

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BARBARA CHIZNIAK, WAYNE BAILEY,
RICHARD WILLIS, LARRY JOHNSON,
JEAN DUCHAM, JEFFREY BROOM and
ROBBIE SHEETS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

CERTAINTeed CORPORATION
d/b/a "CERTAINTeed SAINT-GOBAIN"
and SAINT-GOBAIN CORPORATION
d/b/a "SAINT-GOBAIN NORTH AMERICA"
d/b/a "SAINT-GOBAIN,"

Defendants.

Civil No.

**CLASS ACTION COMPLAINT
DEMAND FOR JURY**

Plaintiffs, by and through their undersigned attorneys, as and for their class complaint against defendants, allege as follows:

INTRODUCTION

1. This putative class action seeks damages, injunctive relief, and declaratory relief against CertainTeed Corporation and its parent company Saint-Gobain Corporation (collectively "CertainTeed Saint-Gobain" or "defendants"), on behalf of a class of persons who owned homes and other structures on which CertainTeed vinyl siding products (collectively "CertainTeed vinyl siding") were installed.

2. Defendants manufactured and distributed defective vinyl siding under the brand name "CertainTeed" that blisters and degrades when exposed to normal environmental and building construction conditions.

3. For example, below are photographs of a portion of the blistered and degraded CertainTeed siding on plaintiff Barbara Chizniak's home:



Figure 1



Figure 2

4. Pictured below is a photograph of the blistered and degraded CertainTeed siding on the home of plaintiff Richard Willis:



Figure 3

5. Pictured below is a photograph of the degraded CertainTeed siding on the home of plaintiff Wayne Bailey:



Figure 4

6. Pictured below is a photograph of the blistered and degraded CertainTeed siding on the home of Plaintiff Jeffrey Broom:



Figure 5

7. Pictured below is a photograph of the blistered and degraded CertainTeed siding on the home of Plaintiff Jean Ducham:



Figure 6

8. Pictured below is a photograph of the blistered and degraded CertainTeed Wolverine siding on the home of Plaintiff Larry Johnson:



Figure 7

9. Pictured below is a photograph of the blistered and degraded CertainTeed siding on the home of Plaintiff Robbie Sheets:



Figure 8

10. Defendants marketed, promoted and sold CertainTeed vinyl siding, including the CertainTeed lifetime warranty, when they knew or should have known that the siding was defective.

11. Defendants failed to adequately disclose to builders, homeowners and the public that the siding degrades under normal exposure conditions.

12. CertainTeed vinyl siding fails to conform to the public's reasonable expectation of the product's durability and longevity, and the company's promise of "Quality made certain, satisfaction guaranteed."

PARTIES

13. Plaintiff Barbara Chizniak is currently a resident of the City of Troy, State of New York, but was a resident of the Town of Clifton Park, State of New York at the time the injuries herein complained of were suffered.

14. Wayne Bailey, at all times relevant, was and is a resident of the State of Florida, but owned a home in the Town of Standish, State of Maine where the injuries herein complained of were suffered.

15. Plaintiff Richard Willis, at all times relevant, was and is a resident of the City of Simpsonville, State of South Carolina.

16. Plaintiff Larry Johnson is currently a resident of the State of Texas, but was a resident of the Town of Clarksville, State of Tennessee at the time that the injuries herein complained of were suffered.

17. Plaintiff Jean Ducham, at all times relevant, was and is a resident of the Town of Midland, State of Michigan.

18. Plaintiff Jeffrey Broom, at all times relevant, was and is a resident of the Town of Laconia, State of New Hampshire.

19. Plaintiff Robbie Sheets, at all times relevant, was and is a resident of the Town of Stewart, State of Minnesota.

20. Defendant CertainTeed Corporation d/b/a “CertainTeed Saint-Gobain” (hereinafter “CertainTeed”) is incorporated in the state of Delaware with a corporate headquarters located at 20 Moores Road, Malvern, Pennsylvania 19355.

21. Defendant Saint-Gobain Corporation d/b/a “Saint-Gobain North America” d/b/a “Saint-Gobain” (hereinafter “Saint-Gobain”) is a Pennsylvania corporation with a corporate headquarters located at 20 Moores Road, Malvern, Pennsylvania 19355.

22. Upon information and belief, defendant CertainTeed Corporation is a wholly owned subsidiary of Saint-Gobain Delaware Corporation, which is in turn a wholly owned subsidiary of defendant Saint-Gobain Corporation, which is an indirect subsidiary of Compagnie de Saint-Gobain, a French multinational corporation which is publicly owned and traded on the Euronext Paris stock exchange.

JURISDICTION AND VENUE

23. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) based on diversity of citizenship among the parties/class and the amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

24. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391 *et seq.* because defendants conduct substantial business in this District, have caused harm to Class Members in this District, one or more of plaintiffs reside in this District, and defendants are subject to this court’s personal jurisdiction with respect to this action.

NATURE OF ACTION

25. CertainTeed Saint-Gobain manufactures and distributes building products and materials, including vinyl siding.

26. “Founded in 1904 as General Roofing Manufacturing Company, today CertainTeed is North America’s leading brand of exterior and interior building products, including siding, roofing, fence, decking, railing, trim, insulation, gypsum and ceilings.”
<https://www.certainteed.com/about-certainteed/>.

27. CertainTeed’s exterior siding products include vinyl, polymer, composite, fiber cement and stone.

28. The company’s name was changed in 1917 to CertainTeed, which is derived from its slogan “Quality made **certain**, Satisfaction **Guaranteed**.” (emphasis added).

29. CertainTeed and its affiliates have more than 5,700 employees and more than 60 manufacturing facilities throughout the United States and Canada.

30. In 1967, CertainTeed and Saint-Gobain began a joint venture to manufacture siding in the United States.

31. At all times relevant herein, CertainTeed was and is a wholly owned subsidiary of Saint-Gobain.

32. In 1988, CertainTeed Saint-Gobain acquired vinyl siding manufacturer Wolverine Technologies.

33. CertainTeed is one of Saint-Gobain’s product brands.

34. CertainTeed vinyl siding products include, among others: Carolina Beaded, CedarBoards, Encore, Mainstreet, Monogram, Northwoods, Restoration Classic and Wolverine American Legend.

35. Upon information and belief, CertainTeed Corporation reports annual revenue of approximately \$3 billion dollars.

36. CertainTeed and Saint-Gobain share corporate headquarters in Malvern, Pennsylvania.

37. Saint-Gobain is one of the world's largest and oldest building products companies.

38. Saint-Gobain is one of the top 100 largest industrial companies in the world and in 2016 reported € 39.1 billion in sales with 172,000 employees in 67 countries.

39. Saint-Gobain has more than 250 manufacturing facilities and 15,000 employees in North America. In the United States and Canada, Saint-Gobain reported sales of approximately \$6.2 billion in 2014.

40. CertainTeed Saint-Gobain has manufactured and sold vinyl siding throughout the United States since 1967 for installation on homes, townhomes, apartments, duplexes, commercial buildings and other structures.

41. CertainTeed Saint-Gobain has marketed its vinyl siding products to building professionals, contractors, consumers and the general public, including plaintiffs and the Class, as the vinyl siding "#1 Rated Brand" for over 20 consecutive years:



42. Defendants promoted the CertainTeed brand as an "industry leader" that produces "quality building products that provide long-lasting beauty and protection for homes of every size, style and age":

CONGRATULATIONS! ...and thank you for your recent purchase of one of the fine siding products from CertainTeed. You can feel confident that you have made a wise decision buying from a company that is an industry leader and stands behind its products with strong warranty protection. Since 1904, CertainTeed has been producing quality building products that provide long-lasting beauty and protection for homes of every size, style and age. In addition to vinyl and polymer siding, CertainTeed offers roofing, fiber cement siding, windows, fence, railing, decking, trim, foundations, pipe, insulation, walls, and ceilings. For over 100 years, the origin of our name continues to be our ongoing philosophy, "Quality made certain, satisfaction guaranteed."



Figure 9

43. Defendants advertised CertainTeed vinyl siding as beautifying, protective, durable, low maintenance and cost effective.

44. CertainTeed's website states that "When it comes to your home, beauty goes beneath the surface. Accentuate your style and extend the life of your home with CertainTeed siding." See *infra* Figure 10.

45. Defendants advertise CertainTeed vinyl siding as designed and manufactured with the newest technology and state-of-the art formulations.

46. CertainTeed markets its vinyl siding products with a satisfaction guarantee:



47. Defendants warrant to property owners that CertainTeed vinyl siding is free from manufacturing defects and will maintain its structural integrity, including protection from peeling, flaking, blistering, corroding and excessive fading under normal exposure and weathering conditions.

48. Normal weathering is defined by CertainTeed's warranty as "exposure to sunlight and extremes of weather and atmosphere."

49. The CertainTeed vinyl siding warranty provides property owners with a lifetime warranty that is transferable to subsequent owners.

50. CertainTeed Saint-Gobain provides subsequent owners with a prorated 50 year warranty measured from the date of first installation.

51. Defendants' vinyl siding warranty provides that if CertainTeed determines, in its sole discretion, that its siding products have a manufacturing defect under the terms of the warranty, defendants will either (1) pay to repair, replace, refinish, or coat any siding product it

determines has a manufacturing defect, or (2) refund the amount paid by the original property owner for the siding products plus the cost of the labor of the original installation.

52. Building professionals, consumers and the general public reasonably understand defendants' representations to mean that CertainTeed vinyl siding will maintain its structural integrity and not blister or degrade for the lifetime of the original property owner (or 50 years on a pro-rated basis for subsequent owners).

53. Attached as "Exhibit A" is plaintiff Barbara Chizniak's CertainTeed Saint-Gobain Lifetime Limited Warranty dated 1/1/08.

54. Attached as "Exhibit B" is plaintiff Wayne Bailey's CertainTeed Saint-Gobain Lifetime Limited Warranty dated 1/1/09.

55. Attached as "Exhibit C" is plaintiff Richard Willis's CertainTeed Saint-Gobain Lifetime Limited Warranty dated 1/1/09.

56. Attached as "Exhibit D" is plaintiff Larry Johnson's Wolverine Siding Lifetime Limited Warranty dated 1/1/11.

57. Attached as "Exhibit E" is plaintiff Jean Ducham's CertainTeed Saint-Gobain Lifetime Limited Warranty dated 1/1/09.

58. Attached as "Exhibit F" is plaintiff Jeffrey Broom's CertainTeed Saint-Gobain Lifetime Limited Warranty dated 1/1/13.

59. Attached as "Exhibit G" is plaintiff Robbie Sheets's CertainTeed Saint-Gobain Lifetime Limited Warranty dated 8/1/15.

WARRANTY DENIALS

60. After some period of exposure to normal, expected environmental conditions and typical weather patterns, the CertainTeed vinyl siding on each of plaintiffs' homes has lost its structural integrity and degraded, warped, melted, blistered, and/or deformed.

61. Plaintiffs' vinyl siding is not beautifying, protective, durable, low maintenance, or cost effective.

62. Plaintiffs each contacted CertainTeed to make a claim under their vinyl siding warranty.

63. On October 26, 2016, CertainTeed sent plaintiff Barbara Chizniak a letter denying her warranty claim on the grounds of "heat distortion" from glass reflection.

64. A copy of CertainTeed's warranty denial letter sent to plaintiff Barbara Chizniak is attached as "Exhibit H."

65. On October 28, 2016, CertainTeed sent plaintiff Wayne Bailey a letter denying his warranty claim on the grounds of "glass reflection/heat distortion (deformed siding)."

66. A copy of CertainTeed's warranty denial letter sent to plaintiff Wayne Bailey is attached as "Exhibit I."

67. On March 28, 2017, CertainTeed sent plaintiff Richard Willis a letter denying his warranty claim on the grounds of "heat distortion" from glass reflection.

68. A copy of CertainTeed's warranty denial letter sent to plaintiff Richard Willis is attached as "Exhibit J."

69. On November 10, 2016, CertainTeed sent plaintiff Larry Johnson a letter denying his warranty claim on the grounds of "glass reflection".

70. A copy of CertainTeed's warranty denial letter sent to plaintiff Larry Johnson is attached as "Exhibit K."

71. On May 19, 2015, CertainTeed sent plaintiff Jean Ducham a letter denying her warranty claim on the grounds of "heat distortion."

72. A copy of CertainTeed's warranty denial letter sent to plaintiff Jean Ducham is attached as "Exhibit L."

73. On June 16, 2017, CertainTeed sent plaintiff Jeffrey Broom a letter denying his warranty claim on the grounds of "glass reflection/wrinkled/melted siding."

74. A copy of CertainTeed's warranty denial letter sent to plaintiff Jeffrey Broom is attached as "Exhibit M."

75. On July 25, 2017, CertainTeed sent plaintiff Robbie Sheets a letter denying his warranty claim on the grounds of "heat distortion."

76. A copy of CertainTeed's warranty denial letter sent to plaintiff Robbie Sheets is attached as "Exhibit N."

77. The CertainTeed Limited Lifetime Warranty provides warranty coverage against manufacturing defects, including but not limited to "blistering." The Warranty also covers damage caused to the vinyl siding by "normal exposure conditions," and in its Limitations section, makes no mention of any warranty exclusion relating to non-flame heat from any source. The Warranty specifically contemplates that the vinyl siding will be subject to "exposure to sunlight and extremes of weather and atmosphere." *See generally* Exhibits "A" – "G."

78. The internally-inconsistent CertainTeed Limited Lifetime Warranty also states elsewhere that the warranty does not apply to "siding products which have been distorted or

melted due to an external heat source (including but not limited to a barbecue grill, fire, reflection from windows, doors, or other objects.” See Exhibits “A” – “G.”

79. CertainTeed’s warranty denial is exemplified by CertainTeed’s letter to plaintiff Barbara Chizniak (Exhibit H) stating that:

It appears the windows have caused the reflection of the sunlight to increase the temperature to an extreme degree which has caused the melting of the siding. This increase has caused the siding to lose its memory (shape) by distorting/melting. In other words, the window has acted like a magnifying glass. It has reflected the light, which concentrates it, resulting in an increase in heat.

80. Upon information and belief, CertainTeed Saint-Gobain made no attempt to determine with any certainty the actual source of any heat that defendants allege to have caused the damage to plaintiffs’ vinyl siding.

81. CertainTeed Saint-Gobain’s denial that its vinyl siding is defective as a result of melting or distortion from sunlight reflecting off windows or other building materials fails the essential purpose of the warranty, i.e., that the siding is free from defects under normal exposure conditions.

82. As a result of defendants’ warranty denials, plaintiffs have suffered and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding.

83. The construction of windows adjacent to siding, windows that reflect light onto siding, and homes and other structures with windows adjacent to the building on which the siding is installed is a reasonable expectation of property owners, including plaintiffs, and a normal condition in building design and construction.

84. Sunlight exposure is a reasonable expectation of property owners, including plaintiffs, and a normal environmental condition.

85. It is a reasonable expectation of property owners, including plaintiffs, that CertainTeed vinyl siding is suitable for use on or near homes and other structures with windows.

86. CertainTeed Saint-Gobain's website (<https://www.certainteed.com/siding/>) advertises the use of its vinyl siding on homes with windows exposed to sunlight:



ENDLESS POSSIBILITIES FOR ENDLESS BEAUTY

When it comes to your home, beauty goes beyond the surface. Accentuate your style and extend the life of your home with CertainTeed Siding. You will see and feel the difference.

Figure 10

87. Defendants' product installation instructions fail to warn that CertainTeed Saint-Gobain vinyl siding should not be installed where sunlight may reflect off windows.

88. Plaintiffs were surprised when defendants disclaimed coverage under their warranties.

89. Defendants' denial of their duty of care and warranty responsibility for the defective CertainTeed vinyl siding is analogous to a car manufacturer disclaiming its duty of care for a vehicle's paint finish that melts and distorts from sunlight reflecting off vehicle windows.

**DEFENDANTS' DECEPTIVE AND UNFAIR CONDUCT
AND BREACH OF WARRANTIES**

90. Defendants advertised, warranted and sold CertainTeed vinyl siding products that defendants knew or reasonably should have known were inherently defective and failed to perform as represented and warranted by defendants.

91. Upon information and belief, thousands of property owners, including plaintiffs, have experienced degradation of their CertainTeed vinyl siding under normal construction and environmental exposure conditions as described herein.

92. Upon information and belief, CertainTeed Saint-Gobain has denied numerous warranty claims alleging a manufacturing or design defect in the vinyl siding on the basis of reflective sunlight from windows causing melting or distortion.

93. Despite said claims and knowledge, defendants have failed to notify their customers about the defects; have refused to fully repair damage caused by said defects; have concealed the true nature of the defects inherent in the siding; and continue to market CertainTeed vinyl siding without adequate warnings or disclosures.

94. At all times relevant, defendants had a duty to disclose to Plaintiffs and the Class that CertainTeed vinyl siding was inherently defective as designed and manufactured and would foreseeably blister and degrade under normal construction and environmental conditions as detailed herein.

95. Defendants' marketing of CertainTeed vinyl siding as suitable for use in homes with windows exposed to sunlight is deceptive.

96. Defendants' denial of plaintiffs' warranty claims constitute breach of implied and express warranties.

97. Defendants' denial of plaintiffs' warranty claims on the basis of reflective window sunlight distortion is unconscionable and causes the warranty to fail its essential purpose.

98. Defendants' denial of plaintiffs' warranty claims has deprived plaintiffs of a substantial bargained benefit and unjustly enriched defendants.

CLASS ALLEGATIONS

99. The Class claims derive from a single course of conduct by defendants CertainTeed Saint-Gobain. Defendants' design, manufacture, marketing and sale of CertainTeed vinyl siding products was pursuant to uniform practices directed at the Class. Defendants did not discriminate in the degree of care or candor, disclosure or omission, or other conduct among the individual Class members. The object facts are that CertainTeed siding, as presently designed and manufactured, is not suitable for its foreseeable uses, i.e., when installed on homes with windows, as advertised by defendants.

100. Plaintiffs seek to bring this case as a nationwide class action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). The proposed Class is defined as follows:

All persons and entities who own, or have owned, homes or other structures with CertainTeed vinyl siding products.

101. Alternatively, or in addition to the nationwide Class claims, plaintiffs bring these claims under Fed. R. Civ. P. 23 on behalf of themselves and on behalf of Subclasses of persons and entities residing in each of the states in which plaintiffs reside and each of the states where the laws are similar to each of the states in which plaintiffs reside.

102. Excluded from the Class are defendants, any entity in which defendants have a controlling interest, and defendants' legal representatives, assigns and successors.

103. Although the exact number of class members is unknown at this time, the members of the class are sufficiently numerous such that joinder of all members is impracticable.

104. The members of the putative class are mutually and commonly aggrieved and the relief sought is common to the entire class and, if granted, would commonly benefit the entire class.

105. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class, namely, questions as to whether defendants breached their duties of care and warranties to all of the members of the class.

106. Common questions of fact and law predominate over any questions affecting only individual members of the class, including but not limited to the following:

- a. Whether CertainTeed vinyl siding products (“Siding”) are defective;
- b. Whether the Siding blisters, degrades, and fails before the expiration of its advertised, marketed and warranted life;
- c. Whether defendants knew or should have known of the defective nature of the Siding;
- d. Whether defendants properly advised property owners about the likelihood of its Siding’s premature failure;
- e. Whether defendants owed a duty to plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, warranting and marketing of the Siding;
- f. Whether defendants breached a duty to plaintiffs and the Class by designing, manufacturing, advertising and selling defective Siding and by failing promptly to remove the Siding from the marketplace or take other appropriate remedial action;

- g. Whether the Siding will continue to blister and degrade in performance over time;
- h. Whether the Siding fails to perform in accordance with the reasonable expectations of ordinary consumers;
- i. Whether the Siding fails to perform as advertised, marketed and warranted;
- j. Whether defendants breached express warranties to plaintiffs and the Class by advertising, marketing and selling the defective Siding;
- k. Whether defendants breached implied warranties to plaintiffs and the Class by advertising, marketing and selling Siding that was not of a merchantable quality, nor fit for the ordinary purpose for which it was sold;
- l. Whether defendants' representations regarding the suitability and exemplary nature of its Siding, and its omissions and concealment of facts to the contrary regarding the Siding defects constitute violation(s) of deceptive and unfair trade practices;
- m. Whether defendants have been unjustly enriched;
- n. Whether plaintiffs should be entitled to indemnity and restitution;
- o. Whether plaintiffs and the Class are entitled to compensatory damages to repair, replace and remedy the defective Siding; and
- p. Whether injunctive relief should be granted compelling defendants to notify all Class members about their defective Siding.

107. Plaintiffs' claims herein are typical of the claims of the Class, in that the claims of all members of the Class, including plaintiffs, depend on a showing of the acts and omissions of defendants giving rise to the right of plaintiffs to the relief sought. Plaintiffs, like all Class members, owned homes or other structures on which the defective CertainTeed vinyl siding was

installed. As a result of the uniform defects inherent in the vinyl siding's formulation, the siding failed and will continue to fail prematurely, causing plaintiffs and members of the Class to suffer damages in the form of unreimbursed costs associated with repairing or replacing the defective siding.

108. Plaintiffs will fairly and adequately protect the interests of the respective Class members in that plaintiffs have such a plain, direct, and adequate interest in the outcome of the controversy to assure the adequacy of the presentation of the issues involved herein. Plaintiffs have no interest which is adverse to any interest of the Class members.

109. Plaintiffs have retained competent counsel with substantial experience litigating complex building products defect cases and class claims in both state and federal court.

110. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither plaintiffs nor their counsel have interests adverse to the Class.

111. Class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

112. Absent class certification, individual litigation of the claims would be unreasonably expensive in light of the probable recoverable damages, burdensome upon the court, and would waste resources otherwise available to compensate the class.

TOLLING OF THE STATUTE OF LIMITATIONS

113. Upon information and belief, defendants have known of the defects in CertainTeed vinyl siding since at least the early 2000s.

114. Defendants concealed and/or failed to notify plaintiffs, the Class and the general public of the full and complete nature of said defects.

115. Defendants were and are under a continuous duty to disclose to plaintiffs the true character, quality, and nature of the CertainTeed vinyl siding.

116. Defendants actively concealed the true character, quality and nature of CertainTeed vinyl siding and knowingly made misrepresentations about the quality, reliability, characteristics and performance of said siding, which behavior is ongoing.

117. Plaintiffs and the Class reasonably relied upon defendants' knowing and affirmative misrepresentations and/or active concealment of these facts.

118. Plaintiffs, despite the exercise of due diligence, could not have reasonably discovered that CertainTeed vinyl siding was inherently defective because said defects are latent and not detectable until manifestation.

119. Based on the foregoing, defendants are estopped from relying on any statutes of limitation in defense of this action.

**FIRST CAUSE OF ACTION –
BREACH OF EXPRESS WARRANTY**

120. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

121. At all times relevant, defendants owed a duty for express warranties pursuant to New York Uniform Commercial Code § 2-313 and other similar state statutes including S.C. Code Ann. § 36-2-313; Tenn. Code Ann. § 47-2-313; Mich. Comp. Laws § 440.2313; N.H. Rev. Stat. § 382-A:2-313; 11 Maine Rev. Stat. § 2-313; and Minn. Stat. § 336.2-313.

122. At all times relevant, defendants expressly represented to the public and plaintiffs that "Satisfaction is Guaranteed" for CertainTeed vinyl siding products.

123. At all times relevant, defendants expressly represented to the public and plaintiffs that CertainTeed vinyl siding provides long-lasting beauty and protection for home of every size, style and age.

124. At all times relevant, defendants expressly represented to the public and plaintiffs that CertainTeed vinyl siding is beautifying, protective, durable, low maintenance and cost effective.

125. At all times relevant, defendants expressly represented that CertainTeed vinyl siding is free from manufacturing defects.

126. At all times relevant, defendants expressly represented that CertainTeed vinyl siding will not result in failure, defect or damage under normal exposure conditions.

127. At all times relevant, defendants expressly represented that CertainTeed vinyl siding will maintain its structural integrity, including protection from peeling, flaking, blistering, corroding and excessive fading under normal exposure and weathering conditions.

128. At all times relevant, defendants expressly represented that CertainTeed vinyl siding provides a lifetime warranty to an original individual homeowner and a 50-year prorated warranty to all other owners and/or subsequent owners.

129. At all times relevant, defendants provided a written warranty for their CertainTeed vinyl siding, including plaintiffs' written warranties attached hereto, which constitute express warranties.

130. Defendants' representations and warranties were directed at plaintiffs and the Class, and expressly made and written for the benefit of plaintiffs and the Class.

131. At all times relevant, the foregoing representations of defendants constituted the basis of the bargain between CertainTeed Saint-Gobain and plaintiffs and/or their predecessors-in-interest who justifiably relied upon the same.

132. Certain aforementioned portions of the written warranties, including but not limited to the “external heat source” exclusions were unconscionable at the time they were entered into, and are void, voidable, or otherwise unenforceable.

133. Contrary to said express representations and written warranties, defendants designed, manufactured, marketed and sold CertainTeed vinyl siding that was not fit for its intended use as a beautifying, protective, durable, low maintenance and cost effective building product.

134. Contrary to said express representations and written warranties, the Siding prematurely degrades, blisters, fails, and is defective.

135. Contrary to said express representations and written warranties, defendants have refused to stand behind their product and guarantee the satisfaction of plaintiffs.

136. Contrary to said express representations and written warranties, defendants have denied plaintiffs’ warranty claims.

137. At all times relevant, plaintiffs acted with due diligence and notified defendants of their warranty claims within a reasonable time upon discovery of the defects alleged herein, which defects defendants knew, or should have known about, and despite their superior knowledge, defendants failed to disclose or warn plaintiffs.

138. Defendants’ denials, disclaimers and limitations of the aforementioned express warranties were unconscionable in that, among other things:

- a. A disparity of bargaining power existed between the parties—commercially sophisticated CertainTeed Saint-Gobain on the one hand, and the relatively unsophisticated lay-homeowner plaintiffs on the other hand;
- b. The express warranties were offered on a “take it or leave it” basis;

- c. CertainTeed Saint-Gobain had material information about the latent defect(s) in its vinyl siding products that caused them to blister, deform, and otherwise degrade under normal environmental and exposure conditions that that it did not share with its customers, including plaintiffs;
- d. Plaintiffs were surprised to learn, upon submission of their warranty claims, that the type of significant product failure that they had experienced would not be covered by defendants' express warranties;
- e. Defendants' representations, warranties and limitations were complex, convoluted, internally inconsistent, and misleading;
- f. Plaintiffs lacked meaningful choice in purchasing other vinyl siding products. The vinyl siding industry, of which CertainTeed Saint-Gobain is one of the largest and arguably most well-known members, has intentionally devised the distribution network for their products to have such a structure providing consumers with little knowledge or choice about the products that are purchased and sold, or about the shortcomings of the products and warranties offered.

139. Defendants' denials, disclaimers and limitations of the aforementioned express warranties cause those warranties to fail of their essential purposes in that, among other things:

- a. CertainTeed Saint-Gobain was unwilling to repair or replace plaintiffs' faulty vinyl siding;
- b. CertainTeed Saint-Gobain was unable to repair or replace plaintiffs' faulty vinyl siding because replacement with the same, similarly-deficient siding product would only lead to further, future blistering, deformation, and damage;

- c. Plaintiffs' foreseeable, consequential and incidental damages relating to repair and replacement of damaged siding surpass the cost of the defective product itself, and/or the remedy available under the warranty.

140. As a result of the foregoing, defendants breached said express warranties to plaintiffs.

141. As a direct and proximate result of said breach of express warranties, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding in an amount to be determined at trial.

142. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**SECOND CAUSE OF ACTION –
BREACH OF IMPLIED WARRANTIES**

143. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

144. Because the express warranties fail of their essential purposes, plaintiffs may seek remedies pursuant to the implied warranties provided by state statutes: New York Commercial Code § 2-719 and other similar state statutes including S.C. Code § 36-2-719; Tenn. Code Ann. § 47-2-719; Mich. Comp. Laws § 440.2719; N.H. Rev. Stat. § 381-A:2-719; 11 Maine Rev. Stat. § 2-719; and Minn. Stat. § 336.2-719.

145. At all times relevant, defendants CertainTeed Saint-Gobain owed a duty for implied warranties of merchantability and fitness for a particular purpose pursuant to New York Uniform Commercial Code §§ 2-314, 2-315 and other similar state statutes including S.C. Code Ann. §§ 36-2-314, 36-2-315; Tenn. Code Ann. §§ 47-2-314, 315; Mich. Comp. Laws §§

440.2314, 440.2315 and N.H. Rev. Stat. §§ 382-A:2-314, 382-A:2-315; 11 Maine Rev. Stat. §§ 2-314, 2-315; and Minn. Stat. §§ 336.2-314, 336.2-315.

146. At all times relevant, defendants knew, or had reason to know, that property owners desired CertainTeed vinyl siding for the purpose of installing said building product on the exterior of homes and other structures.

147. At all times relevant, defendants knew or had reason to know that property owners desired CertainTeed vinyl siding as a beautifying, durable, low maintenance and cost effective building product for the exterior of homes and other structures.

148. At all times relevant, defendants impliedly warranted to the public and plaintiffs that CertainTeed vinyl siding was a beautifying, durable, low maintenance and cost effective building product for use on the exterior of homes and other structures.

149. At all times relevant, defendants impliedly warranted to the public and plaintiffs that CertainTeed vinyl siding was of merchantable quality and fit for its intended purposes.

150. Defendants' representations were directed at plaintiffs and the Class, and made for the benefit of plaintiffs and the Class.

151. At all times relevant, plaintiffs justifiably relied upon defendants' skill and judgment that CertainTeed vinyl siding was of merchantable quality and satisfactory for its intended purposes.

152. At all times relevant, defendants knew or should have known that property owners, including plaintiffs, would rely upon defendants' skill and judgment that CertainTeed vinyl siding was of merchantable quality and satisfactory for its intended purposes.

153. In fact, defendants advertise CertainTeed vinyl siding as the "#1 Rated" brand of vinyl siding products by building professionals.

154. That defendants' CertainTeed vinyl siding was and is unfit for its intended purposes, not of merchantable quality, defective, degrades prematurely and fails to perform as impliedly warranted.

155. Defendants' denials, disclaimers and limitations of the aforementioned implied warranties were unconscionable in that, among other things:

- a. A disparity of bargaining power existed between the parties—commercially sophisticated CertainTeed Saint-Gobain on the one hand, and the relatively unsophisticated lay-homeowner plaintiffs on the other hand;
- b. The disclaimers and limitations of implied warranties were offered on a “take it or leave it” basis;
- c. CertainTeed Saint-Gobain had material information about the latent defect(s) in its vinyl siding products that caused them to blister, deform, and otherwise degrade under normal environmental and exposure conditions that that it did not share with its customers, including plaintiffs;
- d. Plaintiffs were surprised to learn, upon submission of their warranty claims, that the type of significant product failure that they had experienced would not be covered by defendants' implied warranties;
- e. Defendants' representations, warranties and limitations were complex, convoluted, internally inconsistent, and misleading;
- f. Plaintiffs lacked meaningful choice in purchasing other vinyl siding products.

The vinyl siding industry, of which CertainTeed Saint-Gobain is one of the largest and arguably most well-known member, has intentionally devised the distribution network for their products to have such a structure providing consumers with little

knowledge or choice about the products that are purchased and sold, or about the shortcomings of the products and warranties offered.

156. Defendants' denials, disclaimers and limitations of the aforementioned implied warranties cause those warranties to fail of their essential purposes in that, among other things:

- a. CertainTeed Saint-Gobain was unwilling to repair or replace plaintiffs' faulty vinyl siding;
- b. CertainTeed Saint-Gobain was unable to repair or replace plaintiffs' faulty vinyl siding because replacement with the same, similarly-deficient siding product would only lead to further, future blistering, deformation, and damage;
- c. Plaintiffs' foreseeable, consequential and incidental damages relating to repair and replacement of damaged siding surpass the cost of the defective product itself, and/or the remedy available under the warranty.

157. As a result of the foregoing, defendants breached their implied warranties to plaintiffs.

158. As a direct and proximate result of said breach of implied warranties, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding in an amount to be determined at trial.

159. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**THIRD CAUSE OF ACTION -
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

160. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

161. At all times relevant, defendants had a duty to act in good faith and fairness with plaintiffs.

162. The acts and omissions of defendants described above constitute a breach of the implied covenant of good faith and fair dealing.

163. As a direct and proximate result of said breach, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding in an amount to be determined at trial.

164. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**FOURTH CAUSE OF ACTION –
DECEPTIVE AND UNFAIR TRADE PRACTICES**

165. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

166. At all times relevant, defendants CertainTeed Saint-Gobain had a duty not to engage in unfair, misleading, false, or deceptive trade practices under New York General Business Law § 349 and other state statutes including S.C. Code Ann. § 39-5-20, Tenn. Code Ann. § 47-18-104, Mich. Comp. Laws § 445.903, N.H. Rev. Stat. § 358-A:1, 5 Maine Rev. Stat. § 205-A, and Minn. Stat. § 325D.44.

167. Plaintiffs are consumers who purchased CertainTeed vinyl siding products and were subjected to defendants' unfair, misleading, false and deceptive business practices as alleged herein.

168. Defendants' deceptive and misleading conduct included, but was not limited to the following:

- a. Deceptive, false, and misleading marketing that CertainTeed vinyl siding is of particular standard, quality, or grade;
- b. Deceptive, false, and misleading advertisement that "Satisfaction is Guaranteed" for CertainTeed vinyl siding products;
- c. Deceptive, false, and misleading advertisements that CertainTeed vinyl siding is beautifying, protective, durable, low maintenance, and cost effective;
- d. Deceptive, false, and misleading representations that that CertainTeed vinyl siding will not result in failure, defect, or damage under normal exposure conditions;
- e. Deceptive, false, and misleading representations that CertainTeed vinyl siding will maintain its structural integrity, including protection from peeling, flaking, blistering, corroding, and excessive fading under normal exposure and weathering conditions;
- f. Failing to adequately disclose and/or concealing material facts that CertainTeed vinyl siding degrades and fails prematurely;
- g. Failing to adequately disclose or warn of normal environmental and building construction conditions in which CertainTeed siding blisters, degrades, and fails;
- h. Failing to adequately disclose and/or concealing complaints by property owners about material defects in CertainTeed vinyl siding.

169. The acts and omissions of defendants described above constitute deceptive business acts or practices.

170. Defendants' conduct has injured the public interest and continues to pose a threat to the public.

171. Plaintiffs reasonably relied on defendants' deceptive, false and misleading representations and omissions to their detriment.

172. By reason of the foregoing, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding in an amount to be determined at trial.

173. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

174. Plaintiffs have provided defendants with all required pre-suit notice(s) and demand(s) required by the relevant statutes.

**FIFTH CAUSE OF ACTION –
FALSE ADVERTISING**

175. Plaintiffs incorporate by reference all of the paragraphs alleged above.

176. At all times relevant, defendants had a duty not to engage in false advertising under New York General Business Law § 350 and other similar state statutes.

177. The above described conduct of defendants constitutes false advertising, in violation of Section 350 of the New York Business Law and other similar state statutes.

178. By reason of the foregoing, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding in an amount to be determined at trial.

179. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other

damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**SIXTH CAUSE OF ACTION –
UNJUST ENRICHMENT**

180. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

181. Defendants have received substantial direct benefits from the marketing and sale of CertainTeed vinyl siding to property owners, including plaintiffs.

182. Defendants have accepted and enjoyed said benefits, including revenue and profit from the sale of CertainTeed vinyl siding products, which in fairness and good conscience should not be retained.

183. For the reasons stated heretofore, CertainTeed vinyl siding is defective, blisters, degrades prematurely, and fails to perform.

184. Defendants knew or should have known that CertainTeed vinyl siding products were defective, and that property owners would incur expense to repair, replace and remedy the same.

185. Defendants have denied any duty to reimburse, repair, replace, or remedy their defective products, thereby enriching themselves at the expense of plaintiffs.

186. As a result of the foregoing, the conduct of defendants constitutes unjust enrichment.

187. As a direct and proximate result of said breach, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective CertainTeed vinyl siding in an amount to be determined at trial.

188. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other

damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**SEVENTH CAUSE OF ACTION –
EQUITABLE INDEMNITY/RESTITUTION**

189. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

190. Defendants are liable to plaintiffs for all damages, expenses and costs incurred by plaintiffs as the direct and proximate result of their defective CertainTeed vinyl siding.

191. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective CertainTeed vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

192. Wherefore, plaintiffs seek indemnification and restitution from defendants.

**EIGHTH CAUSE OF ACTION –
DECLARATORY AND INJUNCTIVE RELIEF**

193. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

194. Plaintiffs seek declaratory relief adjudicating the legal rights and obligations of the parties, together with injunctive relief:

- a. Enjoining defendants from further deceptive advertising, marketing, distribution, and sales practices with respect to CertainTeed vinyl siding products;
- b. Compelling defendants to fully disclose to property owners the defective nature of CertainTeed vinyl siding;
- c. Compelling defendants to audit and reassess all prior warranty claims on CertainTeed vinyl siding, including claims previously denied in whole or in part on warranty grounds; and

- d. Compelling defendants to establish an inspection program and protocol to be communicated to property owners requiring that defendants inspect, upon request, homes and structures to determine whether CertainTeed vinyl siding in prematurely degrading, blistering, and/or failing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand relief against defendants as follows:

1. Certification of this action as a class action;
2. Declaratory relief adjudicating the legal rights and obligations of the parties;
3. Injunctive relief compelling defendants to notify all Class members of the problems with CertainTeed vinyl siding;
4. Injunctive relief enjoining defendants from further deceptive advertising, marketing, distribution and sales practices with respect to CertainTeed vinyl siding products;
5. Compensatory, statutory, and punitive damages; disgorgement of profits; restitution; and pre-judgment and post-judgment interest, in an amount to be determined upon trial;
6. Attorneys' fees, disbursements and costs; and
7. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Dated: September 26, 2017

Respectfully,

s/

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