

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

JOHNNY S. WYSE, JR., on behalf of
himself and all others similarly situated,

Plaintiff,

v.

GERARD ROOF PRODUCTS, LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Johnny S. Wyse, Jr. (“Plaintiff”) files this class action complaint (“Class Action Complaint”) on behalf of himself and all others similarly situated, by and through the undersigned attorneys, against Gerard Roof Products, LLC (hereinafter “Gerard” or “Defendant”), and states as follows:

I. Nature of the Action

1. This is an action on behalf of Plaintiff and a class of all other similarly situated persons or entities against Defendant Gerard, the manufacturer of a defective roofing material known as Stone Coated Metal Roofing (hereinafter the “Roofing,”), which is designed, marketed, and sold at a significant premium based upon, inter alia, claims that the Roofing is a low to no maintenance, alternative to traditional roofing materials. The Roofing possesses a latent defect subjecting it to major discoloration as a result of its defective design, which causes black mold, fungus, and/or mildew to develop on the surface of the Roofing. This discoloration devalues the homes and requires frequent and costly maintenance and cleaning. Not only does Defendant refuse to cover the cost of this cleaning, but by completing this necessary cleaning consumers risk voiding Defendant’s purported Lifetime Warranty. Defendant does not disclose

that installation of the Roofing will necessitate substantial and ongoing maintenance and cleaning. To the contrary, an essential component of Defendant's marketing campaign relies upon promotion of the durable and little to no maintenance nature of the Roofing. As a result of Defendant's failure to properly design, develop, test, manufacture, distribute, market, sell, instruct, and otherwise ensure that the Roofing was made to an acceptable standard, Plaintiff's Roofing quickly degraded to a substandard appearance and must now be repeatedly cleaned to maintain an appearance worthy of the value of his home, causing him to incur substantial and unacceptable maintenance costs.

2. In marketing materials, Defendant touts its Roofing as an excellent investment that will be durable and reliable for a lifetime. Defendant warrants and advertises that the Roofing requires low or no maintenance and is long-lasting. The current iteration of Defendant's brochure, which is consistent with the brochure presented to Plaintiff before he purchased Gerard Roofing, specifically states that the Roofing "will look beautiful for decades to come and requires little to no maintenance." This statement was and is false, as Plaintiff has learned as the discoloration of his roof progressively worsened.

3. When Plaintiff attempted to make a warranty claim in March 2018, approximately seven years into Defendant's purported 50-year warranty, Defendant refused Plaintiff's claim and disclosed, for the first time, that the Roofing must undergo expensive maintenance and cleaning at regular intervals to retain its intended appearance and color. Defendant rejected Plaintiff's warranty claim because Defendant asserts that severe discoloration is not a defect, despite the fact that information or warnings regarding discoloration and routine maintenance were entirely excluded from all promotional materials prepared and disseminated by Defendant.

4. Defendant is responsible and liable for, among other things, the costs of removing

and replacing the Roofing with materials that meet Defendant's claims of little or no maintenance. Alternatively, Defendant is responsible for the ongoing costs of maintenance necessary to conform the Roofing to its advertising, as well as the devaluation of the homes on which the Roofing is installed.

II. Jurisdiction and Venue

5. As a result of regularly conducting business, testing, design, manufacturing, marketing, distributing, promoting and/or selling, either directly or indirectly through third parties or related entities, the Roofing to purchasers throughout the state of Florida, Defendant obtained the benefits of the laws of Florida and profited handsomely from Florida commerce.

6. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332(d), because there are at least 100 Class members in the proposed Class, the combined claims of proposed Class members exceed \$5,000,000, exclusive of interest and costs, and at least one Class member is a citizen of a state other than Defendant's state of citizenship.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because most of the events or omissions giving rise to Plaintiff's claims occurred in this District and Defendant is subject to personal jurisdiction in this District.

III. The Parties

8. Plaintiff, Johnny S. Wyse, Jr., was and is an individual resident of Pensacola, Escambia County, Florida, at all times relevant to this action.

9. Defendant is a Utah limited liability company, headquartered in Brea, California.

IV. Factual Allegations

A. Plaintiff's Decision to Purchase Gerard Roofing

10. Plaintiff conducted significant research on the advantages and disadvantages of

different roofing products prior to selecting one to purchase.

11. Plaintiff found that shingle roofs were the least expensive, but have to be replaced every 10-20 years in Florida. Plaintiff also found that tile roofs are heavy, often requiring reinforced trusses to hold the weight, and may crack due to the weight.

12. After browsing Defendant's website, Plaintiff was attracted to the stone-coated metal roof because of its purported durability and, because it was advertised to require little to no maintenance.

13. On or around July 6, 2011, Plaintiff entered into a contract with a certified Gerard installer, Professional Roofing, to install a Gerard stone-coated metal roof on Plaintiff's home.

14. Plaintiff chose to purchase the Gerard Roofing based on Defendant's representations concerning the properties of the Roofing. Among other things, Plaintiff reviewed a chart on Gerard's website comparing Gerard Roofing with a variety of other roofing materials, including: concrete tile, fiber cement tile, architectural composition shingle, and wood shake. Gerard's chart contains a comparison of "weathering" for each of the five aforementioned roof types. Gerard Roofing is the only roof that scores "excellent"; concrete tile scores "good"; fiber cement tile and shingles score "fair"; and wood shake scores "poor."

15. In the "weathering" section of Gerard's chart, below where it says "excellent," the chart also states "Lifetime Warranty." This representation leads reasonable consumers, such as Plaintiff, to the logical conclusion that the lifetime warranty protects consumers against weathering. This expectation is created by, inter alia, the fact that weathering has a common-sense dictionary definition. Merriam-Webster defines "weathering" as, "the action of the weather conditions in altering the color, texture, composition, or form of exposed objects. (Emphasis supplied).

16. Gerard's website also contains a FAQ section concerning the Roofing, which includes the following question and answer:

What materials are used in making Gerard Stone Coated Steel Roofing Systems?

Gerard Stone Coated Steel Roof Systems use steel panels that are protected from the elements by corrosion resistant Galvalume. The Gerard basecoat uses proprietary resins, which have been developed over many years to promote **lifetime performance in all climates**. The stone chips that Gerard uses in its Stone Coating are nonoiled natural granite granules that improve adherence to the basecoat while enhancing the appearance of Gerard panels.

(Emphasis supplied). This statement was intended to lead reasonable consumers to the logical conclusion that the materials used to make the Roofing will meet the lifetime warranty in all climates.

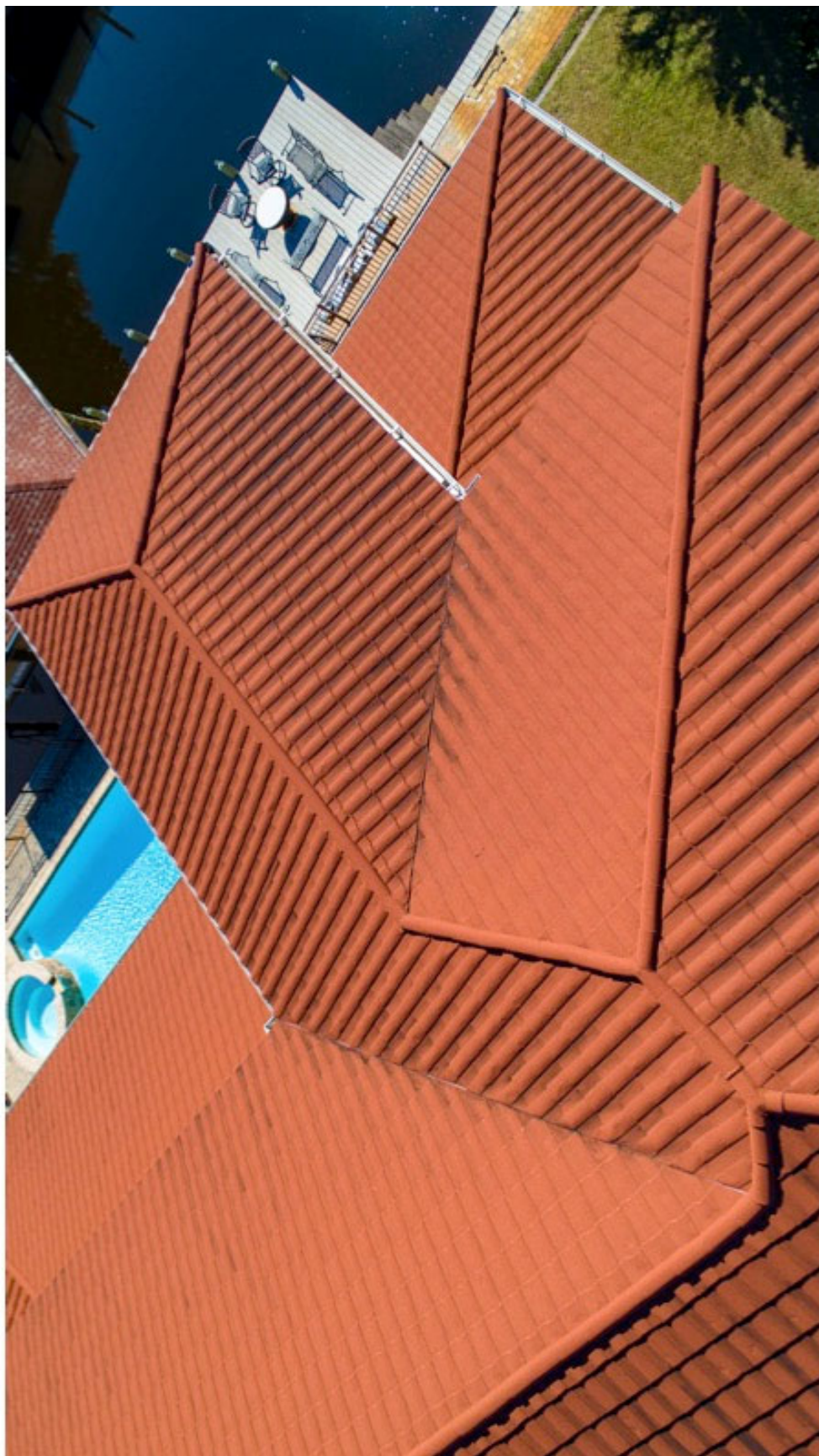
17. The handpicked and misleading "testimonials" marketed by Defendant also reinforce its assertion that the Roofing would look new and require little to no maintenance for a lifetime. One of the testimonials on Defendant's website, further touted the "maintenance free" aspect of the Roofing by stating:

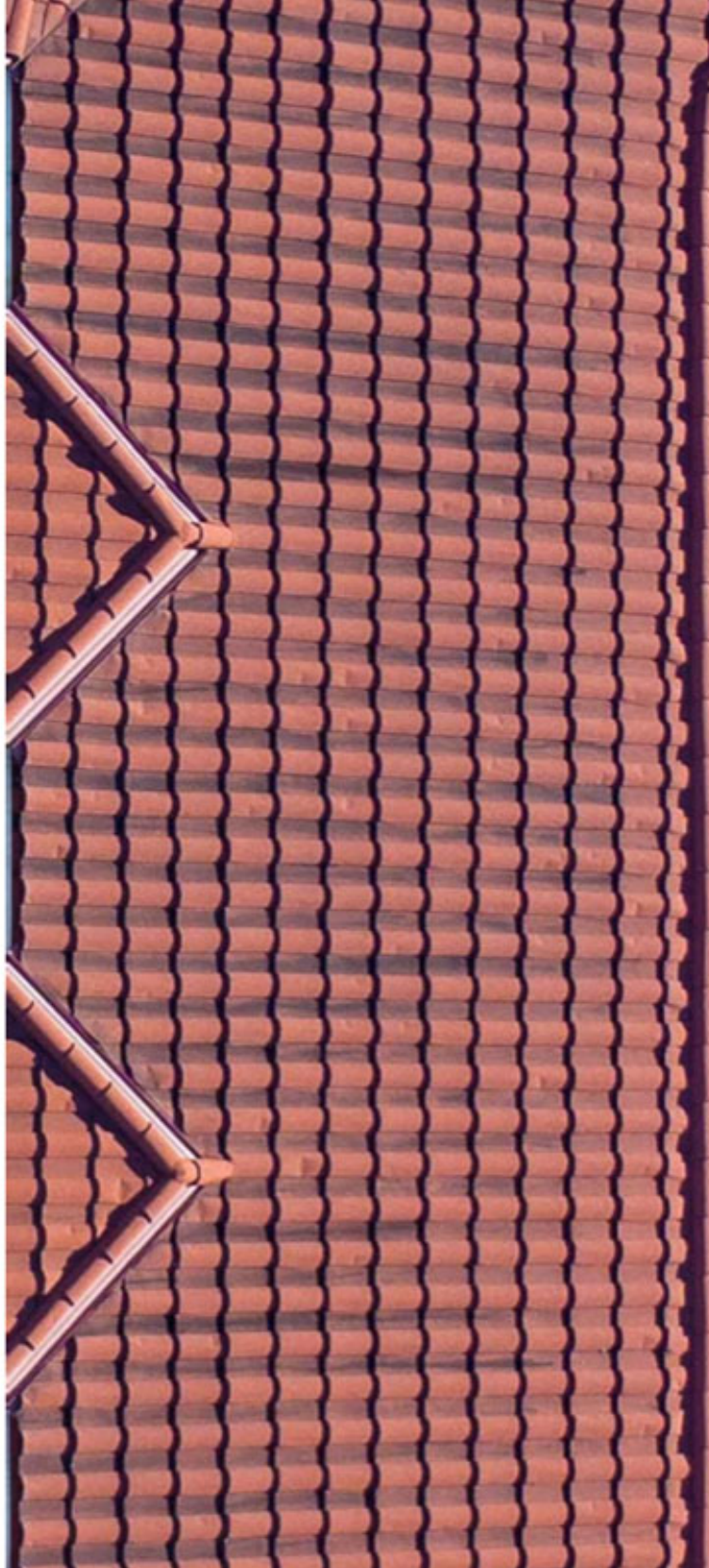
"Florida will test any roofing material about as severely as it can be tested. Typical shingle roofs don't even last their warranty period here. More and more, the fact that a metal roof system will pretty much last a lifetime, justifies the cost. Because of the lightweight material, and the maintenance-free aspect of the roofing, [Gerard] seems to be the clear choice to me."

– Jim Mitchell, A.I.A., Genesis Architecture, FL

18. Beginning in 2017 Plaintiff noticed that his Gerard Roofing had started to become discolored. Below are photographs demonstrating the present condition of the roof as of January 16, 2019. The first photograph shows the entire roof, as well as the roof of Plaintiff's boathouse. Notably, the boathouse is made of asphalt shingles, installed in 2011. In contrast to the Gerard Roofing, the asphalt shingles—comparatively much less expensive—are not discolored and have maintained their original appearance. The subsequent photographs typify the condition of Plaintiff's Roofing.







19. Upon discovering the discoloration, Plaintiff contacted the installer, Professional Roofing in early March 2018, to determine what, if anything, could be done to remedy the problem. In response, Professional Roofing provided a quote of \$2,750 to clean Plaintiff's roof. Plaintiff complained to Professional Roofing that had he known that he would have to pay \$2,750 every few years to clean the Roofing, he would not have bought the Roofing for \$51,000.

20. In response to Plaintiff's complaint, Professional Roofing advised Plaintiff to call Gerard about the Roofing warranty.

21. On or about March 7, 2018, Plaintiff called Gerard about the Roofing warranty. Gerard's warranty department directed Plaintiff to submit an online request for the warranty department to resolve Plaintiff's issue, which Plaintiff subsequently did.

22. After Plaintiff submitted his online request to the warranty department, Gerard contacted Plaintiff by phone. During the phone call, Gerard informed Plaintiff that Gerard would replace Plaintiff's Roofing only if it was "defective." Gerard asserted that the discoloration of Plaintiff's Roofing did not stem from a defect and thus would not be replaced or otherwise covered by the warranty. Instead, Gerard informed Plaintiff that he would need to have the roof regularly cleaned in order to avoid the discoloration.

23. Following the telephone conversation with Gerard, Plaintiff conducted his own online investigation and found stories in which purchasers of stone-coated metal roofs who had cleaned their roofs subsequently had their warranty claims voided on the basis that the cleaning process had damaged the coating on the tiles.

B. The Defective Design and Manufacture of Gerard Stone-Coated Metal Roofing

24. Defendant is, and at all times relevant hereto was, engaged in the business of designing, developing, manufacturing, distributing, marketing, and selling Roofing and related

materials in the state of Florida.

25. Defendant manufactures, advertises, sells and distributes the Roofing, and has since approximately 1981.

26. The Roofing was touted by Defendant as being extremely durable, maintenance free, and longer-lasting than any other roofing on the market. These attributes were used as a basis to charge a substantial premium for the Roofing compared with traditional roofs made of shingles, cedar shake or tile. In exchange for its durability, Gerard demands a premium price for its Roofing.

27. Defendant was negligent in the design, testing, and manufacture of the Roofing in a number of ways, including the use of substandard design and materials that are prone to discoloration, the collection of dirt and the growth of mold, algae, or fungus. Indeed, the Roofing possesses a latent defect.

28. Defendant fraudulently concealed, and continues to fraudulently conceal, the discoloration problem and the fact that expensive maintenance must be completed every few years to maintain the appearance of the Roofing. Indeed, Defendant continues to promote its Roofing as maintenance free despite knowing that the Roofing must be cleaned routinely.

29. Defendant knew or should have known that the design of the Roofing and/or the materials used in the construction of the Roofing made it susceptible to, mold, fungus, or algae, turning it black and detrimentally affecting its appearance. Defendant knew that, mold, fungus, or algae would grow between the stones on its Roofing and it should have disclosed this information to consumers.

30. Defendant's design and material choices, coupled with a lack of appropriate testing, created a product that begins to fail on its first day of use, even if perfectly installed in its

intended environment. As discussed above, Florida, where Plaintiff lives, is an environment expressly referred to in Defendant's promotional materials and use in Florida is an intended purpose of the product. Roofs serve not only to keep out the elements, but they are also a critical part of the aesthetics of a building. This is why Defendant promotes its expensive Roofing as being both low maintenance and beautiful.

31. Because of the defective design and manufacture, Defendant's Roofing failed in its intended purpose.

32. Because of poor quality design and manufacturing, Defendant's Roofing is suffers from a latent defect and is substantially certain to fail within the longer of the lifetime of the original purchaser, or the 50-year express warranty for subsequent purchasers, provided by Defendant and/or the useful life of the Roofing.

33. Despite Defendant's claims to the contrary, Defendant's lifetime warranty specifically covers the appearance of the Roofing and states, in pertinent part, that:

LIMITED LIFETIME COVERAGE: This Limited Warranty extends only to a purchaser of Gerard stone-coated steel panels ("Gerard Product") who has been issued a Limited Warranty Certificate and paid for the Gerard Product in full (the "Purchaser"), and to subsequent owners of the property to which the Gerard Product is originally affixed after purchase (the "Property"). Subject to the terms, conditions and limitations herein, Gerard hereby warrants that for the lifetime of Purchaser during Purchaser's ownership of the Property or, if the Property is transferred by Purchaser, for fifty (50) years from the date of installation of the Gerard Products, the Gerard Products will be free from manufacturing defects in workmanship and materials such that:

- Each Gerard Product (meaning each individual Gerard panel) will withstand winds of up to 120 miles per hour;
- Steel substrate on Gerard Products will not burn, and will not be penetrated by hailstones less than two and one-half inches (2.5") in diameter such that the Gerard Products are no longer weatherproof; and
- **The appearance of the surface coating of Gerard Products will not materially deteriorate beyond normal weathering and aging, including minor granule loss over the extended life of the warranty. (emphasis added).**

34. Persons or entities that own Roofing have already experienced material

deterioration in the appearance of their Roofing, and as a result, have to clean or will have to clean their roofs every few years to maintain its intended appearance. Thus, consumers who have purchased Roofing have suffered or are reasonably certain to suffer actual damages throughout the life of their Roofs in the form of substantial cleaning and maintenance costs. For example, Plaintiff will be forced to pay \$2,750 to have his roof cleaned.

35. Despite numerous customer complaints over a period of years, Defendant failed to implement any changes to their Roofing, marketing, or warranty procedures to remedy these latent defects.

36. Instead, Defendant concealed and continues to conceal material maintenance information from prospective and current consumers.

37. The Internet is replete with examples of angry consumers who paid top dollar for Gerard Roofing and are disappointed by its performance, mostly because Defendant had concealed the fact that frequent cleanings would be necessary. An example, from another Florida customer summarizes the central issue:

Name: gail

Location: south Fl

Model: Canyon Shake

Satisfaction Rating:

Somewhat Unsatisfied

Review:

"Be careful"

I have had my roof for awhile. Overall I like the roof. But I am in a homeowners neighborhood. My HOA has been troubling me for several years to clean my roof. I finally received help from Gerard to locate someone who could clean according to Gerard's standards. Problem... They want \$1500.00 just to clean my roof. Which is going to need to be done approximately every 2 years in Florida! Which I find incredible....

<http://www.roof.info/shingles/reviews/gerard/>

C. Gerard Roofing's Inadequate Testing

38. Defendant did not properly test the Roofing in anticipated environments, such as Florida, before promoting its efficacy in these environments and selling the Roofing to the public.

39. Defendant conducted inadequate testing on the Roofing and failed to test for factors that it knew or should have known would lead to premature failure of the Roofs.

40. Defendant failed to investigate or test whether well-known and expected environmental conditions would, among other things, lead to substantial premature discoloration in the Roofing, and Defendant failed to disclose this failure to consumers.

41. Defendant failed to test the affect that repeated cleanings would have on the life of the Roofing.

D. Gerard Roofing's False Advertising

42. Defendant falsely marketed and advertised the Roofing as requiring minimal or no maintenance and that it would retain its appearance for decades and, for those reasons, charged a premium price compared to alternative roofing materials.

43. During the relevant time period, Gerard's website compared Gerard Roofing with a variety of other roofing materials, including: concrete tile, fiber cement tile, architectural composition shingle, and wood shake. As discussed above, a "weathering" chart on the website asserted that Gerard Roofing was the only one of the five aforementioned roof types to receive a score of "excellent." In the "weathering" category, below where it says "excellent," the website also references the "Lifetime Warranty," leading reasonable consumers to conclude that the lifetime warranty protects against weathering.

44. During the relevant time period, Defendant's website also included an FAQ

section concerning Gerard’s Roofing, which includes the following question and answer:

What materials are used in making Gerard Stone Coated Steel Roofing Systems?

Gerard Stone Coated Steel Roof Systems use steel panels that are protected from the elements by corrosion resistant Galvalume. The Gerard basecoat uses proprietary resins, which have been developed over many years to promote **lifetime performance in all climates**. The stone chips that Gerard uses in its Stone Coating are nonoiled natural granite granules that improve adherence to the basecoat while enhancing the appearance of Gerard panels.

Emphasis supplied.

45. Notably, during the class period, Defendant also included the following savings calculator, which is designed to make the consumer believe that he will save money in the long run by choosing Gerard Roofing over competing materials:

Calculator Example

Florida Coastal Home

29 squares
\$19400 Gerard quote (72 years)
\$10950 shingle quote (16 years)
\$16640 tile quote (33 years)

For example, a home owner in Florida knows from experience that asphalt shingles don't last 18 years in Florida's humidity and storms. And many Florida roofing companies won't offer an 18 year warranty for shingles. He knows from his neighbors that a tile roof' underlayment usually won't make it much past the warranty 30 year mark. He has learned that Gerard roofs are expected to go far beyond the 50 years guaranteed in their lifetime with 50-year transferable warranty. When he gets his quotes, he might enter these numbers into the calculator based on his climate and information, and get these results:

Gerard Metal	Asphalt Shingle	Concrete/Clay Tile
\$16,046.47	\$16,079.21	\$19,024.01
Or \$320.93 per year over 50 years	Or \$321.58 per year over 50 years	Or \$380.48 per year over 50 years
• for 24 Squares (2400 ft ²)	• for 24 Squares (2400 ft ²)	• for 24 Squares (2400 ft ²)
• at \$650.00 installed per Square	• at \$350.00 installed per Square	• at \$550.00 installed per Square
• with 50 year expectancy	• with 18 year expectancy	• with 30 year expectancy

46. Defendant and its authorized agents and distributors made each of the above described assertions, statements, representations and warranties with the intent and purpose of

inducing suppliers, builders, and consumers to purchase and install the Roofing in or on properties in Florida and throughout the United States.

47. Defendant also made numerous material omissions in its literature and uniformly withheld important information relating to the regular and expensive maintenance required to maintain the appearance of the Roofing. Indeed, the foregoing calculator completely ignores the cost of cleaning the Roofing every few years. It was not until Plaintiff attempted to make a warranty claim by contacting Defendant's warranty department that Defendant provided him with documentation showing that Gerard Roofing is known to accumulate dirt and debris over time which causes mold, algae or fungus to grow. Specifically, Gerard provided the following documentation:

General Information

Gerard stone-coated steel roof panels and accessories by themselves do not support moss or algae growth. However, over time the accumulation of dirt and debris coupled with retained moisture and limited sunlight creates an environment hospitable for moss or algae growth. Moss or algae growth does not normally harm stone-coated steel panels, but merely creates unsightly areas on the roof.

Controlling excessive Moss or Algae Growth on Stone-Coated steel roofs

Moss or Algae growth can be controlled by periodically cleaning the roof surface. Loose debris dropped from trees should be removed as necessary. A mild solution of 1-part chlorine to 1-part water can be sprayed on affected moss or algae growth and left to soak for approx. 1-hour. The Moss or Algae can then be washed off with a garden hose using a pressurized water nozzle. Stubborn spots may require using a soft bristled brush and/or a pressure washer capable of 1,000psi. This cleaning procedure should be performed as necessary to maintain a clean roof.

Roof Cleaning, Bird Droppings, General Dirt & Debris

Prepare a Cleaning Solution - Begin by filling an empty spray bottle with a mixture of hot water and mild detergent.

Apply the Cleaning Solution - Apply the blended cleaning solution to any dropping-laden / dirt areas of the roof. After allowing the cleaning solution to sit for several minutes, use a soft bristle brush while

48. Had Defendant not withheld and omitted such important information about the design and performance of the Roofing, Plaintiff and the members of the Class would not have purchased the products and/or installed them on their properties, or would have paid substantially less for similar products considering the long-term maintenance requirements to maintain the appearance of the Roofing.

V. Class Action Allegations

49. Plaintiff seeks to bring this case as a class action, pursuant to Rule 23 of the Federal Rules of Procedure. The proposed class (the “National Class”) is defined as follows:

All persons and entities that own a structure located within the United States that is constructed with Gerard Stone-Coated Metal Roofing installed on or after January 19, 2009.

Additionally, or alternatively, Plaintiff proposes the following “Warranty Class” to include:

Any individual or entity who was denied or partially denied warranty coverage by Gerard based on the assertion that discoloration of the Roofing is not covered by the Roofing warranty.

Additionally, or alternatively, Plaintiff proposes a class or subclass (the “Florida Subclass”) defined as follows:

All persons and entities that own a structure located within Florida that is constructed with Gerard Roofing installed on or after January 19, 2009.

Collectively the National Class, the Warranty Class and the Florida Subclass are referred to

herein as the “Class.” Expressly excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Defendant and any entity in which Defendant has a controlling interest, or which has a controlling interest in Defendant, and its legal representatives, assigns and successors; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

50. Plaintiff reserves the right to amend the Class definitions if further investigation and discovery indicates that the Class definitions should be narrowed, expanded, or otherwise modified.

Rule 23(a) Criteria

51. **Numerosity.** Defendant’s Roofing has caused consumers to suffer damages caused by the excessive cleaning and maintenance of Defendant’s “little to no maintenance” Roofing. Rather than enjoying the promised years of maintenance free living, Plaintiff and the Class have to routinely clean their roofs to maintain their intended appearance. The exact number of Class members is unknown as such information is in the exclusive control of Defendant. However, due to the nature of the trade and commerce involved, Plaintiff believes the Class consists of easily thousands of consumers, geographically dispersed throughout the United States and Florida, making joinder of all Class members impracticable.

52. **Commonality.** Common questions of law and fact affect the right of each Class member and common relief by way of damages is sought for Plaintiff and Class members.

53. The harm that Defendant has 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 Defendant sold and entered a defective product into the stream of commerce in Florida and other states;
- (b) Whether Defendant was unjustly enriched by the sale of the defective product;
- (c) Whether Defendant knew, or should have known, that the Roofing was subject to discoloration from, inter alia, mold, algae or fungus;
- (d) Whether Defendant breached the lifetime warranty it promised Class members and engaged in fraudulent, false, deceptive and/or misleading conduct with respect to the handling of warranty claims;
- (e) Whether Defendant omitted material information about the need to clean and maintain the Roofing when they advertised, marketed, and sold the Roofing;
- (f) Whether the Roofing possesses a latent defect; and
- (g) Whether the members of the Class have sustained damages and, if so, the proper measure of such damages.

54. **Typicality.** The claims and defenses of the representative Plaintiff are typical of the claims and defenses of the Class. Specifically, Plaintiff has the Roofing installed on his home in Pensacola, Florida. Despite the fact that no trees surround his home and the fact that his entire roof receives substantial sun, the Roofing on his home has discolored, which requires him to clean it routinely despite Defendant's representations to the contrary. The design defect in the Roofing will cause all consumers to suffer the same damages and have to pay to clean their roofs to maintain the desired appearance. There is nothing peculiar about Plaintiff's claim. Indeed, Plaintiff's claim is typical of the claims of other class members.

55. **Adequacy of Representation.** The representative Plaintiff, will fairly and adequately assert and protect the interests of the Class:

- (a) Plaintiff has hired attorneys who are experienced in prosecuting class action claims and will adequately represent the interests of the Class; and
- (b) Plaintiff has no conflict of interest that will interfere with the maintenance of this class action.

Rule 23 (b) Criteria

56. **Superiority.** 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 Class is so numerous as to make joinder impracticable. However, the Class is not so numerous as to create manageability problems. There are no unusual legal or factual issues that would create manageability problems;
- (c) Prosecution of a separate action by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendant when confronted with incompatible standards of conduct;
- (d) Adjudications with respect to individual members of the Class 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;

- (e) Upon information and belief, Defendant is responsible for the design and manufacture of the defective Roofing, which was used in Florida and purchased by Plaintiff in Florida, making this forum appropriate for the litigation of the claims of the entire Class; and
- (f) Despite the costly nature of the Roofing, the claims of the individual Class members are, nevertheless, small in relation to the expenses of individual litigation, making a Class action the only procedural method of redress in which Class members can, as a practical matter, recover.

Tolling of any Applicable Statutes of Limitations

57. For the reasons set forth herein, Plaintiff and putative members of the Class are within the applicable statute of limitation for the claims presented here. Defendant failed to disclose known but non-public information about the latent defective nature of the Roofing and its required maintenance as a result—information over which they had exclusive control. Among other things, this entitles Plaintiff to benefit from the statute of repose. Because Plaintiff and Class members therefore could not reasonably have known that the Roofing was defective, Defendant is estopped from asserting any statute of limitation defenses that might otherwise be applicable to the claims asserted herein.

VI. Cause of Action

COUNT I

Violation of the Florida Deceptive and Unfair Trade Practices Act, FLA.

STAT. § 501.201, *et seq.*

(On Behalf of the Florida Subclass)

58. Plaintiff repeats and re-alleges every allegation in paragraphs 1 through 57 above, as if set forth herein in full.

59. Plaintiff brings this claim individually and on behalf of a Class of Florida consumers who purchased the Roofing.

60. Plaintiff and Class members are “consumers” within the meaning of Fla. Stat. § 501.203(7).

61. Defendant was engaged in “trade or commerce” within the meaning of Fla. Stat. § 501.203(8).

62. Defendant omitted disclosure of the known fact that the Roofing possesses a defect which causes dirt and debris to collect between the stones, thereby allowing, inter alia, mold, algae and fungus, to grow on the surface of the Roofing, which ruins its appearance. Additionally, Defendant misrepresented the characteristics of the Roofing in claiming that it was of a high and durable quality and required little to no maintenance when they were not. This conduct constitutes unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices within the meaning of Fla. Stat. § 501.204, *et seq.*

63. A reasonable consumer, like Plaintiff, would be deceived by Defendant’s conduct in promoting the Roofing.

64. As described above, Plaintiff and the Class suffered damages because the Roofing they purchased does not perform as described by Defendant. Instead, the Roofing requires substantial maintenance every few years over its anticipated 50 year life. For example, if Plaintiff pays \$2,750 every three (3) years to have his 7 year old roof cleaned, for the next 43 years, he will be have paid approximately \$39,000 in maintenance costs for his “maintenance fee” Roofing.

65. Because the Roofing does not function as advertised, Defendant caused Plaintiff's damages, which can be measured with specificity based upon, inter alia, the square footage of the roof.

66. As a result of Defendant's misrepresentations, Plaintiff suffered actual damages within the meaning of Fla. Stat. § 501.211, because the product Plaintiff purchased failed to live up to Defendant's representations and will continue to cost Plaintiff and the Class maintenance costs over the life of the roof.

Count II
Breach of Implied Warranty
(On Behalf of the Florida Subclass)

67. Plaintiff repeats and re-alleges every allegation set forth in paragraphs 1 through 57 above, as if set forth herein in full.

68. Gerard designed, developed, manufactured, distributed, and marketed Roofing for purposes of sale to retail buyers.

69. Gerard impliedly warranted that the Roofing was properly designed, developed, tested, manufactured, distributed, marketed, and sold, and that the designs and materials were proper and of workmanlike quality.

70. Additionally, Fla. Stat. § 672.314-315 (Uniform Commercial Code) implies warranties of merchantability and fitness for a particular purpose.

71. Gerard knew and intended that Roofing would be installed on homes throughout the United States, including in Florida, where it would be exposed to variety of environmental conditions including high and low temperatures, humid and dry conditions, direct sunlight, shade and precipitation, as well as repeated freeze-thaw cycles.

72. The Roofing is not merchantable because it has a propensity to, among other things, collect dirt, grow mold, fungus, or algae and severely discolor in a manner that renders it unfit for the ordinary use of roofing, and the quality of the Roofing is objectionable in the trade.

73. Gerard knew that Plaintiff and the Class members would use Roofing on homes and other structures, and it should have used its own skill and judgment in the industry to furnish suitable materials for use in normal construction applications. The Roofing is not fit for its intended purpose because it has a propensity to grow mold, fungus or algae, and discolor prior to the expiration of its warranted or expected useful life.

74. Gerard breached said warranties by failing to provide adequate and proper designs, calculations, or materials for Roofing.

75. The Roofing fails to perform in accordance with the reasonable expectations of consumers such as Plaintiff and Class members to have roofing that does not grow mold, fungus or algae, or otherwise discolor..

76. Gerard had, and has, a duty and responsibility to disclose to the consuming public the foreseeable risks associated with the use of Roofing; Gerard further had, and has, a duty not to put defective products on the market.

77. But for Gerard's breach of implied warranty, Plaintiff and the Class would not have sustained damages in the form of excessive maintenance costs

78. As a direct and proximate result of the breach of said warranties, Plaintiff and the Class have suffered and will continue to suffer damages for having to repeatedly pay to have their roofs cleaned, as alleged herein, in an amount to be determined at trial.

79. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Gerard for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

COUNT III
Breach of Express Warranty
(On Behalf of the Florida Subclass)

80. Plaintiff repeats and re-alleges every allegation set forth in paragraphs 1 through 57 above, as if set forth herein in full.

81. Plaintiff, and each member of the Class, formed a contract with Defendant at the time they purchased the Roofing or when they purchased a home with Gerard Roofing installed. The terms of that contract include the promises and affirmations of fact made by Defendant in its advertising as well as through the lifetime warranty provided with the Roofing. The marketing and advertising of the Roofing constitutes express warranties and became part of the basis of the bargain and are part of the standardized contract between Plaintiff and the members of the Class, on the one hand, and Defendant, on the other hand. Defendant's promises create express warranties that the Roofing will require little to no maintenance relative to other roofing options available in the marketplace.

82. Furthermore, Defendant warrants that the Roofing is sold with a "lifetime warranty." Specifically, Gerard warrants that "the appearance of the surface coating of Gerard Products will not materially deteriorate beyond normal weathering and aging, including minor granule loss over the extended life of the warranty."

83. All conditions precedent to Defendant's liability under this contract were performed by Plaintiff and the Class, when they purchased the Roofing.

84. Despite Gerard's express warranties, the Roofing does not meet Defendant's stated standards of quality because it requires substantial maintenance and regular cleaning to control the mold, fungus, or algae growing on its surface and to maintain its intended appearance. The mold, fungus or algae, causes the appearance of the Roofing to materially deteriorate unless costly and regular cleaning is completed.

85. As a result of Defendant's breach of express warranties, Plaintiff and the Class have suffered and will continue to incur damages in the form of substantial cleaning and maintenance costs, in an amount to be proven at trial

Count IV
Violations of the Magnuson-Moss Federal Warranty Act,
15 U.S.C. 2301, *et seq.*
(On Behalf of the National Class)

86. Plaintiff repeats and re-alleges every allegation set forth in paragraphs 1 through 57 above, as if set forth herein in full.

87. The Roofing constitutes a "consumer product," as defined in 15 U.S.C. §2301.

88. Plaintiff and the other Class members are "consumers," as defined in 15 U.S.C. §2301.

89. Defendant is a "supplier" of the Roofing as defined in 15 U.S.C. §2301.

90. Defendant is a "warrantor" as defined in 15 U.S.C. §2301.

91. Defendant supplied a "written warranty" regarding the Roofing, as defined in 15 U.S.C. §2301(6).

92. The warranties made by Defendant pertained to consumer products costing the consumer more than five dollars, see 15 U.S.C. §2302(e).

93. As suppliers and in connection with the sale of the Roofing, Defendant made “implied warranties” arising under State law regarding the Roofing, as defined in 15 U.S.C. §2301(7).

94. Plaintiff invokes federal jurisdiction for his claims stated under this Count pursuant to the Class Action Fairness Act.

95. Defendant violated the Magnuson-Moss Federal Warranty Act by its failure to comply with the express warranties it made to Plaintiff and other Class members, as described above. *See*, 15 U.S.C. §2301, et seq.

96. Specifically, Defendant made the following express warranties:

- a. That the appearance of the surface coating of Gerard Products will not materially deteriorate beyond normal weathering and aging, including minor granule loss over the extended life of the warranty;
- b. That the Roofing will require little to no maintenance;
- c. That the roofing will require less maintenance than other comparable roofing materials; and
- d. That the Roofing will retain its appearance and will not prematurely “weather” over time.

97. Based on the facts alleged herein, any durational limitation to the warranties that would otherwise bar the Magnuson-Moss Federal Warranty Act claims in this Count, whether premised upon express or implied warranty, is procedurally and substantively unconscionable under federal law and the applicable state common law.

98. Based on the facts alleged herein, any durational limitations to the warranties that would otherwise bar the claims in this Count are tolled under equitable doctrines. Plaintiff, and

the other Class members, sustained injuries and damages as a proximate result of Defendant's violation of its written and/or implied warranties, and are entitled to legal and equitable relief against Defendant, including economic damages, rescission or other relief as appropriate.

Count V
Negligent Misrepresentation
(On Behalf of the National Class)

99. Plaintiff repeats and re-alleges every allegation set forth in paragraphs 1 through 57 above, as if set forth herein in full.

100. In making material misrepresentations of material facts regarding the characteristics and capabilities of the Roofing through their advertising, marketing, and product information publications that were in fact untrue, Defendant knew or should have known they were misrepresenting material facts and that the Plaintiff and Class would rely on Defendant's representations to their detriment and damage.

101. In concealing material facts regarding the characteristics and capabilities of the Roofing, Defendant knew or should have known they were not disclosing material facts and that Plaintiff and the Class would rely on Defendant's representations and omissions to their detriment and damage.

102. Defendant made false representations in the course of its business with the intent that Plaintiff and the Class would purchase or construct structures using its Roofing.

103. As a direct, proximate and foreseeable result of Defendant's failure to fully disclose material facts and its misrepresentations of material facts concerning mold, fungus, or algae, growing on the Roofing and causing severe discoloration, Plaintiff and the Class suffered damage.

104. As a result of Defendant's misconduct, Plaintiff and the Class have suffered actual damages in that they purchased defective Roofing, which, inter alia, requires costly maintenance.

105. Damages also include, without limitation, consequential and incidental damages.

106. As a direct, proximate and foreseeable result of Defendant's negligent misrepresentations, Plaintiff and the Class sustained damages in an amount to be determined at trial.

107. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

COUNT VI
Negligence
(On Behalf of the National Class)

108. Plaintiff repeats and re-alleges every allegation set forth in paragraphs 1 through 57 above, as if set forth herein in full.

109. Gerard owed a duty to Plaintiff and the Class to exercise reasonable care while designing, manufacturing, testing, and marketing Roofing.

110. Defendant breached its duty to Plaintiff and the Class by designing, manufacturing, selling, inadequately testing, advertising, and warranting a defective product to Plaintiff and the Class and by failing to take the steps necessary to repair or otherwise discontinue selling a defective product to consumers.

111. Gerard knew or should have known that the Roofing is defective and does not adequately perform its intended function. Upon information and belief, initial testing included accelerated weathering tests that failed to account for many of the climates in which the Roofing

would be used. Specifically, that the stones used to coat the Roofing would trap dirt and debris and allow for mold, fungus or algae, to develop and discolor the roof.

112. Despite the substandard performance of the Roofing, Gerard marketed and advertised the product as expensive but durable, long-lasting, and low maintenance or maintenance free. Additionally, Gerard sold and represented the Roofing as having certain specifications and properties (as described above) that it does not possess, such as the claim that the Roofing requires little or no maintenance.

113. Plaintiff and the Class were not aware of the Roofing's defective nature when they purchased the product.

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

115. As a result of Gerard's negligence, Plaintiff and the Class have suffered actual damages in that they purchased and installed on their homes and other structures Roofing that is defective. This failure has required or is requiring Plaintiff and the Class to incur significant expense in maintaining, repairing or replacing their roofs.

116. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Gerard for compensatory damages, for the establishment of a common fund, plus attorneys' fees, interest and costs.

COUNT VII
Unjust Enrichment
(On Behalf of the National Class)

117. Plaintiff repeats and re-alleges every allegation set forth in paragraphs 1 through 57 above, as if set forth herein in full.

118. Plaintiff and the Class have conferred substantial benefits on Defendant by purchasing Roofing at a premium price compared to alternative materials, and Defendant has knowingly and willingly accepted and enjoyed these benefits.

119. Defendant either knew or should have known that the payments rendered by Plaintiff and the Class were given and received with the expectation that Roofing would perform as represented and warranted. For Defendant to retain the benefit of the payments under these circumstances is inequitable.

120. Defendant, through misrepresentations, intentional omissions, or other improper business practices in connection with the advertising, marketing, promotion, and sale of the Roofing, reaped substantial benefits because the Roofing is one of the most expensive roofing materials available, which resulted in Defendant's wrongful receipt of profits.

121. Equity demands disgorgement of Defendant's ill-gotten gains. Defendant will be unjustly enriched unless Defendant is ordered to disgorge those profits for the benefit of Plaintiff and the Class.

122. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and the Class are entitled to restitution from and institution of a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendant.

Prayer for Relief

123. WHEREFORE, Plaintiff prays that this case be certified and maintained as a class action and for judgment to be entered against Defendant Gerard as follows:

- A. Enter an order certifying the proposed National Class, Warranty Class and Florida Subclass, designating Plaintiff as the Class representative, and designating the undersigned as Class counsel;

- B. Declare that Defendant is financially responsible for notifying all Class members of the problems with the Roofing;
- C. Declare that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of the Roofing, or order Defendants to make full restitution to Plaintiff and the members of the Class;
- D. Defendant shall re-audit and reassess all prior warranty claims regarding the Roofing, 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 Plaintiff and all members of the Class;
- F. For actual damages sustained or trebled damages, as allowed by law;
- 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

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

Respectfully submitted this 22nd day of January, 2019.

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Attorneys for Plaintiff

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

Johnny S. Wyse, Jr., on behalf of himself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brian W. Warwick, Janet R. Varnell, Varnell & Warwick, P.A. P.O. Box 1870, Lady Lake, FL 32158 (352) 753-8600

DEFENDANTS

GERARD ROOF PRODUCTS, LLC

County of Residence of First Listed Defendant outside this district (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

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

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

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)

Brief description of cause:

Contract dispute

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/22/2019

Brian W. Warwick

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.