

EXHIBIT 1

State Court Pleadings Case #2014-CP-10-1628

Schussel v. Lincoln Wood Products, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARTIN D. SCHUSSEL, individually and on
behalf of all others similarly situated,

Plaintiff(s)

vs.

LINCOLN WOOD PRODUCTS, INC.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 10- 1628

Submitted By:

Harper L. Todd

Justin O'Toole Lucey, P.A.

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input checked="" type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | Product Liability-Building Products | |

Submitting Party Signature:



Date: March 11, 2014

SCCA / 234 (06/2013)

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FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARTIN D. SCHUSSEL, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

LINCOLN WOOD PRODUCTS, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS

2014-CP-10-1628

SUMMONS

JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAR 11 PM 1:04

FILED


YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

Respectfully submitted,

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:


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Attorneys for Plaintiffs

March 11, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARTIN D. SCHUSSEL, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

LINCOLN WOOD PRODUCTS, INC.,
Defendant.

IN THE COURT OF COMMON PLEAS

2014-CP-10- 1628

CLASS ACTION COMPLAINT

(Re: Defective Windows)
Jury Trial Demanded

2014 MAR 11 PM 1:04
JULIA ARMSTRONG
CLERK OF COURT

FILED

The Plaintiff, Martin D. Schussel, individually, and on behalf of all others similarly situated, complaining of the Defendant named herein, would respectfully allege and show the Court as follows:

NATURE OF ACTION

1. This is a class action asserting negligence/gross negligence, breach of express warranty, breach of implied warranties of merchantability and fitness for particular purpose, negligent misrepresentation, strict products liability and seeking damages in connection with defective windows designed, manufactured, marketed, advertised, distributed, and sold by Defendant, Lincoln Wood Products, Inc. (hereinafter "Lincoln").

FACTUAL AND LEGAL ALLEGATIONS

2. In late 2004, Plaintiff Schussel, purchased a new residence with the property address of 190 North Shelmore Boulevard, Mount Pleasant, South Carolina.

3. At all times relevant herein, Defendant Lincoln Wood Products, Inc. (hereinafter "Lincoln") was and is a corporation existing under the laws of the State of Wisconsin.

4. Defendant Lincoln holds itself out to both the construction industry and the public at large as having superior knowledgeable in the design and manufacture of window products and as being providers of quality window products, including the windows that are the subject of this litigation.

5. At all times relevant herein, Defendant Lincoln was engaged in the marketing, sale, supply, and delivery of windows and window products in the State of South Carolina.

6. At all times relevant herein, Defendant Lincoln designed, manufactured, marketed, sold, supplied and distributed vinyl wood clad, exterior glazed windows (hereinafter "Windows").

7. The Windows were installed in Plaintiff Schussel's residence prior to his purchase.

8. The Windows are defective and fail to perform at Plaintiff's residence and at class members' residences by permitting water intrusion through unsealed or inadequately sealed areas of the window frame and into the interior of the residences.

9. The Windows are defective and fail to perform at Plaintiff's residence and at class members' residences by permitting water to penetrate through the vinyl cladding without effectively discharging the water. The water congregates inside of the cladding, is absorbed by wood members, and causes rot, premature degradation, leaking, and failure of the wood within the vinyl cladding.

10. Degradation of the sashes and frame permits additional air and water infiltration into the home in an accelerated cycle.

11. The water intrusion and above-described damages resulting from the Windows constitutes "occurrences" resulting in "property damage" to property other than Lincoln's

“product” as those are terms commonly defined and used in the typical commercial general liability insurance policy.

12. The above-described defects are due to fundamental design, engineering, and manufacturing errors which should have been within Defendant Lincoln’s expertise.

13. Because the Windows rot, prematurely degrade, otherwise fail, and permit air and water intrusion, they violate the building codes and industry standards.

14. The above-described deficiencies exist at the time the Windows leave the factory.

15. Failure at the sashes and frames begin when the Windows are installed, and continue during repeated and prolonged exposure to weather and ordinary use.

16. Defendant Lincoln knew or should have known that the defects were present at the time the products left its control.

17. Defendant Lincoln knew or should have known the potential for leakage, rot, premature degradation, and failure of its Windows, but failed to adequately correct the defective design or formulation that resulted in said damage.

18. Defendant Lincoln knew or should have known the potential for leakage, rot, premature degradation, and failure of its Windows, but failed to adequately correct the defective manufacture and that resulted in said damage.

19. Defendant Lincoln failed to warn purchasers, installers, or users of the above-described risks of failures.

20. The purchase of Defendant Lincoln’s Windows includes a written express warranty which forms part of the basis of the bargain between Defendant Lincoln and the purchaser at the time of sale.

21. The Windows' written express warranty also forms part of the basis of the bargain between the seller of the home and home buyers, including Plaintiff Schussel and class members.

22. Plaintiff Schussel's purchase agreement for the sale of the home contains a provision assigning any manufacturer's and supplier's warranties to Plaintiff at the time of conveyance.

23. The typical purchase agreement for the sale of class members' homes likely contains the same or similar provision transferring or assigning manufacturers' and suppliers' warranties to them at the time of purchase or conveyance.

24. The transfer or assignment of the manufacturers' and suppliers' warranties, which would include the window warranty, forms part of the basis of the bargain at the time Plaintiff and class members purchased the homes.

25. Even where a manufacturer or supplier warranty transfer provision is not present, the average homeowner expects at the time of purchase, his or her home comes with such warranties, including a window warranty against defects.

26. Defendant Lincoln also expressly and implicitly represents in documents available to the public that its warranty is part of the product being sold, and that the written warranties apply to the owners of the homes containing the Windows.

27. Defendant Lincoln represents in its express warranty and documents available to the public that the Windows would be free from defective materials and workmanship for at least 10 years, or that Lincoln would remedy the situation.

28. Plaintiff Schussel and putative class members relied upon these representations when Plaintiff Schussel purchased the Windows and/or structures containing the Windows.

29. Defendant Lincoln's representations, expressly and impliedly, through its website, brochures, and marketing materials that the Windows are suitable and free from defects, were intended to and likely did affect the market by inducing builders, contractors, suppliers, and others to purchase the windows.

30. Plaintiff Schussel put Defendant Lincoln on notice of the defects in his Windows and resultant damages.

31. Defendant Lincoln was put on notice of defects and resultant damages in the Windows by other homeowners in South Carolina.

32. Defendant Lincoln has acknowledged the written warranty applicability to Plaintiff in writing via emails.

33. Defendant Lincoln's shipping of the Windows with actual or constructive knowledge of the defects, or with negligent or reckless disregard of the presence of defects constituted a breach of its express warranty, and makes the limitations of the express warranty unconscionable in all respects, and therefore void *ab initio*.

34. The published Lincoln written warranties include the following limitations and defects (hereinafter "limitations"):

- (a) The warranty is limited for ten (10) years from the date of manufacturer, regardless of when the windows are sold or installed;
- (b) Defendant Lincoln purports to limit its responsibility to defects in materials and workmanship only;
- (c) The warranty requires that notice be given to Lincoln within thirty (30) days from discovery of a "defect" in its windows and/or window components;

- (d) The warranty requires that the homeowner be able to identify a “defect” in the window;
- (e) The warranty excludes the cost of mandatory inspection of the Windows once notice of a defect is given;
- (f) The warranty purports to limit its responsibility by offering a refund of the purchase prices, if replacement or repair is not reasonably possible, solely within the discretion of Defendant Lincoln;
- (g) The warranty excludes other window components necessary to install the covered replacement product;
- (h) The warranty excludes the labor, shipping, and all other costs associated with removal or installation of products for repair or replacement;
- (i) The warranty excludes any liability for consequential or incidental damages;
- (j) The warranty limits the warranty on the replacement product to the remainder of the warranty period of the original unit;
- (k) The warranty excludes damage due to exposure to conditions beyond published performance specifications; and
- (l) The warranty purports to exclude implied warranties of merchantability or fitness for a particular purpose.

35. The warranty is not a negotiated contract and is so one-sided that no reasonable person would ever knowingly agree to its terms if properly disclosed.

36. Further, Defendant Lincoln has engaged in a pattern and practice of failing to honor or discouraging warranty claims by requiring the property owner to hire a Lincoln

provided, third-party inspector at a cost paid by the owner (and not Lincoln) to initially inspect the Windows.

37. Another such method of thwarting warranty claims is requiring the owner to pay for window and/or window components that should otherwise be covered under Lincoln's warranties.

38. Upon discovery of problems with the Windows, Plaintiff Schussel timely notified Defendant Lincoln of the failure of multiple Windows in his home.

39. Defendant Lincoln responded by giving Plaintiff Schussel the contact information for its local dealer or handyman service and instructed Plaintiff to schedule an initial inspection with Lincoln's local contact.

40. Plaintiff Schussel was also informed that the cost of the initial inspection was not covered by the warranty and would have to be paid by Plaintiff.

41. Following the inspection by Lincoln's local contact, Plaintiff Schussel was informed that he would be required to pay for the costs of the replacement product and labor.

42. The offered product, associated costs, and damages should have been covered under the Lincoln warranty.

43. Defendant Lincoln has responded to the warranty claims of class members in the same or similar manner as it did Plaintiff Schussel's.

44. The above described pattern and practice by Defendant Lincoln has the effect of discouraging defect claims by class members.

45. Moreover, during contact with class members, Defendant Lincoln conceals its knowledge of product defects in the windows in the class members' residences.

46. As Defendant Lincoln has known or should have known of its Window defects and has failed to timely honor its warranty, the warranty has failed of its essential purpose and the limitations therein are null and void, and the Plaintiff and class members have otherwise not received the value for which their builders or contractors bargained at the time the Windows were purchased or transferred to homeowners.

47. The defects in Defendant Lincoln's Windows also make the Windows unfit for their intended use.

48. Given the leaking, rotting, premature degradation, and failure of the Windows, the Windows have a reduced life expectancy, and require unexpected maintenance, repair, and replacement by Plaintiff and class members.

49. The Window defects and resultant damages have caused a diminution of the value of the homes.

50. Defendant Lincoln knew or should have known that the Windows did and do not satisfy industry standards.

51. Defendant Lincoln knew or should have known that its Windows were defective in design and manufacture, not fit for their ordinary and intended use, not merchantable, and failed to perform in accordance with the advertisements, brochures, representations, marketing materials, and warranties disseminated by Defendant Lincoln.

52. Defendant Lincoln's Windows failed to conform to the reasonable expectations of ordinary consumers such as Plaintiff Schussel and class members.

53. Because the Windows leak, and allow for increased water absorption, water penetration, rot, degradation, cause reduced life expectancy, and otherwise fail, the Windows are neither durable nor suitable for use as an exterior building product.

54. The above-described defective conditions of the Windows and resultant damages are present in Plaintiff Shussel's home and are common among class members.

55. The Plaintiff and class members have been proximately damaged by the Windows' above-described defective condition and Lincoln's above-described conduct.

CLASS ACTION ALLEGATIONS

56. Plaintiff Schussel brings this action individually and as representative of all those similarly situated pursuant to Rule 23, SCRCP, on behalf of the Class. The Class is defined as follows:

All persons and entities that own structures located within the State of South Carolina in which Lincoln's vinyl clad, exterior glazed Windows are installed.

This class excludes:

- a) any Judge or Magistrate presiding over this action and members of their families;
- b) any employees of Lincoln;
- c) any entity in which Lincoln has a controlling interest or which has a controlling interest in Lincoln and its legal representatives, assigns, and successors;
- d) any person who has released Lincoln or is currently in litigation with Lincoln; and
- e) all persons who properly execute and file a timely request for exclusion from the Class.

Plaintiff proposes that the class be divided into subclasses if and as necessary to align class interests.

57. *Numerosity:* The Class is composed of a thousand or more persons geographically dispersed throughout the State of South Carolina, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class is ascertainable and identifiable from Lincolns' records or identifying marks on the Windows.

58. *Commonality*: The critical question of law and fact common to the Class that will materially advance the litigation is whether the Windows are inherently defective, contrary to the expectations imparted by Lincoln through its warranties, representations and omissions.

59. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- (a) Whether the Windows are defective;
- (b) Whether Lincoln was negligent in its design and manufacture of the Windows;
- (c) Whether Lincoln knew or should have known about the defective condition of the Windows;
- (d) Whether Lincoln concealed and/or failed to disclose the defective condition of the Windows to consumers;
- (e) Whether Lincoln breached its express and implied warranties;
- (f) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees, and costs from Lincoln; and
- (g) Whether Lincoln's conduct was negligent, reckless, willful, wanton, intentional, fraudulent or the like, entitling Plaintiffs to statutory or punitive damages from Lincoln.

60. *Typicality*: Plaintiff Schussel's claims are typical of the claims of the members of the Class, as all such claims arise out of Lincoln's conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective Windows and Lincoln's conduct in concealing the defect in the Windows to owners, contractors, developers, and suppliers.

61. *Adequate Representation*: Plaintiff Schussel will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class given the Plaintiff is a member of the Class he also seeks to represent. The Plaintiff has retained counsel experienced and competent in construction litigation, product liability, complex litigation and consumer class actions.

62. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court and/or courts throughout South Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

63. Moreover, Plaintiff envisions no unusual difficulty in the management of this action as a class action and the amount of money at stake for each member is not sufficient for each member to hire their own counsel and experts and to bring their own action.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

64. Plaintiff and class members are within the applicable statute of limitations for the claims presented hereunder because Plaintiff and class members did not discover the defect, and could not reasonably have discovered the defect.

65. Due to coverage by the cladding, Plaintiffs are often unaware of the wood rot, degradation, and other failures until the end or expiration of Lincoln's warranty period.

66. Defendant Lincoln is estopped from relying on any statutes of limitation or repose by virtue of their acts of concealment, which include Defendant Lincoln's concealment from Plaintiff, class members, and the general public that its Windows were defective, while continually marketing the Windows as a durable and suitable product.

67. Defendant Lincoln had a duty to disclose that its Windows were defective, unreliable, and inherently flawed in design and/or manufacture.

68. Plaintiff and class members had no knowledge of, and no reasonable way of discovering, the latent defects found in Defendant Lincoln's Windows at the time they purchased the product or their homes, residences, buildings, and other structures.

69. Defendant Lincoln did not notify, inform, or disclose to Plaintiff and class members that there were defects in the Windows.

70. Because Defendant Lincoln failed in its duty to notify Plaintiff and class members that its product was defective, the statute of limitations should be tolled on Plaintiff's and class members' claims.

ESTOPPEL FROM PLEADING WARRANTY LIMITATIONS AND DISCLAIMERS

71. Defendant Lincoln is also estopped from relying on any warranty limitation or disclaimer as a defense to Plaintiff's and class members' claims.

72. By virtue of Defendant Lincoln's acts, the Windows installed in Plaintiff's and class members' residences have not lived up to Defendant Lincoln's warranties and representations, and given the defective condition of the Windows and the premature

deterioration the Windows that require unexpected maintenance, wear and/or replacement, the Windows have not proven to be of value when compared to other window products.

73. Defendant Lincoln knew or should have known that its Windows were defective in design and/or manufacture, and said Windows were not fit for their ordinary and intended use, were not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendant Lincoln or with the reasonable expectations of ordinary consumers such as Plaintiff and class members.

74. Accordingly, any warranty provided by Defendant Lincoln fails its essential purpose because its purports to warrant that the Windows will be free from defects for a prescribed period of time when in fact said Windows fall far short of the applicable warranty period.

75. Moreover, Defendant Lincoln's warranties are woefully inadequate to repair and replace failed Windows, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available under Defendant Lincoln's warranties are limited to such an extent that they do not provide a minimum adequate remedy.

76. As a result, any time limitations or disclaimers which restrict the remedies encompassed within Defendant Lincoln's warranties are unconscionable and unenforceable, and therefore, Defendant Lincoln is estopped from relying on the same.

FOR A FIRST CAUSE OF ACTION
Negligence/Gross Negligence

77. The above allegations are incorporated as fully as if stated verbatim herein.

78. At all times material hereto, Defendant Lincoln designed and manufactured the Windows.

79. Defendant Lincoln had a duty to Plaintiff and class members to design and manufacture Windows that were free of latent defects that would cause the Windows to leak, rot, prematurely degrade, and otherwise fail.

80. Defendant Lincoln had a duty to Plaintiff and class members to test the Windows to ensure adequate performance of the windows for a reasonable period of use.

81. Defendant Lincoln had a duty to Plaintiff and class members to ensure that the window components were suitable as an exterior product, either by testing or by verifying third-party test results.

82. Defendant Lincoln had a duty to Plaintiff and class members to ensure their products complied with industry standards.

83. Defendant Lincoln had a duty to Plaintiff and class members to forewarn purchasers, installers, and users regarding the known risk of product failures.

84. Defendant Lincoln failed to exercise ordinary and reasonable care in the design and manufacture of the Windows.

85. Defendant Lincoln breached its duty to the Plaintiff and class members by failing to test the Windows to ensure adequate performance of the Windows for a reasonable period of use.

86. Defendant Lincoln breached its duty to Plaintiff and class members by failing to ensure that the window components were suitable, either by testing or verifying third-party test results.

87. Defendant Lincoln breached its duty to Plaintiff and class members by failing to ensure its products complied with industry standards.

88. Defendant Lincoln breached its duty to Plaintiff and class members by failing to forewarn purchasers, installers, and users regarding the known risk of product failures.

89. The Plaintiff and class have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Defendant Lincoln as above-described.

90. As Defendant Lincoln's conduct was grossly negligent, reckless, willful, wanton, intentional, fraudulent, or the like, Plaintiff class is entitled to an award of punitive damages against Defendant Lincoln.

FOR A SECOND CAUSE OF ACTION
Breach of Implied Warranty

91. The above allegations are incorporated as fully as if stated verbatim herein.

92. Defendant Lincoln is a designer, manufacturer, and supplier of the Windows, and for a number of years, marketed, warranted, distributed, and/or sold the Windows in South Carolina.

93. Defendant Lincoln manufactured and sold its Windows to Plaintiff, class members, and/or Plaintiff's and class members' agents, and in so doing, impliedly warranted to them that the product was of merchantable quality and fit for its intended use.

94. Defendant Lincoln's Windows were not of merchantable quality and not fit for intended use when they left the factory due to the defects in the Windows described herein.

95. The numerous and serious defects described herein make the Windows unfit and inappropriate for its intended use within structures.

96. The Windows are also unfit for their particular purpose. Defendant Lincoln manufactured and marketed its Windows for climates with multiple seasons, including rainy weather seasons. Defendant Lincoln knew, or should have known, that its Windows would be

subjected to varying temperatures and weather conditions, including rain cycles, throughout each year. Due to the defects and resultant leakage, rot, premature degradation, and other failures, the Windows are unfit for their particular purpose.

97. Even after Plaintiff Schussel became aware of the leakage, rot, premature degradation, and other failures, and gave proper notice to Defendant Lincoln, it failed to provide an adequate remedy.

98. As Defendant Lincoln's express warranty (and warranty claims process thereunder) has been breached and/or is unconscionable and/or fails of its essential purpose, as described above, the limitations on implied warranties contained within the express warranty should be deemed null and void and of no effect or limitation.

99. As a result, Defendant Lincoln breached its implied warranties to Plaintiff and class members by producing, manufacturing, distributing and selling them a defective product that was unfit for its intended use and for a particular purpose.

100. Plaintiff and class members suffered and will continue to suffer losses as alleged herein, in an amount to be determined at trial.

101. As a direct and proximate result of Lincoln's breach of the implied warranty on the Windows, the Plaintiff and class members have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
Breach of Express Warranty

102. The above allegations are incorporated as fully as if stated verbatim herein.

103. Lincoln marketed and sold Windows into the stream of commerce with the intent that the Windows would be purchased by Plaintiff and class members.

104. The representations and warranties made by Lincoln in marketing and selling its Windows formed part of the basis of the bargain between Defendant Lincoln and the purchasers of the Windows at the time of the sale.

105. Purchase agreements for the sale of residences or structures, including Plaintiff Schussel's purchase agreement, contained provisions transferring or assigning the manufacturers' warranties, including window warranties. Such provisions are valid transfers and assignments, and the transferred and assigned warranties formed part of the basis of the bargain at the time the home was purchased.

106. The Lincoln warranty certifies that Lincoln will replace or repair any of its products found to be defective by virtue of materials or workmanship provided that the defect occurs within its ten (10) year warranty period.

107. Upon information and belief, all of Lincoln's written warranties applicable to class members contain the same or similar provisions.

108. Through its written warranties, brochures, and marketing materials regarding the performance, durability, and quality of the Windows, Lincoln created express warranties for the benefit of Plaintiff and class members.

109. Thus, Lincoln's express warranties and representations are applicable to the Windows installed in Plaintiff's and class members' residences and/or structures.

110. Specifically, Lincoln expressly warranted to Plaintiff and class members that the Windows purchased by Plaintiff and class members were free from defects in materials and workmanship that substantially impair their operation or performance and that they would last at least 10 years.

111. The Lincoln warranty further certifies that Lincoln will replace or repair any of its products found to be defective by virtue of materials or workmanship provided that the defect occurs within its ten (10) year warranty period.

112. However, Lincoln's warranties fail their essential purpose because they purport to warrant that the Windows will be free from manufacturer defects for at least 10 years when in fact the Windows fall far short of the applicable warranty period. To the contrary, due to the leakage in the Windows, Lincoln's Windows begin failing after only several years' or less use.

113. Moreover, Lincoln's warranties are woefully inadequate to repair and replace failed Windows, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available in Lincoln's warranties are limited to such an extent that they do not provide a minimum adequate remedy. Further, the warranty is inadequate because Lincoln asserts that the defect is caused by the weather and/or installation.

114. Indeed, Lincoln has denied, failed to pay in full, or failed to respond to warranty claims.

115. Accordingly, the limitations on remedies and the exclusions in Lincoln's warranties are unconscionable and unenforceable.

116. As a result of Lincoln's breach of its express warranties, Plaintiff and class members have suffered actual damages in that they purchased homes, residences, buildings, and other structures containing defective Windows that have failed or are failing prematurely due to leakage and increased moisture absorption problems. This failure has required or is requiring Plaintiff and class members to incur significant expense in repairing or replacing their Windows.

Replacement is required to prevent on-going and future damage to the underlying structures or interiors of Plaintiff's and class members' residences.

117. Thus, as a direct and proximate result of Defendant Lincoln's breach of the express warranty on the Windows, the Plaintiff and class has suffered actual and consequential damages.

FOR A FOURTH CAUSE OF ACTION
Negligent Misrepresentation

118. The above allegations are incorporated as fully as if stated verbatim herein.

119. Lincoln, through its marketing materials, website, brochures, product literature, warranties and agents, made representations to the Plaintiff and class members, builders, suppliers and the public about the superior quality of its Windows and window components.

120. Lincoln transmitted said representations to the Plaintiff and class members, builders, suppliers and the public while failing to disclose the defective condition of its Windows, including the substantial leakage and consequential damages that would or could likely result from its Windows and Window defects.

121. Lincoln had a pecuniary interest in making these representations and non-disclosures and had a duty to communicate truthful information to the Plaintiff and class members, builders, suppliers and the public.

122. Lincoln breached its duty by failing to exercise due care in making the above-described representations and non-disclosures and the Plaintiff and class members, builders, suppliers and the public relied on these representations and non-disclosures.

123. The Plaintiff and class members have suffered a pecuniary loss as a direct and proximate result of their reliance upon these representations and non-disclosures.

FOR A FIFTH CAUSE OF ACTION
Strict Liability

124. The above allegations are incorporated as fully as if stated verbatim herein.

125. At all times relevant to this Complaint, Lincoln was in the business of designing, manufacturing, marketing, distributing and/or selling windows and had a statutory duty of care.

126. Defendant Lincoln breached this duty because its Windows are defectively designed and manufactured and are unreasonably dangerous in that they allow water to intrude into the interior of the residence, resulting in damage to the Windows and consequential damage to the structure into which the Windows are installed.

127. Lincoln breached this duty because its Windows are defectively designed and manufactured and are unreasonably dangerous in that they rot, degrade, and otherwise fail, thereby allowing air and water to intrude into the interior of the residence and cause damage to the Windows and consequential damage to the structure into which the Windows are installed.

128. Were the defects known at the time of design and manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing a product designed and manufactured in that manner.

129. Feasible alternatives existed to make the Windows safer for intended use at the time of design. Lincoln was very knowledgeable about the product and aware or should have been aware that feasible alternatives existed which would maintain the usefulness of the Windows and eliminate the harm.

130. The Windows reached the Plaintiff and class members, and were intended to reach the Plaintiff and class members, without substantial change in the condition in which they were sold.

131. Lincoln is in violation of South Carolina Code §15-73-10, for having designed, manufactured, marketed, distributed, and sold the Windows, which were defective, to the Plaintiff and class members.

132. As a direct, foreseeable, and proximate result of the sale of the defective windows to Plaintiff and class members, the Plaintiff and class members have suffered significant physical damage to its properties, other contamination and deterioration, as well as diminution in the value of the properties.

133. Plaintiffs demand a trial by jury.

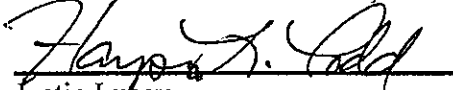
WHEREFORE, Plaintiff prays that this Court will certify a class and for judgment against Lincoln, for:

- 1) Plaintiff's and class members' actual and consequential damages as found by the jury; statutory or punitive damages against Lincoln; reasonable attorneys' fees; costs of suit; and prejudgment interest;
- 2) For such other and further relief at law or equity, both in general and special, as to which Plaintiff and class members by this Complaint show themselves to be entitled.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

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March 11, 2014
Charleston, South Carolina