

3. Venue is proper in this matter in the Charleston Division of this Court in accordance with 28 U.S.C. §1441(a).

4. Upon information and belief, the amount in controversy in this matter exceeds \$75,000.00. Plaintiff alleges that he represents a class of South Carolina residents who are entitled to the costs to repair damages to their homes and other buildings. The structures at issue were allegedly constructed using SIPS [SIPS are manufactured by Defendant using two sheets of oriented strand board ("OSB"), with insulating foam inserted between the OSB sheets.] designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, and sold by Defendant. Plaintiffs allege that the SIPS used were defective and have failed and that these defects have caused unreasonably dangerous and unsafe conditions and have caused substantial damage and deterioration of the structure of their homes and the exterior building envelopes and have caused damages to non-defective building components and other property. Furthermore, Plaintiffs seek costs and statutory attorney fees.

5. Defendant has filed no pleadings in this action with the Court of Common Pleas for the State of South Carolina in response to this Complaint; however, Defendant's Answer to the Plaintiffs' Complaint is filed herewith contemporaneously.

6. Defendant has furnished a copy of this Notice of Removal to the Clerk of Court for Charleston County.

WHEREFORE, Defendant General Panel Corp & Perma R Products, Inc. prays that this action be removed to the United States District Court for the District of South Carolina.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Everett A. Kendall, II", is written over a horizontal line.

Everett A. Kendall, II Fed. I.D. No. 6762

Richard E. McLawhorn, Fed. I.D. No. 11441

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

eak@swblaw.com

rem@swblaw.com

(803) 256-2233

ATTORNEYS FOR THE DEFENDANT

Columbia, South Carolina

March 2, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-10-6588

MARK LAWRENCE, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

GENERAL PANEL CORP., a division of
PERMA "R" PRODUCTS, INC.,

Defendant.

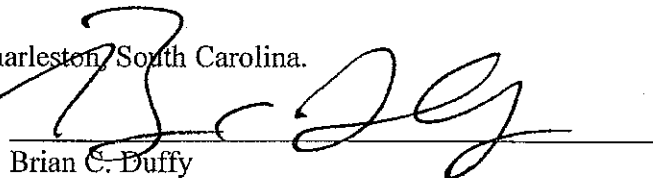
FILED
2017 JAN 25 PM 3:09
JULIE J. BRISTOL
CLERK OF COURT
BY

AMENDED SUMMONS

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Amended Class Action Complaint ("Complaint") in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to said Complaint on the subscribers at their offices, DUFFY & YOUNG, LLC, 96 Broad Street, Charleston, South Carolina, 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default to be rendered against you for the relief demanded in the Complaint.

This 25th day of January, 2017, at Charleston, South Carolina.



Brian C. Duffy
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-10-6588

MARK LAWRENCE, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

GENERAL PANEL CORP., a division of
PERMA "R" PRODUCTS, INC.,

Defendant.

AMENDED
CLASS ACTION COMPLAINT
(Jury Trial Requested)

FILED
JAN 25 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE ABOVE-NAMED DEFENDANT:

COMES NOW Plaintiff Mark Lawrence, individually ("Plaintiff Lawrence"), and on behalf of all others similarly situated (collectively, "Plaintiffs"), by and through the undersigned counsel, complaining of and demanding judgment against Defendant General Panel Corp., a division of Perma "R" Products, Inc. ("Defendant"), and in support thereof hereby alleges and says as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Lawrence is and was, at all times relevant hereto and referred to herein, a citizen and resident of Charleston County, South Carolina, and an owner of certain real property located at 675 Faulkner Drive in Mount Pleasant, South Carolina ("Home"), which is a subject of this lawsuit.

2. Upon information and belief, Defendant is and was, at all times relevant hereto and referred to herein, a corporation organized and existing under the laws of the State of Mississippi, with its principal place of business in Grenada, Mississippi, and operating as a division of Perma

“R” Products, Inc., which is a corporation organized and existing under the laws of the State of Tennessee.

3. Upon information and belief, Defendant is and was, at all times relevant hereto and referred to herein, doing substantial business in the State of South Carolina but was not registered to do business in the State of South Carolina.

4. Upon information and belief, Defendant is and was, at all times relevant hereto and referred to herein, engaged in the design, selection, production, manufacture, fabrication, construction, marketing, distribution, and sale of structural insulated panels (“SIPs”), which are used in the construction of certain structures, including in South Carolina.

5. This Court has jurisdiction over the subject matter of this action and over all parties hereto.

6. Venue is proper in Charleston County, South Carolina, pursuant to section 15-7-30(G)(1) of the South Carolina Code of Laws.

FACTUAL ALLEGATIONS

7. This matter arises out of the design, selection, production, manufacture, fabrication, construction, marketing, distribution, and sale of SIPs by Defendant for installation at the Home and for installation at homes, residences, buildings, and other structures currently or previously owned by other similarly situated individuals and entities.

8. SIPs are manufactured by Defendant using two sheets of oriented strand board (“OSB”), with insulating foam inserted between the OSB sheets.

9. At times relevant and material hereto, Defendant designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, and sold SIPs and represented, marketed, and warranted the same to be durable, structurally sound, reliable, free from defects,

and compliant with applicable standards, regulations, and requirements and otherwise appropriate for use in connection with and installation at the Home and at homes, residences, buildings, and other structures currently or previously owned by other similarly situated individuals and entities.

10. In contrast to Defendant's representations and warranties, the SIPs are and were defective, deficient, dangerous, and problematic at the time of sale and thereafter. As and including but not limited to the particulars alleged and described herein, the SIPs are defective and otherwise do not perform as warranted and represented and are not fit for their particular purpose and thereby have caused and will continue to cause other property damage to the other building components and to property on the interior of the Home, as well as to such homes, residences, buildings, and other structures currently or previously owned by similarly situated individuals and entities.

11. Notwithstanding the foregoing, as well as the defects and deficiencies outlined further herein, Defendant sold and placed the SIPs into the stream of commerce and, upon information and belief, continues to sell to the public, either directly or via its agents, suppliers, and joint venturers, and place the SIPs into the stream of commerce without providing or including the requisite, appropriate, or otherwise sufficient, instructions, warnings, stamping, and labeling, and without correcting inaccurate representations and warranties, despite possessing actual or constructive knowledge of the defects alleged herein and that such defects would cause, have caused, or will eventually cause consumers enormous property damage and substantial removal, repair, and replacement costs and other consequential damages.

12. Due to the defective SIPs designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, and sold by Defendant, and the extensive damages that Plaintiff Lawrence and other similarly situated individuals and entities have suffered and will continue to

suffer as a direct and proximate result thereof, this class action seeks to recover actual damages; punitive damages; treble damages; declaratory, injunctive, and other equitable relief; costs and attorneys' fees; and all other available and appropriate relief.

13. Plaintiff Lawrence's Home was constructed using SIPs designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, and sold by Defendant.

14. Upon information and belief, Defendant sold the SIPs that were installed on the Home to or through, and contracted with, Verdi Building Systems, Inc. or The Verdi Group (collectively, "Verdi"), or both, as its agents, suppliers, or by way of a joint venture, to install the SIPs in and on the Home without providing Verdi or Plaintiffs the requisite, appropriate, or otherwise sufficient, instructions or warnings or affixing to the SIPs the necessary stamps and labels.

15. At the time the Certificate of Occupancy was issued, the Home contained latent building defects, due to the foregoing deficiencies and those described further herein.

16. A preliminary inspection of the Home evidences that the SIPs are defective and have failed and that these latent building defects present an unreasonably dangerous and unsafe condition and have caused substantial damage to and deterioration of the Home's structure and exterior building envelope and have resulted in other consequential damage to non-defective building components and other property.

17. The defects at the Home have caused physical injury to the tangible property of others in that the continuous or repeated exposure to substantially the same general harmful conditions has resulted in physical damage to the components of the Home.

18. Defendant's acts and omissions as alleged herein have resulted in substantial building deficiencies, damages, and partial loss of use and enjoyment, and remedying such wrongs will result in additional consequential damages and loss of use.

19. Upon information and belief, the damage to the SIPs and the resulting actual and consequential damages have occurred and have been occurring in each and every year since the completion of construction of the Home and constitute "occurrences" and "property damage" under the standard or typical general liability policies.

20. To date, Plaintiff Lawrence has expended significant sums in attempting to identify, investigate, and correct the pervasive defects and deficiencies and, in doing so, has been and will be deprived of the use and enjoyment of the Home.

21. Plaintiff Lawrence has complied with section 40-59-840 of the South Carolina Code of Laws in that Plaintiff Lawrence reported the problems at the Home to Defendant and Defendant has failed or refused to adequately investigate or address the problems or to repair them.

CLASS ACTION ALLEGATIONS

22. Plaintiffs hereby repeat, reallege, and incorporate by reference the preceding averments of the foregoing paragraphs of the Complaint as if fully restated herein verbatim.

23. Pursuant to the common law of the State of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiff Lawrence brings this action both individually and as a proposed class action against Defendant on behalf of himself and all other similarly situated individuals and entities who have owned, own, or acquired homes, residences, buildings, or other structures, physically located in the State of South Carolina in or on which SIPs designed, selected, manufactured, fabricated, distributed, or sold by Defendant are or have been installed ("Class"), with the Class more particularly defined as follows:

- a. All individuals and entities that have owned, own, or acquired homes, residences, buildings, or other structures, physically located in the State of South Carolina in or on which SIPs designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, or sold by Defendant are or have been installed.

24. Plaintiffs propose that the Class be divided into subclasses if and as necessary to align class interests.

25. Excluded from the Class are: (a) any Judge presiding over this action and members of their family; (b) Defendant and any entity in which Defendant has a controlling interest or any entity that has a controlling interest in Defendant and their legal representatives, assigns, and successors of Defendant and Defendant's current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

26. *Numerosity.* The Class is, upon information and belief, composed of one hundred or more persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class is ascertainable and identifiable from Defendant's records or identifying marks on the SIPs.

27. *Commonality.* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues and questions include but are not limited to the following:

- a. Whether the SIPs are inherently defective, contrary to the expectations imparted by Defendant through its representations, actions, and omissions;
- b. Whether the SIPs have not performed or will not perform in accordance with the reasonable expectations of ordinary consumers;

- c. Whether the SIPs conform to the applicable standards, regulations, building codes, or other requirements;
- d. Whether Defendant knew or should have known of the defects alleged herein;
- e. Whether Defendant concealed from consumers or failed to disclose to consumers the defects alleged herein;
- f. Whether Defendant failed to provide adequate installation instructions or training;
- g. Whether Defendant failed to adequately stamp and label the SIPs in accordance with the applicable standards, regulations, building codes, or other requirements;
- h. Whether Defendant's warranty fails of its essential purpose;
- i. Whether Defendant failed to warn of actual or potential defects in its product or omitted critical information regarding defects in its product in its marketing, sales, and installation materials;
- j. Whether Defendant breached implied warranties of merchantability and fitness for a particular purpose;
- k. Whether Plaintiffs are entitled to all costs associated with replacement of their defective SIPs with non-defective SIPs or other materials;
- l. Whether Plaintiffs are entitled to restitution and/or disgorgement;
- m. Whether Plaintiffs are entitled to specific performance of the applicable warranty;
- n. Whether Defendant failed to perform or was negligent in undertaking or performing quality control measures;
- o. Whether Defendant has acted or refused to act on grounds generally applicable to the Class; and
- p. Whether Plaintiffs are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by members of the Class for repair or replacement of the SIPs and/or installation costs; (ii) the failure of consideration in connection with and/or difference in value arising out of the variance between the SIPs as warranted and the SIPs containing the defects; (iii) the diminution of resale value of the residences and buildings resulting from the defect in the SIPs; (iv) temporary repairs; and (v) compensation for loss of use;

28. *Typicality.* Plaintiff Lawrence's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's conduct in designing, manufacturing, fabricating, marketing, advertising, warranting, and selling the defective SIPs and Defendant's conduct in connection with and in response to the same.

29. *Adequate Representation.* Plaintiff Lawrence will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Lawrence has retained counsel experienced in the prosecution of complex class actions, including but not limited to consumer class actions involving, *inter alia*, breach of warranties, product liability, and product design defects.

30. *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 also providing unitary adjudication, economies of scale, and comprehensive supervision by a single court.

31. Defendant has acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendant engaged in a uniform and common practice. All Class members have the same legal rights to and interests in redress for damages associated with the defective SIPs at issue.

32. Plaintiffs envision no unusual difficulty in the management of this action as a class action.

33. Each Class member has an interest of more than \$100.00; however, the amount of money at stake for each Class member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF
LIMITATIONS AND REPOSE**

34. Plaintiffs hereby repeat, reallege, and incorporate by reference the preceding averments of the foregoing paragraphs of the Complaint as if fully restated herein verbatim.

35. Defendant had a duty to disclose that its SIPs were defective, unreliable, and inherently flawed in one or more of the aspects alleged herein.

36. Plaintiffs had no knowledge of, and no reasonable way of discovering, the latent defects found in Defendant's SIPs at the time they purchased the product or when the SIPs were installed on their homes, residences, buildings, and other structures.

37. Defendant did not notify, inform, or disclose to Plaintiffs that there were defects in the SIPs. After discovering the defective nature of Defendant's SIPs, Plaintiff Lawrence adequately notified Defendant.

38. Because Defendant failed in its duty to notify Plaintiff Lawrence and other Class members that its product was defective, any applicable statutes of limitations or repose should be tolled on Plaintiffs' claims.

**FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence/Negligence Per Se)**

39. Plaintiffs hereby repeat, reallege, and incorporate by reference the preceding averments of the foregoing paragraphs of the Complaint as if fully restated herein verbatim.

40. At all times relevant hereto and referred to herein, Defendant had a duty to consumers, including Plaintiff Lawrence and putative Class members, to exercise reasonable care

in the design, selection, production, manufacture, fabrication, construction, marketing, distribution, and sale of the SIPs and Defendant breached said duty.

41. Defendant had a duty to consumers, including Plaintiffs, to design, select, produce, manufacture, fabricate, construct, market, distribute, and sell, or place into the stream of commerce, SIPs that were free of latent defects and that would comply with and conform to the applicable standards, regulations, building codes, or other requirements.

42. Defendant had a duty to consumers, including Plaintiffs, to warn or advise of actual or potential defects, and not to conceal the same, and to include critical information regarding defects in its product in its marketing, sales, promotional, instructional, and installation materials.

43. Defendant had a duty to consumers, including Plaintiffs, to provide adequate installation instructions or training.

44. Defendant had a duty to Plaintiffs to ensure that the SIPs were suitable as a building component, whether by way of testing or by verifying third-party test or investigation results.

45. Upon information and belief, Defendant breached its duty of care by, among other things, negligently, carelessly, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, testing, inspecting, marketing, distributing, and selling the SIPs when it knew or should have known of their defective condition, in willful, wanton, and/or reckless disregard of the rights of others.

46. Upon information and belief, Defendant breached its duty of care to Plaintiffs in one or more of, but not limited to, the following particulars:

- a. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling an inherently defective product, contrary to the expectations imparted by Defendant through its representations, actions, and omissions;

- b. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs that fail to conform to the applicable standards, regulations, building codes, or requirements;
- c. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs that are not stamped or labeled in accordance the applicable standards, regulations, building codes, or requirements;
- d. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs without performing sufficient testing, investigations, or studies of or regarding the SIPs or verifying third-party test or investigation results;
- e. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs without providing adequate installation instructions or training;
- f. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs without performing or implementing sufficient quality control measures;
- g. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs without warning or advising consumers or users of actual or potential defects, or concealing or otherwise failing to disclose the same, or omitting critical information regarding defects in its product in its marketing, sales, promotional, instructional, and installation materials;
- h. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, selling, and placing the same into the stream of commerce SIPs that Defendant knew did not comply with its own specifications and requirements;
- i. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs to, or for installation by, a contractor that Defendant knew or should have known was unable or unwilling to install the SIPs in conformance with Defendant's specifications or in accordance the applicable standards, regulations, building codes, or requirements;
- j. Carelessly, negligently, and recklessly failing to investigate complaints about or related to its SIPs and the condition, construction, and installation thereof;
- k. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs with improper or insufficient component parts that fail to

conform to the applicable standards, regulations, building codes, or requirements; and

1. Carelessly, negligently, and recklessly designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling an unreasonably dangerous product that is dangerous to an extent that outweighs its utility and is beyond that which would be contemplated or reasonably expected by the ordinary consumer who purchases the same, with the ordinary knowledge common to the community, given the conditions and circumstances that foreseeably attend use of the SIPs.

47. Upon information and belief, Defendant failed to exercise ordinary and reasonable care in designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling the SIPs to consumers, including Plaintiffs, and in placing the same into the stream of commerce.

48. Defendant further breached its duty by failing to notify Plaintiffs of the defects in the SIPs they purchased and installed or were purchasing and installing and by failing to take any remedial action once Defendant was on notice that the SIPs were defective.

49. Defendant knew or should have known that the SIPs were defective, would fail prematurely, were not suitable for use as a product or building component, and otherwise were not as warranted and represented by Defendant.

50. Defendant knew or should have known that the SIPs sold to consumers, including Plaintiffs, and used in the construction of dwellings and other structures did not comply with the applicable standards, regulations, and requirements, thereby greatly compromising the value of the Home and any other structures containing the defective SIPs or rendering the Home and any other structures worthless, based upon the cost to identify, remove, and replace the SIPs that do not comply with the applicable standards, regulations, and requirements.

51. In addition to selling to consumers SIPs that it knew or should have known were not compliant with the applicable standards, regulations, and requirements, Defendant failed to

provide such consumers, including but not limited to purchasers, contractors, installers, and property owners, with the requisite, appropriate, or otherwise sufficient instructions or training regarding the form or manner of installing the SIPs or with warnings regarding the defective and deficient SIPs. Likewise, Defendant failed to verify or confirm such consumers' knowledge of or conformance with any specific installation requirements or instructions.

52. Upon information and belief, Defendant's negligent, careless, reckless, willful, and wanton acts and omissions, including but not limited to those set forth above, exhibit a conscious disregard for the rights of others.

53. As a direct and proximate result of Defendant's negligent, careless, reckless, willful, and wanton acts and omissions, including but not limited to those set forth above and alleged further herein, Plaintiffs have suffered actual damages in that they purchased and installed in or on their homes, residences, buildings, and other structures, a product that is defective and that fails prematurely due to inherent defects and that they were not adequately warned or advised of the foregoing defects.

54. Upon information and belief, the defects alleged herein have caused damage to Plaintiff Lawrence's Home and to Class members' existing homes, residences, buildings, and other structures, in addition to damage to and deterioration of the SIPs themselves, by, *inter alia*, jeopardizing the structural integrity and safety of the structures and the exterior building envelopes and by allowing moisture to enter through or collect within the SIPs. These failures have caused and will continue to cause Plaintiffs to incur substantial costs and expenses in repairing or replacing their SIPs as well as the resultant progressive property damage.

55. Defendant's negligent acts and omissions as pleaded herein were done in a willful, wanton, and grossly negligent manner, and with reckless indifference to the rights of others, thereby entitling Plaintiffs to recover punitive damages in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Strict Products Liability)

56. Plaintiffs hereby repeat, reallege, and incorporate by reference the preceding averments of the foregoing paragraphs of the Complaint as if fully restated herein verbatim.

57. At times relevant and material hereto, Defendant was engaged in the business of designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs, and their component parts, and specifically designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, and sold the SIPs at issue in this case.

58. The SIPs designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, sold, and placed into the stream of commerce by Defendant, were not materially modified, changed, altered, or abused by Plaintiffs or other users to a meaningful degree or extent and were in essentially the same condition at the time of the subject damages as when they left the hands of Defendant.

59. Defendant knew and intended that its SIPs would be used by members of the general public and knew of the specific uses, purposes, and requirements for which said SIPs would be utilized.

60. Defendant designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, sold, and placed into the stream of commerce SIPs, including their component parts, in a defective condition unreasonably dangerous to the user, which have failed or will catastrophically fail due to their defects as alleged herein.

61. The SIPs are defectively designed and manufactured and lack adequate warnings and instructions and are unreasonably dangerous in that, *inter alia*, they jeopardize the structural integrity and stability of the corresponding structures and allow water to collect in or invade the interior of the structure and the SIPs, which has resulted in or may result in mold or microbial growth and other consequential damage to the structure on or into which the SIPs are installed.

62. Defendant knew, or should have known, that the SIPs would, and did, reach Plaintiffs' possession without material or substantial change in or to the condition in which they were originally sold and placed into the stream of commerce by Defendant.

63. The SIPs were not materially altered in any way that would affect the dangerous conditions caused and created by Defendant.

64. Were the design defects known at the time of the design, selection, production, manufacture, fabrication, construction, marketing, distribution, and sale, a reasonable person would not have concluded that the utility of the product outweighed the risk inherent in marketing a product designed in that manner and with such other deficiencies as alleged herein.

65. Because Defendant defectively designed the SIPs, the SIPs were unreasonably dangerous to the Home and other property and to the proposed Class members' properties at the time Defendant sold the SIPs for their intended use on customers' structures.

66. The SIPs were defective and unreasonably dangerous for their intended use at the time they left the control of Defendant, as and in the manner alleged herein, despite the existence of feasible design alternatives.

67. Feasible alternatives, including designs, instructions, warnings, and manufacturing processes and procedures, existed to make the SIPs safer for their intended use at the time they were placed into the stream of commerce by Defendant. Upon information and belief, Defendant

knew or should have known that reasonable, and feasible, alternatives existed that would maintain the usefulness and utility of the SIPs and eliminate the dangers and resulting harm.

68. The defective, unreasonably dangerous, and unsafe condition of the SIPs as alleged herein was a direct and proximate cause of the damages sustained by Plaintiffs.

69. The defective SIPs caused, among other damages and expense, structural damage and repair and replacement costs.

70. The injuries and damages caused to Plaintiffs as a result of the defective SIPs could and should have been reasonably foreseen by Defendant.

71. Because of Defendant's defective design of the SIPs, Plaintiffs have been and will be damaged in an amount to be determined at trial.

72. Plaintiffs demand judgment against Defendant for compensatory damages for each member of the Class, for the establishment of a common fund, plus attorneys' fees, interest, and costs.

73. For the aforementioned reasons, Defendant is strictly liable to Plaintiffs under section 15-73-10 of the South Carolina Code of Laws, Section 402A of the Restatement (Second) of Torts, and applicable case law of the State of South Carolina.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)

74. Plaintiffs hereby repeat, reallege, and incorporate by reference the preceding averments of the foregoing paragraphs of the Complaint as if fully restated herein verbatim.

75. Upon information and belief, Defendant knew, at the time of the sale, the particular purpose for which the SIPs would be used by Plaintiff Lawrence, as well as other putative Class members, including the intended use and the installation location and corresponding climate and weather conditions.

76. Upon information and belief, Defendant further knew that Plaintiffs were relying on Defendant's skill or judgment, or both, to design, select, produce, manufacture, fabricate, construct, market, distribute, and furnish suitable goods in accordance with such purpose.

77. Moreover, Defendant knew, or should have known, and it was entirely foreseeable to Defendant that Plaintiff Lawrence and other putative Class members would, in purchasing the SIPs, act in response to and reliance upon any marketing and advertising materials and instructions promulgated by Defendant and the claims and representations contained therein.

78. Upon information and belief, Defendant impliedly warranted that the SIPs were fit for the particular purpose, in accordance with section 36-2-315 of the South Carolina Code of Laws, and Defendant breached this warranty by providing Plaintiffs with SIPs that were not fit for such particular purpose.

79. As a direct and proximate result of this breach, Plaintiffs have been injured as described herein and are entitled to judgment against Defendant in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

80. Plaintiffs hereby repeat, reallege, and incorporate by reference the preceding averments of the foregoing paragraphs of the Complaint as if fully restated herein verbatim.

81. At times relevant and material hereto, Defendant was engaged in the business of designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs, and their component parts, and specifically designed, selected, produced, manufactured, fabricated, constructed, marketed, distributed, and sold the SIPs at issue in this case.

82. Defendant impliedly warranted to consumers, including Plaintiff Lawrence and other putative Class members, whether directly, via its agents, joint venturers, or suppliers, or as a

third-party beneficiary or otherwise indirectly, that the SIPs would pass without objection in the trade under the contract description and be fit for the ordinary purpose for which the goods are used.

83. Defendant's SIPs were not of merchantable quality and not fit for their ordinary or intended use when they left Defendant's possession or were otherwise placed into the stream of commerce due to the defects and deficiencies in the SIPs as alleged and described herein.

84. The numerous and serious defects alleged and described herein make the SIPs unfit and inappropriate for installation and their ordinary or intended use on or in the Home or other such homes, residences, buildings, or structures currently or previously owned by putative Class members.

85. As a result, Defendant has breached its implied warranty of merchantability, as provided by section 36-2-314 of the South Carolina Code of Laws, by designing, selecting, producing, manufacturing, fabricating, constructing, marketing, distributing, and selling SIPs, and their component parts, which, as alleged and described herein, constitute a defective product that was unfit for its intended use.

86. As a direct and proximate result of this breach, Plaintiffs have been injured as described herein and are entitled to judgment against Defendant in an amount determined by the trier of fact.

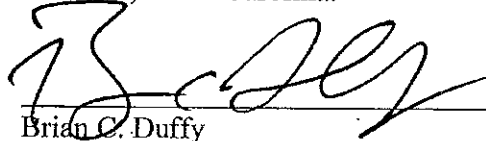
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lawrence, individually, and on behalf of himself and all others similarly situated, prays for relief and judgment against Defendant as follows:

- a. For an Order certifying the Class, pursuant to Rule 23, appointing Plaintiff Lawrence as representative of the Class, and appointing the law firm representing Plaintiff Lawrence as counsel for the Class;

- b. For the entry of judgment against Defendant on the foregoing causes of action in such amounts as may be proved at trial, including but not limited to compensatory, consequential, and punitive damages, and all other damages allowed by law, sustained by Plaintiff Lawrence and the Class;
- c. For injunctive or other equitable relief;
- d. For both pre-judgment and post-judgment interest at the maximum rate provided by law on any amounts awarded;
- e. For payment of reasonable attorneys' fees and costs as may be allowed by law; and
- f. For such other and further relief as the Court may deem just and proper.

This 28th day of January, 2017, at Charleston, South Carolina.



Brian C. Duffy
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 720-2044
Facsimile: (843) 720-2047
Attorneys for Plaintiff