

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ANTHONY PAGLIARONI, VICKI
O'BRIEN, JOHN COSTELLO,
CATHERINE LYNCH and MELISA
BURNETT on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

MASTIC HOME EXTERIORS, INC.,
an Ohio corporation, and
DECEUNINCK NORTH AMERICA,
LLC, a Delaware Limited Liability
Company.

Defendants.

No. 12-cv-10164:DJC

**SECOND AMENDED CLASS
ACTION COMPLAINT
AND JURY DEMAND**

Plaintiffs Anthony Pagliaroni, Vicki O'Brien, John Costello, Catherine Lynch and Melisa Burnett file this second amended class action complaint on behalf of themselves and all others similarly situated, by and through the undersigned attorneys, against Defendants Mastic Home Exteriors, Inc. ("Mastic") and Deceuninck North America, LLC ("Deceuninck"), 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*, investigation conducted by their attorneys and discovery produced to date.

Background

1. This is an action on behalf of Plaintiffs and a class (or subclasses) of all others similarly situated against Defendants Mastic and Deceuninck,

manufacturers and marketers of composite decking products known as Oasis Composite Deck and Rail (“Oasis Decking”). The decking is defective and the defect(s) render the product prone to severe cracking, warping, and discoloration after installation. Furthermore, the decking prematurely fails requiring replacement far sooner than consumers reasonably expect. As a result of Defendants’ failure to properly design, develop, test, manufacture, distribute, market, sell, and ensure that Oasis Decking was properly designed, Plaintiffs’ home deck is failing, causing him to suffer damages.

2. Defendants entered into a “strategic alliance” wherein Deceuninck designed (or licensed a design), manufactured, and supposedly tested Oasis Decking products and Mastic acted as the exclusive distributor responsible for, among other things, marketing and distributing the Oasis Decking product.

3. Defendant Mastic warranted and advertised that Oasis Decking is designed to outlast ordinary wood and requires little or no maintenance.

4. Defendant Mastic further warranted and advertised that Oasis Decking will not split, cup, or warp.

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

Jurisdiction and Venue

6. 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.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1407 because the claims in this action have been consolidated for multidistrict litigation in this District by the Judicial Panel on Multidistrict Litigation.

8. 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.

9. Defendants' joint venture contemplated the sale, distribution, and use of Oasis Decking in this district.

10. As a result of Mastic's marketing, distributing, promoting or selling, either directly or indirectly through third parties or related entities, Oasis Decking to consumers throughout Massachusetts, the Defendants obtained the benefits of the laws of Massachusetts and profited from Massachusetts commerce.

11. As a result of Deceuninck's designing, testing, developing, manufacturing, and shipping of Oasis Decking to purchasers throughout Massachusetts, the Defendants obtained the benefits of the laws of Massachusetts and profited from Massachusetts commerce.

12. Defendant Mastic conducted systematic and continuous business activities in and throughout the State of Massachusetts through the promotion of marketing of its business.

13. Additionally, this action was filed over a year ago in this district and the interests of comity, judicial efficiency, and the risk of conflicting judicial determinations support the District of Massachusetts as the proper venue for this litigation.

Parties

14. Plaintiff Anthony Pagliaroni is a resident of Swansea, Massachusetts. He purchased Oasis Decking to build a deck to his home in approximately August 2006.

15. Plaintiff Vicki O'Brien is a resident of Buffalo, Minnesota. She purchased Oasis Decking to build a deck to her home in approximately June 2006.

16. Plaintiff John Costello is a resident of Portland, Oregon. He purchased Oasis Decking to build a deck to his home in approximately March 2008.

17. Plaintiff Catherine Lynch is a resident of Harpersfield, New York. She purchased Oasis Decking to build a deck to her home in approximately September 2007.

18. Plaintiff Melisa Burnett is a resident of Brighton, Michigan. She purchased Oasis Decking to build a deck to her home in approximately September 2006 and additional Oasis Decking in July 2007.

19. Defendant Mastic is a wholly owned subsidiary of Ply Gem Holdings, Inc. Ply Gem acquired Alcoa Home Exteriors, Inc., the distributor, marketer, and warrantor of Oasis Decking, on October 31, 2006. In December 2010, Ply Gem changed the legal name of Alcoa Home Exteriors, Inc. to Mastic Home Exteriors, Inc. Mastic is an Ohio corporation with its principal place of business in Cary, North Carolina.

20. Defendant Deceuninck is a Delaware limited liability company that has its principal place of business in Monroe, Ohio. Deceuninck North America, LLC is a wholly owned subsidiary of Deceuninck NV, a Belgian corporation that designs, manufactures, and sells PVC systems and building products throughout Europe, North America, and Asia. Deceuninck NV is headquartered in Hoogledes-Gits, Belgium. In 2005, Deceuninck NV renamed Dayton Technologies, L.L.C. to Deceuninck North America, LLC.

Factual Basis

21. In approximately Fall 2003, Defendants entered into a sale and distribution agreement. The agreement was between Alcoa Home Exteriors and Dayton Technologies, the predecessors of Mastic and Deceuninck.

22. Deceuninck designed, developed, manufactured, tested, and sold Oasis Decking pursuant to certain terms of the agreement.

23. Mastic marketed, and distributed Oasis Decking pursuant to certain terms of the agreement.

24. Mastic publically referred to the agreement as a “strategic alliance” with a stated purpose of “entering a growing sector of the building products industry - engineered wood, or composites.” <http://www.alcoa.com/Building/en/news/print/dayton.asp> (accessed June 12, 2012).

25. At the time the agreement was announced, Mastic’s president stated, “We could not have found a better partner in Dayton Technologies for this promising new venture. They are, hands down, a technology leader with a reputation for quality and dedication to customers that is directly in line with our mission.” *Id.*

26. At the same time, Deceuninck’s CEO stated in a press release, “We have gone through rigorous R&D and will soon introduce one of the finest composite building materials available today. With our combined resources, the alternatives for builders and homeowners will keep getting better.” *Id.*

27. Oasis Decking is a manufactured composite decking material made of yellow pine wood flour mixed with high-density polyethylene (HDPE). The materials are heated, mixed, and extruded into profiles and shapes.

28. Mastic represented to consumers that, “Oasis™ composite products meet and exceed the acceptance criteria for the Universal Building Code’s AC-174 requirements under the International Code Council (ICC).” And that Oasis Decking “Meets International Code Council (ICC) standards (ESR 1425).”

29. Mastec published the following product specifications for Oasis

Decking:

<u>Property</u>	<u>Test Method</u>	<u>Result</u>
Modulus of Rupture	ASTM 4761	>2980 psi
Modulus of Elasticity	ASTM 4761	>530,000 psi
Coefficient of Linear Exp.	ASTM D696	<2.0 x 10 ⁻⁵
Slip Resistance (Dry)	ASTM F1679	>.5
Slip Resistance (Wet)	ASTM F1679	>.5
Nail Withdrawal	ASTM D1761	>300 lbs
Screw Withdrawal	ASTM D1761	>930 lbs
Flame Spread Index	ASTM E84	Flame Spread – 60 Smoke developed – 200
Fire Rating		Class II or Class B

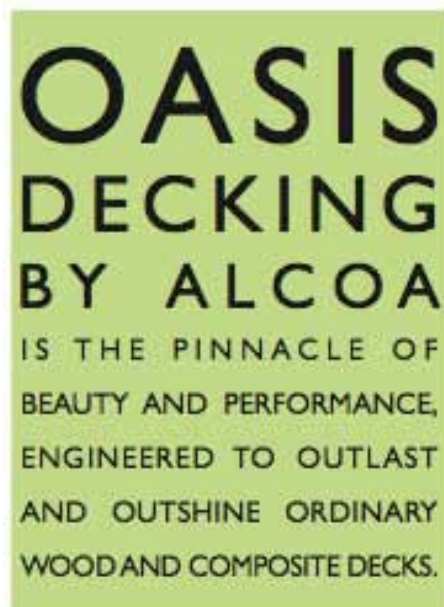
30. Oasis Decking is designed to look and work like natural wood but without the ongoing maintenance that natural wood requires.

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

32. Mastic represented to consumers, “It’s engineered to outlast and out perform ordinary wood and composite decks for years of enjoyment.”

33. Mastic represented to consumers that Oasis Decking provides “[t]he most natural wood appearance in the industry that never needs staining or painting.” And that, Oasis™ exhibits the characteristics of wood decking without the drawbacks.”

34. One of Mastic’s marketing brochures contains the following image:



35. Mastic represented to consumers that “Oasis® is engineered for high plank strength for reduced ‘spongy’ feel.”

36. Mastic represented to consumers that because it manufactured Oasis Decking with furniture-grade wood flour, installers could cut and work the composite material like fine-quality wood.

37. Mastic (formerly named Alcoa Home Exteriors, Inc.) stated, “Alcoa Home Exteriors, Inc. warrants for 25 years from the original date of installation of the products on your property that are covered products will not splinter, split, rot, or suffer from structural damage”

38. Mastic represented to consumers that Oasis Decking is “backed By [sic] Alcoa Home Exteriors, a name you can trust!” and “It’s backed by Alcoa Home Exteriors...the company with a proven reputation for the best products in the building and construction industry. [sic]”

39. Despite Mastic’s representations to consumers, Oasis Decking is plagued with design flaws that cause the decking to crack, cup, warp, split, mildews, and discolor shortly after installation.

40. Mastic represented to consumers that “Oasis® composite decking is guaranteed not to splinter or rot. It will not split when installed according to manufacturer’s instructions.”

41. Mastic also represented to consumers that the company would fully indemnify consumers against splitting, splintering, rot, and other problems. Defendant described its warranty as:

*A warranty that will
put you at ease. Naturally.*

The Oasis Composite Decking and Railing Limited 10-Year Warranty let's you relax by protecting against rot, decay, splitting, splintering and termite damage. See full warranty for specifics.

42. Mastic 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 Oasis Decking in residential and commercial structures throughout the United States.

43. Upon information and belief, Mastic and Deceuninck also made numerous material omissions in its literature and uniformly withheld important information relating to the design, reliability and performance of Oasis Decking.

44. Had Mastic and Deceuninck not withheld and omitted important information about the design, reliability and performance of Oasis Decking, Plaintiffs and members of the proposed class would not have purchased the products or installed them in their properties.

Plaintiff Anthony Pagliaroni

45. Plaintiff Pagliaroni purchased Oasis Decking materials to build a raised deck to his home in approximately August 2006. Plaintiff purchased Oasis Decking deck planks, fascia boards, post covers, post caps, rails, and balusters.

46. Prior to purchasing Oasis Decking, Plaintiff reviewed a brochure published by Mastic to market Oasis Decking. Plaintiff also reviewed the company's website. Upon information and belief, Deceuninck employees participated in the preparation of the marketing material.

47. Plaintiff's contractor purchased Oasis Decking believing it to be a quality product and free of any major defects.

48. Plaintiff noticed that his Oasis decking was discoloring and appeared as if it was showing the early signs of cracking approximately one year after installation. At the time, Plaintiff believed that these were normal characteristics of the product.

49. The problems continually worsened over the next 3–4 years. The Oasis Decking continued to crack and discolor. As the cracking became more severe, Plaintiff observed his Oasis Decking expand, warp, and separate along the thickness of the board as if layers were coming apart.

50. In addition to problems with Oasis Decking planks, Plaintiff's Oasis Decking rails, post covers, and balusters are cracking and swelling and Plaintiff's Oasis Decking fascia board is warping, cracking, and growing mold or mildew.

51. The following photos demonstrate the premature deterioration of Plaintiff Pagliaroni's deck.





52. Plaintiff did not recognize the problems with his Oasis Decking as manifestations of a product defect until shortly before making a warranty claim to the company in approximately late September 2011.

53. Water apparently wicks into the decking material and causes expansion and eventual cracking of the product. The absorbed water causes further degradation to the product. Repeated freeze-thaw cycles accelerate the problem because the water absorbed by the Oasis Decking expands as it freezes and causes even more cracks.

54. The deterioration of Plaintiff's deck is a safety concern because the amount and nature of the cracking may lead to structural instability or uneven walking surfaces. Additionally, the cracks in the railings may pose a safety hazard because the railing may not be able to serve its intended purpose of protecting occupants of the raised deck from falling off the deck.

55. The boards on Plaintiff's deck have expanded so much that the gaps between the boards have closed, preventing proper drainage of rainwater. The result is pooled water that promotes the growth of mold or mildew. The mold or mildew creates an extremely slippery deck surface that is unsafe for children and adults when wet.

56. Mastic inspected Plaintiff Pagliaroni's Oasis Decking deck on September, 9 2011 and noted "Warping on every board of main deck, 20X24', stair are all cracked 24"x2', fascia is cracked 78 sq. ft. [sic throughout]."

57. The Mastic inspector also wrote, “All board on this deck (480 square ft) were observed and determined to be all warped. 78 feet of fascia board ... were observed to have many crack and warping in the boards also. There was noticeable cracking around the failing of the deck also. The two 24 lf ft. stairs were also cracked and warped. 42 lf of railing surrounded deck and was cracked and warped.”

Plaintiff Vicki O’Brien

58. Plaintiff O’Brien purchased Oasis Decking materials to build an elevated deck to her home in approximately June 2006.

59. Prior to purchasing Oasis Decking, Plaintiff reviewed a brochure published by Mastic to market Oasis Decking. Upon information and belief, Deceuninck employees participated in the preparation of the marketing brochure.

60. Plaintiff’s contractor purchased Oasis Decking believing it to be a quality product and free of any major defects.

61. Plaintiff noticed that her Oasis Decking was discoloring and cracking in approximately May of 2011.

62. The problems have continually worsened. The Oasis Decking continues to crack and discolor. As the cracking became more severe, Plaintiff observed her Oasis Decking expand, warp, and separate along the thickness of the board as if layers were coming apart.

63. The following photos demonstrate the premature deterioration of Plaintiff O’Brien’s deck.





64. Plaintiff did not recognize the problems with her Oasis Decking as manifestations of a product defect until shortly before making a warranty claim to the company in approximately June 2012.

65. Water apparently wicks into the decking material and causes expansion and eventual racking of the product. The absorbed water causes further degradation to the product. Repeated freeze-thaw cycles accelerate the problem because the water absorbed by the Oasis Decking expands as it freezes and causes even more cracks.

66. The deterioration of Plaintiff's deck is a safety concern because the amount and nature of the cracking may lead to structural instability or uneven walking surfaces. Additionally, the cracks in the railings may pose a safety hazard because the railing may not be able to serve its intended purpose of protecting occupants of the raised deck from falling off the deck.

67. The boards of Plaintiff's deck have warped so much that they form concave surfaces that hold rainwater. The result is pooled water that promotes the formation of dark spots, which are, upon information and belief, mold or mildew.

Plaintiff John Costello

68. Plaintiff Costello purchased Oasis Decking materials to build an elevated deck to his home in approximately March 2008.

69. Prior to purchasing Oasis Decking, Plaintiff reviewed a brochure published by Mastic to market Oasis Decking. Upon information and belief, Deceuninck employees participated in the preparation of the marketing brochure.

70. Plaintiff's contractor purchased Oasis Decking believing it to be a quality product and free of any major defects.

71. Plaintiff noticed that his Oasis Decking was discoloring and cracking within approximately two years after installation.

72. The problems have continually worsened. The Oasis Decking continues to crack, split, cup and discolor. As the cracking became more severe, Plaintiff observed his Oasis Decking expand, warp, and separate along the thickness of the board as if layers were coming apart.

73. The following photos demonstrate the premature deterioration of Plaintiff Costello's deck.







74. Plaintiff did not recognize the problems with his Oasis Decking as manifestations of a product defect until shortly before making a warranty claim to the company in approximately November 2011.

75. Water apparently wicks into the decking material and causes expansion and eventual racking of the product. The absorbed water causes further degradation to the product. Repeated freeze-thaw cycles accelerate the problem because the water absorbed by the Oasis Decking expands as it freezes and causes even more cracks.

76. The deterioration of Plaintiff's deck is a safety concern because the amount and nature of the cracking may lead to structural instability or uneven walking surfaces. Additionally, the cracks in the railings may pose a safety hazard because the railing may not be able to serve its intended purpose of protecting occupants of the raised deck from falling off the deck.

77. The boards of Plaintiff's deck have warped so much that they form concave surfaces that hold rainwater. The result is pooled water that promotes the formation of dark spots, which are, upon information and belief, mold or mildew.

78. Defendant Mastic inspected Plaintiff's Oasis Decking on February 21, 2012 and noted, "The deck had both cracking and cupping present."

79. The Mastic inspector also wrote, "According to the homeowner, the deck boards were installed with proper gapping between the planks."

Plaintiff Catherine Lynch

80. Plaintiff Lynch purchased Oasis Decking materials to build an elevated deck to her home in approximately September 2007. Plaintiff purchased Oasis Decking deck planks and fascia boards.

81. Prior to purchasing Oasis Decking, Plaintiff reviewed a brochure published by Mastic to market Oasis Decking and also reviewed the company's website. Upon information and belief, Deceuninck employees participated in the preparation of the marketing brochure.

82. Plaintiff purchased Oasis Decking believing it to be a quality product and free of any major defects.

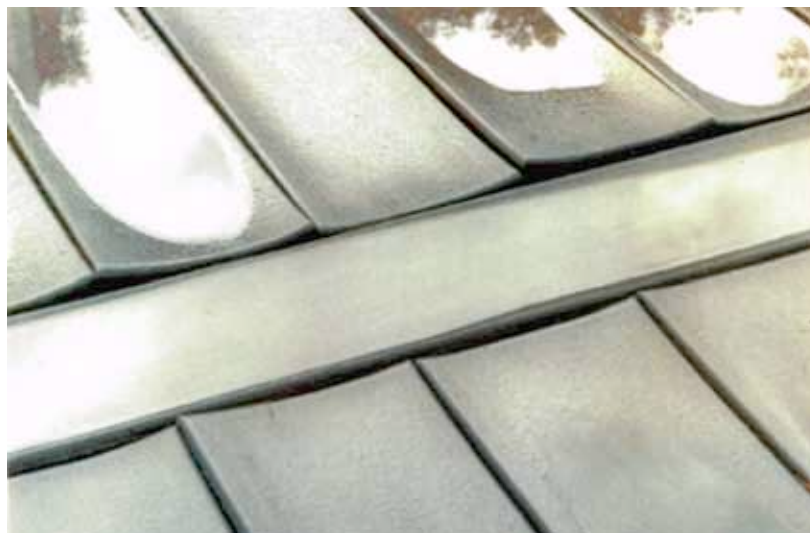
83. Plaintiff noticed that her Oasis Decking was discoloring, cracking and cupping within approximately two years after installation.

84. The problems have continually worsened. The Oasis Decking continues to crack, split, cup and discolor. As the cracking became more severe, Plaintiff observed his Oasis Decking expand, warp, and separate along the

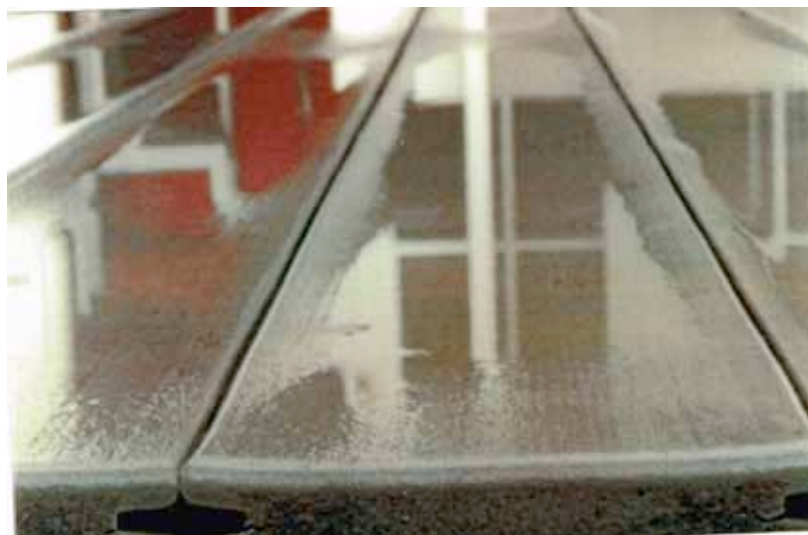
thickness of the board as if layers were coming apart. Further, the decking began to grow mold and became discolored. Cleaning and scrubbing does not remove the discoloration and the mold continues to grow back.

85. In addition to problems with Oasis Decking planks, Plaintiff's Oasis Decking is cracking and swelling, and Plaintiff's Oasis Decking fascia board is warping, cracking, and growing mold or mildew.

86. The following photos demonstrate the premature deterioration of Plaintiff Lynch's deck.







87. Plaintiff did not recognize the problems with her Oasis Decking as manifestations of a product defect until shortly before making a warranty claim to the company in approximately October 2011.

88. Water apparently wicks into the decking material and causes expansion and eventual cracking of the product. The absorbed water causes further degradation to the product. Repeated freeze-thaw cycles accelerate the

problem because the water absorbed by the Oasis Decking expands as it freezes and causes even more cracks.

89. The deterioration of Plaintiff's deck is a safety concern because the amount and nature of the cracking may led to structural instability and uneven walking surfaces. Additionally, the cracks in the railings may pose a safety hazard because the railing may not be able to serve its intended purpose of protecting occupants of the raised deck from falling off the deck.

90. The boards of Plaintiff's deck have warped so much that they form concave surfaces that hold rainwater. The result is pooled water that promotes the formation of dark spots, which are, upon information and belief, mold or mildew. The mold or mildew creates an extremely slippery deck surface that is unsafe for children and adults when wet.

91. The severity of cupping that occurs creates a tripping hazard which could lead to serious injury. Furthermore, the severe cupping creates a puddling effect that freezes in cold weather making it unsafe to walk on. In warm weather the puddles take hours to dry thus limiting usage of the deck.

92. Mastic inspected Plaintiff's Oasis Decking on April 4, 2012, and noted, "Cracking/Warping were found on the majority of the deck boards. Cracking was found on the majority of the stair boards."

93. The Mastic inspector also wrote, "Cracking was deemed the predominant damage when boards demonstrated both conditions."

Plaintiff Melisa Burnett

94. Plaintiff Burnett purchased Oasis Decking materials to build an elevated deck to her home in approximately September 2006 and again in July 2007 for an addition to the deck. Plaintiff purchased Oasis Decking deck planks, rails, balusters, post covers, and fascia boards.

95. Prior to purchasing Oasis Decking, Plaintiff went to a showroom at Killer Decks in Wayne, MI where she saw Oasis Decking on display. Plaintiff also visited the Oasis Decking website multiple times prior to her purchase and downloaded the company's electronic brochures that were available on the website. Plaintiff relied upon the electronic materials as the basis of her purchase decision. Upon information and belief, Deceuninck employees participated in the preparation of the marketing brochures Plaintiff downloaded.

96. Plaintiff's contractor purchased Oasis Decking believing it to be a quality product and free of any major defects.

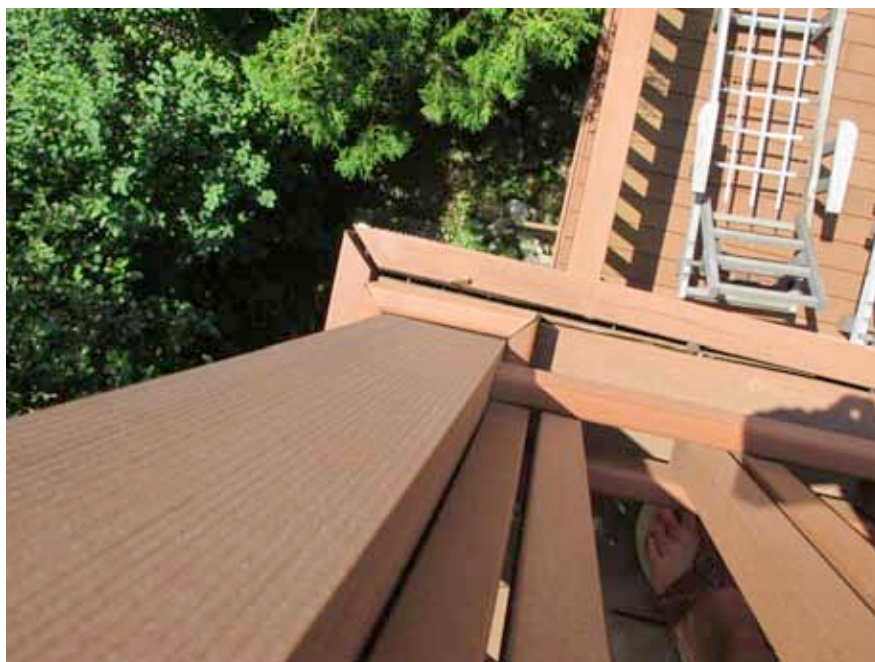
97. In approximately summer 2008, Plaintiff noticed that her Oasis Decking fascia boards and post covers were slightly cracking. She believed the conditions were normal characteristics of composite decking. By summer 2010, Plaintiff's Oasis Decking deck boards began to buckle, warp, and separate. Additionally the boards were splitting and cupping, the fascia boards were warping and the rail balusters were expanding at the ends.

98. The problems have continually worsened. The Oasis Decking continues to crack. As the cracking became more severe, Plaintiff observed her

Oasis Decking expand, warp, and separate along the thickness of the board as if layers were coming apart.

99. The following photos demonstrate the premature deterioration of Plaintiff Burnett's deck.





100. Plaintiff did not recognize the problems with her Oasis Decking as manifestations of a product defect until shortly before making a warranty claim to the company in approximately summer 2011.

101. Plaintiff contacted Mastic in summer 2011 to notify the company of the defects in its product. She requested a copy of the warranty claim form.

102. Water apparently wicks into the decking material and causes expansion and eventual cracking of the product. The absorbed water causes further degradation to the product. Repeated freeze-thaw cycles accelerate the problem because the water absorbed by the Oasis Decking expands as it freezes and causes even more cracks.

103. The deterioration of Plaintiff's deck is a safety concern because the amount and nature of the cracking may lead to structural instability and uneven walking surfaces. Additionally, the cracks in the railings may pose a safety hazard because the railing may not be able to serve its intended purpose of protecting occupants of the raised deck from falling off the deck.

104. The boards of Plaintiff's deck have warped so much that they form concave surfaces that hold rainwater. The result is pooled water that promotes the formation of dark spots, which are, upon information and belief, mold or mildew. The mold or mildew creates an extremely slippery deck surface that is unsafe for children and adults when wet.

105. The severity of cupping that occurs creates a tripping hazard, which could lead to serious injury. Furthermore, the severe cupping creates a pudding effect that freezes in cold weather making it unsafe to walk on. In warm weather the puddles take hours to dry thus limiting usage of the deck.

General Facts

106. The problems with Oasis Decking experienced by the named plaintiffs are not unique. Below is a small sample of customer comments made on the Internet regarding Defendant Mastic's Oasis Decking:

We replaced our redwood deck after 10 years of use. We replaced it with a product called Oasis from Alcoa. In less than one year, it's surface is etching, it warping everywhere (significantly), cracking at the ends of the boards where the screws were driven in, bowing between floor joists....is terrible. we are currently in discussions with the contractor that built the deck. He is in the process of submitting a warranty claim to Alcoa as I write this. I am anxious to see how they will try to wiggle their way out of this.... very disappointing as we paid a great deal of money versus just using wood. In the short term, this will need to be replaced so, I would love someone to write and tell me what better choice there is out there....what have you used that has help up well under harsh conditions? I'm at a loss.

<http://landscaping.about.com/b/2006/11/14/deck-materials-wood-decks-vs-composite-decks.htm>

#16 Frustrated with the Alcoa Oasis deck.... what happened to the warranty? Was this resolved? I am going through the same thing now with the same deck. Mine is 3 years old....any advice you can offer?

Id. (in reply to the comment quoted above).

107. The following photos of unused Oasis Decking demonstrate that the cracking, splitting, warping, and other deterioration experienced by Plaintiffs and other homeowners are not related to installation.





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

109. 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.

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

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

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

113. Upon information and belief, Defendants conducted inadequate testing on Oasis Decking and failed to test for things that they knew or should have known would lead to premature failure.

114. Upon information and belief, Defendants failed to investigate or test whether well-known and expected conditions would lead to premature failure of Oasis Decking.

115. Despite customer complaints, Defendants failed to implement any changes to their Oasis Decking or warranty procedures to remedy the defects. Instead, the companies stopped selling Oasis Decking.

116. Despite the obvious defective design and/or manufacture of its Oasis Decking products, Defendants have hid behind their woefully inadequate warranties to deny Plaintiffs Pagliaroni, Costello, Lynch, O'Brien and members of the proposed Class adequate compensation.

117. Even when it does honor its warranty in part, Defendant Mastic limited its offer of warranty payment to its estimate of the purchase price of Oasis Decking—just a fraction of the actual replacement cost—but included a new requirement not contained in the warranty. Defendants' offers are contingent upon Plaintiffs signing a Settlement Agreement and General Release. The release document states, in part:

In return for the sum of \$_____ I (we) the homeowners agree to settle the claim against Mastic Home Exteriors, Inc. and its affiliates and hereby release Mastic Home Exteriors, Inc. and its affiliates from any and all claims, actions or damages arising from or relating to the decking materials that are the subject of this claim.

It is further agreed that this settlement agreement and General Release is a complete and final release as to any claims I (we) have or may have in the future regarding the decking materials that are the subject of this claim.

118. Defendants' requirement that Plaintiffs execute a general release, among other things, terminates the purported 25-year warranty that Plaintiffs expected to receive with their purchase of Oasis Decking.

119. Defendant Mastic failed to inform Plaintiffs that another company, Deceuninck, manufactured their Oasis Decking and that Deceuninck also warranted the product. Upon information and belief, Mastic has similarly misled Class members.

120. Defendant Mastic concealed the identity of Deceuninck as the manufacturer of Oasis Decking; all published materials indicate that Alcoa Home Exteriors is the originator of the decking product. The full product name, Alcoa Oasis Decking, further conceals the identity of the manufacturer.

121. Mastic's offer to cover only the original purchase price of the Oasis 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 Oasis Decking, removal and disposal of the underlying deck structure, replacement of the deck structure, and labor to install new decking materials.

122. On September 21, 2011, Ply Gem Siding Group, a division of Mastic's corporate parent company, sent a letter to Plaintiff Pagliaroni's wife suggesting that she accept Mastic's warranty offer and use the money to purchase "matching boards" from "Deceuninck NA under the brand name Kodiak." The letter did not disclose the former "strategic alliance" between the companies and failed to disclose the fact that Kodiak is not a suitable replacement option for Oasis Decking.

123. Deceuninck's Kodiak decking has installation requirements for the underlying deck structure that are different, and incompatible, with Oasis Decking's installation requirements. Consumers who follow Mastic's advice will be required to replace their deck structure, even if Oasis Decking did not damage it.

124. Defendants knew or reasonably should have known that Oasis Decking is defective prior to the time of sale, and intentionally concealed that material information and the truth concerning their product from Plaintiffs, Class members, and the general public, while continually marketing Oasis Decking as dependable products. Defendants' acts of fraudulent concealment include failing to disclose that its Oasis Decking was defectively manufactured or designed and would deteriorate in less than its expected lifetime, leading to damage to the very structures they were purchased to protect.

125. Because the defects in Oasis Decking are latent and not detectable until manifestation, Plaintiffs and the Class members were not reasonably able to

discover their Oasis Decking was defective and unreliable until after installation, despite their exercise of due diligence.

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

Class Action Allegations

127. 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 class (the “Class” or the “National Class”) is 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 Oasis Decking is or has been installed since 2003. 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.

Additionally or alternatively, Plaintiffs propose a class or subclass (the “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 Oasis Decking is or has been installed since 2003. 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.

Additionally or alternatively, Plaintiffs propose a class or subclass (the “Minnesota 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 Minnesota, in which Oasis Decking is or has been installed since 2003. 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.

Additionally or alternatively, Plaintiffs propose a class or subclass (the “Michigan 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 Michigan, in which Oasis Decking is or has been installed since 2003. 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.

Additionally or alternatively, Plaintiffs propose a class or subclass (the “New York 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 New York, in which Oasis Decking is or has been installed since 2003. 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.

Additionally or alternatively, Plaintiffs propose a class or subclass (the “Oregon 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 Oregon, in which Oasis Decking is or has been installed since 2003. 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.

Additionally or alternatively, Plaintiffs propose a class or subclass (the “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 Oasis 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.

128. As defined above, this complaint collectively refers to these proposed classes as the Class.

129. Plaintiffs reserves the right to redefine the Class(es) prior to class certification.

130. The members of the proposed Class are so numerous that joinder of all members is impracticable.

131. 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 Class consists of over a thousand consumers.

132. 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.

133. 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 Oasis 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 Oasis 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 Oasis Decking failed to perform in accordance with the reasonable expectations of ordinary consumers;
- e. Whether Mastic's requirement that Plaintiff and members of the class release all claims in exchange for a warranty payment is a breach of express warranty;
- f. Whether Defendants failed to prevent damages which occurred as a result of defective Oasis Decking they designed, manufactured and placed into the stream of commerce;
- g. Whether Defendants properly warned consumers about the reasonably foreseeable dangers of using Oasis Decking;

- h. Whether Defendants were unjustly enriched by the sale of defective Oasis Decking;
- i. Whether Mastic breached the 25 year warranty they represented as existing and engaged in fraudulent, false, deceptive or misleading misconduct with respect to the handling of warranty claims;
- j. Whether Mastic has changed or altered its warranty program without notice to Plaintiff and the Class;
- k. Whether Defendants omitted material information when they sold Oasis Decking;
- l. Whether members of the proposed Class have sustained damages and, if so, the proper measure of such damages; and
- m. Whether Defendants should be declared financially responsible for notifying all Class members about their defective Oasis Decking and for all damages associated with the incorporation of such decking into Class members' homes, residences, buildings, and other structures.

134. The claims and defenses of the named Plaintiffs are typical of the claims and defenses of the Class. Plaintiffs and all members of the class own or have owned homes, residences, or other structures on which Oasis Decking decks 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 Oasis Decking's premature failure. Furthermore, the factual bases 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 Class.

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

136. 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 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 Class would create a risk of inconsistent and varying adjudications against Defendant when confronted with incompatible standards of conduct;
- e. 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; 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.

**COUNT I: Breach of Express Warranties Made by Mastic
(Brought by all Plaintiffs against Mastic on behalf of the proposed class)**

137. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

138. Mastic marketed and sold Oasis Decking into the stream of commerce with the intent that the decking would be purchased by Plaintiffs and members of the Class.

139. The express statements, assertions, marketing materials, and representations by Mastic or its predecessors concerning Oasis Decking as set forth above constitute express warranties.

140. Mastic expressly warranted that Oasis Decking is permanent and would maintain its structural integrity. Defendants' representatives, through its written warranties regarding the durability and quality of Oasis Decking, created express warranties that became part of the basis of the bargain into which Plaintiffs and members of the Class entered when they purchased Oasis Decking.

141. The express warranties provided by Mastic include warranties that it would provide a 25-year warranty on materials and workmanship.

142. The express warranties created by Mastic go beyond the limited warranty Mastic relies upon when processing warranty claims. Mastic also created express warranties in product brochures, product specifications, product packaging, builder guides, and installation manuals.

143. Mastic failed to provide defect-free Oasis Decking and failed to inspect and identify decking components or raw materials with defects.

144. But for the design or manufacturing defect, selection of improper materials, or the breaches of duty by Mastic, the Class would not have sustained damages.

145. As a result, Mastic breached its express warranties by providing defective Oasis Decking that has or is reasonably certain to fail well before the 25-year warranty or useful life of the product.

146. Mastic breached its express warranties to Plaintiffs and the Class because Oasis Decking is neither permanent nor structurally sound and does not perform as promised. Oasis Decking cracks, splits, warps, discolors, is susceptible to mildew and mold, and otherwise prematurely deteriorates and does not perform as warranted by Mastic.

147. Upon discovery of the defective Oasis Decking used to build decks to homes and other structures, Plaintiffs gave notice to Mastic of its breach of express warranty claim using a warranty claim form provided by Mastic. Plaintiffs have brought this Complaint to give notice to Mastic of the claims of consumers at large.

148. Mastic further breached its express warranty to Plaintiffs and the proposed class by unilaterally modifying its warranty program to require consumers to execute a Settlement Agreement and General Release as a condition of receiving payment under the warranty.

149. Mastic's warranties fail their essential purpose because they purport to warrant that Oasis Decking will be free from structural breakdown for 25 years when, in fact, Oasis Decking fails shortly after installation. Because Defendants' putative "limited" warranty limits recovery to replacement of the decking material piece by piece with labor, removal, disposal not included, Defendants' warranty is woefully inadequate to repair and replace failed decking. The remedies available in Defendants' putative "limited" warranty are limited to such an extent that they do not provide a minimum adequate remedy. Additionally, even if Plaintiffs were to replace their decking on a piecemeal basis, the color variation between new and old boards would be unacceptable, especially given Defendants' strong emphasis on the attractive visual appearance of their product; and, as noted above, new composite decking from Deceuninck requires a different structure than Oasis Decking.

150. The limitations on remedies and the exclusions in Defendants' putative "limited" warranty are unconscionable and unenforceable because they cause the warranty to fail its essential purpose.

151. As a result of Mastic's breach of its express warranties, Plaintiffs and the Class 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 Class to incur significant expense in repairing or replacing their decks.

Replacement is required to prevent on-going and future damage to the underlying structure.

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

**COUNT II: Mastic's Breach of Implied Warranties
(Brought by all Plaintiffs against Mastic on behalf of the proposed classes)**

153. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

154. Mastic designed, developed, manufactured, distributed, and marketed Oasis Decking for purposes of its eventual sale to retail buyers.

155. Mastic impliedly warranted that Oasis Decking is properly designed, developed, manufactured, distributed, marketed, sold, and installed and that the designs and materials were proper and of workmanlike quality.

156. Additionally, Mass Gen. Laws Ann. Ch. 106, §§ 2-314 – 318, Mich. Comp. Laws §§ 440.2314 – 440.2318, Minn. Stat. Ann. §§ 336.2-314 – 336.2-318, N.Y. U.C.C. Law §§ 2-314; 2-315, and Or. Rev. Stat. Ann. § 72.3140 imply warranties of merchantability and fitness for a particular purpose.

157. Mastic knew and intended that Oasis Decking would be installed on exterior decks throughout the United States, including regions 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.

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

159. Mastic knew that Plaintiffs and the Class would use Oasis Decking to construct decks, and Plaintiffs and the Class relied upon Defendants' skill and judgment to furnish suitable decking material; Oasis Decking is not fit for its intended purpose because it has a propensity to crack, warp, split, or otherwise prematurely degrade.

160. Plaintiffs and the Class relied upon said warranties and the claims skill, expertise and quality assurance of Mastic and its agents to provide suitable goods.

161. Mastic breached said warranties by failing to provide adequate and proper designs, calculations, or materials for Oasis Decking.

162. Oasis Decking fails to perform in accordance with the reasonable expectations of Plaintiffs and the Class and the benefits of the design of Oasis Decking does not outweigh the risk of its failure.

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

164. But for Mastic's breach of implied warranty, Plaintiffs and the proposed Class would not have sustained damages.

165. Upon discovery of the defective Oasis Decking used to build decks to homes and other structures, Plaintiffs gave notice to Mastic of their breach of implied warranty claim using a warranty claim form provided by Mastic. Plaintiffs have brought this Complaint to give notice to Mastic of the claims of consumers at large.

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

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

**COUNT III: Deceuninck's Breach of Implied Warranties
(Brought by all Plaintiffs against Deceuninck
on behalf of the proposed classes)**

168. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

169. At all times relevant to this lawsuit, Deceuninck was in the business of designing, manufacturing, and selling composite deck products. Deceuninck associated with Mastic, a company that held itself out as having knowledge and skill with respect to residential building products and composite deck products. Mastic was Deceuninck's agent for marketing and distributing Oasis decking to consumers.

170. Deceuninck designed, developed, manufactured, and distributed Oasis Decking for purposes of its eventual sale to retail buyers. Upon information and belief, Deceuninck also participated in the marketing of Oasis Decking to end consumers.

171. By designing, manufacturing, and placing Oasis Decking into the stream of commerce, Deceuninck impliedly warranted that Oasis Decking is properly designed, developed, manufactured, and distributed and that the designs and materials were proper and of workmanlike quality.

172. Additionally, Mass Gen. Laws Ann. Ch. 106, §§ 2-314 – 318, Mich. Comp. Laws §§ 440.2314 – 440.2318, Minn. Stat. Ann. §§ 336.2-314 – 336.2-318, N.Y. U.C.C. Law §§ 2-314; 2-315, and Or. Rev. Stat. Ann. § 72.3140 imply warranties of merchantability and fitness for a particular purpose.

173. Deceuninck knew and intended that Oasis Decking would be installed on exterior decks throughout the United States, including regions 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.

174. Plaintiffs and the Class relied upon said warranties and the claims, skill, expertise and quality assurance of Deceuninck and its agents to provide suitable goods.

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

176. Oasis Decking is not fit for its intended purpose because it has a propensity to crack, warp, split, or otherwise prematurely degrade.

177. Plaintiffs and the Class relied upon said warranties and the claims, skill, expertise and quality assurance of Deceuninck and its agents to provide suitable goods.

178. Deceuninck breached said warranties by failing to provide adequate and proper designs, materials, or manufacturing processes for Oasis Decking.

179. But for Deceuninck's breach of implied warranty, Plaintiffs and the proposed Class would not have sustained damages.

180. Upon discovery of the defective Oasis Decking used to build decks to homes and other structures, Plaintiffs gave notice to Mastic, as Deceuninck's agent for warranty claims, of their breach of implied warranty claim using a warranty claim form provided by Mastic. Plaintiffs have brought this Complaint to give notice to Deceuninck of the claims of consumers at large.

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

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

**COUNT IV: Unjust Enrichment
(Brought by all Plaintiffs against both Defendants
on behalf of the proposed classes)**

183. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

184. Plaintiffs and the Class have conferred substantial benefits on Defendants by purchasing Oasis Decking, and Defendants have knowingly and willingly accepted and enjoyed these benefits.

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

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

187. 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 Class.

188. As a direct and proximate cause of Defendants' wrongful conduct and unjust enrichment, Plaintiffs and the Class are entitled to restitution from and

institution of a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendants.

**COUNT V: Mastic's Negligent Misrepresentation
(Brought by all Plaintiffs against Mastic
on behalf of the proposed class)**

189. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

190. In making material misrepresentations of material facts regarding the characteristics and capabilities of Oasis Decking through its advertising and product information publications that were in fact untrue, Mastic knew or should have known it was misrepresenting material facts and that the Plaintiffs and Class would be relying on Defendant's representations to their detriment and damage.

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

192. Plaintiffs and the Class were unaware of the falsity of Mastic's representations, and as a result, they, or their contractor intermediaries, justifiably relied upon them in purchasing or constructing a structure of Oasis Decking.

193. Defendants made the false representations in the course of its business with the intent that the Plaintiffs and the Class would rely on them and purchase or construct structures of Oasis Decking.

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

195. As a result of Mastic's misconduct, Plaintiffs and the Class have suffered actual damages in that they purchased defective Oasis Decking.

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

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

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

COUNT VI: Mastic's Negligence
(Brought by all Plaintiffs against Mastic on behalf of the proposed classes)

199. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

200. Mastic owed a duty to Plaintiffs and the proposed Class to exercise reasonable care while testing, distributing, and marketing Oasis Decking.

201. Mastic breached its duty to Plaintiffs and the Class by testing, selling, advertising and warranting a defective product to Plaintiffs and the proposed Class, and by failing to take those steps necessary to repair or otherwise discontinue selling a defective product to consumers.

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

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

204. Plaintiffs and the proposed Class were not aware of Oasis Decking's defective nature when they purchased the product.

205. As a direct and proximate cause of Mastic's failures, Plaintiffs 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.

206. As a result of Mastic's negligence Plaintiffs and the Class 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 Class to incur significant expense in repairing or replacing their decks. Replacement is required to prevent on-going and future damage to the underlying structure.

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

**COUNT VII: Deceuninck's Negligence
(Brought by all Plaintiffs against Deceuninck
on behalf of the proposed classes)**

208. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

209. Deceuninck owed a duty to Plaintiffs and the proposed Class to exercise reasonable care while designing, testing, and manufacturing Oasis Decking.

210. Deceuninck breached its duty to Plaintiffs and the Class by designing, testing, and manufacturing a defective product to Plaintiffs and the proposed Class, and by failing to take steps necessary to repair or otherwise discontinue shipping a defective product to Mastic and to consumers.

211. Deceuninck knew or should have known that Oasis Decking is defective and does not perform its intended use.

212. Upon information and belief, Deceuninck 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 Oasis Decking would be used.

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

214. Deceuninck owed a duty of care to Plaintiffs and members of the class to manufacture Oasis Decking in a non-defective way such that it would not develop safety issues of the type described herein.

215. Plaintiffs and the proposed Class were not aware of Oasis Decking's defective nature when they purchased the product.

216. As a direct and proximate cause of Deceuninck's failures, Plaintiffs 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.

217. As a result of Deceuninck's negligence Plaintiffs and the Class 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 Class to incur significant expense in repairing or replacing their decks. Replacement is required to prevent on-going and future damage to the underlying structures.

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

**COUNT VIII: Violation of The Massachusetts Consumer
Protection Act, M.G.L. c. 93A §§ 2 and 9
(Brought by all Plaintiffs against Mastic solely
on behalf of the Massachusetts Subclass)**

219. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

220. M.G.L. c. 93A, § 2 provides that, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

221. The foregoing course of conduct constitutes unfair or deceptive trade practices in violation of M.G.L. c. 93A, § 2.

222. Plaintiffs have suffered actual damages, ascertainable losses and damages by virtue of having purchased defective Oasis Decking.

223. As a result of Mastic's untrue, deceptive, and misleading assertions and representations about Oasis Decking, Plaintiffs have and will continue to suffer damages that include not only the full cost to replace their decks, but also include, without limitation, consequential and incidental damages.

224. Demand was not required pursuant to M.G.L. c. 93A § 9(3) because Defendants do not maintain a place of business in Massachusetts.

225. Plaintiffs and the proposed Massachusetts Subclass are entitled to damages in an amount to be determined at trial.

COUNT IX: Unlawful Trade Practices
Minn. Stat. § 325D.13, *et seq.*
(Brought by Plaintiff O’Brien against Mastic solely
on behalf of the Minnesota Subclass)

226. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

227. Minn. Stat. § 325D.13 provides that, “no person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origins of such merchandise.”

228. Minn. Stat. § 325D.44, subd. 1, provides in part:

a person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

* * *

(5) represents that goods or services have ... characteristics, ingredients, uses, benefits, ... that they do not have ...

(7) represents that goods or services are of a particular standard, quality, or grade, ... if they are of another ...

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding ...

229. Where, as here, Plaintiff’s claims inure to the public benefit, Minnesota’s private-attorney general statute, Minn. Stat. § 8.31, subdiv. 3a, allows individuals who have been injured through a violation of these consumer-protection statutes to bring a civil action.

230. The forgoing course of conduct constitutes unfair or deceptive trade practices in violation of Minn. Stat. § 325D.13, *et seq.*

231. Plaintiffs have suffered actual damages, ascertainable losses and damages by virtue of having purchased defective Oasis Decking.

232. As a direct and proximate result of Mastic's violations of the Unfair Trade Practices and Consumer Protection laws as set forth above, Plaintiffs seek injunctive or declaratory relief including, but not limited to replacement of all Oasis Decking, remediating the damage done to other property, and prohibiting Mastic from not honoring the expectation of a 25-year useful life and, for Minnesota, all other damages available by statute and law.

233. Plaintiffs and the proposed Minnesota Subclass are entitled to damages in an amount to be determined at trial.

COUNT X: FALSE ADVERTISING
(Brought by Plaintiff O'Brien against Mastic
solely on behalf of the Minnesota Subclass)

234. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

235. Minnesota's False Statement in Advertising Act ("FSAA"), Minn. Stat. § 325F.67, provides a cause of action to "any person, firm, corporation, or association" who purchases goods or services through advertising that "contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading."

236. Where, as here, Plaintiffs' claims inure to the public benefit, Minnesota's private-attorney general statute, Minn. Stat. § 8.31, subdiv. 3a, allows individuals who have been injured through a violation of these consumer-protection statutes to bring a civil action.

237. The forgoing course of conduct violates Minn. Stat. § 325F.67.

238. As a result of Mastic's conduct, Plaintiffs have suffered actual damages in that they purchased and incorporated Oasis Decking into their structures. There is an association between Mastic's acts and omissions as alleged herein and the damages suffered by Plaintiffs.

239. As a result of Mastic's untrue, deceptive, and misleading assertions and representations about Oasis Decking, Plaintiffs have and will continue to suffer damages that include not only the full cost to replace their decks, but also include, without limitation, consequential and incidental damages.

240. Plaintiffs and the proposed Minnesota Subclass are entitled to damages in an amount to be determined at trial.

**Count XI: Violation of New York Deceptive Acts and Practices Unlawful,
N.Y. Gen. Bus. Law § 349 (McKinney)
(Brought by Plaintiff Lynch against Mastic
solely on behalf of the New York Subclass)**

241. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

242. The foregoing course of conduct constitutes a deceptive act or practice in which Defendant Mastic falsely misrepresented goods in violation of N.Y. Gen. Bus. Law § 349.

243. By marketing its product with claims of skill, expertise and warranty, Defendant Mastic knowingly induced customers to purchase a product that it knew or should have known was an inferior product. Defendant's print and web advertisements as well as its marketing materials falsely claimed that its decking would not decay, rot, split, or splinter when it was, in fact, plagued by design flaws including severe cracking, splitting, cupping and susceptibility to severe mildew and discoloration.

244. Defendant's failure to disclose material facts and misrepresentations of material fact caused injury to Plaintiffs who purchased and installed defective decking believing it to be a quality product.

245. Plaintiff and the proposed New York subclass are entitled to treble damages or an amount to be determined at trial.

**Count XII: Violation of Michigan Consumer Protection Act,
Mich. Comp. Laws § 445.901, et seq.
(Brought by Plaintiff Burnett against Mastic
solely on behalf of the Michigan Subclass)**

246. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

247. The Michigan Consumer Protection Act (“CPA”) states “Unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have ...

(e) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

Mich. Comp. Laws § 445.903(1).

248. The foregoing course of conduct is a violation of the Michigan Consumer Protection Act.

249. Plaintiff and the Class relied upon Defendant’s untrue, deceptive, and misleading assertions and representations about Oasis Decking.

250. By marketing its product with claims of skill, expertise and warranty, Defendant Mastic knowingly induced customers to purchase a product that it knew or should have known was an inferior product. Defendant’s print and web advertisements as well as its marketing materials falsely claimed that it’s decking would not decay, rot, split, or splinter when it was, in fact, plagued by design flaws including severe cracking, splitting, cupping and susceptibility to sever mildew and discoloration.

251. Defendant's failure to disclose material facts and misrepresentations of material fact caused injury to Plaintiff and the Class who relied on Defendant's marketing representations and as a result purchased and installed defective decking believing it to be a quality product.

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

253. As a direct, proximate and foreseeable result of Mastic's unlawful acts under the CPA, Plaintiff and the Class sustained damages in an amount to be determined at trial.

254. Plaintiff and the proposed Michigan Subclass are entitled to damages in an amount to be determined at trial.

**COUNT XIII: Declaratory and Injunctive Relief
(Brought by all Plaintiffs against both Defendants
on behalf of the proposed classes)**

255. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows.

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

- a. Oasis Decking manufactured after September 2003 until September 2008 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. Oasis Decking manufactured after September 2003 until the September 2008 has a defect in workmanship and material that causes failures;

- c. Defendants knew of the defects in Oasis Decking and that the limitation contained in the warranties are unenforceable;
- d. Defendants shall re-audit and reassess all prior warranty claims on Oasis 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 Oasis Decking failure is manifest.

Prayer for Relief

257. 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 Mastic and Defendant Deceuninck as follows:

- A. Enter an order certifying the proposed Class (and subclasses, if applicable), designating the named plaintiffs as the class representative, and designating the undersigned as class counsel;
- B. Declare that Defendants are financially responsible for notifying all Class members of the problems with Oasis Decking;
- C. Declare that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of Oasis Decking, or order Defendants to make full restitution to Plaintiff and the members of the Class;
- D. Defendants shall re-audit and reassess all prior warranty claims regarding Oasis 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 Class;
- 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

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

Dated: August 12, 2012

Respectfully submitted,

s/ Shawn J. Wanta
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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on August 12, 2012.

s/ Shawn J. Wanta