

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No. 5:23-cv-00217

MARCIA BALTIMORE and STEVE
COTHREN, individually and on behalf of all
others similarly situated

Plaintiff,

vs.

GENERAC POWER SYSTEMS, INC.,

Defendant.

NOTICE OF REMOVAL

Defendant Generac Power Systems, Inc. (“Generac”) hereby gives notice of removal of this action, pursuant to 28 U.S.C. §§ 1332, 1441, and 1453, from the State of North Carolina Superior Court for Wake County, to the United States District Court for the Eastern District of North Carolina, Western Division. Generac is entitled to remove this action based on both diversity jurisdiction and the Class Action Fairness Act (“CAFA”), and as grounds for removal, states as follows.

BACKGROUND

1. Plaintiffs Marcia Baltimore and Steve Cothren (“Plaintiffs”) filed this action against Generac on March 21, 2023, in the State of North Carolina Superior Court for Wake County, and this action was assigned Case No. 23CV00641-910. *See* Summons and Complaint (attached as Exhibit 1). Plaintiffs served Generac with the Complaint on March 24, 2023.

2. Plaintiffs allege that they bring this action against Generac “on the basis of the breach of express and implied warranties, breach of contract, negligent misrepresentation, fraud, unjust enrichment, and a violation of the North Carolina’s Unfair Trade Practices and Consumer

Protection Laws, N.C. Gen. Stat. § 75-1.1, *et seq.*, due to the design, manufacture, supply, distribution, and/or sale of defective PWRcell systems to consumers in North Carolina.” Complaint ¶ 1. Plaintiffs allege that “Generac manufactures the PWRcell system (the ‘System’),” *id.* ¶ 5, and that “consumers do not receive the benefits of a fully functional System because the System contains a design and/or manufacturing defect,” *id.* ¶ 7. Plaintiffs further allege that “each System contains ‘SnapRS’ connector components (the ‘Snaps’),” and that “[d]uring the course of normal and expected use of the system, the Snaps will overheat, melt, explode, and otherwise malfunction (the ‘Defect’).” *Id.*

3. The named Plaintiffs (Marcia Baltimore and Steve Cothren) allege that they are each residents and citizens of North Carolina, that each of them “purchased one of the aforementioned Systems,” and that “the System is not performing as expected and contains the defective component.” *Id.* ¶¶ 19-20. Plaintiffs further allege that the “[t]he cost of the System is at least \$50,000.” *Id.* ¶ 195.

4. Plaintiffs state that they bring this action “individually and as a representative of all those similarly situated pursuant to Rule 23 of the North Carolina Rules of Civil Procedure,” and that they seek to represent the following putative class: “During the fullest period allowed by law, all persons who purchased the Generac PWRcell system in the State of North Carolina within the applicable statute of limitations, until the date notice is disseminated.” *Id.* ¶ 125. Plaintiffs estimate that the putative class “likely consists of hundreds of people in North Carolina.” *Id.* ¶ 127.

5. According to the Complaint, as a result of “Generac’s concealment of the Defect,” “Plaintiffs and putative Class Members purchased the defective Systems when they otherwise would not have made such purchases on the same terms at all, or would not have paid as much for the defective Systems,” *id.* ¶ 12; and that the “Systems failed or are likely to fail as a result of the

Defect . . . , resulting in damaged and unusable Systems,” *id.* ¶ 13. Plaintiffs and putative class members allegedly “suffered damages, including but not limited to: (a) the difference in value of the Systems as purchased and the Systems as received; (b) loss of use of the Systems; (c) cost to repair or replace the Systems, including labor and parts; (d) consequential damages; and (e) damage to property other than the Systems.” *Id.* ¶ 58.

6. Plaintiffs further state that “Plaintiffs and putative North Carolina Subclass Members have been damaged in an amount in excess of \$25,000 and are entitled pursuant to N.C. Gen. Stat. § 75-16 to recover treble damages as well as attorneys’ fees and costs.” *Id.* ¶ 213.

7. Among other relief, Plaintiffs request that the court “[a]ward damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the Classes”; “[p]ermanently enjoin Generac from engaging in the wrongful and unlawful conduct alleged”; “[a]ward Plaintiffs and the Classes their expenses and costs of suit, including reasonable attorneys’ fees,” and “[a]ward Plaintiffs and the Classes pre-judgment and post-judgment interest.” *Id.* p. 34.

**THE PROCEDURAL REQUIREMENTS FOR REMOVAL
UNDER 28 U.S.C. §§ 1441, 1446, AND 1453 ARE MET**

8. Venue for the removal of this action is proper in this Court pursuant to 28 U.S.C. §§ 113(a) and 1441(a) because the State of North Carolina Superior Court for Wake County is located within the Eastern District of North Carolina, Western Division.

9. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 5.3(a)(1), a Copy of the Summons and Complaint are attached as Exhibit 1. No other process, pleadings, or orders have been served on Generac.

10. Generac was served with the Summons and Complaint on March 24, 2023. Accordingly, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

11. Pursuant to 28 U.S.C. § 1446(d), Generac is serving a copy of this Notice of

Removal on Plaintiffs and is filing a copy with the Clerk of the State of North Carolina Superior Court for Wake County.

12. By filing a Notice of Removal in this matter, Generac does not waive its right to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and Generac reserves its right to assert any defenses and/or objections to which it may be entitled.

13. Generac reserves the right to amend or supplement this Notice of Removal.

REMOVAL IS PROPER BASED ON DIVERSITY JURISDICTION

14. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). Diversity jurisdiction under 28 U.S.C. § 1332(a) exists if two requirements are met. First, there must be complete diversity between the plaintiffs and the defendants. *See, e.g., Navy Fed. Credit Union v. LTD Fin. Servs., LP*, 972 F.3d 344, 352 (4th Cir. 2020). Second, the amount in controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

15. Traditional diversity jurisdiction exists over putative class actions pursuant to 28 U.S.C. §§ 1332 and 1367 when the named plaintiffs and defendants are completely diverse and at least one named plaintiff's claim satisfies the amount-in-controversy requirement under 28 U.S.C. § 1332(a). *See, e.g., TJJ Servs., Inc. v. Transp. Media, Inc.*, 2018 WL 10812168, at *2-3 (E.D.N.C.) (citing *Dell Webb Cmty. Inc. v. Carlson*, 817 F.3d 867, 870-71 (4th Cir. 2016)). The citizenship of absent class members is not considered for purposes of determining complete diversity. *See Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 117 n.4 (4th Cir. 2001).

A. The Complete Diversity Requirement Is Met.

16. The Complaint alleges that Plaintiff Marcia Baltimore is a resident and citizen of Apex, North Carolina, and that Plaintiff Steve Cothren is a resident and citizen of Pleasant Garden, North Carolina. Complaint ¶¶ 19-20. The named Plaintiffs thus are citizens of North Carolina.

17. As the Complaint alleges, Generac is a corporation that is incorporated in Wisconsin and has its principal place of business in Waukesha, Wisconsin. Complaint ¶ 20. For diversity purposes, a corporation is a citizen of “every State or foreign state by which it has been incorporated” as well as “the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1); *see, e.g., Pittsburgh Terminal Corp. v. Mid Allegheny Corp.*, 831 F.2d 522, 530 (4th Cir. 1987). Generac thus is a citizen of Wisconsin.

18. Because the named Plaintiffs are citizens of North Carolina and Generac is a citizen of Wisconsin, under 28 U.S.C. § 1332, complete diversity among the parties exists in this action.

B. The Amount-In-Controversy Requirement Is Met.

19. The amount-in-controversy requirement is also satisfied. The amount in controversy in a case where federal jurisdiction is based on diversity of citizenship must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. As the Supreme Court has made clear, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). While Generac denies that Plaintiffs are entitled to any monetary or other relief, the allegations of the Complaint demonstrate that the amount in controversy as to each named Plaintiff is in excess of the jurisdictional minimum.

20. The Complaint specifically states that Plaintiffs “have been damaged in an amount in excess of \$25,000 and are entitled pursuant to N.C. Gen. Stat. § 75-16 to recover treble damages.” Complaint ¶ 213. That allegation alone satisfies the \$75,000 jurisdictional amount-in-controversy requirement. A claim for treble damages is considered when determining whether the amount-in-controversy requirement for diversity jurisdiction is satisfied. *See, e.g., Marchese v. JPMorgan Chase Bank, N.A.*, 917 F. Supp. 2d 452, 460 (D. Md. 2013) (citing *Wall v. Fruehauf Trailer Servs.*,

Inc., 123 F. App'x 572, 577 (4th Cir. 2005); *R.L. Jordan Oil Co. of N.C., Inc. v. Boardman Petroleum, Inc.*, 23 F. App'x 141, 145 n.3 (4th Cir. 2001)) (“Trebled damages are considered when determining the amount in controversy.”).

21. Moreover, the Complaint alleges that named Plaintiff Marcia Baltimore “paid approximately \$83,160” for “parts and installation”; her “System has not operated properly”; “[h]ad she known about the Defect, she would have either not purchased the System or would have paid less than she did”; and she “did not receive the benefit of her bargain.” Complaint ¶¶ 62, 68. The Complaint alleges that named Plaintiff Steve Cothren “paid approximately \$57,000” for “parts and installation”; his “System has not operated properly”; “[h]ad he known about the Defect, he would have either not purchased the System or would have paid less than he did”; and he “did not receive the benefit of his bargain.” *Id.* ¶¶ 69, 77. Each named Plaintiff alleges that he or she had to have the System’s “Snaps” replaced. *Id.* ¶¶ 65-66, 73. Plaintiffs seek “compensatory damages including, but not limited to, the cost of inspection, repair, and diminution in value,” and they allege that they suffered “loss of the Systems and its intended benefits.” *Id.* ¶ 165. Plaintiffs seek “restitution from Generac and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Generac from their wrongful conduct.” *Id.* ¶ 199. Plaintiffs also seek attorneys’ fees “provided by law” and exemplary damages. *Id.* p. 34; *see Francis v. Allstate Ins. Co.*, 709 F.3d 362, 368-69 (4th Cir. 2013) (considering attorneys’ fees authorized by statute in amount-in-controversy calculation); *Gordon v. Bus. Consultants, Inc.*, 856 F.2d 186, 1998 WL 86618, at *1 (4th Cir. 1988) (table decision) (“exemplary . . . damages may be included in determining whether a plaintiff has satisfied the amount in controversy requirement”). Those allegations show that the amount in controversy exceeds \$75,000, exclusive of interest or costs.

22. Because there is complete diversity of citizenship between the named Plaintiffs and

Generac, and because the amount in controversy for each of the named Plaintiffs exceeds \$75,000, exclusive of interest and costs, this case is subject to removal by Generac on diversity grounds pursuant to 28 U.S.C. §§ 1332 and 1441.

ALTERNATIVELY, THIS CASE IS REMOVABLE UNDER CAFA

23. CAFA provides a separate and independent ground for removal of this action. CAFA “provides the federal district courts with ‘original jurisdiction’ to hear a ‘class action’ if the class has more than 100 members, the parties are minimally diverse, and the ‘matter in controversy exceeds the sum or value of \$5,000,000.’” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013) (quoting 28 U.S.C. § 1332(d)(2), (d)(5)(B)). To determine whether the amount in controversy requirement under CAFA is satisfied, “the claims of the individual class members shall be aggregated.” *Id.* (quoting § 1332(d)(6)).

A. The Numerosity Requirement Is Satisfied.

24. Plaintiffs invoke North Carolina Rule of Civil Procedure 23, and seek to represent other persons on a class action basis as alleged in the Complaint. Complaint ¶ 125. Accordingly, this case is a “class action” within the meaning of CAFA because it is brought pursuant to a “State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

25. Plaintiffs seek to represent a putative class composed of “all persons who purchased the Generac PWRcell system in the State of North Carolina within the applicable statute of limitations.” Complaint ¶ 125. The Complaint specifically alleges that the putative class “likely consists of hundreds [plural] of people in North Carolina.” *Id.* ¶ 127. Accordingly, this action satisfies the requirement for removal that “the number of members of all proposed plaintiff classes in the aggregate” is equal to or greater than 100. 28 U.S.C. § 1332(d)(5)(B).

B. The Minimal Diversity Requirement Is Satisfied.

26. The minimal diversity requirement is met if “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2).

27. The minimal diversity requirement is met here. Each named Plaintiff is alleged to be a citizen of North Carolina, and as the Complaint alleges, Generac is a citizen of Wisconsin. Complaint ¶¶ 19-21.

C. The Amount-In-Controversy Requirement Is Satisfied.

28. Under CAFA, the amount in controversy must exceed five million dollars (\$5,000,000), exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2). In a putative class action, the amount in controversy is determined by aggregating the claims of all members of the putative class. *See* 28 U.S.C. § 1332(d)(6). The Supreme Court has made clear that “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*, 574 U.S. at 89; *see also* 28 U.S.C. § 1446(c)(2) (“the notice of removal may assert the amount in controversy”). Moreover, in “actions seeking declaratory . . . and injunctive relief, it is well established that the amount in controversy” may be “measured by the value of the object of the litigation.” *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977). Attorneys’ fees that are provided by law also may be considered in determining the amount in controversy. *See Bartnikowski v. NVR, Inc.*, 307 F. App’x 730, 736 n.12 (4th Cir. 2009). Claims for punitive or exemplary damages may be considered, too. *See, e.g., Schutte v. Ciox v. Health, LLC*, 28 F.4th 850, 855 (7th Cir. 2022) (“it is well-settled that punitive damages . . . factor into the amount-in-controversy calculation) (internal quotation marks and citation omitted); *Carter v. Westlex Corp.*, 643 F. App’x 371, 376 (5th Cir. 2016); *E.P. v. Hardee’s Food Sys., LLC*, 2018 U.S. Dist. LEXIS 186427, at *7 (W.D.N.C. Oct. 31, 2018).

29. Based on the allegations in the Complaint, the amount in controversy in this action exceeds five million dollars (\$5,000,000) in the aggregate, exclusive of interest and costs. Plaintiffs allege that “Plaintiffs and putative North Carolina Subclass Members have been damaged in an amount in excess of \$25,000 and are entitled pursuant to N.C. Gen. Stat. § 75-16 to recover treble damages as well as attorneys’ fees and costs.” Complaint ¶ 213. The Complaint also alleges that the putative class “likely consists of hundreds [plural] of people in North Carolina.” *Id.* ¶ 127. Those allegations by themselves easily satisfy the requirement that the amount in controversy exceed \$5,000,000 in the aggregate, exclusive of interest and costs. *See, e.g., Hardig v. Certaineed Corp.*, 2012 WL 423512, at *2 (W.D.N.C. Feb. 9, 2012) (“In analyzing the amount in controversy for cases under CAFA, treble damages, when demanded, must be included in the analysis.”).

30. Moreover, the Complaint broadly seeks monetary and non-monetary relief on behalf of the likely “hundreds” of putative class members. Complaint ¶ 127. Plaintiffs and putative class members allegedly “suffered damages, including but not limited to: (a) the difference in value of the Systems as purchased and the Systems as received; (b) loss of use of the Systems; (c) cost to repair or replace the Systems, including labor and parts; (d) consequential damages; and (e) damage to property other than the Systems.” *Id.* ¶ 58; *see also id.* ¶ 124. The Complaint specifically alleges that the “baseline starting price” for the Generac PWRcell system is “\$47,000.00,” and that the estimated savings of using the system are “\$66,217.00 over 25 years.” *Id.* ¶ 6. The Complaint identifies as common questions as to members of the putative class “[w]hether Generac should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Systems,” *id.* ¶ 129(i), “[w]hether Plaintiffs and putative Class Members are entitled to damages “compensatory, exemplary, and statutory damages,” *id.* ¶ 129(j), and “[w]hether Plaintiffs and putative Class Members are entitled to injunctive, declaratory, or other equitable relief,” *id.*

¶ 129(1); *see also, e.g., id.* ¶¶ 149, 165, 174, 191, 199, 212. The Complaint also seeks attorneys' fees on behalf of putative class members. *Id.* ¶¶ 149, 213. Given the potential number of putative class members and the alleged damages and other relief sought, the aggregate amount in controversy is greater than five million dollars (\$5,000,000), exclusive of interest and costs.

31. Although Generac denies that Plaintiffs or any putative class members are entitled to recover any amount, and denies that Plaintiffs or putative class members are entitled to any of the relief sought, the amount-in-controversy requirement for removal under CAFA is satisfied.

32. Because the numerosity, minimal diversity, and amount-in-controversy requirements of CAFA are satisfied, this case is subject to removal to federal court.

WHEREFORE, Generac hereby removes this action from the State of North Carolina Superior Court for Wake County to the United States District Court for the Eastern District of North Carolina, Western Division.

This 21st day of April, 2023

MAYER BROWN LLP

/s/ Michael J. Gill

Michael J. Gill
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600
Fax (312) 701-7711
(IL Bar No. 0957615)
mgill@mayerbrown.com
Counsel for Generac Power Systems, Inc., by
Special Appearance

/s/ John S. Hahn

John S. Hahn
1999 K Street, NW
Washington, DC 20006-1101
(202) 263-3346
Fax (202) 263-5346
State Bar No. 43430
jhahn@mayerbrown.com
Local Civil Rule 83.1(d) Counsel for
Defendant Generac Power Systems, Inc.

EXHIBIT 1

STATE OF NORTH CAROLINA

File No. 23CV006415-910

Wake County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
Marcia Baltimore and Steven Cothren

Address
c/o Omer Law Firm, PLLC, 9131 Anson Way, Suite 205

City, State, Zip
Raleigh, NC 27615

VERSUS

Name Of Defendant(s)
Generac Power Systems, Inc.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Generac Power Systems, Inc.
National Registered Agents, Inc., Registered Agent
160 Mine Lake Ct., Ste. 200
Raleigh, NC 27615

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers! ¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)
David G. Omer
Omer Law Firm, PLLC
9131 Anson Way, Suite 205
Raleigh, NC 27615

Date Issued 3/21/2023 Time 1:46:18 pm AM PM

Signature /s/ Linda Timayio

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM	<input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (*specify*)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM	<input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (*specify*)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

Wake County Clerk of Superior Court
STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENREAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23CV006415-910

MARCIA BALTIMORE and STEVE)
COTHREN, individually and on behalf of)
all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
GENERAC POWER SYSTEMS, INC.,)
)
)
Defendant.)
_____)

COMPLAINT

(Class Action)

Plaintiffs Marcia Baltimore and Steve Cothren (“Plaintiffs”), individually and on behalf of all others similarly situated, bring this class action against Defendant Generac Power Systems, Inc. (“Generac” or “Defendant”) and allege the following based on personal knowledge as to themselves, and as to all other matters, upon information and belief, including investigation conducted by their attorneys.

NATURE OF THE ACTION

1. This is an action brought pursuant to Rule 23 of the North Carolina Rules of Civil Procedure by Plaintiffs and others similarly situated on the basis of the breach of express and implied warranties, breach of contract, negligent misrepresentation, fraud, unjust enrichment, and a violation of the North Carolina’s Unfair Trade Practices and Consumer Protection Laws, N.C. Gen. Stat. § 75-1.1, *et seq.*, due to the design, manufacture, supply, distribution, and/or sale of defective PWRcell systems to consumers in North Carolina.

BACKGROUND OF LITIGATION

2. This action concerns clean energy management systems designed and manufactured by Generac, which contain a defective component¹ and were subsequently sold to consumers across the United States.

¹ Upon information and belief, the defective component of the PWRcell consists of the SnapRS connectors. There are three models of SnapRS connector components, (the 801, the 801A, and the 802). Upon information and belief, all three models contain the same or a similar design and/or manufacturing defect.

3. Generac has provided consumers “Affordable Power Solutions for 60 years” and is the self-proclaimed “#1 manufacturer of home backup generators.”² Generac “manufactures the widest range of power products in the marketplace including portable, residential, commercial and industrial generators.”³ Generac’s offerings include “backup and prime power generation systems for residential and commercial & industrial (C&I) applications, solar + battery storage solutions, energy management devices and controls, advanced power grid software platforms & services, and engine & battery-powered tools and equipment.”⁴ Generac purports to “protect the things that power your life by providing quality, affordable power solutions.”⁵ As of August 2022, Generac’s net sales (LTM) were \$4.4 billion.⁶

4. Generac represents itself as being on the cutting edge of the energy market and purportedly seeks to provide cost-efficient and environmentally sustainable solutions to its customers. To its investors, Generac claims that it “is developing and launching innovative clean energy products that not only increase and optimize the amount of clean energy produced, stored and utilized by homeowners, but help to maximize customer savings.”⁷

5. As a part of its clean energy offerings, Generac manufactures the PWRcell system (the “System”), which it represents as “the complete clean energy system.”⁸ According to Generac, “The PWRcell system is not just a powerful battery, but is also the most flexible and scalable home energy system on the market.” Furthermore, Generac boasts that “PWRcell offers 30% more power output than our competitors[], and it offers more storage capacity.”⁹ The System takes electricity produced by solar panels (not part of the PWRcell system but must be integrated into the System) and gives consumers the option of managing how that electricity is used, either for powering their homes, for storage in a generator, for storage in back-up batteries, or for net-metering (selling electricity back to the utility company that traditionally powered the consumer’s home). A consumer can program how the electricity is used and track electricity production from within a Generac phone application.

6. The baseline starting price for the System is approximately \$47,000.00 (including installation), and consumers can customize by adding additional battery modules based upon the

² *About Us*, Generac, <https://www.generac.com/about-us> (last visited Sept. 26, 2022).

³ *Id.*

⁴ *Investor Relations*, Generac, <https://investors.generac.com/> (last visited Sept. 26, 2022).

⁵ *About Us*, Generac, <https://www.generac.com/about-us> (last visited Sept. 26, 2022).

⁶ *Investor Presentation – August 2022*, Generac, <https://investors.generac.com/static-files/a9f36c1c-9836-436b-ae20-84bdb21b3b62> (last visited Sept. 26, 2022).

⁷ *Environmental, Social, and Governance Report 2021*, Generac, <https://investors.generac.com/static-files/edaf815c-9f4f-4453-8b1e-0f61f9175255> (last visited Sept. 26, 2022).

⁸ *PWRCELL*, Generac, <https://www.generac.com/all-products/clean-energy/pwrcell> (last visited Sept. 26, 2022).

⁹ *PWRCELL Solar + Battery Storage System*, Generac, https://www.generac.com/GeneracCorporate/media/Library/content/Clean%20Energy/PWRcell/PWRcell_Consumer_Brochure-Digital-9-15-22.pdf (last visited Sept. 26, 2022).

size of their homes and energy needs.¹⁰ Generac advertises that consumers who use a fully functional System will save \$66,217.00 over 25 years.¹¹ Consumers purchase the Systems through Generac's authorized dealers.

7. Unfortunately, consumers do not receive the benefits of a fully functional System because the System contains a design and/or manufacturing defect, described in more detail *supra*, that renders it unsuitable for its intended use. Specifically, each System contains "SnapRS" connector components (the "Snaps").¹² During the course of normal and expected use of the System, the Snaps will overheat, melt, explode, and otherwise malfunction (the "Defect"). Without properly functioning SnapRS units, the System's performance declines or ceases.

8. Generac has undertaken a deliberate and willful pattern of conduct (including taking active measures) aimed at concealing the Defect from its consumers, including Plaintiffs and putative Class Members.

9. At all relevant times, Generac knew or should have known about the Defect but nevertheless marketed, advertised, and sold the Systems without disclosing the Defect or warning consumers that the Snaps overheat, melt, explode, or otherwise malfunction.

10. Generac fails to disclose the known Defect or to provide consumers with a non-defective replacement. Indeed, rather than providing consumers with new, non-defective Snaps after they fail as a result of the Defect, Generac fails to provide a non-defective replacement component capable of remedying the problem and/or improperly denies consumers' warranty claims. Generac's purported solution, its newest version of the Snaps (the 802s), fails just as earlier models did.

11. Alternative designs presently exist in the marketplace and are sold to consumers by Generac's competitors. Despite Generac representing that replacement Snaps are available to consumers, customers are unable to purchase the parts directly from Generac or receive service from authorized dealers, leaving them with Systems that do not function as intended or seeking service from technicians outside of Generac's dealership network, forcing consumers to void their warranties in order to receive service on their Systems.

12. As a direct and proximate result of Generac's concealment of the Defect, its failure to warn customers about the Defect before their purchase, and its failure to recall the Systems or remedy the Defect, Plaintiffs and putative Class Members purchased the defective Systems when they otherwise would not have made such purchases on the same terms or at all, or would not have paid as much for the defective Systems.

13. Plaintiffs and putative Class Members' Systems failed or are likely to fail as a result of the Defect when they attempted to use the Systems as intended, resulting in damaged and unusable Systems.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

14. Plaintiffs and putative Class Members' Systems contain the uniform Defect at the point-of-sale and Generac's Systems cannot be used for their intended purpose of safely and reliably managing electricity.

JURISDICTION AND VENUE

15. The foregoing allegations are incorporated by reference and realleged herein.

16. This Court has jurisdiction over the parties and this action pursuant to N.C.G.S. § 25-1-305, N.C.G.S. §§ 75-16 and 56, N.C.G.S. § 1-75.4, and N.C.G.S. § 1-253.

17. Venue is proper under N.C.G.S. § 1-79 in that Defendant has regularly engaged in business in Wake County, North Carolina.

THE PARTIES

18. The foregoing allegations are incorporated by reference and realleged herein.

19. Plaintiff Marcia Baltimore is a resident and citizen of Apex, North Carolina. She purchased one of the aforementioned Systems at issue on or around November 2020. Currently, the System is not performing as expected and contains the defective component.

20. Plaintiff Steve Cothren is a resident and citizen of Pleasant Garden, North Carolina. She purchased one of the aforementioned Systems at issue on or around October 2021. Currently, the System is not performing as expected and contains the defective component.

21. Defendant Generac Power Systems, Inc. is, upon information and belief, is a publicly-traded Wisconsin corporation with a principal place of business located at S45W29290 Highway 59, Waukesha, Wisconsin, 53189.

22. Generac distributes, markets, and directs the marketing of its products, including the aforementioned Systems, in the state of North Carolina and throughout the United States.

COMMON FACTUAL ALLEGATIONS

23. The foregoing allegations are incorporated by reference and realleged herein.

24. Generac is a publicly traded manufacturer of clean energy management systems with customers across the globe. Approximately 85% of its net sales (LTM) are domestic, and 67% of those sales consist of residential energy products.¹³ Generac has over 10,000 employees worldwide and an adjusted EBITDA (LTM) of \$897 million.¹⁴

¹³ *Investor Presentation – August 2022*, Generac, <https://investors.generac.com/static-files/a9f36c1c-9836-436b-ae20-84bdb21b3b62> (last visited Sept. 26, 2022).

¹⁴ *Id.*

25. Generac considers customer service to be a “core element of [its] enterprise strategy.”¹⁵ According to Generac, its engineers maintain “rigorous design standards that account for product safety at every state of product development, and products go through multiple rounds of design review to ensure that safety is paramount.”¹⁶ Additionally, Generac represents that “Excellence is one of our Corporate Values, and our product quality team exemplifies this value through vigorous involvement in both our new product development and production processes.”¹⁷ Generac “maximize[s] the quality and value of [its] products for [its] customers” by “regularly perform[ing] design reviews and testing.”¹⁸

26. According to the Solar Energy Industries Association, the value of the solar power market in the United States alone is \$33 billion.¹⁹ Growth of electricity production from solar energy has been exponential, more than 80 times its share a decade ago.²⁰ At current rates, 13% of homes in the United States will have solar PV systems by 2030.²¹

27. Generac seeks to capitalize on the burgeoning solar energy market as its “purpose” is to “lead the evolution to more resilient, efficient, and sustainable energy solutions” and sees solar as one of several “strategic growth themes” for the business.²² As the United States energy production systems shift, Generac seeks to unlock \$72 billion by 2025 with residential clean energy as a “key driver” of its strategic evolution.²³

28. Generac’s main clean energy product consists of its PWRcell system, which it designed and manufactures.²⁴ Generac describes the System as “a fully-integrated solar + battery storage system,” as depicted below²⁵:

¹⁵ *Environmental, Social, and Governance Report 2021*, Generac, <https://investors.generac.com/static-files/edaf815c-9f4f-4453-8b1e-0f61f9175255> (last visited Sept. 26, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Solar Data Cheat Sheet*, Solar Energy Industries Association, <https://www.seia.org/research-resources/solar-data-cheat-sheet>

²⁰ *Id.*

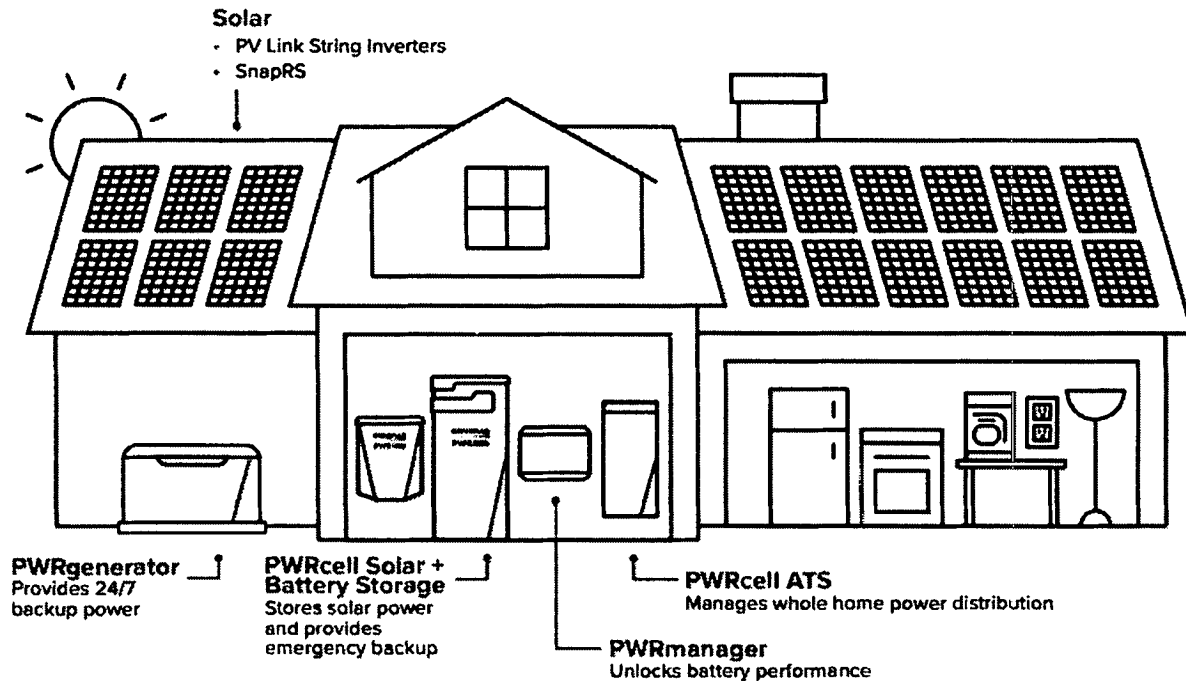
²¹ *Id.*

²² *Investor Presentation – August 2022*, Generac, <https://investors.generac.com/static-files/a9f36c1c-9836-436b-ae20-84bdb21b3b62> (last visited Sept. 26, 2022).

²³ *Id.*

²⁴ *PWRCELL Solar + Battery Storage System*, Generac, https://www.generac.com/GeneracCorporate/media/Library/content/Clean%20Energy/PWRcell/PWRcell_Consumer_Brochure-Digital-9-15-22.pdf (last visited Sept. 26, 2022).

²⁵ *Id.*



29. Notably, a consumer cannot purchase solar panels from Generac. The purpose of the PWRcell is to manage electricity produced by solar panel modules for consumption within a consumer's home. In order to integrate existing solar panels into the PWRcell System and a consumer's overall electricity intake, Generac utilizes PV Link and SnapRS connector components.²⁶ The PV Link "allows you to connect 2 to 9 solar PV modules, enabling you to build a flexible, easy-to-install solar array."²⁷ The SnapRS (Rapid Shutdown Device) connector "is an in-line disconnect device that helps to satisfy module-level rapid shutdown requirements"²⁸ by "isolat[ing] each PV module in the array"²⁹ as shown below³⁰:

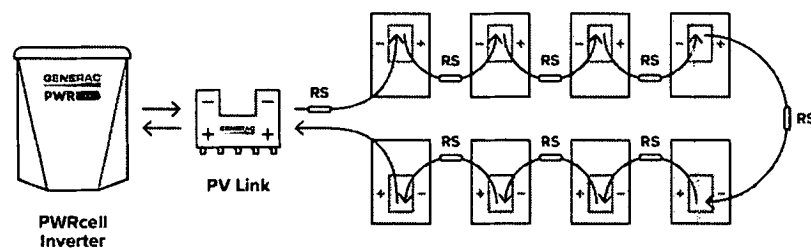


Diagram is applicable for most 60 cell PV modules. Modules with higher cell count may require a different arrangement. Contact Generac for more details.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *SnapRS® Spec Sheet*, Generac, <https://www.generac.com/service-support/product-support-lookup/product-support-details?productid=4194798d-a712-4fc2-abe4-08ed498f43de> (last visited Sept. 26, 2022).

³⁰ *Id.*

30. Generac advertises that its Snaps meet National Electrical Code 2017 and 2020 requirements and are “[p]lug and play” and that “installation is quick and tool-free.”³¹ Generac warrants that the Snaps are able to reduce output to 75 V in under ten seconds.³² The product warranty extends for 25 years, as depicted below³³:

SnapRS™ (APKE00011)	
PV MODULE MAX VOC:	75 V
EFFICIENCY:	99.8% ¹
MAX INPUT CURRENT:	13 A
MAX TOTAL QTY IN SUBSTRING:	10
SHUTDOWN TIME:	< 10 Seconds
ENCLOSURE RATING:	NEMA 6P
OPERATING TEMPERATURE - FAHRENHEIT (CELSIUS):	-40 to 158 °F (-40 to 70 °C)
CERTIFICATIONS:	UL1741
PROTECTIONS:	PVRSE
WARRANTY:	25 Years

¹When used with a 50V panel

31. Elsewhere, Generac explains its Limited Warranty for each part of the System and again indicates that the warranty governing the Snaps is 25 years³⁴:

Generac Power Systems Limited Warranty for Generac PWRcell®

For the period of warranty noted below and beginning upon the successful registration of the unit, Generac Power Systems, Inc. (Generac) warrants that its Generac PWRcell® products will be free from defects in material and workmanship for the items and period set forth below. Any equipment that the purchaser/owner claims to be defective should be reported to Generac customer service for evaluation and resolution. Generac will, at its discretion, repair or replace any part(s) which, upon evaluation, inspection, and testing by Generac, an Independent Authorized Service Dealer or certified installer, is found to be defective.

Product	Model Number	Warranty Period	Coverage
Generac PWRcell Battery Cabinet	APKE00007 APKE00028	10 years	Parts, Labor, and Limited Travel
Generac PWRcell Battery Modules	A0000391219 G0080040 G0080001 G0080003 G0080005	10 years or 7.56MWh of energy throughput per module, whichever comes first (i.e. a six module system carries a warranty of 10 years or 45.36 MWh of total energy throughput). Capacity retention guarantee at the end of the warranty period: At least 70% of nameplate rating.	
Generac PWRcell Inverter	APKE00014 APKE00013 XVT076A03 XVT114G03	10 years	
PWRmanager™	G0080090	10 years	
PV Link™	APKE00010	25 years	
SnapRS™	APKE00011	25 years	
	RS801a RS802		

³¹ PWRcell Full System Overview, Generac, <https://www.generac.com/for-homeowners/clean-energy/clean-energy-ecosystem> (last visited Sept. 26, 2022).

³² *Id.*

³³ *Id.*

³⁴ Generac Power Systems Limited Warranty for Generac PWRcell®, Generac, <https://prod-generacsoa.azurefd.net/manualsweb/manuals/APKE0001-1/A0000416920> (last visited Sept. 26, 2022).

32. The Snaps are installed to make rapid shutdown possible. However, without functioning Snaps, electricity produced by single solar panel modules is unable to circulate around the solar panel array to the PV Link and, subsequently, into a consumer's home for any purpose. A single Snap is installed between each solar panel module in order to isolate each individual module. However, the PV Link creates a circuit that flows from solar panel module to solar panel module through Snaps into the PWRcell Inverter, such that a damaged or destroyed Snap disrupts the flow of the entire circuit and may render an array (of up to eight solar panel modules) useless.

The Defect

33. The SnapRS components connect each solar panel module on the roof of a home to form a singular solar panel array. Electricity flows through the Snaps into the PV Link, and then into battery storage. The Snaps should stay "on" or "off" unless activated with the intention of shutting down or restarting the flow of electricity.

34. However, due to a defect by design or from manufacture, the Snaps are overactive such that they turn "on" and "off" *repeatedly* instead of *remaining* in the "on" or "off" position, which can cause the units to overheat, leaving the Snaps deformed and, in some cases, charred. This deformation can cause the Snaps to bulge and separate.

35. Additionally, upon overheating, customers can experience a "PVRSS Lockout" error in their Systems, which causes the Systems to shut down. When a PV Link or Inverter detects a malfunctioning or overheating Snap in a particular solar panel array, the entire array goes into "lockout mode" and ceases to generate any power until the lockout is cleared. Clearing the lockout generally requires a service technician to replace the faulty Snaps causing the "lockout mode."

36. Upon information and belief, Generac has acknowledged a near 50% failure rate in its Snaps.

37. Following an inundation of complaints regarding general performance issues with the System, Generac issued firmware updates in or around August 2021 that could be downloaded to the System. The updates would keep the "on" or "off" signal constant until the System was forced into rapid shutdown as intended with the functionality of the Snaps.

38. Despite the update to the Systems, overheating issues with the Snaps persisted. This was due, in part, to the fact that some customers did not have their systems connected to the Internet (which Generac was aware of or should have been aware of due to Generac's ability to monitor consumers' systems) and thus did not receive the firmware updates. Worse yet, the firmware updates caused customers' Systems to shut down for extended periods of time.

39. In late 2021, Generac released its second model of Snaps, the 801A. This model was released as a redesign of the original 801 Snap model in an attempt to resolve the Defect. However, the Defect persisted, as did the "PVRSS Lockout" issue.

40. On or about June 2022, Generac admitted to needing to replace the 801 and 801A Snap models. Specifically, Generac stated that there were issues that it needed “[t]o address” and that it needed to “help better optimize and enhance the performance of [its] PWRcell solar + storage systems over the long-term.” Generac stopped short of admitting that the Snaps were defective and failed to warn consumers about any of the issues with the Snaps.

41. At the same time, Generac announced the release of the 802 Snap model, which Generac described as being “designed and engineered to the highest safety and reliability standards.” Generac highlighted that the 802 Snap model “ha[d] been tested in extreme heat and corrosive moisture conditions with exceptional results.” However, Generac has not replaced *all* Snaps currently in use to date and the Defect continues to manifest.

42. The Defect renders the Systems unfit for the ordinary purpose for which they are purchased and used, which is to safely and reliably manage electricity.

43. As a result of the Defect, the Systems pose an unreasonable risk of harm to consumers and their property and are subject to premature failure. The Snaps overheat, melt, explode, and otherwise malfunction which can cause fire damage to consumers’ homes as well as power surges, loss of electricity, and loss of monetary savings consumers expected when purchasing the Systems.

44. Had Plaintiffs and putative Class Members known that the Systems were defective, posed an unreasonable risk of harm to themselves and their property, and could and would cause damage, they would not have purchased the Systems at all, on the same terms, or for the same price.

45. Generac expressly and impliedly warrants, via user manuals, advertisements, pamphlets, brochures, circulars, samples, and/or models, that the Systems are fit for the ordinary purpose for which they are sold.

46. Generac expressly warrants in its Limited Warranty that the Snaps will be free from defects for 25 years.³⁵

47. Although consumers purchase the Systems through Generac’s authorized dealers, Generac’s manifest intent that its warranties apply to Plaintiffs and putative Class Members as third-party beneficiaries is evident from the statements contained in its literature concerning the Systems. For example, the Limited Warranty states that “Any equipment that the purchaser/owner claims to be defective should be reported to Generac customer service for evaluation and resolution.” Additionally, the Limited Warranty states that the “Warranty is transferable between ownership of original installation site only.” The Limited Warranty intends that whoever owns the System retains the rights under the warranty, which here includes Plaintiffs and putative Class Members. Likewise, on Generac’s website, the information pertaining to the Systems falls under

³⁵ *Generac Power Systems Limited Warranty for Generac PWRcell®*, Generac, <https://prod-generacsoa.azurefd.net/manualsweb/manuals/APKE00011/A0000416920> (last visited Sept. 26, 2022).

the dropdown menu category for “HOMEOWNERS” and not “BUSINESS & INDUSTRY,” “GRID SERVICES,” and “DEALERS & INSTALLERS.” Generac plainly contemplates that the homeowner is the individual with rights under the Limited Warranty and as such, Plaintiffs and putative Class Members are third-party beneficiaries. Lastly, it was reasonably foreseeable that Plaintiffs and putative Class Members would be the intended beneficiaries of the Systems and Limited Warranty.

48. Generac’s Limited Warranty fails of its essential purpose for the following reasons:
- a. Generac fails to disclose at the time of sale its knowledge of the Defect to consumers;
 - b. Generac fails to disclose its knowledge of the Defect when contacted by customers about System failures; and
 - c. Generac consistently fails to replace defective Snaps with purportedly non-defective counterparts despite representing that the 802 Snap model is available.
 - d. Generac has failed to produce a sufficient amount of Snaps to replace all defective Snaps.
 - e. Generac has no non-defective Snap component available for consumers. The 802 Snap model is defective and causes the same or similar errors in consumers’ Systems.

49. As described herein, Generac breached the Limited Warranty at the time it shipped the Systems (and at the point-of-sale to consumers) because the Snaps were defective when they came off of the assembly line. The Defect causes the Snaps to overheat, melt, explode, or otherwise malfunction, making consumers unable to properly or safely use the Systems. Thus, at the time the Systems were shipped and sold to consumers, Generac was in violation of the express warranty.

50. Further, because Generac does not have non-defective Snaps available to replace the defective Snaps or does not have the capacity to replace the defective Snaps, and because its replacement Snaps are not able to resolve the Defect, it is unable to fulfill its warranty obligations at the point of purchase, or anytime thereafter, and the Limited Warranty is therefore breached immediately upon purchase.

51. In addition, the Limited Warranty is unconscionable as follows:
- a. In its limitation that the Limited Warranty only begins after a consumer has registered;
 - b. In its limitations on transfer of the Limited Warranty only between ownership of the original installation site only;

- c. In its limitation that the Systems remain connected to the Internet at all times;
- d. In its failure and refusal to extend the time limitation at the time a replacement Snap is installed;
- e. In its requirement for consumers to utilize Independent Authorized Service Dealers or certified installers when those authorized dealers and installers will refuse to service consumers' Systems.
- f. In its disclaimer of warranties; and
- g. In its limitation of remedies, including disclaimer of incidental and consequential damages.

52. The Limited Warranty is also unconscionable given Generac's knowledge of the Defect, the existence of the Defect at the point-of-sale, Generac's failure to disclose the Defect at the time of sale and during warranty communications, and in the premature failure of the System.

53. Any limitations on the Limited Warranty are also procedurally unconscionable. There was unequal bargaining power between Generac, on the one hand, and Plaintiffs and putative Class Members, on the other. The Systems are a substantial investment on the part of consumers, who otherwise have no ability to negotiate the price or terms of the Limited Warranty.

54. Any limitations on the Limited Warranty are also substantively unconscionable. Generac knew the Systems were defective and would continue to fail due to overheating. The Systems pose a safety risk to consumers because the Defect, that the Snaps overheat, melt, explode, and otherwise malfunction, causes the solar panel array within which the Snaps operate to cease production of electricity and, instead, to catch fire. Generac failed to disclose the Defect to Plaintiffs and putative Class Members. When consumers complain about System failure, Generac actively conceals the existence of the Defect and prevents consumers from discovering it. Thus, Generac's enforcement of any limit on these warranties is harsh and shocks the conscience.

55. On or about August 9, 2022, Power Home Solar d/b/a Pink Energy (individually and collectively hereafter, "PHS"), a Generac authorized dealer, indicated to consumers that it was committed to ensuring that the Systems it installed would operate safely and would provide replacement parts as quickly as it could. Generac intended that consumers who purchased the Systems through PHS were to receive all warranty-related repairs through PHS. However, consumers who purchased through PHS are left with little to no recourse because PHS is no longer operating.

56. Additionally, and as a result, Generac's other dealers are facing significant backlogs or are unwilling to provide service on PHS-installed Systems, or otherwise are unable to provide warranty service to the Generac's consumers.

57. Generac has actively concealed the existence and nature of the Defect from Plaintiffs and putative Class Members, despite its knowledge of the existence and pervasiveness

of the Defect, and certainly well before Plaintiffs and putative Class Members purchased the Systems and during warranty communications. Specifically, Generac has:

- a. Failed to disclose the Defect to consumers, at or after the time of purchase, including when consumers make warranty claims or otherwise complain to Generac about the Defect;
- b. Actively concealed the Defect from consumers, at or after the time of purchase, including when consumers make warranty claims, or otherwise complain to Generac about the Defect;
- c. Failed to disclose, and actively concealed the Defect from consumers, including that the Systems, specifically the Snaps, were not fit for their intended purpose;
- d. Failed to disclose and actively concealed the Defect from consumers when it provided them with replacement Snaps that contained the same or similar Defect;
- e. Failed to disclose and actively concealed the Defect from consumers when it provided them with firmware it knew would fail to remedy the Defect;
- f. Failed to disclose and actively concealed the Defect from consumers when it provided them with replacement Snaps, without remedying the actual Defect, and when it knew the Systems could fail again; and
- g. Failed to disclose and actively concealed the Defect from consumers when it announced the availability of the 802 Snap model as a performance-enhancing Snap without disclosing the Defect, making the 802 Snaps generally available to consumers to install in their Systems, and not actually remedying the Defect with the 802 Snap model.

58. As a direct, proximate, and foreseeable result of the Defect, Plaintiffs and putative Class Members suffered damages, including but not limited to: (a) the difference in value of the Systems as purchased and the Systems as received; (b) loss of use of the Systems; (c) cost to repair or replace the Systems, including labor and parts; (d) consequential damages; and (e) damage to property other than the Systems.

59. Plaintiffs and putative Class Members were in privity with Generac because Generac makes direct representations to consumers, who are the ultimate purchasers, about the qualities and attributes of the Systems – including the aforementioned advertising on Generac’s website about the supposed quality of its products. *See supra*, at ¶¶ 4 and 22. Consumers who install the Systems on their property must integrate pre-existing solar panel modules, must connect Internet to the Systems, and can operate their Systems through Generac’s phone application. In turn, Generac is able to monitor consumers’ Systems through the application or through the internet connection to the System.

60. Further, Generac issued warranties to Plaintiffs and putative Class Members as part of the sale of the Systems. For consumers with warranty claims, Generac represents that either it or one of its authorized service providers or certified installers will perform the repairs (*see supra*, at ¶ 28); otherwise, the Limited Warranty is null and void. Thus, the warranty was designed for and intended to benefit *only* the end consumers – here, Plaintiffs and putative Class Members.

61. In any event, privity is not required here because Plaintiffs and putative Class Members were (and are) intended third-party beneficiaries of the Systems. The retailers were not intended to be the ultimate consumers of the Systems and have no rights under the Limited Warranty provided to Plaintiffs and putative Class Members when they purchased the Systems.

PLAINTIFFS' FACTS

Plaintiff Baltimore's Facts

62. In or about November 2020, Ms. Baltimore was seeking to purchase a clean energy management system. She saw PHS advertisements for the System on Facebook and believed that a Generac System would be a premium energy system based upon its reputation. PHS came to her home and she subsequently entered into an agreement to purchase the System in November 6, 2020. She paid approximately \$83,160 for the parts and installation because she believed she was purchasing a premium energy system which, over time, would reduce her energy costs.

63. In selecting the System, Ms. Baltimore relied on Generac's representations in its written materials as well as the statements made by Generac's authorized retailer, PHS. She believed that she was purchasing a System of merchantable quality and that would work as intended and, specifically, that the System would lower her energy costs. As a reasonable consumer, she did not expect that defective Snaps would render the System useless.

64. Installation for Ms. Baltimore's System began in January 2021, but was not complete for approximately ten months. At all times, Ms. Baltimore exclusively used the System for its normal, intended, residential purposes. However, the System has not performed as expected and production has never occurred above minimal levels. As a result, Ms. Baltimore filed a complaint with the Attorney General.

65. After completion of installation, Ms. Baltimore was unable to receive permission to operate her System due to PV Link errors. After months of scheduling issues, PHS replaced the System's Snaps in or about Spring 2022.

66. After having the Snaps replaced, Ms. Baltimore experienced errors with her System yet again in or about Summer 2022. In or about August 2022, Ms. Baltimore had her Snaps replaced yet again, this time receiving the SnapRS802 Snaps. Yet, this did not cause her System to perform as expected, and she continues to experience errors and minimal System performance.

67. Because Generac unlawfully concealed the Defect from Ms. Baltimore before her purchase through the present, she did not suspect (and had no reason to suspect) that there was anything wrong with her System until it experienced errors and underperformed.

68. Ms. Baltimore's System has not operated properly for the expected useful life of the System. Had she known about the Defect, she would have either not purchased the System or would have paid less than she did. Therefore, she did not receive the benefit of her bargain.

Plaintiff Cothren's Facts

69. In or about October 2021, Mr. Cothren was seeking to purchase a clean energy management system. He conducted research to determine what system to buy and then made an appointment with PHS. PHS came to his home and he subsequently entered into an agreement to purchase the System in October 2021. He paid approximately \$57,000 for the parts and installation because he believed he was purchasing a premium energy system which, over time, would reduce his energy costs.

70. In selecting the System, Mr. Cothren relied on Generac's representations in its written materials as well as the statements made by Generac's authorized retailer, PHS. He believed that he was purchasing a System of merchantable quality and that would work as intended and, specifically, that the System would lower his energy costs. As a reasonable consumer, he did not expect that defective Snaps would render the System useless.

71. Installation for Mr. Cothren's System was finished on or about October 2021 but was not able to operate until Spring 2022. At all times, Mr. Cothren exclusively used the System for its normal, intended, residential purposes. However, the System has not performed as expected and production has decreased outside normal fluctuations.

72. In or about May 2022, Mr. Cothren's System started to experience errors due to his Snaps and, as a result, its performance decreased. But for the failure of his Snaps, Mr. Cothren's System would have performed as expected.

73. Mr. Cothren contacted PHS to repair her System, and Mr. Cothren's Snaps were replaced in August 2022. Shortly thereafter, he received an error code indicating that the replacement Snaps, the SnapRS802 Snaps, had failed.

74. Mr. Cothren contacted Generac, which said it would provide him a list of authorized retailers or installers that would be able to provide warranty service for his System. Yet, Generac never provided the list and he has been unable to receive the necessary service for his System. To date, Mr. Cothren continues to receive error codes and his System is at less than one-third of its productive capacity.

75. After he experienced underperformance of his System, Mr. Cothren conducted online research and discovered that numerous other consumers had reported the same or similar incidences of their Systems having errors and experiencing decreased performance.

76. Because Generac unlawfully concealed the Defect from Mr. Cothren before his purchase through the present, he did not suspect (and had no reason to suspect) that there was anything wrong with his System until it experienced errors and underperformed.

77. Mr. Cothren's System has not operated properly for the expected useful life of the System. Had he known about the Defect, he would have either not purchased the System or would have paid less than he did. Therefore, he did not receive the benefit of his bargain.

GENERAC'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE DEFECT

78. Generac knew or should have known when it sold the Systems to the public, and during warranty communications, that the Systems suffered from the Defect, and that the Defect caused the performance of the Systems to decrease and would present a safety risk, which might result in property damage.

79. Plaintiffs put Generac on notice of the Defect in their Systems when they sought installation of the RS802 Snap models, as described *supra*.

80. Generac's knowledge of the Defect is established through years of consumer and dealer complaints, some of which are publicly available on the Internet, and include uniform complaints about the Systems experiencing errors and decreased performance during normal, intended, residential use, as well as through warranty claims. The number of complaints and consistency of their descriptions either alerted or should have alerted Generac to the Defect.

81. Generac's knowledge of the Defect is established through complaints to the Better Business Bureau and Generac's resulting responses to those complaints.

82. Generac's knowledge of the Defect is established through its communications directly to consumers related to the Snaps.

83. Generac's knowledge of the Defect is established through its access to consumers' Systems via the Generac phone application and internet connection, whereby it can monitor each consumers' System functionality. Accordingly, Generac knew or should have known about the Defect as soon as it manifested.

84. The outgrowth of the consumer complaints and warranty claims were the various updates to the Snaps released by Generac. First, in or about August 2021, Generac released firmware updates in an effort to resolve the Defect. Then, in late 2021, Generac released the new RS801A Snap model to replace the RS801 Snaps, which were defective. Finally, in June 2022, Generac announced it would "honor" its Limited Warranty and released the RS802 Snap Model as a result of discussions it had with its retailers, namely PHS. However, despite its knowledge of the Defect, at no point did Generac reveal *why* it was releasing the new components, nor did it disclose that the Systems contained the Defect or cease its active concealment of the Defect from consumers.

85. Consumer complaints about the Defect are available on Generac's website. For example, LarryS describes a problem with "the Snaps"³⁶:

³⁶ PWRcell, Generac, <https://www.generac.com/pwrcell> (last visited Sept. 27, 2022).

★★★★☆ 3 / 5

My system was installed 1st week of December

February 25, 2022



Larry S

from Tallahassee State: FL - Florida Age: Over 65

Our system with battery backup, was installed through Sancity Solar the first week of December. (Contract was signed June 2021.)

However, it has never produced electricity. It appears that there is a problem with the Snaps.

But no one really knows as no one from Generic

nor Sancity Solar LLC has cared enough to check out system to ensure that is the problem. I asked about when warranty starts. Generic said for ME to determine if there is a part under warranty that has malfunctioned.

I do have 2 Generac portable generators: that I have had for years that always start when I needed them. Only had to replace a battery on the one with electric start.

Thus, I know that it makes great products. I just need my solar to start working.

Yes, I recommend this product.

Features

■■■■■■■■■■ 3 / 5

Appearance

■■■■■■■■■■ 5 / 5

Quality

■■■■■■■■■■ 3 / 5

Value for the Price

■■■■■■■■■■ 3 / 5

86. Similarly, on a public Facebook group dedicated to the “Generac PWRcell Systems, Battery Storage, Home Energy, Energy Storage,” there are hundreds of complaints about the Defect. For example, on or about March 27, 2022, a consumer posted the following:



Mark H White

I don't know on the lawsuit issue. But, my new system installed in Jan 2022 has one of 3 strings not producing . never has from day one. My dealer says it might be a snap rs or pv link. but won't come to check the system because they say they have no parts . Generac needs to be held accountable for warrantee issues for sure

26w Like Reply

However, consumer complaints did not end upon the release and installation of some RS802 Snap model for consumers. For example:



Richard Takacs

Sep 14 · 🌐

I have had a Generac system for a year and half. Nothing but problems. After 802s were installed thought problems were solved. Unfortunately, one bank broke on Jul 26. Installer claims it is not a 802 problem, but has failed to send a crew down for repairs. Alot of promising and maybe"next" week. Are all Generac sub contractors this unreliable? I think a law suit will be the only way to get results.

👍👎 7

8 comments

One consumer complained on or about September 20, 2022 that he had to have over 150 replacement Snaps installed, and his System still does not function properly:



Daniel Haak

My generac solar system has had component failure again and again. 56 panels 2 inverters and 3 cell battery. They have replaced 6 inverters. 3 of which exploded, over 150 snapRS connectors. A good number of which were burned all the way through and several pv links. My system is still having problems. Total ownership 25 months, time 100% operational 5%. Generac even had their own techs here for the last 2 sets of snap replacements. And still having issues. Some of it may be installers but the product is also terrible.

1w Like Reply

Recently, consumers have virtually lost all hope that Generac will be able to resolve the Defect. For example, on or about September 13, 2022, a consumer posted the following:



Steven Erat

First problem I had ended up being the 1st gen SnapRS units, which were replaced by installer/generac with the 2nd gen.

Second type of problem was the PVRSS Lockout Error on 1 of 4 strings (each string has 8 panels). Installer "fixed" that problem 4 times now. Each time they fixed it, the problem returned. Today was the 4th fix, so I'm waiting to see how long it holds. Effectively since operation began, there has been at least 1 string out of commission at any given time. That's a 25% reduction in power generation since the system was turned on.

I have little to no hope of Generac fixing this problem for the long-term.

Given the amount that consumers have paid for the Systems, it is clear that they do not believe they received the benefit of their bargain:



Aaron Rutledge



Sep 4 · 🌐

Are snaps are still busted and pink energy aka power home solar is putting it on generac. I'm a customer and it's disgusting what we and many people are going through. Thanks for a hunk of stuff



4

40 comments 1 share



Like



Comment



Share

87. The exemplar posts above represent only a fraction of the countless online complaints about the System on Facebook, which, in turn, are only a fraction of the total complaints posted on the Internet or made directly to Generac about the Defect. Indeed, some of the consumers who posted the complaints above indicate that they also contacted Generac.

88. Upon information and belief, Generac received complaints from authorized retailers and certified installers regarding the Defect, and specifically from PHS.

89. Upon information and belief, Generac filed a report with the Consumer Product Safety Commission (“CPSC”) regarding the Defect but did not issue a recall and continued to conceal the Defect from consumers.

90. Upon information and belief, Generac admits that the failure rate of the Snaps is at least 50%, thereby demonstrating that Generac knows or should know of the Defect.

91. Despite its knowledge about the Defect, Generac did not remedy or eliminate the Defect or remove the Systems from the stream of commerce. Nor did Generac contact consumers to disclose the Defect, even though Generac was aware of the Defect. Instead, Generac improperly denied warranty claims or replaced the defective Snaps with equally defective components, which did not remedy the Defect.

92. Generac has a duty to disclose the Defect and not to conceal the Defect from Plaintiffs and putative Class Members. Generac’s failure to disclose, or active concealment of, the serious safety Defect places Plaintiffs and putative Class Members at risk of personal injury and/or property damage.

93. Generac is currently still selling the Systems, concealing the Defect, failing to notify consumers of the Defect, and failing to recall the Systems.

94. Moreover, Generac continues to falsely represent through written warranties that the Systems are free from Defect, are of merchantable quality, and will perform dependably for years.

95. When corresponding with consumers, Generac does not disclose that the Systems suffer from the Defect. As a result, reasonable consumers, including Plaintiffs and putative Class Members, purchased and used – and continue to purchase and use – the Systems in their homes even though it is unsafe to do so.

96. When Generac replaces components, it fails to disclose the known Defect and it replaces the defective Snaps with equally defective Snaps, which do not remedy the Defect.

97. Had Plaintiffs and putative Class Members, and the consuming public, known that the Systems were defective, posed an unreasonable risk of harm to themselves and their property, and would cause damage, they would not have purchased them.

98. Generac has wrongfully placed on Plaintiffs and putative Class Members the burden, expense, and difficulty involved in discovering the Defect, repairing and replacing the Snaps (often multiple times), and paying for the cost of damages caused by the Defect.

99. Generac had notice of these claims due to its ability to monitor Plaintiffs and putative Class Members' Systems via their applications and connection to the internet. Furthermore, Plaintiffs need only provide notice to the seller, not the manufacturer, which upon information and belief each Plaintiff has and otherwise would be unable to do as a result of PHS being defunct. Notice, however, is futile as there is no non-defective replacement component to cure the Defect alleged herein.

100. Generac had notice and denied warranty claims for Plaintiffs. Plaintiff Cothren was unable to schedule service on his System because when he specifically requested it from Generac, Generac failed to provide any authorized dealers or installers from whom he could request service. Plaintiff Baltimore has received several iterations of replacement Snaps for her System and yet she has not received a non-defective replacement part to make her System operate as expected and warranted.

TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS

101. Generac had actual awareness for years that the Systems contain a Defect that causes the Snaps to fail.

102. Although Generac was aware of the Defect, it took no steps to warn Plaintiffs or putative Class Members of such Defect and the dangers it poses.

103. At least by 2021, if not earlier, Generac had received reports of Snaps failing due to the Defect.

104. Generac had reportedly attempted to resolve the Defect, first through firmware updates and then through new Snap models, without notifying consumers of the Defect or the risks associated with it.

105. To date, Generac has not issued a recall, warned consumers, or taken any other affirmative steps to correct the Defect. Nor has Generac taken steps to alert consumers about the Defect.

106. Despite its knowledge, Generac has fraudulently concealed the fact that the Systems were and are defective, even though it has a duty to disclose the Defect.

107. Generac made affirmative misrepresentations to consumers during the design, manufacture, supply, distribution, and/or sale of the Systems, including that the Systems were free from defects.

108. Generac made affirmative representations to Plaintiffs and putative Class Members during warranty claims and other correspondence with consumers lodging complaints, including that their problems with the Systems have been resolved. Such representations were made in an effort to persuade consumers to accept replacement parts, including replacement Snaps or firmware updates, as supposed remedies.

109. At all times, Generac concealed that the Systems and any remedial measures taken were defective.

110. Generac's concealment was material to Plaintiffs and putative Class Members' decisions to purchase the Systems. Generac's concealment was knowing, and Generac intended to mislead Plaintiffs and putative Class Members into relying upon it. Accordingly, Plaintiffs and putative Class Members relied upon Generac's concealment of these material facts and suffered injury as a proximate result of that justifiable reliance.

111. The uniform Defect in the design and/or manufacture in the Systems was not detectable to Plaintiffs or putative Class Members.

112. Generac actively and intentionally concealed the existence of the Defect and failed to inform Plaintiffs or putative Class Members of the existence of the Defect at all times, including when they contacted Generac about problems with their Systems. Accordingly, Plaintiffs and putative Class Members' lack of awareness was not attributable to lack of diligence on their part.

113. Generac's statements, words, and acts were made for the purpose of suppressing the truth that the Systems and replacements were defective.

114. Generac concealed the Defect for the purpose of delaying Plaintiffs and putative Class Members from bringing a lawsuit to recover their damages.

115. As a result of Generac's active concealment of the Defect and/or failure to inform Plaintiffs and putative Class Members of the Defect, any applicable statutes of limitations

otherwise applicable to the allegations herein have been tolled. Furthermore, Generac is estopped from relying on any statutes of limitations in light of its active concealment of the defective nature of the Systems.

116. Further, the causes of action alleged herein did not occur until Plaintiffs and putative Class Members' discovered that their Systems had the Defect. Plaintiffs and putative Class Members had no realistic ability to discern that the Systems were defective until they learned of the existence of the Defect. In either event, Plaintiffs and putative Class Members had no reason to discover their causes of action because of Generac's active concealment of the true nature of the Defect.

G.S. 1A-1, RULE 9(b) ALLEGATIONS
(Affirmative and By Omission)

117. Although Generac is in the best position to know what content is placed on its website and in marketing materials during the relevant timeframe, to the extent necessary, Plaintiffs and putative Class Members satisfy the requirements of Rule 9(b) by alleging the following facts with particularity:

118. **WHO:** Generac made material misrepresentations and/or omissions of fact through its website representations, warranties, owner's manuals, marketing, labeling, packaging statements and representations made by employees receiving warranty claims, which include statements such as that the Systems were not defective, were of high-quality, and were suitable for their purpose of safely and reliably managing electricity.

119. **WHAT:** Generac's conduct here was, and continues to be, fraudulent because it omitted and concealed that the Systems are (a) defective, in that the Snaps overheat, melt, explode, or otherwise malfunction which or substantially diminishes the performance of the Systems; (b) are not of high-quality; (c) could present a safety hazard when used as intended; and (d) could fail prior to the completion of their expected useful life. Generac's employees made affirmative representations to Plaintiffs and putative Class Members regarding the same qualities. Further, Generac's conduct deceived Plaintiffs and putative Class Members into believing that the Systems are not defective, are high-quality, are safe to use, and will last at least as long as the full duration of their expected useful life. Generac knew or should have known this information is material to reasonable consumers, including Plaintiffs and putative Class Members, in making their purchasing decisions, yet it omits any warning that the Systems suffer from the Defect.

120. **WHEN:** The material misrepresentations and/or omission detailed herein were made prior to and available at the time Plaintiffs and putative Class Members performed research on the Systems to gather information that would aid them in selecting the best energy system to purchase; prior to and at the time Plaintiffs and putative Class Members purchased the Systems; prior to and at the time Plaintiffs and putative Class Members made claims about the Defect; and continuously throughout the applicable Class period.

121. **WHERE:** Generac's material misrepresentations and/or omissions were made on its website(s), through marketing materials, in warranties, in user manuals, as well as through statements made by its employees.

122. **HOW:** Generac made misrepresentations and/or failed to disclose material facts regarding the true nature of the Systems as well as the safety risks of normal use of the Systems in written form, electronic form, or conventional hardcopy form, as well as verbally through statements made by its employees.

123. **WHY:** Generac made the material misrepresentations and/or omissions detailed herein for the express purpose of inducing Plaintiffs, putative Class Members, and all reasonable consumers to purchase and/or pay for the Systems, the effect of which was that Generac profited by selling the Systems to many thousands of consumers.

124. **INJURY:** Plaintiffs and putative Class Members purchased or paid more for the Systems when they otherwise would not have absent Generac's misrepresentations and/or omissions. Further, the Systems continue to pose unreasonable safety risks of personal injury and damage to property, and cause consumers to incur unnecessary and unreasonable out-of-pocket expenses when the Defect manifests.

CLASS ACTION ALLEGATIONS

125. Plaintiffs brings this action individually and as a representative of all those similarly situated, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, on behalf of themselves and the members of the following proposed class:

During the fullest period allowed by law, all persons who purchased the Generac PWRcell system in the State of North Carolina within the applicable statute of limitations, until the date notice is disseminated.

126. Specifically excluded from these definitions are: (1) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge's staff or immediate family; and (3) Class Counsel. Plaintiffs reserve the right to amend the Class definition as necessary.

127. **Numerosity:** The Members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class Members is presently unknown, it likely consists of hundreds of people in North Carolina in North Carolina. The number of Class Members can be determined by sales information and other records. Moreover, joinder of all potential Class Members is not practicable given their numbers and geographic diversity. The Class is readily identifiable from information and records in the possession of Defendant.

128. **Typicality:** The claims of the representative Plaintiffs are typical in that Plaintiffs, like all Class Members, were impacted by the Defect. Plaintiffs and putative Class Members purchased the Systems with the Defect, which pose a safety risk of personal injury and damage to

property. In addition, Generac's misconduct is common to all putative Class Members because Defendant has engaged in systematic deceptive and fraudulent behavior that was deliberate and results in the same injury to all Class Members.

129. **Commonality:** Common questions of law and fact exist as to all Members of the Class. These questions predominate over questions that may affect only individual Class Members because Defendant has acted on grounds generally applicable to the Class. Such common legal or factual questions include, *inter alia*:

- a. Whether the Systems are defective;
- b. Whether the Systems are defectively designed and/or manufactured;
- c. Whether Generac knew or reasonably should have known about the Defect prior to distributing the Systems to Plaintiffs and putative Class Members;
- d. Whether Generac concealed from and/or failed to disclose to Plaintiffs and putative Class Members the Defect in the Systems;
- e. Whether Generac knew or reasonably should have known about the Defect after distributing the Systems to Plaintiffs and putative Class Members;
- f. Whether Generac breached the implied warranty of merchantability;
- g. Whether Generac breached express warranties relating to the Systems;
- h. Whether Generac's Limited Warranty is unconscionable;
- i. Whether Generac should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Systems;
- j. Whether Plaintiffs and putative Class Members are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- k. Whether Plaintiffs and putative Class Members either paid a premium for the Systems that they would not have paid but for Generac's false representations or would not have purchased them at all;
- l. Whether Plaintiffs and putative Class Members are entitled to injunctive, declaratory, or other equitable relief; and
- m. Whether Generac engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Systems.

130. **Adequate Representation:** Plaintiffs will fairly and adequately protect the interests of putative Class Members. They have no interests antagonistic to those of putative Class Members. Plaintiffs retained attorneys experienced in the prosecution of class actions, including consumer products, and Plaintiffs intend to prosecute this action vigorously.

131. **Injunctive/Declaratory Relief:** The elements of Rule 23(b)(2) are met. Generac will continue to commit the unlawful practices alleged herein, and Plaintiffs and putative Class Members will continue to be deceived by Generac's misrepresentations and omissions and unknowingly be exposed to the risk of harm associated with the Defect in the Systems. Generac has acted and refused to act on grounds that apply generally to the Class, such that final injunctive relief, public injunctive relief, and corresponding declaratory relief are appropriate respecting the Class as a whole. Injunctive relief is necessary in this action.

132. **Predominance and Superiority:** Plaintiffs and putative Class Members have all suffered and will continue to suffer risk of harm and damages as a result of Generac's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. The likelihood that individual Class Members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. Serial adjudication in numerous venues is not efficient, timely, or proper. Judicial resources will be unnecessarily depleted by resolution of individual claims. Joinder on an individual basis of hundreds of claimants in one suit would be impractical or impossible. Individualized rulings and judgments could result in inconsistent relief for similarly situated Plaintiffs.

133. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

134. Generac has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class appropriate.

135. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs and allegations of this Class Action Complaint, including the factual allegations, tolling allegations, and class action allegations, as though fully set forth in each of the following Claims for Relief ("Counts") asserted on behalf of the Classes.

COUNT I
Breach of Implied Warranty
(On Behalf of Each Named Plaintiff and the Class)

136. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

137. Generac is a merchant and was at all relevant times involved in the manufacturing, distributing, warranting, and/or selling of the Systems.

138. The Systems are goods within the relevant laws and Generac knew or had reason to know of the specific use for which the Systems, as goods, were purchased.

139. The implied warranty of merchantability included with the sale of each System means that Generac warranted that the Systems would be fit for the ordinary purposes for which the Systems were used and sold, and were not otherwise injurious to consumers, that the Systems would pass without objection in the trade, be of fair and average quality, and conform to the promises and affirmations of fact made by Generac. This implied warranty of merchantability is part of the basis for the benefit of the bargain between Generac, and Plaintiffs and putative Class Members.

140. Generac breached the implied warranty of merchantability because the Systems are not fit for their ordinary purpose of safely and reliably managing electricity because, *inter alia*, the Systems contain the Defect, which ceases or decreases performance of the Systems. Therefore, the Systems are not fit for their particular purpose of safely and reliably managing electricity.

141. The problems associated with the Defect are safety risks such that the Systems do not provide safe reliable electricity management, and therefore, there is a breach of the implied warranty of merchantability.

142. Generac's warranty expressly applies to the original purchaser and any succeeding owner of the Systems on the original purchasing site, creating privity between Generac on the one hand, and Plaintiffs and putative Class Members on the other.

143. Nonetheless, privity is not required because Plaintiffs and putative Class Members are the intended beneficiaries of Generac's warranties and its sales through retailers. Generac's retailers were not intended to be the ultimate consumers of Systems and have no rights under the warranty agreements. Generac's warranties were designed for and intended to benefit the consumer only and Plaintiffs and putative Class Members were the intended beneficiaries.

144. More specifically, Generac's intention that its warranties apply to Plaintiffs and putative Class Members as third-party beneficiaries is evident from the statements contained in its product literature, including the Limited Warranty. Likewise, it was reasonably foreseeable that Plaintiffs and putative Class Members would be the intended beneficiaries of the Systems (as they are Systems intended, marketed, and sold for residential—and not retail—use) and warranties.

145. Generac impliedly warranted that the Systems were of merchantable quality and fit for such use. These implied warranties included, among other things: (i) a warranty that the Systems manufactured, supplied, distributed, and/or sold by Generac were safe to use; and (ii) a warranty that the Systems would be fit for their intended use while they were being used by consumers.

146. Contrary to the applicable implied warranties, the Systems, at the time of sale and thereafter, were not fit for their ordinary and intended purpose of providing Plaintiffs and putative Class Members with safe and reliable electricity management. Instead, the Systems suffered, and continue to suffer, from a design and/or manufacturing defect, as alleged herein.

147. Generac's failure to adequately repair or replace the defective Systems caused the warranty to fail in its essential purpose.

148. Generac breached the implied warranties because the Systems were sold with a design and/or manufacturing Defect, which substantially reduced or ceased the expected performance of the Systems and made them unsafe during ordinary, intended, residential use.

149. As a direct and proximate result of the foregoing, Plaintiffs and putative Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

150. Defendants had notice of Plaintiffs' claims due to its ability to monitor Plaintiffs and putative Class Members' Systems via their applications and connection to the internet. Furthermore, Plaintiffs need only provide notice to the seller, not the manufacturer, which upon information and belief each Plaintiff has and otherwise would be unable to do as a result of PHS being defunct. Any notice, however, is futile as there is no non-defective replacement component to cure the Defect alleged herein.

COUNT II
Breach of Express Warranty
(On Behalf of Each Named Plaintiff and the Class)

151. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

152. Plaintiffs and putative Class Members purchased the Systems from Defendant through its authorized retailers.

153. Generac is and was at all relevant times a "merchant" under U.C.C. § 2-313, and related State U.C.C. provisions.

154. In connection with its sale of the Systems, Generac, as the designer, manufacturer, marketer, distributor or seller, expressly warranted that the Systems were safe and reliable at managing electricity.

155. Generac's warranty representations consist of its pervasive marketing campaign, including the representations described herein that are made online and on its packaging.

156. The express written warranties covering the Systems were a material part of the bargain between Generac and consumers. At the time it made these express warranties, Generac knew reasonable consumers were purchasing the Systems because they believed the System to be as represented and marketed.

157. Each of the Systems has an identical or substantially identical product representation(s) as Generac represents that all its Systems safely and reliably manage electricity.

158. Generac breached its express warranties by selling Systems that were, in actuality, not safe and reliable at managing electricity as promised in the labeling and marketing. Generac breached the warranty because it sold the Systems with a design and/or manufacturing Defect, which was known to Generac and unknown to consumers at the time of sale. Generac further breached the warranty because it improperly and unlawfully denies valid warranty claims, and it has failed or refused to adequately repair or replace the Systems with units that are actually as represented.

159. Generac breached its express warranty to adequately repair or replace the Systems despite its knowledge of the Defect, and/or despite its knowledge of alternative formulations, designs, materials, and/or options for manufacturing the Systems.

160. Generac further breached its express written warranties to Plaintiffs and putative Class Members in that the Systems contain the Defect at the time they leave the manufacturing plant, and on the first day of purchase, and by failing to disclose and actively concealing this risk from consumers.

161. The Systems that Plaintiffs and putative Class Members purchased contained a Defect which makes them unable to safely and reliably manage electricity and cause, loss of the System, loss of use of the System, and loss of the benefit of their bargain. Generac's warranty expressly applies to the original purchaser and any succeeding owner of the Systems at the original site of the System for Systems purchased within the United States, creating privity between Generac on the one hand, and Plaintiffs and putative Class Members on the other.

162. Likewise, it was reasonably foreseeable that Plaintiffs and putative Class Members would be the intended beneficiaries of the Systems and warranties, creating privity or an exception to any privity requirement. Plaintiffs and putative Class Members are the intended beneficiaries of Generac's warranties and its sale through retailers. The retailers were not intended to be the ultimate consumers of the Systems and have no rights under the warranty agreements provided by Generac. Generac warranties were designed for and intended to benefit the consumer only and Plaintiffs and putative Class Members were the intended beneficiaries of the Systems as the Systems are intended, marketed, and sold for residential—and not retail—use.

163. Generac has been provided sufficient notice of its breaches of the express warranties associated with the Systems.

164. Upon information and belief, Generac received further notice and has been on notice of its breach of warranties through its sale of the Systems and of its breaches of warranties through customer warranty claims reporting problems with the Systems, consumer complaints at various sources, and its own internal and external testing.

165. As a direct and proximate result of Generac's breach of its express written warranties, Plaintiffs and putative Class Members suffered damages and did not receive the benefit of the bargain and are entitled to recover compensatory damages, including, but not limited to, the cost of inspection, repair, and diminution in value. Plaintiffs and putative Class Members suffered

damages at the point-of-sale stemming from their overpayment for the Systems, in addition to loss of the Systems and its intended benefits.

166. Each Plaintiff provided notice of their claims as of the date of this filing by way of this Class Action Complaint. Defendants had notice of Plaintiffs' claims due to its ability to monitor Plaintiffs and putative Class Members' Systems via their applications and connection to the internet. Furthermore, Plaintiffs need only provide notice to the seller, not the manufacturer, which upon information and belief each Plaintiff has and otherwise would be unable to do as a result of PHS being defunct. Any notice, however, is futile as there is no non-defective replacement component to cure the Defect alleged herein.

COUNT III
(IN THE ALTERNATIVE)
Breach of Contract/Breach of Common Law Warranty
(On behalf of Each Named Plaintiff and the Class)

167. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

168. To the extent Generac's commitment is deemed not to be a warranty under the Uniform Commercial Code or common law, Plaintiffs plead in the alternative under common law warranty and contract law.

169. Plaintiffs and putative Class Members purchased the Systems from Generac through authorized retailers.

170. Generac expressly warranted that the Systems were fit for their intended purpose of safely and reliably managing electricity and that they were free from defects.

171. Generac made the foregoing express representations and warranties to all consumers, which became the basis of the bargain between Plaintiffs and putative Class Members, and Generac.

172. Generac breached the warranties and/or contract obligations by placing the defective Systems into the stream of commerce and selling them to consumers, when it knew the Systems contained the Defect, were prone to premature failure, and did not safely and reliably manage electricity. These deficiencies substantially and/or completely impair the use and value of the Systems.

173. The deficiencies described existed when the Systems left Generac's possession or control and were sold to Plaintiffs and putative Class Members. The deficiencies and impairment of the use and value of the Systems were not discoverable by Plaintiffs and putative Class Members at the time of purchase of the Systems.

174. As a direct and proximate cause of Generac's breach of contract, Plaintiffs and putative Class Members were harmed because they would not have purchased the Systems if they knew the truth about the defective condition of the Systems.

COUNT IV
(IN THE ALTERNATIVE)
Negligent Misrepresentation
(On behalf of Each Named Plaintiff and the Class)

175. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

176. Plaintiffs must prove the following for a negligent misrepresentation claim: (1) a false statement of a material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement.

177. As a seller of the Systems and a merchant, Generac had a duty to give correct information to Plaintiffs and putative Class Members regarding the truth about whether the Systems contain a defect. Generac had sole possession and control of this information and had a duty to disclose it accurately to Plaintiffs and putative Class Members.

178. Generac represented that the Systems were safely and reliably able to manage electricity, when in reality, the Defect renders the System unable to do so. Generac knew, or should have known, that the Systems contained the Defect.

179. The information supplied by Generac—that the Systems are safely and reliably able to manage electricity—was known by Generac to be desired by Plaintiffs and putative Class Members to induce them to purchase the Systems. Generac knew that making these representations would induce customers to purchase its Systems over energy systems offered by competitors.

180. Plaintiffs and putative Class Members relied upon Generac's representations that the Systems were safely and reliably able to manage electricity when purchasing the Systems. Further, this reliance was, in fact, to their detriment because Plaintiffs and putative Class Members purchased the Systems containing the Defect.

181. Plaintiffs and putative Class Members are entitled to all relief the Court proper as a result of Generac's actions described herein.

COUNT V
Fraud
(On behalf of Each Named Plaintiff and the Class)

182. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

183. Generac knew or should have known that the Systems contained the Defect.

184. Generac provided Plaintiffs and putative Class Members with false or misleading material information and failed to disclose material facts about the true nature of the Systems, including the fact that they contained the Defect which rendered them incapable of safely and reliably managing electricity.

185. Generac had exclusive knowledge of the Defect at the time of sale and at all other relevant times. Neither Plaintiffs nor putative Class Members, in the exercise of reasonable diligence, could have independently discovered the Defect prior to purchase.

186. Generac had the capacity to, and did, deceive Plaintiffs and putative Class Members, into believing they were purchasing Systems free from defects.

187. Generac undertook active and ongoing steps to conceal the presence of the Defect in the Systems. Plaintiffs are not aware of anything in Generac's advertising, publicity, or marketing materials that disclosed the truth about the Systems, despite Generac's awareness of the Defect.

188. The facts concealed and/or not disclosed by Generac to Plaintiffs and putative Class Members are material facts in that a reasonable person would have considered them important in deciding whether to purchase (or pay the same price for) the Systems.

189. Generac intentionally concealed and/or failed to disclose material facts for the purpose of inducing Plaintiffs and putative Class Members to act thereon.

190. Plaintiffs and putative Class Members justifiably acted or relied upon the concealed and/or nondisclosed facts to their detriment, as evidenced by their purchase of the Systems.

191. Plaintiffs and putative Class Members suffered a loss of money in an amount to be proven at trial as a result of Generac's fraudulent concealment and nondisclosure because they would not have purchased the Systems, or would not have purchased the Systems for the price they did, if the true facts concerning the Systems had been known.

192. Plaintiffs and putative Class Members are entitled to all relief the Court proper as a result of Generac's actions described herein.

COUNT VI
(IN THE ALTERNATIVE)
Unjust Enrichment
(On Behalf of Each Named Plaintiff and the Class)

193. Plaintiffs hereby adopt and incorporate by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

194. This alternative claim is asserted on behalf of Plaintiffs and putative Class Members to the extent there is any determination that any contracts between putative Class Members and Generac do not govern the subject matter of the disputes with Generac, or that Plaintiffs do not have standing to assert any contractual claims against Generac.

195. Plaintiffs and putative Class Members conferred a monetary benefit on Generac, and Generac had knowledge of this benefit. The cost of the System is at least \$50,000.00.

196. By its wrongful acts and omissions described herein, including selling the defective System, Generac was unjustly enriched at the expense of Plaintiffs and putative Class Members.

197. Plaintiffs and putative Class Members' detriment and Generac's enrichment were related to and flowed from the wrongful conduct alleged in this Class Action Complaint.

198. It would be inequitable for Generac to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the defective Systems.

199. Plaintiffs and putative Class Members seek restitution from Generac and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Generac from their wrongful conduct and establishing a constructive trust from which Plaintiffs and putative Class Members may seek restitution.

COUNT VII

Violation of North Carolina's Unfair Trade Practices and Consumer Protection Laws

N.C. Gen. Stat. § 75-1.1, *et seq.*

(On Behalf of Each Named Plaintiff and the Class)

200. Plaintiffs hereby adopts and incorporates by reference the allegations contained in all preceding paragraphs as though fully set forth herein.

201. N.C. Gen. Stat. § 75-1.1 makes unlawful, "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

202. By designing, manufacturing, supplying, distributing, and/or selling the Systems throughout the State of North Carolina and making representations regarding the Systems, Generac has affected commerce and trade within the State. Generac engaged in unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, including:

- a. Having extensive knowledge of the defective nature of the Systems and failing to disclose to Plaintiffs and putative North Carolina Subclass Members;
- b. Representing the Systems as capable of safe and reliable management of electricity when they were not due to the Defect;

- c. Conveying a warranty with the sale of its Systems when it does not intend to honor the warranty by replacing the defective Systems with non-defective Systems;
- d. In failing to disclose to Plaintiffs and putative North Carolina Subclass Members that the Systems:
 - i. were defective;
 - ii. were not able to safely manage electricity;
 - iii. were not able to reliably manage electricity;
 - iv. would prematurely fail;
 - v. cannot be expected to fulfill their expected service life; and
 - vi. would pose a safety hazard to individuals and their property once the Defect manifests.

203. Generac's representations and omissions were material because they were likely to lead reasonable consumers to the belief that they were purchasing and using Systems which were free of defects; were safely and reliably capable of managing electricity; of high quality; would not prematurely fail; were not a safety hazard; and came with a warranty that Generac would honor.

204. Generac intended to mislead Plaintiffs and putative North Carolina Subclass Members and induce them to rely on its misrepresentations and omissions.

205. Generac acted intentionally, knowingly, and maliciously to violate North Carolina's Unfair Trade Practices and Consumer Protection Laws, and recklessly disregarded Plaintiffs and putative North Carolina Subclass Members' rights.

206. Generac knew of the defective nature of the Systems yet continued to sell and distribute the Systems.

207. Generac's acts and omissions possessed the tendency or capacity to mislead or create the likelihood of deception.

208. Generac knew or should have known that its Systems were defective, would fail prematurely, was not safely and reliably capable of managing electricity, and otherwise was not as warranted and represented by Generac.

209. Generac's conduct and omissions described herein repeatedly occurred in their trade or business and were capable of deceiving a substantial portion of the consuming public.

210. Generac's misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive and cause misunderstanding and/or in fact caused Plaintiffs and

putative North Carolina Subclass Members to be deceived about the Systems that would be backed by warranties of up to 25 years, and those warranties would in fact be honored by Generac.

211. Generac's unlawful conduct is continuing, with no indication that it will cease.

212. As a direct and proximate result of Generac's unfair, unlawful, and deceptive acts and practices, Plaintiffs and putative North Carolina Subclass Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including that the perpetration of further deception by Generac. Had they been aware of the Defect in the Systems, Plaintiffs and putative North Carolina Subclass Members either would have paid less for their Systems or would not have purchased them at all, or would have negotiated different terms of the warranty. Plaintiffs and putative North Carolina Subclass Members did not receive the benefit of their bargain as a result of Generac's misconduct.

213. Plaintiffs and putative North Carolina Subclass Members have been damaged in an amount in excess of \$25,000 and are entitled pursuant to N.C. Gen. Stat. § 75-16 to recover treble damages as well as attorneys' fees and costs. They seek all monetary and non-monetary relief allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court:

- A. Certify the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Appoint Plaintiffs as Class Representatives of the Classes;
- C. Appoint the undersigned counsel as Class Counsel;
- D. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the Classes in an amount to be determined at trial;
- E. Permanently enjoin Generac from engaging in the wrongful and unlawful conduct alleged herein;
- F. Award Plaintiffs and the Classes their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;
- G. Award Plaintiffs and the Classes pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and
- H. Award such further relief as the Court deems appropriate.

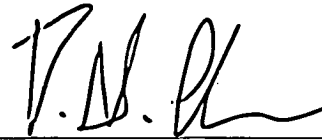
JURY DEMAND

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

Dated: March 21, 2023

Respectfully submitted,

By:



David G. Omer, NCSB # 49737
Omer Law Firm, PLLC
9131 Anson Way, Suite 205
Raleigh, North Carolina 27615
Phone: (919) 300-6070

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Newer Generac SnapRS 802 Switches Fail to Fix PWRcell Melting, Fire Issues, Class Action Says](#)
