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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL HIGHT and MICHAEL
AUGUSTINE, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

IKO MANUFACTURING, INC., a Delaware
corporation; IKO INDUSTRIES, LTD., a
Canadian corporation; IKO SALES, LTD., a
Canadian corporation; IKO PACIFIC, INC., a
Washington corporation; and IKO
CHICAGO, INC., an Illinois corporation,

Defendants.

NO.

COMPLAINT – CLASS ACTION FOR
DAMAGES, INJUNCTIVE RELIEF
AND RESTITUTION

JURY DEMAND

I. INTRODUCTION

1.1 Plaintiffs, Michael Hight and Michael Augustine (hereinafter Plaintiffs), bring this action on their behalf and on behalf of all similarly situated individuals and entities who own or owned homes, residences, buildings or other structures on which asphalt roofing shingles manufactured and distributed under various trade names by IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., or IKO Chicago, Inc. (collectively “IKO” or “Defendant”) were installed (the “Class”).

1 **B. Defendants**

2 2.3 Defendant IKO Manufacturing, Inc. is a Delaware corporation with significant
3 business operations in Sumas, Whatcom County, Washington, where it conducts business as
4 IKO Pacific, Inc.

5 2.4 Defendant IKO Industries, Ltd. is a leading North American manufacturer and
6 distributor of roofing materials and the parent company of Defendant IKO Manufacturing.
7 IKO Industries, Ltd. is the owner of several patents that may apply to the Shingles
8 manufactured by IKO Manufacturing. The company operates manufacturing plants in the
9 United States, Canada, and Europe.

10 2.5 Defendant IKO Sales, Ltd. is a leading North American manufacturer and
11 distributor of roofing materials and the parent company of Defendants IKO Manufacturing and
12 IKO Industries, Ltd. The company owns and operates manufacturing plants in the United
13 States, Canada, and Europe.

14 2.6 Defendant IKO Pacific, Inc. is a Washington corporation with significant
15 business operations located in Sumas, Washington. IKO Pacific, Inc. manufactures, distributes,
16 and sells Shingles throughout the United States, including Washington State.

17 2.7 Defendant IKO Chicago, Inc. is an Illinois corporation with significant business
18 operations located in Kankakee, Illinois. IKO Chicago, Inc. manufactures, distributes, and sells
19 Shingles throughout the United States, including Washington State.

20 **III. JURISDICTION AND VENUE**

21 3.1 This is a proposed nationwide class action. Jurisdiction is proper in this Court
22 pursuant to 28 U.S.C. § 1332(d) because the vast majority of class members are citizens of a
23 state different from the home state of Defendant, and, on information and belief, the aggregate
24 claims of individual class members exceed \$5,000,000, exclusive of interest and costs.

25 3.2 Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) and (c) because
26 IKO has a manufacturing facility in Whatcom County Washington, IKO has established
27 sufficient contacts through its marketing and selling the Shingles in this district to subject it to

1 personal jurisdiction in this district and a substantial part of the events or omissions giving rise
2 to these claims occurred in this district.

3 **IV. APPLICABLE LAW**

4 4.1 Plaintiffs bring this action under Washington law and the similar consumer
5 protection laws of the forty-nine other states and the District of Columbia.

6 4.2 No enforceable choice-of-law agreement governs here or compels the
7 application of different states' laws.

8 4.3 The proposed class includes individuals and entities who own IKO Shingles and
9 who reside in states that, on information and belief, comprise a significant percentage of IKO's
10 sales nationwide. A common nucleus of factual and legal issues dominates this litigation.

11 Although some Class members may possess slightly differing remedies based on state statutory
12 or common law, the claims asserted by the Plaintiff are predicated on the same core facts and
13 legal claims with substantially the same relevant elements. To the extent distinct remedies may
14 exist, they are local variants of a generally homogenous collection of causes which include
15 actionable misrepresentation, unjust enrichment, and breach of express warranty.

16 4.4 Washington has the most significant relationship with the parties and to the
17 events and occurrences that form the basis of the litigation. IKO manufactures its product in
18 Washington and distributes its product in Washington. On information and belief, thousands of
19 Washington residents have purchased and own IKO Shingles that have experienced or will
20 experience the Defects.

21 4.5 Washington's interest in this action, which seeks to protect the rights and
22 interests of Washington and other U.S. residents doing business in Washington, is greater than
23 any other state.

24 4.6 Application of Washington law is neither arbitrary nor fundamentally unfair,
25 because Washington has significant contacts and a significant aggregation of contacts that
26 create a state interest in this litigation.

1 **V. FACTUAL ALLEGATIONS**

2 5.1 IKO designs and manufactures asphalt roofing shingles. One of its major
3 manufacturing facilities is located in Sumas, Washington.

4 5.2 IKO markets and sells the Shingles to tens of thousands of consumers
5 throughout the United States under various brands and product names.

6 5.3 IKO markets and warrants all the Shingles, which are composed of asphalt,
7 natural fibers, filler and mineral granules as durable, and as offering long-lasting protection for
8 a specified life ranging from 25 to 50 years, or in some cases, for a lifetime.

9 5.4 IKO’s sales brochures state the Shingles are, among other things, “[t]ime-tested
10 and true” and “an excellent choice for exceptional roofing value.”

11 5.5 It describes its warranty as “IRON CLAD” and claims it is “Setting the
12 Standard” for “quality, durability, and innovation.”

13 5.6 But IKO’s Shingles have not lived up to that promise.

14 5.7 All of IKO’s Shingles are uniformly defective such that Plaintiffs’ and Class
15 members’ Shingles are failing before the time periods advertised, marketed, and guaranteed by
16 IKO.

17 5.8 IKO did not adequately design, formulate, and test its Shingles before
18 warranting, advertising, and selling them as durable and suitable for use as an exterior roofing
19 product.

20 5.9 IKO knew or reasonably should have known the Shingles are defective as
21 manufactured such that they fail prematurely due to moisture invasion. The Shingles crack,
22 curl, blister deteriorate, blowing off roofs and otherwise do not perform in accordance with the
23 reasonable expectations of consumers that such products be durable and suitable for use as a
24 roofing products.

25 5.10 As a result of these failures, Plaintiffs and the Class have suffered actual
26 damages in that the shingles on their homes, buildings, and other structures have and will
27

1 continue to fail prematurely, resulting in damage to the underlying roof and housing structure
2 and requiring them to expend thousands of dollars to repair the damage associated with the
3 incorporation of the Shingles into their homes, buildings, and other structures, and to prevent
4 such damage from continuing.

5 5.11 Damage caused by the defective Shingles has included, but is not limited to:
6 damage to underlying felt, damage to structural roof components, damage to plaster and
7 sheetrock, and damage to walls, ceiling, and structural components.

8 5.12 Despite receiving a litany of complaints from consumers, such as Plaintiffs and
9 other members of the Class, IKO has refused to convey effective notice to consumers about the
10 defects, and refused to repair defective roofs fully or repair the property damaged by the
11 premature failure of its product.

12 5.13 Even if IKO responds to a compliant its warranty is woefully inadequate under
13 these circumstances in that it limits Plaintiffs' and Class members' recovery to replacement
14 costs of individual Shingles piece by piece and excludes costs of labor to replace to the
15 Shingles.

16 5.14 Because of the relatively small size of the typical individual Class member's
17 claims, and because most homeowners or property owners have only modest resources, it is
18 unlikely that individual Class members could afford to seek recovery against IKO on their own.
19 This is especially true in light of the sizes and resources of IKO. A class action is, therefore,
20 the only reasonable means by which Class members can obtain relief from IKO.

21 VI. TOLLING

22 6.1 Because the defects in the Shingles are latent and not detectable until
23 manifestation, Plaintiffs and the Class members were not reasonably able to discover their
24 Shingles were defective until after installation, despite their exercise of due diligence.

25 6.2 IKO knew the Shingles were defective prior to the time of sale, and concealed
26 that material information from Plaintiff and all consumers.

1 is common to all Class members and represents a common thread of deliberate, fraudulent and
2 negligent misconduct resulting in injury to all members of the Class.

3 7.5 There are numerous questions of law and fact common to Plaintiffs and the
4 Class. Those questions predominate over any questions that may affect individual Class
5 members, and include the following:

6 7.5.1 Whether IKO Shingles are defective in that they fail prematurely and are
7 not suitable for use as an exterior roofing product for the length of time advertised, marketed
8 and warranted;

9 7.5.2 Whether the Shingles are defectively designed or manufactured.

10 7.5.3 Whether IKO knew or should have known of the defective nature of the
11 Shingles;

12 7.5.4 Whether the Shingles failed to perform in accordance with the
13 reasonable expectations of ordinary consumers;

14 7.5.5 Whether the risks of the Shingle's failure outweigh the benefits, if any,
15 of its design;

16 7.5.6 Whether IKO properly warned consumers about the danger of premature
17 failure;

18 7.5.7 Whether the Shingles fail to perform as advertised and warranted;

19 7.5.8 Whether IKO's conduct in marketing and selling its Shingles was unfair
20 and deceptive.

21 7.5.9 Whether Plaintiffs and the Class are entitled to compensatory, exemplary
22 and statutory damages, and the amount of such damages; and

23 7.5.10 Whether IKO should be declared financially responsible for notifying all
24 Class members about their defective Shingles and for all damages associated with the
25 incorporation of such Shingles into Class members' homes, residences, buildings, and other
26 structures.

1 8.3 IKO fraudulently, negligently, or recklessly concealed from or failed to disclose
2 to Plaintiffs and the Class the defective nature of its Shingles.

3 8.4 IKO had a duty to Plaintiffs and the Class to disclose the defective nature of its
4 Shingles because: (1) IKO was in a superior position to know the true facts about the design
5 and manufacturing defects in its Shingles because the design and manufacturing defects are
6 latent and would not appear until well after installation; (2) IKO made partial disclosures about
7 the quality of its Shingles without revealing their true defective nature; and (3) IKO actively
8 concealed the defective nature of its Shingles from Plaintiffs and the Class.

9 8.5 The facts concealed or not disclosed by IKO to Plaintiffs and the Class are
10 material facts in that a reasonable person would have considered those facts to be important in
11 deciding whether or not to purchase IKO's Shingles. Had Plaintiffs and the Class known the
12 defective nature of IKO's Shingles, they would not have purchased them or would have paid
13 less for them.

14 8.6 IKO intentionally, recklessly, or negligently concealed or failed to disclose the
15 true nature of the design and manufacturing defects in its Shingles for the purpose of inducing
16 Plaintiffs and the Class to act thereon, and Plaintiffs and the Class justifiably relied to their
17 detriment upon the truth and completeness of IKO's representations about its Shingles. This is
18 evidenced by Plaintiffs' and Class members' purchase of IKO Shingles.

19 8.7 IKO continued to conceal the defective nature of its Shingles even after
20 members of the Class began to report problems. Indeed, IKO continues to cover up and
21 conceal the true nature of the problem.

22 8.8 As a direct and proximate cause of IKO's misconduct, Plaintiffs and the Class
23 have suffered actual damages in that (1) their roofs constructed with IKO Shingles have failed
24 and will continue to fail prematurely, requiring them to expend money to repair or replace their
25 roofs and repair damage to their underlying property.

1 warranties by selling a product that was defectively designed and manufactured, would fail
2 prematurely, was not suitable for use as a roofing product, and was otherwise not as warranted.

3 9.9 As a direct and proximate result of IKO's conduct Plaintiffs' and the Class own
4 structures with roofs that prematurely fail causing damage to the underlayment of Plaintiffs'
5 and Class members' homes and other structures and other property as well.

6 9.10 As a direct and proximate result of IKO's conduct Plaintiffs and the Class have
7 suffered actual damages in that they have incurred and will continue to incur expenses to
8 diagnose, repair and replace their roofs and to repair damage to underlying roof elements,
9 structures or interiors.

10 9.11 As a result of IKO's violations of the PLA, Plaintiffs and the Class are entitled
11 to compensatory damages, attorneys' fees, costs and interest thereon.

12 **X. THIRD CLAIM FOR RELIEF**
13 **(Breach of Express Warranty)**

14 10.1 Plaintiffs incorporate by reference each of the allegations contained in the
15 preceding paragraph of this Complaint.

16 10.2 IKO marketed the Shingles with the intent that the Shingles would be purchased
17 by Plaintiffs and members of the Class.

18 10.3 IKO expressly warranted that all of its Shingles would provide superior strength,
19 durability, and wind and weather resistance, and would be free of manufacturing defects such
20 that they would last 20 to 50 years, and in some cases, as long as a lifetime.

21 10.4 IKO's express warranties related to material facts and were part of the basis of
22 the bargain Plaintiffs and members of the Class entered into when they purchased the Shingles.

23 10.5 IKO systematically breached its express warranties, in that the Shingles are
24 defective as manufactured such that they are not durable and are destined to fail prematurely.
25 The Shingles crack, split, curl, warp, discolor, delaminate, blow off, deteriorate prematurely,
26 and otherwise do not perform as warranted.
27

1 H. Grant Plaintiffs and the Class leave to amend the Complaint to conform to the
2 evidence produced at trial; and

3 I. Grant such other or further relief as may be appropriate under the circumstances.

4 **XIV. DEMAND FOR JURY TRIAL**

5 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of any and all issues
6 in this action so triable of right.

7 DATED this 26th day of June, 2009.

8 TOUSLEY BRAIN STEPHENS PLLC

9
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