

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| -----X | |
| DAVID RIVERA and VICTOR VACCARO, | : |
| on Behalf of Themselves and All Other Persons | : |
| Similarly Situated, | : |
| | : |
| Plaintiffs, | : |
| | : |
| vs. | : |
| | : |
| THE HOME DEPOT, INC. and AMERICAN | : |
| WOODMARK CORPORATION, | : |
| | : |
| Defendants. | : |
| -----X | |

Case No.

Class Action Complaint

INTRODUCTION

1. Plaintiffs bring this class action on behalf of themselves and all others similarly situated against Defendants The Home Depot, Inc. (“Home Depot”) and American Woodmark Corporation (“American Woodmark,” collectively, “Defendants”) seeking damages for the proposed Class as defined herein.

2. Home Depot helps consumers in the design and renovation of their kitchens. Home Depot is the exclusive distributor of American Woodmark Cabinetry (“Cabinetry”), which it offers in various collections or designs. The standard Cabinetry models usually contain medium-density fiberboard (“MDF”) or another type of engineered wood, such as particle board.

3. MDF is composed of softwood, in the form of wood fibers, small wood chips, or sawdust, bonded together with a synthetic resin that is often formaldehyde-based. It is a low-cost alternative to solid wood, plywood, and in some cases, particle board as well.

4. One of many concerns consumers have with MDF is that it can significantly expand when exposed to water or moisture, as it would be in a kitchen. Consumers have also

become increasingly concerned about MDF's impact on health and the environment.

5. Home Depot additionally markets and offers an All-Plywood Upgrade of certain Cabinetry at an additional fee, calculated as a percentage of the cost of materials, before tax. The Upgrade appears on the consumer's invoice as the "all plywood construction option." Home Depot offers this Upgrade when it knows that, in fact, even the upgraded Cabinetry contains significant amounts of MDF and particle board.

6. Lowe's Home Improvement ("Lowe's") also sells American Woodmark Cabinetry but under the brand name of Shenandoah (hereinafter also referred to as "Cabinetry"), which is sold exclusively at Lowe's. Lowe's also markets and offers an All-Plywood Upgrade, even though the Cabinetry contains MDF and particle board.

7. Home Depot and Lowe's continue to market and offer the Upgrade to American Woodmark Cabinetry as all plywood, implying that it contains no MDF or particle board, when this is not the case.

THE PARTIES

8. Plaintiff Rivera is a citizen of New York and resides in Staten Island, New York. On or about the March 28, 2011, Plaintiff Rivera purchased American Woodmark Cabinetry and opted for the All-Plywood Upgrade. Rivera paid a total of \$7,904.54 for his Cabinetry, \$1,196.58 of which was for the All-Plywood Upgrade. Two months after installation, Rivera discovered that certain parts of his Cabinetry contained a significant amount of MDF and/or particle board.

9. Plaintiff Vaccaro is a citizen of New York and resides in Bellport, New York. On or about April 21, 2012, Plaintiff Vaccaro purchased American Woodmark Cabinetry and opted for the All-Plywood Upgrade. Vaccaro paid a total of \$6,994.43 for the American Woodmark

Cabinetry, \$916.68 of which was for the All-Plywood Upgrade. Upon accepting delivery, Vaccaro discovered that certain parts of his Cabinetry were particle board, not plywood. A year later, Vaccaro discovered that the Cabinetry also contained a significant amount of MDF.

10. Defendant The Home Depot, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 2455 Paces Ferry Rd. SE, Atlanta, GA 30339-1834. Home Depot has several retail stores across New York State.

11. Defendant American Woodmark Corporation maintains its principal place of business at 3102 Shawnee Drive, Winchester, VA 22604-8090. Defendant Home Depot is the exclusive supplier of American Woodmark Cabinetry and markets American Woodmark as the less expensive, in-store brand. American Woodmark sells the Shenandoah brand of Cabinetry at Lowe's stores.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which the Class members and Defendants are citizens of different states.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because the Defendants do business throughout this district, a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within this district, and both Plaintiffs reside in this district.

FACTUAL BACKGROUND

14. Through its sales representatives, Home Depot and Lowe's market an option to upgrade the American Woodmark Cabinetry it supplies to "all plywood construction." To the

reasonable consumer, this indicates that the Cabinetry does not contain MDF or particle board.

15. MDF has become increasingly popular as a less expensive alternative to solid wood and plywood. However, MDF is generally not desirable for areas with frequent exposure to moisture, humidity, or water, as moisture causes it to warp or otherwise degrade.

Furthermore, wood furnishings and Cabinetry containing MDF typically have a shorter lifespan.

16. Some consumers refrain from purchasing any products that contain any MDF and pay more for higher quality wood products due to the risks MDF poses to health and the environment.

17. Consumers pay more for the All-Plywood Upgrade under the assumption that the Cabinetry does not contain any particle board or MDF.

Plaintiff Rivera Allegations

18. On or about March 28, 2011, Rivera purchased American Woodmark's Del Ray line of Cabinetry from Home Depot.

19. During his visit to Home Depot, Rivera met with an in-store kitchen designer who consulted with him in planning his new kitchen.

20. Home Depot marketed and offered Rivera the option of purchasing the All-Plywood Upgrade. Rivera opted for the Upgrade, expecting that his Cabinetry would be made of solid wood and/or plywood.

21. Rivera paid a total of \$7,904.54 for his Cabinetry, \$1,196.58 of which was for the All-Plywood Upgrade.

22. Only two months after installation, Rivera discovered that certain parts of his Cabinetry contained a significant amount of MDF and/or particle board, because the toe-kick had become damaged after minimal exposure to water and moisture.

Plaintiff Vaccaro Allegations

23. On or about April 21, 2012, Vaccaro purchased American Woodmark's Del Ray line of Cabinetry from Home Depot.

24. During his visit to Home Depot, he met with an in-store kitchen designer who consulted with him in planning his new kitchen.

25. Home Depot marketed and offered Vaccaro the option of purchasing the All-Plywood Upgrade. Vaccaro opted for the Upgrade, expecting that his Cabinetry would be made of solid wood and/or plywood.

26. Vaccaro paid a total of \$6,994.43 for his Cabinetry, of which \$916.68 was for the All-Plywood Upgrade. The Upgrade was clearly marked on his invoice as the "all plywood construction option." He paid an additional \$3,200.00 for the installation.

27. In either May or June 2012, Vaccaro received shipment of his new Cabinetry. He quickly realized that certain elements of the Cabinetry were made of particle board covered with a wood veneer. Soon thereafter, Vaccaro contacted Home Depot to request a full refund. Home Depot did not offer him a full refund at that time.

28. In April 2013, the piece that fills the void between the bottom of a cabinet and the floor (the "toe-kick") was exposed to water for no more than twenty-four hours. The toe-kick expanded like a sponge, and Vaccaro realized that, in fact, MDF had been used extensively throughout the Cabinetry and that the Cabinetry was not all plywood. For instance, Vaccaro discovered that MDF and particle board were used in the cabinet panels, doors, and skins (i.e. decorative paneling).

29. Vaccaro once again requested a full refund but did not receive one.

CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all persons in the State of New York who, after June 12, 2007, purchased, at retail price and for personal use, the Cabinetry of American Woodmark, including its brand Shenandoah (the “Class”).

31. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous that joinder of all members would be impracticable. The proposed Class includes thousands of members. The precise number of Class members can be ascertained by reviewing documents in Defendants’ possession, custody, and control.

32. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Class. These common legal and factual questions include, but are not limited to, the following:

- (a) Whether customers who purchased the All-Plywood Upgrade of the Cabinetry have received Cabinetry that contains MDF or particle board;
- (b) Whether Home Depot and/or American Woodmark knew that the All-Plywood Upgrade of the Cabinetry contains MDF or particle board;
- (c) Whether Home Depot and/or American Woodmark concealed material facts from its communications and disclosures to Plaintiffs and the Class regarding the materials used in the All-Plywood Upgrade of the Cabinetry;
- (d) Whether Home Depot and/or American Woodmark have engaged in deceptive acts or practices in connection with the sale of the All-Plywood Upgrade of the Cabinetry;
- (f) Whether Home Depot and/or American Woodmark have fraudulently concealed the materials used in the All-Plywood Upgrade of American Woodmark Cabinetry; and
- (g) Whether, as a result of Home Depot and American Woodmark’s conduct, Plaintiffs and the Class have suffered damages, and if so, the appropriate amount thereof.

33. **Typicality:** The representative Plaintiffs’ claims are typical of the claims of the

members of the Class. Plaintiffs and all Class members have been injured by the same wrongful practices in which Home Depot and American Woodmark have engaged. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of all Class members and are based on the same legal theories.

34. **Adequacy**: Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Class, and have retained class counsel who is experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests which are contrary to or conflicting with the Class.

35. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each Class member resulting from Home Depot and American Woodmark's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

36. Plaintiffs and the Class do not anticipate any difficulty in the management of this

litigation.

FIRST CAUSE OF ACTION
Breach of Contract

37. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

38. Plaintiffs and members of the Class entered into contracts with Home Depot for the purchase of American Woodmark Cabinetry with the All-Plywood Upgrade option, which required Home Depot to provide American Woodmark Cabinetry in all plywood, meaning without MDF or particle board.

39. Home Depot breached its contracts with Plaintiffs and members of the Class by charging Plaintiffs and members of the Class for the All-Plywood Upgrade but failing to provide all-plywood construction.

40. Plaintiffs and the other members of the Class have suffered damages as a result of Defendants' breach of contract.

SECOND CAUSE OF ACTION
Violations of Section 349 Of New York
General Business Law: Deceptive Acts And Practices

41. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

42. Plaintiffs and the members of the Class are consumers who purchased American Woodmark Cabinetry, including Cabinetry from the Shenandoah brand, for personal use.

43. Home Depot and American Woodmark have engaged in deceptive practices in the sale of its Cabinetry for: (1) selling to Plaintiffs and the Class the All-Plywood Upgrade, when the Cabinetry is not of all plywood; and (2) failing to disclose and/or concealing this known fact.

44. The unfair and deceptive trade acts of Home Depot and American Woodmark have caused damages and injury to Plaintiffs and the Class.

THIRD CAUSE OF ACTION
Fraudulent Concealment

45. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

46. New York recognizes a cause of action for fraud based on concealment or omission of material facts.

47. Defendants had a duty to disclose whether materials such as, but not limited to, MDF and particle board were used in the All-Plywood Upgrade due to Defendants' knowledge that such materials were undesirable to the Class. Defendants knew such materials were undesirable because Defendants marketed to Plaintiffs and the Class the option to avoid MDF and particle board in their Cabinetry by purchasing the All-Plywood Upgrade.

48. Defendants had knowledge of the materials in the Cabinetry as a result of, among other things, selling and manufacturing the Cabinetry.

49. Defendants failed to discharge its duty to disclose the defect to Plaintiffs and the Class.

50. Defendants intentionally concealed the undesirable materials used in the All-Plywood Upgrade from Plaintiffs and the Class in order to sell more Upgraded Cabinetry.

51. Plaintiffs and the Class relied on Defendants' representations regarding the materials used in the Cabinetry and would not have purchased the All-Plywood Upgrade had Defendants disclosed that the all-plywood option contained MDF and/or particle board.

52. Plaintiffs and the Class have been damaged by Defendants' concealment of the materials of which the Cabinetry is composed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class pray for judgment against Defendants granting the following relief:

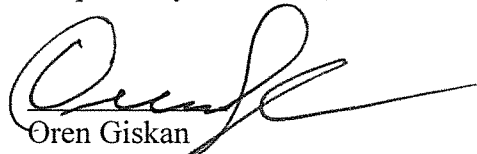
- a. An order certifying this case as a class action and appointing Plaintiffs' counsel to represent the Class;
- b. All recoverable compensatory and other damages sustained by Plaintiffs and the Class;
- c. Actual, treble, and/or statutory damages for injuries suffered by Plaintiffs and the Class in the maximum amount permitted by applicable law;
- e. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and
- f. Such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Date: June 12, 2013
New York, New York

Respectfully submitted,



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Rivera and Victor Vaccaro on Behalf of Themselves and All Other Persons Similarly Situated

(b) County of Residence of First Listed Plaintiff Richmond County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Oren Giskan Giskan Solotaroff Anderson and Stewart LLP 11 Broadway Suite 2150 New York, NY 10004

DEFENDANTS

The Home Depot, Inc. and American Woodmark Corporation

County of Residence of First Listed Defendant Fulton County, Georgia (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)

Brief description of cause: Consumer class action for breach of contract, violation of NY GBL 349 and fraudulent concealment.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/12/2013 SIGNATURE OF ATTORNEY OF RECORD s/ Oren Giskan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Oren Giskan, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: s/ Oren Giskan