

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**JOSEPH MARINO and MICHELLE  
MARINO**, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

Plaintiffs Joseph Marino and Michelle Marino (“Plaintiffs”) file this Class action complaint on behalf of themselves and all others similarly situated, by and through the undersigned attorneys, against Defendants AZEK Building Products, Inc. (“ABP”) and CPG International, Inc. (“CPG”) (collectively “Defendants”), and allege as follows upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigations conducted by their attorneys.

**NATURE OF THE CASE**

1. Plaintiffs bring this action individually and on behalf of the Classes defined below against Defendants to obtain relief, including, among other things, damages and declaratory relief. This Class action is brought to remedy violations of law in connection with Defendants’ design, manufacturing, marketing,

advertising, selling and warranting of their AZEK Deck Boards (“AZEK Decking” or the “Product”). AZEK Deck Boards contain serious design and manufacturing defects, making them susceptible to cracking, discoloring, fading, chalking, and degrading after installation. Furthermore, the decking prematurely fails, requiring replacement far sooner than consumers reasonably expect. Plaintiffs assert claims for breach of implied warranties, unjust enrichment, negligent misrepresentation, negligence, and declaratory and injunctive relief.

2. Defendants designed, manufactured, marketed, advertised, warranted and sold AZEK Decking to Plaintiffs and the Classes as well as the general public. Defendants advertised that the Product was fit for the ordinary purpose for which such goods were used and was free from defects in materials and workmanship.

3. Defendants entered into an alliance wherein CPG designed, manufactured, and tested AZEK Decking products and ABP acted as the distributor responsible for, among other things, marketing and distributing the AZEK Deck Boards.

4. Defendant ABP warranted and advertised that their AZEK Decking is designed to outlast ordinary wood and requires little or no maintenance.

5. Defendant ABP further warranted and advertised that AZEK Decking will not split, cup, blister, peel, flake, crack, or rot.

6. Defendants knew, however, that the Product was defective prior to

the time of sale and intentionally concealed that material information from Plaintiffs and the general public.

7. Plaintiffs relied on Defendants' representations, and as a result of Defendants' failure to properly develop, test, and ensure that AZEK Decking was properly designed, Plaintiffs have suffered damages.

8. Defendants are responsible and liable for, among other things, the costs of removing and replacing the AZEK Decking installed in the homes, offices, buildings and other structures of Plaintiffs and members of the proposed Classes, as well as other related consequential damages that resulted from Defendants' defective AZEK Decking that has failed prematurely.

#### JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because Plaintiffs and Defendants are of diverse citizenship and the aggregate amount in controversy exceeds five million dollars (\$5,000,000.000) exclusive of interest and costs. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the property that is the subject of this action is situated in this District, substantial events or omissions giving rise to Plaintiffs' claims occurred in this District, and Defendants are subject to personal jurisdiction in this District.

10. Defendants' joint venture contemplated the sale, distribution, and use of AZEK Decking in this District.

11. As a result of ABP's marketing, distributing, promoting and

selling, either directly or indirectly through third parties or related entities, AZEK Decking to consumers throughout Massachusetts, the Defendants obtained the benefits of the law of Massachusetts and profited from Massachusetts commerce.

12. As a result of CPG's designing, testing, developing, manufacturing, and shipping of AZEK Decking materials to purchasers throughout Massachusetts, the Defendants obtained the benefits of the laws of Massachusetts and profited from Massachusetts commerce.

13. Defendant ABP conducted systematic and continuous business activities in and throughout the Commonwealth of Massachusetts through the promotion and marketing of its business.

#### PARTIES

14. Plaintiffs Joseph and Michelle Marino are residents of Chelmsford, Massachusetts. They purchased and installed AZEK decking to their home in or around March 2011.

15. Defendant ABP is a wholly owned subsidiary of CPG. ABP makes and markets exterior building products, including AZEK Decking products.

16. Defendant CPG is a Delaware corporation that has its principal place of business in Scranton, Pennsylvania. CPG makes and markets residential and commercial exterior building products, including AZEK Decking materials for the AZEK brand.

#### SUBSTANTIVE ALLEGATIONS

##### **Azek and its Products**

17. Defendants hold themselves out to the public as a manufacturer of durable and long lasting deck boards. Defendants designed, developed, manufactured, tested, marketed, warranted and sold AZEK Decking materials directly and indirectly, through distributors, to Plaintiffs, Plaintiffs' builders, their subcontractors, and/or agents.

18. Defendant ABP represented to consumers that, "AZEK®" products meet the acceptance criteria for Architectural Testing (ATI-ES) standards (CCRR-0101), and that AZEK Decking Meets International Code Council (ICC) standard (ESR 1667)"

19. Defendant ABP published the following product specifications for AZEK Decking Harvest Collection:

<b><u>Property</u></b>	<b><u>Requirement/Method</u></b>	<b><u>Result</u></b>
Modulus of Rupture	ASTM D6109	3788 psi
Modulus of Elasticity	ASTM D6109	207,541 psi
Uplift Resistance	ASTM E330	482 psf <sup>(2)</sup>
Stair Tread Load	AC174	9" o.c. span allowable 24" o.c (with support)
Coefficient of Friction	ASTM D2394	0 deg: 48 dry/ .75 wet 90 deg: .53 dry/ .82 wet
Abrasion Resistance	ASTM D4060	0.214grams/ 5000 cycles
Coefficient of Linear Thermal	ASTM D696	2.64x10 <sup>(-5)</sup> /IN.IN./°F

Expansion		
Flame Spread	ASTM E84	40

20. AZEK Decking is designed to look and work like natural wood but without the ongoing maintenance that natural wood requires.

21. AZEK Decking planks are embossed to give the appearance of a natural wood grain. Other AZEK Decking products are brushed to give the appearance of natural wood.

22. ABP represented to consumers that “AZEK Deck Boards has[sic] been engineered to withstand the everyday things that happen on a deck” and that “[w]ith AZEK Deck, you can rest assured your deck will continue to look great for years to come.”

23. ABP also represented to consumers that “AZEK Deck beats any other decking material – wood or composites – hands down.”

24. ABP represented to consumers that because AZEK Decking does not use wood fillers and is manufactured using Procell® Technology, it can easily resist everyday stains and scratches, yet is workable like wood. Traditional composite deck products combine vinyl and wood flour to produce deck boards. Procell® Technology substitutes agricultural fiber for wood flour. Defendants primarily use flax fiber as the agricultural fiber filler in their AZEK Decking at a rate of approximately ten percent (10%).

25. ABP warrants that for 20 years from the original date of

installation of their products on a consumer's property, AZEK Decking will not blister, peel, flake, crack, split, cup, rot, or structurally defect. Furthermore, ABP represented to consumers that AZEK Decking was better than composite or wood decks, and guaranteed that AZEK Decking was durable, low maintenance, mold resistant, stain resistant, and easy to clean.

26. Despite ABP's representations to consumers, ABP Decking is plagued with design and manufacturing flaws that cause the decking to crack, cup, split, mildew, and discolor shortly after installation.

27. Defendants and their authorized agents and distributors made the above representations with the intent and purpose of inducing suppliers, builders, and consumers to purchase and install AZEK Decking in residential and commercial structures in the State of Massachusetts and elsewhere.

28. Upon information and belief, Defendants also made numerous material omissions in their literature and uniformly withheld important information relating to the design, reliability, and performance of AZEK Decking.

29. Had Defendants not withheld and omitted important information about the design, reliability, and performance of AZEK Decking, Plaintiffs and members of the Classes would not have purchased the products or installed them on their properties.

#### **Plaintiffs' Purchases of AZEK Decking**

30. Plaintiffs Joseph and Michelle Marino purchased Brownstone AZEK Deck Boards from Defendants' Harvest Collection to build 3 decks on the

front, rear, and side of their home, in or around March 2011.

31. Prior to purchasing AZEK Decking, Plaintiffs reviewed ABP's website created by ABP to market AZEK Deck Boards. Upon information and belief, CPG employees participated in AZEK Decking marketing.

32. Plaintiffs noticed that their ABP Deck Boards were fading and discoloring approximately eight months after installation.

33. The problems continually worsened over time. The AZEK Deck Boards continued to fade and discolor.

34. The following photo demonstrates the premature deterioration of Plaintiffs' deck.



35. The problems with AZEK Decking experienced by Plaintiffs are not unique. Below is a small sample of customer comments made on the Internet regarding AZEK Deck Boards:



We installed this product 3 years ago and it now looks terrible. It is stained, faded and scuffed. I can't remove any of it with a power washer. It is ruined. Avoid this product!!! <http://www.consumerreports.org/cro/home-garden/home-improvement/decking/decking-material-ratings/models/overview/azek-with-procell-99031530.htm>

Awful, awful, awful investment. Do not waste your money on this decking material! We were told by our builder that this was top of the line and maintenance free. So far, we have had nothing BUT maintenance and headaches with this deck. It requires power washing and scrubbing every year. Might as well just have used wood. It stained from bug spray. It stained from cooking on the BBQ. We found out (after the fact), that you cannot use bug spray OR sunscreen on the deck. Who DOESN'T use sunscreen or bug spray on their deck????! We cannot place anything plastic on the deck because it will cause discoloration. This means no plastic coolers, grill mats, patio furniture, pots, or pool toys. Give me a break. The dark coloring we chose becomes so hot we cannot walk on it in bare feet. Nor can my dog. The railing is fading fast as well. Latest incident was found when we moved our patio table which has a glass top and found that the entire deck underneath has begun to discolor. This 800 sq ft deck that was super expensive is super useless. <http://www.consumerreports.org/cro/home-garden/home-improvement/decking/decking-material-ratings/models/overview/azek-with-procell-99031530.htm>

Beware. Within a year, my deck started to fade - very unevenly. Forget about removing stains. My clay colored deck turned white. After numerous complaints the company sent someone to apply a product to restore the deck. The product lasts about three months. It would cost more than \$2000.00 every season to have this applied. That's in addition to the fortune I spent to have this installed. <http://www.consumerreports.org/cro/home-garden/home-improvement/decking/decking-material-ratings/models/overview/azek-with-procell-99031530.htm>

We installed an Azek deck in July 07 and loved it for the first summer. The second summer while out there cleaning it we noticed a lot of fading and an array of stains on the deck. We first contacted Azek and they told us it was environmental. Then we had a few of their reps out here to check it out and they agreed that we had a problem. I have been in contact with their Research and Development department for over a year because they are aware of this and are working to come up with a product that can bring the deck back to its "original" condition. They performed a "conditioning" treatment to it last week and while it was brought back to original condition, I was told this will be an ANNUAL APPLICATION" that will be necessary in order to keep my

maintenance free deck looking good. It has been explained to me...the spots that appear are from something that spilled whereby preserving the original finish in those particular spots. What actually causes it to look like a stain, is the "oxidation" that actually occurs on the deck (FADING) all around this spot. When wet the deck looks perfect but once dry all of the spots appear. They now offer a warning to be careful with sunscreen and bug repellent which seem to be the culprits. Now...this is an outdoor, backyard product...who doesn't use sunscreen or bug repellent out while enjoying their pricey deck!! We thought we were buying a "maintenance free" deck and we paid a premium for the product. Now we have to wait until this product that they are working on in research and development hits the market to make are deck look as beautiful as they advertised that it would!!

<http://forums.deckmagazine.com/forums/showthread.php?127-Beware-of-Azek-decking-staining-and-fading>

36. Defendants knew or should have known that the foregoing defects made the AZEK Decking susceptible to premature failure through various processes.

37. Defendants' design and materials choices have created a product that begins to fail on its first day of use, even if perfectly installed in its intended environment.

38. Because of the defective design and manufacture, Defendants' AZEK Decking failed in its intended purpose.

39. Because of the defective design and manufacture, Defendants' AZEK Decking is inherently defective and is substantially certain to fail within the express warranty provided by ABP or the useful life of the decking.

40. Upon information and belief, Defendants did not test their AZEK Decking in its anticipated environments before selling the decking to the public.

41. Upon information and belief, Defendants conducted inadequate

testing on AZEK Decking and failed to test for things that they knew or should have known would lead to premature failure.

42. Upon information and belief, Defendants failed to investigate or test whether well-known and expected conditions would lead to premature failure of AZEK Deck Boards.

43. Defendant ABP limits its offer of warranty payment to their estimate of the purchase price of AZEK Decking—just a fraction of the actual replacement cost.

44. ABP's offer to cover only the original purchase price of the AZEK Decking product is inadequate because Plaintiffs will incur additional costs to replace their deck including, but not limited to, removal and disposal of the defective AZEK Deck Boards, removal and disposal of the underlying deck structure, replacement of the deck structure, and labor to install new decking materials.

45. Defendants knew or reasonably should have known that AZEK Deck Boards were defective prior to the time of sale, and intentionally concealed that material information (and the truth concerning their product) from Plaintiffs and the general public, while continually marketing AZEK Decking as a dependable product. Defendants' acts of negligent misrepresentation include failing to disclose that their AZEK Decking was defectively manufactured or designed and would deteriorate in less than the expected lifetime, leading to damage to the very structures they were purchased to protect.

46. Because the defects in AZEK Decking are latent and not detectable until manifestation, Plaintiffs and the Class members were not reasonably able to discover their AZEK Decking was defective and unreliable until after installation, despite their exercise of due diligence.

47. Defendants had a duty to disclose that their AZEK Decking was defective, unreliable, and inherently flawed in its design and manufacture.

#### CLASS ACTION ALLEGATIONS

48. This action is brought and may be maintained as a nationwide Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and the case law thereunder on behalf of Plaintiffs and all others similarly situated. The proposed classes (the “Classes”) are defined as follows:

A “National Class” consisting of:

All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in the United States, in which AZEK Decking is or has been installed since 2000. Excluded from the Classes are Defendants, any entity in which Defendants have a controlling interest or which have a controlling interest of Defendants, and Defendants’ legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge’s immediate family.

Additionally or alternatively, a “Massachusetts SubClass” defined as follows:

All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in the State of Massachusetts, in which

AZEK Decking is or has been installed since 2000. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which have a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

Additionally or alternatively, a "Warranty SubClass" defined as follows:

All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in the United States, in which AZEK Decking is or has been installed, who have made a warranty claim to Mastic Home Exteriors (or any of its predecessors or successors) and who were required to sign a Settlement Agreement and General Release as a condition for receiving payment under the warranty. Excluded from the Class are Defendants, any entity in which Defendants has a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

49. Plaintiffs reserve the right to redefine the Class(es) prior to Class certification.

50. The members of the proposed Classes are so numerous that joinder of all members is impracticable.

51. The exact number of Class members is unknown as such information is in the exclusive control of Defendants. However, due to the nature of the trade and commerce involved, Plaintiffs believe the Classes consist of thousands of consumers.

52. Common questions of law and fact affect the right of each Class

member and a common relief by way of damages is sought for Plaintiffs and Class members.

53. The harm that Defendants caused or could cause is substantially uniform with respect to Class members. Common questions of law and fact that affect the Class members include, but are not limited to:

- a. Whether AZEK Decking is defective in that it fails prematurely and is not suitable for use as an exterior decking product for the length of time advertised, marketed, and warranted;
- b. Whether AZEK Decking is defectively designed or manufactured;
- c. Whether Defendants sold and entered a defective product into the stream of commerce in Massachusetts and other states in violation of Mass. Gen. Laws. Ann. Ch. 106, § 2-314 to 318 (sales, §§ 2A-212 to 2A-215 (leases));
- d. Whether AZEK Decking failed to perform in accordance with the reasonable expectations of ordinary consumers;
- e. Whether Defendants failed to prevent damages which occurred as a result of defective AZEK Decking they designed, manufactured and placed into the stream of commerce;
- f. Whether Defendants properly warned consumers about the reasonably foreseeable defective nature of AZEK Deck Boards;
- g. Whether Defendants were unjustly enriched by the sale of defective AZEK Decking;
- h. Whether Defendants breached represented warranties and engaged in fraudulent, false, deceptive or misleading misconduct with respect to the handling of warranty claims;
- i. Whether Defendants have changed or altered its warranty program without notice to Plaintiffs and the Classes;
- j. Whether Defendants omitted material information when they sold AZEK Decking;

- k. Whether members of the proposed Classes have sustained damages and, if so, the proper measure of such damages; and
- l. Whether Defendants should be declared financially responsible for notifying all Class members about their defective AZEK Decking and for all damages associated with the incorporation of such decking into Class members' homes, residences, buildings, and other structures.

54. The claims and defenses of the named Plaintiffs are typical of the claims and defenses of the Classes. Plaintiffs and all members of the Classes own or have owned homes, residences, or other structures on which AZEK Deck Boards have been installed. Those decks have failed, and will continue to fail prematurely. The named Plaintiffs, like all Class members have been damaged by Defendants' conduct in that they have incurred or will incur the costs of repairing or replacing their decks and repairing the additional property and structure damaged by the AZEK Deck Boards premature failure. Furthermore, the factual basis of Defendants' conduct is common to all Class members and represents a common thread of deliberate, fraudulent, and negligent misconduct resulting in injury to all members of the Classes.

55. The named Plaintiffs will fairly and adequately assert and protect the interests of the Classes. Specifically, they have hired attorneys who are experienced in prosecuting Class action claims and will adequately represent the interests of the Classes and they have no conflict of interest that will interfere with the maintenance of this Class action.

56. A Class action provides a fair and efficient method for the

adjudication of this controversy for the following reasons:

- a. The common questions of law and fact set forth herein predominate over any questions affecting only individual Class members;
- b. The Classes are so numerous as to make joinder impracticable but not so numerous as to create manageability problems;
- c. There are no unusual legal or factual issues which would create manageability problems;
- d. Prosecution of separate actions by individual members of the Classes would create a risk of inconsistent and varying adjudications against Defendants when confronted with incompatible standards of conduct;
- e. Adjudications with respect to individual members of the Classes could, as a practical matter, be dispositive of any interest of other members not parties to such adjudications, or substantially impair their ability to protect their interests; and
- f. The claims of the individual Class members are small in relation to the expenses of litigation, making a Class action the only procedure in which Class members can, as a practical matter, recover. However, the claims of individual Class members are large enough to justify the expense and effort in maintaining a Class action.

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

57. Plaintiffs and putative members of the Classes are within the applicable statute of limitation for the claims presented here. Defendants' failure to disclose this known but non-public information about the defective nature of their AZEK Deck Boards – information over which they had exclusive control – and because Plaintiffs and Class Members therefore could not reasonably have known that the Products were defective, Defendants are estopped from asserting



any statute of limitation defenses that might otherwise be applicable to the claims asserted herein.

**COUNT I: ABP'S BREACH OF IMPLIED WARRANTIES**  
**(Brought against ABP on behalf of the proposed Classes)**

58. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

59. ABP designed, developed, manufactured, distributed, and marketed AZEK Decking for purposes of its eventual sale to retail buyers.

60. ABP impliedly warranted that AZEK Deck Boards were properly designed, developed, manufactured, distributed, marketed, sold, and installed and that the designs and materials were proper and of workmanlike quality.

61. Additionally, Mass Gen. Laws Ann. Ch. 106, §§ 2-314 – 318 (Uniform Commercial Code) implies warranties of merchantability and fitness for a particular purpose.

62. ABP knew and intended that AZEK Decking would be installed on exterior decks throughout the United States where it would be exposed to high temperature and humid conditions in the summer, freezing temperatures and extremely dry air in the winter, and repeated freeze-thaw cycles.

63. AZEK Decking is not merchantable because it has a propensity to crack, split, or otherwise prematurely degrade that renders it unfit for the ordinary use of deck constructions and the quality is objectionable in the trade.

64. ABP knew that Plaintiffs and the Class members would use AZEK Decking to construct decks, and Plaintiffs and the Classes relied upon ABP's skill and judgment to furnish suitable decking material. AZEK Decking is not fit for its intended purpose because it has a propensity to crack, split, or otherwise prematurely degrade.

65. Plaintiffs and the Classes relied upon said warranties and the claims, skill, expertise, and quality assurance of ABP workers to provide suitable goods.

66. ABP breached said warranties by failing to provide adequate and proper designs, calculations, or materials for AZEK Decking.

67. AZEK Decking fails to perform in accordance with the reasonable expectations of Plaintiffs and the Classes and the benefits of the design of AZEK Decking do not outweigh the risk of its failure.

68. ABP had, and has, a duty and responsibility to disclose to the consuming public the foreseeable risks associated with the use of AZEK Decking; ABP further had, and has, a duty not to put defective products on the market.

69. But for ABP's breach of implied warranty, Plaintiffs and the proposed Classes would not have sustained damages.

70. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Classes have suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

71. Plaintiffs, on behalf of themselves and all others similarly situated,

demand judgment against ABP for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

**COUNT II: CPG'S BREACH OF IMPLIED WARRANTIES**  
**(Brought against CPG on behalf of the proposed Classes)**

72. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

73. CPG manufactured, distributed, and marketed AZEK Decking for purposes of its eventual sale to retail buyers.

74. CPG impliedly warranted that AZEK Deck Boards are properly designed, developed, manufactured, distributed, marketed, sold, and installed and that the designs and materials were proper and of workmanlike quality.

75. Additionally, Mass Gen. Laws Ann. Ch. 106, §§ 2-314 – 318 (Uniform Commercial Code) implies warranties of merchantability and fitness for a particular purpose.

76. CPG knew and intended that AZEK Decking would be installed on exterior decks throughout the United States where it would be exposed to high temperatures and humid conditions in the summer, freezing temperatures and extremely dry air in the winter, and repeated freeze-thaw cycles.

77. AZEK Decking is not merchantable because it has a propensity to crack, split, or otherwise prematurely degrade that renders it unfit for the ordinary use of deck constructions and the quality is objectionable in the trade.

78. CPG knew that Plaintiffs and the Classes would use AZEK Decking to construct decks, and Plaintiffs and the Classes relied upon CPG's skill and judgment to furnish suitable decking material; AZEK Decking is not fit for its intended purpose because it has a propensity to crack, split, or otherwise prematurely degrade.

79. Plaintiffs and the Classes relied upon said warranties and the claims, skill, expertise, and quality assurance of CPG workers to provide suitable goods.

80. CPG breached said warranties by failing to provide adequate and proper designs, calculations, or materials for AZEK Decking.

81. AZEK Decking fails to perform in accordance with the reasonable expectations of Plaintiffs and the Classes and the benefits of the design of AZEK Decking do not outweigh the risk of its failure.

82. CPG had, and has, a duty and responsibility to disclose to the consuming public the foreseeable risks associated with the use of AZEK Decking; CPG further had, and has, a duty not to put defective products on the market.

83. But for CPG's breach of implied warranty, Plaintiffs and the proposed Classes would not have sustained damages.

84. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Classes have suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

85. Plaintiffs, on behalf of themselves and all others similarly situated,

demand judgment against CPG for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

**COUNT III: UNJUST ENRICHMENT**  
**(Brought against both Defendants on behalf of the proposed Classes)**

86. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

87. Plaintiffs and the Classes have conferred substantial benefits on Defendants by purchasing AZEK Decking, and Defendants have knowingly and willingly accepted and enjoyed these benefits.

88. Defendants either knew or should have known that the payments rendered by Plaintiffs and the Classes were given and received with the expectation that AZEK Decking would perform as represented and warranted. For Defendants to retain the benefit of the payments under these circumstances is inequitable.

89. Defendants, through deliberate misrepresentations or omissions in connection with the advertising, marketing, promotion, and sale of AZEK Decking reaped benefits, which resulted in Defendants' wrongful receipt of profits.

90. Equity demands disgorgement of Defendants' ill-gotten gains. Defendants will be unjustly enriched unless Defendants are ordered to disgorge those profits for the benefit of Plaintiffs and the Classes.

91. As a direct and proximate cause of Defendants' wrongful conduct and unjust enrichment, Plaintiffs and the Classes are entitled to restitution from and institution of a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendants.

**COUNT IV: NEGLIGENT MISREPRESENTATION**  
**(Brought against both Defendants on behalf of the proposed Classes)**

92. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

93. In making material misrepresentations of material facts regarding the characteristics and capabilities of AZEK Decking through their advertising and product information publications that were in fact untrue, Defendants knew or should have known they were misrepresenting material facts and that the Plaintiffs and Classes would be relying on Defendants' representations to their detriment and damage.

94. In concealing material facts regarding the characteristics and capabilities of AZEK Decking, Defendants knew or should have known they were not disclosing material facts and that the Plaintiffs and the Classes would be relying on Defendants' representation to their detriment and damage.

95. Plaintiffs and the Classes were unaware of the falsity of Defendants' representations, and as a result, they, or their contractor intermediaries, justifiably relied upon them in purchasing or constructing a

structure of AZEK Decking.

96. Defendants made the false representations in the course of their business with the intent that the Plaintiffs and the Classes would rely on them and purchase or construct structures using AZEK Deck Boards.

97. As a direct, proximate and foreseeable result of Defendants' failure to fully disclose material facts and its misrepresentations of material facts, Plaintiffs and the proposed Classes suffered damage.

98. As a result of Defendants' misconduct, Plaintiffs and the Classes have suffered actual damages in that they purchased defective AZEK Decking.

99. As a result of Defendants' misconduct, Plaintiffs and the Classes will suffer damages that include not only the full cost to attempt to repair but, ultimately, to replace their AZEK Decking. Damages also include, without limitation, consequential and incidental damages.

100. As a direct, proximate and foreseeable result of Defendants' negligent misrepresentations, the Plaintiffs and the Classes sustained damages in an amount to be determined at trial.

101. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

**COUNT V: ABP'S NEGLIGENCE**  
**(Brought against ABP on behalf of the proposed Classes)**

102. Plaintiffs re-allege and incorporate by reference the allegations

contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

103. ABP owed a duty to Plaintiffs and the proposed Classes to exercise reasonable care while designing, manufacturing, testing, and marketing AZEK Decking.

104. ABP breached their duty to Plaintiffs and the Classes by designing, manufacturing, selling, advertising, and warranting a defective product to Plaintiffs and the proposed Classes and by failing to take those steps necessary to repair or otherwise discontinue selling a defective product to consumers.

105. ABP knew or should have known that AZEK Decking is defective and does not perform its intended use. Upon information and belief, initial testing included accelerated weathering tests that failed to account for many of the climates in which AZEK Decking would be used.

106. Despite lacking sufficient knowledge regarding the actual performance of AZEK Decking, ABP marketed the product as durable, long-lasting, and low maintenance. Additionally, ABP sold and represented AZEK Decking as having certain specifications and properties (as listed in facts section above).

107. Plaintiffs and the proposed Classes were not aware of AZEK Decking's defective nature when they purchased the product.

108. As a direct and proximate cause of ABP's failures, Plaintiffs and the Classes have suffered and will continue to suffer damages and economic loss



described fully above in an amount to be proven at trial.

109. As a result of ABP's negligence, Plaintiffs and the Classes have suffered actual damages in that they purchased and installed on their homes and other structures decking material that is defective and that has failed or is failing prematurely. This failure has required or is requiring Plaintiffs and the Classes to incur significant expense in repairing or replacing their decks. Replacement is required to prevent on-going and future damage to the underlying structure.

110. Plaintiffs, on behalf of themselves and all other similarly situated, demand judgment against ABP for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

**COUNT VI: CPG'S NEGLIGENCE**  
**(Brought against CPG on behalf of the proposed Classes)**

111. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

112. CPG owed a duty to Plaintiffs and the proposed Classes to exercise reasonable care while designing, manufacturing, testing, and marketing AZEK Decking.

113. CPG breached their duty to Plaintiffs and the Classes by designing, manufacturing, selling, advertising, and warranting a defective product to Plaintiffs and the proposed Classes, and by failing to take those steps necessary to repair or otherwise discontinue selling a defective product to consumers.

114. CPG knew or should have known that AZEK Deck Boards are defective and do not perform its intended use.

115. Upon information and belief, CPG negligently designed or implemented product-testing procedures that failed to accurately report the products' properties or confirm it was manufactured to specification. Upon information and belief some testing included accelerated weathering tests that failed to account for many of the climates in which AZEK Decking would be used.

116. CPG negligently designed AZEK Decking in such a way that it contains product defects that cause the material to crack, split, absorb water, grow mold or mildew, and otherwise deteriorate within just a few years from installation.

117. CPG owed a duty of care to Plaintiffs and members of the Classes to manufacture AZEK Decking in a non-defective way and such that it would not develop safety issues of the type described herein.

118. Plaintiffs and the proposed Classes were not aware of AZEK Decking's defective nature when they purchased the product.

119. As a direct and proximate cause of CPG's failures, Plaintiffs and the Classes have suffered and will continue to suffer damages and economic loss described fully above in an amount to be proven at trial.

120. As a result of CPG's negligence, Plaintiffs and the Classes have suffered actual damages in that they purchased and installed on their homes and

other structures decking material that is defective and that has failed or is failing prematurely. This failure has required or is requiring Plaintiffs and the Classes to incur significant expenses in repairing or replacing their decks. Replacement is required to prevent on-going and future damage to the underlying structure.

121. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against CPG for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

**COUNT VII: DECLARATORY AND INJUNCTIVE RELIEF**  
**(Brought against both Defendants on behalf of the proposed Classes)**

122. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

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

124. Plaintiffs, on behalf of themselves and putative Class members, seek a Court declaration of the following:

- a. AZEK Decking manufactured after 2000 until the present has defects which cause it to prematurely degrade and fail resulting in damage to deck structure and the necessity of the removal and replacement of the composite decking;
- b. AZEK Decking manufactured after 2000 until the present has a defect in workmanship and material that causes failures;

- c. Defendants knew of the defects in AZEK Decking and that the limitation contained in the warranties are unenforceable;
- d. Defendants shall re-audit and reassess all prior warranty claims on AZEK Decking, including claims previously denied in whole or in part, where the denial was based on warranty or other grounds; and
- e. Defendants shall establish an inspection program and protocol to be communicated to Class members, which will require Defendants to inspect, upon request, a Class member's structure to determine whether an AZEK Decking failure is manifest.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a Class action and for judgment to be entered jointly and severally upon Defendant ABP and Defendant CPG as follows:

- A. Enter an order certifying the proposed Classes (and SubClasses, if applicable), designating Plaintiffs as the Class representatives, and designating the undersigned as Class counsel;
- B. Declare that Defendants are financially responsible for notifying all Class members of the problems with AZEK Decking;
- C. Declare that Defendants must disgorge, for the benefit of the Classes, all or part of the ill-gotten profits it received from the sale of AZEK Decking, or order Defendants to make full restitution to Plaintiffs and the members of the Classes;
- D. Defendants shall re-audit and reassess all prior warranty claims regarding AZEK Decking, including claims previously denied in whole or in part, where the denial was based on warranty or other grounds;
- E. For economic and compensatory damages on behalf of Plaintiffs and all members of the Classes;
- F. For actual damages sustained or treble damages;
- G. For punitive or exemplary damages;

- H. For injunctive and declaratory relief;
- I. For reasonable attorneys' fees and reimbursement of all costs for the prosecution of this action; and
- J. For such other and further relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so properly triable thereby.

Dated: January 3, 2014

Respectfully submitted,

By: /s/Erica Mirabella  
Erica C. Mirabella (MA Bar No. 676750)  
MIRABELLA LAW  
1322 Boylston St., 5th Flr.  
Boston, MA 02116  
(617) 580-8270  
(617) 583-1905 (fax)

Charles J. LaDuca  
Brendan S. Thompson  
CUNEO GILBERT & LADUCA, LLP  
8120 Woodmont Avenue, Suite 810  
Bethesda, MD 20816  
(202) 789-3960  
(202) 789-1813 (fax)

Robert K. Shelquist  
LOCKRIDGE GRINDAL NAUEN PLLP  
Suite 2200  
100 Washington Avenue S  
Minneapolis, MN 55401  
(612) 339-6900  
(612) 339-0981 (fax)

Michael A. McShane  
AUDET & PARTNERS, LLP  
221 Main Street, Suite 1460  
San Francisco, CA 94105

(415) 568-2555  
(415) 576-1776 (fax)

Shawn Wanta  
BAILLON THOME JOZWIAK & WANTA LLP  
222 South Ninth Street, Suite 2955  
Minneapolis, MN 55402  
(612) 252-3570  
(612) 252-3571 (fax)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
Joseph Marino and Michelle Marino
(b) County of Residence of First Listed Plaintiff Middlesex, MA
(c) Attorneys (Firm Name, Address and Telephone Number)
Erica C. Mirabella, MIRABELLA LAW
1322 Boylston St, 5th Floor, Boston, MA 02116
Telephone: 617-580-8270

DEFENDANTS
Azer Building Products, Inc. and CPG International, Inc.
County of Residence of First Listed Defendant Lackawanna, PA
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2), Mass Gen. Laws Ann. Ch. 106, §§ 2-314 - 318
Brief description of cause:
Breach of Warranty, Unjust Enrichment, Negligence

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Greater than \$5 mil. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 1/3/2014 SIGNATURE OF ATTORNEY OF RECORD /s/Erica Mirabella

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Marino v. Azek Building Products, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Erica Mirabella, MIRABELLA LAW

ADDRESS 1322 Boylston St, 5th Floor, Boston, MA 02116

TELEPHONE NO. 617-580-8270