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Attorneys for Plaintiffs Jeffrey Snyder, Martin and Beth Melnick, Lia Louthan and Summerfield Gardens Condominium

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEFFREY SNYDER, MARTIN and BETH
MELNICK, LIA LOUTHAN, and
SUMMERFIELD GARDENS
CONDOMINIUM on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

TAMKO BUILDING PRODUCTS, INC.,
a Missouri Corporation,

Defendant.

No. **1:15-CV-1892-TLN-KJN**

AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Jeffrey Snyder (“Snyder”), Martin and Beth Melnick (the “Melnicks”), Lia
2 Louthan (“Louthan”) and Summerfield Gardens Condominium (“Summerfield Gardens;”
3 collectively, “Plaintiffs”) on behalf of themselves and all persons and entities similarly situated
4 (the “Class”¹), by and through the undersigned counsel, allege as follows upon personal
5 knowledge as to themselves and their own acts and experiences and, as to all other matters, upon
6 information and belief based on, *inter alia*, investigation conducted by counsel.

7 **I. INTRODUCTION**

8 1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a
9 Class of individuals and entities who own or have owned homes, residences, buildings and other
10 structures on which fiberglass roofing shingles, sold under the name “Heritage” and manufactured
11 by TAMKO Building Products, Inc., a Missouri Corporation (formerly known as TAMKO
12 Roofing Products, Inc.) (“Defendant” or “TAMKO”), are or have been installed.

13 2. Defendant’s Heritage shingles are plagued by design and/or manufacturing flaws
14 that result in the shingles becoming brittle, cracking, curling, blistering, degranulating, growing
15 algae, absorbing moisture, failing to remain sealed, generally deteriorating and leaking. Yet
16 Defendant continues to sell the shingles to the public and continues to make false representations
17 and warranties despite the fact that the shingles are defective and will prematurely fail – causing
18 property damage and costing consumers substantial removal and replacement costs.

19 3. Defendant has failed to disclose these problems to consumers, including Plaintiffs
20 and the Class, and has breached its warranty by refusing to adequately compensate property
21 owners who have been injured as a result of the latent defects.

22 4. This class action seeks damages, punitive damages, injunctive relief, costs,
23 attorneys’ fees, and other relief as a result of Defendant’s willful, wanton, reckless, and/or grossly
24 negligent conduct in causing consumers’ homes, residences, buildings and other structures to be
25 in a defective, unsafe and unfit condition for habitation.

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¹ The Class is fully defined in paragraph 94 below.

II. PARTIES

5. At all relevant times, Plaintiff Jeffrey Snyder has been a citizen of California, residing in Tuolumne County.

6. At all relevant times, Plaintiffs Martin and Beth Melnick have been citizens of Connecticut, residing in Hartford County.

7. At all relevant times, Plaintiff Lia Louthan has been a citizen of Ohio, residing in Cuyahoga County.

8. At all relevant times, Summerfield Gardens Condominium has been a not-for-profit corporation formed under the Illinois Condominium Property Act, located in Madison County.

9. TAMKO Building Products, Inc. is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located in Joplin, Missouri. Prior to June 2006, TAMKO Building Products, Inc. was known as TAMKO Roofing Products, Inc.

10. Defendant designed, manufactured, warranted, advertised, and sold defective shingles that were installed on thousands of structures located in California, Connecticut, Ohio, Illinois and throughout the United States.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d). The matter in controversy in this class action exceeds \$5,000,000.00 exclusive of interest and costs, and Plaintiffs and most members of the Class are citizens of states other than the state in which Defendant is incorporated and has its primary place of business.

12. Venue is proper pursuant to 28 U.S.C. §1391(b) because: (1) a substantial part of the events giving rise to this action occurred in this District; and (2) a substantial part of the property that is the subject of this action is located in this District. In addition, Defendant distributes shingles through twenty-seven (27) California dealers and distributors within 100 miles of Plaintiff Snyder's home.

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13. As a result of Defendant marketing, distributing, promoting, and/or selling Heritage shingles throughout California, either directly or indirectly through third parties (such as the dealers and distributors mentioned above) or related entities, Defendant obtained the benefits of the laws of California and profited from California commerce.

14. Defendant conducted systematic and continuous business activities throughout the state of California and otherwise intentionally availed itself of the market in California through the promotion and marketing of its products.

IV. FACTUAL ALLEGATIONS

15. Since 1985, Defendant has been engaged in the business of designing, developing, manufacturing, distributing, marketing, selling, and installing fiberglass Heritage shingles. On its website, Defendant boasts that “Heritage Series Laminated Asphalt Shingles by TAMKO have always provided years of striking beauty and excellent roofing protection.”²

16. Defendant sells its products through a network of retailers, installers, dealers and distributors.

17. Heritage shingles are manufactured using the same basic formula: a base that consists of a double-layer fiberglass mat coated on both sides with asphalt, and a top layer of ceramic mineral granules along with a strip of asphalt sealant.

18. Defendant has manufactured and marketed its shingles under the American Heritage series with various product names including, but not limited to, Heritage, Heritage 50, Heritage 50 AR³, Heritage XL AR, Heritage 30, Heritage 30 AR, Heritage Vintage, Heritage Vintage AR, Heritage Premium, Heritage Woodgate, Heritage IR, Heritage Declaration, Heritage M50, Heritage MXL, Heritage M30, Heritage Stormfighter AR, and Heritage Windfighter.

19. Defendant maintains District Offices in Colorado, Alabama, Maryland, Texas and Missouri; Manufacturing Facilities in Alabama, Maryland, West Virginia, Tennessee, Kansas, Missouri, Florida and Texas; Warehouses in Colorado, Utah, Arizona, Nebraska, Oklahoma,

² See <http://www.tamko.com/ResidentialRoofing/LaminatedAsphalt/Heritage> (last visited November 6, 2015).

³ Defendant has defined “AR” as “[a] suffix used in TAMKO shingle product names denoting algae resistance.” See, e.g., <https://web.archive.org/web/20020605220426/http://www.tamko.com/glossary/glossaryalpha.asp?A>. Despite this definition, Defendant’s shingles promote the growth of algae.

1 Missouri and Florida; and a Public Warehouse in Texas.

2 20. Customers of Defendant make purchasing decisions based, in part, upon the
3 information presented by the company through its website, marketing literature, advertisements
4 and warranties.

5 21. Defendant has represented its shingles as durable, reliable and free from defects.
6 Specifically, on its website www.tamko.com, Defendant makes the following claims concerning
7 its shingles (including Heritage):

8 Offering quality roof protection is in our Heritage.

9 ***

10 Heritage Series Laminated Asphalt Shingles by TAMKO® have always
11 provided years of striking beauty and excellent roofing protection.

12 ***

13 Choosing TAMKO® products will provide professional-grade performance
14 to enhance roof protection.

15 ***

16 TAMKO products offer a powerful combination of cut, color and coverage
17 to give customers the beauty and performance they need.

18 ***

19 Nothing distinguishes the look of a home quite like an architecturally
20 shingled roof. But more than aesthetics alone, a roof should offer
21 performance and protection. TAMKO® offers a complete line of shingles
22 that delivers the cut, color and coverage that not only allows you to express
23 your style as a homeowner, but also helps protect your most valuable asset.
24 Now that's beauty that performs.

25 ***

26 Shingles with a great Heritage.

27 ***

28 The beautiful look that lasts.

- Extra-thick weather-resistant construction provides years of protection.

Reinforce the beauty with Heritage construction.

- Made with a double-layer fiberglass mat for strength.

- Coated on both sides with weathering-grade asphalt and topped with ceramic mineral granules for excellent roofing protection.
- Features self-sealing asphalt strip for added wind resistance.

- Improves the look and curb appeal of your home without the high costs or liabilities associated with wood.
- Excellent for new construction or reroofing.

BUILDING PRODUCTS FOR THE PROFESSIONAL.

Since 1944, building professionals and homeowners have looked to TAMKO for quality products that are built to perform.

22. Defendant has advertised that the shingles meet certain industry standards (*i.e.*, ASTM International – a standard setting organization that establishes industry standards for many different products) despite failing to test and adequately determine the reliability of its product when used in the real world.

23. Defendant states that its shingles are listed for and meet the following industry standards: ASTM D 3462; Class A Fire Resistance; Wind Resistance; UL Evaluation Report ER2919-01; UL Evaluation Report ER2919-02; UL 790/ASTM E 108, Class A; ASTM D 3161, Type I, Class F (110 mph); ASTM D 7158 Class H (150 mph); and UL 2390/ASTM D 6381 Class H (150 mph).⁴

24. Defendant's shingles do not conform to Defendant's express representations and do not conform to applicable building codes or industry standards.

25. Defendant's shingles were designed and are manufactured with less than the required amount of asphalt. This deficiency constitutes nonconformity with applicable industry standards and building codes and causes the shingles to prematurely degranulate, crack, blister and otherwise deteriorate and fail, resulting in moisture intrusion.

26. In addition to damages to their shingles and roofs, Plaintiffs and the Class have also suffered damage to the underlying structures, including to their real and personal property. The premature failure of Defendant's shingles allows moisture to enter the structures on which they are installed.

⁴ <https://www.tamko.com/ResidentialRoofing/LaminatedAsphalt/Heritage> (last visited November 9, 2015).

1 27. Defendant has had ample notice of the deficiencies described herein for many
2 years and has been extensively notified by its customers (by way of warranty claim submissions
3 and complaints) that its shingles are/were defective and have not functioned as advertised and
4 warranted.

5 28. Defendant has knowingly and intentionally concealed that, notwithstanding
6 statements on its website (such as the above), brochures, advertisements and warranties, its
7 shingles routinely deteriorate by becoming brittle, cracking, curling, blistering, degranulating and
8 failing to remain sealed far in advance of the expiration of their purported warranty periods, often
9 causing leaking and resulting in mold formation. Indeed, Defendant's shingles have deteriorated
10 and will continue to deteriorate at a rate which demonstrates their lack of durability and
11 resiliency.

12 29. Defendant has knowingly and intentionally concealed that it actually had no
13 intention of providing the services set forth in its purported warranties.

14 30. Defendant has routinely obstructed Class members' attempts at making warranty
15 claims for their defective shingles.

16 31. Defendant has ignored customers' complaints and concerns, and has failed to
17 implement any changes to its shingle products or warranty procedures to remedy the defects
18 associated with its products.

19 32. Had Defendant not withheld and omitted vital information concerning the design,
20 reliability and performance of the shingles, Plaintiffs and members of the Class would not have
21 purchased and/or installed the shingles on the roofs of their structures, or would have replaced
22 Defendant's shingles before the defects manifested.

23 33. Because the defects in Defendant's shingles are latent and not detectable until
24 manifestation, Plaintiff and the Class members were not reasonably able to discover their shingles
25 were defective until after installation, even with the exercise of due diligence.

26 34. Defendant has failed to adequately compensate Plaintiffs and the Class for
27 damages suffered as a result of the defective shingles.

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Frustrated Customer Postings

35. The following represents a small sample of internet postings by owners of Defendant's shingles [sic throughout]:

We had a 30 yr. roof installed on our home 10 yrs ago! We have been having trouble with this roof for the last 3 1/2 yrs, leaks and water damage! We ended up having to have a new roof put on our house because the shingles were Cracking, De-laminating and Disintegrating! We were told that the shingles were defectives! We filed a claim with Tamko and did what we were told to do! We sent them samples of the roof that were bad along with pictures of the roof! Now 8 weeks later they are telling us that the roof was not installed proper and that they will not reimburse us for the new roof!⁵

I purchased a new RYAN home in 2000 that has a TAMKO roof. The first time I had water damage and reported it TAMKO sent out a local consultant who tried to tell me the shingles was not breaking down and the tar on my home was bird droppings. I had another contract review my roof and he told me that was BULL. HE said he'd never seen shingle break down that fast. Now TAMKO is trying to say the cannot fix my roof because my shingle warranty is void since we had a wind event of 60 mile an hour winds (or more).⁶

These shingles are the worst I have ever seen and I was married to a roofing contractor. I bought a brand new house in Nov 2006 and in July I about lost my whole roof, water pouring in every room due to shingles flying off like frisbees. They are half the thickness of most and don't have enough tar to make them stick together. What a nightmare with buckets all over my 4 bedroom house, water pouring in like the falls in every room, in the middle of the night, while listening to shingles flapping all over the roof. Every room had to be treated for stains and painted. Don't buy Tamko!⁷

These, by far, are the worst shingles I have ever had installed. I had a professional installer put these on a few years ago (they are 30 year shingles)... It was a very warm day (90+) and the shingles did not seal on over half my roof. I have literally had to re-install almost half my roof in the past 5 years. I am just biding my time until I can install metal. Note: never buy this product!⁸

My 25 year warranty on these "upgraded" Tamko shingles is apparently worth nothing! The shingles are curling and look awful. There is also a great loss in granules with every rain. Our roofer that our whole family has used for 2 decades (with no problem ever) says the shingles are defective. Tamko says our very experienced roofer put the shingles on incorrectly and it's not their problem. Roofer says they are installed correctly. Tamko is also blaming winds for causing the damage despite the fact that all the roofs on other homes surrounding me are fine. So, I'm stuck with a crap roof and no help. Do not buy anything from Tamko!⁹

⁵ <http://mythreecents.com/reviews/tamko> (last visited November 6, 2015).

⁶ *Id.*

⁷ <http://www.roofery.com/shingles/reviews/tamko/> (last visited November 6, 2015). On www.roofery.com, sixty (60) TAMKO shingles consumers have given a Satisfaction Rating of "Very Unsatisfied" – the lowest Satisfaction Rating choice offered by the website.

⁸ *Id.*

⁹ *Id.*

1 My roof is falling apart, I thought it was hail damage, but the insurance guy and
 2 the roofing contractor said the shingles were defective. You can't believe the hoops
 3 you have to jump through for Tamco to tell you it's not their fault it's the installer's
 4 fault. They will not send anyone to even look at your roof. Your contact person is
 5 a very rude woman who could care less. This company does not stand behind their
 product! I have a 30 year roof. I've been in my home since 2000. I've replaced two
 places on the roof so far. Shingles are falling off right and left. I will have to get an
 attorney to get this matter solved. Do not use this company!!!!¹⁰

6 36. Defendant should have or could have reasonably expected that Plaintiffs and
 7 members of the Class would be adversely affected by defective shingles as a result of using the
 8 shingles in a foreseeable way on their homes, residences, buildings and other structures.

9 **Failure to Warn**

10 37. Defendant failed to properly design, test, and manufacture its shingles. The
 11 shingles reached the consuming public, including Plaintiffs, without substantial correction of their
 12 defects and without warning of the latent defects alleged herein.

13 38. Defendant was aware that problems existed with its shingles, and had a duty to
 14 disclose these issues to Plaintiffs and the Class. However, Defendant did not provide warnings
 15 with the shingles or otherwise warn consumers, installers and/or distributors of the problems or
 16 dangers that it knew existed. In fact, to this day, Defendant has concealed its knowledge of the
 17 defects and the potential defects in its shingles from the public.

18 39. Defendant never informed Plaintiffs, or other consumers of its shingles, of the
 19 defective nature of its shingles and the resultant inability of such products to last for the periods
 20 for which they would reasonably be expected to last, that is, for the length of the warranties they
 21 were seemingly arbitrarily given.

22 40. To this day, Defendant has not recalled its defective shingles.

23 **Inadequate Testing**

24 41. Defendant did not test the shingles in their anticipated environments before
 25 selling them to the public.

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¹⁰ *Id.*

1 49. After the “Full Start Period,” Defendant’s warranties limit a consumer’s relief to
2 a prorated amount of replacement shingles (less than the quantity needed to replace the defective
3 shingles on a consumer’s roof) and excludes the cost of labor. Such limitations are inadequate to
4 redress failure of the shingles or any resulting damage to the underlying structure. Thus,
5 Defendant’s warranties fail of their essential purpose.

6 50. Defendant has received a litany of complaints from consumers, such as Plaintiffs
7 and other members of the Class. Defendant has refused to convey any notice to consumers
8 concerning defects with its shingles, repair defective roofs fully, or repair property damaged by
9 the premature failure of its product.

10 51. As described herein, Defendant routinely impedes consumers’ efforts to make
11 warranty claims for their shingles. When consumers contact Defendant, Defendant’s customer
12 service representatives dissuade consumers from filing warranty claims.

13 52. When Defendant does allow a consumer to submit a warranty claim, Defendant
14 often denies the claim without proper justification, blaming the failure of the shingles on
15 improper installation or fictional circumstances such as high wind events that never occurred.

16 53. When Defendant does accept a warranty claim, Defendant’s response is woefully
17 inadequate in that it limits the recovery of Plaintiffs and members of the Class to replacement
18 costs of individual shingles piece-by-piece, and excludes costs of labor to remove and replace the
19 shingles.

20 **Plaintiffs’ Facts**

21 **Plaintiff Jeffrey Snyder**

22 54. Plaintiff Jeffrey Snyder is the first and current owner of a home located in
23 Sonora, California.

24 55. In or around October 2004, Defendant’s Heritage 30 shingles were installed on
25 Snyder’s home during construction. Snyder purchased the home from the builder in or around
26 February 2005.

27 56. In 2013, a contractor told Snyder that his shingles were in very poor condition.
28 The shingles had bare patches and granules had collected in Snyder’s gutters.

1 57. Over the next year, the condition of Snyder's shingles worsened. Snyder noticed
2 severe degranulation, cracking and curling of the shingles. The shingles had become brittle and
3 dry and felt could be seen through several of the shingles. Three roofing contractors advised
4 Snyder that the shingles needed to be replaced.

5 58. In June 2015, Snyder became aware that the shingles were Defendant's Heritage
6 30 shingles and contacted Defendant to file a warranty claim. Defendant's representative was
7 hostile and attempted to prevent Snyder from making a claim. Snyder insisted, so the
8 representative finally opened a claim. Pursuant to Defendant's instructions, Snyder provided
9 Defendant with the requested information and sent two (2) full shingles from his roof to
10 Defendant.

11 59. In response to Snyder's warranty claim, on August 14, 2015, Defendant sent
12 Snyder a settlement certificate for 15 of the 23 squares of shingles needed for Snyder to reroof his
13 home and a check for \$100. This relief was insufficient.

14 60. In order to accept the settlement certificate and check, Snyder was required to
15 sign a release that would waive any claims Snyder may have related to Defendant's defective
16 product. Snyder refused to sign Defendant's release or cash the check.

17 61. In June 2015, in order to avoid further damage, Snyder was forced to have his
18 defective TAMKO roof replaced at a cost of approximately \$12,000, an expense he should not
19 have had to incur for another two decades.

20 **Plaintiffs Martin and Beth Melnick**

21 62. Plaintiff Martin and Beth Melnick are the owners of a home located in West
22 Hartford, Connecticut, which they purchased in or around November 1988.

23 63. The Melnicks selected Defendant's Heritage 50 AR shingles for the reroofing of
24 their home because of the duration of the warranty, which indicated that the shingles would last
25 50 years, and the fact that the product was "algae resistant."

26 64. In September 2002, the Heritage 50 AR shingles were installed on the Melnicks'
27 home. The installation of Defendant's shingles cost the Melnicks \$6,400.

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1 65. The Melnicks' shingles have cracked and degranulated, including many areas
2 where all of the shingles' granules have come off. These issues have caused water to leak into the
3 Melnicks' home in at least four distinct places, damaging the home's ceiling and walls.

4 66. In June 2013, the ceiling in the Melnicks' master bedroom began to crack and
5 peel. This leak has continued to get worse in the time since.

6 67. In late 2014, the Melnicks noticed water marks on the perimeter wall of the
7 Melnicks' master bedroom.

8 68. Also in late 2014, a ceiling leak occurred in one of the home's bathrooms.

9 69. In June 2015, the Melnicks discovered water coming down the wall in the upper
10 level hallway of their home. This leak has caused the paneling on the wall to delaminate and has
11 resulted in mold formation.

12 70. Additionally, the Melnicks' shingles are now covered with areas of dark mildew
13 and are growing moss.

14 71. In December 2014, the Melnicks initiated a warranty claim with Defendant. The
15 Melnicks followed Defendant's burdensome warranty claim instructions, including removing at
16 their own expense and sending to Defendant two shingle samples, one exhibiting cracking and
17 one exhibiting mildew.

18 72. On March 23, Defendant sent the Melnicks a letter denying their warranty claim.
19 In the letter, Defendant made several dubious assertions, including that the cracks in the
20 Melnicks' shingles were a part of the "natural aging process."

21 73. The problems with the Melnicks' shingles will force them to prematurely replace
22 the roof at their own expense to avoid further damage to their home. Had their consumer
23 expectations been met, the costs associated with such replacement would not be expected to be
24 incurred for nearly four more decades.

25 **Plaintiff Lia Louthan**

26 74. Plaintiff Lia Louthan is the owner of a home located in Walton Hills, Ohio.

27 75. In or around September 2004, Defendant's Heritage 30 shingles were installed on
28 Louthan's home.

1 76. Before installation of the shingles, Louthan reviewed Defendant's brochure and
2 selected Defendant's Heritage 30 shingles for the reroofing of the home because, based on
3 Defendant's representations, the shingles would last 30 years and she would not have to replace
4 the shingles for a long time.

5 77. Louthan's shingles have cracked, blistered, degranulated, discolored and curled.
6 These issues have caused water to leak into Louthan's home, damaging the home's ceiling, crown
7 molding, walls and floors.

8 78. In November 2015, Louthan's husband, Jeffrey Louthan, contacted Defendant to
9 file a warranty claim. Defendant's representative refused to allow Mr. Louthan to make a claim.

10 79. In order to avoid further damage, Louthan now must prematurely replace her
11 entire roof at her own expense, an expense she should not have had to incur for another two
12 decades.

13 **Plaintiff Summerfield Gardens Condominium**

14 80. Plaintiff Summerfield Gardens Condominium is a condominium association that
15 owns and is responsible for the exterior portions, including the roofs, of twenty (20) duplex
16 buildings located in Godfrey, IL.

17 81. Construction of the Summerfield Gardens buildings began in 2003. Defendant's
18 Heritage 30 shingles were installed on the Summerfield Gardens buildings during construction.

19 82. Summerfield Gardens' shingles have cracked, severely degranulated, curled and
20 come loose. These issues have caused water to leak into several of the Summerfield Gardens
21 homes causing additional damage.

22 83. In 2014, Summerfield Gardens discovered an issue with Defendant's shingles that
23 were installed on the front half 5004-5006 Castlegate Lane. Summerfield Gardens made a
24 warranty claim to Defendant concerning these shingles. Defendant provided Summerfield
25 Gardens with a prorated amount of shingles – 22 of the 33 needed to replace the front half of the
26 roof. This relief was insufficient. In October 2014, Summerfield Gardens replaced the shingles
27 on the front half of the roof of 5004-5006 Castlegate Lane at a cost of over \$9,000.

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1 84. Defendant advised Summerfield Gardens that the shingles on 5004-5006
2 Castlegate Lane were part of a bad batch. This representation caused Summerfield Gardens to
3 believe the problem was isolated to the shingles on 5004-5006 Castlegate Lane and that their
4 other shingles were not defective. Despite admitting that the shingles on the front half of the roof
5 of 5004-5006 Castlegate Lane were problematic, Defendant still only provided Summerfield
6 Gardens with a prorated amount of shingles.

7 85. In April 2015, Summerfield Gardens replaced the shingles on the back half of the
8 roof of 5004-5006 Castlegate Lane at a cost of nearly \$10,000.

9 86. In July 2015, Summerfield Gardens had the roofs of the other nineteen (19)
10 buildings inspected. Because of the shingles' defects, It was recommended that Summerfield
11 Gardens completely replace five (5) of those roofs as soon as possible and, at a minimum,
12 perform repairs on seven (7) of the other roofs.

13 87. In 2015, Summerfield Gardens replaced the roofs on 5029-5031 Castlegate Lane
14 and 5025-5027 Castlegate Lane at a cost of nearly \$34,000. Defendant's shingles on both of
15 these buildings had failed causing damage to the roof sheathing and resulting in water entering
16 and damaging the attics of those buildings.

17 88. The problems with the Summerfield Gardens' shingles will force it to
18 prematurely replace the roofs at its own expense to avoid further damage to the structures. Had
19 Summerfield Gardens' consumer expectations been met, the costs associated with such
20 replacements would not be expected to be incurred for approximately two more decades.

21 **V. ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS**

22 89. Defendant knew that its shingles were defective prior to the time of their sale, and
23 intentionally concealed material information and the truth concerning its products from Plaintiffs,
24 members of the Class and the general public, all the while continually marketing and promoting
25 the shingles. Defendant's acts of fraudulent concealment include failing to disclose that
26 Defendant's shingles were defectively designed and/or manufactured and would deteriorate in
27 less than their expected lifetime, leading to damage.

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1 90. Because the defects in the Defendant's shingles are latent and not detectable until
2 manifestation, and given the locations where Defendant's shingles are foreseeably placed and
3 therefore difficult to view, defects are difficult to detect. Plaintiffs and the Class members were
4 not reasonably able to discover that Defendant's shingles were defective and unreliable until
5 recently, despite their exercise of due diligence. Thus, the running of the applicable statutes of
6 limitation have been tolled with respect to any claims that Plaintiffs or the Class members have
7 brought or could have brought as a result of the unlawful or fraudulent course of conduct
8 described herein.

9 91. Defendant had a duty to disclose that its shingles were defective, unreliable and
10 inherently flawed in their design and/or manufacture and that the shingles would fail within their
11 expected period of use, resulting in significant damages and eventually catastrophic failure.
12 Notwithstanding its duty to inform Plaintiffs and Class members, Defendant has never disclosed
13 the defects to Plaintiffs and the Class.

14 92. As a result, Defendant is estopped from pleading any statute of limitations defense.
15 Defendant actively concealed and misrepresented to Plaintiffs and the Class members facts that
16 were essential to understanding that Plaintiffs and the Class members had claims against
17 Defendant, and thus, Defendant has acted to prevent Plaintiffs and the Class members from
18 learning that they possessed claims against Defendant. Had Plaintiffs and the Class been aware
19 of the facts which Defendant misrepresented and concealed, they would have commenced suit
20 against Defendant before the running of any statute of limitations alleged to be applicable to this
21 case.

22 93. Defendant is further estopped from asserting any statute of limitations defense,
23 contractual or otherwise, to the claims alleged herein by virtue of its fraudulent concealment.

24 **VI. CLASS ACTION ALLEGATIONS**

25 94. Plaintiffs seek to bring this case as a class action, under Federal Rule of Civil
26 Procedure 23, on behalf of themselves and all others similarly situated. The proposed Class is
27 defined as:

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1 All individuals and entities that own or have owned TAMKO Heritage shingles, or
2 who own or have owned homes, residences, buildings or other structures located in
3 the United States, on which TAMKO Heritage shingles are or were installed (the
4 “Class”). Excluded from the Class are TAMKO, any entity in which TAMKO
has a controlling interest or which has a controlling interest in TAMKO, and
TAMKO’s legal representatives, assigns and successors.

5 95. Alternatively, or in addition to the nationwide Class claims, Plaintiffs brings these
6 claims under Federal Rule of Civil Procedure 23 on behalf of themselves and on behalf of
7 Subclasses of individuals and entities residing in California, Connecticut, Ohio and Illinois (the
8 “California Subclass,” the “Connecticut Subclass,” the “Ohio Subclass” and the “Illinois
9 Subclass”). The California Subclass is defined as:

10 All individuals and entities that own or have owned TAMKO Heritage shingles, or
11 who own or have owned homes, residences, buildings or other structures located in
12 the State of California, on which TAMKO Heritage shingles are or were installed
13 (the “California Subclass”). Excluded from the California Subclass are TAMKO,
any entity in which TAMKO has a controlling interest or which has a controlling
interest in TAMKO, and TAMKO’s legal representatives, assigns and successors.

14 The Connecticut Subclass is defined as:

15 All individuals and entities that own or have owned TAMKO Heritage shingles, or
16 who own or have owned homes, residences, buildings or other structures located in
17 the State of Connecticut, on which TAMKO Heritage shingles are or were
18 installed (the “Connecticut Subclass”). Excluded from the Connecticut Subclass
are TAMKO, any entity in which TAMKO has a controlling interest or which has
a controlling interest in TAMKO, and TAMKO’s legal representatives, assigns
and successors.

19 The Ohio Subclass is defined as:

20 All individuals and entities that own or have owned TAMKO Heritage shingles, or
21 who own or have owned homes, residences, buildings or other structures located in
22 the State of Ohio, on which TAMKO Heritage shingles are or were installed (the
“Ohio Subclass”). Excluded from the Ohio Subclass are TAMKO, any entity in
which TAMKO has a controlling interest or which has a controlling interest in
TAMKO, and TAMKO’s legal representatives, assigns and successors.

23 The Illinois Subclass is defined as:

24 All individuals and entities that own or have owned TAMKO Heritage shingles, or
25 who own or have owned homes, residences, buildings or other structures located in
26 the State of Illinois, on which TAMKO Heritage shingles are or were installed (the
“Illinois Subclass”). Excluded from the Illinois Subclass are TAMKO, any entity
27 in which TAMKO has a controlling interest or which has a controlling interest in
TAMKO, and TAMKO’s legal representatives, assigns and successors.

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1 96. Plaintiffs reserve the right to redefine the Class (and/or Subclasses) prior to the
2 certification of the Class (and/or Subclasses).

3 97. The Class and Subclasses described in this Complaint are collectively referred to
4 as the “Class.”

5 **Numerosity**

6 98. The use of Defendant’s shingles has damaged and continues to damage a vast
7 number of persons and entities who own homes, residences, buildings or other structures on
8 which its shingles are installed in California, Connecticut, Ohio, Illinois and throughout the
9 United States. The members of the Class are so numerous that joinder of all members is
10 impracticable.

11 99. The exact number of Class members is unknown as such information is in the
12 exclusive control of Defendant. However, given the widespread use of Defendant’s shingles in
13 the United States, and the size and reach of its operations, Plaintiffs believe the Class consists of
14 thousands of consumers statewide and nationwide, making joinder of Class members
15 impracticable.

16 **Commonality and Predominance**

17 100. The claims of Plaintiffs and members of the Class rely upon common questions of
18 law and fact. Plaintiffs and all Class members are also entitled to a common form of relief,
19 namely damages.

20 101. The harm that Defendant’s shingles has caused, is causing, and will cause is
21 substantially uniform with respect to all Class members. Common questions of law and fact that
22 affect the Class members include, but are not limited to:

- 23 a. Whether Defendant’s shingles are defective;
- 24 b. Whether Defendant’s shingles suffer from common design defects, as alleged
25 herein;
- 26 c. Whether the design defects concerning Defendant’s shingles result in the
27 Defendant’s shingles being prone to becoming brittle, cracking, curling,
28 blistering, degranulation, growing algae, absorbing moisture, failing to remain

1 sealed, general deterioration and failing to perform the tasks for which they
2 were designed;

3 d. Whether Defendant knew or should have known of the defect in the Defendant's
4 shingles prior to putting them into the stream of commerce for purchase by
5 Plaintiffs and the Class;

6 e. Whether Defendant has failed to prevent damages caused by the defective
7 product it designed, manufactured and sold into the stream of commerce;

8 f. Whether Defendant has failed to advise consumers about the likelihood of
9 premature failure of Defendant's shingles;

10 g. Whether Defendant owes a duty to Plaintiffs and the Class to exercise reasonable
11 and ordinary care in the formulation, testing, design, manufacture, warranting
12 and marketing of the shingles;

13 h. Whether Defendant breached its duty to Plaintiffs and the Class by designing,
14 manufacturing, advertising and selling to Plaintiffs and the Class defective
15 shingles;

16 i. Whether Defendant breached its duty to Plaintiffs and the Class by failing to
17 promptly remove the defective shingles from the marketplace or take other
18 remedial action;

19 j. Whether Defendant's shingles fail to perform in accordance with the reasonable
20 expectations of ordinary consumers;

21 k. Whether Defendant's shingles fail to perform as advertised, marketed and
22 warranted;

23 l. Whether Defendant breached express warranties;

24 m. Whether Defendant breached implied warranties;

25 n. Whether Defendant acted negligently;

26 o. Whether Defendant violated consumer fraud acts and/or deceptive trade practice acts;

27 p. Whether Defendant was unjustly enriched by the sale of the defective shingles;

28 q. Whether Defendant's conduct should be enjoined;

1 r. Whether Defendant should be required to notify all Class members about its
2 defective shingles; and

3 s. Whether Plaintiff and the Class have sustained damages and, if so, the proper
4 measure of such damages.

5 102. These common questions of law and fact predominate over any individual
6 questions that may exist or arise.

7 **Typicality**

8 103. Plaintiffs' claims are typical of absent Class members' claims. All claims arise
9 from the same factual background and legal theories. Plaintiffs and all members of the Class
10 sustained damages arising out of Defendant's wrongful course of conduct. The harms suffered by
11 Plaintiffs are typical of the harms suffered by the members of the Class, and Plaintiffs and other
12 members of the Class have an interest in preventing Defendant from engaging in such activity in
13 the future.

14 **Adequacy of Representation**

15 104. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
16 have retained counsel competent and experienced in class action and product liability litigation
17 and have no conflict of interest with other Class members in the maintenance of this class action.
18 Plaintiffs have no relationship with Defendant except as consumers who purchased Defendant's
19 products. Plaintiffs will vigorously pursue the claims of the Class.

20 **Superiority**

21 105. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy because joinder of all members is impracticable. Furthermore,
23 because the damages suffered by individual Class members may be relatively small, the
24 expense and burden of individual litigation makes it impracticable for the Class to individually
25 seek redress for the wrongs done to them. Plaintiffs believe that Class members, to the extent
26 they are aware of their rights against Defendant herein, would be unable to secure counsel to
27 litigate their claims on an individual basis because of the relatively small nature of the
28 individual damages, and that a class action is the only feasible means of recovery for the Class

1 members. Individual actions also would present a substantial risk of inconsistent decisions, even
2 though each Class member has an identical claim of right against Defendant.

3 **Manageability**

4 106. Plaintiffs envision no difficulty in the management of this action as a class action.
5 The advantages of maintaining the action as a class action far outweigh the expense and waste of
6 judicial effort that would result from hundreds or thousands of separate adjudications of these
7 issues for each member of the Class or the injustice that would result if individual actions could
8 not be brought due to lack of notice or resources.

9 107. Through the actions and omissions described herein, Defendant has acted or
10 failed to act on grounds that apply generally to the Class, so that final injunctive or declaratory
11 relief is proper as to the Class as a whole.

12 108. Class treatment further ensures uniformity and consistency in results and will
13 provide optimum compensation to members of the Class for their injuries.

14 **FIRST CAUSE OF ACTION**

15 **Breach of Express Warranty**

16 109. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference
17 each preceding and succeeding paragraph as though fully set forth herein.

18 110. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf
19 of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

20 111. Defendant marketed and sold its shingles into the stream of commerce with the
21 intent that the shingles would be purchased by contractors, subcontractors, and end users for
22 installation on homes, residences, buildings and other structures owned and bought by Plaintiffs
23 and the Class.

24 112. Defendant expressly warranted in writing that its shingles are well-suited as
25 roofing material with a useful life of 30-50 years, depending on the version of shingles. For
26 purchasers of the shingles or of homes, residences, buildings and other structures with the
27 shingles, these warranties became part of the basis of the bargain and Plaintiffs relied upon the
28 warranties.

1 113. Pursuant to Defendant's express warranty, Defendant is obligated to replace
2 defective shingles or provide monetary relief. In exchange for these duties and obligations,
3 Defendant received payment of the purchase price for the shingles from Plaintiffs and the Class.

4 114. Defendant created additional express warranties for the shingles through its sales
5 brochures, catalogs, website and marketing materials. These warranties have full force and effect,
6 notwithstanding any limitations in the "limited warranties" from Defendant.

7 115. Defendant made the express warranties to the ultimate consumers, such as
8 Plaintiffs and the Class.

9 116. Plaintiffs and the Class have afforded Defendant ample opportunities to repair the
10 complained-of defects, and Defendant has failed to remedy same in a reasonable amount of time.
11 Plaintiffs put Defendant on notice, by way of warranty claims, that their shingles were
12 problematic.

13 117. Defendant failed to perform as required under its purported warranties and
14 breached said contracts and agreements by providing Plaintiffs and the Class with shingles that
15 were defective and unfit for their intended use, and failed to appropriately replace the shingles or
16 otherwise provide relief.

17 118. Defendant breached its express warranties because the shingles do not perform as
18 promised. The shingles become brittle, crack, curl, blister, degranulate, grow algae, absorb
19 moisture, fail to remain sealed, otherwise deteriorate and leak. As a result, the shingles are not
20 suitable for use as a roofing product.

21 119. After determining that they had suffered damages from the failure of the shingles,
22 Plaintiffs gave Defendant notice of the breaches of warranty, and Defendant had actual notice of
23 these breaches.

24 120. The limitations and exclusions in Defendant's warranties are unconscionable and
25 unenforceable.

26 121. Defendant denied or failed to pay all costs and damages associated with replacing
27 Plaintiffs' shingles.

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1 122. Plaintiffs and the Class have sustained consequential or incidental losses that
2 would not have been sustained but for Defendant's failure of remedy to repair or replace.

3 123. The consequential or incidental losses sustained by Plaintiffs and the Class were
4 within the contemplation of the parties, and therefore should not be prohibited when such
5 bargained for remedy fails of its essential purpose.

6 124. Defendant's purported "limited warranty" fails of its essential purpose because it
7 purportedly warrants that the shingles will perform as promised for at least 30, 40 or 50 years,
8 depending on the shingles purchased, when in fact, the shingles do not last for these periods.

9 125. Defendant's purported "limited warranty" also fails of its essential purpose in that
10 it limits recovery to the prorated replacement of shingles, as well as excludes the cost of labor.

11 126. Defendant's purported "limited warranty" further fails of its essential purpose in
12 that the replacement shingles provided thereby are the same defective shingles.

13 127. Such limitations are inadequate to redress failure of the shingles or any resulting
14 damage to the underlying structure. As a result, the "limited warranty" does not provide a
15 minimum adequate remedy.

16 128. Because Defendant's warranty fails in its essential purpose, Plaintiffs and the
17 Class are entitled to recover available damages.

18 129. Defendant's shingles were defective at the time they were acquired by Plaintiffs
19 and members of the Class.

20 130. Defendant knew that its shingles were defective, yet continued to represent that
21 they were free of defects. Plaintiffs and members of the Class had no ability to detect the defect
22 nor received notice thereof.

23 131. Plaintiffs and the Class have relied on Defendant's express warranties to their
24 detriment.

25 132. Because of Defendant's breach of warranty, Plaintiffs and the Class suffered and
26 will continue to suffer damages, including but not limited to any damage to underlying structures
27 caused by the deterioration or failure of the shingles, and any other compensatory or

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consequential damages. Plaintiffs and the Class reserve their right to seek all damages available by statute or law.

SECOND CAUSE OF ACTION

Breach of the Implied Warranty of Merchantability

133. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

134. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

135. Defendant designed, manufactured, and sold its shingles knowing that the shingles would be installed on homes, residences, buildings and other structures owned or bought by Plaintiffs and members of the Class.

136. Defendant is a merchant of the shingles and marketed, promoted, and sold the shingles to the consuming public.

137. Defendant expected the consuming public, including Plaintiffs and Class members, to install and use Defendant's shingles on their homes, residences, buildings and other structures and such use was reasonably foreseeable. The shingles sold by Defendant were not merchantable at the time Defendant sold them.

138. Defendant warranted to Plaintiffs and members of the Class that its shingles were of a quality that would pass without objection in the trade and were at least fit for the ordinary purposes for which such goods were used, and in all other respects were of merchantable quality.

139. Plaintiffs and members of the Class relied on that implied warranty.

140. Defendant breached its implied warranty of merchantability because Defendant's shingles were not of merchantable quality as they became brittle, cracked, curled, blistered, degranulated, grew algae, absorbed moisture, failed to remain sealed, otherwise deteriorated and caused leaking, and were unfit for the ordinary purposes for which they were designed and used.

141. Given where Defendant's shingles are installed – permanently affixed to the roof – any limitation of remedies claimed by Defendant must fail of its essential purpose in that if the shingles fail, significant damage to property will occur and the replacement of the failed shingles

1 and the repairs necessitated by the failure cannot be accomplished without considerable
2 consequential cost and expense.

3 142. Defendant has been notified by Plaintiffs of the defective nature of its shingles
4 and of its breach of warranty within a reasonable time of discovery. As a direct and proximate
5 result of Defendant's breach of the implied warranty of merchantability, Plaintiffs and members
6 of the Class have been damaged in an amount to be proven at trial.

7 **THIRD CAUSE OF ACTION**

8 **Breach of the Implied Warranty of Fitness for a Particular Purpose**

9 143. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference
10 each preceding and succeeding paragraph as though fully set forth herein.

11 144. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf
12 of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

13 145. Defendant designed, manufactured, and sold its shingles knowing that they would
14 be installed on the homes, residences, buildings and other structures owned or bought by
15 Plaintiffs and members of the Class.

16 146. Defendant marketed, promoted, and sold the Defendant's shingles for installation
17 and use on homes, residences, buildings and other structures owned or bought.

18 147. Defendant knew that the shingles it designed, manufactured, and sold were to be
19 used by Plaintiffs, Class members and other consumers on their homes, residences, buildings and
20 other structures.

21 148. Plaintiffs relied on Defendant's skill and/or judgment to furnish the shingles for
22 use on their homes, residences, buildings and other structures which they owned.

23 149. Defendant impliedly warranted that roofs using Defendant's shingles would be fit
24 for the particular purpose of providing aesthetically pleasing protection from the elements for
25 homes, residences, buildings and other structures owned by Plaintiffs and members of the Class.

26 150. The Defendant's shingles were not fit for the particular purpose for which they
27 were intended and became brittle, cracked, curled, blistered, degranulated, grew algae, absorbed
28 moisture, failed to remain sealed, otherwise deteriorated, prematurely failed and caused leaking

1 when installed on Plaintiffs' and Class member's homes, residences, buildings and other
2 structures.

3 151. Defendant was properly notified of the defective nature of its shingles and of its
4 breach of the implied warranty of fitness for a particular purpose within a reasonable time of its
5 discovery.

6 152. Given where Defendant's shingles were installed – permanently affixed to the
7 roof – any limitation of remedies claimed by Defendant must fail of its essential purpose in that if
8 the shingles fail, significant damage to property will occur and the replacement of the failed
9 shingles and the repairs necessitated by the failure cannot be accomplished without considerable
10 consequential cost and expense.

11 153. As a direct and proximate result of Defendant's breach of implied warranty of
12 fitness for a particular purpose, Plaintiffs and members of the Class have been damaged in an
13 amount to be proven at trial.

14 **FOURTH CAUSE OF ACTION**

15 **Strict Liability – Design Defect**

16 154. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference
17 each preceding and succeeding paragraph as though fully set forth herein.

18 155. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf
19 of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

20 156. Defendant designed its shingles to be used and installed on the Plaintiffs' and
21 Class members' homes, residences, buildings and other structures.

22 157. The design of Defendant's shingles, including the formulation and composition of
23 the material making up the shingle is defective and because of such design defects, Defendant's
24 shingles are unreasonably dangerous to the consuming public, including Plaintiffs and members
25 of the Class. In contravention of Section 402A of the Restatement (Second) of Torts, Defendant's
26 shingles posed a substantial likelihood of harm at the time they were sold.

27 158. The design defect in Defendant's shingles existed at the time the shingles were
28 sold and/or when the shingles left Defendant's possession or control.

159. The risks inherent in the design of Defendant's shingles outweigh the benefits of its design.

160. Feasible design alternatives existed to make Defendant's shingles safer for their intended use at the time of their design.

161. Defendant's shingles were expected to be and were installed in consumers' homes, residences, buildings and other structures, including Plaintiffs' homes, without substantial change in its condition from the time of their design, manufacture and sale.

162. Defendant is strictly liable for the injuries that the defective shingles have caused Plaintiffs and members of the Class.

163. The injuries caused to Plaintiffs as a result of Defendant's defective shingles could and should have been reasonably foreseen by Defendant.

164. As a proximate result of the defective design of the Defendant's shingles, Plaintiffs and the Class have incurred and will incur damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Strict Liability – Manufacturing Defect

165. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

166. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

167. Defendant manufactured its shingles to be used and installed on Plaintiffs' and Class member's homes, residences, buildings and other structures.

168. When the shingles left Defendant's control, they deviated in a material way from their design and/or performance standards. As a result, Defendant's shingles were unreasonably dangerous to the consuming public, including the Plaintiffs.

169. The Defendant's shingles were defectively manufactured and posed a substantial likelihood of harm at the time they were sold and/or when the shingles left Defendant's possession or control.

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170. Defendant's shingles were expected to be and were installed in consumers' homes, residences, buildings and other structures, including Plaintiffs' homes, without substantial change in their condition from the time of their manufacture and sale.

171. Defendant is strictly liable for the injuries that the defective shingles have caused Plaintiffs and members of the Class.

172. The injuries caused to Plaintiffs as a result of Defendant's defective shingles could and should have been reasonably foreseen by Defendant.

173. As a proximate result of Defendant's defective manufacture of the shingles, Plaintiffs have incurred and will incur damages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

Strict Liability – Failure to Warn

174. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

175. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

176. Defendant designed and manufactured the roofing shingles used and installed on Plaintiffs' and Class members' homes, residences, buildings and other structures.

177. When Plaintiffs and members of the Class bought Defendant's shingles, they were not aware of the dangerous and destructive nature of the shingles. Defendant knew or had reason to know that those consumers would not realize the dangerous condition of the shingles.

178. Defendant did not provide, and Defendant's shingles did not contain, adequate warnings and as a result, the shingles were unreasonably dangerous to the consuming public, including the Plaintiffs and members of the Class.

179. The defect in Defendant's shingles, including the lack of warnings, existed at the time the Defendant's shingles were sold and/or when the shingles left Defendant's possession or control.

180. Defendant's shingles were expected to be and were installed on consumers' homes, residences, buildings and other structures, including the homes of Plaintiffs and members

1 of the Class, without substantial change in their condition from the time of their manufacture or
2 sale.

3 181. Defendant is strictly liable for the damage that its defective shingles and its lack
4 of warnings have caused Plaintiffs. Such harm would not have been suffered if Defendant had
5 provided adequate warnings or instructions.

6 182. The injuries caused to Plaintiffs and Class members as a result of the Defendant's
7 defective shingles could and should have been reasonably foreseen by Defendant.

8 183. As a proximate result of Defendant's failure to give adequate warnings or
9 instructions regarding any reasonably foreseeable problems, Plaintiffs and members of the Class
10 have incurred and will incur damages in an amount to be proven at trial.

11 **SEVENTH CAUSE OF ACTION**

12 **Negligence**

13 184. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference
14 each preceding and succeeding paragraph as though fully set forth herein.

15 185. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf
16 of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

17 186. Defendant designed, developed, formulated, tested, manufactured and sold
18 Defendant's shingles for use and installation on homes, residences, buildings and other structures.

19 187. Defendant was negligent in that it failed to use reasonable care when it designed,
20 developed, formulated, tested, manufactured and sold its shingles.

21 188. Defendant's shingles are unreasonably dangerous when used on homes,
22 residences, buildings and other structures.

23 189. Defendant owed a duty to the consuming public to design, develop, formulate,
24 test and manufacture a product reasonably free of defect. Defendant further had a duty not to put
25 defective and dangerous products such as its shingles on the market.

26 190. At the time Defendant was selling its shingles, Defendant was aware, or
27 reasonably should have been aware, of the foreseeable risks associated with the use of its
28 shingles.

191. Defendant was negligent and breached its duty to the consuming public, including Plaintiffs, by designing, developing, formulating, testing, manufacturing and selling Defendant's shingles that, under ordinary use, are subject to becoming brittle, cracking, curling, blistering, degranulating, growing algae, absorbing moisture, failing to remain sealed, otherwise deteriorating, prematurely failing and causing leaks.

192. The injuries sustained by Plaintiffs and members of the Class could have been reasonably foreseen by Defendant.

193. As a direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiffs and members of the Class have incurred and will incur damages in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

Negligent Failure to Warn

194. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

195. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

196. Defendant owed a duty to the consuming public to design, develop, formulate, test, and manufacture a product reasonably free of defect.

197. Defendant had a duty to disclose to the consuming public the foreseeable risks associated with the use of its shingles on homes, residences, buildings and other structures.

198. Defendant was aware, or reasonably should have been aware, of the foreseeable risks associated with the use of its shingles on homes, residences, buildings and other structures.

199. Defendant was negligent in that it knew or, by the exercise of reasonable care, should have known that Defendant's shingles under ordinary use in homes, residences, buildings and other structures, might be harmful or injurious to the consuming public, including the Plaintiffs and members of the Class, but failed to use reasonable care to warn Plaintiffs and members of the Class and the consuming public of the potentially harmful and injurious effects in the manner that a reasonable person would under the same or similar circumstances.

200. Defendant failed to exercise reasonable care and give adequate warnings or instructions to consumers about the reasonably foreseeable dangers that could result from using Defendant's shingles under reasonably foreseeable conditions.

201. Consumers using and installing Defendant's shingles were not aware of the dangerous nature of them.

202. Plaintiffs were not aware of the dangerous and destructive nature of the shingles and Defendant knew or had reason to know that consumers would not realize the dangerous condition of them.

203. Due to Defendant's failure to provide consumers with adequate warnings or instruction about the dangerous and destructive nature of the shingles, Plaintiffs and members of the Class have been harmed. Such harm would not have been suffered if Defendant provided adequate warnings or instructions.

204. As a direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiffs and members of the Class have incurred and will incur damages in an amount to be proven at trial.

NINTH CAUSE OF ACTION

Unjust Enrichment

205. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

206. Substantial benefits have been conferred on Defendant by Plaintiffs and the Class by purchasing Defendant's shingles, and Defendant knowingly and willingly accepted and enjoyed those benefits.

207. Defendant knew or should have known that payments received from Plaintiffs and the Class for the shingles were paid with the expectation that the shingles would perform as represented.

208. Defendant's retention of these benefits is inequitable.

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

210. As a direct and proximate cause of Defendant's wrongful conduct and unjust enrichment, Plaintiffs and the Class are entitled to an accounting, restitution, attorneys' fees, costs and interest.

TENTH CAUSE OF ACTION

Fraudulent Concealment

211. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

212. At all times mentioned herein, Defendant, through its experience, was in a position of superiority to Plaintiffs and the Class members and had the duty and obligation to disclose to Plaintiffs the true facts and its knowledge concerning its shingles; specifically, that its product was defective, would prematurely fail, and otherwise was not as warranted and represented by Defendant. Defendants made the affirmative representations as set forth in this Complaint to Plaintiffs, the Class, and the general public prior to the date Plaintiffs purchased the shingles, while at the same time concealing the material defects described herein. All of these facts were material to Plaintiffs' and Class members' purchase decisions.

213. The material facts concealed or not disclosed by Defendant to Plaintiffs and the Class are material facts that a reasonable person would have considered to be important in deciding whether or not to purchase Defendant's shingles.

214. At all times mentioned herein, Defendant intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiffs with the intent to defraud as herein alleged (i.e., reported that its warranties for certain time periods would be honored and that its shingles met ASTM and industry requirements).

215. At all times mentioned herein, Plaintiffs and members of the Class reasonably relied on Defendant to disclose those material facts set forth above. If Defendant had disclosed these facts to Plaintiffs and the Class, and had Plaintiffs and the Class been aware of said facts, they would either negotiated additional warranty coverage, negotiated a lower price to reflect the risk or simply avoided the risk all together by purchasing different shingles. Further, Plaintiffs

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1 and the Class would have replaced the defective shingles on their roofs sooner, potentially
2 preventing damage to their homes.

3 216. Defendant continued to conceal the defective nature of its shingles even after
4 members of the Class began to report problems and submit warranty claims. Indeed, Defendant
5 continues still to cover up and conceal the true nature of the problem.

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

9 **ELEVENTH CAUSE OF ACTION**

10 **Negligent Misrepresentation**

11 218. Plaintiffs Snyder, Louthan and Summerfield Gardens incorporate by reference
12 each preceding and succeeding paragraph as though fully set forth herein.

13 219. Plaintiffs Snyder, Louthan and Summerfield Gardens bring this Count on behalf
14 of the Class, the California Subclass, the Ohio Subclass and the Illinois Subclass.

15 220. Defendant represented that its shingles conformed to all applicable building codes
16 and industry standards and that the shingles would be free from defects for at least 30 years.
17 Defendant marketed, advertised and sold its shingles without adequate testing and without
18 warning Plaintiff and the Class that it had not adequately tested the shingles.

19 221. These misrepresentations and omissions concerned material facts that influenced
20 Plaintiffs and the Class members in their decisions to purchase Defendant's shingles or homes,
21 residences, buildings and other structures on which the shingles were installed.

22 222. Defendant intended to supply these misrepresentations and omissions to
23 Plaintiffs, the Class members, and other purchasers, and intended that the recipients act upon
24 them by purchasing the shingles.

25 223. Defendants, at the time it made these representations, knew or should have known
26 that these representations were false or were made without knowledge of their truth or falsity.

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224. Plaintiffs and Class members justifiably and detrimentally relied on these representations and, as a proximate result thereof, have and will continue to suffer damages in an amount to be determined at trial.

225. Plaintiffs and the Class members incurred monetary losses as a result of Defendant's wrongful conduct because: (a) they would not have purchased Defendant's shingles or homes, residences, buildings and other structures on which the shingles were installed on the same terms if the true facts concerning the shingles' defects had been known; (b) the shingles did not perform as promised; and (c) Plaintiffs and the Class have been damaged and continue to suffer damages, in an amount to be determined at trial.

TWELFTH CAUSE OF ACTION

**Violation of Song-Beverly Consumer Warranty Act,
(Cal. Civ. Code §§ 1790, *et seq.*)**

226. Plaintiff Jeffrey Snyder incorporates by reference each preceding and succeeding paragraph as though fully set forth herein.

227. Plaintiff Snyder brings this Count on behalf of the California Subclass.

228. Pursuant to the Song-Beverly Consumer Warranty Act (the “Song-Beverly Act”), Cal. Civ. Code §§ 1790, *et seq.*, Defendant’s shingles constitute “consumer goods” used primarily for personal, family or household purposes, and Plaintiff Snyder and the other members of the California Subclass have used the shingles primarily for those purposes.

229. Plaintiff Snyder and the other members of the California Subclass are “buyers” of consumer goods under the Song-Beverly Act.

230. Defendant is a “manufacturer” and/or “distributor” under the Song-Beverly Act.

231. Pursuant to the Song-Beverly Act, purchases of Defendant's shingles in California were accompanied by implied warranties of merchantability and fitness.

232. Contrary to these applicable implied warranties, the Defendant's shingles at the time of sale and thereafter, were neither merchantable nor fit for their particular purpose. Instead of being reliable, durable and free of defects, the Defendant's shingles are defective and prematurely fail, becoming brittle, cracking, curling, blistering, degranulating, growing algae,

1 absorbing moisture, failing to remain sealed, otherwise deteriorating and causing leaking. These
2 issues manifest within the applicable express warranty period for the shingles.

3 233. Defendant's actions, as complained herein, breached the implied warranties that
4 the shingles were of merchantable quality and fit for such use, in violation of Cal. Civ. Code §§
5 1792 and 1792.1.

6 234. In addition to replacement or reimbursement for the defective shingles, Plaintiff
7 Snyder and the other members of the California Subclass are entitled to all incidental,
8 consequential, and general damages resulting from Defendant's failure to comply with its
9 obligations under the Song-Beverly Act.

10 235. Plaintiff Snyder and the other members of the California Subclass are entitled
11 under the Song-Beverly Act to recover as part of the judgment a sum equal to the aggregate
12 amount of costs and expenses, including attorneys' fees reasonably incurred in connection with
13 the commencement and prosecution of this action.

14 236. Plaintiff Snyder and the other members of the California Subclass are entitled, in
15 addition to the amounts recovered, to recover all statutory damages for Defendant's willful failure
16 to comply with its responsibilities under the Song-Beverly Act.

17 **THIRTEENTH CAUSE OF ACTION**

18 **Violation of California Consumers Legal Remedies Act**
19 **(Cal. Civ. Code §§ 1750, *et seq.*)**

20 237. Plaintiff Jeffrey Snyder incorporates by reference each preceding and succeeding
21 paragraph as though fully set forth herein.

22 238. Plaintiff Snyder brings this Count on behalf of the California Subclass.

23 239. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750,
24 *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices
25 undertaken by any person in a transaction intended to result or which results in the sale or lease of
26 goods or services to any consumer."

27 240. Defendant's shingles are "goods" as defined in Cal. Civ. Code § 1761(a).

28 ///

1 241. Plaintiff Snyder and the other California Subclass members are “consumers” as
2 defined in Cal. Civ. Code § 1761(d), and Plaintiff Snyder, the other California Subclass members,
3 and Defendant are “persons” as defined in Cal. Civ. Code § 1761(c).

4 242. As alleged above, Defendant made numerous representations concerning the
5 quality and performance of its shingles.

6 243. In purchasing and installing the shingles manufactured by Defendant, or
7 purchasing homes, residences, buildings and other structures on which the defective shingles
8 manufactured by Defendant had been installed, Plaintiff and the other California Subclass
9 members were deceived by Defendant’s failure to disclose that the shingles are defective and will
10 prematurely fail.

11 244. Defendant’s conduct, as described herein, was and is in violation of the CLRA.
12 Defendant’s conduct violates at least the following enumerated CLRA provisions:

- 13 a. Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics,
14 uses, and benefits which they do not have;
- 15 b. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
16 standard, quality, or grade, if they are of another;
- 17 c. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them
18 as advertised; and
- 19 d. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied
20 in accordance with a previous representation when they have not.

21 245. As alleged above, Defendant omitted numerous material facts and made
22 numerous material statements about the benefits and characteristics of its shingles that were either
23 false or misleading. Each of these statements contributed to the deceptive context of Defendant’s
24 unlawful advertising and representations as a whole.

25 246. Plaintiff and the other California Subclass members have suffered injury in fact
26 and actual damages resulting from Defendant’s material omissions and misrepresentations
27 because they paid an inflated price for Defendant’s shingles.

28 ///

1 247. Defendant knew, should have known, or was reckless in not knowing of the
2 defective design and/or manufacture of its shingles, that its shingles did not comply with
3 applicable building codes or industry standards, and that the shingles were not suitable for their
4 intended use. Defendant nevertheless failed to warn Plaintiff and members of the Ohio Subclass
5 about these defects despite having a duty to do so.

6 248. The facts concealed and omitted by Defendant to Plaintiff and the other
7 California Subclass members are material in that a reasonable consumer would have considered
8 them to be important in deciding whether to purchase and install the shingles manufactured by
9 Defendant, or purchase homes, residences, buildings and other structures on which the defective
10 shingles manufactured by Defendant had been installed. Had Plaintiff and the other California
11 Subclass members known about the defective nature of the shingles, they would not have
12 purchased and installed the shingles manufactured by Defendant, or purchased homes, residences,
13 buildings and other structures on which the defective shingles manufactured by Defendant had
14 been installed, or would not have paid the prices they paid.

15 249. Plaintiff has provided Defendant with notice of its violations of the CLRA
16 pursuant to Cal. Civ. Code § 1782(a). The notice was transmitted to Defendant on December 11,
17 2015. On December 31, 2015, counsel for Defendant responded to Plaintiff's counsel by letter
18 and rejected Plaintiff's demand.

19 250. Plaintiff and the other California Subclass members' injuries were proximately
20 caused by Defendant's fraudulent and deceptive business practices.

21 251. Therefore, Plaintiff and the other California Subclass members are entitled to
22 equitable and monetary relief under the CLRA, including, but not limited to, a permanent
23 injunction against Defendant to refrain from continued advertising of the shingles at issue herein
24 that omits material facts about product performance, injunctive relief forcing Defendant to replace
25 and repair all shingles at issue herein for members of the Subclass, consequential damages for
26 members of the Subclass who have replaced or will replace the shingles at issue herein, plus costs
27 and attorneys' fees pursuant to California Civil Code §1780(d).

28 ///

FOURTEENTH CAUSE OF ACTION

**Violation of California Unfair Competition Law
(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

252. Plaintiff Jeffrey Snyder incorporates by reference each preceding and succeeding paragraph as though fully set forth herein.

253. Plaintiff Snyder brings this Count on behalf of the California Subclass.

254. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

255. Defendant's conduct, as described herein, was and is in violation of the UCL. Defendant's conduct violates the UCL in at least the following ways:

a. By knowingly and intentionally concealing from Plaintiff and the other California Subclass members that Defendant's shingles suffer from a design and/or manufacturing defect while obtaining money from Plaintiff and the California Subclass;

b. By marketing Defendant's shingles as durable, free of defects and ASTM-acceptable when it knew the shingles would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not as warranted and represented by Defendant; and

c. By limiting its warranty obligations in an unfair and unconscionable way in light of its failure to disclose the defective nature of the shingles.

256. Defendant's unfair and deceptive acts and practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff and members of the California Subclass, about the true performance and characteristics of the shingles.

257. Defendant's misrepresentations and omissions alleged herein caused Plaintiff and the other California Subclass members to make purchases of the shingles manufactured by Defendant, or purchases of homes, residences, buildings and other structures on which the defective shingles manufactured by Defendant had been installed. Absent those

1 misrepresentations and omissions, Plaintiff and the other California Subclass members would not
2 have purchased and installed the shingles manufactured by Defendant, or purchased homes,
3 residences, buildings and other structures on which the defective shingles manufactured by
4 Defendant had been installed, or would not have purchased and installed the shingles
5 manufactured by Defendant, or purchased homes, residences, buildings and other structures on
6 which the defective shingles manufactured by Defendant had been installed at the prices they
7 paid. If Defendant had not failed to disclose and actively concealed the material fact that its
8 shingles are defective and will prematurely fail, Plaintiff and members of the California Subclass
9 would have replaced the defective shingles on their roofs sooner, potentially preventing damage
10 to their homes.

11 258. Accordingly, Plaintiff and the other California Subclass members have suffered
12 injury in fact including lost money or property as a result of Defendant's misrepresentations and
13 omissions.

14 259. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or
15 practices by Defendant under Cal. Bus. & Prof. Code § 17200.

16 260. Plaintiff requests that this Court enter such orders or judgments as may be
17 necessary to enjoin Defendant from continuing its unfair, unlawful, and/or deceptive practices
18 and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition,
19 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code §
20 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below.

21 **FIFTEENTH CAUSE OF ACTION**

22 **Violation of California False Advertising Law**
23 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

24 261. Plaintiff Jeffrey Snyder incorporates by reference each preceding and succeeding
25 paragraph as though fully set forth herein.

26 262. Plaintiff Snyder brings this Count on behalf of the California Subclass.

27 263. California Bus. & Prof. Code § 17500 states: "It is unlawful for
28 any...corporation...with intent directly or indirectly to dispose of real or personal property...to

1 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to
2 be made or disseminated before the public in this state,...in any newspaper or other publication,
3 or any advertising device,...or in any other manner or means whatever, including over the
4 Internet, any statement...which is untrue or misleading, and which is known, or which by the
5 exercise of reasonable care should be known, to be untrue or misleading....”

6 264. As alleged herein, Defendant caused to be made or disseminated through
7 California and the United States, through advertising, marketing and other publications,
8 statements that were untrue or misleading, and which were known, or which by the exercise of
9 reasonable care should have been known to Defendant, to be untrue and misleading to consumers,
10 including Plaintiff and the other California Subclass members.

11 265. Defendant has violated § 17500 because the misrepresentations and omissions
12 regarding the quality and performance of its shingles were material and likely to deceive a
13 reasonable consumer.

14 266. Plaintiff and the other California Subclass members have suffered an injury in
15 fact, including the loss of money or property, as a result of Defendant’s unfair, unlawful, and/or
16 deceptive practices. In purchasing and installing the shingles manufactured by Defendant, or
17 purchasing homes, residences, buildings and other structures on which the defective shingles
18 manufactured by Defendant had been installed, Plaintiff and the other California Subclass
19 members relied on the misrepresentations and/or omissions of Defendant with respect to the
20 quality and performance of Defendant’s shingles. Defendant’s representations turned out not to be
21 true because the shingles are defective and will prematurely fail. Had Plaintiff and the other
22 California Subclass members known this, they would not have purchased and installed the
23 shingles manufactured by Defendant, or purchased homes, residences, buildings and other
24 structures on which the defective shingles manufactured by Defendant had been installed, or
25 would not have paid the prices they paid. Accordingly, Plaintiff and the other California Subclass
26 members overpaid for their shingles and did not receive the benefit of their bargain.

27 267. All of the wrongful conduct alleged herein occurred, and continues to occur, in
28 the conduct of Defendant’s business. Defendant’s wrongful conduct is part of a pattern or

1 generalized course of conduct that is still perpetuated and repeated, both in the State of California
2 and nationwide.

3 268. Plaintiff, individually and on behalf of the other California Subclass members,
4 requests that this Court enter such orders or judgments as may be necessary to enjoin Defendant
5 from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the
6 other California Subclass members any money Defendant acquired by unfair competition,
7 including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

8 **SIXTEENTH CAUSE OF ACTION**

9 **Violation of Connecticut Product Liability Act**
10 **(Conn. Gen. Stat. §§ 52-572m, *et seq.*)**

11 269. Plaintiffs Martin and Beth Melnick incorporate by reference each preceding and
12 succeeding paragraph as though fully set forth herein.

13 270. The Melnicks bring this Count on behalf of the Connecticut Subclass.

14 271. The Melnicks bring this Count for violation of the Connecticut Product Liability
15 Act, Conn. Gen. Stat. §§ 52-572m, *et seq.* (“CPLA”).

16 272. This product liability claim under the CPLA includes but is not limited to the
17 following theories: breaches of express and implied warranties, strict liability, negligence, failure
18 to warn and misrepresentation, and specifically incorporates by reference the allegations
19 contained in paragraphs 111-132, 135-142, 145-153, 156-164, 167-173, 176-183, 186-193, 196-
20 204, 220-225.

21 273. Defendant is a product manufacturer and seller within the meaning of the CPLA.

22 274. Defendant’s shingles are plagued by design and/or manufacturing defects that
23 result in the shingles prematurely failing by becoming brittle, cracking, curling, blistering,
24 degranulating, growing algae, absorbing moisture, failing to remain sealed, generally
25 deteriorating and leaking in normal anticipated operating environments.

26 275. The Melnicks and the Connecticut Subclass suffered property damage (including
27 but not limited to property damage to the shingles) and harm caused by Defendant’s design,
28 formulation, manufacture, assembly, warranting, marketing and selling of the defective shingles,

1 including Defendant's failure to warn, misrepresentations and omissions alleged herein.

2 276. Defendant is liable under the CPLA for its defective shingles.

3 277. The Melnicks and the Connecticut Subclass demand judgment against Defendant
4 including multiple damages, interest, costs and attorneys' fees under Conn. Gen. Stat. §§ 52-240a
5 and 52-240b.

6 **SEVENTEENTH CAUSE OF ACTION**

7 **Violation of Connecticut Unfair Trade Practices Act**
8 **(Conn. Gen. Stat. Ann. §§ 42-110a, *et seq.*)**

9 278. Plaintiffs Martin and Beth Melnick incorporate by reference each preceding and
10 succeeding paragraph as though fully set forth herein.

11 279. The Melnicks bring this Count on behalf of the Connecticut Subclass.

12 280. The Melnicks and Defendant are each "persons" as defined by Conn. Gen. Stat.
13 Ann. § 42-110a(3).

14 281. The Connecticut Unfair Trade Practices Act ("CUTPA") provides that "[n]o
15 person shall engage in unfair methods of competition and unfair or deceptive acts or practices in
16 the conduct of any trade or commerce." Conn. Gen. Stat. Ann. § 42-110b(a). The CUTPA
17 further provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a).

18 282. By failing to disclose and actively concealing that Defendant's shingles were
19 defective and will prematurely fail, Defendant engaged in deceptive business practices prohibited
20 by the CUTPA, including (1) representing that Defendant's shingles have characteristics, uses,
21 benefits, and qualities which they do not have; (2) representing that Defendant's shingles are of a
22 particular standard, quality, and grade when they are not; (3) advertising Defendant's shingles
23 with the intent not to sell them as advertised; and (4) engaging in acts or practices which are
24 otherwise unfair, misleading, false, or deceptive to the consumer.

25 283. As alleged above, Defendant made numerous material statements about the
26 benefits and characteristics of Defendant's shingles that were either false or misleading. Each of
27 these statements contributed to the deceptive context of Defendant's unlawful advertising and
28 representations as a whole.

1 284. Defendant knew that its shingles were defectively designed and/or manufactured
2 and were not suitable for their intended use. Defendant nevertheless failed to warn Plaintiffs and
3 the Connecticut Subclass about these defects despite having a duty to do so.

4 285. Defendant owed Plaintiffs and the Connecticut Subclass a duty to disclose the
5 defective nature of its shingles, because Defendant:

- 6 a. Possessed exclusive knowledge of the defects;
- 7 b. Intentionally concealed the defects associated with the shingles; and/or
- 8 c. Made incomplete representations about the characteristics and performance
9 of the shingles, while purposefully withholding material facts from Plaintiffs and
10 the Connecticut Subclass that contradicted these representations.

11 286. Defendant's unfair or deceptive acts or practices were likely to and did in fact
12 deceive reasonable consumers, including Plaintiffs and the Connecticut Subclass, about the true
13 performance and characteristics of Defendant's shingles. Plaintiffs and the Connecticut Subclass
14 paid a premium for Defendant's shingles as a result of Defendant's representations, omissions
15 and other unfair and deceptive acts and practices.

16 287. As a result of its violations of the CUTPA detailed above, Defendant caused
17 actual damage to Plaintiffs and the Connecticut Subclass and, if not stopped, will continue to
18 harm Plaintiffs and the Connecticut Subclass. Plaintiffs currently have Defendant's defective
19 shingles installed on their homes. Defects associated with the shingles have caused the value of
20 the homes, residences, buildings and other structures owned by Plaintiffs and the Connecticut
21 Subclass to decrease.

22 288. Plaintiffs and the Connecticut Subclass sustained damages as a result of
23 Defendant's unlawful acts and are, therefore, entitled to damages and other relief as provided
24 under the CUTPA.

25 289. Plaintiff also seeks court costs and attorneys' fees as a result of Defendant's
26 violation of the CUTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this
27 Complaint has been mailed to the Attorney General and the Commissioner of Consumer
28 Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

EIGHTEENTH CAUSE OF ACTION

**Violation of Ohio Product Liability Act
(Ohio Rev. Code Ann. §§ 2307.71, *et seq.*)**

290. Plaintiff Lia Louthan incorporates by reference each preceding and succeeding paragraph as though fully set forth herein.

291. Plaintiff Louthan brings this Count on behalf of the Ohio Subclass.

292. At all relevant times herein, Defendant was the designer, developer, tester, manufacturer, distributor, marketer, and seller of Defendant's shingles.

293. Defendant is a "manufacturer" within the meaning of the Ohio Product Liability Act, Ohio Rev. Code Ann. §§ 2307.71, *et seq.* ("OPLA") and engaged in the business of designing, developing, formulating, producing, creating, making, constructing, assembling, testing, manufacturing, distributing, marketing, and selling home construction materials including the materials at issue herein.

294. At all relevant times, Defendant placed its shingles in the stream of commerce, to be sold to residents of Ohio.

295. At all relevant times, Defendant owed a duty of reasonable care to Plaintiff and members of the Ohio Subclass in the design, development, manufacture, distribution, marketing, sale, and selection of materials for Defendant's shingles.

296. Defendant breached this duty by, among other things:

a. Manufacturing, designing, developing, distributing, marketing, selling and placing into the stream of commerce the defective, dangerous, unsafe, and unfit shingles;

b. Failing to adequately and properly inspect and test the shingles it distributed, marketed and sold;

c. Failing to adequately and properly select and utilize non-defective materials;

d. Failing to adequately and properly design shingles so that they would operate and/or perform in a non-defective manner so as to prevent damage; and

e. Failing to adequately and properly warn of the damages arising from the installation and use of the shingles.

297. Defendant knew and/or should have known that the shingles it manufactured, designed, developed, distributed, marketed, sold, and placed into the stream of commerce were constructed were defective and improper for exterior use.

298. The shingles become brittle, crack, curl, blister, degranulate, grow algae, absorb moisture, fail to remain sealed, otherwise deteriorate, prematurely fail and cause leaking, making it foreseeable to Defendant that failure of the shingles would cause damages to the end users.

299. The defects in Defendant's shingles are the proximate cause of damages sustained by Plaintiff and members of the Ohio Subclass.

300. Defendant's shingles constitute a "product" within the meaning of the OPLA because they are tangible personal property, capable of delivery itself, made for introduction into trade or commerce, and intended for sale to persons for personal or commercial use.

301. As alleged at length herein, Defendant's shingles are defectively manufactured (OPLA § 2307.74), defectively designed and formulated (OPLA § 2307.75) and fail to conform to Defendant's representations (OPLA § 2307.77), and Defendant failed to provide adequate warnings or instructions (OPLA § 2307.76) to Plaintiff and members of the Ohio Subclass.

302. As a direct and proximate result of Defendant's violations of the OPLA, Plaintiff and members of the Ohio Subclass have sustained, are sustaining, and will sustain damages and losses as alleged herein.

NINETEENTH CAUSE OF ACTION

**Violation of Ohio Consumer Sales Protection Act
(Ohio Rev. Code Ann. §§ 1345.01, *et seq.*)**

303. Plaintiff Lia Louthan incorporates by reference each preceding and succeeding paragraph as though fully set forth herein.

304. Plaintiff Louthan brings this Count on behalf of the Ohio Subclass.

305. Defendant is a “merchant” within the meaning of Ohio Rev. Code § 1302.01(5).

306. Plaintiff and members of the Ohio Subclass are “consumers,” Defendant is a “supplier,” and the purchase of Defendant’s defective shingles constitutes a “consumer transaction” under the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01, *et seq.*

1 (“OCSPA”).

2 307. By failing to disclose and actively concealing that its shingles are defective,
3 Defendant engaged in unfair and deceptive practices prohibited by the OCSPA, including but not
4 limited to (1) representing that the shingles have characteristics, uses, benefits, and qualities
5 which they do not have, (2) representing that the shingles are of a particular standard, quality, and
6 grade when they are not, (3) advertising the shingles with the intent not to sell them as advertised,
7 and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to
8 the consumer.

9 308. As alleged above, Defendant made numerous material statements about the
10 benefits and characteristics of its shingles that were either false or misleading. Each of these
11 statements contributed to the deceptive context of Defendant’s unlawful advertising and
12 representations as a whole.

13 309. Defendant knew that its shingles were defectively designed and/or manufactured,
14 did not comply with applicable building codes or industry standards, and were not suitable for
15 their intended use. Defendant nevertheless failed to warn Plaintiff and members of the Ohio
16 Subclass about these defects despite having a duty to do so.

17 310. Defendant’s omissions and failures to warn are continuing violations of the
18 OCSPA.

19 311. Defendant’s unfair or deceptive acts or practices were likely to, and did in fact,
20 deceive reasonable consumers, including Plaintiff, about the true performance and characteristics
21 of the shingles.

22 312. Defendant knowingly made the representations that constitute unfair or deceptive
23 trade practices.

24 313. Defendant further violated the OCSPA by obstructing Plaintiff (in November
25 2015) and members of the Ohio Subclass from making warranty claims and by improperly
26 rejecting valid warranty claims.

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1 322. Defendant further violated the Illinois CFA by advising Plaintiff that it possessed
2 a “bad batch” of Defendant’s shingles, concealing the truth: that Defendant’s shingles are
3 uniformly defective.

4 323. Defendant’s concealment, suppression and omission of material facts, and its
5 failure to warn, are continuing violations of the Illinois CFA.

6 324. As alleged above, Defendant made numerous material statements about the
7 benefits and characteristics of its shingles that were either false or misleading.

8 325. Defendant knew that its shingles were defectively designed and/or manufactured,
9 did not comply with applicable building codes or industry standards, and were not suitable for
10 their intended use. Defendant nevertheless failed to warn Plaintiff and members of the Illinois
11 Subclass about these defects despite having a duty to do so

12 326. Defendant’s unfair or deceptive acts or practices were likely to and did in fact
13 deceive reasonable consumers, including Plaintiff and members of the Illinois Subclass, about the
14 true performance and characteristics of the shingles.

15 327. Defendant intentionally and knowingly misrepresented material facts regarding
16 the shingles with an intent to mislead Plaintiff and member of the Illinois Subclass.

17 328. Defendant further violated the Illinois CFA by obstructing members of the
18 Illinois Subclass from making warranty claims and by improperly rejecting valid warranty claims.

19 329. Defendant knew or should have known that its conduct violated the Illinois CFA.

20 330. Defendant owed Plaintiff and members of the Illinois Subclass a duty to disclose
21 that its shingles were defectively designed and/or manufactured.

22 331. Plaintiff and members of the Illinois Subclass suffered ascertainable loss caused
23 by Defendant’s misrepresentations and its concealment of and failure to disclose material
24 information.

25 332. Defendant had an ongoing duty to all customers to refrain from unfair and
26 deceptive acts or practices under the Illinois CFA.

27 333. As a direct and proximate result of Defendant’s violations of the Illinois CFA,
28 Plaintiff and members of the Illinois Subclass have suffered injury-in-fact and/or actual damage.

334. Pursuant to 815 Ill. Comp. Stat.505/10a(a), Plaintiff and members of the Illinois Subclass seek monetary relief against Defendant in the amount of actual damages, as well as punitive damages because Defendant acted with fraud and/or malice and/or was grossly negligent.

335. Plaintiff also seeks an order enjoining Defendant's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 Ill. Comp. Stat.. § 505/1 et seq.

TWENTY-FIRST CAUSE OF ACTION

Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.

336. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

337. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the members of the Class against Defendant.

338. Declaratory relief is intended to minimize "the danger of avoidable loss and unnecessary accrual of damages." 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

339. There is an actual controversy between Defendant and Plaintiffs concerning:

- a. whether Defendant's shingles are defectively designed thus causing them to fail;
- b. whether Defendant knew or should have known of the defects; and
- c. whether Defendant failed to warn against the potential unsuitability of its defectively designed shingles.

340. Pursuant to 28 U.S.C. § 2201, the Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

341. Despite the repeated failures of its shingles, Defendant refused to acknowledge that its product is defectively designed.

342. Accordingly, based on Defendant's failure to act, Plaintiffs seek a declaration that the Defendant's shingles are defective in their design, workmanship, materials, and labeling, as

1 alleged herein. The defective nature of Defendant's shingles is material and requires disclosure to
2 all persons who own the shingles.

3 343. The declaratory relief requested herein will generate common answers that will
4 settle the controversy related to the alleged defective design workmanship, materials, and labeling
5 of Defendant's shingles and the reasons for their failure. There is an economy to resolving these
6 issues as they have the potential to eliminate the need for continued and repeated litigation.

7 **TWENTY-SECOND CAUSE OF ACTION**

8 **Injunctive Relief**

9 344. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
10 though fully set forth herein.

11 345. Plaintiffs, on behalf of themselves and the members of the Class, seek a Court
12 declaration of the following:

- 13 A. All Defendant's shingles have defects which cause them to become
14 brittle, crack, curl, blister, degranulate, grow algae, absorb moisture, fail
15 to remain sealed, otherwise deteriorate, prematurely fail and cause
16 leaking, resulting in damage to property and the necessity of the removal
17 and replacement;
- 18 B. Defendant knew of the defects in its shingles and that the limitations
19 contained in the warranties accompanying the shingles are unenforceable;
- 20 C. All Defendant's shingles have defects in design, workmanship and/or
21 material that cause failures;
- 22 D. Defendant will re-audit and reassess all prior warranty claims on its
23 shingles, including claims previously denied in whole or in part, where
24 the denial was based on warranty or other grounds; and
- 25 E. Defendant shall establish an inspection program and protocol to be
26 communicated to members of the Class, which will require Defendant to
27 inspect, upon request, a Class member's structure to determine whether
28 Defendant shingle failure is manifest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request the following relief:

A. an Order certifying the Class (and/or Subclasses) and appointing Plaintiffs as the Class Representatives, and appointing the undersigned counsel as Class Counsel;

B. an Order declaring that Defendant is financially responsible for notifying all Class members of the problems with Defendant's shingles;

C. an award of all actual, general, special, incidental, statutory, treble or other multiple, punitive and consequential damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;

D. an award of pre-judgment and post-judgment interest at the maximum rate allowable by law;

E. an award of reasonable attorneys' fees and reimbursement of costs incurred by Plaintiffs and Plaintiffs' counsel in connection with this action;

F. an award for equitable and injunctive relief enjoining TAMKO from continuing to pursue the policies, acts and practices described in this Complaint; and

G. such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: May 6, 2016

Respectfully submitted,

BERGER & MONTAGUE, P.C.

By: /s/ Jacob M. Polakoff

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CERTIFICATE OF SERVICE

I, Jacob M. Polakoff, hereby certify that on this 6th day of May, 2016, I caused to be served, through the Court's ECF system, Amended Class Action Complaint in connection with the above-captioned matter, upon all counsel of record.

/s/ Jacob M. Polakoff