillips, Wolcott, Denton, Turcheck, Tuthill, Khanna, Giovanetti, Barker, Megerle, Robertie, Mapp, Christofferson, Koster, Brown, Law, Kuropatkin, King, Aspinwall, Johnson, Vinson, Campbell, Smieja and Johnson, Individually and on Behalf of All Others Similarly Situated)

1062. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

1063. Plaintiffs and Class Members are entitled to a declaratory judgment as to whether (i) the Decking and Railings are defective; (ii) whether GAF knew or had reason to know of the Decking and Railings' defects; (iii) whether the limitations in the purported Limited Warranty are unconscionable or unenforceable; (iv) and whether GAF's representations regarding the Decking and Railings were false or deceptive.

PRAYER FOR RELIEF

Therefore, each Plaintiff seeks the following relief:

- A. An order (i) certifying the Class or Classes, pursuant to Federal Rule of Civil Procedure 23, (ii) appointing Plaintiffs or any one or several of them Class Representative, and (ii) designating undersigned counsel as Class Counsel;
- B. Actual and compensatory damages;
- C. Punitive damages;
- D. Declaratory and equitable relief;
- E. Costs of suit;
- F. Pre- and post-judgment interest;
- G. Reasonable attorneys' fees; and
- H. Such other relief as allowed by law the Court may find appropriate.

JURY DEMAND

Plaintiffs each demand a trial by jury.

This the 4th day of December, 2015.

Respectfully submitted,

<u>/s/ Daniel K. Bryson</u> Daniel K. Bryson N.C. Bar No. 15781 Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 Telephone: 919-600-5000 Email: dan@wbmllp.com

Plaintiffs' Lead Counsel

/s/ James E. Cecchi

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Plaintiffs' Liaison Counsel

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PROOF OF SERVICE

I hereby certify that on December 4, 2015, I electronically filed the forgoing document with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the counsel of record.

/s/ Daniel K. Bryson_____

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