

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

C.A. No. 2:18-cv-03160-DCN

Plaintiffs,

v.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

Defendants.

**NOTICE OF REMOVAL**

Defendants Plycem USA LLC, Elementia USA, Inc., Elementia S.A.B. de C.V. (“Defendants”),<sup>1</sup> by and through their undersigned counsel, hereby remove the state court action, captioned *Lowe v. Allura USA LLC, et al.*, No. 2018CP0801578, from the Berkeley County Court of Common Pleas, where it is now pending, to the United States District Court for the District of South Carolina, Charleston Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Defendants reserve any and all defenses, including, but not limited to, jurisdictional defenses and a defense that the claims at issue must be brought before an arbitrator.

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<sup>1</sup> The Complaint also lists two additional defendants: Allura USA LLC and Plycem USA, Inc. Neither defendant exists as an independent corporate entity. Allura is merely a trade name of Plycem USA LLC. Plycem USA, Inc. merged into Plycem USA LLC and no longer maintains any independent corporate existence. Accordingly, these non-existent entities are not properly named and should be stricken from the caption. Additionally, the caption misnames Elementia S.A.B. de C.V. as Elementia S.A. DE C.V.

## I. BACKGROUND

1. On August 20, 2018, Plaintiffs Dominic and Amanda Lowe (“Plaintiffs”) commenced a putative class action on behalf of themselves and all others similarly situated by filing a complaint (the “Complaint”) in the Berkeley County, South Carolina Court of Common Pleas. *See* Ex. A, State Ct. Docket.

2. This action is being removed within thirty days of the first instance of service on any Defendant. Plaintiffs served a copy of the Complaint on in-house counsel for Plycem USA LLC and Elementia USA, Inc. on October 22, 2018. *See* Ex. B, Compl. with Accepted Service. Plaintiffs also served Defendant Elementia USA, Inc. via certified mail on October 23, 2018 and Defendant Plycem USA LLC via registered agent on November 9, 2018. *See* Ex. C, Aff. of Service.

3. Plaintiffs assert claims on behalf of a putative class related to fiber cement siding manufactured by Defendant Plycem USA LLC, marketed under the name Allura (the “Siding”), and installed on their homes. Specifically, Plaintiffs allege that the Siding is “defective” and it has manifested problems such as “severe cracking.” Ex. D, Compl. ¶¶ 21, 33.

4. Plaintiffs further allege that the “severe cracking” requires “unexpected maintenance, repair, and replacement” and has “caused a diminution of the value of the homes.” Ex. D, Compl. ¶¶ 64, 65.

5. Plaintiffs claim that they must “expend thousands of dollars” as a result of the allegedly defective Siding. Ex. D, Compl. ¶ 71.

6. Plaintiffs assert these claims on behalf of themselves and “[a]ll persons and entities that own structures located within the State of South Carolina in which Defendants’ Siding is installed.” Ex. D, Compl. ¶ 72.

7. Defendants deny any and all liability for Plaintiffs' claims. The Siding is covered by a 50-year Limited Warranty that provides relief to homeowners in the event the Siding manifests a manufacturing defect. *See* Ex. E, Allura Limited Warranty.

## **II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

8. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) and § 1453(b) because it is filed within thirty (30) days of October 22, 2018, the date on which Defendants Plycem USA LLC and Elementia USA, Inc. were first served with the Complaint.

9. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint, Summons, Service of Process Transmittal, and all other process, pleadings, and orders served on Defendants in the State Court Action are attached hereto as Exhibits.<sup>2</sup> *See* Ex. A, State Ct. Docket; Ex. B, Compl. with Accepted Service; Ex. C, Aff. of Service; Ex. D, Compl.; Ex. F, Notice of Electronic Filing 9.6.18; Ex. G, Notice of Electronic Filing 9.20.18; Ex. H, Order of Protection; Ex. I, Notice of Electronic Filing for Aff. of Service.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1441(a) because the Berkeley County Court of Common Pleas is located within the geographic boundaries of the United States District Court for the District of South Carolina, Charleston Division. 28 U.S.C. § 121(1).

11. Pursuant to 28 U.S.C. § 1446(d), upon filing this Notice, Defendants will file a copy of this Notice with the clerk of the South Carolina State Court in which the action is currently pending. Defendants will also give written notice of this Notice to Plaintiffs.

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<sup>2</sup> Pursuant to 28 U.S.C. § 1446(a), the Defendants must only include copies of the state court pleadings, process, and orders served upon such defendant in such action. In this case, the Defendants have only been served the Complaint; however, copies of all available documents from the State Court Action are attached to this filing.

12. Defendants remove this matter on two grounds. First, removal is proper on diversity grounds pursuant to 28 U.S.C. § 1332(a). Second, jurisdiction also exists under 28 U.S.C. § 1332(d), as amended by the Class Action Fairness Act of 2005 (“CAFA”).

### **III. REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(a)**

13. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because the parties are citizens of different states and a citizen of a foreign state; and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

#### **A. There Is Complete Diversity of Citizenship Between Plaintiffs and Defendants**

14. Plaintiffs are individuals and citizens of the State of South Carolina. Ex. D, Compl. ¶ 2.

15. Defendant Elementia USA, Inc. is a Delaware corporation with its principal place of business in Houston, Texas. Accordingly, Elementia USA, Inc. is a citizen of both Texas and Delaware. *See* Ex. D, Compl. ¶ 6.

16. Defendant Plycem USA LLC is a Delaware company with its principal place of business in Houston, Texas. Plycem USA LLC is a single member limited liability company, with Elementia USA, Inc. as its only member. Accordingly, it is also a citizen of both Texas and Delaware. *See* Ex. D, Compl. ¶ 4.

17. Defendant Elementia, S.A.B. de C.V. is a Mexican corporation with its principal place of business in Mexico. Accordingly, Elementia, S.A.B. de C.V. is citizen of Mexico. *See* Ex. D, Compl. ¶ 7.

18. As explained above, neither Allura USA LLC nor Plycem USA, Inc. exist as independent corporate entities. As such, neither non-existent entity is relevant for purposes of

removal. *See Traber v. Bank of Am.*, No. 1:13-cv-00184-MR-DLH, 2014 U.S. Dist. LEXIS 29591, at \*4 (W.D.N.C. Mar. 7, 2014) (“As a non-existent entity, this defendant could not be properly joined or served in this case nor could it properly join or consent for removal.”)

**B. The Amount in Controversy Exceeds \$75,000**

19. Although the amount in controversy is not specified in the Complaint, it is apparent that the matter in controversy is in excess of \$75,000, exclusive of interest and costs. Plaintiffs seek actual and consequential damages and also punitive damages. Ex. D, Compl., Prayer for Relief, ¶ 1.

20. Specifically, Plaintiffs seek damages for the costs of repairing and replacing the Siding that they allege amounts to “thousands of dollars.” *See* Ex. D, Compl. ¶ 71. In addition to these repair costs, Plaintiffs seek damages for the diminution in value to their home, and punitive damages. *See* Ex. D, Compl. ¶ 136, Prayer for Relief, ¶ 1. When punitive damages are claimed, the Court should consider such damages for purposes of determining whether the amount in controversy is met. *See Meadows v. Nationwide Mut. Ins. Co.*, No. 1:14-cv-04531-JMC, 2015 U.S. Dist. LEXIS 71621, at \*5 (D.S.C. June 3, 2015).

21. While Defendants deny that Plaintiffs are entitled to any recovery whatsoever, the amount in controversy exceeds \$75,000 where Plaintiffs seek damages for repair costs, diminution in home value, and punitive damages. *See Mattison v. Wal-Mart Stores, Inc.*, No. 6:10-cv-01739-JMC, 2011 U.S. Dist. LEXIS 11634, at \*10 (D.S.C. Feb. 4, 2011) (noting that a plaintiff’s “request for punitive damages alone . . . makes it difficult for [plaintiff] to prove she could not possibly recover the jurisdictional limit were she to prevail”).

**IV. REMOVAL IS PROPER UNDER THE CLASS ACTION FAIRNESS ACT OF 2005**

22. This Court also has original jurisdiction over this action under 28 U.S.C. § 1332(d), as amended by the CAFA because: (1) any member of the class of Plaintiffs is a citizen of a state different from any Defendant; (2) the number of proposed class members is 100 or more; and (3) the amount in controversy exceeds \$5 million in the aggregate, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1332(d)(5)(B) and 1332(d)(6). This case meets all of these CAFA’s prerequisites, and no statutory exception to CAFA jurisdiction applies.

23. There is minimal diversity. Plaintiffs are South Carolina citizens and Defendants are citizens of Delaware and Texas.

24. The putative class contains at least 100 class members. Plaintiffs allege that the putative class consists of “a[t] least thousands of members.” Ex. D, Compl. ¶ 73. As such, CAFA’s requirement of class numerosity is satisfied.

25. Although the Complaint does not demand a precise amount, the allegations reveal that the matter in controversy exceeds \$5 million. The \$5 million jurisdictional minimum required to remove a complaint under CAFA may be based on an aggregation of the claims of all class members. 28 U.S.C. § 1332(d)(2). While Defendants deny that a class could be certified pursuant to Rule 23 and deny any and all liability in this action, taking the Plaintiffs’ allegations as true and accepting their damage theories for purposes of removal only, the matter in controversy, when aggregating the claims, exceeds \$5 million. Plaintiffs claim that repair costs alone are “thousands of dollars.” *See* Ex. D, Compl. ¶ 71. If the class consisted of even just 1,000 people (fewer than the “thousands” Plaintiffs allege), damages of only \$5,000 per class member would allow for federal court jurisdiction under the CAFA. On

top of the “thousands” in repair costs per class member, Plaintiffs also seek punitive damages. *See* Ex. D, Compl., Prayer for Relief, ¶ 1. Accordingly, jurisdiction in this court is proper.

WHEREFORE, Defendants Plycem USA LLC, Elementia USA, Inc., Elementia S.A.B. de C.V. hereby remove this action from the Berkeley County Court of Common Pleas, where it is now pending, to the United States District Court for the District of South Carolina.

Respectfully submitted,

s/ Edward D. Buckley, Jr.  
Edward D. Buckley, Jr. (Bar No. 994)  
YOUNG CLEMENT RIVERS, LLP  
25 Calhoun St., Suite 400  
Charleston, SC 29401  
(843) 724-6671  
*ebuckley@ycrlaw.com*

Dated: November 20, 2018

*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I, Nicholas J. Rivera, hereby certify that on November 20, 2018, a true and correct copy of the foregoing **Notice of Removal** was served via first-class mail upon the following:

Phillip W. Segui, Jr.  
Segui Law Firm PC  
864 Lowcountry Blvd., Ste. A  
Mount Pleasant, SC 29464

Amanda Morgan Blundy  
Blundy Law Firm, LLC  
295 Seven Farms Drive, Suite C-200  
Charleston, SC 29492

*Attorneys for Plaintiffs*

s/ Nicholas J. Rivera  
Nicholas J. Rivera (Bar No. 77186)  
YOUNG CLEMENT RIVERS, LLP  
25 Calhoun St., Suite 400  
Charleston, SC 29401  
(843) 724-6671  
*nrivera@ycrlaw.com*



## Exhibit A - State Court Docket



# Berkeley County 9th Judicial Circuit Public Index



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Switch View

<b>Dominic Lowe, On Behalf Of All Others Similarly Situated , plaintiff, et al VS Allura Usa, Llc , defendant, et al</b>					
<b>Case Number:</b>	2018CP0801578	<b>Court Agency:</b>	Common Pleas	<b>Filed Date:</b>	08/20/2018
<b>Case Type:</b>	Common Pleas	<b>Case Sub Type:</b>	Special-Comp/Oth 699	<b>File Type:</b>	Mediator - Jury
<b>Status:</b>	Pending/ADR	<b>Assigned Judge:</b>	Clerk Of Court C P, G S, And Family Court		
<b>Disposition:</b>		<b>Disposition Date:</b>		<b>Disposition Judge:</b>	
<b>Original Source Doc:</b>		<b>Original Case #:</b>			
<b>Judgment Number:</b>		<b>Court Roster:</b>			

<a href="#">Case Parties</a> <a href="#">Judgments</a> <a href="#">Tax Map Information</a> <a href="#">Associated Cases</a> <a href="#">Actions</a> <a href="#">Financials</a>						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Lowe, On Behalf Of All Others Similarly Situated, Dominic	ADR/Alternative Dispute Resolution (Workflow)	Action		03/18/2019-15:42		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	NEF(11-06-2018 12:55:32 PM) Service/Affidavit Of Service	Filing		11/06/2018-14:59		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	Service/Affidavit Of Service on Elementia USA, Inc	Filing		11/06/2018-12:55		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	Notice/Notice of Appearance	Filing		11/06/2018-12:55		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	NEF(09-20-2018 05:11:52 PM) Order/Protection from Court ...	Filing		09/20/2018-17:11		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	Order/Protection from Court Appearance	Order		09/20/2018-17:11		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	NEF(09-06-2018 02:17:55 PM) Notice/Notice of Appearance	Filing		09/06/2018-15:16		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	Notice/Notice of Appearance	Filing		09/06/2018-14:17		
Lowe, On Behalf Of All Others Similarly Situated, Dominic	Order/Order Cover Sheet \$25.00	Filing		09/06/2018-14:17		
Lowe, On Behalf Of All Others	Summons & Complaint	Filing		08/20/2018-15:40		

11/15/2018

Public Index Search

<b>Similarly Situated, Dominic</b>						
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## Exhibit B - Complaint with Accepted Service on 10.22.18

**SEGUI LAW FIRM PC**

864 Lowcountry Boulevard  
Suite A  
Mount Pleasant, SC 29464

T 843-884-1865

Phillip W. Segui, Jr.  
psegui@seguilawfirm.com

October 18, 2018

Via Process Server

Jessica Navascues, CEO of Allura USA LLC  
396 W. Greens Road, Suite 300  
Houston, Texas 77067

RE: Dominic Lowe and Amanda Lowe, and on Behalf of All Others Similarly Situated v. Allura USA LLC, et al.  
Case No: 2018-CP-08-1578

Dear Ms. Navascues:

Please be advised that we represent the homeowners who are the Plaintiffs in the above-referenced case. Accordingly, please find enclosed for service upon you, as CEO of Allura USA LLC, filed copies of the Civil Action Coversheet, Class Action Summons and Class Action Complaint in the above-referenced case.

As noted on the Class Action Summons, you must file an answer within thirty days of service of these documents. Accordingly, it is very important that you forward these documents to your attorney, as well as any general liability insurance companies (through their agents) with whom you have had general liability insurance from the date of the construction of the project until the current date as soon as possible.

Should you require any additional information regarding this matter, please feel free to contact us.

Sincerely,



Phillip W. Segui, Jr.

PWS/esm

Enclosure

cc: Amanda M. Blundy, Esquire (w/o enclosure - via electronic mail only)  
Harper T. Segui, Esquire (w/o enclosure - via electronic mail only)



- Medical (620)
- Out-of State Depositions (650)
- Other (799) \_\_\_\_\_
- X Other (699)
- Motion to Quash Subpoena in an Out-of-County Action (660)
- CONSTRUCTION DEFECTS**
- Sexual Predator (510)
- Pre-Suit Discovery (670)

**Submitting Party Signature:**  AUGUST 16, 2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

Civil Action No. \_\_\_\_\_

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

**CLASS ACTION SUMMONS  
(Re: Defective Products)  
(JURY TRIAL DEMANDED)**

Plaintiffs,

vs.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

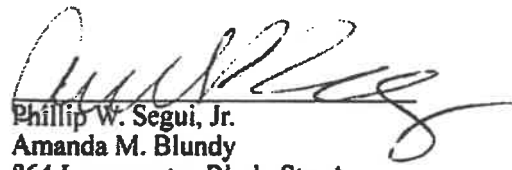
Defendants.)

FILED  
2018 AUG 20 PM 3:50  
MARY P. FERGUSON  
CLERK OF COURT  
BERKELEY COUNTY, SC

**TO THE DEFENDANTS ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at 864 Lowcountry Blvd., Ste. A, Mount Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEGUI LAW FIRM PC



Phillip W. Segui, Jr.  
Amanda M. Blundy  
864 Lowcountry Blvd., Ste. A  
Mount Pleasant, SC 29464  
(843) 884-1865  
psegui@seguilawfirm.com  
ablundy@seguilawfirm.com

Mount Pleasant, South Carolina  
August 16, 2018

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

Civil Action No. \_\_\_\_\_

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

**CLASS ACTION COMPLAINT**  
**(Re: Defective Products)**  
**(JURY TRIAL DEMANDED)**

Plaintiffs,

vs.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

Defendants.

2018 AUG 20 PM 3:50  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED  
[Handwritten signature]

The Plaintiffs, Dominic Lowe and Amanda Lowe, and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

**NATURE OF ACTION**

1. This is a class action asserting negligence/gross negligence, breach of express warranty, breach of implied warranties of merchantability and fitness for particular purpose, negligent misrepresentation, strict products liability and seeking damages in connection with defective fiber cement siding designed, manufactured, marketed, advertised, distributed, and sold by Defendants, Allura USA LLC, Plycem USA LLC d/b/a Allura, Plycem USA, Inc., Elementia USA, Inc. and Elementia, S.A. de C.V. (hereinafter referred to as "Defendants").

**THE PARTIES**

2. Plaintiffs Dominic Lowe and Amanda Lowe are natural persons and citizens of South Carolina. Plaintiffs own a home in Berkeley, South Carolina (Berkeley County), in which Defendants' fiber cement siding are installed.

3. Defendant Allura USA LLC, is a subsidiary of Plycem USA LLC and Plycem USA, Inc., with a principal place of business in the State of Texas, and at all times relevant herein, Allura USA LLC transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

4. Defendant Plycem USA LLC d/b/a Allura was and is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in the State of Texas, and all times relevant herein, Plycem USA LLC d/b/a Allura transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

5. Defendant Plycem USA Inc. was and is a corporation organized and existing under the laws of the State of Georgia, with a principal place of business in the State of Texas and all times relevant herein, Plycem USA Inc. transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

6. Defendant Elementia USA, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in the State of Texas, and all times relevant herein, Elementia USA, Inc. transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

7. Defendant Elementia, S.A. de C.V. was and is a corporation organized and existing under the laws of another country and at all times relevant herein, Elementia, S.A. de C.V. conducts and is engaged in business in the State of South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

8. At all times relevant herein, Elementia, S.A. de C.V., Elementia USA, Inc., Plycem USA LLC, Plycem USA Inc., and Allura USA LLC jointly transacted and conducted business in South Carolina. The Defendants are the agents and/or alter egos of each other, and the corporate interests of these Defendants were amalgamated so that they in effect operated as one and the same entity. Accordingly jurisdiction over the Defendants is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

9. Defendants used, commingled, and combined their resources to design, develop, manufacture, market, and sell the fiber cement siding at issue.

10. At all times relevant herein, the Defendants were actual and/or de facto joint venturers in the design, development, manufacture, marketing, and sales of the fiber cement siding at issue.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over the parties and subject matters hereto and that the allegations out of this action all involve fiber cement siding that was marketed, sold, supplied and distributed in South Carolina.

**FACTUAL ALLEGATIONS**

12. Defendants hold themselves out to both the construction industry and the public at large as being providers of superior, quality, and durable products, including the fiber cement siding that is the subject of this litigation.

13. At all times relevant herein, Defendants were engaged in the design, manufacturing, marketing, sale, supply and delivery of the fiber cement siding in the State of South Carolina.

14. At all times relevant herein, Defendants designed, manufactured, marketed, sold, supplied and distributed the fiber cement siding (“the Siding”).

15. In 2015, Plaintiffs contracted for the construction of a home with the property address of 512 Nelliefield Trail, Charleston, South Carolina. The Siding was used in the construction of the homes.

16. This lawsuit arises out of damages sustained by Plaintiffs and the Class that were proximately caused by Defendants’ defective Siding used in the construction of Plaintiffs’ and Class Members’ homes and other structures.

17. Defendants sold and distributed Siding throughout South Carolina for installation on homes, commercial buildings, and other structures. At all times material hereto, Defendants marketed and represented the Siding that “Allura won’t rot, warp, fade, burn or disappoint.

Allura Fiber Cement products are made with an advanced formula that resists damage from moisture, rot, hail and termite attacks. Best of all, Allura products are suitable in even the most extreme hot and cold climates and are non-combustible.”

18. Specifically, Defendants sold its Siding to Plaintiffs and members of the Class with a warranty that its Siding will be free from manufacturing defects for a period of fifty (50) years from the date of the purchase of the product.

19. The 50 Year Transferrable Limited Product Warranty (hereinafter referred to as “Warranty”) offered by the Defendants promised to the retail purchaser of the Siding, the owners of the property on which the Siding was installed, and the first transferee of the property on which the Siding was installed that Defendants will repair, replace or reimburse up to twice the original retail cost of the defective portion of the Siding should the Siding be defective.

20. The Siding was installed in Plaintiffs’ home during construction.

21. After moving into their home, Plaintiffs began experiencing problems with their Siding including severe cracking of the Siding.

22. As a result of the cracking of the Siding, water has or will intrude, leading to deterioration of the sheathing beneath the Siding, decreased life expectancy of the Siding, and degradation of the Siding and other building components.

23. Plaintiffs contacted the general contractor, Crescent Homes, who installed the Siding during construction, who made several visits to the site to investigate the Siding.

24. Crescent Homes contacted the Defendants regarding the cracking Siding.

25. Defendants' representatives have inspected several homes, including the class representatives' home, inspecting, evaluating, and obtaining samples of the cracked fiber cement Siding to perform tests at their laboratory.

26. Defendants' representatives performed a collection of samples from many residences in the Nelliefield Plantation subdivision in Charleston, South Carolina; often without notice. Defendants removed Siding from many homes and have yet to replace or repair the destructive testing that was performed.

27. Several cracked fiber cement boards were removed from Plaintiffs' home and destroyed by Defendants' representatives. The boards have not been replaced.

28. Defendants sent Warranty Claim Communication to many owners of residences with the Siding on May 15, 2018 and requesting a warranty claim be made by June 1, 2018. Furthermore, the Warranty Claim Communication stated Defendants would be collecting samples during the week of May 14, 2018.

29. Plaintiffs returned the Warranty Claims Form supplied by Defendants by June 1, 2018.

30. Responding to Plaintiffs' Warranty Claims Form, Defendants did not admit liability for the cracking of board, but stated the tests were inconclusive and that the boards installed prior to 2014 could be CertainTeed siding and those owners would be contacted about filing a claim with CertainTeed.

31. Plaintiffs continue to experience severe cracking and deterioration of the Siding and the terms of the Warranty were not completed by the Defendants.

32. As a result, Plaintiffs had no other alternative than to file suit.

33. The Siding is defective and fails to perform at Plaintiffs' residence and at Class Members' residences by cracking, allowing excess moisture into the structures and decreasing the ability to withstand weather events. These defects manifest and worsen over time, indicating degradation of the material.

34. Upon information and belief, these defects have manifested themselves uniformly in the Siding installed on the homes of Plaintiffs and Class Members.

35. The water intrusion and above-described damages resulting from the Siding constitutes "occurrences" resulting in "property damage" to property other than Defendants' "product" as those are terms commonly defined and used in the typical commercial general liability insurance policy.

36. The above-described defects are due to fundamental design, engineering and manufacturing errors, which should have been within Defendants' expertise.

37. Because the Siding cracks, prematurely degrades, otherwise fails and permits water intrusion, it violates the building codes and industry standards.

38. The above-described deficiencies exist at the time the Siding leaves the factory.

39. Failure of the Siding begins upon installation and continues during repeated and prolonged exposure to weather and ordinary use.

40. Defendants knew or should have known that the defects were present at the time the Siding left their control.

41. Defendants knew or should have known the potential for cracking, premature degradation and failure of their Siding, but failed to adequately correct the defective design or formulation that resulted in said damage.



42. Defendants knew or should have known the potential for cracking, premature degradation and failure of their Siding, but failed to adequately correct the defective manufacture and that resulted in said damage.

43. Defendants failed to warn purchasers, installers or users of the above-described risks of failures.

44. The purchase of Defendants' Siding includes a written express warranty, which forms part of the basis of the bargain between Defendants and the purchaser at the time of sale.

45. The Siding's express warranty also forms part of the basis of the bargain between the seller of the home and home buyers, including Plaintiffs and Class Members.

46. Defendants also expressly and implicitly represents in documents available to the public that their warranty is part of the product being sold and that the written warranties apply to the owners of the homes containing the Siding.

47. Defendants represent in their express warranty and documents available to the public that the Siding would be free from defective materials and workmanship for at least 10 years.

48. Plaintiffs and Class Members relied upon these representations when they purchased the structures containing the Siding.

49. Plaintiffs and Class Members reasonably expected and expect that the Siding would last longer than 4 years.

50. Defendants' representations, expressly and impliedly, through their website, and marketing materials that the Siding is suitable and free from defects, were intended to and likely

did affect the market by inducing builders, contractors, suppliers, and others to purchase the Siding.

51. Plaintiffs put the installer/supplier of the Siding and Defendants on notice of the defects and damages; and Defendants were also put on notice of defects and damages by the installer/supplier of the Siding.

52. Defendants and/or their representatives purportedly attempted to evaluate and test the defective Siding.

53. Defendants and/or their representatives failed to adequately remedy the defects and damages and Plaintiffs and Class Members have not received an adequate remedy since the submission of the Warranty Claim of June 1, 2018.

54. Defendants were put on notice of defects and resultant damages in the Siding by other homeowners in South Carolina and other states across the country.

55. Defendants' shipping of the Siding with actual or constructive knowledge of the defects, or with negligent or reckless disregard of the presence of defects constituted a breach of their express warranty, and makes the limitations of the express warranty unconscionable in all respects, and therefore void *ab initio*.

56. The published written warranties include the following limitations and exclusions:

- (a) The warranty is excludes the costs or expenses for labor or accessory materials.
- (b) The warranty requires homeowners, at their own expense, provide protection of all property that could be affected until the claimed defect is remedied;

- (e) The warranty disclaims all liability for any incidental, consequential, or special damages of any type, including limitation of any and all claims pertaining to property damage, breach of warranty, breach of contract, tort, or any other legal claim or theory.
- (d) The warranty also disclaims any warranties except the limited warranty of the Warranty.
- (e) The warranty states a Claimant Questionnaire must be completed, signed and returned to Defendants (along with photographic evidence requested in the Claimant Questionnaire) within sixty (60) after the date on which Defendants provided the Claimant Questionnaire to the Claimant; However, Defendants required Plaintiffs to return the information requested with the Claimant Questionnaire in less than fifteen (15) days.
- (f) The warranty purports to allow Defendants to inconsistently apply the warranty at their own discretion; and
- (g) In other such ways revealed during discovery, and/or otherwise determined at trial.

57. The warranty is not a negotiated contract and is so one-sided that no reasonable person would ever knowingly agree to its terms if properly disclosed.

58. Further, Defendants have failed to honor warranty claims by failing to respond to the homeowner and removing Siding from Plaintiffs' homes with no replacements, leaving areas of the homes exposed to additional damage.

59. The above described pattern and practice by Defendants have the effect of discouraging defect claims by Class Members or continuing to pursue remedies through the Defendants.

60. Moreover, during contact with Class Members, Defendants have stated they are having issues with cracking of the Siding in many communities.

61. As Defendants have known or should have known of their Siding' defects and have failed to timely honor their warranty, the warranty has failed of its essential purpose and the limitations therein are null and void, and the Plaintiffs and Class Members have otherwise not received the value for which they, their builders or contractors bargained for at the time the Siding was purchased or transferred to homeowners.

62. Given the early and severe cracking in the Siding that requires unexpected maintenance and premature repair and replacement, the Siding has not lived up to the Defendants' representations and warranties.

63. The defects in Defendants' Siding also make the Siding unfit for their intended use.

64. Given the cracking, premature degradation, and failure of the Siding, the Siding has a reduced life expectancy, and require unexpected maintenance, repair, and replacement by Plaintiffs and Class Members.

65. The Siding defects and resultant damages have caused a diminution of the value of the homes.

66. Defendants knew or should have known that the Siding did and do not satisfy industry standards.

67. Defendants knew or should have known that their Siding was defective in design and manufacture, not fit for their ordinary and intended use, not merchantable, and failed to perform in accordance with the advertisements, brochures, representations, marketing materials and warranties disseminated by Defendants.

68. Defendants' Siding failed to conform to the reasonable expectations of ordinary consumers such as Plaintiffs and Class Members.

69. Because the Siding cracks and allows for increased water absorption, water penetration, cause reduced life expectancy, decreased wind load capacity, and otherwise fail, the Siding is neither durable nor suitable for use as an exterior building product.

70. The above-described defective conditions of the Siding and resultant damages are present in Plaintiffs' home and are common among Class Members.

71. As a direct and proximate result of purchasing and installing Defendants' Siding, Plaintiffs and the Class Members have suffered damages, in that the Siding on their homes and other structures has and will continue to fail prematurely, resulting in damage to the Siding and underlying structures and requiring them to expend thousands of dollars to repair the damage associated with the incorporation of the Siding into their homes and other structures, or to prevent such damage from occurring.

#### **CLASS ACTION ALLEGATIONS**

72. Plaintiffs bring this action individually and as representatives of all those similarly situated pursuant to Rule 23, SCRPC, on behalf of the Class. The Class is defined as follows:

**All persons and entities that own structures located within the State of South Carolina in which Defendants' Siding is installed.**

**This class excludes:**

- (a) any Judge or Magistrate presiding over this action and members of their families;
- (b) any employees of Defendants;

- (c) any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants' and its legal representatives, assigns, and successors;
- (d) any person who has released Defendants or us currently in litigation with Defendants related to Defendants' Siding; and
- (e) all persons who properly execute and file a timely request for exclusion from the Class.

Plaintiffs propose that the Class be divided into subclasses if and as necessary to align class interests.

73. **Numerosity:** Members of the Class are so numerous that their individual joinder is impracticable. While the precise number is unknown at this time, upon information and belief, the proposed Class is comprised of a least thousands of members. The true number of Class Members is likely to be known by Defendants and may be ascertained through its books and records.

74. **Commonality:** The critical question of law and fact common to the Class that will materially advance the litigation is whether the Siding is inherently defective, contrary to the expectations imparted by Defendants through their warranties, representations and omissions.

75. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- (a) Whether the Siding is defective;
- (b) Whether the Siding is subject to cracking and is not suitable for use as an exterior siding product for the duration of time advertised, marketed and warranted;
- (c) Whether the Siding will continue to crack and degrade over time;

- (d) Whether Defendants were negligent in their design and manufacture of the Siding;
- (e) Whether Defendants knew or should have known about the defective condition of the Siding;
- (f) Whether Defendants concealed and/or failed to disclose the defective condition of the Siding to consumers;
- (g) Whether Defendants breached their express and implied warranties;
- (h) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees, and costs from Defendants;
- (i) Whether Defendants' conduct was negligent, reckless, willful, wanton, intentional, fraudulent or the like, entitling Plaintiffs to statutory or punitive damages from Defendants;
- (j) Whether Plaintiffs and the Class are entitled to compensatory damages and the amount of damages for the removal and replacement of the defective Siding; and
- (k) Whether Defendants' representations regarding suitability and exemplary nature of its Siding, and its omissions and concealment of facts to the contrary regarding the Siding defects constitute violations of the South Carolina's Unfair Trade Practices Act.

76. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective Siding and Defendants' conduct in concealing the defects in the Siding to owners, contractors, developers, and suppliers.

77. *Adequate Representation*: Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class given the Plaintiffs are members of the Class he and she also seek to represent. The Plaintiffs have

retained counsel experienced and competent in construction litigation, product liability, complex litigation and consumer class actions.

78. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and/or courts throughout South Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

79. Moreover, Plaintiffs envision no unusual difficulty in the management of this action as a class action and absent a class action, the vast majority of Class Members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims against Defendants and be made whole.

**ESTOPPEL FROM PLEADING WARRANTY LIMITATIONS AND DISCLAIMERS**

80. Defendants are also estopped from relying on any warranty limitation or disclaimer as a defense to Plaintiffs' and Class Members' claims.

81. By virtue of Defendants' acts, the Siding installed in Plaintiffs' and Class Members' residences has not lived up to Defendants' warranties and representations, and given



the defective condition of the Siding and the premature deterioration the Siding that requires unexpected maintenance, wear and/or replacement, the Siding has not proven to be of the value bargained for and/or of that compared to other siding.

82. Defendants knew or should have known that their Siding was defective in design and/or manufacture, and said Siding was not fit for their ordinary and intended use, was not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendants or with the reasonable expectations of ordinary consumers such as Plaintiffs and Class Members.

83. Accordingly, any warranty provided by Defendants fails its essential purpose because its purports to warrant that the Siding will be free from defects for a prescribed period of time when in fact said Siding falls far short of the applicable warranty period.

84. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed Siding, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available under Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

85. As a result, any time limitations, exclusions, or disclaimers which restrict the remedies encompassed within Defendants' warranties are unconscionable and unenforceable, and therefore, Defendants are estopped from relying on the same.

**FOR A FIRST CAUSE OF ACTION**  
**Negligence/Gross Negligence**

86. The above allegations are incorporated as fully as if stated verbatim herein.

87. At all times material hereto, Defendants designed and manufactured the Siding.

88. Defendants had a duty to Plaintiffs and Class Members to design and manufacture Siding that was free of latent defects that would cause the Siding to crack, prematurely degrade, and otherwise fail.

89. Defendants had a duty to Plaintiffs and Class Members to test the Siding to ensure adequate performance of the Siding for a reasonable period of use.

90. Defendants had a duty to Plaintiffs and Class Members to ensure that the Siding was suitable as an exterior product, either by testing or by verifying third-party test results.

91. Defendants had a duty to Plaintiffs and Class Members to ensure their Siding complied with industry standards.

92. Defendants had a duty to Plaintiffs and Class Members to forewarn purchasers, installers, and users regarding the known risk of product failures.

93. Defendants failed to exercise ordinary and reasonable care in the design and manufacture of the Siding.

94. The Plaintiffs and Class Members have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Defendants as above-described.

95. As Defendants' conduct was grossly negligent, reckless, willful, wanton, intentional, fraudulent, or the like, Plaintiffs and Class is entitled to an award of punitive damages against Defendants.

**FOR A SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty**

96. The above allegations are incorporated as fully as if stated verbatim herein.

97. Defendants are designers, manufacturers, and suppliers of the Siding, and for a number of years, marketed, warranted, distributed, and/or sold the Siding in South Carolina.

98. Defendants manufactured and sold their Siding to Plaintiffs, Class Members, and/or Plaintiffs' and Class Members' agents, and in so doing, impliedly warranted to them that the product was of merchantable quality and fit for its intended use.

99. Defendants' Siding was not of merchantable quality and not fit for intended use when they left the factory due to the defects in the Siding described herein.

100. The numerous and serious defects described herein make the Siding unfit and inappropriate for its intended use within structures.

101. The Siding is also unfit for their particular purpose. Defendants manufactured and distributed their Siding in climates with multiple seasons and geographic locations. Defendants knew, or should have known, that their Siding would be subjected to varying temperatures and weather conditions, including extreme heat and extreme cold, throughout each year. Due to the defects and resultant cracking, premature degradation, and other failures, the Siding are unfit for their particular purpose.

102. Despite having knowledge of the Siding defects, Defendants have failed to provide an adequate remedy.

103. As Defendants' express warranty (and warranty claims process thereunder) has been breached and/or is unconscionable and/or fails of its essential purpose, as described above, the limitations on implied warranties contained within the express warranty should be deemed null and void and of no effect or limitation.

104. As a result, Defendants breached their implied warranties to Plaintiffs and Class Members by producing, manufacturing, distributing and selling them a defective product that was unfit for its intended use and for a particular purpose.

105. Plaintiffs and Class Members suffered and will continue to suffer losses as alleged herein, in an amount to be determined at trial.

106. As a direct and proximate result of Defendants' breach of the implied warranty on the Siding, the Plaintiffs and Class Members have suffered actual and consequential damages.

**FOR A THIRD CAUSE OF ACTION**  
**Breach of Express Warranty**

107. The above allegations are incorporated as fully as if stated verbatim herein.

108. Defendants marketed and sold Siding into the stream of commerce with the intent that the Siding would be purchased by Plaintiffs and Class Members.

109. The representations and warranties made by Defendants in marketing and selling their Siding formed part of the basis of the bargain between Defendants and the purchasers of the Siding at the time of the sale.

110. Purchase agreements for the construction or sale of residences or structures, including the Warranty, contained provisions transferring or assigning the manufacturers' warranties. Such provisions are valid transfers and assignments, and the transferred and assigned warranties formed part of the basis of the bargain at the time the home was purchased.

111. The Defendants' Warranty certifies that they will replace or repair the Siding found to be defective for fifty (50) years.

112. Upon information and belief, all of Defendants' written warranties applicable to Class Members contain the same or similar provisions.

113. Through their written warranties, brochures, marketing materials, website, and other representations regarding the performance, durability, and quality of the Siding, Defendants created express warranties for the benefit of Plaintiffs and Class Members.

114. Thus, Defendants' express warranties and representations are applicable to the Siding installed in Plaintiffs' and Class Members' residences and/or structures.

115. Specifically, Defendants expressly warranted to Plaintiffs and Class Members that the Siding purchased by Plaintiffs and Class Members were free from defects in materials and workmanship that substantially impair their operation or performance and that they would last at least fifty (50) years.

116. However, Defendants' warranties fail their essential purpose because they purport to warrant that the Siding will be free from manufacturer defects for at least fifty (50) years when in fact the Siding fall far short of the applicable warranty period. To the contrary, due to the cracking in the Siding, Defendants' Siding began failing after only several years' or less of use.

117. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed Siding, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

118. Defendants have failed to pay in full and/or failed to respond to warranty claims.

119. Accordingly, the limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

120. As a result of Defendants' breaches of express warranties, Plaintiffs and Class Members have suffered actual damages in that they purchased homes, residences, buildings, and other structures containing defective Siding that has failed or are failing prematurely due to cracking and premature degradation. This failure has required or is requiring Plaintiffs and Class Members to incur significant expense in repairing or replacing their Siding. Replacement is required to prevent on-going and future damage to the underlying structures or interiors of Plaintiffs' and Class Members' residences.

121. Thus, as a direct and proximate result of Defendants' breach of the express warranty on the Siding, the Plaintiffs and Class Members have suffered actual and consequential damages.

**FOR A FOURTH CAUSE OF ACTION**  
**Negligent Misrepresentation**

122. The above allegations are incorporated as fully as if stated verbatim herein.

123. Defendants, through their marketing materials, website, brochures, product literature, warranties and agents, made representations to the Plaintiffs and Class Members, builders, suppliers and the public about the superior quality and durability of their Siding and components.

124. Defendants transmitted said representations to the Plaintiffs and Class Members, builders, suppliers and the public while failing to disclose the defective condition of their Siding, including the substantial leakage and consequential damages that would or could likely result from their Siding' defects.

125. Defendants have a pecuniary interest in making these representations and non-disclosures and had a duty to communicate truthful information to the Plaintiffs and Class Members, builders, suppliers and the public.

126. Defendants breached their duties by failing to exercise due care in making the above-described representations and non-disclosures and the Plaintiffs and Class Members, builders, suppliers and the public relied on these representations and non-disclosures.

127. The Plaintiffs and Class Members have suffered a pecuniary loss as a direct and proximate result of their reliance upon these representations and non-disclosures.

**FOR A FIFTH CAUSE OF ACTION**  
**Strict Liability**

128. The above allegations are incorporated as fully as if stated verbatim herein.

129. At all times relevant to this Complaint, Defendants were in the business of designing, manufacturing, marketing, distributing and/or selling Siding and had a statutory duty of care.

130. Defendants breached this duty because their Siding cracks and allows for increased water absorption, water penetration, cause reduced life expectancy, decreased wind load capacity, and otherwise failure, resulting in damage to the Siding and consequential damage to the structure into which the Siding is installed.

131. Defendants breached their duty because their Siding are defectively designed and manufactured and are unreasonably dangerous in that they crack, degrade, and otherwise fail, thereby causing damage to the Siding and consequential damage to the structure into which the Siding are installed.

132. Were the defects known at the time of design and manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing a product designed and manufactured in that manner.

133. Feasible alternatives existed to make the Siding safer for intended use at the time of design. Defendants were knowledgeable about the products and aware or should have been aware that feasible alternatives existed which would maintain the usefulness of the Siding and eliminate the harm.

134. The Siding reached the Plaintiffs and Class Members, and were intended to reach the Plaintiffs and Class Members, without substantial change in the condition in which they were sold.

135. Defendants are in violation of South Carolina Code §15-73-10, for having designed, manufactured, marketed, distributed, and sold the Siding, which was defective, to the Plaintiffs and Class Members.

136. As a direct, foreseeable, and proximate result of the sale of the defective Siding to Plaintiffs and Class Members, the Plaintiffs and Class Members have suffered significant physical damage to their properties, other contamination and deterioration, as well as diminution in the value of the properties.

137. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs pray that this Court will certify a class and for judgment against Defendants, for:

- 1) Plaintiffs' and Class Members' actual and consequential damages as found by the jury; statutory or punitive damages



against Defendants; reasonable attorneys' fees; costs of suit; and pre-judgment interest;

2) For such other and further relief at law or equity, both in general and special, as to which Plaintiffs and Class Members by this Complaint show themselves to be entitled.

SEGUI LAW FIRM PC



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ablundy@segulawfirm.com

Mount Pleasant, South Carolina  
August 16, 2018

Attorneys for Plaintiffs


Exhibit C - Affidavit of Service on Defendant Elementia USA, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	2018-CP-08-1578
	)	
DOMINIC LOWE AND AMANDA LOWE,	)	<b>AFFIDAVIT OF SERVICE ON</b>
AND ON BEHALF OF ALL OTHERS	)	<b>DEFENDANT ELEMENTIA USA, INC.</b>
SIMILARLY SITUATED,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
ALLURA USA, LLC, PLYCEM USA LLC	)	
D/B/A ALLURA, PLYCEM USA, INC.,	)	
ELEMENTIA USA, INC., ELEMENTIA,	)	
S.A. DE C.V.,	)	
	)	
<u>Defendants.</u> )	)	

I, Phillip W. Segui, Jr., Esquire, certify that filed copies of the Civil Action Cover Sheet, Class Action Summons and Class Action Complaint in the above-referenced case caption were served on the above-named Defendant Elementia USA, Inc. by certified mail on October 23, 2018, as evidenced on the attached Domestic Return Receipt..

FURTHER AFFIANT SAYETH NAUGHT.

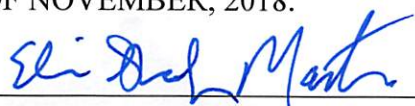
SEGUI LAW FIRM, PC




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Phillip W. Segui, Jr.  
 Bar No. 7029  
 Attorney for Plaintiffs  
 864 Lowcountry Blvd., Suite A.  
 Mount Pleasant, SC 29464  
 (843) 884-1865  
 Email: [psegui@seguilawfirm.com](mailto:psegui@seguilawfirm.com)

SWORN TO AND SUBSCRIBED  
 BEFORE ME THIS 6<sup>th</sup> DAY  
 OF NOVEMBER, 2018.




---

ELOISE SHEPHERD MARTIN  
 NOTARY PUBLIC FOR SOUTH CAROLINA  
 MY COMMISSION EXPIRES: October 15, 2019

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CORPORATE CREATIONS NETWORK  
 INC., AS REGISTERED AGENT FOR  
 ELEMENTIA USA, INC.  
 3411 SILVERSIDE ROAD, TATNALL  
 BUILDING SUITE 104  
 WILMINGTON, DE 19810-4809



9590 9402 3600 7305 6301 71

2. Article Number (Transfer from service label)

7016 0340 0000 9137 7277

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

B. Received by (Printed Name)

Agent

Addressee

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No



3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

Priority Mail Express®

Registered Mail™

Registered Mail Restricted Delivery

Return Receipt for Merchandise

Signature Confirmation™

Signature Confirmation Restricted Delivery

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## Exhibit D - Complaint

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

Civil Action No.  
~~2018-CP-08-1578~~

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

**CLASS ACTION SUMMONS  
(Re: Defective Products)  
(JURY TRIAL DEMANDED)**

Plaintiffs,

vs.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

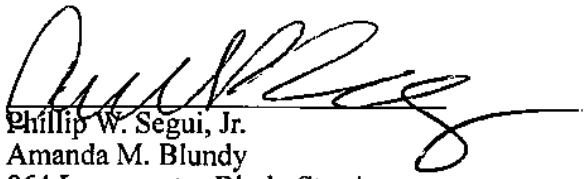
Defendants.

2018 AUG 20 PM 3:45  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.  
FILED  
HAR

**TO THE DEFENDANTS ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at 864 Lowcountry Blvd., Ste. A, Mount Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEGUI LAW FIRM PC



Phillip W. Segui, Jr.  
Amanda M. Blundy  
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ablundy@seguilawfirm.com

Mount Pleasant, South Carolina  
August 10, 2018

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

Civil Action No.

2018-CP-08-1578

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

CLASS ACTION COMPLAINT  
(Re: Defective Products)  
(JURY TRIAL DEMANDED)

Plaintiffs,

vs.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

Defendants.

2018 AUG 20 PH 3:44  
MARY P. SROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

*Handwritten signature*

The Plaintiffs, Dominic Lowe and Amanda Lowe, and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

**NATURE OF ACTION**

1. This is a class action asserting negligence/gross negligence, breach of express warranty, breach of implied warranties of merchantability and fitness for particular purpose, negligent misrepresentation, strict products liability and seeking damages in connection with defective fiber cement siding designed, manufactured, marketed, advertised, distributed, and sold by Defendants, Allura USA LLC, Plycem USA LLC d/b/a Allura, Plycem USA, Inc., Elementia USA, Inc. and Elementia, S.A. de C.V. (hereinafter referred to as "Defendants").

### **THE PARTIES**

2. Plaintiffs Dominic Lowe and Amanda Lowe are natural persons and citizens of South Carolina. Plaintiffs own a home in Berkeley, South Carolina (Berkeley County), in which Defendants' fiber cement siding are installed.

3. Defendant Allura USA LLC, is a subsidiary of Plycem USA LLC and Plycem USA, Inc., with a principal place of business in the State of Texas, and at all times relevant herein, Allura USA LLC transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

4. Defendant Plycem USA LLC d/b/a Allura was and is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in the State of Texas, and all times relevant herein, Plycem USA LLC d/b/a Allura transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

5. Defendant Plycem USA Inc. was and is a corporation organized and existing under the laws of the State of Georgia, with a principal place of business in the State of Texas and all times relevant herein, Plycem USA Inc. transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.



6. Defendant Elementia USA, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in the State of Texas, and all times relevant herein, Elementia USA, Inc. transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

7. Defendant Elementia, S.A. de C.V. was and is a corporation organized and existing under the laws of another country and at all times relevant herein, Elementia, S.A. de C.V. conducts and is engaged in business in the State of South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

8. At all times relevant herein, Elementia, S.A. de C.V., Elementia USA, Inc., Plycem USA LLC, Plycem USA Inc., and Allura USA LLC jointly transacted and conducted business in South Carolina. The Defendants are the agents and/or alter egos of each other, and the corporate interests of these Defendants were amalgamated so that they in effect operated as one and the same entity. Accordingly jurisdiction over the Defendants is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

9. Defendants used, commingled, and combined their resources to design, develop, manufacture, market, and sell the fiber cement siding at issue.

10. At all times relevant herein, the Defendants were actual and/or de facto joint venturers in the design, development, manufacture, marketing, and sales of the fiber cement siding at issue.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over the parties and subject matters hereto and that the allegations out of this action all involve fiber cement siding that was marketed, sold, supplied and distributed in South Carolina.

**FACTUAL ALLEGATIONS**

12. Defendants hold themselves out to both the construction industry and the public at large as being providers of superior, quality, and durable products, including the fiber cement siding that is the subject of this litigation.

13. At all times relevant herein, Defendants were engaged in the design, manufacturing, marketing, sale, supply and delivery of the fiber cement siding in the State of South Carolina.

14. At all times relevant herein, Defendants designed, manufactured, marketed, sold, supplied and distributed the fiber cement siding (“the Siding”).

15. In 2015, Plaintiffs contracted for the construction of a home with the property address of 512 Nelliefield Trail, Charleston, South Carolina. The Siding was used in the construction of the homes.

16. This lawsuit arises out of damages sustained by Plaintiffs and the Class that were proximately caused by Defendants’ defective Siding used in the construction of Plaintiffs’ and Class Members’ homes and other structures.

17. Defendants sold and distributed Siding throughout South Carolina for installation on homes, commercial buildings, and other structures. At all times material hereto, Defendants marketed and represented the Siding that “Allura won’t rot, warp, fade, burn or disappoint.

Allura Fiber Cement products are made with an advanced formula that resists damage from moisture, rot, hail and termite attacks. Best of all, Allura products are suitable in even the most extreme hot and cold climates and are non-combustible.”

18. Specifically, Defendants sold its Siding to Plaintiffs and members of the Class with a warranty that its Siding will be free from manufacturing defects for a period of fifty (50) years from the date of the purchase of the product.

19. The 50 Year Transferrable Limited Product Warranty (hereinafter referred to as “Warranty”) offered by the Defendants promised to the retail purchaser of the Siding, the owners of the property on which the Siding was installed, and the first transferee of the property on which the Siding was installed that Defendants will repair, replace or reimburse up to twice the original retail cost of the defective portion of the Siding should the Siding be defective.

20. The Siding was installed in Plaintiffs’ home during construction.

21. After moving into their home, Plaintiffs began experiencing problems with their Siding including severe cracking of the Siding.

22. As a result of the cracking of the Siding, water has or will intrude, leading to deterioration of the sheathing beneath the Siding, decreased life expectancy of the Siding, and degradation of the Siding and other building components.

23. Plaintiffs contacted the general contractor, Crescent Homes, who installed the Siding during construction, who made several visits to the site to investigate the Siding.

24. Crescent Homes contacted the Defendants regarding the cracking Siding.

25. Defendants' representatives have inspected several homes, including the class representatives' home, inspecting, evaluating, and obtaining samples of the cracked fiber cement Siding to perform tests at their laboratory.

26. Defendants' representatives performed a collection of samples from many residences in the Nelliefield Plantation subdivision in Charleston, South Carolina; often without notice. Defendants removed Siding from many homes and have yet to replace or repair the destructive testing that was performed.

27. Several cracked fiber cement boards were removed from Plaintiffs' home and destroyed by Defendants' representatives. The boards have not been replaced.

28. Defendants sent Warranty Claim Communication to many owners of residences with the Siding on May 15, 2018 and requesting a warranty claim be made by June 1, 2018. Furthermore, the Warranty Claim Communication stated Defendants would be collecting samples during the week of May 14, 2018.

29. Plaintiffs returned the Warranty Claims Form supplied by Defendants by June 1, 2018.

30. Responding to Plaintiffs' Warranty Claims Form, Defendants did not admit liability for the cracking of board, but stated the tests were inconclusive and that the boards installed prior to 2014 could be CertainTeed siding and those owners would be contacted about filing a claim with CertainTeed.

31. Plaintiffs continue to experience severe cracking and deterioration of the Siding and the terms of the Warranty were not completed by the Defendants.

32. As a result, Plaintiffs had no other alternative than to file suit.

33. The Siding is defective and fails to perform at Plaintiffs' residence and at Class Members' residences by cracking, allowing excess moisture into the structures and decreasing the ability to withstand weather events. These defects manifest and worsen over time, indicating degradation of the material.

34. Upon information and belief, these defects have manifested themselves uniformly in the Siding installed on the homes of Plaintiffs and Class Members.

35. The water intrusion and above-described damages resulting from the Siding constitutes "occurrences" resulting in "property damage" to property other than Defendants' "product" as those are terms commonly defined and used in the typical commercial general liability insurance policy.

36. The above-described defects are due to fundamental design, engineering and manufacturing errors, which should have been within Defendants' expertise.

37. Because the Siding cracks, prematurely degrades, otherwise fails and permits water intrusion, it violates the building codes and industry standards.

38. The above-described deficiencies exist at the time the Siding leaves the factory.

39. Failure of the Siding begins upon installation and continues during repeated and prolonged exposure to weather and ordinary use.

40. Defendants knew or should have known that the defects were present at the time the Siding left their control.

41. Defendants knew or should have known the potential for cracking, premature degradation and failure of their Siding, but failed to adequately correct the defective design or formulation that resulted in said damage.

42. Defendants knew or should have known the potential for cracking, premature degradation and failure of their Siding, but failed to adequately correct the defective manufacture and that resulted in said damage.

43. Defendants failed to warn purchasers, installers or users of the above-described risks of failures.

44. The purchase of Defendants' Siding includes a written express warranty, which forms part of the basis of the bargain between Defendants and the purchaser at the time of sale.

45. The Siding's express warranty also forms part of the basis of the bargain between the seller of the home and home buyers, including Plaintiffs and Class Members.

46. Defendants also expressly and implicitly represents in documents available to the public that their warranty is part of the product being sold and that the written warranties apply to the owners of the homes containing the Siding.

47. Defendants represent in their express warranty and documents available to the public that the Siding would be free from defective materials and workmanship for at least 10 years.

48. Plaintiffs and Class Members relied upon these representations when they purchased the structures containing the Siding.

49. Plaintiffs and Class Members reasonably expected and expect that the Siding would last longer than 4 years.

50. Defendants' representations, expressly and impliedly, through their website, and marketing materials that the Siding is suitable and free from defects, were intended to and likely

did affect the market by inducing builders, contractors, suppliers, and others to purchase the Siding.

51. Plaintiffs put the installer/supplier of the Siding and Defendants on notice of the defects and damages; and Defendants were also put on notice of defects and damages by the installer/supplier of the Siding.

52. Defendants and/or their representatives purportedly attempted to evaluate and test the defective Siding.

53. Defendants and/or their representatives failed to adequately remedy the defects and damages and Plaintiffs and Class Members have not received an adequate remedy since the submission of the Warranty Claim of June 1, 2018.

54. Defendants were put on notice of defects and resultant damages in the Siding by other homeowners in South Carolina and other states across the country.

55. Defendants' shipping of the Siding with actual or constructive knowledge of the defects, or with negligent or reckless disregard of the presence of defects constituted a breach of their express warranty, and makes the limitations of the express warranty unconscionable in all respects, and therefore void *ab initio*.

56. The published written warranties include the following limitations and exclusions:

- (a) The warranty is excludes the costs or expenses for labor or accessory materials.
- (b) The warranty requires homeowners, at their own expense, provide protection of all property that could be affected until the claimed defect is remedied;

- (e) The warranty disclaims all liability for any incidental, consequential, or special damages of any type, including limitation of any and all claims pertaining to property damage, breach of warranty, breach of contract, tort, or any other legal claim or theory.
- (d) The warranty also disclaims any warranties except the limited warranty of the Warranty.
- (e) The warranty states a Claimant Questionnaire must be completed, signed and returned to Defendants (along with photographic evidence requested in the Claimant Questionnaire) within sixty (60) after the date on which Defendants provided the Claimant Questionnaire to the Claimant; However, Defendants required Plaintiffs to return the information requested with the Claimant Questionnaire in less than fifteen (15) days.
- (f) The warranty purports to allow Defendants to inconsistently apply the warranty at their own discretion; and
- (g) In other such ways revealed during discovery, and/or otherwise determined at trial.

57. The warranty is not a negotiated contract and is so one-sided that no reasonable person would ever knowingly agree to its terms if properly disclosed.

58. Further, Defendants have failed to honor warranty claims by failing to respond to the homeowner and removing Siding from Plaintiffs' homes with no replacements, leaving areas of the homes exposed to additional damage.

59. The above described pattern and practice by Defendants have the effect of discouraging defect claims by Class Members or continuing to pursue remedies through the Defendants.

60. Moreover, during contact with Class Members, Defendants have stated they are having issues with cracking of the Siding in many communities.



61. As Defendants have known or should have known of their Siding' defects and have failed to timely honor their warranty, the warranty has failed of its essential purpose and the limitations therein are null and void, and the Plaintiffs and Class Members have otherwise not received the value for which they, their builders or contractors bargained for at the time the Siding was purchased or transferred to homeowners.

62. Given the early and severe cracking in the Siding that requires unexpected maintenance and premature repair and replacement, the Siding has not lived up to the Defendants' representations and warranties.

63. The defects in Defendants' Siding also make the Siding unfit for their intended use.

64. Given the cracking, premature degradation, and failure of the Siding, the Siding has a reduced life expectancy, and require unexpected maintenance, repair, and replacement by Plaintiffs and Class Members.

65. The Siding defects and resultant damages have caused a diminution of the value of the homes.

66. Defendants knew or should have known that the Siding did and do not satisfy industry standards.

67. Defendants knew or should have known that their Siding was defective in design and manufacture, not fit for their ordinary and intended use, not merchantable, and failed to perform in accordance with the advertisements, brochures, representations, marketing materials and warranties disseminated by Defendants.

68. Defendants' Siding failed to conform to the reasonable expectations of ordinary consumers such as Plaintiffs and Class Members.

69. Because the Siding cracks and allows for increased water absorption, water penetration, cause reduced life expectancy, decreased wind load capacity, and otherwise fail, the Siding is neither durable nor suitable for use as an exterior building product.

70. The above-described defective conditions of the Siding and resultant damages are present in Plaintiffs' home and are common among Class Members.

71. As a direct and proximate result of purchasing and installing Defendants' Siding, Plaintiffs and the Class Members have suffered damages, in that the Siding on their homes and other structures has and will continue to fail prematurely, resulting in damage to the Siding and underlying structures and requiring them to expend thousands of dollars to repair the damage associated with the incorporation of the Siding into their homes and other structures, or to prevent such damage from occurring.

### **CLASS ACTION ALLEGATIONS**

72. Plaintiffs bring this action individually and as representatives of all those similarly situated pursuant to Rule 23, SCRPC, on behalf of the Class. The Class is defined as follows:

All persons and entities that own structures located within the State of South Carolina in which Defendants' Siding is installed.

This class excludes:

- (a) any Judge or Magistrate presiding over this action and members of their families;
- (b) any employees of Defendants;

- (c) any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants' and its legal representatives, assigns, and successors;
- (d) any person who has released Defendants or us currently in litigation with Defendants related to Defendants' Siding; and
- (e) all persons who properly execute and file a timely request for exclusion from the Class.

Plaintiffs propose that the Class be divided into subclasses if and as necessary to align class interests.

73. *Numerosity*: Members of the Class are so numerous that their individual joinder is impracticable. While the precise number is unknown at this time, upon information and belief, the proposed Class is comprised of a least thousands of members. The true number of Class Members is likely to be known by Defendants and may be ascertained through its books and records.

74. *Commonality*: The critical question of law and fact common to the Class that will materially advance the litigation is whether the Siding is inherently defective, contrary to the expectations imparted by Defendants through their warranties, representations and omissions.

75. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following: .

- (a) Whether the Siding is defective;
- (b) Whether the Siding is subject to cracking and is not suitable for use as an exterior siding product for the duration of time advertised, marketed and warranted;
- (c) Whether the Siding will continue to crack and degrade over time;

- (d) Whether Defendants were negligent in their design and manufacture of the Siding;
- (e) Whether Defendants knew or should have known about the defective condition of the Siding;
- (f) Whether Defendants concealed and/or failed to disclose the defective condition of the Siding to consumers;
- (g) Whether Defendants breached their express and implied warranties;
- (h) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees, and costs from Defendants;
- (i) Whether Defendants' conduct was negligent, reckless, willful, wanton, intentional, fraudulent or the like, entitling Plaintiffs to statutory or punitive damages from Defendants;
- (j) Whether Plaintiffs and the Class are entitled to compensatory damages and the amount of damages for the removal and replacement of the defective Siding; and
- (k) Whether Defendants' representations regarding suitability and exemplary nature of its Siding, and its omissions and concealment of facts to the contrary regarding the Siding defects constitute violations of the South Carolina's Unfair Trade Practices Act.

76. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective Siding and Defendants' conduct in concealing the defects in the Siding to owners, contractors, developers, and suppliers.

77. *Adequate Representation*: Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class given the Plaintiffs are members of the Class he and she also seek to represent. The Plaintiffs have

retained counsel experienced and competent in construction litigation, product liability, complex litigation and consumer class actions.

78. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and/or courts throughout South Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

79. Moreover, Plaintiffs envision no unusual difficulty in the management of this action as a class action and absent a class action, the vast majority of Class Members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims against Defendants and be made whole.

#### **ESTOPPEL FROM PLEADING WARRANTY LIMITATIONS AND DISCLAIMERS**

80. Defendants are also estopped from relying on any warranty limitation or disclaimer as a defense to Plaintiffs' and Class Members' claims.

81. By virtue of Defendants' acts, the Siding installed in Plaintiffs' and Class Members' residences has not lived up to Defendants' warranties and representations, and given

the defective condition of the Siding and the premature deterioration the Siding that requires unexpected maintenance, wear and/or replacement, the Siding has not proven to be of the value bargained for and/or of that compared to other siding.

82. Defendants knew or should have known that their Siding was defective in design and/or manufacture, and said Siding was not fit for their ordinary and intended use, was not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendants or with the reasonable expectations of ordinary consumers such as Plaintiffs and Class Members.

83. Accordingly, any warranty provided by Defendants fails its essential purpose because its purports to warrant that the Siding will be free from defects for a prescribed period of time when in fact said Siding falls far short of the applicable warranty period.

84. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed Siding, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available under Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

85. As a result, any time limitations, exclusions, or disclaimers which restrict the remedies encompassed within Defendants' warranties are unconscionable and unenforceable, and therefore, Defendants are estopped from relying on the same.

**FOR A FIRST CAUSE OF ACTION**  
**Negligence/Gross Negligence**

86. The above allegations are incorporated as fully as if stated verbatim herein.

87. At all times material hereto, Defendants designed and manufactured the Siding.

88. Defendants had a duty to Plaintiffs and Class Members to design and manufacture Siding that was free of latent defects that would cause the Siding to crack, prematurely degrade, and otherwise fail.

89. Defendants had a duty to Plaintiffs and Class Members to test the Siding to ensure adequate performance of the Siding for a reasonable period of use.

90. Defendants had a duty to Plaintiffs and Class Members to ensure that the Siding was suitable as an exterior product, either by testing or by verifying third-party test results.

91. Defendants had a duty to Plaintiffs and Class Members to ensure their Siding complied with industry standards.

92. Defendants had a duty to Plaintiffs and Class Members to forewarn purchasers, installers, and users regarding the known risk of product failures.

93. Defendants failed to exercise ordinary and reasonable care in the design and manufacture of the Siding.

94. The Plaintiffs and Class Members have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Defendants as above-described.

95. As Defendants' conduct was grossly negligent, reckless, willful, wanton, intentional, fraudulent, or the like, Plaintiffs and Class is entitled to an award of punitive damages against Defendants.

**FOR A SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty**

96. The above allegations are incorporated as fully as if stated verbatim herein.

97. Defendants are designers, manufacturers, and suppliers of the Siding, and for a number of years, marketed, warranted, distributed, and/or sold the Siding in South Carolina.

98. Defendants manufactured and sold their Siding to Plaintiffs, Class Members, and/or Plaintiffs' and Class Members' agents, and in so doing, impliedly warranted to them that the product was of merchantable quality and fit for its intended use.

99. Defendants' Siding was not of merchantable quality and not fit for intended use when they left the factory due to the defects in the Siding described herein.

100. The numerous and serious defects described herein make the Siding unfit and inappropriate for its intended use within structures.

101. The Siding is also unfit for their particular purpose. Defendants manufactured and distributed their Siding in climates with multiple seasons and geographic locations. Defendants knew, or should have known, that their Siding would be subjected to varying temperatures and weather conditions, including extreme heat and extreme cold, throughout each year. Due to the defects and resultant cracking, premature degradation, and other failures, the Siding are unfit for their particular purpose.

102. Despite having knowledge of the Siding defects, Defendants have failed to provide an adequate remedy.

103. As Defendants' express warranty (and warranty claims process thereunder) has been breached and/or is unconscionable and/or fails of its essential purpose, as described above, the limitations on implied warranties contained within the express warranty should be deemed null and void and of no effect or limitation.



104. As a result, Defendants breached their implied warranties to Plaintiffs and Class Members by producing, manufacturing, distributing and selling them a defective product that was unfit for its intended use and for a particular purpose.

105. Plaintiffs and Class Members suffered and will continue to suffer losses as alleged herein, in an amount to be determined at trial.

106. As a direct and proximate result of Defendants' breach of the implied warranty on the Siding, the Plaintiffs and Class Members have suffered actual and consequential damages.

**FOR A THIRD CAUSE OF ACTION**  
**Breach of Express Warranty**

107. The above allegations are incorporated as fully as if stated verbatim herein.

108. Defendants marketed and sold Siding into the stream of commerce with the intent that the Siding would be purchased by Plaintiffs and Class Members.

109. The representations and warranties made by Defendants in marketing and selling their Siding formed part of the basis of the bargain between Defendants and the purchasers of the Siding at the time of the sale.

110. Purchase agreements for the construction or sale of residences or structures, including the Warranty, contained provisions transferring or assigning the manufacturers' warranties. Such provisions are valid transfers and assignments, and the transferred and assigned warranties formed part of the basis of the bargain at the time the home was purchased.

111. The Defendants' Warranty certifies that they will replace or repair the Siding found to be defective for fifty (50) years.

112. Upon information and belief, all of Defendants' written warranties applicable to Class Members contain the same or similar provisions.

113. Through their written warranties, brochures, marketing materials, website, and other representations regarding the performance, durability, and quality of the Siding, Defendants created express warranties for the benefit of Plaintiffs and Class Members.

114. Thus, Defendants' express warranties and representations are applicable to the Siding installed in Plaintiffs' and Class Members' residences and/or structures.

115. Specifically, Defendants expressly warranted to Plaintiffs and Class Members that the Siding purchased by Plaintiffs and Class Members were free from defects in materials and workmanship that substantially impair their operation or performance and that they would last at least fifty (50) years.

116. However, Defendants' warranties fail their essential purpose because they purport to warrant that the Siding will be free from manufacturer defects for at least fifty (50) years when in fact the Siding fall far short of the applicable warranty period. To the contrary, due to the cracking in the Siding, Defendants' Siding began failing after only several years' or less of use.

117. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed Siding, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

118. Defendants have failed to pay in full and/or failed to respond to warranty claims.

119. Accordingly, the limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

120. As a result of Defendants' breaches of express warranties, Plaintiffs and Class Members have suffered actual damages in that they purchased homes, residences, buildings, and other structures containing defective Siding that has failed or are failing prematurely due to cracking and premature degradation. This failure has required or is requiring Plaintiffs and Class Members to incur significant expense in repairing or replacing their Siding. Replacement is required to prevent on-going and future damage to the underlying structures or interiors of Plaintiffs' and Class Members' residences.

121. Thus, as a direct and proximate result of Defendants' breach of the express warranty on the Siding, the Plaintiffs and Class Members have suffered actual and consequential damages.

**FORA FOURTH CAUSE OF ACTION**  
**Negligent Misrepresentation**

122. The above allegations are incorporated as fully as if stated verbatim herein.

123. Defendants, through their marketing materials, website, brochures, product literature, warranties and agents, made representations to the Plaintiffs and Class Members, builders, suppliers and the public about the superior quality and durability of their Siding and components.

124. Defendants transmitted said representations to the Plaintiffs and Class Members, builders, suppliers and the public while failing to disclose the defective condition of their Siding, including the substantial leakage and consequential damages that would or could likely result from their Siding' defects.

125. Defendants have a pecuniary interest in making these representations and non-disclosures and had a duty to communicate truthful information to the Plaintiffs and Class Members, builders, suppliers and the public.

126. Defendants breached their duties by failing to exercise due care in making the above-described representations and non-disclosures and the Plaintiffs and Class Members, builders, suppliers and the public relied on these representations and non-disclosures.

127. The Plaintiffs and Class Members have suffered a pecuniary loss as a direct and proximate result of their reliance upon these representations and non-disclosures.

**FOR A FIFTH CAUSE OF ACTION**  
**Strict Liability**

128. The above allegations are incorporated as fully as if stated verbatim herein.

129. At all times relevant to this Complaint, Defendants were in the business of designing, manufacturing, marketing, distributing and/or selling Siding and had a statutory duty of care.

130. Defendants breached this duty because their Siding cracks and allows for increased water absorption, water penetration, cause reduced life expectancy, decreased wind load capacity, and otherwise failure, resulting in damage to the Siding and consequential damage to the structure into which the Siding is installed.

131. Defendants breached their duty because their Siding are defectively designed and manufactured and are unreasonably dangerous in that they crack, degrade, and otherwise fail, thereby causing damage to the Siding and consequential damage to the structure into which the Siding are installed.

132. Were the defects known at the time of design and manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing a product designed and manufactured in that manner.

133. Feasible alternatives existed to make the Siding safer for intended use at the time of design. Defendants were knowledgeable about the products and aware or should have been aware that feasible alternatives existed which would maintain the usefulness of the Siding and eliminate the harm.

134. The Siding reached the Plaintiffs and Class Members, and were intended to reach the Plaintiffs and Class Members, without substantial change in the condition in which they were sold.

135. Defendants are in violation of South Carolina Code §15-73-10, for having designed, manufactured, marketed, distributed, and sold the Siding, which was defective, to the Plaintiffs and Class Members.

136. As a direct, foreseeable, and proximate result of the sale of the defective Siding to Plaintiffs and Class Members, the Plaintiffs and Class Members have suffered significant physical damage to their properties, other contamination and deterioration, as well as diminution in the value of the properties.

137. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs pray that this Court will certify a class and for judgment against Defendants, for:

- 1) Plaintiffs' and Class Members' actual and consequential damages as found by the jury; statutory or punitive damages

against Defendants; reasonable attorneys' fees; costs of suit; and prejudgment interest;

2) For such other and further relief at law or equity, both in general and special, as to which Plaintiffs and Class Members by this Complaint show themselves to be entitled.

SEGUI LAW FIRM PC



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Mount Pleasant, South Carolina  
August 16, 2018

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August 16, 2018

Mary P. Brown  
Clerk of Court  
Berkeley County Court of Common Pleas  
P.O. Box 219  
Moncks Corner, SC 29461

RE: Dominic Lowe and Amanda Lowe, and On Behalf of All Others Similarly Situated v. Allura USA, LLC, Plycem USA LLC d/b/a Allura, Plycem USA, Inc. Elementia USA, Inc. and Elementia, S.A. de C.V.,  
Case No: 2018-CP-\_\_\_\_ - \_\_\_\_\_

Dear Ms. Brown:

Please find enclosed the original and one copy each of the Civil Action Coversheet, Summons and Complaint, as well as a check in the amount of \$150.00, for the above referenced matter. If you would, please file the originals and return the clocked copies to me in the self-addressed, stamped envelope enclosed.

Your assistance in this matter is greatly appreciated. Should you require any additional information regarding this matter, please feel free to contact me.

Sincerely,



Amanda M. Blundy

AMB/jl  
Enclosures

STATE OF SOUTH CAROLINA )

COUNTY OF BERKELEY )

DOMINIC LOWE AND AMANDA LOWE, AND )  
ON BEHALF OF ALL OTHERS SIMILARLY )  
SITUATED, )

Plaintiffs )

vs. )

ALLURA USA LLC, ET AL., )

Defendants )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP - 08 - 1578

Submitted By: Amanda M. Blundy, Esquire  
Address: 864 Lowcountry Blvd., Suite A,  
Mt. Pleasant, SC 29464

SC Bar #: 73069  
Telephone #: (843) 884-1865  
Fax #:  
Other:  
E-mail: ablundy@seguilawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |   |  |  |
|---|---|--|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199) _____</li> </ul> <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599) _____</li> </ul> <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20__-NI-_____-_____-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299) _____</li> </ul> <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture—Consent Order (850)</li> <li><input type="checkbox"/> Other (899) _____</li> </ul> | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Label (380)</li> <li><input type="checkbox"/> Other (399) _____</li> </ul> <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement</li> </ul> | <p><b>Real-Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499) _____</li> </ul> <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
|---|---|--|--|

2018 AUG 20 PM 3:14  
 MAILED  
 CLERK OF COURT  
 BERKELEY COUNTY  
 FILED

A.M.B.  
150.00



- Medical (620)
- Out-of State Depositions (650)
- Other (799) \_\_\_\_\_
- X **Other (699)**  
**CONSTRUCTION**  
**DEFECTS**
- Motion to Quash Subpoena in an Out-of-County Action (660)
- Sexual Predator (510)
- Pre-Suit Discovery (670)

**Submitting Party Signature:**  AUGUST 16, 2018

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**Effective January 1, 2016,** Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

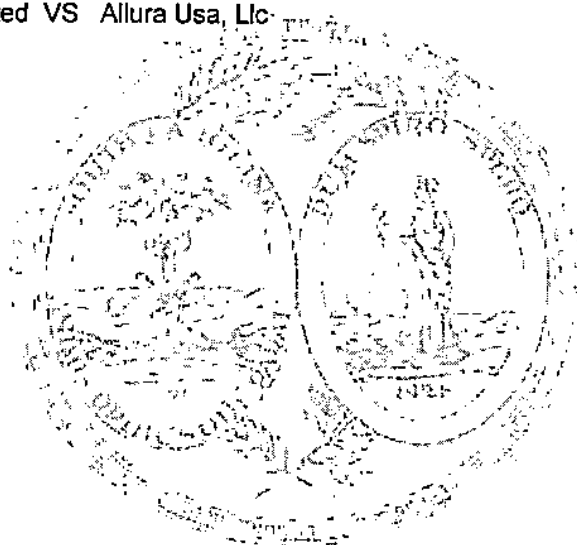
**Common Pleas**

**Clerk : Mary P. Brown**  
**300 B California Avenue**  
**Moncks Corner, SC 29461**  
**Phone:(843) 719-4400 Fax:(843) 719-4509**

Received From:	Blundy, Amanda Morgan 864 Lowcountry Blvd Mount Pleasant, SC 29464	Date: 8/20/2018 Receipt #: 6082136 Clerk: c08thill
Paying for:	Lowe, On Behalf Of All Others Sii	
Transaction Type:	Payment	Reference #: 05612
Payment Type:	Check \$150.00	Comment: Non-Refundable
Total Paid:	\$150.00	

Total Received:           \$150.00           You may check the status of your Berkeley case at:  
 Change Due:           \$0.00           <http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2018CP0801578	Dominic Lowe, On Behalf Of All Others Similarly Situated VS Allura Usa, Llc	\$150.00	\$150.00	\$0.00	699



<b>Total Cases: 1</b>	<b>\$150.00</b>	<b>\$150.00</b>	<b>\$0.00</b>
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## Exhibit E - Allura Limited Warranty



*50 Year Transferable Limited Product Warranty*

WARRANTY COVERAGE. ALLURA, (“ALLURA”) warrants, for a period of fifty (50) years (the “Limited Warranty Period”) from the date of purchase of ALLURA’s Fiber Cement Siding Products (collectively, herein called “the Product”), for installation within the Continental U.S., the District of Columbia, and Canada, that such purchased Product complies with ASTM C1186, and that, if used for its intended purpose and properly installed and maintained according to ALLURA’s published installation instructions: (a) will resist damage caused by hail or termite attacks, (b) will resist rot, (c) will remain non-combustible, and (d) will be free from manufacturing defects in material and workmanship. This Limited Warranty extends only to: (i) the original retail purchaser of the Product, (ii) the first subsequent owner of the property on which the Product is installed, and (iii) the first transferee (each a “Covered Person”).

2. ALLURA’S OBLIGATIONS. If, during the Limited Warranty Period, the Product is defective in material or workmanship, ALLURA will, in its sole and reasonable discretion, **either**: (i) repair **or** replace the defective portion of the Product, **or** (ii) (a) during the first (1st) through the thirty-fifth (35<sup>th</sup>) year from the date of Product installation, reimburse the Covered Person for up to twice the original retail cost of the defective portion of the Product (no labor or other charges shall be paid), **or** (b) during the thirty-sixth (36<sup>th</sup>) through the fiftieth (50<sup>th</sup>) year from the date of installation, reimburse the Covered Person an amount equal to the cost of similar replacement product for the defective portion of the Product (no labor or other charges shall be paid) less an annual pro rata reduction of 6.67% per year (36<sup>th</sup> year, 6.67%; 37<sup>th</sup> year, 13.34%, etc.) such that from and

after the fiftieth (50) year the amount payable under this Limited Warranty shall be zero. If the Covered Person to the reasonable satisfaction of ALLURA cannot establish the original retail cost of the defective portion of the Product, the retail cost of the defective portion of the Product shall be determined by ALLURA in its sole and reasonable discretion. ALLURA’s repair or replacement of the defective portion of the Product, or reimbursement to a Covered Person, pursuant to this Section 2 of this Limited Warranty is and shall be the sole and exclusive remedy of a Covered Person for any and all defects in material or workmanship. ALLURA WILL NOT REIMBURSE OR PAY ANY COSTS IN CONNECTION WITH LABOR OR ACCESSORY MATERIALS.

3. CONDITIONS PRECEDENT. Warranty coverage under this Limited Warranty is and shall be subject to the following terms and conditions:

(a) A Covered Person must provide written notice to ALLURA within thirty (30) days after discovery of any claimed defect covered by this Limited Warranty and before beginning any permanent repair. The notice must include: (a) the name, phone number and address of the owner of the property on which the Product was installed, (b) the address of the property on which the Product was installed, (c) The name of the Product or a detailed description, and the date on which the Product was installed, (d) The date when the claimant discovered the problem, (e) A brief description of the problem, and (f) A brief description of actions taken by the Covered Person (if any were taken) to prevent further defect, damage or failure to the Product and to the Covered Person’s property.

(b) Shortly after receiving written notice of a claimed defect covered by this Limited Warranty, ALLURA will provide the claimant with a Claimant



50 Year Transferable Limited Product Warranty

Questionnaire to fill out. This Claimant Questionnaire must be completed, signed and returned by the claimant to ALLURA (along with the photographic or other physical evidence requested in the Claimant Questionnaire) within sixty (60) days after the date on which ALLURA provided the Claimant Questionnaire to the claimant. A claimant under this Limited Warranty must provide satisfactory proof to ALLURA that such claimant is a Covered Person as defined in Section 1 above.

(c) The Product must be installed according to ALLURA's printed installation requirements and must comply with all applicable building codes adopted by applicable federal, state and/or local governmental authorities.

(d) Upon discovery of a claimed defect, a Covered Person must immediately, and at a Covered Person's own expense, provide for protection of all property that could be affected until the claimed defect is remedied, if applicable. Before any permanent repair to the Product, a Covered Person must allow ALLURA or ALLURA's authorized agent to enter the property and structure where the Product is installed, if applicable, and examine, photograph and take samples of the Product. Any repairs initiated by or on behalf of a Covered person without prior authorization from ALLURA could possibly void the Product's Limited Warranty.

4. EXCLUSIONS FROM COVERAGE. This Limited Warranty does not cover damage or defects resulting from or in any way pertaining or attributable to: (a) The improper storage, shipping, handling or installation of the Product, including, without limitation, the failure of the Product to be installed in strict compliance with the Conditions Precedent set forth in Section 3 of this Limited Warranty and/or improper installation of studs, trim, framing

members, wall assemblies or other accessories; (b) Further processing, modification or alteration of the Product after shipping from ALLURA; (c) Neglect, abuse, or misuse; (d) Product repair or alteration; (e) Settlement or structural movement and/or movement of materials to which the Product is attached; (f) Damage from incorrect design of the structure to which the Product is attached; (g) Exceeding the maximum designed wind loads; (h) Acts of God including without limitation riots, civil insurrections, wars, tornados, hurricanes, floods, earthquakes, severe weather or other natural phenomena, (including without limitation unusual weather or climate conditions); (i) Efflorescence, (j) Peeling or performance of any third party paints, stains and/or coatings; (k) Growth of mold, mildew, fungi, bacteria, or any organism on any surface of the Product (whether on the exposed or unexposed surfaces); (l) Lack of proper storage, handling, shipping or maintenance; or (m) Any cause whatsoever other than defects in material and workmanship attributable to ALLURA.

5. SETTLEMENT OF A CLAIM. Any Product replacements or reimbursements made by ALLURA pursuant to Section 2, above, shall be deemed a full settlement and release of any claims arising hereunder and shall be a complete bar to any claims in any arbitration or litigation related to or arising from any Product so replaced or for which a reimbursement has been made. By accepting Product replacement or a reimbursement hereunder, the Covered Person so accepting irrevocably waives any further claim pertaining in any manner whatsoever to the Product so replaced or for which a reimbursement has been made.

6. LIABILITY LIMITATION.



50 Year Transferable Limited Product Warranty

**NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY ELSEWHERE IN THIS LIMITED WARRANTY, ALLURA SHALL IN NO WAY BE RESPONSIBLE OR LIABLE IN ANY MANNER WHATSOEVER FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY TYPE, NATURE OR CHARACTER WHATSOEVER, INCLUDING**

**WITHOUT LIMITATION ANY AND ALL CLAIMS PERTAINING TO: (a) PROPERTY DAMAGE, (b) BREACH OF WARRANTY, (c) BREACH OF CONTRACT, (d) TORT, OR (e) ANY OTHER LEGAL CLAIM OR THEORY.**

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply to you.

**7. WARRANTY LIMITATION. THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY FOR THE ALLURA PRODUCT COVERED HEREBY. ALLURA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR OTHERWISE.**

In the event that applicable consumer law prohibits the disclaimer of an implied warranty, the above Limited Warranty shall not extend the time period of any such implied warranty. Some states do not allow limitations for consumers on how long an implied warranty lasts, so the above limitation may not apply to you. This Limited Warranty gives you specific legal rights, and you might possibly have additional rights, which vary from one jurisdiction to another.

**8. PRODUCT MODIFICATION/DISCONTINUANCE.** ALLURA reserves the right to

discontinue or modify the Product at any time, and from time to time, without notice. In the event that repair or replacement of the Product pursuant to this Limited Warranty is not possible, ALLURA will, in its sole discretion, fulfill any replacement obligation under this Limited Warranty with a product of equal or greater value.

**9. CHOICE OF LAW.** This Limited Warranty is to and shall be construed under the laws of the State of Texas, without giving effect to the conflict of law principles thereof. The United Nations Convention on the International Sales of Goods does not apply to this Limited Warranty.

**10. BINDING ARBITRATION.** By use and/or application of the Product, it is agreed that any and all controversies, disputes, or claims pertaining in any manner whatsoever to the purchase of any Product from ALLURA shall be resolved exclusively by binding Arbitration administered by the American Arbitration Association, and judgment on the arbitration award rendered by the Arbitrator(s) may be entered in a court having competent jurisdiction. This agreement to arbitrate is intended to and shall be broadly interpreted and covers all controversies, disputes, and claims arising out of or relating to a Product purchase including, but not limited to contract claims, tort claims and statutory claims, or any combination of claims. The arbitration proceeding shall take place exclusively in Houston, Harris County, Texas. The American Arbitration Association shall administer the arbitration, and the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures and Consumer Related Disputes



*50 Year Transferable Limited Product Warranty*

**Supplementary Procedures, if applicable, shall apply. These Arbitration Rules may currently be found on the American Arbitration Association's web site at [www.adr.org](http://www.adr.org). Any arbitration under this Limited Warranty will take place on an individual basis. Class arbitrations and class actions are not permitted. If you wish to begin arbitration against ALLURA, you must file a case with the American Arbitration Association in Houston, Texas. You may visit the American Arbitration Association's web site at [www.adr.org](http://www.adr.org) to obtain forms and guidance and to learn the procedure for filing a case under this Arbitration Agreement. This arbitration agreement affects your legal rights. An arbitration is resolved by a neutral party and not a judge or jury. There is less discovery and less exchange of information between the parties to an arbitration than might occur in a court proceeding. An arbitration award is final and binding and will only be overturned or reversed by a court in very limited circumstances. You agree that, by use and/or application of the Product, you and ALLURA are each waiving the right to a trial by jury or to participate in a class action. This binding agreement to arbitrate shall be governed by and interpreted under the United States Federal Arbitration Act (Title 9, U.S. Code, sections 1-16).**

**11. SEVERABILITY.** All parts of this Limited Warranty shall apply to the maximum extent permitted by applicable law, unless prohibited by law. If any provision of this Limited Warranty shall be found to be illegal, invalid, or unenforceable under any present or future law(s), such provision shall be

fully severable and the remaining provisions of this Limited Warranty shall remain in full force and effect. In lieu of any provision of this Limited Warranty that is held illegal, invalid, or unenforceable, there shall be automatically added as part of this Limited Warranty a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and may be legal, valid, and enforceable.

**12. ENTIRE AGREEMENT.** This Limited Warranty contains the entire agreement between the parties with respect to the subject matter hereof, and it supersedes all other prior and contemporary agreements, understandings, and commitments between the parties with respect to the subject matter hereof. This Limited Warranty may not be modified, amended or in any way altered except by an instrument in writing signed by an authorized representative of ALLURA. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ALLURA OR ITS AGENTS WILL CREATE ANY ADDITIONAL ALLURA WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF ALLURA'S OBLIGATIONS BEYOND THOSE OF THIS LIMITED WARRANTY.

**13. EFFECTIVE DATE.** The effective date of this Limited Warranty is February 1, 2014 (the "Effective Date"). Accordingly, this Limited Warranty shall only cover applicable Product purchases and installations made on and after the Effective Date.

**14. OBTAINING LIMITED WARRANTY SERVICE.** For Limited Warranty service, call **1 844 4 ALLURA** or write Limited Warranty Department, ALLURA, 15055 Woodham Drive, Houston, Texas 77073.



Exhibit F - Notice of Electronic Filing for Protection  
from Court Appearance 9.6.18

## Certificate of Electronic Notification

### Recipients

**Amanda Blundy** - Notification transmitted on 09-06-2018 02:18:14 PM.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**NOTICE OF ELECTRONIC FILING [NEF]**

-

**A filing has been submitted to the court RE:** 2018CP0801578

**Official File Stamp:** 09-06-2018 02:17:55 PM

**Court:** CIRCUIT COURT

Common Pleas

Berkeley

**Case Caption:** Dominic Lowe, On Behalf Of All Others Similarly Situated , plaintiff, et al VS Allura Usa, Llc , defendant, et al

**Event(s):**

Notice/Notice of Appearance

Order/Order Cover Sheet \$25.00

**Document(s) Submitted:** Proposed Order/Protection from Court Appearance

**Filed by or on behalf of:** Amanda Morgan Blundy

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Amanda Morgan Blundy for Dominic Lowe, On Behalf Of All Others Similarly Situated

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Elementia, S.A. DE C.V.

Elementia USA, Inc

Plycem USA, Inc

Allura

Plycem USA LLC d/b/a

Amanda Lowe, on behalf of all others similarly  
situated

Allura Usa, Llc

Exhibit G - Notice of Electronic Filing for Protection from  
Court Appearance 9.20.18

## Certificate of Electronic Notification

### Recipients

**Amanda Blundy** - Notification transmitted on 09-20-2018 05:11:57 PM.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**NOTICE OF ELECTRONIC FILING [NEF]**

-

**A filing has been submitted to the court RE:** 2018CP0801578

**Official File Stamp:** 09-20-2018 05:11:52 PM

**Court:** CIRCUIT COURT

Common Pleas

Berkeley

**Case Caption:** Dominic Lowe, On Behalf Of All Others Similarly Situated , plaintiff, et al VS Allura Usa, Llc , defendant, et al

**Document(s) Submitted:** Order/Protection from Court Appearance  
Order/Protection from Court Appearance

**Filed by or on behalf of:** Deadra L. Jefferson

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Amanda Morgan Blundy for Dominic Lowe, On Behalf Of All Others Similarly Situated et al

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Elementia, S.A. DE C.V.

Elementia USA, Inc

Plycem USA, Inc

Allura

Plycem USA LLC d/b/a

Allura Usa, Llc

## Exhibit H - Order of Protection



STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF BERKELEY )

**ORDER OF PROTECTION**

This matter is before the Court upon the request of Amanda M. Blundy, Esquire, of Segui Law Firm, PC, for protection from all court appearances in any case in which she is involved as counsel or co-counsel for the dates: September 28, 2018, October 1, 2018 and November 6 through 13, 2018.

IT IS ORDERED that Amanda M. Blundy, Esquire will be protected from proceedings in the Court of Common Pleas for Berkeley County for the following time period:

September 28, 2018

October 1, 2018

November 6 through 13, 2018

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
The Honorable Deadra L. Jefferson  
Chief Administrative Judge  
Berkeley County

Amanda M. Blundy, Esquire  
Berkeley County Pending Cases

Sena Maria Shiloh Averill, Trustee of The Sena Maria Shiloh Averill Trust, Dated November 14, 2014, and Nathan J. Averill v. Ashton Charleston Residential L.L.C., et al.  
Case No. 2017-CP-08-1953

Natalie Brimeyer, as Trustee of the Natalie M. Brimeyer Trust Under Agreement Dated February 10, 2016, as Amended, and Natalie Brimeyer Individually v. Max G. Crosby Construction Co., Inc., et al.  
Case No. 2017-CP-08-1042

Dominic Lowe and Amanda Lowe, and On Behalf of All Others Similarly Situated v. Allura USA LLC, et al.  
Case No. 2018-CP-08-1578

Caitlin M. McDonald and Jason S. McDonald v. John Wieland Homes and Neighborhoods of South Carolina, Inc., et al.  
Case No. 2017-CP-08-2113

Nicole Nadel and Stanley Wilhelm v. Vaughn Homes, Inc. et al.  
Case No. 2018-CP-08-691

Shivdeep S. Sidhu and Navdeep K. Dhaliwal v. Ashton Charleston Residential, LLC, et al.  
Case No. 2018-CP-08-783



Berkeley Common Pleas

**Case Caption:** Dominic Lowe, On Behalf Of All Others Similarly Situated , plaintiff,  
et al VS Allura Usa, Llc , defendant, et al

**Case Number:** 2018CP0801578

**Type:** Order/Protection from Court Appearance

IT IS SO ORDERED

s/D.L. Jefferson Chief Administrative Judge

## Exhibit I - Notice of Electronic Filing for Affidavit of Service

## Certificate of Electronic Notification

### Recipients

**Amanda Blundy** - Notification transmitted on 11-06-2018 12:55:49 PM.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**NOTICE OF ELECTRONIC FILING [NEF]**

-

**A filing has been submitted to the court RE:** 2018CP0801578

**Official File Stamp:** 11-06-2018 12:55:32 PM

**Court:** CIRCUIT COURT

Common Pleas

Berkeley

**Case Caption:** Dominic Lowe, On Behalf Of All Others Similarly Situated , plaintiff, et al VS Allura Usa, Llc , defendant, et al

**Event(s):**

Notice/Notice of Appearance

**Document(s) Submitted:** Service/Affidavit Of Service

**Filed by or on behalf of:** Phillip Ward Segui, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Amanda Morgan Blundy for Dominic Lowe, On Behalf Of All Others Similarly Situated et al

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Elementia, S.A. DE C.V.

Elementia USA, Inc

Plycem USA, Inc

Allura

Plycem USA LLC d/b/a

Allura Usa, Llc

## Exhibit J - List of Parties



# Berkeley County 9th Judicial Circuit Public Index



[Berkeley County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Dominic Lowe, On Behalf Of All Others Similarly Situated , plaintiff, et al VS Allura Usa, Llc , defendant, et al					
<b>Case Number:</b>	2018CP0801578	<b>Court Agency:</b>	Common Pleas	<b>Filed Date:</b>	08/20/2018
<b>Case Type:</b>	Common Pleas	<b>Case Sub Type:</b>	Special-Comp/Oth 699	<b>File Type:</b>	Mediator - Jury
<b>Status:</b>	Pending/ADR	<b>Assigned Judge:</b>	Clerk Of Court C P, G S, And Family Court		
<b>Disposition:</b>		<b>Disposition Date:</b>		<b>Disposition Judge:</b>	
<b>Original Source Doc:</b>		<b>Original Case #:</b>			
<b>Judgment Number:</b>		<b>Court Roster:</b>			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials		
Click the  icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Allura					Defendant		08/28/2018
Allura Usa, Llc					Defendant		08/20/2018
<input checked="" type="checkbox"/> Blundy, Amanda Morgan	295 Seven Farms Drive Suite C - 200 Charleston SC 29492				Plaintiff Attorney		10/02/2018
Elementia USA, Inc					Defendant		08/28/2018
Elementia, S.A. DE C.V.					Defendant		08/28/2018
<input checked="" type="checkbox"/> Lowe, on behalf of all others similarly situated, Amanda					Plaintiff		08/28/2018
<input checked="" type="checkbox"/> Lowe, On Behalf Of All Others Similarly Situated, Dominic					Plaintiff		09/06/2018
Plycem USA LLC d/b/a					Defendant		08/28/2018
Plycem USA, Inc					Defendant		08/28/2018
<input checked="" type="checkbox"/> Segui, Phillip Ward Jr.	864 Lowcountry Blvd., Ste A Mt. Pleasant SC 29464				Plaintiff Attorney		11/06/2018



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

Civil Action No. ~~2018-CP-08-1578~~

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

**CLASS ACTION SUMMONS  
(Re: Defective Products)  
(JURY TRIAL DEMANDED)**

Plaintiffs,

vs.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

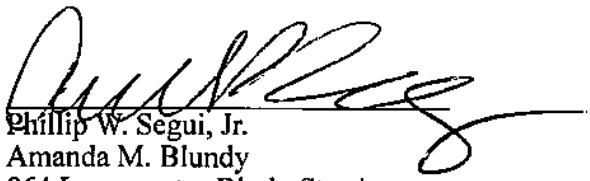
Defendants.

2018 AUG 20 PM 3:41  
MARTY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.  
FILED  
HAR

**TO THE DEFENDANTS ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at 864 Lowcountry Blvd., Ste. A, Mount Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEGUI LAW FIRM PC



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Mount Pleasant, South Carolina  
August 16, 2018

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

Civil Action No. 2018-CP-08-1578

DOMINIC LOWE AND AMANDA LOWE,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

**CLASS ACTION COMPLAINT  
(Re: Defective Products)  
(JURY TRIAL DEMANDED)**

Plaintiffs,

vs.

ALLURA USA LLC, PLYCEM USA LLC  
D/B/A ALLURA, PLYCEM USA, INC.,  
ELEMENTIA USA, INC., ELEMENTIA, S.A.  
DE C.V.,

Defendants.

2018 AUG 20 PM 3:44  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED  
*Handwritten signature*

The Plaintiffs, Dominic Lowe and Amanda Lowe, and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

**NATURE OF ACTION**

1. This is a class action asserting negligence/gross negligence, breach of express warranty, breach of implied warranties of merchantability and fitness for particular purpose, negligent misrepresentation, strict products liability and seeking damages in connection with defective fiber cement siding designed, manufactured, marketed, advertised, distributed, and sold by Defendants, Allura USA LLC, Plycem USA LLC d/b/a Allura, Plycem USA, Inc., Elementia USA, Inc. and Elementia, S.A. de C.V. (hereinafter referred to as "Defendants").

**THE PARTIES**

2. Plaintiffs Dominic Lowe and Amanda Lowe are natural persons and citizens of South Carolina. Plaintiffs own a home in Berkeley, South Carolina (Berkeley County), in which Defendants' fiber cement siding are installed.

3. Defendant Allura USA LLC, is a subsidiary of Plycem USA LLC and Plycem USA, Inc., with a principal place of business in the State of Texas, and at all times relevant herein, Allura USA LLC transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

4. Defendant Plycem USA LLC d/b/a Allura was and is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in the State of Texas, and all times relevant herein, Plycem USA LLC d/b/a Allura transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

5. Defendant Plycem USA Inc. was and is a corporation organized and existing under the laws of the State of Georgia, with a principal place of business in the State of Texas and all times relevant herein, Plycem USA Inc. transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

6. Defendant Elementia USA, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in the State of Texas, and all times relevant herein, Elementia USA, Inc. transacted and conducted business in South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

7. Defendant Elementia, S.A. de C.V. was and is a corporation organized and existing under the laws of another country and at all times relevant herein, Elementia, S.A. de C.V. conducts and is engaged in business in the State of South Carolina. It manufactured, warranted, advertised, and sold defective fiber cement siding that was installed on Plaintiffs' home and those of thousands of Class Members in South Carolina and the United States.

8. At all times relevant herein, Elementia, S.A. de C.V., Elementia USA, Inc., Plycem USA LLC, Plycem USA Inc., and Allura USA LLC jointly transacted and conducted business in South Carolina. The Defendants are the agents and/or alter egos of each other, and the corporate interests of these Defendants were amalgamated so that they in effect operated as one and the same entity. Accordingly jurisdiction over the Defendants is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

9. Defendants used, commingled, and combined their resources to design, develop, manufacture, market, and sell the fiber cement siding at issue.

10. At all times relevant herein, the Defendants were actual and/or de facto joint venturers in the design, development, manufacture, marketing, and sales of the fiber cement siding at issue.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over the parties and subject matters hereto and that the allegations out of this action all involve fiber cement siding that was marketed, sold, supplied and distributed in South Carolina.

**FACTUAL ALLEGATIONS**

12. Defendants hold themselves out to both the construction industry and the public at large as being providers of superior, quality, and durable products, including the fiber cement siding that is the subject of this litigation.

13. At all times relevant herein, Defendants were engaged in the design, manufacturing, marketing, sale, supply and delivery of the fiber cement siding in the State of South Carolina.

14. At all times relevant herein, Defendants designed, manufactured, marketed, sold, supplied and distributed the fiber cement siding (“the Siding”).

15. In 2015, Plaintiffs contracted for the construction of a home with the property address of 512 Nelliefield Trail, Charleston, South Carolina. The Siding was used in the construction of the homes.

16. This lawsuit arises out of damages sustained by Plaintiffs and the Class that were proximately caused by Defendants’ defective Siding used in the construction of Plaintiffs’ and Class Members’ homes and other structures.

17. Defendants sold and distributed Siding throughout South Carolina for installation on homes, commercial buildings, and other structures. At all times material hereto, Defendants marketed and represented the Siding that “Allura won’t rot, warp, fade, burn or disappoint.

Allura Fiber Cement products are made with an advanced formula that resists damage from moisture, rot, hail and termite attacks. Best of all, Allura products are suitable in even the most extreme hot and cold climates and are non-combustible.”

18. Specifically, Defendants sold its Siding to Plaintiffs and members of the Class with a warranty that its Siding will be free from manufacturing defects for a period of fifty (50) years from the date of the purchase of the product.

19. The 50 Year Transferrable Limited Product Warranty (hereinafter referred to as “Warranty”) offered by the Defendants promised to the retail purchaser of the Siding, the owners of the property on which the Siding was installed, and the first transferee of the property on which the Siding was installed that Defendants will repair, replace or reimburse up to twice the original retail cost of the defective portion of the Siding should the Siding be defective.

20. The Siding was installed in Plaintiffs’ home during construction.

21. After moving into their home, Plaintiffs began experiencing problems with their Siding including severe cracking of the Siding.

22. As a result of the cracking of the Siding, water has or will intrude, leading to deterioration of the sheathing beneath the Siding, decreased life expectancy of the Siding, and degradation of the Siding and other building components.

23. Plaintiffs contacted the general contractor, Crescent Homes, who installed the Siding during construction, who made several visits to the site to investigate the Siding.

24. Crescent Homes contacted the Defendants regarding the cracking Siding.

25. Defendants' representatives have inspected several homes, including the class representatives' home, inspecting, evaluating, and obtaining samples of the cracked fiber cement Siding to perform tests at their laboratory.

26. Defendants' representatives performed a collection of samples from many residences in the Nelliefield Plantation subdivision in Charleston, South Carolina; often without notice. Defendants removed Siding from many homes and have yet to replace or repair the destructive testing that was performed.

27. Several cracked fiber cement boards were removed from Plaintiffs' home and destroyed by Defendants' representatives. The boards have not been replaced.

28. Defendants sent Warranty Claim Communication to many owners of residences with the Siding on May 15, 2018 and requesting a warranty claim be made by June 1, 2018. Furthermore, the Warranty Claim Communication stated Defendants would be collecting samples during the week of May 14, 2018.

29. Plaintiffs returned the Warranty Claims Form supplied by Defendants by June 1, 2018.

30. Responding to Plaintiffs' Warranty Claims Form, Defendants did not admit liability for the cracking of board, but stated the tests were inconclusive and that the boards installed prior to 2014 could be CertainTeed siding and those owners would be contacted about filing a claim with CertainTeed.

31. Plaintiffs continue to experience severe cracking and deterioration of the Siding and the terms of the Warranty were not completed by the Defendants.

32. As a result, Plaintiffs had no other alternative than to file suit.

33. The Siding is defective and fails to perform at Plaintiffs' residence and at Class Members' residences by cracking, allowing excess moisture into the structures and decreasing the ability to withstand weather events. These defects manifest and worsen over time, indicating degradation of the material.

34. Upon information and belief, these defects have manifested themselves uniformly in the Siding installed on the homes of Plaintiffs and Class Members.

35. The water intrusion and above-described damages resulting from the Siding constitutes "occurrences" resulting in "property damage" to property other than Defendants' "product" as those are terms commonly defined and used in the typical commercial general liability insurance policy.

36. The above-described defects are due to fundamental design, engineering and manufacturing errors, which should have been within Defendants' expertise.

37. Because the Siding cracks, prematurely degrades, otherwise fails and permits water intrusion, it violates the building codes and industry standards.

38. The above-described deficiencies exist at the time the Siding leaves the factory.

39. Failure of the Siding begins upon installation and continues during repeated and prolonged exposure to weather and ordinary use.

40. Defendants knew or should have known that the defects were present at the time the Siding left their control.

41. Defendants knew or should have known the potential for cracking, premature degradation and failure of their Siding, but failed to adequately correct the defective design or formulation that resulted in said damage.



42. Defendants knew or should have known the potential for cracking, premature degradation and failure of their Siding, but failed to adequately correct the defective manufacture and that resulted in said damage.

43. Defendants failed to warn purchasers, installers or users of the above-described risks of failures.

44. The purchase of Defendants' Siding includes a written express warranty, which forms part of the basis of the bargain between Defendants and the purchaser at the time of sale.

45. The Siding's express warranty also forms part of the basis of the bargain between the seller of the home and home buyers, including Plaintiffs and Class Members.

46. Defendants also expressly and implicitly represents in documents available to the public that their warranty is part of the product being sold and that the written warranties apply to the owners of the homes containing the Siding.

47. Defendants represent in their express warranty and documents available to the public that the Siding would be free from defective materials and workmanship for at least 10 years.

48. Plaintiffs and Class Members relied upon these representations when they purchased the structures containing the Siding.

49. Plaintiffs and Class Members reasonably expected and expect that the Siding would last longer than 4 years.

50. Defendants' representations, expressly and impliedly, through their website, and marketing materials that the Siding is suitable and free from defects, were intended to and likely

did affect the market by inducing builders, contractors, suppliers, and others to purchase the Siding.

51. Plaintiffs put the installer/supplier of the Siding and Defendants on notice of the defects and damages; and Defendants were also put on notice of defects and damages by the installer/supplier of the Siding.

52. Defendants and/or their representatives purportedly attempted to evaluate and test the defective Siding.

53. Defendants and/or their representatives failed to adequately remedy the defects and damages and Plaintiffs and Class Members have not received an adequate remedy since the submission of the Warranty Claim of June 1, 2018.

54. Defendants were put on notice of defects and resultant damages in the Siding by other homeowners in South Carolina and other states across the country.

55. Defendants' shipping of the Siding with actual or constructive knowledge of the defects, or with negligent or reckless disregard of the presence of defects constituted a breach of their express warranty, and makes the limitations of the express warranty unconscionable in all respects, and therefore void *ab initio*.

56. The published written warranties include the following limitations and exclusions:

- (a) The warranty is excludes the costs or expenses for labor or accessory materials.
- (b) The warranty requires homeowners, at their own expense, provide protection of all property that could be affected until the claimed defect is remedied;

- (e) The warranty disclaims all liability for any incidental, consequential, or special damages of any type, including limitation of any and all claims pertaining to property damage, breach of warranty, breach of contract, tort, or any other legal claim or theory.
- (d) The warranty also disclaims any warranties except the limited warranty of the Warranty.
- (e) The warranty states a Claimant Questionnaire must be completed, signed and returned to Defendants (along with photographic evidence requested in the Claimant Questionnaire) within sixty (60) after the date on which Defendants provided the Claimant Questionnaire to the Claimant; However, Defendants required Plaintiffs to return the information requested with the Claimant Questionnaire in less than fifteen (15) days.
- (f) The warranty purports to allow Defendants to inconsistently apply the warranty at their own discretion; and
- (g) In other such ways revealed during discovery, and/or otherwise determined at trial.

57. The warranty is not a negotiated contract and is so one-sided that no reasonable person would ever knowingly agree to its terms if properly disclosed.

58. Further, Defendants have failed to honor warranty claims by failing to respond to the homeowner and removing Siding from Plaintiffs' homes with no replacements, leaving areas of the homes exposed to additional damage.

59. The above described pattern and practice by Defendants have the effect of discouraging defect claims by Class Members or continuing to pursue remedies through the Defendants.

60. Moreover, during contact with Class Members, Defendants have stated they are having issues with cracking of the Siding in many communities.

61. As Defendants have known or should have known of their Siding' defects and have failed to timely honor their warranty, the warranty has failed of its essential purpose and the limitations therein are null and void, and the Plaintiffs and Class Members have otherwise not received the value for which they, their builders or contractors bargained for at the time the Siding was purchased or transferred to homeowners.

62. Given the early and severe cracking in the Siding that requires unexpected maintenance and premature repair and replacement, the Siding has not lived up to the Defendants' representations and warranties.

63. The defects in Defendants' Siding also make the Siding unfit for their intended use.

64. Given the cracking, premature degradation, and failure of the Siding, the Siding has a reduced life expectancy, and require unexpected maintenance, repair, and replacement by Plaintiffs and Class Members.

65. The Siding defects and resultant damages have caused a diminution of the value of the homes.

66. Defendants knew or should have known that the Siding did and do not satisfy industry standards.

67. Defendants knew or should have known that their Siding was defective in design and manufacture, not fit for their ordinary and intended use, not merchantable, and failed to perform in accordance with the advertisements, brochures, representations, marketing materials and warranties disseminated by Defendants.

68. Defendants' Siding failed to conform to the reasonable expectations of ordinary consumers such as Plaintiffs and Class Members.

69. Because the Siding cracks and allows for increased water absorption, water penetration, cause reduced life expectancy, decreased wind load capacity, and otherwise fail, the Siding is neither durable nor suitable for use as an exterior building product.

70. The above-described defective conditions of the Siding and resultant damages are present in Plaintiffs' home and are common among Class Members.

71. As a direct and proximate result of purchasing and installing Defendants' Siding, Plaintiffs and the Class Members have suffered damages, in that the Siding on their homes and other structures has and will continue to fail prematurely, resulting in damage to the Siding and underlying structures and requiring them to expend thousands of dollars to repair the damage associated with the incorporation of the Siding into their homes and other structures, or to prevent such damage from occurring.

### **CLASS ACTION ALLEGATIONS**

72. Plaintiffs bring this action individually and as representatives of all those similarly situated pursuant to Rule 23, SCRPC, on behalf of the Class. The Class is defined as follows:

All persons and entities that own structures located within the State of South Carolina in which Defendants' Siding is installed.

This class excludes:

- (a) any Judge or Magistrate presiding over this action and members of their families;
- (b) any employees of Defendants;

- (c) any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants' and its legal representatives, assigns, and successors;
- (d) any person who has released Defendants or us currently in litigation with Defendants related to Defendants' Siding; and
- (e) all persons who properly execute and file a timely request for exclusion from the Class.

Plaintiffs propose that the Class be divided into subclasses if and as necessary to align class interests.

73. *Numerosity:* Members of the Class are so numerous that their individual joinder is impracticable. While the precise number is unknown at this time, upon information and belief, the proposed Class is comprised of a least thousands of members. The true number of Class Members is likely to be known by Defendants and may be ascertained through its books and records.

74. *Commonality:* The critical question of law and fact common to the Class that will materially advance the litigation is whether the Siding is inherently defective, contrary to the expectations imparted by Defendants through their warranties, representations and omissions.

75. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- (a) Whether the Siding is defective;
- (b) Whether the Siding is subject to cracking and is not suitable for use as an exterior siding product for the duration of time advertised, marketed and warranted;
- (c) Whether the Siding will continue to crack and degrade over time;

- (d) Whether Defendants were negligent in their design and manufacture of the Siding;
- (e) Whether Defendants knew or should have known about the defective condition of the Siding;
- (f) Whether Defendants concealed and/or failed to disclose the defective condition of the Siding to consumers;
- (g) Whether Defendants breached their express and implied warranties;
- (h) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees, and costs from Defendants;
- (i) Whether Defendants' conduct was negligent, reckless, willful, wanton, intentional, fraudulent or the like, entitling Plaintiffs to statutory or punitive damages from Defendants;
- (j) Whether Plaintiffs and the Class are entitled to compensatory damages and the amount of damages for the removal and replacement of the defective Siding; and
- (k) Whether Defendants' representations regarding suitability and exemplary nature of its Siding, and its omissions and concealment of facts to the contrary regarding the Siding defects constitute violations of the South Carolina's Unfair Trade Practices Act.

76. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective Siding and Defendants' conduct in concealing the defects in the Siding to owners, contractors, developers, and suppliers.

77. *Adequate Representation*: Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class given the Plaintiffs are members of the Class he and she also seek to represent. The Plaintiffs have

retained counsel experienced and competent in construction litigation, product liability, complex litigation and consumer class actions.

78. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and/or courts throughout South Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

79. Moreover, Plaintiffs envision no unusual difficulty in the management of this action as a class action and absent a class action, the vast majority of Class Members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims against Defendants and be made whole.

**ESTOPPEL FROM PLEADING WARRANTY LIMITATIONS AND DISCLAIMERS**

80. Defendants are also estopped from relying on any warranty limitation or disclaimer as a defense to Plaintiffs' and Class Members' claims.

81. By virtue of Defendants' acts, the Siding installed in Plaintiffs' and Class Members' residences has not lived up to Defendants' warranties and representations, and given



the defective condition of the Siding and the premature deterioration the Siding that requires unexpected maintenance, wear and/or replacement, the Siding has not proven to be of the value bargained for and/or of that compared to other siding.

82. Defendants knew or should have known that their Siding was defective in design and/or manufacture, and said Siding was not fit for their ordinary and intended use, was not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendants or with the reasonable expectations of ordinary consumers such as Plaintiffs and Class Members.

83. Accordingly, any warranty provided by Defendants fails its essential purpose because its purports to warrant that the Siding will be free from defects for a prescribed period of time when in fact said Siding falls far short of the applicable warranty period.

84. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed Siding, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available under Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

85. As a result, any time limitations, exclusions, or disclaimers which restrict the remedies encompassed within Defendants' warranties are unconscionable and unenforceable, and therefore, Defendants are estopped from relying on the same.

**FOR A FIRST CAUSE OF ACTION**  
**Negligence/Gross Negligence**

86. The above allegations are incorporated as fully as if stated verbatim herein.

87. At all times material hereto, Defendants designed and manufactured the Siding.

88. Defendants had a duty to Plaintiffs and Class Members to design and manufacture Siding that was free of latent defects that would cause the Siding to crack, prematurely degrade, and otherwise fail.

89. Defendants had a duty to Plaintiffs and Class Members to test the Siding to ensure adequate performance of the Siding for a reasonable period of use.

90. Defendants had a duty to Plaintiffs and Class Members to ensure that the Siding was suitable as an exterior product, either by testing or by verifying third-party test results.

91. Defendants had a duty to Plaintiffs and Class Members to ensure their Siding complied with industry standards.

92. Defendants had a duty to Plaintiffs and Class Members to forewarn purchasers, installers, and users regarding the known risk of product failures.

93. Defendants failed to exercise ordinary and reasonable care in the design and manufacture of the Siding.

94. The Plaintiffs and Class Members have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Defendants as above-described.

95. As Defendants' conduct was grossly negligent, reckless, willful, wanton, intentional, fraudulent, or the like, Plaintiffs and Class is entitled to an award of punitive damages against Defendants.

**FOR A SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty**

96. The above allegations are incorporated as fully as if stated verbatim herein.

97. Defendants are designers, manufacturers, and suppliers of the Siding, and for a number of years, marketed, warranted, distributed, and/or sold the Siding in South Carolina.

98. Defendants manufactured and sold their Siding to Plaintiffs, Class Members, and/or Plaintiffs' and Class Members' agents, and in so doing, impliedly warranted to them that the product was of merchantable quality and fit for its intended use.

99. Defendants' Siding was not of merchantable quality and not fit for intended use when they left the factory due to the defects in the Siding described herein.

100. The numerous and serious defects described herein make the Siding unfit and inappropriate for its intended use within structures.

101. The Siding is also unfit for their particular purpose. Defendants manufactured and distributed their Siding in climates with multiple seasons and geographic locations. Defendants knew, or should have known, that their Siding would be subjected to varying temperatures and weather conditions, including extreme heat and extreme cold, throughout each year. Due to the defects and resultant cracking, premature degradation, and other failures, the Siding are unfit for their particular purpose.

102. Despite having knowledge of the Siding defects, Defendants have failed to provide an adequate remedy.

103. As Defendants' express warranty (and warranty claims process thereunder) has been breached and/or is unconscionable and/or fails of its essential purpose, as described above, the limitations on implied warranties contained within the express warranty should be deemed null and void and of no effect or limitation.

104. As a result, Defendants breached their implied warranties to Plaintiffs and Class Members by producing, manufacturing, distributing and selling them a defective product that was unfit for its intended use and for a particular purpose.

105. Plaintiffs and Class Members suffered and will continue to suffer losses as alleged herein, in an amount to be determined at trial.

106. As a direct and proximate result of Defendants' breach of the implied warranty on the Siding, the Plaintiffs and Class Members have suffered actual and consequential damages.

**FOR A THIRD CAUSE OF ACTION**  
**Breach of Express Warranty**

107. The above allegations are incorporated as fully as if stated verbatim herein.

108. Defendants marketed and sold Siding into the stream of commerce with the intent that the Siding would be purchased by Plaintiffs and Class Members.

109. The representations and warranties made by Defendants in marketing and selling their Siding formed part of the basis of the bargain between Defendants and the purchasers of the Siding at the time of the sale.

110. Purchase agreements for the construction or sale of residences or structures, including the Warranty, contained provisions transferring or assigning the manufacturers' warranties. Such provisions are valid transfers and assignments, and the transferred and assigned warranties formed part of the basis of the bargain at the time the home was purchased.

111. The Defendants' Warranty certifies that they will replace or repair the Siding found to be defective for fifty (50) years.

112. Upon information and belief, all of Defendants' written warranties applicable to Class Members contain the same or similar provisions.

113. Through their written warranties, brochures, marketing materials, website, and other representations regarding the performance, durability, and quality of the Siding, Defendants created express warranties for the benefit of Plaintiffs and Class Members.

114. Thus, Defendants' express warranties and representations are applicable to the Siding installed in Plaintiffs' and Class Members' residences and/or structures.

115. Specifically, Defendants expressly warranted to Plaintiffs and Class Members that the Siding purchased by Plaintiffs and Class Members were free from defects in materials and workmanship that substantially impair their operation or performance and that they would last at least fifty (50) years.

116. However, Defendants' warranties fail their essential purpose because they purport to warrant that the Siding will be free from manufacturer defects for at least fifty (50) years when in fact the Siding fall far short of the applicable warranty period. To the contrary, due to the cracking in the Siding, Defendants' Siding began failing after only several years' or less of use.

117. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed Siding, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

118. Defendants have failed to pay in full and/or failed to respond to warranty claims.

119. Accordingly, the limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

120. As a result of Defendants' breaches of express warranties, Plaintiffs and Class Members have suffered actual damages in that they purchased homes, residences, buildings, and other structures containing defective Siding that has failed or are failing prematurely due to cracking and premature degradation. This failure has required or is requiring Plaintiffs and Class Members to incur significant expense in repairing or replacing their Siding. Replacement is required to prevent on-going and future damage to the underlying structures or interiors of Plaintiffs' and Class Members' residences.

121. Thus, as a direct and proximate result of Defendants' breach of the express warranty on the Siding, the Plaintiffs and Class Members have suffered actual and consequential damages.

**FOR A FOURTH CAUSE OF ACTION**  
**Negligent Misrepresentation**

122. The above allegations are incorporated as fully as if stated verbatim herein.

123. Defendants, through their marketing materials, website, brochures, product literature, warranties and agents, made representations to the Plaintiffs and Class Members, builders, suppliers and the public about the superior quality and durability of their Siding and components.

124. Defendants transmitted said representations to the Plaintiffs and Class Members, builders, suppliers and the public while failing to disclose the defective condition of their Siding, including the substantial leakage and consequential damages that would or could likely result from their Siding' defects.

125. Defendants have a pecuniary interest in making these representations and non-disclosures and had a duty to communicate truthful information to the Plaintiffs and Class Members, builders, suppliers and the public.

126. Defendants breached their duties by failing to exercise due care in making the above-described representations and non-disclosures and the Plaintiffs and Class Members, builders, suppliers and the public relied on these representations and non-disclosures.

127. The Plaintiffs and Class Members have suffered a pecuniary loss as a direct and proximate result of their reliance upon these representations and non-disclosures.

**FOR A FIFTH CAUSE OF ACTION**  
**Strict Liability**

128. The above allegations are incorporated as fully as if stated verbatim herein.

129. At all times relevant to this Complaint, Defendants were in the business of designing, manufacturing, marketing, distributing and/or selling Siding and had a statutory duty of care.

130. Defendants breached this duty because their Siding cracks and allows for increased water absorption, water penetration, cause reduced life expectancy, decreased wind load capacity, and otherwise failure, resulting in damage to the Siding and consequential damage to the structure into which the Siding is installed.

131. Defendants breached their duty because their Siding are defectively designed and manufactured and are unreasonably dangerous in that they crack, degrade, and otherwise fail, thereby causing damage to the Siding and consequential damage to the structure into which the Siding are installed.

132. Were the defects known at the time of design and manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing a product designed and manufactured in that manner.

133. Feasible alternatives existed to make the Siding safer for intended use at the time of design. Defendants were knowledgeable about the products and aware or should have been aware that feasible alternatives existed which would maintain the usefulness of the Siding and eliminate the harm.

134. The Siding reached the Plaintiffs and Class Members, and were intended to reach the Plaintiffs and Class Members, without substantial change in the condition in which they were sold.

135. Defendants are in violation of South Carolina Code §15-73-10, for having designed, manufactured, marketed, distributed, and sold the Siding, which was defective, to the Plaintiffs and Class Members.

136. As a direct, foreseeable, and proximate result of the sale of the defective Siding to Plaintiffs and Class Members, the Plaintiffs and Class Members have suffered significant physical damage to their properties, other contamination and deterioration, as well as diminution in the value of the properties.

137. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs pray that this Court will certify a class and for judgment against Defendants, for:

- 1) Plaintiffs' and Class Members' actual and consequential damages as found by the jury; statutory or punitive damages



against Defendants; reasonable attorneys' fees; costs of suit; and  
prejudgment interest;

2) For such other and further relief at law or equity, both in  
general and special, as to which Plaintiffs and Class Members by  
this Complaint show themselves to be entitled.

SEGUI LAW FIRM PC



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Mount Pleasant, South Carolina  
August 16, 2018

Attorneys for Plaintiffs

**SEGUI LAW FIRM PC**

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T 843-884-1865

Amanda M. Blundy  
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August 16, 2018

Mary P. Brown  
Clerk of Court  
Berkeley County Court of Common Pleas  
P.O. Box 219  
Moncks Corner, SC 29461

RE: Dominic Lowe and Amanda Lowe, and On Behalf of All Others Similarly Situated v. Allura USA, LLC, Plycem USA LLC d/b/a Allura, Plycem USA, Inc. Elementia USA, Inc. and Elementia, S.A. de C.V.,  
Case No: 2018-CP-\_\_\_\_ - \_\_\_\_\_

Dear Ms. Brown:

Please find enclosed the original and one copy each of the Civil Action Coversheet, Summons and Complaint, as well as a check in the amount of \$150.00, for the above referenced matter. If you would, please file the originals and return the clocked copies to me in the self-addressed, stamped envelope enclosed.

Your assistance in this matter is greatly appreciated. Should you require any additional information regarding this matter, please feel free to contact me.

Sincerely,



Amanda M. Blundy

AMB/jl  
Enclosures

STATE OF SOUTH CAROLINA )

COUNTY OF BERKELEY )

DOMINIC LOWE AND AMANDA LOWE, AND )  
ON BEHALF OF ALL OTHERS SIMILARLY )  
SITUATED, )

Plaintiffs )

vs. )

ALLURA USA LLC, ET AL., )

Defendants )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP - 08 - 1578

Submitted By: Amanda M. Blundy, Esquire  
Address: 864 Lowcountry Blvd., Suite A,  
Mt. Pleasant, SC 29464

SC Bar #: 73069  
Telephone #: (843) 884-1865  
Fax #:  
Other:  
E-mail: ablundy@seguilawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |   |  |  |
|---|---|--|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199) _____</li> </ul> <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul> <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20__-NI-_____-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299) _____</li> </ul> <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture—Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Libel (380)</li> <li><input type="checkbox"/> Other (399) _____</li> </ul> <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement</li> </ul> | <p><b>Real-Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499) _____</li> </ul> <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
|---|---|--|--|

2018 AUG 20 PM 3:14  
 FILED  
 CLERK OF COURT  
 BERKELEY COUNTY  
 MARY STONOR

AMB  
150

- Medical (620)
- Out-of State Depositions (650)
- Other (799) \_\_\_\_\_
- Other (699)  
**CONSTRUCTION**  
**DEFECTS**
- Motion to Quash Subpoena in an Out-of-County Action (660)
- Sexual Predator (510)
- Pre-Suit Discovery (670)

**Submitting Party Signature:**  AUGUST 16, 2018

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**Effective January 1, 2016,** Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

- 6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

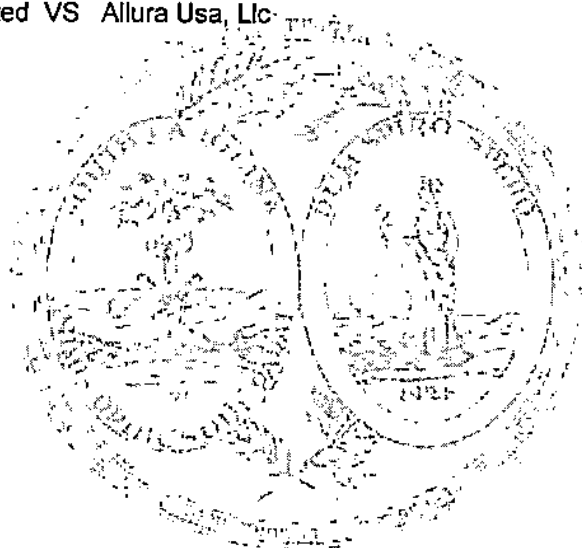
**Common Pleas**

**Clerk : Mary P. Brown**  
**300 B California Avenue**  
**Moncks Corner, SC 29461**  
**Phone:(843) 719-4400 Fax:(843) 719-4509**

Received From:	Blundy, Amanda Morgan 864 Lowcountry Blvd Mount Pleasant, SC 29464	Date: 8/20/2018 Receipt #: 6082136 Clerk: c08thill
Paying for:	Lowe, On Behalf Of All Others Sii	
Transaction Type:	Payment	Reference #: 05612
Payment Type:	Check \$150.00	Comment: Non-Refundable
Total Paid:	\$150.00	

Total Received:           \$150.00 You may check the status of your Berkeley case at:  
 Change Due:           \$0.00 <http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2018CP0801578	Dominic Lowe, On Behalf Of All Others Similarly Situated VS Allura Usa, Llc	\$150.00	\$150.00	\$0.00	699



<b>Total Cases: 1</b>	<b>\$150.00</b>	<b>\$150.00</b>	<b>\$0.00</b>
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Allura Fiber Cement Siding Suffers from Manufacturing Defects, Class Action Lawsuit Alleges](#)

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