

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

TOM GLODO, WILLIAM MURDOCH,
JOSEPH RULE, MATTHEW SOTO and
JEFFREY WAYNE, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

CPG INTERNATIONAL, INC. and AZEK
BUILDING PRODUCTS, INC.,

Defendants.

CASE NO.: 3:13-cv-00402-WDS-SCW

(Jury Demand Endorsed Hereon)

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Tom Glodo, William Murdoch, Joseph Rule, Matthew Soto, and Jeffrey Wayne, by and through their undersigned counsel, on behalf of themselves and all other persons and entities similarly situated, sue Defendants, CPG International, Inc. and Azek Building Products, Inc., and for their Second Amended Class Action Complaint allege, upon information and belief and based on the investigation to date of their counsel, as follows:

INTRODUCTION AND SUMMARY OF ACTION

1. This is a consumer class action brought on behalf of Tom Glodo, William Murdoch, Joseph Rule, Matthew Soto, Jeffrey Wayne, and a class of all others similarly situated against CPG International, Inc. and Azek Building Products, Inc. as manufacturers and distributors of polyvinylchloride synthetic decking and railing used for residential and commercial applications.

2. Defendant CPG International, Inc. (“CPG”) and Defendant AZEK Building Products, Inc. (“ABP”) collectively (“Defendants”) designed, manufactured, warranted,

advertised, and sold AZEK decking and railing and other similar products to homeowners, builders, and contractors, which was installed on the property owners' structures.

3. Plaintiffs purchased the AZEK decking and railing materials manufactured by Defendants for their homes to be used as outdoor decks, docks, railings and applications represented by Defendants as appropriate for their AZEK decking and railing material.

4. The AZEK decking and railing at issue is not a natural wood product, but a manufactured synthetic decking and railing made of polyvinylchloride (PVC).

5. Defendants uniformly marketed decking (herein "AZEK decking") by representing that the decking only required low maintenance periodic cleaning, and was an alternative to wood and composite decking, because, unlike alternative natural wood and composite decking, AZEK decking would retain its appearance in all outdoor application.

6. Defendants uniformly represented AZEK decking to consumers as follows:

- a. That AZEK decking would maintain "Richer, Long Lasting Color."
- b. That AZEK decking would only "weather very slightly over time and will look luxurious for years to come."
- c. That "[B]y leaving out the wood fillers AZEK deck materials are engineered to resist stains and mold."
- d. That "AZEK deck surfaces resist scratching and maintain their grain better than conventional wood or composite boards."
- e. That AZEK Building Products are "Designed to last beautifully," a phrase which Defendants have trademarked.
- f. That AZEK decking "will stand the test of time gracefully with minimal upkeep."
- g. That consumer need only "Sit back and enjoy the lasting beauty" of AZEK decking and that its "Strong good looks are just the beginning."
- h. That AZEK decking is "Scratch Resistant," and "Mold Resistant;"

- i. That “[m]arket demand is moving from wood and composites to a new category of low maintenance decking. With stain and scratch resistance that makes life on the deck easy and a broad palette of shades to complement any exterior. AZEK is the smart and beautiful low maintenance decking. And with over 25 years of experience in cellular PVC manufacturing, AZEK Decking is no stranger to better performance. Manufactured in the USA, AZEK has invested years of technical expertise to develop decking that is designed to last beautifully.”¹
- j. ”WOOD AND COMPOSITES ROT, STAIN AND FADE. AZEK DOESN’T. AZEK exterior products look so beautiful and last so long why would you ever use anything else? . . . AZEK deck is the embodiment of durability. At the end of the day all you have to do is enjoy it.” (Capitalization in the original)

7. Defendants uniformly marketed AZEK PVC railing (herein “AZEK railing”) by representing that the railing only required low maintenance periodic cleaning, and was an alternative to wood and composite railing, because, unlike alternative natural wood and composite railing, AZEK railing would retain its appearance in all outdoor application.

8. Defendants uniformly represented AZEK railing to consumers as follows:

- a. That AZEK railing “joins the AZEK family of premium exterior products.”
- b. That AZEK railing “offers the beauty and feel of real wood coupled with the high durability and low maintenance you expect from AZEK.”

9. Collectively, AZEK decking and AZEK railing and other similar AZEK PVC products is referred to as “AZEK PVC Products.” The inherent design defect in AZEK decking, AZEK railing and other AZEK PVC products are substantially similar. AZEK PVC Products all contain the substantially similar design defects as described in this Amended Complaint.

10. For these reasons, Defendants charged a price for AZEK PVC Products that was well in excess of the price charged for natural lumber materials, and competitors’ materials.

¹ In small print at the end of a brochure concerning the color palette there appears the following “Depending on environmental conditions, AZEK Deck colors may appear to lighten over time as part of the natural weathering [process.]” Thus, Defendants actively sought to minimize the fallout from their other representations.

11. In their instructions to consumers on the care and maintenance of their decks and railings, Defendants represented that the only maintenance required was to clean the deck and railing. Defendants also represented that, because of the low maintenance, owners will save money by using AZEK PVC Products instead of wood decking and railing which requires significantly more upkeep than mere cleaning.

12. Each of the Plaintiffs and Class Members saw or heard these representations from Defendants about AZEK PVC Products prior to purchasing and installing their AZEK PVC Products.

13. Defendants uniformly represented to consumers that they had years of experience in the manufacture of PVC material and were in effect experts in the manufacture and use of PVC materials.

14. Despite the marketing representations and warranties to the contrary, Defendants knew, or should have known:

- a. That because their decking and railing was made of PVC, it was particularly susceptible to photo and thermal degradation, especially if exposed to sunlight or heat; to photo and thermal degradation, especially if exposed to sunlight or heat;
- b. That the chemical pathways by which PVC photo-degrades were well known in the scientific and industrial community;
- c. That the chemical process in PVC, when exposed to ultraviolet would result in color change that was progressive;
- d. That all synthetic polymers undergo UV induced discoloration;
- e. That PVC is a polymer well known in the polymers industry for its tendency to undergo photo- degradation;
- f. That as the surface layers of PVC materials degrade, opacifiers used by Defendants, namely titanium dioxide powder, would be released and form a surface layer known as “chalking,” as a direct result of exposure to solar UV radiation; and

- g. That both the tensile strength and the extensibility of rigid PVC surfaces would become embrittled with the duration of exposure to solar UV radiation making the material more susceptible to scratching and impact damage.

15. In spite of the foregoing knowledge Defendants represented to consumers that outdoor applications in direct sunlight constituted appropriate use of AZEK PVC Products, consumers could reasonably expect that outdoor usage in direct sunlight would not result in the degradation of their decks, porches, docks, railing and other appropriate applications.

16. Defendants knew that consumers' primary concern in purchasing AZEK PVC Products was that the AZEK PVC Products be durable and low maintenance.

17. In spite of this knowledge, AZEK PVC Products are highly susceptible to color and performance degradation as a result of exposure to solar ultraviolet radiation and heat, conditions likely to occur in the outdoor applications in which Defendants expected and anticipated their consumers to use their PVC products.

18. Defendants also knew that as a direct result of using AZEK PVC Products in outdoor applications exposed to solar UV radiation and heat, the AZEK PVC Products would prematurely discolor, stain, scratch, chalk, crack and otherwise deteriorate as a result of photo and thermal degradation.

19. At the time of sale, AZEK PVC Products contained chemical and biochemical characteristics which result in photo and thermal degradation, deterioration and loss of appearance, durability, and eventually surface integrity. These design defects reduced the effectiveness and performance of AZEK PVC Products and rendered it unable to perform the ordinary purposes for which it was marketed and used.

20. Indeed, Defendants knew about the design defects and flaws while simultaneously placing the AZEK PVC Products in the market and continuing their marketing campaign and

representations. Despite defendants' representations to consumers, AZEK decking and AZEK railing is plagued with design flaws that cause the AZEK PVC products to crack, cup, warp, split, mildews, and discolors shortly after installations.

21. Plaintiffs' AZEK PVC Products are discoloring, fading, chalking, cracking and otherwise degrading, and will continue to do so. Plaintiffs' AZEK PVC Products require significantly more maintenance than what Defendants represented. It does not and cannot maintain its color, which is neither durable nor long lasting, and is in fact failing well before the time periods advertised, marketed and warranted by Defendants.

22. Defendants' AZEK decking provided a "Lifetime Limited Warranty" that warrants the product as being free of defects in material and workmanship. As stated above, AZEK PVC Products are made of polyvinylchloride (PVC), which is a product long known in the scientific and industrial community to be highly susceptible to degradation when exposed to solar UV radiation and heat. Nevertheless, Defendants, despite knowing that their PVC products are susceptible to solar ultraviolet and thermal degradation, have denied that their AZEK PVC Products are defective and therefore have refused to provide coverage under their warranty. Defendants have refused to repair or replace Plaintiffs' AZEK PVC Products in spite of the Lifetime Warranty, and have claimed that their warranties only cover "performance" and not "aesthetic" characteristics. This distinction does not appear in the language of the warranties, and is contrary to Defendants' numerous representations of "designing lasting beauty" and appearance durability.

23. Defendants' AZEK railing provided a "20 Year Limited Warranty." The AZEK railing warranty is substantially similar to the terms and conditions of the AZEK decking warranty.

24. As a result, Plaintiffs and the Class Members have suffered actual damages in that the decking and railing purchased or installed on their property prematurely discolors, fades, chalks, scratches, stains, cracks and otherwise degrades under normal conditions of exposure to solar ultraviolet radiation and heat. Furthermore, Plaintiffs and the Classes have suffered or will suffer damages in the form of, inter alia, out-of-pocket expenditures for the replacement, and attempted remediation of AZEK PVC Products purchased or installed on their property as a direct and proximate result of the known chemical characteristics of polyvinylchloride use by the Defendants in their products.

25. Had Plaintiffs and the Classes known the true facts regarding the inherent characteristics of PVC products manufactured, sold and distributed by Defendants, those facts would be material to their and any reasonable consumer's decisions to purchase the AZEK PVC Products at the price they paid for it.

26. Because of the relatively small size of the typical individual Class members' claims, it is unlikely that individual Class members could afford to seek recovery on their own. This is especially true in light of the size and resources of Defendants. A class action is, therefore, the only reasonable means by which Class members can obtain relief.

27. As stated above, AZEK PVC Products suffers from the propensity for photo and thermal degradation, the propensity for which is inherent in and directly attributable to its chemical composition. Despite receiving numerous complaints during the Class Period from consumers such as Plaintiffs and other Class members, Defendants have refused to effectively disclose to consumers the defective characteristics of their AZEK PVC Products in the presence of outdoor applications, and Defendants have refused to repair, replace, remediate, or refund the purchase price. Instead, Defendants have used or suggested that owners use after-market

products in an attempt to re-surface the AZEK PVC Products, which is a temporary solution. Defendants have also characterized the defects in AZEK PVC Products as merely “weathering,” an undefined, vague, misleading, and contradictory term to consumers in light of Defendants’ numerous representations that AZEK PVC Products has durability of appearance and performance.

JURISDICTION AND VENUE

28. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because there are more than 100 members in one or more of the proposed classes, at least one class member is a citizen of a state different from Defendants and the amount in controversy exceeds \$5,000,000.00.

29. Defendants transact business in Illinois, advertise and market their products in Illinois, disseminated their afore-described representations and deceptions throughout Illinois, and derive a substantial income from the sale of products in Illinois.

30. Venue is proper in this district pursuant to 28 U.S.C. § 1391, et seq. because a substantial part of the events or omissions giving rise to this claim occurred in the state of Illinois. Additionally, venue is appropriate for the claims arising out of Illinois’ Consumer Fraud Act because the statute applies to any company engaging in any of the activities regulated by the Act within the State of Illinois.

PARTIES

31. Plaintiff, Tom Glodo (“Plaintiff” or “Mr. Glodo”), at all relevant times hereto, has been a citizen and resident of Pinckneyville, Illinois. From October to December 2011, Plaintiff purchased and had installed AZEK railing at his residence in Illinois.

32. Plaintiff, William Murdoch (“Plaintiff” or “Mr. Murdoch”), at all relevant times hereto, has been a citizen and resident of Bel Air, Maryland. Plaintiff purchased and had installed AZEK decking at his residence in Maryland.

33. Plaintiff, Joseph Rule (“Plaintiff” or “Mr. Rule”), at all relevant times hereto, has been a citizen and resident of Virginia Beach, Virginia. Plaintiff purchased and had installed AZEK decking at his residence in Virginia.

34. Plaintiff, Jeffrey Wayne (“Plaintiff” or “Mr. Wayne”), at all relevant times hereto, has been a citizen and resident of North Haven, Connecticut. Plaintiff purchased and had installed AZEK decking at his residence in Connecticut.

35. Plaintiff, Matthew Soto (“Plaintiff” or “Mr. Soto”), at all relevant times hereto, has been a citizen and resident of Middletown, Connecticut. Plaintiff purchased and had installed AZEK decking at his residence in Connecticut.

36. Defendant CPG International (“CPG”) is a Delaware corporation headquartered in Scranton, Pennsylvania. CPG is a manufacturer of materials for residential and commercial markets designed to replace wood, metal and other traditional materials in a variety of building applications produces for sale in Illinois and nationwide. Defendant conducts substantial business in Illinois, and has sufficient contacts with Illinois or otherwise intentionally avails themselves of the laws and markets of Illinois, so as to sustain this Court’s jurisdiction over Defendant.

37. Defendant AZEK Building Products, Inc. (“ABP”), is a wholly owned subsidiary of CPG. ABP makes and markets exterior building products, including AZEK decking under the AZEK Brand. ABP and CPG (collectively “Defendants”) engage in the sale and distribution of AZEK decking and railing in Illinois.

38. Defendants hold themselves out to both the construction industry and the public at large as being knowledgeable in the design and manufacture of exterior building products and as being providers of quality building products, including the decking and railing that is the subject of this litigation.

CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23, and case law there under on behalf of themselves and all others similarly situated.

40. Plaintiff Glodo seeks to represent a Class in this action which is defined as follows (herein the “Illinois Class”):

ILLINOIS CLASS:

All individuals and entities in the State of Illinois that have owned, own, or acquired homes, residences, buildings, or other structures physically located in the State of Illinois on which AZEK railing is or has been installed.

41. Plaintiff Murdoch seeks to represent a Class in this action which is defined as follows (herein the “Maryland Class”):

MARYLAND CLASS:

All individuals and entities in the State of Maryland that have owned, own, or acquired homes, residences, buildings, or other structures physically located in the State of Maryland on which AZEK decking is or has been installed.

42. Plaintiff Rule seeks to represent a Class in this action which is defined as follows (herein the “Virginia Class”):

VIRGINIA CLASS:

All individuals and entities in the State of Virginia that have owned, own, or acquired homes, residences, buildings, or other structures physically located in the State of Virginia on which AZEK railing is or has been installed.

43. Plaintiff Wayne and Plaintiff Soto seek to represent a Class in this action which is defined as follows (herein the “Connecticut Class”):

CONNECTICUT CLASS:

All individuals and entities in the State of Connecticut that have owned, own, or acquired homes, residences, buildings, or other structures physically located in the State of Connecticut on which AZEK decking is or has been installed.

44. Collectively, the Illinois Class, the Maryland Class, the Virginia Class, and the Connecticut Class may be referred to as the Class or Classes.

45. Excluded from the Classes are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) AZEK, CPG, and their subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

46. *Numerosity:* The Class is composed of thousands of persons geographically dispersed throughout the States of Illinois and Maryland, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class is ascertainable and identifiable from Defendants’ records or identifying marks on AZEK PVC Products.

47. *Commonality:* The critical questions of law and fact common to the Class that will materially advance the litigation are whether the AZEK PVC Products are inherently defective, contrary to the expectations imparted by Defendants through their representations and omissions.

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

- a. Whether AZEK PVC Products have not or will not perform in accordance with the reasonable expectations of ordinary consumers;
- b. Whether Defendants knew or should have known of the defect;

- c. Whether Defendants concealed from consumers and/or failed to disclose to consumers the defect;
- d. Whether Defendants concealed from consumers and/or failed to disclose to consumers the necessary maintenance required for the AZEK PVC Products;
- e. Whether Defendants' express warranty fails of its essential purpose;
- f. Whether ABP breached the express warranty given to Plaintiffs and the Class;
- g. Whether Defendants' limitations on its express warranty are unconscionable;
- h. Whether Defendants failed to properly disclaim any limitation to pay for installation of replacement the AZEK PVC Products;
- i. Whether Defendants failed to warn of potential defects in its product or omitted critical information regarding defects in its product in its marketing, sales and installation materials;
- j. Whether Defendant breached implied warranty of merchantability;
- k. Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by members of the Class for replacement of AZEK PVC Products and/or installation costs; (ii) the failure of consideration in connection with and/or difference in value arising out of the variance between AZEK PVC Products as warranted and the AZEK PVC Products containing the defect; and (iii) the diminution of resale value of the residences and buildings resulting from the defect in AZEK PVC Products;
- l. Whether Plaintiffs and the Class are entitled to all costs associated with replacement of their defective AZEK PVC Products with non-defective AZEK PVC Products;
- m. Whether Plaintiff and the Class are entitled to restitution and/or disgorgement;
- n. Whether Plaintiffs and the Class are entitled to specific performance of the warranty;

- o. Whether Plaintiffs and Class Members would have purchased their structures, or whether they would have paid a lower price for their structures, had they known of the defective nature of AZEK PVC Products used on their structures.

49. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective AZEK PVC Products and Defendants' conduct in concealing the defect in AZEK to owners, contractors, developers, and suppliers.

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

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

COMMON FACTUAL ALLEGATIONS

52. Defendants have sold, directly or indirectly (through dealers and other retail outlets), thousands of AZEK decking boards, railing and other PVC products nationwide and in the states of Illinois, Maryland, Virginia, and Connecticut to homeowners, developers, contractors and/or subcontractors.

53. Defendants designed, manufactured, marketed, advertised, warranted and sold, through distributors, AZEK PVC Products to Plaintiffs or Plaintiffs' builders, their subcontractors, and/or agents.

54. Defendants, through a distributor, designed, manufactured, marketed, advertised, warranted and sold AZEK PVC Products to Class Members, Class Members' builders, contractors, subcontractors, and/or agents, and AZEK was installed on Class Members' structures.

55. Defendants provided an express warranty to Plaintiffs and Class Members and the owners of the structures on which AZEK PVC Products were installed and/or applied. A true and accurate copy of the AZEK decking warranty is attached hereto as **Exhibit A** and incorporated herein by reference. A true and accurate copy of the AZEK railing warranty is attached hereto as **Exhibit B** and incorporated herein by reference.

56. In conjunction with each sale and through various forms of media, Defendants marketed, advertised and warranted that the AZEK PVC Products were fit for the ordinary purpose for which such goods were used and was free from defects in materials and workmanship.

57. In its materials, Defendants marketed AZEK decking as alternative to wood decking specifically because it is "low maintenance decking."

58. Defendants expressly advertise that its deck boards “limit the shortfalls associated with traditional wood and composite decking so that you can enjoy your deck without worry.”

59. Defendants represented that, unlike their competitors, their deck boards are “stain resistant;” “scratch resistant;” and “split resistant.”

60. Moreover, Defendants expressly represent that, “Wood and Composites Rot, Stain and Fade. AZEK DOES NOT.”

61. Defendants have released numerous videos on its website and YouTube page promoting its maintenance-free attributes. In one video, for example, Defendants advertise that, “AZEK deck is the #1 best-selling brand of stain-resistant decking.” Defendants further represent that, “Our unique cellular PVC formulation makes AZEK deck stain resistant against even stubborn stain-makers.” Furthermore, “With a strong, dense surface, AZEK deck resists scratching from everyday things such as lawn furniture, dog claws, and general traffic wear.”

62. In another video, titled “AZEK Deck Double-Dare,” the company compares its cellular PVC deck to other wood and composite deck boards. The video demonstrates how AZEK deck is stain-resistant and scratch-resistant through a series of hands-on demonstrations by an AZEK representative. <http://www.azek.com/double-dare/>

63. Another version of the Double Dare Challenge states that “every day stains can be cleaned with ordinary cleaners.” The video compares staining and scratching of AZEK deck vs. wood and wood composite decks.

64. Defendants uniformly marketed AZEK railing by representing that the railing only required low maintenance periodic cleaning, and was an alternative to wood and composite railing, because, unlike alternative natural wood and composite railing, AZEK railing would retain its appearance in all outdoor application.

65. Defendants uniformly represented AZEK railing to consumers as follows:

- a. That AZEK railing “joins the AZEK family of premium exterior products.”
- b. That AZEK railing “offers the beauty and feel of real wood coupled with the high durability and low maintenance you expect from AZEK.”

66. The inherent defect in AZEK decking, AZEK railing and other AZEK PVC products are substantially similar. AZEK PVC Products all contain the substantially similar defects as described in this Amended Complaint.

67. Defendants knew that Plaintiffs, Plaintiffs’ builders, Plaintiffs’ subcontractors, and/or agents, as well as Class Members, Class Members’ builders, contractors, subcontractors, and/or agents, would rely upon Defendants’ representations, marketing and warranties regarding the quality of AZEK PVC Products.

68. Plaintiffs, Plaintiffs’ builders, Plaintiffs’ subcontractors, and/or agents, as well as Class Members, Class Members’ builders, contractors, subcontractors, and/or agents, relied upon Defendants’ representations, marketing and warranties when purchasing AZEK PVC Products.

69. Contrary to Defendants’ representations, however, AZEK PVC Products are not durable, and is neither stain, scratch or split resistant. Indeed, AZEK PVC Products, at the time of leaving Defendants’ control, contains a defect because it prematurely discolors, cracks, chalks, rots, stains, spots, and deteriorates under normal conditions and natural, outdoor exposure in the structures in which it is installed.

70. At the time of sale, AZEK PVC Products contained design and construction defects that resulted in deterioration and loss of structural integrity. The defects reduced the effectiveness and performance of the AZEK PVC Products and rendered it unable to perform the ordinary purposes for which it was used.

71. Defendants also knew that AZEK PVC Products had a history of failures and was prone to premature wear and premature discoloration, yet Defendants failed and/or omitted to inform their distributors, their customers and the eventual owners of the product of these issues.

72. Despite knowledge of these defects in AZEK PVC Products, Defendants have not notified distributors, contractors, owners, subcontractors or purchasers of AZEK PVC Products of the defect or provided a workable solution.

73. Furthermore, despite Defendants advertising and claims of “maintenance free” AZEK PVC Products, Defendants instructed Plaintiffs and class members to purchase Deck Max or other similar maintenance products in order to maintain the AZEK PVC Products. This maintenance was not disclosed to Plaintiffs or other Class members prior to purchasing AZEK PVC Products.

74. Defendants warranted that AZEK PVC Products would be free from defects in material and workmanship that (i) occur as a direct result of the manufacturing process, (ii) occur under normal use and service, (iii) occur during the warranty period, and (iv) result in blistering, peeling, flaking, cracking, splitting, cupping, or rotting.

75. The warranty is limited to replacement of the defective AZEK PVC Products.

FACTS SPECIFIC TO PLAINTIFFS

Plaintiff Tom Glodo

76. In the fall of 2011, Plaintiff Tom Glodo purchased AZEK railing Products and had them installed at his home in Pinckneyville, Illinois.

77. Less than 6 months after purchasing the AZEK railing, the railing on Plaintiff Glodo’s deck developed extensive splitting and cracking in the coating. True and accurate copies

of the e-mail correspondence and complaint form are attached hereto as **Exhibit C** and incorporated herein by reference.

78. Plaintiff Glodo called Defendant AZEK and was told that this problem had occurred in the past, but was “rare.” Defendant AZEK sent Plaintiff Glodo a piece of replacement railing, which he had installed at his own expense.

79. Approximately 6 months later, the coating on another piece of railing also began to split and crack. Plaintiff Glodo again contacted Defendant AZEK who sent him replacements for all split and cracked rail sections. Plaintiff Glodo will have to re-install these sections at his own expense, and as such has not yet been able to do so. A true and accurate copy of the complaint form is attached hereto as **Exhibit D** and incorporated herein by reference.

80. Plaintiff Glodo did not and could not reasonably have discovered the defects at the time of purchase or delivery, nor could he have known of the omitted material information regarding the photo and thermal degradation propensity of AZEK railing Products.

81. Plaintiff Glodo purchased AZEK railing Products over other available products specifically because AZEK railing Products was represented by the Defendants as a no-maintenance option with durable appearance and that it would not deteriorate with outdoor exposure. If Plaintiff Glodo had known that the AZEK railing Products were inherently susceptible to photo and thermal degradation due to outdoor exposure resulting in cracking of the coating, discoloration, fading, chalking, loss of stain, and scratch resistance and appearance durability, and that Plaintiff Glodo would have to do maintenance beyond the limited care and maintenance Defendants had represented, Plaintiff Glodo would not have purchased AZEK railing Products at the price charged.

82. Plaintiff Glodo is within the applicable statute of limitations for the claims presented hereunder.

83. As a direct and proximate result of the defective AZEK railing Products and Defendants' deceptive practices in the marketing and sale of AZEK railing Products, Plaintiff Glodo has suffered and will suffer damages including but not limited to the cost of replacement, remediation, and the price difference between what he paid and what he received.

84. Plaintiff Glodo notified Defendants of the perceived problems with his AZEK railing Products in the manner and time frame proscribed in Defendants' express warranty.

85. It was not until Defendants refused to correct the perceived problems or offer a reasonable means of resolving these problems that Plaintiff Glodo became aware that his AZEK railing Products was actually defective.

Plaintiff William Murdoch

86. On September 14, 2009, Plaintiff William Murdoch purchased AZEK decking Products and had it installed at his home in Bel Air, Maryland on September 25, 2009.

87. Prior to purchasing his AZEK decking Products, Plaintiff Murdoch saw and reviewed Defendants' representations and marketing as afore-described about AZEK decking Products in pamphlets and information sheets including the same claims and representations referenced above, and in reliance thereon, Plaintiff decided to purchase and install AZEK PVC Products.

88. Plaintiff Murdoch was not told by, nor did Defendants disclose, that AZEK decking Products are constructed of polyvinylchloride that will experience photo and thermal degradation when exposed to sunlight resulting in progressive discoloration, fading, loss of appearance durability, chalking, and loss of stain and scratch resistance which cannot be

remediated and at best can only retain its appearance by periodic re-surfacing, the results of which are transient. Beginning approximately three years after purchasing the AZEK decking Products, Plaintiff Murdoch began to notice staining, streaking, scratches, discoloration, chalking, and fading on the AZEK decking that could not be successfully cleaned or otherwise resolved by employing the methods indicated in the care and maintenance instructions provided by Defendants.

89. Plaintiff Murdoch contacted AZEK via e-mail on August 17, 2012, complaining of the fading, stains, and scratches in his decking and seeking relief under the warranty. On August 18, 2012, AZEK responded to Mr. Murdoch's e-mail requesting additional information and photographs. On August 21, 2012, Plaintiff Murdoch e-mailed the complaint form, proof of purchase, and photos of the decking to AZEK and received confirmation of receipt of same by AZEK on August 22, 2012. True and accurate copies of the e-mail correspondence and complaint form are attached hereto as **Exhibit E** and incorporated herein by reference.

90. On August 23, 2012, AZEK contacted Plaintiff Murdoch via telephone and informed him that his claim had been reviewed and that AZEK decking is not intended to protect from stains attributed to suntan lotion and bug spray (neither of which had been claimed by Mr. Murdoch). Plaintiff Murdoch was advised to purchase the product Deck Max online and apply it to his deck. He was advised to use the promotion code "AZEKVIP" when ordering the product.

91. Plaintiff Murdoch did not and could not reasonably have discovered the defects at the time of purchase or delivery, nor could he have known of the omitted material information regarding the photo and thermal degradation propensity of Defendants' AZEK decking Products.

92. Plaintiff Murdoch purchased AZEK decking Products over other available products specifically because AZEK decking Products were represented by the Defendants as a

no-maintenance option with durable appearance and that it would not deteriorate with outdoor exposure. If Plaintiff Murdoch had known the PVC was inherently susceptible to photo and thermal degradation due to outdoor exposure resulting in discoloration, fading, chalking, loss of stain and scratch resistance and appearance durability, and that he would have to do re-surfacing maintenance beyond the limited care and maintenance Defendants had represented, he would not have purchased AZEK decking Products at the price charged.

93. Plaintiff Murdoch is within the applicable statute of limitations for the claims presented hereunder.

94. As a direct and proximate result of the defective AZEK decking Products and Defendants' deceptive practices in the marketing and sale of AZEK decking Products, Plaintiff Murdoch has suffered and will suffer damages including but not limited to the cost of replacement, remediation, and the price difference between what he paid and what he received.

95. Plaintiff Murdoch notified Defendants of the perceived problems with his AZEK decking Products in the manner and time frame proscribed in Defendants' express warranty.

96. It was not until Defendants refused to correct the perceived problems or offer a reasonable means of resolving these problems that Plaintiff Murdoch became aware that his AZEK decking Products were actually defective.

Plaintiff Jeffrey Wayne

97. In approximately June 2012, Plaintiff Jeffrey Wayne purchased AZEK decking Products and had it installed at his home in North Haven, Connecticut.

98. Prior to purchasing his AZEK decking, Plaintiff Wayne saw and reviewed Defendants' representations and marketing as afore-described about AZEK decking Products in pamphlets and information sheets including the same claims and representations referenced

above, and in reliance thereon, Plaintiff Wayne decided to purchase and install AZEK PVC Products.

99. Plaintiff Wayne was not told by, nor did Defendants disclose, that AZEK decking Products are constructed of polyvinylchloride that will experience photo and thermal degradation when exposed to sunlight resulting in progressive discoloration, fading, loss of appearance durability, chalking, and loss of stain and scratch resistance which cannot be remediated and at best can only retain its appearance by periodic re-surfacing, the results of which are transient.

100. Plaintiff Wayne began to notice staining, streaking, scratches, discoloration, and fading on the AZEK decking that could not be successfully cleaned or otherwise resolved by employing the methods indicated in the care and maintenance instructions provided by Defendants.

101. Plaintiff Wayne contacted AZEK via e-mail on June 17, 2013, complaining of the fading, stains, and scratches in his decking and seeking relief under the warranty, and to date has not received a response to his e-mail.

102. Plaintiff Wayne did not and could not reasonably have discovered the defects at the time of purchase or delivery, nor could he have known of the omitted material information regarding the photo and thermal degradation propensity of Defendants' AZEK decking.

103. Plaintiff Wayne purchased AZEK decking Products over other available products specifically because AZEK decking Products were represented by the Defendants as a no-maintenance option with durable appearance and that it would not deteriorate with outdoor exposure. If Plaintiff Wayne had known the PVC was inherently susceptible to photo and thermal degradation due to outdoor exposure resulting in discoloration, fading, chalking, loss of stain and scratch resistance and appearance durability, and that he would have to do re-surfacing

maintenance beyond the limited care and maintenance Defendants had represented, he would not have purchased AZEK decking Products at the price charged.

104. Plaintiff Wayne is within the applicable statute of limitations for the claims presented hereunder.

105. As a direct and proximate result of the defective AZEK decking Products and Defendants' deceptive practices in the marketing and sale of AZEK decking, Plaintiff Wayne has suffered and will suffer damages including but not limited to the cost of replacement, remediation, and the price difference between what he paid and what he received.

106. Plaintiff Wayne notified Defendants of the perceived problems with his AZEK decking Products in the manner and time frame proscribed in Defendants' express warranty.

107. It was not until Defendants refused to correct the perceived problems or offer a reasonable means of resolving these problems that Plaintiff Wayne became aware that his AZEK decking Products were actually defective.

Plaintiff Matthew Soto

108. Plaintiff Matthew Soto purchased AZEK decking Products in April 2009 and had it installed at his home in Middletown, Connecticut.

109. Prior to purchasing his AZEK decking, Plaintiff Soto saw and reviewed Defendants' representations and marketing as afore-described about AZEK decking Products in pamphlets and information sheets including the same claims and representations referenced above, and in reliance thereon, Plaintiff Soto decided to purchase and install AZEK PVC Products.

110. Plaintiff Soto was not told by, nor did Defendants disclose, that AZEK decking Products are constructed of polyvinylchloride that will experience photo and thermal degradation

when exposed to sunlight resulting in progressive discoloration, fading, loss of appearance durability, chalking, and loss of stain and scratch resistance which cannot be remediated and at best can only retain its appearance by periodic re-surfacing, the results of which are transient.

111. Plaintiff Soto's decking has stains that cannot be removed by conventional methods.

112. Plaintiff Soto contacted AZEK regarding the staining in October 2013.

113. Plaintiff Soto did not and could not reasonably have discovered the defects at the time of purchase or delivery, nor could he have known of the omitted material information regarding the photo and thermal degradation propensity of Defendants' AZEK decking.

114. Plaintiff Soto purchased AZEK decking Products over other available products specifically because AZEK decking Products were represented by the Defendants as a no-maintenance option with durable appearance and that it would not deteriorate with outdoor exposure. If Plaintiff Soto had known the PVC was inherently susceptible to photo and thermal degradation due to outdoor exposure resulting in discoloration, fading, chalking, loss of stain and scratch resistance and appearance durability, and that he would have to do re-surfacing maintenance beyond the limited care and maintenance Defendants had represented, he would not have purchased AZEK decking Products at the price charged.

115. Plaintiff Soto is within the applicable statute of limitations for the claims presented hereunder.

116. As a direct and proximate result of the defective AZEK decking Products and Defendants' deceptive practices in the marketing and sale of AZEK decking, Plaintiff Soto has suffered and will suffer damages including but not limited to the cost of replacement, remediation, and the price difference between what he paid and what he received.

117. Plaintiff Soto notified Defendants of the perceived problems with their AZEK Products in the manner and time frame proscribed in Defendants' express warranty.

118. It was not until Defendants refused to correct the perceived problems or offer a reasonable means of resolving these problems that Plaintiff Soto became aware that his AZEK decking Products were actually defective.

Plaintiff Joseph Rule

119. In August 2011, Plaintiff Joseph Rule purchased AZEK decking Products and had it installed at his home in Virginia Beach City, Virginia in December 2011.

120. Prior to purchasing his AZEK decking Products, Plaintiff Rule saw and reviewed Defendants' representations and marketing as afore-described about AZEK decking Products in pamphlets and information sheets including the same claims and representations referenced above, and in reliance thereon, Plaintiff decided to purchase and install AZEK PVC Products.

121. Plaintiff Rule was not told by, nor did Defendants disclose, that AZEK decking Products are constructed of polyvinylchloride that will experience photo and thermal degradation when exposed to sunlight resulting in progressive discoloration, fading, loss of appearance durability, chalking, and loss of stain and scratch resistance which cannot be remediated and at best can only retain its appearance by periodic re-surfacing, the results of which are transient.

122. Beginning in approximately July 2012, Plaintiff Rule began to notice staining, streaking, scratches, discoloration, chalking, and fading on the AZEK decking that could not be successfully cleaned or otherwise resolved by employing the methods indicated in the care and maintenance instructions provided by Defendants. Plaintiff Rule contacted AZEK regarding these issues in October 2013.

123. Plaintiff Rule did not and could not reasonably have discovered the defects at the time of purchase or delivery, nor could he have known of the omitted material information regarding the photo and thermal degradation propensity of Defendants' AZEK decking Products.

124. Plaintiff Rule purchased AZEK decking Products over other available products specifically because AZEK decking Products were represented by the Defendants as a no-maintenance option with durable appearance and that it would not deteriorate with outdoor exposure. If Plaintiff Rule had known the PVC was inherently susceptible to photo and thermal degradation due to outdoor exposure resulting in discoloration, fading, chalking, loss of stain and scratch resistance and appearance durability, and that he would have to do re-surfacing maintenance beyond the limited care and maintenance Defendants had represented, he would not have purchased AZEK decking Products at the price charged.

125. Plaintiff Rule is within the applicable statute of limitations for the claims presented hereunder.

126. As a direct and proximate result of the defective AZEK decking Products and Defendants' deceptive practices in the marketing and sale of AZEK decking Products, Plaintiff Rule has suffered and will suffer damages including but not limited to the cost of replacement, remediation, and the price difference between what he paid and what he received.

127. Plaintiff Rule notified Defendants of the perceived problems with his AZEK decking Products in the manner and time frame proscribed in Defendants' express warranty.

128. It was not until Defendants refused to correct the perceived problems or offer a reasonable means of resolving these problems that Plaintiff Rule became aware that his AZEK decking Products were actually defective.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

129. Plaintiff Glodo is within the applicable statute of limitations for the claims presented hereunder because Plaintiff Glodo did not discover the defect, and could not reasonably have discovered the defect, until May 2012.

130. Plaintiff Murdoch is within the applicable statute of limitations for the claims presented hereunder because Plaintiff Murdoch did not discover the defect, and could not reasonably have discovered the defect, until June 2012.

131. Plaintiff Rule is within the applicable statute of limitations for the claims presented hereunder because Plaintiff Rule did not discover the defect, and could not reasonably have discovered the defect, until October 2013.

132. Plaintiff Soto is within the applicable statute of limitations for the claims presented hereunder because Plaintiff Soto did not discover the defect, and could not reasonably have discovered the defect, until October 2013.

133. Plaintiff Wayne is within the applicable statute of limitations for the claims presented hereunder because Plaintiff Rule did not discover the defect, and could not reasonably have discovered the defect, until June 2013.

134. Plaintiffs have brought the warranty claims prior to the expiration of the warranty. Plaintiffs also assert that this action has been filed within all applicable time frames from the date of initial use or consumption of AZEK PVC Products.

135. Defendants committed affirmative acts of concealment related to these defects by making the representations, warranties, and marketing claims described supra, to Plaintiffs, the Classes, and the public at large, and omitting material information known to them concerning the

propensity of its AZEK PVC Products to photo and thermal degradation when exposed to sunlight.

136. Defendants expected and anticipated that Plaintiffs and Class Members would rely upon their representations and omissions in their decisions to purchase and install AZEK PVC Products on their structures.

137. Defendants issued a “Life Time Warranty” that their AZEK decking were free of defects in material and workmanship when they knew or should have known that their AZEK PVC Products were susceptible to photo and thermal degradation, and that such degradation was going to occur in all the outdoor uses and applications. Likewise, Defendants issued a “20 Year Limited Warranty” for their railing products that were susceptible to the same degradation as previously mentioned. Defendants also knew that their AZEK PVC Products would not maintain its appearance durability but would fade, discolor, and would release its opacifier material in the form of chalking, all as a result of exposure to sunlight and heat, normal and anticipated conditions of outdoor applications. Defendants knew that although their product was highly susceptible to photo and thermal degradation, they had no intention of honoring their warranty for those consequences. Defendants knew that their AZEK PVC Products would maintain neither a durable appearance nor surface integrity in the presence of sunlight, and as a result would in fact require repeated and frequent re-surfacing to maintain its appearance durability, yet Defendants omitted these material facts from the public and consumers. When warranty applications were made to them for the anticipated results of photo and thermal degradation, Defendants denied such warranty claims falsely asserting that chemical degradations were mere “aesthetic issues” and not a “performance” issue even though that distinction is provided neither in their warranty nor in any of the representations made by the Defendants to consumers.

138. Defendants had a duty to disclose that AZEK PVC Products were defective, unreliable and inherently flawed in its design or manufacture.

COUNT I
VIOLATIONS OF THE MANGUSSON MOSS ACT
BREACH OF EXPRESS WARRANTY
(On Behalf of Plaintiffs and the Illinois, Maryland, Connecticut, and Virginia Classes)

139. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.

140. The Magnuson-Moss Consumer Products Liability Act, 15 U.S.C §2301, et seq. (“MMCPWA” or the “Act”) provides a private right of action to purchasers of consumer products against retailers who, *inter alia*, fail to comply with the terms of a written warranty, express warranty and/or implied warranty. As demonstrated above, Defendants have failed to comply with the terms of their warranties, written, express and implied, with regard to the decking that they advertised, distributed, marketed and/or sold.

141. AZEK PVC Products are consumer products, as the term is defined in 15 U.S.C. § 2301(a).

142. Defendants are a warrantor, as that term is defined in 15 U.S.C. § 2301(5).

143. The Plaintiffs and each member of the Classes are consumers, as that term is defined in 15 U.S.C. § 2301(3).

144. The MMWA provides a cause of action for breach of warranty or other violations of the Act. 15 U.S.C. § 2310(d)(1). Defendant has also breached its warranty to provide goods that are free from material defects in workmanship and materials. It also has breached its implied warranty of merchantability, which it cannot disclaim under the MMWA, 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs have suffered damages as a

result of Defendant's breaches of express and implied warranties as set forth herein; thus, this action lies. 15 U.S.C. § 2310(d)(1)-(2).

COUNT II
BREACH OF EXPRESS WARRANTY
(On Behalf of Plaintiffs and the Illinois, Maryland, Connecticut, and Virginia Classes)

145. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.

146. As set forth in Exhibit A, Defendants expressly warranted, for the lifetime of the product, that AZEK PVC Products would be free from defects in material and workmanship.

147. Defendants also extended express warranting to consumers, including Plaintiffs and the Classes, by way of product descriptions and representations as to product qualities and characteristics made in sales literature at retailers, on their website, and via advertisements, among other methods, including the representations regarding appearance durability as described above.

148. Defendants represent in their warranty that "AZEK Products are intended for decks, boardwalks and piers," all applications of outdoor exposure to sunlight, ultraviolet and thermal radiation. In spite of this representation of the suitability of outdoor applications, AZEK PVC Products do not perform as represented because its chemical composition results in premature discoloration, fading, chalking, loss of scratch, and stain resistance, and loss of appearance durability due to ultraviolet and thermal radiation. This defect is due to fundamental chemical characteristics of the material used and was known by the Defendants prior to the sale and distribution of the AZEK PVC Products to Plaintiffs and the Classes. Accordingly, the

AZEK PVC Products purchased by Plaintiffs and the Classes was not free from defects in material and workmanship.

149. Defendants' express lifetime warranty provides that they will repair or replace the defective product or refund the purchase price.

150. Defendants have breached the written warranty, as set forth above, by failing to replace the defective product or refund the purchase price.

151. Plaintiffs did not negotiate or bargain for the terms of the express warranty provisions and any purported limitations contained therein. Upon information and belief, the distributors, contractors, and other customers of Defendants did not and could not negotiate or bargain for the terms of the express warranty provisions and any purported limitations contained therein. Instead, Defendants stood in a position of domination and control over the terms.

152. Under these circumstances, Defendants' purported exclusions or limitations of liability and remedies are unconscionable and invalid.

153. At the time that Defendants extended these express warranties to Plaintiffs and the Classes, Defendants knew that AZEK PVC Products would degrade in the presence of sunlight and heat. Nevertheless, Defendants continued to place the defective product on the market and failed and omitted to inform their distributors, customers, Plaintiffs and Class Members, on whose structures AZEK PVC Products were installed, of these inherent chemical characteristics.

154. Defendants have received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and Defendants' knowledge of the defect in AZEK PVC Products, Defendants have failed and refused to honor their express warranty.

155. Defendants' failure to remedy the defective AZEK PVC Products and all associated damages constitutes a breach of express warranty.

156. The foregoing breaches of express warranty at issue were substantial factors in causing damages to Plaintiffs and the Classes.

157. As a result of the foregoing, Plaintiffs and the members of the Classes have suffered damages (in the form of, inter alia, out-of-pocket expenditures for the replacement of AZEK PVC Products or installation of replacements) that were directly and proximately caused by the defective design and manufacture of AZEK PVC Products. Moreover, if Plaintiffs and the members of the Classes had known the true facts about the defects in AZEK PVC Products, they would have considered that information material in their decisions to purchase AZEK PVC Products.

158. Plaintiffs and members of the Classes are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by Illinois and Maryland, as well as all other applicable remedies.

COUNT III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(On Behalf of Plaintiffs and the Illinois, Maryland, Connecticut, and Virginia
Classes)

159. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.

160. Defendants are merchants who sold AZEK PVC Products to Plaintiffs and the Classes for residential use.

161. Defendants impliedly represented and warranted that AZEK PVC Products were free of defects, was of good and merchantable quality, fit for its intended purpose and fit for the ordinary purposes for which such goods are used.

162. In fact, Defendants have sold, directly or indirectly (through distributors and other retail outlets), thousands of AZEK PVC Products in the states of Illinois and Maryland to homeowners, developers, contractors or subcontractors.

163. Through distributors, Defendants designed, manufactured, marketed, advertised, warranted and sold AZEK PVC Products to Plaintiffs or Plaintiffs' builders, contractors, subcontractors or agents.

164. Defendants, generally through distributors, designed, manufactured, marketed, advertised, warranted and sold AZEK PVC Products to Class Members, Class Members' builders, contractors, subcontractors or agents, and AZEK PVC Products was installed on Class Members' structures.

165. Plaintiffs and the Class Members were in privity with Defendants because (1) they

purchased their AZEK PVC Products from an actual or apparent agent of Defendants, and (2) have a contractual relationship stemming from Defendants' lifetime warranty provided in conjunction with the purchase of the AZEK PVC Products.

166. Any limitation, or attempt at limitation, on the implied warranty of merchantability is unconscionable under all of the circumstances, and is unenforceable.

167. Defendants breached the aforementioned representations and implied warranties, as the AZEK PVC Products contain and suffer from defects because the AZEK PVC Products' chemical characteristics result in premature discoloration, fading, chalking, loss of scratch and stain resistance, and loss of appearance durability, and otherwise degrade when exposed to sunlight and heat under all outdoor exposures in the structures in which it is installed. These defects are due to fundamental chemical composition of the AZEK PVC Products which was

known to Defendants prior to its manufacture, sale and distribution of the AZEK PVC Products at the time it left Defendants' control.

168. These defects rendered the decking unsuitable for the ordinary purposes for which it was used and purchased.

169. Plaintiffs provided notice to Defendants of the defects in their AZEK PVC Products and requested that Defendants repair the defects. In addition, members of the Classes, by virtue of claims for replacement made pursuant to the express warranties, also notified Defendants of the defects in their AZEK PVC Products. By virtue of the foregoing, Defendants have received notice of the breach of the warranties.

170. As a result of the foregoing, Plaintiffs and the members of the Classes have suffered damages (in the form of, inter alia, out-of-pocket expenditures for replacement of AZEK PVC Products or installation of replacement decking) that were directly and proximately caused by the defective AZEK PVC Products. Moreover, if Plaintiffs and the members of the Classes had known the true facts about the defects, they would not have had AZEK PVC Products installed at their residences.

171. Plaintiffs and members of the Classes are entitled to the full remedies provided under Article 2 of the Uniform Commercial Code as adopted by Illinois and Maryland, as well as all other applicable remedies.

COUNT IV
VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE
BUSINESS PRACTICES ACT 815 ILCS 505/1 to 515/12
(On Behalf of Plaintiff Tom Glodo and the Illinois Class Only)

172. Plaintiff Tom Glodo, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all other paragraphs of this Amended Complaint as if fully set forth herein. This count is on behalf of Plaintiff Tom Glodo and the Illinois Class.

173. Defendants are manufacturers, marketers, sellers, or distributors of AZEK railing products.

174. The conduct described above and throughout this Amended Complaint took place within the State of Illinois and constitutes unfair business practices in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 5015/1 to 515/12 (hereinafter, "ICFA").

175. The ICFA applies to the claims of all the Illinois Class members because the conduct which constitutes violations of the ICFA by the Defendants occurred within the State of Illinois.

176. Defendants' acts and practices violate the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* ("ICFA"). The Illinois Consumer Fraud Act provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2.

177. Through brochures, advertising, marketing, and sales of AZEK railing Products, Defendants misrepresented the quality, durability, and needed maintenance of AZEK railing Products, and made omissions of material fact.

178. Defendants failed to advise Plaintiff and other member of the Illinois Class that AZEK railing Products are defective and not fit for use.

179. Because of their misrepresentations and non-disclosure of material facts in regard to the quality and durability of AZEK railing Products, as alleged above, Defendants deceived Plaintiff and other members of the Illinois Class.

180. The unfair and deceptive trade acts and practices in regard to the AZEK railing Products have directly, foreseeably, and proximately caused actual damages to Plaintiff and Illinois Class members. Plaintiff and other Class members are damaged in that, contrary to Defendants' previous representations, AZEK railing Products is defective and not fit for use. Additionally, Defendants' remedy is inadequate, as it requires consumers to expend considerable time and money repairing the defective AZEK railing Products at their own expense.

181. In violation of the ICFA, Defendants employed fraud, deception, false promise, misrepresentation and the knowing concealment, suppression, or omission of material facts in their sale and advertisement of AZEK railing Products in the State of Illinois.

182. Specifically, Defendants made the following false and deceptive representations in its marketing materials:

- a. That AZEK decking would maintain "Richer, Long Lasting Color."
- b. That AZEK decking would only "weather very slightly over time and will look luxurious for years to come."
- c. That "[B]y leaving out the wood fillers AZEK deck materials are engineered to resist stains and mold."
- d. That "AZEK deck surfaces resist scratching and maintain their grain better than conventional wood or composite boards."
- e. That AZEK Building Products are "Designed to last beautifully," a phrase which Defendants have trademarked.
- f. That AZEK decking "will stand the test of time gracefully with minimal upkeep."
- g. That consumer need only "Sit back and enjoy the lasting beauty" of AZEK decking and that its "Strong good looks are just the beginning."

- h. That AZEK decking is “Scratch Resistant,” and “Mold Resistant;”
- i. That “[m]arket demand is moving from wood and composites to a new category of low maintenance decking. With stain and scratch resistance that makes life on the deck easy and a broad palette of shades to complement any exterior. AZEK is the smart and beautiful low maintenance decking. And with over 25 years of experience in cellular PVC manufacturing, AZEK Decking is no stranger to better performance. Manufactured in the USA, AZEK has invested years of technical expertise to develop decking that is designed to last beautifully.”
- j. That AZEK railing “joins the AZEK family of premium exterior products.”
- k. That AZEK railing “offers the beauty and feel of real wood coupled with the high durability and low maintenance you expect from AZEK.”

183. Contrary to Defendants’ representations, AZEK railing Products are not more durable than wood and composites, does not “stand the test of time gracefully with minimal upkeep”, and is not resistant to scratches, stains, and fading.

184. Defendants either knew, or should have known, that AZEK railing Products were defectively designed and/or manufactured and would allow stains, scratching, and fading, such that the decking was not as represented to be by the Defendants as alleged herein.

185. Upon information and belief, at the time that AZEK railing Products left their control, Defendants knew that AZEK railing Products contained a defect because it succumbs to staining, scratching, and fading under normal conditions and natural, outdoor exposure.

186. Despite the foregoing, Defendants failed to inform or educate distributors, Plaintiff, Plaintiff’s contractor, subcontractors and/or agents, as well as Class Members, Class Members’ contractors, subcontractors and/or agents about the defects and deficiencies regarding AZEK railing Products at the time of sale. Defendants were in a superior position to know, and actually did know, the true facts about the hidden defects of AZEK railing Products. Defendants’ acts and omissions, detailed herein, had the tendency to deceive distributors, Plaintiff, Plaintiff’s

builder, subcontractors and/or agents, as well as Class Members, Class Members' builders, subcontractors and/or agents and members of the Class, and did deceive Plaintiff and Class Members to their detriment.

187. Defendants knew that AZEK railing Products were defective and would stain, scratch, and fade prematurely. Defendants also knew that their warranty failed its essential purpose and would not make Plaintiff or Class Members whole, and breached its warranty by failing to pay for 100% of the labor costs associated with repair and replacement of AZEK railing Products on Plaintiff's and Class Members' Structures. Because of these facts, deception or unfairness was present at both the time of contract formation and at the time of Defendants' breach of warranty.

188. As a direct and proximate cause of the violation of the ICFA, described above, Plaintiff and members of the Class have been injured in that they have purchased the defective AZEK railing Products based on nondisclosure of material facts alleged above. Had Plaintiff and Class Members known the defective nature of the AZEK railing Products used on their structures, they would not have purchased it, or would have paid a lower price for their structures.

189. Defendants used unfair methods of competition and unfair or deceptive acts or practices in conducting their businesses within the meaning of the ICFA. This unlawful conduct is continuing, with no indication that Defendants will cease.

190. Defendants acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when it committed these acts of consumer fraud.

191. As a direct and proximate result of Defendants' unfair and deceptive acts and practices, Plaintiff and the other members of the Illinois Class will suffer damages, which

include, without limitation, costs to inspect, repair or replace their AZEK railing Products, in an amount to be determined at trial.

192. As a result of the acts of consumer fraud described above, Plaintiff and the members of the Illinois Class have suffered ascertainable loss in the form of actual damages that include the purchase price of the products for which Defendants are liable to the Plaintiff and the Illinois Class for treble their ascertainable losses, plus attorneys' fees and costs, along with equitable relief prayed for herein in this Amended Complaint.

COUNT V
VIOLATION OF MARYLAND'S CONSUMER PROTECTION ACT
Md. Code Ann., Com. Law §§ 13–101 *et seq.*
(On Behalf of Plaintiff William Murdoch and the Maryland Class Only)

193. Plaintiff William Murdoch, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all other paragraphs of this Amended Complaint as if fully set forth herein. This count is on behalf of Plaintiff William Murdoch and the Maryland Class.

194. Defendants are manufacturers, marketers, sellers, or distributors of AZEK decking Products.

195. The conduct described above and throughout this Amended Complaint took place within the State of Maryland and constitutes unfair business practices in violation of Maryland's Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 *et seq.* (hereinafter, "MCPA").

186. The MCPA applies to the claims of all the Maryland Class members because the conduct which constitutes violations of the MCPA by the Defendants occurred within the State of Maryland.

187. The MCPA prohibits "unfair or deceptive trade practices", including:

(1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;

(2) Representation that: (i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;

Md. Code Ann., Com. Law § 13-101

188. Through brochures, advertising, marketing, and sales of AZEK decking Products, Defendants misrepresented the quality, durability, and needed maintenance of AZEK decking Products, and made omissions of material fact.

189. Defendants failed to advise Plaintiff and other member of the Maryland Class that AZEK decking Products are defective and not fit for use.

190. Because of their misrepresentations and non-disclosure of material facts in regard to the quality and durability of AZEK decking Products, as alleged above, Defendants deceived Plaintiff and other members of the Maryland Class.

191. The unfair and deceptive trade acts and practices in regard to the AZEK decking Products have directly, foreseeably, and proximately caused actual damages to Plaintiff and Maryland Class members. Plaintiff and other Class members are damaged in that, contrary to Defendants' previous representations, AZEK decking Products are defective and not fit for use. Additionally, Defendants' remedy is inadequate, as it requires consumers to expend considerable time and money repairing the defective AZEK decking Products at their own expense.

192. In violation of the MCPA, Defendants employed fraud, deception, false promise, misrepresentation and the knowing concealment, suppression, or omission of material facts in their sale and advertisement of AZEK decking Products in the State of Maryland.

193. Specifically, Defendants made the following false and deceptive representations in its marketing materials:

- a. That AZEK Building Products are “Designed to last beautifully,” a phrase which Defendants have trademarked.
- b. That AZEK railing “joins the AZEK family of premium exterior products.”
- c. That AZEK railing “offers the beauty and feel of real wood coupled with the high durability and low maintenance you expect from AZEK.”

194. Contrary to Defendants’ representations, AZEK railing Products are not more durable than wood and composites, does not “stand the test of time gracefully with minimal upkeep”, and is not resistant to scratches, stains, and fading.

195. Defendants either knew, or should have known, that AZEK decking Products were defectively designed and/or manufactured and would allow stains, scratching, and fading, such that the decking was not as represented to be by the Defendants as alleged herein.

196. Upon information and belief, at the time that AZEK decking Products left their control, Defendants knew that AZEK decking Products contained a defect because it succumbs to staining, scratching, and fading under normal conditions and natural, outdoor exposure.

197. Despite the foregoing, Defendants failed to inform or educate distributors, Plaintiff, Plaintiff’s contractor, subcontractors and/or agents, as well as Class Members, Class Members’ contractors, subcontractors and/or agents about the defects and deficiencies regarding AZEK decking Products at the time of sale. Defendants were in a superior position to know, and actually did know, the true facts about the hidden defects of AZEK decking Products. Defendants’ acts and omissions, detailed herein, had the tendency to deceive distributors, Plaintiff, Plaintiff’s builder, subcontractors and/or agents, as well as Class Members, Class

Members' builders, subcontractors and/or agents and members of the Class, and did deceive Plaintiff and Class Members to their detriment.

198. Defendants knew that AZEK decking Products were defective and would stain, scratch, and fade prematurely. Defendants also knew that their warranty failed its essential purpose and would not make Plaintiff or Class Members whole, and breached its warranty by failing to pay for 100% of the labor costs associated with repair and replacement of AZEK decking Products on Plaintiff's and Class Members' Structures. Because of these facts, deception or unfairness was present at both the time of contract formation and at the time of Defendants' breach of warranty.

199. As a direct and proximate cause of the violation of the MCPA, described above, Plaintiff and members of the Class have been injured in that they have purchased the defective AZEK decking Products based on nondisclosure of material facts alleged above. Had Plaintiff and Class Members known the defective nature of the AZEK decking Products used on their structures, they would not have purchased it, or would have paid a lower price for their structures.

200. Defendants used unfair methods of competition and unfair or deceptive acts or practices in conducting their businesses within the meaning of the MCPA. This unlawful conduct is continuing, with no indication that Defendants will cease.

201. Defendants acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when it committed these acts of consumer fraud.

202. As a direct and proximate result of Defendants' unfair and deceptive acts and practices, Plaintiff and the other members of the Class will suffer damages, which include,

without limitation, costs to inspect, repair or replace their AZEK decking Products, in an amount to be determined at trial.

203. As a result of the acts of consumer fraud described above, Plaintiff and the Maryland Class have suffered ascertainable loss in the form of actual damages that include the purchase price of the products for which Defendants are liable to the Plaintiff and the Maryland Class for treble their ascertainable losses, plus attorneys' fees and costs, along with equitable relief prayed for herein in this Amended Complaint.

COUNT VI
VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT
VIRGINIA CODE § 59.1-196, *et seq.*
(On Behalf of Plaintiff Joseph Rule and the Virginia Class Only)

204. Plaintiff Rule, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all other paragraphs of this Amended Complaint as if fully set forth herein. This count is on behalf of Plaintiff Joseph Rule and the Virginia Class.

205. The conduct described above and throughout this Amended Complaint took place within the State of Virginia and constitutes unfair business practices in violation of Virginia's Consumer Protection Act, Virginia Code § 59.1-196, *et. seq.*

206. Virginia Code § 59.1-198 defines a "consumer transaction" as "[t]he advertisement, sale, lease, license or offering for sale, lease or license of goods or services to be used primarily for personal, family or household purposes." Furthermore, "Goods" means "all real, personal or mixed property, tangible or intangible."

207. Defendants' sale of the AZEK decking Products, either directly or through agents, constitutes a transaction by a supplier under the Virginia Consumer Protection Act.

208. Virginia Code §59.1-200.4.providesthat:"[t]he following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful":

- a. Misrepresenting the source ... of goods or services;
- b. Misrepresenting the affiliation, connection or association of the supplier, or of the goods or services, with another;
- c. Misrepresenting geographic origin in connection with goods or services;
- d. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses or benefits;
- e. Misrepresenting that goods or services are of a particular standard, quality, grade, style or model.
- f. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;
- g. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

209. The Virginia Consumer Protection Act was designed to promote ethical dealings between suppliers and the consuming public. The duty not to misrepresent is independent of any contract between the parties.

210. Defendants' acts and omissions were committed willfully, wantonly and with reckless disregard of Plaintiffs rights, as well as Defendants' failure to use reasonable care in this matter as alleged in this Amended Complaint, constitute violations of the Virginia Consumer Protection Act.

211. Plaintiff Rule has suffered actual damages as a result of Defendants' violations of the Virginia Consumer Protection Act.

212. Therefore, Plaintiff Rule is entitled to damages from Defendants together with his attorneys' fees, interest and costs.

213. Because Defendants' violations were willful, Plaintiff Rule is entitled to increase his damages to an amount not exceeding three times the actual damages sustained, or \$1,000.00, whichever is greater.

COUNT VII
VIOLATION OF CONNECTICUT UNFAIR TRADE PRACTICES ACT (CUPTA)
(On Behalf of Plaintiffs Wayne and Soto and the Connecticut Class Only)

214. Plaintiffs Wayne and Soto, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein. This count is on behalf of Plaintiffs Wayne and Matthew Soto and the Connecticut Class.

215. This is a claim for relief under Connecticut General Statutes §§ 42-110a, et seq., the Connecticut Unfair Trade Practices Act ("CUTPA").

216. CUTPA provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen.Stat. § 42-110b(a). Defendants' acts and omissions as alleged herein constitute "unfair or deceptive acts or practices in the conduct of [a] trade or commerce" in violation of CUTPA, Conn. Gen. Stat. § 42-110b(a).

217. Defendants are corporations and, thus, are "persons" for purposes of CUTPA, Conn. Gen. Stat. § 42-110a(3).

218. Defendants' marketing, selling, and installation of the AZEK decking Products constitutes "trade or commerce" within the meaning of Conn. Gen. Stat. § 42-110a(4).

219. In the course of Defendants' business, they misrepresented the nature of their product as "maintenance free," willfully failed to disclose and actively concealed the defects associated with the AZEK decking Products, as described above. This conduct was a deceptive

act in that Defendants represented that the AZEK decking Products has characteristics, uses, benefits, and qualities which it does not have; represented that the AZEK decking Products is of a particular standard and quality when it is not; and advertised the AZEK decking Products with the intent not to sell it as advertised.

220. Defendants knew or should have known that their conduct violated CUTPA. Defendants engaged in a deceptive trade practice when they failed to disclose material information concerning the AZEK decking Products, which was known to Defendants at the time of manufacture and sale. Defendants deliberately withheld the information about the AZEK decking Products, defects to ensure that consumers would purchase their AZEK decking Products and to induce the consumer to enter into a transaction.

221. Defendants' conduct as alleged herein constitutes "unfair trade practices" under CUTPA, because it offends the public policy of the State of Connecticut and the United States, is unethical, oppressive, and unscrupulous, and causes substantial (preventable) injury to Connecticut consumers who are purchasers of the AZEK decking Products.

222. The side effects of Defendants' decking Products were material to Plaintiffs and the Class. Had Plaintiffs and the Class known the truth about the AZEK decking Products, they would not have purchased the product.

223. As a direct and proximate cause of Defendants' employment of these unfair or deceptive acts and practices, Plaintiffs and the Class have suffered ascertainable loss within the meaning of Conn. Gen. Stat. § 42-110g(a) and have been damaged by Defendants' unlawful acts. Defendants misrepresented the AZEK decking Products as "maintenance-free" and concealed from Plaintiffs and Class Members the true defects associated with the AZEK decking Products. As a result of Defendants' conduct, Plaintiffs and the Class have suffered financial injury in that

they were sold defective AZEK decking Products as a result of Defendants' misrepresentations and omissions concerning the defects of the AZEK decking Products. Plaintiffs and the Class Members paid more for the AZEK decking Products than they would have paid for traditional wood decking. The value of the AZEK decking Products has been diminished now that the defects have come to light, and Plaintiffs and the Class own homes with AZEK decking Products that is defective.

224. Defendants manufactured, marketed, and sold the defective AZEK decking Products in reckless disregard of its defects.

225. Plaintiffs and the Class are entitled to recover their actual damages, punitive damages, and attorneys' fees pursuant to Conn. Gen. Stat. § 42-110g

226. Pursuant to Conn. Gen. Stat. § 42-110g(c), Plaintiffs will mail a copy of this Amended Complaint to the Connecticut Attorney General.

DECLARATORY RELIEF PURSUANT TO 28 U.S.C. § 2201
(On Behalf of All Plaintiffs and the Class)

227. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.

228. Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P. 23.

229. There is an actual controversy between Defendants, Plaintiffs, and the Classes concerning the validity of the Defendants' limitations contained in their Lifetime Limited Warranty issued by Defendants, and in particular Defendants' rejection of warranty claims related to photo and thermal degradation of its AZEK PVC Products.

230. Pursuant to 28 U.S.C. § 2201 this 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.”

231. Defendants have wrongfully denied warranty claims as unwarranted “aesthetic” defects despite this distinction not appearing in the warranty, and in spite of the root cause of defects being directly attributable to Defendants’ use of PVC in their outdoor decking and railing materials.

232. Accordingly, Plaintiffs seek a declaration that the Defendants’ use of PVC is a defect in material used in their AZEK decking and AZEK railing, and covered by Defendants’ Lifetime Limited Warranty. In particular, Plaintiffs and the Class seek the following declarations:

- a. The Court finds that all Defendants’ AZEK PVC decking and railing is defective in material because the polyvinylchloride used in the decking is susceptible to chemical degradation due to ultraviolet and thermal exposure, which exposure appertains to all outdoor applications of the Defendants’ product.
- b. The Court finds that Defendants knew their PVC decking and railing products would experience photo and thermal degradation as a result of exposure to sunlight and heat, and that these exposures were highly likely to occur in all outdoor applications of their products.
- c. The Court finds that Defendants intended the purchasers of their products to use their PVC decking and railing for decks, boardwalks, and piers when they knew, but did not disclose that such intended uses would result in chemical degradation of the products before the expiration of their Lifetime Limited Warranty.
- d. The Court finds that Defendants uniformly represented to purchasers of their PVC products that their appearance was durable and long lasting when in fact Defendants knew this to be false, and knew that the appearance of their PVC products could not be restored to their pre-degradation appearance.

- e. The Court finds that Defendants' representation that their PVC decking and railing products would have durable and long lasting appearance characteristics and would not be subject to chemical degradation of those characteristics when used in the matter Defendants had recommended, and would not require maintenance to retain their appearance were express warranties of product characteristics and performance subject to all the remedies otherwise provided for products defective in material and workmanship contained in Defendants' Lifetime Limited Warranty.
- f. The Court finds that Defendants have wrongfully denied warranty benefits, under their express warranty, to purchasers and owners of AZEK PVC decking and railing, and that all applications for warranty coverage for photo and thermal degradation are to be honored by Defendants with all appropriate warranty benefits provided to otherwise eligible warranty applicants.
- g. The Court finds that Defendants' PVC decking products are subject to chemical degradation as a result of exposure to ultraviolet and thermal radiation and that the results of this degradation, including discoloration, fading, chalking, loss of appearance durability and loss of scratching and staining resistance, and that no maintenance will remediate the consequences of this chemical degradation are material facts which Defendants must disclose to all persons or entities currently possessing contractual rights under Defendants' Lifetime Limited Warranty.
- h. The Court declares that Defendants shall re-audit and reassess all prior warranty claims, including claims previously denied in whole or in part, where the denial was based upon Defendants' assertion that claims of fading, discoloration, chalking, loss of appearance durability, loss of scratch or stain resistance, or other symptoms of photo and/or thermal degradation for outdoor exposure were not warrantable "aesthetic" defects.
- i. The Court declares that Defendants shall establish an inspection program and protocol to be communicated to all purchasers and owners of AZEK PVC decking which will require Defendants to determine whether their AZEK decking products have experienced photo or thermal degradation due to exposure to ultraviolet or thermal radiation. All disputes over warranty coverage shall be adjudicated by a Special master appointed by the Court or agreed to by the parties.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for a judgment against Defendants as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3), and certifying the Classes defined herein;
- B. Designating Plaintiffs as representatives of the Classes and their counsel as Class counsel;
- C. Entering judgment in favor of Plaintiffs and the Classes and against Defendants for all compensatory, individual and class damages, and all other damages permitted by law, and for attorneys' fees and costs, including interest thereon;
- D. Compelling Defendants to establish a program to inspect, repair or replace all AZEK PVC Products that has manifest photo or thermal degradation as a result of exposure to ultraviolet or thermal radiation;
- F. Compelling Defendants to establish a program to reimburse their warranty claims previously denied or paid in part, reimburse Plaintiffs and the Class Members who have had to pay to repair or replace defective AZEK PVC Products, or paid the cost of remediation;
- G. For each of the Declarations as afore described; and
- H. Granting such further relief as the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

DATED: October 31, 2013

Respectfully submitted,

s/Eric D. Holland

Eric D. Holland

R. Seth Crompton

**HOLLAND, GROVES, SCHNELLER
& STOLZE, LLC**

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St. Louis, Missouri 63101

Telephone: 314.241.8111

Facsimile: 314.241.5554

eholland@allfela.com

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John A. Peca

Timothy W. Clary

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mark@geragos.com
kaufman@geragos.com
meiselas@geragos.com

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2013, I caused a copy of the foregoing document to be served upon all counsel of record via ECF Notice of Electronic Filing.

/s/ Eric D. Holland
Eric D. Holland
**HOLLAND, GROVES, SCHNELLER
& STOLZE, LLC**
300 N Tucker, Suite 801
St. Louis, Missouri 63101
Telephone: 314.241.8111
Facsimile: 314.241.5554
eholland@allfela.com

EXHIBIT A



LIFETIME LIMITED WARRANTY

AZEK Deck components (the "AZEK Products") are warranted by the manufacturer, AZEK Building Products Inc., ("AZEK" or "Manufacturer") in accordance with the terms and conditions set out below, to be free from defects in material and workmanship that (i) occur as a direct result of the manufacturing process, (ii) occur under normal use and service, (iii) occur during the warranty period and (iv) result in blistering, peeling, flaking, cracking, splitting, cupping, rotting or structural defects from termites or fungal decay.

NOTIFICATION

It is a condition of this warranty that should your AZEK Products show defects at any point, Purchaser/Property owner will notify AZEK in writing within 30 days after discovering the claimed defect and prior to beginning any repair or alteration to the AZEK Products. The notice must include a detailed description of the claimed defect, photograph(s) of the defect and proof of purchase.

It is a further condition of this Warranty that the Manufacturer will, within a reasonable period of its receipt of such notice, be permitted to inspect the claimed defect. If, after inspection, the Manufacturer determines that the claim is in accordance with the terms of this Lifetime Limited Warranty, the Manufacturer will repair or replace the defective material, or will refund the original purchase price of the defective material. The choice of remedy is in Manufacturer's sole discretion. The Manufacturer will not be liable for labor and/or removal costs connected with the claim. Replacement product will be provided as close to the original color as possible, although it is not guaranteed to match completely. In the event of repair or replacement, the original warranty shall apply to the repaired or replaced portion of the AZEK Products and will extend for the balance of the warranty period in effect at the time the material proved defective.

LIMITATIONS

This Lifetime Limited Warranty is void if any of the following occurs: (a) improper installation and/or failure to abide by the Manufacturer's installation guidelines; (b) movement, settling, distortion or collapse of the ground or supporting structure on which the AZEK Products are installed; (c) naturally occurring casualties including impact of objects, earthquakes, tornados, hurricanes, lightning, flooding or acts of God; (d) improper handling or storage, neglect or misuse of the AZEK Products either by the Purchaser or third parties; (e) improper application of paint or other surface chemicals not recommended by the Manufacturer in writing; (f) adverse effects of air pollution and (g) normal weathering of surfaces.

OTHER CONDITIONS

The Manufacturer does not recommend the AZEK Products for all end use applications. The AZEK Products are intended for decks, boardwalks and piers. Local Code Authority should be consulted before installation of structures with specific load-bearing capacities and for other zoning code requirements. This Lifetime Limited Warranty is valid for single-family, residential applications only. For all other applications, including commercial use, this warranty shall be limited to a period of twenty (20) years.

THE WARRANTY STATEMENTS CONTAINED IN THIS LIFETIME LIMITED WARRANTY SET FORTH THE ONLY WARRANTIES EXTENDED BY AZEK AND ARE IN LIEU OF ALL OTHER CONDITIONS AND WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PROVISIONS OF THIS WARRANTY SHALL CONSTITUTE THE ENTIRE LIABILITY OF AZEK AND THE PURCHASER/PROPERTY OWNER'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY. IN PARTICULAR, IN NO EVENT SHALL AZEK BE LIABLE TO THE PURCHASER/PROPERTY OWNER FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING FROM THE USE OF THE AZEK PRODUCTS OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY.

The laws of some states and provinces do not allow the exclusion, limitation or variation of certain conditions or warranties implied by legislation so the above limitations or exclusions may not apply to you. This Lifetime Limited Warranty gives you specific legal rights and you may also have other rights that vary from state to state and province to province.

NOTE: In order to register your Lifetime Limited Warranty, please complete and sign the Warranty Registration Card within forty five (45) days of purchase. Failure to do so may void certain portions of this warranty. This warranty and registration is non-transferable from the original Purchaser/Property Owner.

REGISTER BY MAIL: Please complete and mail to: AZEK Building Products Inc., 801 Corey Street, Scranton, PA 18505.

REGISTER ONLINE: Visit azek.com.

OWNER INFORMATION

Name _____
 Address _____
 City State Zip _____
 Phone Number _____
 E-mail _____
 Date Installed _____

Owner Signature _____

CONTRACTOR INFORMATION

Name _____
 Address _____
 City State Zip _____
 Phone Number _____
 Email _____

EXHIBIT B



AZEK Trademark and AZEK Reserve Railing Products - Limited 20-Year Warranty

AZEK Building Products warrants to the original purchaser and to any subsequent owner of a structure on which its AZEK Trademark and AZEK Reserve Railing products are originally installed, will not rot, crack, peel, blister, or suffer structural damage from fungal decay for 20 (twenty) years (white railing only) from the date of the original consumer purchase when the product has been stored, handled, applied, finished and maintained in accordance with all manufacturer's guidelines.

Purchaser's sole remedy for any claim whatsoever, whether in contract, warranty, tort or strict liability arising out of the use, storage or possession of any AZEK Trademark or AZEK Reserve Railing products including, without limitation, any claim that the products fail to perform as warranted, shall be replaced with new AZEK Trademark or AZEK Reserve Railing products. To obtain replacement, the original subsequent owner must submit this Warranty Certificate with the original purchase invoice indicating the date of purchase and pictures of the defective product. The owner/purchaser must notify AZEK Building Products in writing at the address listed below, within 30 days after discovering a possible nonconformity of the

Product(s), and before beginning any permanent repair. This notice should include the date on which the Product(s) were purchased. It is the Owner's responsibility to establish the purchase date. AZEK must be given a 60-day opportunity to inspect the Product(s) if requested. Upon reasonable notice, the Purchaser or Owner must allow AZEK's agents to enter the property and the structure on which the Product(s) is applied for inspection.

AZEK Building Products
Warranty Services
801 Corey Street
Scranton, PA 18505

Manufacturer's sole liability under this Warranty is limited solely to the replacement of defective product. This Warranty shall not apply to product that has not been installed in accordance with the installation guidelines specified by the Manufacturer or to product which has been abused, placed under or subjected to abnormal residential use conditions or used modified or otherwise treated in any manner other than as intended by Manufacturer. In no event shall Manufacturer be liable for labor, exemplary or consequential damages of any kind whatsoever.

er. Purchaser is solely responsible for determining the suitability of use of application of any AZEK Trademark or AZEK Reserve Railing products, or whether products meet requirements of applicable building codes for specific applications.

No person or entity is authorized by Manufacturer to make, and Manufacturer shall not be bound by any statement or representation as to the performance of any AZEK Trademark or AZEK Reserve Railing products other than what is contained in this Warranty. This Warranty shall not be amended or altered except in a written instrument signed by Manufacturer and Purchaser.

The foregoing Warranty is exclusive and in lieu of any other warranties with respect to any AZEK Trademark or AZEK Reserve Railing products, express or implied, including without limitation, any implied warranty of merchantability or fitness for a particular purpose.

This warranty gives you specific legal rights, and you may also have other rights which vary from province to province and state to state.

EXHIBIT C

From: "Jessica Methot" <Jessica.Methot@azek.com>
To: "Thomas Glodo" <btll@midwest.net>
Cc: "Kim McGahee" <Kim.McGahee@azek.com>
Sent: Tuesday, May 22, 2012 10:30 AM
Attach: Trim Complaint Form-.pdf
Subject: RE: Contact Request Other: Thomas Glodo
Thomas,

Please fill out the attached complaint form and provide me with a few photos showing the areas of concern and a copy of the original invoice. We will use this information to make a complete evaluation of your railing complaint.

Thank You,
Jessica Methot
Customer Service Representative

Phone: 570.558.8014
Fax: 570-558-8210
Email:

Visit our website at:

This email message and any attachments are confidential. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in relation to the contents of this information is strictly prohibited.

From: Thomas Glodo [mailto:btll@midwest.net]
Sent: Tuesday, May 22, 2012 11:30 AM
To: Info@AZEK; Info@AZEK
Subject: Contact Request Other: Thomas Glodo

First Name: **Thomas**
Last Name: **Glodo**
Company: **None**
Address: **5834 State Route 154**
City: **Pinckneyville**
State: **IL**
Zip Code: **62274**
Email:
Telephone: **6183579606**
Cell Phone: **6183180280**
Contact Type: **Other**
Type of Business: **Homeowner**
Type of Business Other:

Message:

We have a problem with some azek railing that is only 6 months old. It is cracked and splitting open on the top. We were told to get online and fill out this form.

Received from IP Address 72.106.137.192 on May 22, 2012 11:29AM

5/23/2012



AZEK Trim Complaint Form

Homeowner Information

Homeowner: TOM + BRENDA GLOD

Address: 5834 S.R. 154

City/State/Zip code: PINCKNEYVILLE, IL. 62274

Phone: 618.357.9606

Mobile: 618.318.0280

E-mail address:

Date customer noticed concern:	5/7/12
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Date AZEK was made aware of concern:	5/10/12
--------------------------------------	---------

Date of installation:	12/1/11
-----------------------	---------

Product type:	RESERVE RAIL (TOP)
---------------	--------------------

Estimated amount of trim used:	11 FL
--------------------------------	-------

Trim Exposure

	Northern		Eastern
X	Southern		Western

☒ Copy of original invoice/or proof of purchase

☒ Close up photos of damaged materials:

	Photo of overall installation (elevation)
---	---

Type and brand of fasteners used

Size: _____

Spec:	RESERVE RAIL KIT
-------	------------------

Fastener spacing:

Distribution of fastener from end of the board:

Type of adhesive (if used):

Applied to back end of the boards?	Yes		No	
------------------------------------	-----	--	----	--

Applied to the joints?	Yes	No
------------------------	-----	----

If painted, what brand / type of paint/color?

Solid backing? Yes ☐ No ☐

If spanning, what are the spans?

Builder Information

Builder Name: DENNIS RUETER

Builders Address:

City/State/Zip code: PINCKNEYVILLE, FL. 62274

Phone: 618.571.2875

Mobile:

Dealer Information

Name of dealer: RP LUMBER CO. INC.

Name of dealer: RT LUMBER CO. INC.
Location of dealer: 12585 N. SPARROW LANE - MT. VERNON, IL. 62864

Contact person: TOM M. 618.204.7870

Phone: 601.242.3370

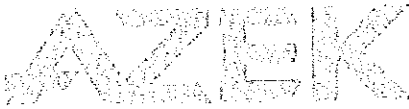
Description of Complaint:

FINISH ON TOP OF RESERVE RAIL IS SPLIT, CRACKED.

Mail to:
AZEK Building Products
888 N. Keyser Avenue
Scranton, PA 18504

Email to: kim.mcgahee@azek.com

Attn: Kim McGahee



AZEK Trim Complaint Form

Homeowner Information

Homeowner: TOM + BRENDA GLODO
 Address: 5834 S.R. 154
 City/State/Zip code: PINCKNEYVILLE, IL. 62274
 Phone: 618-357-9606 Mobile: 618-318-0280
 E-mail address: ~~bt@brennabg.com~~

Date customer noticed concern: 5/7/12 Product type: 6X6 ISLAND POST CAP
 Date AZEK was made aware of concern: 5/10/12 Estimated amount of trim used: 2 PIECES
 Date of installation: 12/1/11

Trim Exposure			
<input checked="" type="checkbox"/>	Northern	<input type="checkbox"/>	Eastern
<input type="checkbox"/>	Southern	<input type="checkbox"/>	Western

- ☒ Copy of original invoice/or proof of purchase
☒ Close up photos of damaged materials:
☒ Photo of overall installation (elevation)

Type and brand of fasteners used

Size:
 Spec:
 Fastener spacing:
 Distribution of fastener from end of the board:

Type of adhesive (if used):

Applied to back end of the boards? Yes ☐ No ☐
 Applied to the joints? Yes ☐ No ☐

If painted, what brand / type of paint/color?

Solid backing? Yes ☐ No ☐ If spanning, what are the spans?

Builder Information

Builder Name: DENNIS RUETER
 Builders Address:
 City/State/Zip code: PINCKNEYVILLE, IL. 62274
 Phone: 618-571-2875 Mobile:

Dealer Information

Name of dealer: THE DECK STORE, INC.
 Location of dealer: 4322 W. 96TH ST. INDIANAPOLIS, IN.
 Contact person: TOM
 Phone: 317-471-0400

Description of Complaint:

TOP OF CAPS ARE RUFF NOT SMOOTH, THE FINISH IS SANDY. WATER ALSO PUDDLES ON TOP OF THEM.

Mail to:
 AZEK Building Products
 888 N. Keyser Avenue
 Scranton, PA 18504

Email to: kim.mcgahoe@azek.com

Attn: Kim McGahee

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ATTN: KIM MCGAHEE
 AZEK BUILDING PRODUCTS
 888N. KEYSER AVE.
 SCRANTON, PA. 18504

2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Mary K. [Signature]

☐ Agent☐ Addressee

B. Received by (Printed Name)

Mary K. [Signature]

C. Date of Delivery

5/25/2002

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7011 0110 0000 9432 4489

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE

SCRANTON PA 185



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

TOM GLOBO
 5834 S.R. 154
 PINCKNEYVILLE, IL.
 62274



R/L CARRIERS		FREIGHT BILL NO. I472893093		DATE 06/28/12 PAGE 1/1	
REPTO: P.O. BOX 271 WILLIAMINGTON, OH 43777-0271		772 AAA R/L CARRIERS 800-543-5589 R/L GLOBAL 888-706-3589 R/L TRUCKLOAD 877-510-9133		B84-1 One Call-One Carrier • R/L Carriers.com	
SERVICES BELOW MAY REQUIRE ADDITIONAL CHARGES: <input checked="" type="checkbox"/> CHECK BOX & INITIAL					
<input type="checkbox"/> UPGRADE <input type="checkbox"/> INSIDE DELIVERY <input type="checkbox"/> LIMITED ACCESS (RESIDENTIAL)		ORIGINATING TERMINAL		DESTINATION TERMINAL	
<input type="checkbox"/> SORT/REDELEGATE <input type="checkbox"/> DETENTION (TIME IN TIME OUT)		SCR/AREA 100 PAD/AREA 25B		PAD 0A1607 PREPAID	
BILL TO AZEK801 AZEK BUILDING PRODUCTS 801 E COREY ST SCRANTON PA 18505		BAL NO. NONE 570 558-8000		PICKUP 08348 FREIGHT TERMS	
CONSIGNEE TOM GLODO 5834 STATE ROUTE 154 PINCKNEYVILLE IL 62274					
NO. PIECES	NO. TWT	H/A	DESCRIPTION OF ARTICLES	WEIGHT / LB	RATE
1			PVC DECK & TRIMBOARDS FUEL SURCHARGE 27.50% LIMITED ACCESS DELIVERY CHARGE CUSTOMER PHONE # 618-357-9606 *** RESIDENTIAL LIMITED ACCESS *** 1 SKID R/L CARRIERS - PRIDE IN OUR PEOPLE, PRIDE IN OUR PERFORMANCE!	31	
1			06/28/12 6:55PM	31	CHARGES
					Collect This Amount
R/L TRANSFER, INC. • GATOR FREIGHTWAYS, INC. • GREENWOOD MOTOR LINES, INC. • PARAMOUNT TRANSPORTATION SYSTEMS, INC. R/L CARRIERS CUSTOMER COPY					

COPY

EXHIBIT D

AZEK

12-4-12

AZEK Trim Complaint Form #2

DAVE SAID HE DIDNT NEED THIS FORM - WOULD USE FIRST COMPLAINT.

Homeowner Information

Homeowner: TOM + BRENDA GLODO

Address: 5834 S.R. 154

City/State/Zip code: PINKNEYVILLE, IL 62274

Phone: 618-357-9606

Mobile: 618-318-0280

E-mail address:

Date customer noticed concern: 11-20-12

Date AZEK was made aware of concern: 12-4-12

Date of installation: 12-1-11

Product type: RESERVE RAIL (TOP)

Estimated amount of trim used: 8 ft 1/4 in.

Trim Exposure

Northern	<input checked="" type="checkbox"/>	Eastern
Southern	<input type="checkbox"/>	Western

Copy of original invoice/or proof of purchase

Close up photos of damaged materials:

Photo of overall installation (elevation)

Type and brand of fasteners used

Size:
 Spec: RESERVE RAIL KIT
 Fastener spacing:
 Distribution of fastener from end of the board:

Type of adhesive (if used):

Applied to back end of the boards? Yes ☐ No ☐
 Applied to the joints? Yes ☐ No ☐

If painted, what brand / type of paint/color?

Solid backing? Yes ☐ No ☐

If spanning, what are the spans?

Builder Information

Builder Name: DENNIS RUETER

Builders Address:

City/State/Zip code: PINKNEYVILLE, IL 62274

Phone: 618-571-2875

Mobile:

Dealer Information

Name of dealer: R.P. LUMBER CO. INC.

Location of dealer: 12585 N. SPARROW LANE - MT. VERNON, IL 62864

Contact person: TOM M. 618-204-7870

Phone: 618-242-3370

Description of Complaint:

FINISH ON TOP OF RESERVE RAIL IS SPLIT, CRACKED.

(SAME PROBLEM AS OTHER RAIL AS REPORTED ON 5-10-12)

Mail to:

AZEK Building Products
 888 N. Keyser Avenue
 Scranton, PA 18504

Email to: kim.mcgahoe@azek.com

Attn: Kim McGahee

EXHIBIT E

William Murdoch

From: William Murdoch [murdochwill@comcast.net]
Sent: Tuesday, August 21, 2012 8:41 PM
To: 'Kim McGahee'
Subject: RE: Murdoch, William-Deck Complaint
Attachments: deck0001.jpg; deck0002.jpg; DSC00002-s.jpg; DSC00004-s.jpg; DSC00007-s.jpg; DSC00008-s.jpg; DSC00010-s.jpg; Deck Complaint Form-2012.pdf; DSC00005-s.jpg

Ms. McGahee,
Attached please find the complaint form, proof of purchase (2 files), and pictures of our deck. Please contact me if you have any additional questions. Thank you.
William C. Murdoch III
(410)459-5677

From: Kim McGahee [mailto:Kim.McGahee@azek.com]
Sent: Saturday, August 18, 2012 10:54 AM
To: William Murdoch III
Cc: Jessica Methot
Subject: Murdoch, William-Deck Complaint

Hi William :

Please provide me with the information attached to this email. We will use this information to make a complete evaluation of your deck complaint. Please include photos showing your concern.

Regards,

Kim McGahee
570-558-8066

From: William Murdoch III [mailto:murdochwill@comcast.net]
Sent: Friday, August 17, 2012 10:39 AM
Subject: Contact Request Other: William Murdoch III

First Name: William
Last Name: Murdoch III
Company: None
Address: 2215 Fox Hunt Court
City: Bel Air
State: MD
Zip Code: 21015
Email: murdochwill@comcast.net
Telephone: 4105698374
Cell Phone: 410-459-5677
Contact Type: Other
Type of Business: Homeowner

William Murdoch

From: Michele Jackson [Michele.Jackson@azek.com]
Sent: Wednesday, August 22, 2012 10:19 AM
To: 'murdochwill@comcast.net'
Subject: Azek Deck Complaint-Murdoch

Dear Mr. Murdoch,

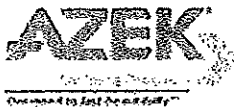
Please accept this email as confirmation that we are in receipt of the necessary information to address your AZEK Deck complaint.

Our Technical Department will review the information and we will be in contact with you.

Should you have any questions or concerns, or would like to provide additional detail, please feel free to contact us at: 1/877/275-2935, Monday through Friday, 8 AM to 4:30 PM EST.

Sincerely,

K. McGahee,
Client Services Specialist



Visit our website at: www.azek.com

This email message and any attachments are confidential. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in relation to the contents of this information is strictly prohibited.



AZEK Deck Complaint Form

Homeowner Information

Homeowner: William C. Murdoch III
 Address: 2215 Fox Hunt Court
 City/State/Zip code: Bel Air, Maryland 21015
 Mobile: (410) 459-5677
 E-mail address: murdochwill@comcast.net

Date customer noticed concern: June 2012
 Date AZEK was made aware of concern: 8/17/2012
 Date of installation: 09/25/2009

Color of deck: Brownstone
 Size of deck: 22' x 14'
 Type of fastener used: stainless steel screw w/ brown cap

Deck Exposure

<input checked="" type="checkbox"/>	Northern	<input checked="" type="checkbox"/>	Eastern
	Southern		Western

☒ Copy of original invoice/or proof of purchase
☒ Close up photos of damaged materials:
☒ Photo of overall installation (elevation)

Builder Information

Builder Name: Homecraft Decks Incorporated
 Address: 539 Constant Ridge Court
 City/State/Zip code: Abingdon, Maryland 21009
 Phone: (443) 803-3330 Mobile:

Dealer Information

Name of dealer: 84 Lumber
 Location of dealer: 1704 Harford Rd., Fallston, Maryland
 Contact person: Unknown to homeowner
 Phone: (410) 879-4384

Description of Complaint:

Deck is stained with footprints of children and animal prints that are not removable. Deck color has faded but may not be evident in photos. Scratches on deck are also evident in the photos provided.

Please send this information back to Kim McGahee via a method below

Mail to:
 AZEK Building Products
 888 North Keyser Ave
 Scranton, PA 18504
 Attn: Kim McGahee
 Date: 08/21/2012

Email to: kim.mcgaher@azek.com

877-275-2935
 570-558-8266
 570-558-8066

Fax
 Office

Type of Business Other:

Message:

I had an Azek deck installed in Sept. 2009 and am experiencing substancial fading and staining problems. I would appreciate having a representative from your company contact me as soon as possible to resolve this problem. Please call on my cell phone only. Thank you.