

1 Michael F. Ram (SBN 104805)
mram@robinskaplan.com
2 Marie N. Appel (SBN 187483)
mappel@robinskaplan.com
3 ROBINS KAPLAN LLP
4 2440 West El Camino Real, Suite 100
Mountain View, CA 94040
5 Telephone: (650) 784-4040
Facsimile: (650) 784-4041

6 Juvian J. Hernandez, pro hac vice pending
7 JHernandez@robinskaplan.com
ROBINS KAPLAN LLP
8 800 LaSalle Avenue, Suite 2800
9 Minneapolis, MN 55402
Telephone: (612) 349-8500

10 Kevin E. Epps, pro hac vice pending
11 Kevin@ehdhlaw.com
Adam L. Hoipkemier, pro hac vice pending
12 Adam@ehdhlaw.com
EPPS, HOLLOWAY, DELOACH & HOIPKEMIER, LLC
13 1220 Langford Drive, Building 200-101
14 Watkinsville, Georgia 30677
Telephone: (706) 508-4000
15 Facsimile: (706) 842-6750

16 *Additional Counsel on Signature Page*

17 UNITED STATES DISTRICT COURT

18 FOR THE NORTHERN DISTRICT OF CALIFORNIA

19 CARY W. COOPER, TERRI G. COOPER,
20 FERNANDINA BEACH, LLC, on behalf of
themselves and all others similarly situated,

21 Plaintiffs,

22 v.

23 SIMPSON STRONG-TIE COMPANY,
24 INCORPORATED, a California corporation;
25 SIMPSON MANUFACTURING, COMPANY,
INCORPORATED, a Delaware corporation; and
26 DOES 1 through 200, inclusive,

27 Defendants.

No.

CLASS ACTION COMPLAINT

CLASS ACTION

JURY TRIAL DEMAND

1 Plaintiffs Cary W. Cooper, Terri G. Cooper and Fernandina Beach, LLC, on behalf of
2 themselves and all others similarly situated, file this class action complaint against Defendants
3 Simpson Strong-Tie Company, Simpson Manufacturing Company, Inc., and Does 1 through
4 200. On personal knowledge of their own circumstances, and upon investigation and
5 information and belief of its counsel, Plaintiffs aver:

6 **INTRODUCTION**

7 1. Defendants Simpson Strong-Tie Company, Inc. and Simpson Manufacturing
8 Co., Inc. (jointly “Simpson”) develop, manufacture, advertise, sell, and distribute galvanized
9 hurricane straps (the “Product”) throughout the United States for installation in the foundations,
10 framing, and doors of homes and other buildings.

11 2. Simpson fails to disclose that the Product is subject to premature and accelerated
12 corrosion, which causes the Product to fail well before its reasonable useful life, putting
13 homeowners at risk and requiring costly repairs.

14 3. Plaintiffs bring this action to seek redress for damages caused by Simpson’s
15 wrongful conduct.

16 **JURISDICTION**

17 4. This Court has jurisdiction over this case under 28 U.S.C. § 1332(d)(2) because:
18 (1) this is a class action with more than one hundred (100) Class Members, many of whom,
19 including the named Plaintiffs, live outside California; (2) Simpson Strong-Tie Company, Inc.
20 is a California corporation, based in the state of California and is thus a citizen of the state of
21 California; (3) Defendant Simpson Manufacturing Co. is a Delaware corporation, based in the
22 state of California, and is thus a citizen of the state of California; (6) Plaintiffs and all Class
23 Members are United States citizens; and (7) the matter in controversy exceeds the sum or value
24 of \$5,000,000, exclusive of interest and costs.

25 **VENUE**

26 5. Venue in this Court is proper: (1) pursuant to 28 U.S.C. 1391(a)(1) because
27 Defendants are headquartered in this District and do sufficient business in this District to

1 subject them to personal jurisdiction here; and (2) pursuant to 28 U.S.C. 1391(a)(2) because a
2 substantial part of the events or omissions giving rise to the claim occurred in this District.

3 **INTRADISTRICT VENUE**

4 6. Venue in this Division of the Northern District is proper because a substantial
5 part of the events or omissions which give rise to the claim occurred in Alameda County and
6 Defendants are headquartered in this County.

7 **PARTIES**

8 7. Plaintiffs Cary W. Cooper and Terri G. Cooper are Georgia residents who own a
9 home in Port St. Joe Florida.

10 8. Plaintiff Fernandina Beach, LLC is a Florida limited liability company that owns
11 a home located in Fernandina Beach, Florida.

12 9. Defendant Simpson Strong-Tie Company, Inc. is a California corporation with
13 its principal place of business in Pleasanton, California. Plaintiffs are informed and believe that
14 Defendant Simpson Strong-Tie conducts business throughout the United States and was
15 responsible for, or otherwise involved in, the development, manufacture, marketing, sales, and
16 distribution of the Product.

17 10. Defendant Simpson Manufacturing Company, Inc. is a Delaware corporation
18 with its principal place of business in Pleasanton, California. Plaintiffs are informed and
19 believe that Simpson Manufacturing Company conducts business within the United States and
20 was responsible for, or otherwise involved in, the development, manufacture, marketing, sales,
21 and distribution of the Product.

22 11. Plaintiffs are ignorant of the true names and capacities of Defendants sued as
23 Does 1 through 200, inclusive, and therefore sues these Doe Defendants by fictitious names.
24 Plaintiffs will amend this Complaint to allege the true names and capacities of these
25 fictitiously-named Doe Defendants when they are ascertained. Each of the fictitiously-named
26 Doe Defendants is responsible for the conduct alleged in this Complaint and Plaintiffs'
27 damages were actually and proximately caused by the conduct of the fictitiously named Doe

1 Defendants.

2 **FACTUAL ALLEGATIONS**

3 **A. Plaintiffs Cary and Terri Coopers’ Factual Allegations**

4 12. Plaintiffs Cary W. Cooper and Terri G. Cooper are Georgia residents who own a
5 home in Port St. Joe, Florida.

6 13. Plaintiffs purchased the property on August 17, 2019. The property was built in
7 2004 and had the Product installed to protect against hurricane force winds and seismic
8 activity.

9 14. In 2019, a hurricane hit the area and caused severe damage to the Plaintiffs’
10 home. Although the Product was marketed for the purpose of securing structures in “high wind
11 events,” and Plaintiffs’ home suffered extensive damage that would have otherwise been
12 prevented had the Product functioned as marketed. Due to premature corrosion, the straps were
13 weakened and failed to secure Plaintiffs’ home.

14 15. Plaintiffs are now faced with extensive costs to repair the damage to their home
15 and to install replacement straps to properly secure and protect their home against future similar
16 events.

17 **B. Plaintiff Fernandina Beach’s Factual Allegations**

18 16. Plaintiff Fernandina Beach is a Florida LLC that owns a home located in
19 Fernandina Beach, Florida.

20 17. Plaintiff purchased the property in September of 2011. The home on the
21 property was built in 1997 and had the Product installed to protect against hurricane force
22 winds and seismic activity.

23 18. Because of premature corrosion of the Product in Plaintiff’s home, the Product
24 was no longer capable of protecting the home from collapse during high wind and seismic
25 events. Thus, Plaintiff started replacing the failing Product with new hurricane straps made by
26 Simpson in 2018.

27 19. Plaintiff has already noticed significant corrosion on the replacement Product.

1 20. Plaintiff has spent substantial amounts of money so far replacing corroded
2 straps.

3 21. The Product continues to manifest problems to the present day, including
4 accelerated corrosion and spalling (fragmenting) on or near the home's foundation and
5 structural support.

6 **C. Product Manufacturing Process and Representations**

7 22. Plaintiffs are informed and believe that Defendants have been manufacturing
8 and selling the Product since approximately 1983. The Product is made of pre-formed strips of
9 steel that have flanges used for connecting the Product to the structure.

10 23. The Product includes, but is not limited to, various galvanized steel hurricane
11 straps including, but not limited to, steel, galvanized, and hot-dipped galvanized straps. The
12 Product also includes mudsill anchors. Both are used in protecting homes against wind
13 resistance, seismic activity, and hurricanes.

14 24. The Product is installed in various locations throughout homes and other
15 structures, including the foundation, framing, and doors. The Product is supposed to protect the
16 home by creating a load path resistant to increased uplift and lateral forces common to high-
17 wind regions.¹

18 25. Uplift refers to forces that can lift a home. The forces are generated when high
19 winds blow over the top of the structure, creating suction that can lift the roof. These uplift
20 forces must be transferred down to the foundation to prevent damage. Several connections or
21 straps are required to create a continuous load path.² When used in the foundation, for
22 example, the Product is placed in wet concrete, and, after the concrete cures, bent over a sill
23 plate. The straps are then nailed to the structure.

24 26. The Product is also supposed to protect against lateral forces that make a
25 structure rock, slide, or overturn.

26 _____
27 ¹ SIMPSON Strong-Tie, High Wind-Resistant Construction Application Guide F-C-HWRCAG16, p. 14 (2016).

² *Id.*

1 27. Defendants have sold the Product to thousands of purchasers, including
2 subdivision developers, home builders, and individual homeowners throughout the United
3 States. The Product is often installed by the home builder, but is also installed and/or replaced
4 by individual home owners.

5 28. Plaintiffs are informed and believe that Simpson marketed, promoted, sold, and
6 distributed the Product for the purposes of being installed and incorporated into building
7 construction projects for life safety purposes, to prevent injury and damage to persons and/or
8 property from wind uplift forces and seismic activity.

9 29. Defendants provided, made and disseminated information, installation
10 instructions, design specifications, and other representations as to the usage and qualities of the
11 Product, so that the Product would be specified, included, installed, and incorporated in the
12 design of various building construction projects for the purpose of securing and stabilizing
13 structures against high wind, seismic and other similar events.

14 30. For example, Simpson widely circulated materials including, but not limited to,
15 manuals and guides, stating that the Product “meet[s] or exceed[s] our customers’ needs and
16 expectations.”³ Simpson also represented that “whether [consumers] search by product or
17 application, Simpson Strong-Tie has the right connector to help [consumers] build safe, strong
18 structures.”⁴ Simpson never adequately disclosed that the Product is subject to premature
19 corrosion, rusting, failure, deterioration, and disintegration (“the Defect”).

20 31. Plaintiffs are informed and believe that the Product was installed and
21 incorporated into the construction of the homes belonging to the Plaintiffs and other Class
22 Members in accordance with the information, installation instructions, design specifications,
23 and other representations provided, made, and disseminated by Simpson.

24 32. Plaintiffs purchased the homes and learned that the Product was beginning to
25 prematurely and continuously corrode, rust, fail, deteriorate, and disintegrate, thus causing
26

27 ³ *Id.* at p. 5.

⁴ *Id.* at p. 3.

1 cracking, spalling, and other damage compromising the structural stability of the home should
2 there be high winds or seismic activity.

3 33. Plaintiffs are informed and believe that the Product installed and incorporated
4 into the homes of Class Members is also prematurely and continuously corroding, rusting,
5 failing, deteriorating, and disintegrating, thus creating a life safety issue, a dangerous condition
6 and a substantial and unreasonable risk of serious personal injury and property damage, which
7 will likely require repair and replacement of the Product, at substantial cost and expense to the
8 Class Members, and will necessarily involve damage to other products.

9 34. As a direct result of the premature and continuing corrosion, rusting, failure,
10 deterioration, and disintegration of the Product which has occurred and is occurring to homes,
11 Plaintiffs and the Class Members have suffered damages, costs, loss, and expense, and are
12 reasonably likely to suffer further damages, costs, loss, and expense in the future.

13 35. Defendants knew of the Defect since before Plaintiffs and the Class Members
14 purchased their properties and failed to disclose to Plaintiffs and the Class Members the
15 defective nature of the Product. Plaintiffs are informed and believe that Defendants consistently
16 have represented, and continue to represent, that the Product is durable, good quality, and will
17 secure and stabilize structures, without disclosing the Defect. These representations were
18 published in product catalogs and manuals, as well as on the Defendants' website, and
19 foreseeably repeated, as Defendants intended, by developers, builders, and others involved in
20 the development, building and sale of homes. Defendants made the published representations
21 and failed to disclose the Defect, knowing and intending that the representations and omission
22 would be repeated to third parties, including consumers who purchased the structures.

23 Defendants communicated a common and repeated theme regarding the Product:

- 24 (a) That the Products are "free from defects in material or manufacturing";
25 (b) That the Product "enable[s] structures to resist the movement, stress, and
26 loading that results from impact events such as earthquakes and high velocity
27 winds";

1 (c) That a “properly installed [Product] will perform in accordance with the
2 specifications set forth in the applicable Simpson website.”⁵

3 36. Defendants knew yet failed to inform Plaintiffs and the Class Members that the
4 Product would prematurely corrode and need to be replaced.

5 37. Simpson knew that the Product would prematurely corrode. Simpson never
6 adequately warned consumers that the Product would prematurely corrode, weaken, and fail
7 when installed in the foundation, framing, and doors of homes.

8 38. Defendants intended to mislead customers into believing that its Product
9 provides adequate corrosion resistance by failing adequately to disclose that severe premature
10 corrosion could and would compromise Defendants’ galvanized hurricane straps.

11 39. Defendants also deliberately failed to disclose that the Product would
12 prematurely corrode, rendering the Product incapable of protecting against hurricane force
13 winds and seismic activity.

14 40. Defendants continue to advertise and sell the Product for use in homes and other
15 structures, omitting to disclose to Plaintiffs and the Class Members, their agents, or contractors,
16 material facts concerning the Product including, but not limited to, that the Product is
17 susceptible to accelerated corrosion and spalling, does not otherwise perform as represented,
18 and fails far in advance of its reasonable useful life. All of these facts are material. The
19 Product did not perform in accordance with the reasonable expectations of Plaintiffs and the
20 Class Members in that it was not durable and suitable for use as a source of uplift and lateral
21 resistance throughout the life of homes.

22 41. The Product is a manufactured galvanized metal strap that was defectively
23 designed, tested, and manufactured, and will prematurely deteriorate when used in its intended
24 manner and installed in homes.

25 42. As a result of Defendants’ prematurely failing Product, and Defendants’ failure
26

27 ⁵ SIMPSON StrongTie Connectors, www.strongtie.com/fr_distributor.html, WaybackMachine August 5, 2001.

1 to disclose the defect, Plaintiffs have suffered actual damages because their homes are no
2 longer properly protected from uplift and lateral resistance. The Product has failed and will
3 continue to fail, damaging other building elements, causing continuous and progressive damage
4 to Plaintiffs’ property, and requiring Plaintiffs to expend thousands of dollars to repair damage
5 or replace the Product before the expiration of the useful life reasonably expected by Plaintiffs.
6 Defendants are also responsible for the damage resulting from the course of repairs to replace
7 the Product in Plaintiffs’ homes. Class members have suffered similar damages.

8 43. Because of the relatively small size of the typical damages, and the modest
9 resources of most homeowners and of the individual Plaintiffs and Class Members, it is
10 unlikely that most Class Members could afford to seek recovery against Defendants on their
11 own. A class action is therefore the only viable, economical, and rational means for Class
12 Members to recover from Defendants for the damages they have caused.

13 **CLASS ACTION ALLEGATIONS**

14 44. Plaintiffs bring this class action pursuant to Rule 23(b)(2) and Rule 23(b)(3) of
15 the Federal Rules of Civil Procedure on behalf of itself and the Class Members. This action
16 satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
17 requirements as set forth in Rule 23(a) and Rule 23(b)(3).

18 45. Plaintiffs advance this action on behalf of the following classes (together, the
19 “Class” or “Class Members”):

20 National Class: All individuals in the United States who own residential structures
21 constructed with Simpson hurricane straps embedded in the foundations or in the
22 structural support and all former owners who paid to repair such straps. Excluded
23 from the Class are Defendants, their legal representatives, assigns and successors
24 and any entity in which Defendants have a controlling interest. Also excluded is
the judge to whom this case is assigned and any member of the judge’s immediate
family and judicial staff.

25 Florida Class: All individuals in the State of Florida who own residential
26 structures constructed with Simpson hurricane straps embedded in the
foundations or in the structural support, and all former owners who paid to repair
27 such straps. Excluded from the Class are Defendants, their legal representatives,
assigns and successors and any entity in which Defendants have a controlling

1 interest. Also excluded is the judge to whom this case is assigned and any member
2 of the judge’s immediate family and judicial staff.

3 Claims for personal injury are specifically excluded from the Class.

4 46. Numerosity (Rule 23(a)(1)). Plaintiffs are informed and believe that the Classes
5 are comprised of many thousands of property owners, making joinder impractical. The
6 disposition of the claims of these Class Members in a single class action will provide
7 substantial benefits to all parties and to the Court.

8 47. Community (Rule 23(a)(2)). There are questions of law and fact common to
9 all Class Members. Common questions include, but are not limited to, the following:

- 10 (a) Whether the Product is subject to premature corrosion well in advance of its
11 reasonable useful life;
- 12 (b) Whether the Product is not suitable for use as a long-term hurricane and seismic
13 structural connector;
- 14 (c) Whether Defendants knew of the defective nature of the Product before making
15 it available for purchase and use by the Plaintiffs and Class Members;
- 16 (d) Whether Defendants failed to disclose to Plaintiffs and Class Members the
17 defective nature of the Product;
- 18 (e) Whether Defendants had a duty to Plaintiffs and Class Members to disclose the
19 true nature of the Product;
- 20 (f) Whether the facts not disclosed by Defendants to Plaintiffs and Class Members
21 are material;
- 22 (g) Whether Defendants knew that the Product would prematurely fail, is not
23 suitable for use as structural support to resist hurricane force winds and seismic
24 forces in residences, and is otherwise not as represented by Defendants;
- 25 (h) Whether Defendants are liable for breach of express warranty;
- 26 (i) Whether Defendants are liable for breach of the implied warranty of
27 merchantability or fitness for a particular purpose;

- 1 (j) Whether Defendants are liable for negligence;
- 2 (k) Whether Defendants are liable for non-disclosure;
- 3 (l) Whether Plaintiffs and Class Members are entitled to compensatory damages,
- 4 restitution, and the amounts thereof respectively;
- 5 (m) Whether Defendants should be declared financially responsible for notifying all
- 6 Class Members of the defective Product and for the costs and expenses of repair
- 7 and replacement of all defective hurricane straps and providing restitution of
- 8 monies paid and inadequate value given;
- 9 (n) Whether Defendants should be ordered to disgorge, for the benefit of Class
- 10 Members, all or part of their ill-gotten profits received from the sale of the
- 11 defective Product and/or to make full restitution to Plaintiffs and Class
- 12 Members; and
- 13 (o) Whether Defendants should be enjoined from continuing to market the Product,
- 14 as defined herein, utilizing misleading misrepresentations and omission of
- 15 material facts.

16 48. Typicality (Rule 23(a)(3)). The claim of the representative Plaintiffs are typical

17 of the claims of Class Members, in that the representative Plaintiffs, like all Class Members,

18 own structures in which the defective Product was installed. The representative Plaintiffs, like

19 all Class Members, have suffered a common injury: Plaintiffs, like all Class Members, have or

20 will incur the cost of repairing and/or replacing the defective Product in their homes and

21 repairing any consequential damage to other building components. The factual basis of

22 Defendants' misconduct is common to all Class Members.

23 49. Adequacy (Rule 23(a)(4)). Plaintiffs will fairly and adequately represent and

24 protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in

25 prosecuting consumer class actions, including actions involving defective building products,

26 the failure to disclose material information regarding product performance, and violation of

27 consumer protection statutes. Plaintiffs and their counsel are committed to vigorously

1 prosecuting this action on behalf of the Class and have the financial resources to do so. Neither
2 Plaintiffs nor Plaintiffs' counsel have any interest adverse to those of the Class.

3 50. Predominance of Common Questions (Rule 23(b)(3)). Common questions of
4 law and fact predominate over any questions involving individualized analysis.

5 Fundamentally, there are no material questions of fact or law that are not common to Class
6 Members. Common questions include:

- 7 (a) Whether the Product is subject to premature failure well in advance of its
8 represented useful life;
- 9 (b) Whether the Product is not suitable for its intended use, to secure structures
10 against high winds and seismic forces;
- 11 (c) Whether Defendants knew, or should have known, of the defective nature of the
12 Product before making it available for purchase and use by the Plaintiffs and
13 Class Members;
- 14 (d) Whether Defendants failed to disclose to Plaintiffs and Class Members the
15 defective nature of the Product;
- 16 (e) Whether Defendants, through making statements regarding the Product's
17 qualities and recommended uses, had a duty to disclose the defect;
- 18 (f) Whether Defendant's failure to inform customers that the Product was
19 susceptible to the failures alleged here was a material omission, the
20 nondisclosure of which was a deceptive sales practice under the consumer
21 protection statutes of applicable state law;
- 22 (g) Whether Defendant owed a duty to Plaintiffs and Class Members to exercise
23 reasonable and ordinary care in the testing, design, production, manufacturing,
24 warranting and marketing of the Product;
- 25 (h) Whether Defendants breached their duties to Plaintiffs and Class Members by
26 designing, manufacturing, producing, marketing, advertising, and selling the
27 defective Product to Plaintiffs and Class Members;

- 1 (i) Whether the facts not disclosed by Defendants to Plaintiffs and Class Member
2 are material facts;
- 3 (j) Whether Defendants knew, or should have known that the Product would
4 prematurely fail, is not suitable for its intended use to secure structures, and is
5 otherwise not as represented by Defendant;
- 6 (k) Whether, in committing the acts alleged here, Defendants engaged in unfair
7 competition and in an unfair business practice or practices within the meaning of
8 California Business and Professions Code § 17200;
- 9 (l) Whether Defendants are liable for breach of implied warranty;
- 10 (m) Whether Defendants are liable for breach of express warranty;
- 11 (n) Whether Defendants are liable for negligence;
- 12 (o) Whether Plaintiffs and Class Members are entitled to compensatory damages,
13 restitution, and the amounts thereof respectively;
- 14 (p) Whether Defendants should be declared financially responsible for notifying all
15 Class Members of the defective Product and for the costs and expenses of repair
16 and replacement of all defective flooring materials and providing restitution of
17 monies paid and inadequate value given;
- 18 (q) Whether Defendants should be ordered to disgorge, for the benefit of Class
19 Members, all or part of their ill-gotten profits received from the sale of defective
20 Product and/or to make full restitution to Plaintiffs and Class Members; and
- 21 (r) Whether Defendants should be enjoined from continuing to market the Product
22 utilizing misleading omission of material facts.

23 51. Superiority (Rule 23(b)(3)). Plaintiffs and Class Members have all suffered and
24 will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful
25 conduct. A class action is superior to other available methods for the fair and efficient
26 adjudication of the subject controversy. Because of the relatively small size of the individual
27 Class Members' claims, most Class Members likely would find the cost of litigating their

1 individual claims to be prohibitive and will have no effective remedy at law. Thus, absent a
2 class action, Class Members will continue to incur damages and Defendants' misconduct will
3 continue without remedy. The class treatment of common questions of law and fact is also
4 superior to multiple individual actions or piecemeal litigation in that it conserves the resources
5 of the courts and the litigants and promotes consistency and efficiency of adjudication. There
6 is no impediment to the management of this action because of the virtual identity of the
7 common questions of law and fact to all Class Members.

8 52. Injunctive Relief (Rule 23(b)(2)). Defendants have engaged and continue to
9 engage in business practices which are unfair, unlawful, and/or fraudulent in violation of
10 California's Unfair Competition Law (Business & Professions Code §§ 17200 *et seq.*) and
11 California's False Advertising Law (Business & Professions Code §§ 17500 *et seq.*) by, among
12 other things, advertising and representing that the Product has characteristics and benefits that it
13 does not.

14 53. Plaintiffs seek class-wide injunctive relief on grounds consistent with the
15 standards articulated in Rule 23(b)(2) that establish final injunctive relief as an appropriate
16 class-wide remedy, in that Defendants continue to advertise the Product, continue to provide
17 half-truths and misleading information about the Product, and continue to omit to disclose
18 material facts regarding the Product.

19 **ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS**

20 54. Defendants knew or reasonably should have known that the Product was
21 defective before its sale.

22 55. Defendants affirmatively represented that the Product was resistant to corrosion
23 and capable of withstanding loading from "earthquakes and high velocity winds."⁶ Through
24 these representations, Defendants created a reasonable expectation among ordinary customers
25 and in the construction trades that the Product would have a useful life spanning the life of the
26 home in which the Product was installed.

27 _____
⁶ High Wind-Resistant Construction Application Guide, p. 6.

1 contained the Product.

2 62. To this day, Defendants continue to engage in unlawful practices in violation of
3 the CLRA. Defendants continue to conceal the defective nature of the Product, make
4 misleading statements about the Product, and have omitted to disclose, on inquiry from
5 Plaintiffs and Class Members, the Product's defective propensities.

6 63. Plaintiffs served Defendants with notice of the violations of the CLRA by
7 serving notice on their Chief Executive Officer by certified mail to their corporate offices, on
8 December 2, 2019. Plaintiffs will amend this complaint to request actual damages once 30
9 days have elapsed unless Defendants fully comply with the CLRA demand letter.

10 WHEREFORE, Plaintiffs on behalf of themselves and for all others similarly situated,
11 demand injunctive relief, plus costs and attorneys' fees pursuant to California Civil Code
12 §1780(d).

13 **SECOND CAUSE OF ACTION**
14 **(Violation of California Unfair Competition Law—Unlawful Business Practice)**

15 64. Plaintiffs incorporate the allegations contained in all preceding paragraphs of
16 this Complaint.

17 65. California Business and Professions Code §17200 *et seq.* prohibits acts of unfair
18 competition, which includes unlawful business practices.

19 66. Defendants engaged in unlawful business practices in that they created and sold
20 a defective Product that prematurely fails due to poor design; failed to disclose material facts
21 concerning the Product's safety; failed to disseminate information known to them about the
22 Product's defect; impliedly warranted to Plaintiffs and Class members that the Product was
23 required for a particular purpose; impliedly warranted that the Product was merchantable; failed
24 to adequately warn Plaintiffs and Class Members of the Product's defect; negligently designed
25 and manufactured the Product; and concealed and suppressed material facts concerning the
26 Product. Plaintiffs' allege that Defendant violated California Civil Code §1770(a)(5) and (a)(7),
27 violated California's Unfair Competition Law, violated Florida's Unfair and Deceptive Trade
Practices Act, breached the express warranty, breach of the implied warranty of fitness, breach

1 the implied warranty of merchantability, was negligent, and committed fraud.

2 67. As a direct and proximate cause of Defendants' unfair and unlawful methods of
3 competition and unfair, deceptive or unlawful acts or practices, Plaintiffs and Class Members
4 have suffered actual damages in that they own homes and other structures on which the
5 defective Product is or was installed. The Product has failed and will continue to prematurely
6 fail due to its poor design, poor manufacture, and unsuitability for its intended purpose, which
7 will require (or has already required) Plaintiffs and Class Members to incur costs to
8 prematurely repair and/or replace their hurricane straps, as well as repair property damaged due
9 to the need for such repairs and replacements.

10 68. As a proximate result of their unlawful practices, Defendants have been unjustly
11 enriched and should be required to make restitution to the Plaintiffs and Class Members
12 pursuant to §§ 17203 and 17204 of the California Business & Professions Code.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of California Unfair Competition Law – Unfair Business Practice)**

15 69. Plaintiffs incorporate by reference the allegations contained in all preceding
16 paragraphs of this complaint.

17 70. Defendants engaged in an unfair business practice by failing to disclose material
18 safety facts concerning the Product that they had a duty to disclose.

19 71. In California, the court must weigh the utility of the defendant's conduct against
20 the gravity of the harm to the alleged victim.

21 72. The court may also find a business act unfair when it offends an established
22 public policy or when the practice is immoral, unethical, oppressive, unscrupulous, or
23 substantially injurious to consumers.

24 73. As a direct and proximate cause of Defendants' unfair methods of competition
25 and unfair or deceptive acts or practices, Plaintiffs and Class Members have suffered actual
26 damages in that they own homes and other structures in which the defective Product is or was
27 installed. The Product will prematurely fail due to inadequate product testing, poor design

1 and/or manufacturing techniques, and poor installation guidelines, which will require Plaintiffs
2 and Class Members to incur costs to prematurely repair and/or replace their hurricane straps.

3 74. As a proximate result of their unfair practices, Defendants have been unjustly
4 enriched and should be required to make restitution to the Plaintiffs and Class Members
5 pursuant to §§ 17203 and 17204 of the California Business & Professions Code.

6 **FOURTH CAUSE OF ACTION**
7 **(Violation of Florida’s Deceptive and Unfair Trade Practices Act Florida Statute**
8 **§ 501.201 et seq. (“FDUTPA”))**

9 75. Plaintiffs incorporate the allegations contained in all preceding paragraphs of
10 this complaint.

11 76. This cause of action is brought pursuant to the Florida Deceptive and Unfair
12 Trade Practices Act, Fla. Stat. § 501.201 et seq. The stated purpose of this Act is to “protect
13 the consuming public . . . from those who engage in unfair methods of competition, or
14 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”
15 *Id.* §501.202(2).

16 77. Under the FDUTPA, a “Consumer” means an individual; child, by and through
17 its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust;
18 business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated;
19 or any other group or combination. Fla. Stat. Ann. § 501.203.

20 78. Plaintiffs and Florida Class Members are “consumers” and the transactions at
21 issue in this complaint constitute “trade or commerce” as defined by FDUTPA. *See id.* §
22 501.203(7)–(8).

23 79. FDUTPA declares unlawful, “[u]nfair methods of competition, unconscionable
24 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or
25 commerce.” *Id.* § 501.204(1)

26 80. Defendants’ omission constitutes an unfair and deceptive practice under the
27 FDUTPA. Defendants represented to Plaintiffs and Florida Class Members that the Product had

1 particular qualities, including that the Product met industry standards, that the Product was
2 “free from defects in material or manufacturing, that the Product “enable[s] structures to resist
3 the movement, stress, and loading that results from impact events such as earthquakes and high
4 velocity winds,” and that a “properly installed [P]roduct will perform in accordance with the
5 specifications set forth in the applicable Simpson website;” all qualities that were inconsistent
6 with Defendant’s knowledge of the Product’s performance. Defendants’ failed to inform
7 consumers, however, that the Product would prematurely corrode long before a reasonable
8 consumer would expect under the circumstances. Defendants’ omission misled reasonable
9 Florida Class Members into purchasing the Product to the consumers’ detriment—causing
10 costly repairs and significant safety risks.

11 81. Furthermore, Defendants employed fraud, deception, false promises,
12 misrepresentation, and the knowing concealment, suppression, or omission of material facts in
13 the sale and advertisement of the Product in the State of Florida by:

- 14 (a) Representing that the Product was suitable for long-term structural support
15 when, at best, Defendants lacked credible evidence to support those claims, and,
16 at worst, Defendants knew the Product would fail prematurely and was not
17 suitable for use against wind and seismic activity;
- 18 (b) Failing to disclose to, or concealing from, consumers, installers, and distributors
19 material facts about the defective nature of the Product; and
- 20 (c) Failing to disclose its own knowledge of the defective nature of the Product.

21 82. Plaintiffs and the Florida Class Members directly or indirectly relied upon
22 Defendants’ representations and omissions regarding the quality of the Product in their
23 purchase decisions.

24 83. Plaintiffs and the Florida Class Members were misled by Defendants’
25 misrepresentations and omissions.

26 84. As a direct and proximate result of the FDUTPA violations described above,
27 Plaintiffs and the Florida Class Members have been injured in that they purchased the defective

1 Product or purchased homes or other structures with the defective Product, based on the
2 misrepresentations and nondisclosures of material facts alleged above.

3 85. Had Plaintiffs and the Florida Class Members known the defective nature of the
4 Product and the truth concerning Defendants' claims, they would not have purchased or would
5 not have paid what they did for the Product or their structures.

6 86. As a result of Defendants' practices in violation of FDUTPA, Plaintiffs and
7 Florida Class Members suffered an ascertainable loss in the form of monies paid to Defendants
8 for the Product that, contrary to Defendants' representations, prematurely failed.

9 87. Accordingly, Plaintiffs and Florida Class Members are entitled to such damages,
10 as well as equitable relief, costs, reasonable attorney's fees, and other relief, as are permitted
11 under the law.

12 **FIFTH CAUSE OF ACTION**
13 **(Breach of Express Warranty)**

14 88. Plaintiffs hereby incorporate by reference the allegations contained in all
15 preceding paragraphs of this complaint.

16 89. Plaintiffs and the Class members are "buyers" within the meaning of each of
17 their respective State's warranty statutes. See, e.g., Cal. Civ. Code § 1791(b); Fla. Stat. §
18 672.103.

19 90. Defendants are "seller[s]" and/or "manufacturers" and the Product is a "good"
20 within the meaning of each state's warranty statute. See, e.g., Cal. Civ. Code § 1791, (a)(j); Fla.
21 Stat. §§ 672.103(1)(a)(d) (3) and 672.105.

22 91. Defendants made express warranties to Plaintiffs and Class Members by
23 describing the goods such that the description became "part of the basis of the bargain," which
24 created an express warranty that the goods "conform to the description." See, e.g., Cal. Civ.
25 Code § 1793; Fla. Stat. § 672.313. However, the product does not have the quality that a buyer
26 would reasonably expect and was therefore not merchantable.

27 92. Defendants' Product description did not limit the expected useful life of the

1 product.⁷ The Product was described in such a way that a reasonable consumer would expect
2 the Product to last the entire life of a home and that the Product was capable of resisting
3 corrosion and protecting against strong winds and seismic activity for the entire life of the
4 home. The Product did not conform to this description.

5 93. Any attempt by Defendants to disclaim the express warranty is unenforceable, as
6 the disclaimer failed to mention the express warranty of fitness and was not conspicuous as
7 required by law, and was both procedurally and substantively unconscionable, rendering it
8 unenforceable.

9 94. As a result, Plaintiffs and the Class Members were injured through their
10 purchase of unfit products.

11 95. Under each state's warranty statutes, Plaintiffs and Class Members are entitled
12 to damages and other legal and equitable relief, including, at their election, the purchase price
13 of the product, or the overpayment of amounts they paid for the Product.

14
15 **SIXTH CAUSE OF ACTION**
(Breach of Implied Warranty of Fitness)

16 96. Plaintiffs incorporate by reference the allegations contained in all preceding
17 paragraphs of this complaint.

18 97. Plaintiffs and Class members are "buyers" within the meaning of each of their
19 respective State's implied warranty statutes. *E.g.*, Cal. Civ. Code § 1791(b); Fla. Stat. §
20 672.103.

21 98. Defendants are "seller[s]" and/or "manufacturers" and the Product is a
22 "consumer good" within the meaning of each state's warranty statute. Cal. Civ. Code § 1791,
23 (a)(j); Fla. Stat. §§ 672.103(1)(a)(d) (3) and 679.1021.

24 99. Defendants impliedly warranted to Plaintiffs and Class Members that the
25 Product, "at the time of the retail sale," was required for a particular purpose and that "the
26 buyer is relying on the manufacturer's skill to select or furnish suitable goods." Cal. Civ. Code

27 _____
⁷ See High Wind-Resistant Construction Application Guide, p. 6.

1 § 1792.1; & 1792; Fla. Stat. § 672.315. However, the Product does not have the quality that a
2 buyer would reasonably expect and was therefore not merchantable for the purpose for which
3 the Product was sold.

4 100. Defendants' Product is not fit for the ordinary purposes for which such goods
5 are sold, yet Defendants sold the Product knowing that Plaintiffs and Class Members required
6 the Product for a particular purpose and that the Plaintiffs and Class Members relied on the
7 manufacturer's skill to furnish suitable goods.

8 101. Any attempt by Defendants to disclaim the implied warranty of fitness is
9 unenforceable, as the disclaimer failed to mention the implied warranty of fitness and was
10 not conspicuous as required by law, and was both procedurally and substantively
11 unconscionable, rendering it unenforceable.

12 102. As a result, Plaintiffs and Class Members were injured through their purchase of
13 unfit products.

14 103. Under each state's implied warranty of fitness statutes, Plaintiffs and Class
15 Members are entitled to damages and other legal and equitable relief, including, at their
16 election, the purchase price of the product, or the overpayment of amounts they paid for the
17 Product.

18 **SEVENTH CAUSE OF ACTION**
19 **(Breach of Implied Warranty of Merchantability)**

20 104. Plaintiffs incorporate the allegations contained in all preceding paragraphs of
21 this complaint.

22 105. Plaintiffs and Class members are "buyers" within the meaning of each of their
23 respective State's implied warranty statutes. *E.g.*, Cal. Civ. Code § 1791; Fla. Stat. § 672.103.

24 106. Defendants are "seller[s]" and the Product is a "consumer good" within the
25 meaning of each state's warranty statutes. Cal. Civ. Code § 1791, (a)(j); Fla. Stat. §§
26 672.103(1)(a)(d) (3) and 679.1021.

27 107. Defendants impliedly warranted to Plaintiffs and Class Members that the
product was "merchantable" within the meaning of Cal. Civ. Code § 1792.1; & 1792; Fla. Stat.

1 § 672.314. However, the Product does not have the quality that a buyer would reasonably
2 expect and was therefore not merchantable.

3 108. Defendants' product is not fit for the ordinary purposes for which such goods
4 are sold.

5 109. Any attempt by Defendants to disclaim the implied warranty of merchantability
6 is unenforceable, as the disclaimer failed to mention the implied warranty of merchantability
7 and was not conspicuous as required by law, and was both procedurally and substantively
8 unconscionable, rendering it unenforceable.

9 110. As a result, Plaintiffs and Class Members were injured through their purchase of
10 non-merchantable products.

11 111. Under each state's implied warranty statutes, Plaintiffs and Class members are
12 entitled to damages and other legal and equitable relief, including, at their election, the
13 purchase price of the product, or the overpayment of amounts they paid for the Product.

14 **EIGHTH CAUSE OF ACTION**
15 **(Negligence)**

16 112. Plaintiffs incorporate the allegations contained in all preceding paragraphs of
17 this complaint.

18 113. Defendants had a duty to exercise reasonable care to avoid causing foreseeable
19 risk of harm to Plaintiffs and Class Members when designing, formulating, manufacturing,
20 compounding, testing, inspecting, packaging, labeling, distributing, marketing, promoting,
21 advertising, selling, warning, and researching the Product, including taking action to reasonably
22 provide notification to Plaintiffs and Class Members of the Product's propensity to prematurely
23 corrode and deteriorate.

24 114. Defendants breached their duty to Plaintiffs and Class Members by not
25 exercising reasonable care to avoid causing foreseeable risk of harm to Plaintiffs and Class
26 Members. Defendants carelessly designed and manufactured a product that prematurely
27 corrodes when installed in homes. Defendants did not take action to reasonably provide

1 notification to Plaintiffs and Class Members of the Product’s propensity to prematurely corrode
2 and deteriorate. Repairs necessarily include harm to other products.

3 115. Defendants breached their duty of care, causing Plaintiffs and Class Members to
4 make costly repairs to their homes. Defendants’ careless action, or inaction, was the legal cause
5 of Plaintiffs and Class Members’ harm.

6 116. Defendants failed to use reasonable care to warn about the Product’s dangerous
7 condition or about facts that made the Product likely to be dangerous.

8 117. Defendants knew or reasonably should have known that the Product was
9 dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable
10 manner.

11 118. Defendants knew or reasonably should have known that Plaintiffs and Class
12 Members would not realize the danger.

13 119. Defendants failed to adequately warn of the danger. A reasonable manufacturer
14 under the same or similar circumstances would have warned of the danger.

15 120. As a result of Defendants’ failure to warn, Plaintiffs and Class Members were
16 harmed and repairs resulting from Defendants’ failure to warn caused or will cause damage to
17 other property.

18 **NINTH CAUSE OF ACTION**
19 **(Fraud/Non-Disclosure/Concealment)**

20 121. Plaintiffs hereby incorporate by reference the allegations contained in all
21 preceding paragraphs of this complaint.

22 122. As alleged above, Defendants concealed and suppressed material facts
23 concerning the Product.

24 123. Defendants had a duty to disclose facts concerning the inability of the Product to
25 withstand environmental factors that cause premature corrosion because they were known
26 and/or accessible only to the Defendants, who had superior knowledge and access to the facts,
27 and the Defendants knew they were not known to or reasonably discoverable by Plaintiffs and
Class Members. The omitted and concealed facts were material

- 6. Restitution;
- 7. Costs and attorneys' fees,
- 8. Leave to amend to conform to the evidence presented at trial; and
- 9. Orders granting such other and further relief as may be appropriate.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial for all individual and Class claims so triable.

RESPECTFULLY SUBMITTED AND DATED this 2nd day of December, 2019.

ROBINS KAPLAN LLP

By: /s/ Michael F. Ram
 Michael F. Ram, SBN 104805
 mram@robinskaplan.com
 Marie N. Appel, SBN 187483
 mappel@robinskaplan.com
 ROBINS KAPLAN LLP
 2440 West El Camino Real, Suite 100
 Mountain View, CA 94040
 Telephone: (650) 784-4040
 Facsimile: (650) 784-4041

Juvian J. Hernandez, pro hac vice pending
 JHerndandez@robinskaplan.com
 ROBINS KAPLAN LLP
 800 LaSalle Avenue, Suite 2800
 Minneapolis, MN 55402
 Telephone: (612) 349-8500

Adam L. Hoipkemier, pro hac vice pending
 Adam@ehdhlaw.com
 EPPS, HOLLOWAY, DELOACH &
 HOIPKEMIER, LLC
 10 Lenox Pointe
 Atlanta, Georgia 30324
 Telephone: (706) 508-4000
 Facsimile: (706) 842-6750

Kevin E. Epps, pro hac vice pending
 Kevin@ehdhlaw.com
 EPPS, HOLLOWAY, DELOACH &
 HOIPKEMIER, LLC
 1220 Langford Drive, Building 200-101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Watkinsville, Georgia 30677
Telephone: (706) 508-4000
Facsimile: (706) 842-6750

Jeffrey B. Cereghino, SBN 099480
jbc@cereghinolaw.com
CEREGHINO LAW GROUP
101 Montgomery Street, Suite 1800
San Francisco, California 94104
Telephone: (415) 433-4949
Facsimile: (415) 433-7311

Attorneys for Plaintiffs