

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

KEVIN JONES and JANET JONES,
DOUGLAS COCHRANE, DONNA BAKER,
and CATHERINE MARTIN,

Plaintiffs,

v.

LUBRIZOL ADVANCED MATERIALS, INC.,
THE LUBRIZOL CORPORATION,
CHARLOTTE PIPE AND FOUNDRY
COMPANY, and CRESLINE PLASTIC PIPE
CO., INC.,

Defendants.

CASE NO. 1:20-cv-00511-JPC

**SECOND AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

“FlowGuard Gold pipe and fittings are designed for a 50-year service life....”¹

Through the undersigned counsel, Plaintiffs Kevin and Janet Jones, Douglas Cochrane, Donna Baker, and Catherine Martin (“Plaintiffs”), file this complaint against Defendants Lubrizol Advanced Materials, Inc., The Lubrizol Corporation (together, “Lubrizol”), Charlotte Pipe and Foundry Company (“Charlotte”), and Cresline Plastic Pipe Co., Inc. (“Cresline;” and collectively with Lubrizol and Charlotte, “Defendants”). On personal knowledge of their own circumstances and upon investigation and information and belief of their counsel, Plaintiffs aver the following:

¹ <https://www.flowguardgold.com/blog/frequently-asked-questions-on-the-performance-of-cpvc-in-residential-plumbing> (last visited July 29, 2020).

INTRODUCTION

1. Defendants design, develop, test, manufacture, advertise, sell, warrant and distribute chlorinated polyvinyl chloride (“CPVC”) pipes and fittings under the brand name FlowGuard Gold® (“FlowGuard Gold”) throughout the United States for installation in homes and other structures.

2. Lubrizol provides Charlotte and Cresline (and formerly Thompson²) with compounds, which Charlotte and Cresline (and formerly Thompson) then extrude and mold into FlowGuard Gold pipes and fittings.

3. Defendants market and warrant that FlowGuard Gold is tough and reliable, and meets industry standards. Defendants tout that FlowGuard Gold is the “most well-established non-metallic piping product[] in the market” and that “millions of homes and businesses around the world trust” FlowGuard Gold.³ Defendants provided a reasonable expectation to consumers and the industry that FlowGuard Gold would be durable and useful for an extended period of time. In fact, Lubrizol states that “FlowGuard Gold pipe and fittings are designed for a 50-year service life....”⁴

4. Contrary to Defendants’ advertising and representations, however, FlowGuard Gold becomes brittle and frail early in its expected useful life and is prone to cracking and shattering. As a result of these defects, FlowGuard Gold leaks (the potable water it was meant to transport) and causes severe property damage. Yet Defendants continue to manufacture and sell FlowGuard Gold to the public, continue to make false representations about FlowGuard Gold,

² Thompson Plastics, Inc., referred to herein as “Thompson,” was another manufacturer of FlowGuard Gold. Thompson was acquired by Charlotte in 2004. *See* ¶ 17.

³ <https://www.flowguardgold.com/> (last visited March 3, 2020).

⁴ <https://www.flowguardgold.com/blog/frequently-asked-questions-on-the-performance-of-cpvc-in-residential-plumbing> (last visited July 29, 2020).

and continue to improperly reject and obstruct warranty claims from consumers concerning failed FlowGuard Gold, despite the fact that FlowGuard Gold pipes and fittings are defective and will fail, costing consumers substantial removal, replacement and repair costs.

5. Plaintiffs bring this action to seek redress for damages caused by Defendants' wrongful conduct.

JURISDICTION

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District, and Defendant Lubrizol is subject to the Court's personal jurisdiction.

8. As a result of Defendants' designing, testing, manufacturing, advertising, selling, warranting and distributing, either directly or indirectly through third parties or related entities, of FlowGuard Gold to purchasers throughout Ohio, Defendants obtained the benefits of the laws of Ohio and profited from Ohio commerce.

9. Defendants conducted systematic and continuous business activities in and throughout the state of Ohio and otherwise intentionally availed themselves of the markets of the state of Ohio through the promotion and marketing of their products.

PARTIES

10. Plaintiffs Kevin and Janet Jones are Arizona residents and own a home located in Chandler, Arizona.

11. Plaintiff Douglas Cochrane is a Massachusetts resident and owns a home located in Bellingham, Massachusetts.

12. Plaintiff Donna Baker is a Washington resident and owns a home located in Lake Stevens, Washington.

13. Plaintiff Catherine Martin is a Michigan resident and owns a home located in Ann Arbor, Michigan.

14. Lubrizol Advanced Materials, Inc.'s principal place of business is located in Brecksville, Ohio. Defendant Lubrizol Advanced Materials, Inc., formerly known as Noveon, Inc., is a segment of Defendant The Lubrizol Corporation. Defendant Lubrizol Advanced Materials, Inc. conducts business within the United States, including within the state of Ohio.

15. The Lubrizol Corporation's principal place of business is located in Wickliffe, Ohio. Defendant The Lubrizol Corporation, a subsidiary of Berkshire Hathaway Inc., describes itself as "the innovator and world leader in chlorinated polyvinyl chloride (CPVC) resins and compounds."⁵ Defendant The Lubrizol Corporation conducts business within the United States, including within the state of Ohio.

16. Defendants Lubrizol Advanced Materials, Inc. and The Lubrizol Corporation designed, developed and marketed FlowGuard Gold.

17. Charlotte Pipe and Foundry Company's principal place of business is located in Charlotte, North Carolina. Defendant Charlotte conducts business within the United States, including within the state of Ohio. Defendant Charlotte was responsible for, or was otherwise involved in, the development, manufacture, marketing, sales, warranting and distribution of FlowGuard Gold. In 2004, Charlotte acquired Thompson Plastics, Inc., another manufacturer of

⁵ See, e.g., <https://www.globenewswire.com/news-release/2019/07/09/1880480/0/en/Lubrizol-Introduces-FlowGuard-MultiPort-Fitting-for-Water-Distribution.html> (last visited July 26, 2020).

FlowGuard Gold. Thompson's single location was a Huntsville, Alabama manufacturing plant, which Charlotte continues to utilize for the manufacture of FlowGuard Gold, as Thompson did before the acquisition.⁶ Charlotte also took control of Thompson's website, www.cpv.com, and operated it as Charlotte's own website until 2016. Charlotte is subject to successor liability for Thompson's actions and failures related to FlowGuard Gold.

18. Cresline Plastic Pipe Co., Inc.'s principal place of business is located in Evansville, Indiana. Defendant Cresline conducts business within the United States, including within the state of Ohio. Defendant Cresline was responsible for, or was otherwise involved in, the development, manufacture, marketing, sales, warranting and distribution of FlowGuard Gold.

19. Lubrizol licenses its "FlowGuard Gold" trade name to Charlotte and Cresline and, upon information and belief, works in conjunction with them to develop and create FlowGuard Gold. Lubrizol further works with Charlotte and Cresline in evaluating warranty claims submitted to the companies by consumers.

FACTUAL ALLEGATIONS

A. Plaintiffs Kevin and Janet Jones's Factual Allegations

20. Plaintiffs Kevin and Janet Jones are the first owners of a home located in Chandler, Arizona.

21. Plaintiffs' FlowGuard Gold pipes and fittings were designed and manufactured by Defendants Lubrizol and Charlotte and were installed in the Joneses' home during the 1999 construction of the home, which the Joneses contracted with a builder to have built.

⁶ Concerning the acquisition of Thompson, Charlotte stated on its own website: "With our recent acquisition of Thompson Plastics in Huntsville, AL, Charlotte Pipe has added even more FlowGuard Gold products to its line." *See, e.g.*, <https://web.archive.org/web/20050805081340/http://www.charlottepipe.com/Default.aspx?Page=FGG&type=FGG> (last visited March 3, 2020). *See also* <https://web.archive.org/web/20050307205036/http://www.cpv.com/> ("Welcome, Thompson Plastics customers. We are pleased to announce that Charlotte Pipe and Foundry has acquired Thompson Plastics.")

22. In October 2019, the Joneses experienced a leak in their FlowGuard Gold. The leak was in the ceiling of a bedroom that the Joneses use as an office. The leak caused the ceiling to cave in. The leak ruined the Joneses' ceiling fan and caused other damage to the office.

23. Upon discovering the leak, the Joneses promptly put a bucket under the leak and turned off the water in the home. The Joneses arranged for a remediation company to dry out their home and for a contractor to repair the leak. The contractor reported that the pipe that leaked was brittle.

24. Following the repair of the leak, Mr. Jones gradually turned the water to the home back on. Immediately thereafter, another leak sprung in the ceiling above the home's kitchen and front bathroom.

25. This second leak caused damage throughout the kitchen and bathroom. As a result of the leak, portions of the ceiling in the kitchen and bathroom had to be removed, the bathroom vanity needed to be replaced, and the baseboards in the kitchen and bathroom needed to be replaced. The repairs for the damage caused by these two leaks were partially covered by the Joneses' insurance company, but the Joneses were still forced to pay a \$1,000 deductible, plus several thousand dollars more for additional repairs not covered by insurance.

26. The Joneses have been advised by multiple plumbers that the Joneses' FlowGuard Gold is extremely brittle.

27. Due to the leaks in the Joneses' FlowGuard Gold, the pipes' brittleness, and the inevitability of additional leaks in the future, the Joneses were forced to prematurely replumb their home, replacing the defective FlowGuard Gold. The replumb cost the Joneses over

\$11,000. The Joneses have also had to expend over \$2,000 on hotels while they were without running water, including during the replumb.

28. In November 2019, Mrs. Jones contacted Charlotte to initiate a warranty claim. The initial representative with whom Mrs. Jones spoke was not aware that FlowGuard Gold was warranted by the company. Mrs. Jones then spoke with a second representative named Kelly who stated that Charlotte backs up their product, but that Mrs. Jones needed to follow a process. Kelly told Mrs. Jones that she should deal with the company's representative in Arizona and that the Arizona representative would set Mrs. Jones up with a Product Complaint Form.

29. When Mrs. Jones contacted the Arizona representative, as directed, Mrs. Jones was initially met with silence. When Mrs. Jones gave additional information and requested the Product Complaint Form, the Arizona representative interrogated Mrs. Jones, asking, "Who are you with?". Mrs. Jones reiterated the Joneses' situation and experience with their FlowGuard Gold, and explained that Charlotte gave Mrs. Jones the Arizona representative's phone number and directed her to work with the Arizona representative. The Arizona representative advised Mrs. Jones that he would call her back and would get her the form she requested so that the Joneses' warranty claim could be processed.

30. To date, the Joneses have not heard back from the Arizona representative nor have they received the form required for them to proceed with their warranty claim.

31. The Joneses would not have purchased a home containing FlowGuard Gold and exposed their real and personal property to flooding and water damage, as well as exposing themselves to a risk of personal injury, or would have replaced their FlowGuard Gold before suffering damage, had Defendants disclosed the propensity for the FlowGuard Gold to fail.

32. The following photos are of the Joneses' defective FlowGuard Gold:





B. Plaintiff Douglas Cochrane's Factual Allegations

33. Plaintiff Douglas Cochrane is the first owner of a home located in Bellingham, Massachusetts.

34. Cochrane's FlowGuard Gold pipes and fittings were designed and manufactured by Defendants Lubrizol and Charlotte and were installed in Cochrane's home during the 2008 construction of the home, which Cochrane contracted to have built.

35. In June 2019, Cochrane's FlowGuard Gold experienced its first leak. This FlowGuard Gold fitting leak flooded Cochrane's basement, and caused damage to his ceiling tiles, trim, carpet and furniture.

36. As a result of the leak, Cochrane was dropped by his insurance company.

37. Between August 2019 and May 2020, Cochrane's FlowGuard Gold suffered five additional leaks. These leaks caused further damage to Cochrane's home.

38. Following his third FlowGuard Gold leak, Cochrane contacted Defendant Charlotte to initiate a warranty claim. Cochrane sent sample photos of the FlowGuard Gold in his home to Charlotte. In early December 2019, pursuant to the request of Charlotte's Claims Specialist, Michelle Webb, Cochrane shipped a failed fitting assembly to Charlotte so that the company could examine it in its lab.

39. Approximately two months later, on February 4, 2020, Cochrane received an email from Ms. Webb stating that "[c]hemical analysis of the material indicates the presence of foreign, incompatible chemicals which led to the failures." Ms. Webb's email attached a report entitled "The Lubrizol Corporation Technical Document." Defendant Lubrizol's report was dated February 3, 2020 (one day before Cochrane received the email from Ms. Webb) and was authored and signed by Catherine L. Cliver and "authorized" and signed by Michelle L. Knight. The report's "Conclusions" paragraph claimed that Cochrane's "tee fitting ha[d] failed due to environmental stress cracking caused by exposure on the exterior to incompatible plasticizers and nonionic surfactants," and that "[t]here were no manufacturing defects observed in either the pipes or the fitting."

40. Charlotte improperly rejected Cochrane's warranty claim, failed to fulfil its express written warranty obligations and offered no consideration to Cochrane for the harm caused to him by Defendants Lubrizol and Charlotte's defective FlowGuard Gold.

41. In the time since receiving Charlotte's warranty claim rejection from Ms. Webb, the FlowGuard Gold in Cochrane's home has continued to suffer leaks.

42. The defects in Cochrane's FlowGuard Gold will require it to be removed and replaced in order to prevent further damage to Cochrane's home, an undertaking Cochrane cannot afford.

43. On May 4, 2020, counsel for Cochrane sent a letter to Defendants Lubrizol and Charlotte ("93A Demand") notifying Defendants of their violations of Massachusetts General Laws Chapter 93A ("Chapter 93A") and demanding relief.

44. On June 3, 2020, counsel for Defendants Lubrizol and Charlotte responded to Cochrane's 93A Demand in letters to Cochrane's counsel ("the 93A Responses"). Defendants' 93A Responses failed to offer relief that was fair and reasonable in relation to the injuries suffered by Cochrane.

45. Cochrane would not have purchased a home containing FlowGuard Gold and exposed his real and personal property to flooding and water damage, as well as exposing himself and his family to a risk of personal injury, or would have replaced his FlowGuard Gold before suffering damage, had Defendants disclosed the propensity for the FlowGuard Gold to fail.

46. The following photos are of Cochrane's defective FlowGuard Gold:





C. Plaintiff Donna Baker's Factual Allegations

47. Plaintiff Donna Baker is the first owner of a home located in Lake Stevens, Washington.

48. Baker's FlowGuard Gold pipes and fittings were designed and manufactured by Defendants Lubrizol and Charlotte and Thompson, and were installed in Baker's home during the 2004 construction of the home.

49. In November 2018, Baker experienced a leak in the FlowGuard Gold located in her living room wall. The leak damaged the wall, which then had to be cut open in order for Baker's plumber to replace the failed FlowGuard Gold.

50. In July 2020, Baker noticed a strong, musty odor in a spare bedroom in her home. Upon moving the bed in the bedroom, Baker discovered mold on the bedroom's wall and carpet,

and observed that the carpet was wet. Baker called a mold remediation company which cut open the bedroom's wall, exposing a leaking FlowGuard Gold fitting. The mold remediation company also tore out half of the bedroom's carpet, finding additional mold underneath, and discovered wet insulation in the home's crawlspace. The company also set up a dehumidifying machine. Baker had a plumber replace the failed FlowGuard Gold in the bedroom's wall.

51. Baker's insurance company denied coverage for Baker's FlowGuard Gold leaks. The July 2020 leak has already cost Baker several thousand dollars, with substantial work still remaining.

52. Following the second leak in Baker's FlowGuard Gold, Baker initiated a warranty claim with Defendant Charlotte. As part of the warranty claim process, Baker sent photos of her failed FlowGuard Gold to Michelle Webb, Charlotte's Claim Specialist.

53. After receiving the photos, Ms. Webb confirmed that Baker's FlowGuard Gold pipes were manufactured by Charlotte, but further responded to Baker denying responsibility for Baker's FlowGuard Gold leak and stating:

The fitting which caused the leak to occur has been identified as being manufactured by TPI (Thompson Plastics). TPI was a manufacturer of FlowGuard Gold CPVC pipe and fittings. Unfortunately, they are no longer in business. Charlotte Pipe did not produce this part; therefore, we cannot accept liability for your loss. Charlotte Pipe cannot examine the parts produced by other manufacturers.

Ms. Webb did not disclose to Baker that Charlotte had acquired Thompson and had taken over Thompson's sole manufacturing plant.

54. The defects in Baker's FlowGuard Gold will require it to be removed and replaced in order to prevent further damage to Baker's home.

55. Baker would not have purchased a home containing FlowGuard Gold and exposed her real and personal property to flooding and water damage, as well as exposing herself

to a risk of personal injury, or would have replaced her FlowGuard Gold before suffering damage, had Defendants and Thompson disclosed the propensity for the FlowGuard Gold to fail.

56. The following photo is from the area of Baker's first FlowGuard Gold leak:



57. The following photos are of the failed fittings from Baker's second FlowGuard Gold leak and the area of the leak:







D. Plaintiff Catherine Martin's Factual Allegations

58. Plaintiff Catherine Martin is the first owner of a home located in Ann Arbor, Michigan.

59. Martin's FlowGuard Gold pipes and fittings were designed and manufactured by Defendants Lubrizol and Cresline and were installed in her home during the 1997 construction of the home, which Martin contracted to have built.

60. In March 2019, in conjunction with a vanity replacement in a second-floor bathroom, a FlowGuard Gold pipe in Martin's home broke and leaked, causing the ceiling in the kitchen to sag. A large portion of Martin's kitchen ceiling needed to be removed and replaced, and the entire ceiling had to be repainted.

61. In February 2020, a FlowGuard Gold pipe broke behind Martin's laundry room wall, upon a flooring installer turning off the water to Martin's washing machine. The leak caused substantial flooding in Martin's laundry room, basement and duct work, and required the removal and replacement of drywall.

62. The next day, while the installer shut off the water to Martin's first floor toilet, a FlowGuard Gold pipe in Martin's basement broke, flooding the basement.

63. A plumber who replaced Martin's shut-off valve for her outside hose bib reported to Martin that her FlowGuard Gold pipe was very brittle and would crumble, making it difficult for the plumber to make a clean cut while doing the repair.

64. In order to have the issues with her defective FlowGuard Gold addressed, Martin submitted a warranty claim to Cresline's Michigan representative, Herder Sales, Inc. on March 4, 2020. As part of her claim, Martin included a comprehensive letter detailing the history of the problems with her FlowGuard Gold and including photographs. Martin also submitted a piece of broken FlowGuard Gold pipe from her third leak, along with samples of FlowGuard Gold pipe that were adjacent to where leaks had occurred. With her warranty claim, Martin requested that her defective FlowGuard Gold plumbing system be replaced.

65. Three weeks later, on March 25, 2020, Martin received a disappointing email response from Cresline's Central Region Sales Manager, Ryan Beal. Mr. Beal indicated that Martin's FlowGuard Gold pipe "samples were inspected and were found to meet or exceeded the standards of ASTM D2846, which is the Standard Specification for CPVC pipe, and were free of manufacturing defects."

66. Mr. Beal also wrote that Lubrizol admits that "FlowGuard Gold CPVC ages over time" and recommends using certain cutters or saws when making repairs to aged FlowGuard Gold pipe. Of course, Martin's leaks and the damage to Martin's home had nothing to do with making repairs to the pipe.

67. Martin responded to Mr. Beal's email that same day explaining her disappointment and asking Mr. Beal what testing was done to establish that Martin's FlowGuard

Gold pipes met or exceeded the cited standards. To date, Martin has not heard back from Mr. Beal.

68. Cresline did not provide Martin with a formal report in response to her warranty claim.

69. The defects in Martin's FlowGuard Gold will require it to be removed and replaced in order to prevent further damage to Martin's home.

70. Martin would not have purchased a home containing FlowGuard Gold and exposed her real and personal property to flooding and water damage, as well as exposing herself to a risk of personal injury, or would have replaced her FlowGuard Gold before suffering damage, had Defendants disclosed the propensity for the FlowGuard Gold to fail.

71. The following photo is of Martin's failed FlowGuard Gold:



E. The FlowGuard Gold Pipes and Fittings

72. Defendants’ and Thompson’s FlowGuard Gold pipes and fittings are a cheaper alternative to copper plumbing systems. FlowGuard Gold is made of chlorinated polyvinyl chloride (CPVC).

73. According to Lubrizol, it developed CPVC “as a tough, reliable plumbing material.”⁷ The current formulation of Lubrizol’s FlowGuard Gold CPVC pipes and fittings was introduced in 1991 and is still sold today.⁸

74. Lubrizol designed and developed FlowGuard Gold and licenses its “FlowGuard Gold” trade name to companies that use Lubrizol’s FlowGuard Gold compound to make CPVC pipe and fittings, including Charlotte and Cresline (and formerly Thompson). Lubrizol provides Charlotte and Cresline (and formerly Thompson) with the compound, which Charlotte and Cresline (and formerly Thompson) then extrude and mold into FlowGuard Gold pipes and fittings. Charlotte and Cresline manufacture FlowGuard Gold in some or all of its plants. Charlotte’s plants are located in North Carolina, Texas, Florida, Pennsylvania, Alabama (the former Thompson plant) and Utah.⁹ Cresline’s plants are located in Kentucky, Pennsylvania, Iowa, Texas and Washington (operated by Cresline-Northwest, LLC).¹⁰ Charlotte’s, Cresline’s and Thompson’s FlowGuard Gold pipes and fittings are installed in Plaintiffs’ homes throughout the United States.

75. FlowGuard Gold is marketed and sold for use in residential and commercial buildings. Yet, at all times, Defendants have concealed from and/or failed to disclose to Plaintiffs the defective nature of FlowGuard Gold, which is prone to cause catastrophic damage.

⁷ <https://www.flowguardgold.com> (last visited March 3, 2020).

⁸ <https://www.lubrizol.com/CPVC/About-Lubrizol-CPVC> (last visited March 3, 2020).

⁹ https://www.charlottepipe.com/plant_locations.aspx (last visited March 3, 2020).

¹⁰ <https://www.cresline.com/cresline>; <https://www.cresline.com/cresline-northwest> (last visited May 8, 2020).

F. Defendants' Representations Concerning FlowGuard Gold

76. Defendants have used and continue to use a variety of methods to communicate representations about the durability and quality of FlowGuard Gold to the general public and contractors in the plumbing installation business. These uniform representations were and are published on Internet sites, including Defendants' websites, at trade, building, and home shows typically open to the general public and contractors who service ultimate consumers of FlowGuard Gold, and on point of sale displays.

77. On its website Lubrizol boasts that it is “[t]he world leader in CPVC resins and compounds with proven performance.”¹¹

78. Concerning FlowGuard Gold in general, Lubrizol claims:

FlowGuard Gold piping systems are backed by a nearly 60-year track record and provide long-term reliability and performance. The systems are durable and will not degrade, pit or scale, even when in contact with high chlorine levels.¹²

79. Concerning durability, Lubrizol touts that “FlowGuard Gold® CPVC is 100% immune to corrosion or degradation caused by chlorinated water and *will never fail* due to contact with normal drinking water.”¹³ Lubrizol states that “FlowGuard Gold pipe and fittings are designed for a 50-year service life”¹⁴ and have “a life expectancy similar to copper.”¹⁵

80. Concerning reliability, Lubrizol advises that “more than 11 billion feet of FlowGuard Gold® CPVC pipe has been installed in the U.S.—giving it the longest, most proven track record among non-metallic plumbing systems.” *Id.* In a blog post entitled “How Long Does CPVC Piping Last?”, Lubrizol further admits that “[r]eliability is arguably the most

¹¹ <https://www.lubrizol.com/CPVC> (last visited March 3, 2020).

¹² <https://www.flowguardgold.com/flowguard-gold-vs-pex-fact-sheet-download> (last visited March 3, 2020).

¹³ <https://www.flowguardgold.com/make-the-switch-to-flowguard-gold-cpvc> (last visited March 3, 2020) (emphasis added).

¹⁴ <https://www.flowguardgold.com/blog/frequently-asked-questions-on-the-performance-of-cpvc-in-residential-plumbing> (last visited July 29, 2020).

¹⁵ <https://www.flowguardgold.com/blog/updating-aging-plumbing-systems> (last visited July 29, 2020).

important characteristic for a residential piping system. Homeowners want piping that does its job, without problems, for as long as possible.”¹⁶

81. Lubrizol’s website includes industry standards it contends that its FlowGuard meets, including, but not limited to: “ASTM D1784, Specification for Rigid Poly(Vinyl Chloride) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds” and “ASTM D2846, Standard Specification for Chlorinated Poly(Vinyl Chloride) (CPVC) Plastic Hot- and Cold-Water Distribution Systems.”¹⁷

82. Concerning chlorine resistance, Lubrizol claims that “FlowGuard Gold pipes and fittings are naturally immune to chlorine degradation, due to the inclusion of chlorine in its molecular structure” and that “a FlowGuard Gold plumbing system will never fail under normal use due to chlorine levels.”¹⁸

83. Charlotte, Thompson and Cresline have also made various representations about the quality and durability of FlowGuard Gold.

84. On the cover of Charlotte’s brochure for FlowGuard Gold, Charlotte lists three attributes of FlowGuard Gold:

- QUALITY
- RELIABILITY
- PERFORMANCE.¹⁹

85. The third page of the same brochure makes many assertions about FlowGuard Gold. For example, it touts that “FlowGuard Gold Pipe & Fittings are Built for Strength,”

¹⁶ <https://www.flowguard.com/blog/how-long-does-cpvc-piping-last> (last visited July 27, 2020).

¹⁷ <https://www.flowguardgold.com/specifications-submittals-and-codes> (last visited March 3, 2020).

¹⁸ <https://www.flowguardgold.com/pex-vs-cpvc> (last visited March 3, 2020).

¹⁹ Available at: <https://www.charlottepipe.com/Documents/Brochures/BR-FGG-IDEA.pdf> (last visited March 3, 2020).

stating that FlowGuard Gold has “[e]xcellent corrosion resistance to chlorine, chloramines and chlorine dioxide, which are used as disinfectants in municipal water systems.” *Id.*

86. Charlotte repeats these representations in marketing materials that accompany the product at points of sale at distributors and national retailers, such as Home Depot.

87. In its FlowGuard Technical Manuals, which are geared toward builders, contractors and plumbers, Charlotte has stated the following:

When you need a dependable hot- and cold-water piping system, specify Charlotte Pipe’s full line of CPVC-CTS FLOWGUARD GOLD® pipe and fittings. Our market research indicated that you and your customers require a potable-water system that will provide a lifetime of reliable service.

* * *

Charlotte Pipe is able to provide you with a system of the highest quality products and the best service in the industry.

88. Charlotte’s literature explains that FlowGuard Gold “pipes and fittings are made with 100 percent FlowGuard Gold high-performance CPVC compounds.”

89. Charlotte further claims in its literature that FlowGuard Gold is “superior” in certain ways when compared to copper, cross-linked polyethylene (PEX), and polypropylene random (PP-R).

90. Before its acquisition by Charlotte, Thompson made its own representations about its FlowGuard Gold:

- FlowGuard Gold CPVC Is More Durable and Reliable (than other plumbing systems).
- ...FlowGuard Gold piping systems never corrode, pit or scale.
- ...a plumbing system that will perform for the life of the home.
- ...Nothing is Proven More Reliable.

In sum, Thompson claimed that “THERE IS NO BETTER CHOICE THAN FLOWGUARD GOLD CPVC. Quiet. Reliable. Healthy. Energy-efficient. Professional. And cost-effective.”²⁰

91. In Cresline’s Plastic Pipe Selection Guide, Cresline states that its FlowGuard Gold pipes and fittings have the following characteristics:

- Rigid.
- Non-Corrosive.
- Lightweight.
- Excellent insulation properties.
- High water temperature resistance.²¹

92. Cresline’s website describes its FlowGuard Gold pipes as “high-quality.”²²

93. Defendants have advertised that FlowGuard Gold meets certain industry standards (*i.e.*, ASTM International – a global standard setting organization that establishes industry technical standards for a wide range of products and materials) despite failing to test and adequately determine the reliability of the products when used in the real world.

94. Proper testing of FlowGuard Gold by Defendants would have revealed that FlowGuard Gold does not meet industry standards.

95. Defendants state that FlowGuard Gold is listed for and meets certain industry standards, including the following: ASTM D1784, ASTM D2846, ASTM F493, NSF Standard 14.²³

96. Defendants’ FlowGuard Gold does not conform to Defendants’ voluminous express representations and does not conform to applicable industry standards.

²⁰ <https://web.archive.org/web/20030412105606/http://cpvc.com/whycpvc.html> (last visited July 27, 2020).

²¹ <https://www.cresline.com/uploads/bulletinpa1.pdf> (last visited May 8, 2020).

²² <https://www.cresline.com/> (last visited May 8, 2020).

²³ *See, e.g.*, <https://www.flowguardgold.com/specifications-submittals-and-codes> (last visited March 3, 2020); https://www.charlottepipe.com/flowguard_gold.aspx (last visited March 3, 2020); <https://www.cresline.com/flowguard-gold-cpvc-pipe-2> (last visited July 27, 2020).

G. FlowGuard Gold Warranties

97. Charlotte and Cresline sold and sell FlowGuard Gold with written warranties. The warranties are marketed and promoted and create an expectation and belief within the industry, and with ordinary consumers, that FlowGuard Gold will last as long as the warranty period.

98. Charlotte and Cresline established warranty periods for FlowGuard Gold without conducting appropriate testing to determine if the warranty period was supported by actual or simulated use.

99. In 1999, when the Joneses' FlowGuard Gold was installed, Charlotte's written warranty warranted that the pipes and fittings would "be free from manufacturing defects and conform to currently applicable ASTM standards under normal use and service for as long as the single family residential dwelling is owned and occupied by the original owner."

100. Cresline's written lifetime warranty warrants that its FlowGuard Gold pipes and fittings "are free from defects in material and workmanship and conform to ASTM standards." The warranty provides relief for defective FlowGuard Gold "for as long as the original owner owns the property."

101. As such, Plaintiffs and other homeowners could expect that the FlowGuard Gold would last a lifetime; and, if not, that Charlotte or Cresline would repair or replace it under the warranty. The warranties explicitly extend to future performance of the FlowGuard Gold pipes and fittings.

102. Notably, the Cresline FlowGuard Gold warranty states that repair or replacement is the customer's responsibility only if there is "no defect in" in the FlowGuard Gold's "material, workmanship, or design."

103. Aware of the defects in FlowGuard Gold and the fact that its life span was in reality relatively short, in or around 2008, Charlotte dramatically decreased the length of its FlowGuard Gold warranty from unlimited as to time to only ten (10) years.

104. Charlotte's and Cresline's warranties contain unconscionable terms, including, among other things, that the remedy is limited to: a.) "replacement of, or credit for, the defective product" (Charlotte), and b.) "repair or replacement" of the defective FlowGuard Gold (Cresline). Therefore, even if a warranty claim is accepted and successfully processed by Charlotte or Cresline, a consumer would only get a free piece of equally defective FlowGuard Gold or have the defective piece of FlowGuard Gold repaired and would be responsible for, not only labor, but all other property repair and replacement costs. Such limitations are inadequate to redress failure of the pipes and fittings or any resulting damage to the structure in which they are installed. Thus, the warranties fail of their essential purpose. The warranties further include various other unenforceable limitations.

105. Lubrizol has an active role in Charlotte's and Cresline's warranty process, including evaluating the defective pipes and fittings that are submitted to Charlotte and Cresline as part of warranty claims, and drafting reports, or "Technical Documents," on Lubrizol's purported findings. These Technical Documents often list specious excuses for the premature failure of FlowGuard Gold.

106. Defendants have knowingly and intentionally concealed that they actually had no intention of providing the services set forth in their purported warranties.

107. Defendants have routinely obstructed consumers' attempts at making warranty claims for their defective FlowGuard Gold and summarily dismissed those claims when consumers were permitted to present them.

108. The handling of Plaintiffs warranty claims illustrates Defendants' disinterest in assisting customers with reasonable inquiries and formal warranty claims.

H. Defendants' Knowledge of and Notice that FlowGuard Gold was and is Defective

109. For many years, Defendants have been well aware of the problems related to the embrittlement, cracking and shattering of FlowGuard Gold. They have received warranty claims and complaints from customers (like those submitted by the Plaintiffs) that the pipes and fittings were and are defective and have not functioned as advertised and warranted.

110. Defendants acknowledge on their websites that FlowGuard Gold is susceptible to expansion and contraction and repair problems (cracking and splintering). In addition, on-line postings which provide specific dates, where the complaint or on-line posting was made, a description of the product, and how Defendants handled the complaints and inquiries, further put Defendants on notice concerning the defective nature of FlowGuard Gold. A small sampling of such on-line postings are as follows [sic throughout]:

a. Date: 11/29/2014

I did a water heater this morning and ran into some problems with the CPVC piping. It's old and brittle, and snapped off rather suddenly after two clicks from my ratchet cutters. This is what I thought to be the premium brand, and what I used exclusively when I was doing new houses, 10+ years ago. I picked up materials to do a copper installation, and got surprised once I got to the job. I transitioned my work to the CPVC with sharkbites and left everything dry and in good shape. However, I'm a little worried about the plastic not holding up. I was expecting a longer life-span out of the Flowguard-Gold pipe. If others have had similar concerns feel free to vector me to other posts on the subject. Thanks.²⁴

b. Date: 10/27/2013

The line that leads to the refrigerator had cracked for the second time. The first time a patch was put into the line and now it is leaking a foot above that section. The pipe is FlowGuard Gold and you can feel the crack in the pipe. I am just wondering if I should insist on the insurance company covering the cost of taking out the entire

²⁴ <https://terrylove.com/forums/index.php?threads/hey-terry-flowguard-cpvc-getting-brittle.59346/> (last visited December 30, 2019).

pipe for however far back it leads. I have no clue at this point if it runs 4 feet more up the wall and turns and runs through the floor joists or if it runs to the attic. So I have to at least fix the immediate spot but really feel this entire bunch of pipe needs to go.

Any thoughts on how much of this pipe should go?²⁵

c. Date: 04/27/2011

I'm looking for other plumbers that have experienced problems with CPVC piping when a compression type fixture stop is installed on the pipe. I have letters and documentation from the stop manufacturer that states their stops can be used on CPVC and they recognize this practice as industry standard in some areas of the country. Lubrizol (Flowguard Gold) also has public documentation that recognizes these types of connections as acceptable.

I am experiencing failures at toilets, lavatories, kitchen sinks, etc. on the hot and cold side of the system where a fixture stop just breaks off obviously flooding the home. I have had several of these tested by a chemist to try and figure out what the issue is. The test results were somewhat inconclusive due to lubrizol's resin "recipe" not being public knowledge so the chemist had nothing to compare the ingredients to.

Anyway, the failures I'm seeing are around 4-5 years after installation which is within the 8 year state statute that covers a homeowner against poor workmanship. I'm being sued on a regular basis for poor workmanship and I am convinced something is wrong with the pipe. I'm hoping I can find a few more companies that have experienced the same issue so we can get Lubrizol to discuss this.²⁶

d. Date: 03/08/2012

I have been in homebuilding 20+ years and worked for a major builder building 300+ homes a year. We converted to CVCP Flowguard in early/mid 90's. When I built my own home in 1996 I used CPVC Flowguard, because I thought it was the best product available. In the past week on two separate occasions I have woke up hearing water dripping/flowing in our finished lower level. On both occasions in the main section of pipe (not near a joint) there were a string of bumps (looks something like a string of poison ivy) and one of the bumps burst open shooting out water. I fixed one on Monday (still floating drywall mud) and another one today. The one today as I cut out a section of pipe (about 6" long) I noticed another section of bumps 2-3" long (had not leaked there,yet) about 18" away. Therefore, I cut out the entire section. It is 3/4" line that reduces down to 1/2" when it goes to

²⁵ <https://terrylove.com/forums/index.php?threads/flowguard-gold-pipe-breaks.54305/> (last visited December 30, 2019).

²⁶ <https://www.ridgidforum.com/forum/mechanical-trades/professional-plumbing-discussion/38351-flowguard-gold-cpvc> (last visited December 30, 2019).

fixtures. The leak on Monday was probably 30' away from the leak that started last night sometime.

Has anyone had this problem? Concerned that will have another "burst" when we are gone, so we will start shutting of the water when we leave more than 24hours. Should I take out the drywall and replace all the pipe (seems like the only solution).²⁷

e. Dated: 12/12/2012

Hi,

My apologies for intruding, I am not a plumber, but a helicopter pilot by trade. I really felt the need to share my experience with the product. I built my own home in 2006 as an owner builder. This was not the first house that I have built, and I did not do the plumbing myself. I had a licensed plumbing contractor do all the work.

In my guest bathroom the plumbers ran a hot water line from an on demand heater through the walls to the set of Delta shower head valves. The pipe used was the Flow Guard Gold PVC pipe.

About a month ago, I noticed some buckling in a laminate floor in a bedroom adjacent that bathroom. It is a 350 sq ft guest suite with higher end laminate flooring designed to hand a lot of traffic.

My initial reaction was that the shower pan was leaking and through a series of tests and poking around (with a licensed plumbing contractor at my side) we were able to determine that there must be a hot water pipe leaking in the back wall of the shower.

Unfortunately it is a 3 sided 4'x7' shower with 10' high tiled walls. Fortunately, that back wall was also the exterior wall of the house
Bottom line: we cut a hole in the side of the house, located the leak and exposed the damp wood. Here is the scary part.....it was not even at a joint. It was a pin hole in the pipe, no where near the joint.

See 2 pictures. You can see the area where the leak was, and then a close up of the leak.

Finally, how in the heck does a 6 year old piece of low pressure PVC just pop a pin hole in the pipe?

This little pinhole will cost me \$1200 - \$1500 when all said and done. If it can happen there, it can happen anywhere in my home if the same crap pipe was used everywhere else.

²⁷ <https://www.ridgidforum.com/forum/mechanical-trades/ask-the-plumbing-experts/41568-cpvc-pipe-bursts> (last visited December 30, 2019).

Is there some kind of class action suit against the manufacture of this product?²⁸

f. Dated: 06/26/2019

[Home Depot customer review concerning Charlotte's FlowGuard]

Worst product. Unreliable and fragile. Use PVC or copper.²⁹

g. Dated: 12/10/2019

[Home Depot customer review concerning Charlotte's FlowGuard]

Great initial quality but, after this stuff is in service a while it becomes brittle and can no longer be trusted to hold the pressures of water etc. If you plan on staying in your home over 10 years do yourself a favor and learn how to solder copper pipes together you'll be glad you did later down the road.³⁰

h. Dated: 05/06/2017

[Home Depot customer review concerning Charlotte's FlowGuard]

Our house has intake pipes made of this stuff. We have had multiple failure points throughout the pipes. They are in the length of the tube. Some have resulted in catastrophic loss of whole walls.³¹

111. In fact, Lubrizol's own website acknowledges its awareness of FlowGuard Gold failures with a special page dedicated to "Handling Aged Pipe."³² Previous versions of this webpage advised that FlowGuard should be "handled carefully" and that "[i]f a repair is needed, it's important to use a fine-toothed saw to cut" the material. The webpage now warns that those making repairs should "**Never Use Ratchet or Scissors-Style Cutters.**" The page continues to state that "[s]ervice contractors who attempt to cut into older CPVC pipe with ratchet cutters or scissors-style cutters have experienced issues with cracking or splintered pipe," and claim "[t]his is not due to a defect in the pipe, but instead the use of the wrong tool."

²⁸ <https://www.plumbingzone.com/f22/defective-flowguard-gold-cpvc-pipe-21461/index5/> (last visited December 30, 2019).

²⁹ <https://www.homedepot.com/p/Charlotte-Pipe-3-4-in-x-10-ft-CPVC-SDR11-Flowguard-Gold-Pipe-CTS-12007-0600/100161617> (last visited December 31, 2019).

³⁰ <https://www.homedepot.com/p/Charlotte-Pipe-1-2-in-x-10-ft-CPVC-SDR11-Flow-Guard-Gold-Pipe-CTS-12005-0600/100170202> (last visited December 31, 2019).

³¹ *Id.* (last visited December 31, 2019).

³² <https://www.flowguardgold.com/handling-aged-pipe> (last visited December 30, 2019).

112. On the contrary, Charlotte's own installation instructions state the opposite, "*FlowGuard Gold pipe can be easily cut with a wheel type plastic tubing cutter, ratchet cutter or fine tooth saw.*"

113. While Lubrizol's "Handling Aged Pipe" webpage, discusses how aged FlowGuard Gold pipe should be handled when making repairs, it does not warn Plaintiffs or the general public, in any way whatsoever, about the defective nature of FlowGuard Gold or that the pipes and fittings become brittle, crack, shatter and leak without being touched.

114. Defendants and Thompson have knowingly and intentionally concealed that, notwithstanding statements on their websites, and in their brochures, advertisements and warranties, FlowGuard Gold suffers from embrittlement and routinely cracks and shatters, resulting in plumbing leaks and attendant damage.

115. Defendants have ignored customers' complaints and concerns, and have failed to implement any changes to FlowGuard Gold pipes and fittings or warranty procedures to remedy the defects associated with their products.

I. Plaintiffs Have Been Injured by Defendants' Actions

116. Defendants and Thompson knew and failed to disclose that they did not properly design, test or manufacture FlowGuard Gold in such a way as to withstand embrittlement, cracking, shattering and leaking. FlowGuard Gold reached the consuming public, including Plaintiffs, without substantial correction of its defects and without warning of the latent defects alleged herein.

117. Defendants continue to advertise and sell FlowGuard Gold for use in homes and other structures, omitting to disclose to Plaintiffs and other consumers, and their agents or contractors, facts concerning FlowGuard Gold, including, but not limited to, concealing that

FlowGuard Gold was defectively formulated and does not meet industry standards. All of these facts are material to a reasonable consumer and Defendants had a duty to disclose these facts.

118. Defendants and Thompson did not provide warnings with FlowGuard Gold or otherwise warn consumers of the problems or unreasonable dangers that they knew existed. In fact, to this day, Defendants have concealed their knowledge of the defects in FlowGuard Gold pipes and fittings from the public. Furthermore, to this day, Defendants have not recalled their defective FlowGuard Gold.

119. FlowGuard Gold did not perform in accordance with the reasonable expectations of Plaintiffs in that it was not durable and suitable for use as a plumbing system in their homes and other structures.

120. Had Defendants and Thompson not withheld and omitted vital information concerning the design, reliability and performance of FlowGuard Gold, Plaintiffs would not have purchased and/or installed FlowGuard Gold in their structures, would not have purchased structures containing FlowGuard Gold, or would have replaced their FlowGuard Gold pipes and fittings before the defects manifested and caused them damage.

121. Because the defects in FlowGuard Gold are latent and not detectable until manifestation, Plaintiffs were not reasonably able to discover their FlowGuard Gold pipes and fittings were defective until after installation, even with the exercise of due diligence.

122. As a result of Defendants' and Thompson's misconduct, Plaintiffs have suffered actual damages in that the FlowGuard Gold pipes and fittings in their homes and other structures have prematurely failed and will continue to do so, potentially damaging other building elements, causing continuous and progressive damage to real and personal property, and requiring Plaintiffs to expend thousands of dollars to repair or replace the FlowGuard Gold pipes

and fittings long before the expiration of the “useful life” of the FlowGuard Gold as represented by Defendants. These failures are common in FlowGuard Gold regardless of when, where, or how it is installed.

123. The damages suffered by Plaintiffs were not foreseeable from the perspective of Plaintiffs, as plumbing products should last for far longer than twenty years, as Lubrizol promises, and Plaintiffs were not warned by Defendants and Thompson that their FlowGuard Gold would not last as long as it should.

124. Defendants have failed to adequately compensate Plaintiffs for damages suffered as a result of the defective FlowGuard Gold pipes and fittings.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

125. Defendants and Thompson knew that FlowGuard Gold was defective prior to the time of its sale, and intentionally and wrongfully concealed material information and the truth concerning its products from Plaintiffs and the general public, all the while continually marketing and promoting FlowGuard Gold pipes and fittings. Defendants’ acts of fraudulent concealment include failing to disclose that FlowGuard Gold was defectively designed and/or manufactured, did not meet industry standards, and would deteriorate in less than its expected lifetime, leading to damage.

126. Because the defects FlowGuard Gold are latent and not detectable until manifestation, and given the locations where FlowGuard Gold pipes and fittings are foreseeably installed and therefore often impossible to view, defects are difficult to detect. Plaintiffs were not reasonably able to discover that FlowGuard Gold was defective and unreliable until recently, despite their exercise of due diligence. Thus, the running of the applicable statutes of limitation

have been tolled with respect to any claims that Plaintiffs have brought or could have brought as a result of the unlawful or fraudulent course of conduct described herein.

127. Defendants and Thompson had a duty to disclose that FlowGuard Gold was defective, unreliable and inherently flawed in its design and/or manufacture and that FlowGuard Gold pipes and fittings would fail within their expected period of use, resulting in significant damages and eventually catastrophic failure. Notwithstanding their duty to inform Plaintiffs, Defendants have never disclosed the defects to Plaintiffs.

128. As a result, Defendants are estopped from pleading any statute of limitations defense. Defendants actively concealed and misrepresented to Plaintiffs facts that were essential to understanding that Plaintiffs had claims against Defendants, and thus, Defendants have acted to prevent Plaintiffs from learning that they possessed claims against Defendants. Had Plaintiffs been aware of the facts which Defendants misrepresented and concealed, they would have acted to prevent damage to themselves and their property and/or commenced suit against Defendants before the running of any statute of limitations alleged to be applicable to this case.

129. Defendants are further estopped from asserting any statute of limitations defense, contractual or otherwise, to the claims alleged herein by virtue of their fraudulent concealment.

FIRST CAUSE OF ACTION

Negligence

(Plaintiffs the Joneses, Cochrane and Martin against Defendants Lubrizol, Charlotte and Cresline)³³

130. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

³³ Plaintiffs are filing this Second Amended Complaint pursuant to the Court's February 1, 2022 order (ECF No. 60). Plaintiffs do not seek to reallege any causes of action previously dismissed from this action (see ECF No. 39, as amended by ECF No. 47), but leave the causes of action previously alleged in this Second Amended Complaint in order to preserve them for purposes of appeal.

131. Plaintiffs the Joneses, Cochrane and Martin bring this Count against Defendants Lubrizol, Charlotte and Cresline.

132. Defendants Lubrizol, Charlotte and Cresline and Thompson each owed duties to Plaintiffs to exercise reasonable care in the design, development, formulation, testing, manufacture, marketing, selling and warranting of FlowGuard Gold. Defendants and Thompson further had a duty not to put defective products such as FlowGuard Gold on the market. These duties were independent of any duties Defendants or Thompson had pursuant to the warranties they made to Plaintiffs.

133. Defendants and Thompson breached their duties to Plaintiffs by designing, developing, formulating, testing, manufacturing, selling and warranting a defective product to Plaintiffs, and by failing to take those steps necessary to repair or otherwise discontinue selling a defective product to consumers.

134. Defendants and Thompson were aware, or reasonably should have been aware, that FlowGuard Gold was defective and did not perform its intended use.

135. Defendants and Thompson were aware, or reasonably should have been aware, of the foreseeable risks associated with the use of FlowGuard Gold.

136. When they purchased Defendants' and Thompson's FlowGuard Gold pipes and fittings, Plaintiffs were not aware of their defective nature.

137. The injuries sustained by Plaintiffs could have been reasonably foreseen by Defendants and Thompson.

138. As a direct and proximate cause of the foregoing, Plaintiffs have suffered and will continue to suffer damages and economic loss as described above, in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Negligent Failure to Warn

(Plaintiffs the Joneses, Cochrane and Martin against Defendants Lubrizol, Charlotte and Cresline)

139. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

140. Plaintiffs the Joneses, Cochrane and Martin bring this Count against Defendants Lubrizol, Charlotte and Cresline.

141. Defendants Lubrizol, Charlotte and Cresline and Thompson each owed duties to the consuming public to design, develop, formulate, test, manufacture, market, sell and warrant a product reasonably free of defect. These duties were independent of any duties Defendants or Thompson had pursuant to the warranties they made to Plaintiffs.

142. Defendants and Thompson had a duty to disclose to the consuming public the foreseeable risks associated with the use of FlowGuard Gold in homes and other structures.

143. Defendants and Thompson were aware, or reasonably should have been aware, of the foreseeable risks associated with the use of FlowGuard Gold in homes and other structures.

144. Defendants and Thompson were negligent in that they knew or, by the exercise of reasonable care, should have known that Defendants' FlowGuard Gold pipes and fittings, under ordinary use in homes and other structures, might be harmful or injurious to the consuming public, including the Plaintiffs, but failed to use reasonable care to warn Plaintiffs and the consuming public of the potentially harmful and injurious effects in the manner that a reasonable person would under the same or similar circumstances.

145. Defendants and Thompson failed to exercise reasonable care and give adequate warnings or instructions to consumers about the reasonably foreseeable dangers that could result from using FlowGuard Gold under reasonably foreseeable conditions.

146. Consumers using and installing FlowGuard Gold were not aware of its defective nature.

147. Plaintiffs were not aware of the destructive nature of FlowGuard Gold and Defendants knew or had reason to know that consumers would not realize the dangerous condition of it.

148. Had Plaintiffs been warned about of the true nature of the quality of FlowGuard Gold, they would not have purchased FlowGuard Gold or structures in which FlowGuard Gold was installed, would have negotiated additional warranty coverage, would have negotiated a lower price to reflect the risk, or simply would have avoided the risk all together by purchasing a different plumbing system or different home. Further, Plaintiffs would have replaced the defective FlowGuard Gold pipes and fittings sooner, preventing damage to their homes.

149. Due to Defendants' and Thompson's failure to provide consumers with adequate warnings or instruction about the defective and destructive nature of FlowGuard Gold, Plaintiffs have been harmed. Such harm would not have been suffered if Defendants and Thompson provided adequate warnings or instructions.

150. As a direct and proximate result of Defendants' and Thompson's negligent acts and/or omissions, Plaintiffs have incurred and will incur damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
Strict Liability – Design Defect
(Plaintiffs the Joneses against Defendants Lubrizol and Charlotte)

151. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

152. Plaintiffs the Joneses bring this Count against Defendants Lubrizol and Charlotte.

153. Defendants and Thompson designed FlowGuard Gold to be used and installed in the Plaintiffs' homes and other structures.

154. The design of FlowGuard Gold, including the formulation and composition of the material making up FlowGuard Gold pipes and fittings is defective and because of such design defects, FlowGuard Gold is unreasonably dangerous to the consuming public, including Plaintiffs. In contravention of Section 402A of the Restatement (Second) of Torts, FlowGuard Gold posed a substantial likelihood of harm at the time it was sold.

155. The design defect in FlowGuard Gold existed at the time the FlowGuard Gold pipes and fittings were sold and/or when the FlowGuard Gold pipes and fittings left Defendants' and Thompson's possession or control.

156. The risks inherent in the design of FlowGuard Gold outweigh the benefits of its design.

157. Feasible design alternatives existed to make FlowGuard Gold safer for its intended use at the time of its design.

158. FlowGuard Gold was expected to be and was installed in consumers' homes and other structures, including Plaintiffs' home, without substantial change in its condition from the time of its design, manufacture and sale.

159. Defendants are strictly liable for the injuries that the defective FlowGuard Gold pipes and fittings have caused Plaintiffs.

160. The injuries caused to Plaintiffs as a result of Defendants' and Thompson's defective FlowGuard Gold pipes and fittings could and should have been reasonably foreseen by Defendants and Thompson.

161. As a proximate result of the defective design of FlowGuard Gold, Plaintiffs have incurred and will incur damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
Strict Liability – Manufacturing Defect
(Plaintiffs the Joneses against Defendant Charlotte)

162. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

163. Plaintiffs the Joneses bring this Count against Defendant Charlotte.

164. Defendant Charlotte and Thompson manufactured FlowGuard Gold to be used and installed in Plaintiffs' homes and other structures.

165. When the FlowGuard Gold pipes and fittings left Charlotte's and Thompson's control, they deviated in a material way from their design and/or performance standards. As a result, the FlowGuard Gold pipes and fittings were unreasonably dangerous to the consuming public, including the Plaintiffs.

166. The FlowGuard Gold pipes and fittings were defectively manufactured and posed a substantial likelihood of harm at the time they were sold and/or when the pipes and fittings left Charlotte's and Thompson's possession or control.

167. The FlowGuard Gold pipes and fittings were expected to be and were installed in consumers' homes and other structures, including Plaintiffs' home, without substantial change in their condition from the time of their manufacture and sale.

168. Charlotte is strictly liable for the injuries that FlowGuard Gold has caused Plaintiffs.

169. The injuries caused to Plaintiffs as a result of the defective FlowGuard Gold pipes and fittings could and should have been reasonably foreseen by Charlotte and Thompson.

170. As a proximate result of Charlotte's and Thompson's defective manufacture of FlowGuard Gold, Plaintiffs have incurred and will incur damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Strict Liability – Failure to Warn
(Plaintiffs the Joneses against Defendants Lubrizol and Charlotte)

171. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

172. Plaintiffs the Joneses bring this Count against Defendants Lubrizol and Charlotte.

173. Defendants and Thompson designed and manufactured the FlowGuard Gold pipes and fittings used and installed in Plaintiffs' homes and other structures.

174. When Plaintiffs bought FlowGuard Gold or structures in which FlowGuard Gold was installed, they were not aware of the defective and destructive nature of the pipes and fittings. Defendants and Thompson knew or had reason to know that those consumers would not realize the defective condition of the FlowGuard Gold pipes and fittings.

175. Defendants and Thompson did not provide, and FlowGuard Gold pipes and fittings did not contain, adequate warnings and as a result, the pipes and fittings were unreasonably dangerous to the consuming public, including the Plaintiffs.

176. The defects in FlowGuard Gold, including the lack of warnings, existed at the time the FlowGuard Gold pipes and fittings were sold and/or when the FlowGuard Gold compound, pipes and/or fittings left Defendants' and Thompson's possession or control.

177. FlowGuard Gold pipes and fittings were expected to be and were installed in consumers' homes and other structures, including the homes of Plaintiffs, without substantial change in their condition from the time of their manufacture or sale.

178. Had Plaintiffs been warned about the true nature of the quality of FlowGuard Gold, they would not have purchased FlowGuard Gold or structures in which FlowGuard Gold was installed, would have negotiated additional warranty coverage, would have negotiated a lower price to reflect the risk, or simply would have avoided the risk all together by purchasing a different plumbing system or different home. Further, Plaintiffs would have replaced the defective FlowGuard Gold pipes and fittings sooner, preventing damage to their homes.

179. Defendants are strictly liable for the damage that FlowGuard Gold and its lack of warnings have caused Plaintiffs. Such harm would not have been suffered if Defendants and Thompson had provided adequate warnings or instructions.

180. The injuries caused to Plaintiffs as a result of the defective FlowGuard Gold pipes and fittings could and should have been reasonably foreseen by Defendants and Thompson.

181. As a proximate result of Defendants' and Thompson's failure to give adequate warnings or instructions regarding any reasonably foreseeable problems, Plaintiffs have incurred and will incur damages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
Breach of Express Warranty
(Plaintiffs the Joneses, Cochrane, Baker and Martin against Defendants Lubrizol, Charlotte and Cresline)

182. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

183. Plaintiffs the Joneses, Cochrane, Baker and Martin bring this Count against Defendants Lubrizol, Charlotte and Cresline.

184. Defendants and Thompson marketed and sold FlowGuard Gold into the stream of commerce with the intent that FlowGuard Gold would be purchased by contractors,

subcontractors, plumbers, and end users for installation in homes and other structures owned and bought by Plaintiffs.

185. Defendants Charlotte and Cresline expressly warranted in writing that FlowGuard Gold is well-suited as plumbing material with a useful life matching the lifetime of the structure in which the FlowGuard Gold pipes and fittings are installed (or ten (10) years for Charlotte FlowGuard Gold purchases after Charlotte dramatically decreased the length of its warranty).

186. Charlotte and Cresline's express written warranties explicitly extend to future performance of the FlowGuard Gold pipes and fittings and discovery of breaches of these warranties necessarily await the time of such performance.

187. For purchasers of FlowGuard Gold or of homes and other structures in which FlowGuard Gold was installed, these warranties became part of the basis of the bargain and Plaintiffs relied upon the warranties.

188. Pursuant to Charlotte's express written warranty, Charlotte is obligated to replace defective FlowGuard Gold pipes and fittings or provide monetary relief. Likewise, pursuant to Cresline's express written warranty, Cresline is obligated to repair or replace defective FlowGuard Gold pipes and fittings. In exchange for these duties and obligations, Charlotte and Cresline received payment of the purchase price for FlowGuard Gold from or on behalf of Plaintiffs.

189. Lubrizol, Charlotte, Cresline and Thompson created additional express warranties for FlowGuard Gold through their sales brochures, catalogs, websites and marketing materials. These warranties have full force and effect, notwithstanding any limitations in the "limited warranties" from Charlotte and Cresline.

190. Defendants and Thompson made the express warranties to the ultimate consumers, such as Plaintiffs.

191. Defendants and Thompson breached the additional express warranties by designing, manufacturing and selling FlowGuard Gold compound, pipes and/or fittings that were defective and did not conform to the representations made by Defendants and Thompson.

192. Plaintiffs have afforded Defendants ample opportunities to repair the complained-of defects, and Defendants have failed to remedy same in a reasonable amount of time. Plaintiffs put Charlotte and Cresline on notice, by way of warranty claims, that their FlowGuard Gold pipes and fittings are problematic.

193. Charlotte and Cresline failed to perform as required under their purported warranties and breached said contracts and agreements by providing Plaintiffs with FlowGuard Gold pipes and fittings that were defective and unfit for their intended use, and failed to appropriately replace the FlowGuard Gold pipes and fittings or otherwise provide relief.

194. Defendants breached their express warranties because FlowGuard Gold does not perform as promised. The FlowGuard Gold pipes and fittings embrittle, crack, shatter, otherwise deteriorate and leak. As a result, FlowGuard Gold is not suitable for use as a plumbing product.

195. After determining that they had suffered damages from the failure of FlowGuard Gold, Plaintiffs gave Defendants notice of the breaches of warranty, and Defendants had actual notice of these breaches.

196. Charlotte and Cresline further breached their written warranties by wrongly denying warranty claims made by Plaintiffs.

197. The limitations and exclusions in Charlotte's and Cresline's unjust one-sided warranties are unconscionable and unenforceable.

198. Charlotte's and Cresline's warranties provide for replacement of the defective FlowGuard Gold pipes and fittings with equally defective parts.

199. Charlotte and Cresline failed to pay all costs and damages associated with replacing Plaintiffs' FlowGuard Gold.

200. Charlotte and Cresline included the limitations and exclusions in their warranties while failing to disclose FlowGuard Gold's defects to Plaintiffs.

201. Plaintiffs have sustained consequential or incidental losses that would not have been sustained but for Charlotte's and Cresline's failure of remedy to repair or replace.

202. The consequential or incidental losses sustained by Plaintiffs were within the contemplation of the parties, and therefore should not be prohibited when such bargained for remedy fails of its essential purpose.

203. Charlotte's and Cresline's purported "limited warranties" fail of their essential purpose because they purportedly warrant that FlowGuard Gold will perform as promised for the lifetime of the structure in which the FlowGuard Gold pipes and fittings are installed (or ten (10) years for Charlotte FlowGuard Gold purchases after Charlotte dramatically decreased the length of its warranty), when in fact, FlowGuard Gold does not so last.

204. Charlotte's purported "limited warranty" also fails of its essential purpose in that it limits recovery "to replacement of, or credit for, the defective product," as well as excludes the cost of labor and reimbursement for other damages. Charlotte's purported "limited warranty" further fails of its essential purpose in that the replacement FlowGuard Gold provided thereby is the same defective FlowGuard Gold.

205. Cresline's purported "limited warranty" also fails of its essential purpose in that it limits recovery to "repair or replacement," as well as excludes the cost of labor and

reimbursement for other damages. Cresline's purported "limited warranty" further fails of its essential purpose in that the replacement FlowGuard Gold provided thereby is the same defective FlowGuard Gold.

206. Such limitations are inadequate to redress failure of FlowGuard Gold or any resulting damage to the structure in which it is installed. As a result, the "limited warranties" do not provide a minimum adequate remedy.

207. Because Charlotte's and Cresline's warranties fails of their essential purpose, Plaintiffs are entitled to recover available damages.

208. Defendants' FlowGuard Gold was defective at the time it was acquired by Plaintiffs.

209. Defendants knew that the FlowGuard Gold compound, pipes and fittings were defective, yet continued to represent that FlowGuard Gold was free of defects. Plaintiffs had no ability to detect the defect nor received notice thereof.

210. Plaintiffs have relied on Defendants' express warranties to their detriment.

211. Because of Defendants' breaches of warranty, Plaintiffs have suffered and will continue to suffer damages, including but not limited to any damage to the structures in which FlowGuard Gold is installed caused by the deterioration or failure of the FlowGuard Gold pipes and fittings, and any other compensatory or consequential damages. Plaintiffs reserve their right to seek all damages available by statute or law.

SEVENTH CAUSE OF ACTION

Breach of the Implied Warranty of Merchantability (Plaintiffs Cochrane, Baker and Martin against Defendants Charlotte and Cresline)

212. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

213. Plaintiffs Cochrane, Baker and Martin bring this Count against Defendants Charlotte and Cresline.

214. Defendants Charlotte and Cresline and Thompson designed, manufactured and sold FlowGuard Gold knowing that the pipes and fittings would be installed in homes and other structures owned or bought by Plaintiffs.

215. Charlotte and Cresline are, and Thompson was, merchants of FlowGuard Gold and marketed, promoted and sold FlowGuard Gold to the consuming public.

216. Charlotte, Cresline and Thompson expected the consuming public, including Plaintiffs, to install and use FlowGuard Gold in their homes and other structures and such use was reasonably foreseeable. The FlowGuard Gold pipes and fittings sold by Charlotte were not merchantable at the time Charlotte, Cresline and Thompson sold them.

217. Charlotte, Cresline and Thompson warranted to Plaintiffs that FlowGuard Gold was of a quality that would pass without objection in the trade and was at least fit for the ordinary purposes for which such goods were used, and in all other respects were of merchantable quality.

218. Plaintiffs relied on that implied warranty.

219. As alleged herein, Charlotte, Cresline and Thompson concealed and failed to disclose the true nature of the quality of FlowGuard Gold, and failed to adequately warn Plaintiffs of the dangers associated with the use of FlowGuard Gold.

220. Charlotte, Cresline and Thompson breached their implied warranties of merchantability because the FlowGuard Gold pipes and fittings were not of merchantable quality and were defectively designed, as they embrittled, cracked, shattered, otherwise deteriorated and leaked, and were unfit for the ordinary purposes for which they were designed and used.

221. Given where FlowGuard Gold is installed – within the walls of a home or other structure – any limitation of remedies claimed by Charlotte or Cresline must fail of their essential purpose in that if the FlowGuard Gold fails, significant damage to property will occur and the replacement of the FlowGuard Gold and the repairs necessitated by the failure cannot be accomplished without considerable consequential cost and expense.

222. Charlotte and Cresline have been notified by Plaintiffs of the defective nature of the FlowGuard Gold pipes and fittings and of their breaches of warranty within a reasonable time of discovery.

223. Charlotte and Cresline are strictly liable in accordance with Restatement (Second) of Torts § 402A.

224. As a direct and proximate result of Charlotte's, Cresline's and Thompson's breaches of the implied warranty of merchantability, Plaintiffs have been damaged in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

**Violation of the Magnuson-Moss Warranty Act
(15 U.S.C. § 2301, *et seq.*)**

(Plaintiffs the Joneses, Cochrane and Martin against Defendants Charlotte and Cresline)

225. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

226. Plaintiffs the Joneses, Cochrane and Martin bring this against Defendants Charlotte and Cresline.

227. FlowGuard Gold is a “consumer product” as defined in 15 U.S.C. § 2301(1) when a consumer contracts to build a home.

228. Defendants are, and Thompson was, “suppliers” and “warrantors” as defined in 15 U.S.C. §§ 2301(4) and (5).

229. Charlotte and Cresline supplied “written warranties” for FlowGuard Gold under as defined in 15 U.S.C. §§ 2301(6)(A) and (B).

230. Plaintiffs are “consumers” as defined in 15 U.S.C. § 2301(3).

231. Charlotte and Cresline are liable to Plaintiffs pursuant to 15 U.S.C. § 2310(d)(1) because they breached its written warranties as set forth above.

232. In connection with the sale of FlowGuard Gold, Charlotte, Cresline and Thompson gave implied warranties as defined in 15 U.S.C. § 2301(7); namely, the implied warranty of merchantability. As a part of the implied warranty of merchantability, Charlotte, Cresline and Thompson warranted that FlowGuard Gold was fit for its ordinary purpose as a reliable building product that complies with all applicable laws and regulations. Charlotte and Cresline are liable to Plaintiffs pursuant to 15 U.S.C. § 2310(d)(1) because they breached the implied warranty of merchantability as set forth herein.

233. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs are entitled to recover the following damages proximately caused by Charlotte’s and Cresline’s breaches of its written warranties and the implied warranty of merchantability: (a) direct economic damages at the point of sale in the amount of the difference in value between the value of FlowGuard Gold as warranted (the full purchase price) and the value of FlowGuard Gold as delivered (\$0); and (b) consequential economic damages at the point of repair in the form of the cost of repair, replacement and/or removal of FlowGuard Gold.

234. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys’ fees based on actual time expended) determined by the Court to have been reasonably incurred by Plaintiffs in connection with the commencement and prosecution of this action.

NINTH CAUSE OF ACTION

**Violation of the Washington Products Liability Act, RCW 7.72, *et seq.*
(Plaintiff Baker against Defendants Lubrizol and Charlotte)**

235. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

236. Plaintiff Baker brings this against Defendants Lubrizol and Charlotte.

237. Lubrizol and Charlotte are, and Thompson was, “product sellers” and “manufacturers” as defined by RCW 7.72.010(1) and (2), respectively. Lubrizol, Charlotte and Thompson designed, produced, made and fabricated FlowGuard Gold.

238. Plaintiff’s claims are “product liability claims” as defined by RCW 7.72.010(4).

239. Plaintiff’s claims include those brought for harm caused by the manufacture, production, making, fabrication, design, formulation, preparation, assembly, testing, (lack of) warnings, marketing, and labeling of FlowGuard Gold.

240. Plaintiff’s claims include, but are not limited to, claims or actions based on: strict liability; negligence; breach of express and implied warranty; failure to warn; misrepresentation, concealment, or nondisclosure. Plaintiff specifically incorporates by reference the allegations contained in paragraphs 143-149, 152-161, 164-172, 175-181, 184-192, 195-222 and 225-235. Lubrizol and Charlotte are subject to liability and are strictly liable to Plaintiff pursuant to RCW 7.72.030(1) and (2), respectively.

241. Plaintiff’s harm was proximately caused by the negligence of Defendants in that FlowGuard Gold was not reasonably safe as designed and not reasonably safe because adequate warnings or instructions were not provided by Defendants.

242. Plaintiff's harm was also proximately caused by the fact that FlowGuard Gold was not reasonably safe in construction and not reasonably safe because it did not conform to the Defendants' express and implied warranties.

243. Plaintiff's harm was caused during the useful sale life of FlowGuard Gold.

244. Lubrizol's and Charlotte's actions have caused damages and injuries to Plaintiffs.

TENTH CAUSE OF ACTION
Unjust Enrichment
(Plaintiffs the Joneses, Cochrane, Baker and Martin against Defendants Lubrizol, Charlotte and Cresline)

245. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

246. Plaintiffs the Joneses, Cochrane, Baker and Martin bring this against Defendants Lubrizol, Charlotte and Cresline.

247. As the intended and expected result of its conscious wrongdoing, Defendants have profited and benefited from the purchase of FlowGuard Gold by Plaintiffs. Plaintiffs' payments for FlowGuard Gold flowed to Defendants and Thompson.

248. Defendants and Thompson have voluntarily accepted and retained these profits and benefits, derived from Plaintiffs, with full knowledge and awareness that, as a result of their misconduct, Plaintiffs were not receiving products of the quality, nature, fitness or value that had been represented by Defendants and Thompson, and that Plaintiffs, as reasonable consumers, expected.

249. Defendants have been unjustly enriched by their fraudulent and deceptive withholding of benefits from Plaintiffs, at the expense of Plaintiffs.

250. Defendants' retention of these profits and benefits is inequitable.

251. Plaintiffs seek the disgorgement and restitution of Defendants' wrongful profits, revenue and benefits, plus interest, to the extent and in the amount deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendants' unjust enrichment.

ELEVENTH CAUSE OF ACTION

Fraudulent Concealment

(Plaintiffs the Joneses, Cochrane, Baker and Martin against Defendants Lubrizol, Charlotte and Cresline)

252. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

253. Plaintiffs the Joneses, Cochrane, Baker and Martin bring this against Defendants Lubrizol, Charlotte and Cresline.

254. Defendants and Thompson knowingly, intentionally, willfully, fraudulently and actively misrepresented, omitted and concealed from consumers material facts relating to the quality of FlowGuard Gold; specifically omitting that FlowGuard Gold was defective, did not meet industry standards, would prematurely fail, and otherwise was not as warranted and represented by Defendants and Thompson.

255. Defendants and Thompson were and are in a position of superiority to Plaintiffs and had and have a duty to disclose to Plaintiffs the actual quality of the FlowGuard Gold pipes and fittings. Defendants and Thompson never made disclosures about the defective nature of FlowGuard Gold to the marketplace.

256. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. The facts concealed or not disclosed by Defendants and Thompson to Plaintiffs, and the general public are material facts that a reasonable person would have considered to be important in deciding whether or not to

purchase FlowGuard Gold or structures in which FlowGuard Gold was installed, and whether or not to remove and replace FlowGuard Gold earlier than one would expect to need to do so.

257. Plaintiffs reasonably relied upon Defendants and Thompson to make accurate disclosures concerning FlowGuard Gold, and further relied upon Defendants' promises in their warranties concerning FlowGuard Gold. Such reliance may also be imputed, based upon the materiality of Defendants' wrongful conduct.

258. Had Plaintiffs been warned about the true nature of the quality of FlowGuard Gold, they would not have purchased FlowGuard Gold or structures in which FlowGuard Gold was installed, would have negotiated additional warranty coverage, would have negotiated a lower price to reflect the risk, or simply would have avoided the risk all together by purchasing a different plumbing system or different home. Further, Plaintiffs would have replaced the defective FlowGuard Gold pipes and fittings sooner, preventing damage to their homes.

259. Defendants continued to conceal the defective nature of FlowGuard Gold even after customers began to report problems and submit warranty claims. Indeed, Defendants continue to cover up and conceal the true nature of the problems with FlowGuard Gold to this day.

260. Defendants' acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice entitling Plaintiffs to an award of punitive damages to the extent allowed in an amount appropriate to punish or to set an example of Defendants so as to deter future similar conduct on the part of Defendants and others.

261. Plaintiffs are entitled to damages and injunctive relief as claimed below.

TWELFTH CAUSE OF ACTION

**Violation of the Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1521, *et seq.*
(Plaintiffs the Joneses against Defendants Lubrizol and Charlotte)**

262. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

263. Plaintiffs the Joneses bring this Count against Defendants Lubrizol and Charlotte.

264. Plaintiffs, and Defendants are all “persons” as defined by ARIZ. REV. STAT. § 44-1521(6). FlowGuard Gold is “merchandise” as defined by ARIZ. REV. STAT. § 44-1521(5).

265. The Arizona Consumer Fraud Act proscribes “[t]he act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby.” ARIZ. REV. STAT. § 44-1522(A).

266. Defendants have violated and continue to violate the Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1521, *et seq.*, as described at length herein, by disseminating false, deceptive and/or misleading information, by engaging in false, deceptive and/or misleading actions, and by concealing and/or omitting material facts in connection with the sale or advertisement of FlowGuard Gold. In connection with the sales and advertisement of FlowGuard Gold, Defendants intended to and have deceived and misled consumers and continue to deceive and mislead consumers into believing that FlowGuard Gold is fit for use, meets certain industry standards, and is durable and reliable, as described at length herein. Defendants have further deceived and misled consumers concerning its warranties and its warranty claims process.

267. Defendants knew or should have known that FlowGuard Gold was and is defective and would fail. Defendants' actions constitute unfair practices and deceptive acts which were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs.

268. Plaintiffs relied on Defendants' representations and actions concerning FlowGuard Gold, including as to Defendants' warranty for FlowGuard Gold.

269. Defendant Charlotte further violated the Arizona Consumer Fraud Act by obstructing Plaintiffs from making warranty claims and by improperly rejecting valid warranty claims.

270. Plaintiffs were injured and/or damaged as a direct and proximate result of Defendants' violations of the Arizona Consumer Fraud Act. As such, Plaintiffs seek relief including, but not limited to, compensatory damages, punitive damages, and/or injunctive relief.

THIRTEENTH CAUSE OF ACTION
Violation of Massachusetts General Laws c. 93A §§ 2, 9
(Plaintiff Cochrane against Defendants Lubrizol and Charlotte)

271. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

272. Plaintiff Cochrane brings this Count against Defendants Lubrizol and Charlotte.

273. The foregoing course of conduct by Defendants Lubrizol and Charlotte and Thompson constitutes "unfair or deceptive acts or practices in the conduct of [] trade or commerce" in violation of Chapter 93A, §§ 2, 9.

274. Moreover, by engaging in the conduct described above, Defendants and Thompson violated at least 940 Code Mass. Regs. § 3.16 of the General Regulations of the Massachusetts Attorney General, which provides that "[w]ithout limiting the scope of any other

rule, regulation or statute, an act or practice is a violation of M.G.L. c.93A, § 2 if: (1) It is oppressive or otherwise unconscionable in any respect; or (2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction; or (3) It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection; or (4) It violates the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of M.G.L. c. 93A, § 2.” Defendants’ violation of this regulation further constitutes a violation of Chapter 93A, §§ 2, 9.

275. By engaging in the conduct described herein, Defendants and Thompson also violated at least 940 Code Mass. Regs. § 3.05(1) of the General Regulations of the Massachusetts Attorney General, which provides that “No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.” Defendants’ violation of this regulation further constitutes a violation of Chapter 93A, §§ 2, 9.

276. Defendants also violated at least 940 Code Mass. Regs. § 3.08(2) of the General Regulations of the Massachusetts Attorney General, which provides that “It shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty. The utilization of a deceptive warranty is unlawful. Language intended to limit or modify the warrantor’s obligations under a warranty shall not operate to limit the warrantor’s liability, notwithstanding the limiting language, if the warrantor fails to perform under the warranty, provided, however, that no language of limitation otherwise unenforceable by statute or regulation shall be enforceable. This regulation in no way limits, modified [sic], or supersedes any other statutory or regulatory provisions dealing with warranties.” Defendants’ violations of this regulation further constitutes a violation of Chapter 93A, §§ 2, 9.

277. The violations of Chapter 93A by Defendants were done so willfully, knowingly, in bad faith and in violation of Chapter 93A, §§ 2, 9.

278. Plaintiff Cochrane was damaged by Defendants’ violations of Chapter 93A.

279. Demand on behalf of Plaintiff Cochrane was made upon Defendants Lubrizol and Charlotte on May 4, 2020, pursuant to Chapter 93A, §§ 2, 9, more than 30 days prior to filing this claim for relief under Chapter 93A.

280. On June 3, 2020, counsel for Defendants responded by letters to Cochrane’s 93A Demand. Defendants’ 93A Responses failed to offer relief that is fair and reasonable in relation to the injuries suffered by Plaintiff Cochrane.

281. Defendants are liable to Plaintiff Cochrane for up to three times the damages that Plaintiff Cochrane incurred or statutory damages, whichever is greater, together with all related court costs and attorneys’ fees.

FOURTEENTH CAUSE OF ACTION

**Violation of the Washington Consumer Protection Act, RCW § 19.86, *et seq.*
(Plaintiff Baker against Defendants Lubrizol and Charlotte)**

282. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

283. Plaintiff Baker brings this Count against Defendants Lubrizol and Charlotte.

284. The Washington Consumer Protection Act (the “WCPA”) declares unlawful “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

285. Baker is “persons” within the meaning of the WCPA, RCW 19.86.010(1).

286. Defendants and Thompson are “persons” within the meaning of the WCPA, RCW 19.86.010(1), and conduct “trade” and “commerce” within the meaning of the WCPA, RCW 19.86.010(2).

287. The foregoing acts, omissions, misrepresentations and statements, including improper warranty claim denials or obstruction, by Defendants Lubrizol and Charlotte and Thompson constitute unfair or deceptive acts or practices in violation of the WCPA. These acts or practices occurred in the conduct of Defendants’ and Thompson’s trade or commerce and affect the public interest.

288. Defendants’ and Thompson’s acts or practices were a proximate cause of the injuries suffered by Baker.

289. Baker is therefore entitled to an order enjoining the conduct complained of herein; actual damages; treble damages pursuant to RCW 19.86.090; costs of suit, including reasonable attorneys’ fees; and such further relief as the Court may deem proper.

290. Baker is also entitled to equitable relief as the Court deems appropriate, including, but not limited to, disgorgement of all or part of the ill-gotten profits Defendants received from the sale of FlowGuard Gold.

291. In accordance with RCW 19.86.095, a copy of this complaint will be served on the Attorney General of Washington.

FIFTEENTH CAUSE OF ACTION
Violation of the Michigan Consumer Protection Act,
Mich. Comp. Laws § 445.901, *et seq.*
(Plaintiff Martin against Defendants Lubrizol and Cresline)

292. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

293. Plaintiff Martin brings this Count against Defendants Lubrizol and Cresline.

294. Martin, and Defendants are “persons” under Mich. Comp. Laws § 445.902(1)(d).

295. Defendants’ acts or practices, as set forth above, occurred in the conduct of “[t]rade or commerce” within the meaning of Mich. Comp. Laws § 445.902(1)(g).

296. The Michigan Consumer Protection Act (“MCPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce....” Mich. Comp. Laws § 445.903(1).

297. Defendants’ methods, acts, and practices, as alleged in this complaint, violate at least Mich. Comp. Laws § 445.903(1)(c), (e), (g), (s), (bb), and (cc) because they include unfair, unconscionable, or deceptive methods, acts, and practices – including fraudulent omissions and improper warranty claim denials or obstruction – connection with the marketing and sale of defective pipes and fittings. In violation of the MCPA, Defendants and Thompson, among other things: represented that FlowGuard Gold had characteristics, uses, and benefits it does not have; represented that FlowGuard Gold is of a standard, quality, or grade when in fact it is not;

advertised FlowGuard Gold with intent to not sell it as advertised; misled or deceived consumers by failing to reveal material facts which could not reasonably be known by consumers; represented facts material to transactions such that consumers reasonably believed the state of affairs to be other than it actually was; and failed to disclose facts that were material to the transaction in light of Defendants' positive representations of fact concerning FlowGuard Gold.

298. Defendants and Thompson committed deceptive acts and practices with the intent that consumers, such as Martin, would rely on Defendants' and Thompson's representations and omissions when deciding whether to purchase FlowGuard Gold or homes or other structures in which FlowGuard Gold was installed.

299. Because the defects in FlowGuard Gold are latent and undetectable until they arise, the defective nature of the pipes and fittings were not the type of defects that consumers could reasonably discover or be expected to discover.

300. Martin suffered ascertainable losses as a direct and proximate result of Defendants' and Thompson's unfair, unconscionable, and deceptive acts and practices. Had Martin known that FlowGuard Gold was defective, they would not have purchased FlowGuard Gold or homes or other structures in which FlowGuard Gold was installed.

301. Under Mich. Comp. Laws §§ 445.911(1)(b) and (3), Martin further seeks an order enjoining Defendants from engaging in the aforementioned practices that violate the MCPA.

SIXTEENTH CAUSE OF ACTION

Declaratory and Injunctive Relief

(Plaintiffs the Joneses, Cochrane, Baker and Martin against Defendants Lubrizol, Charlotte and Cresline)

302. Plaintiffs re-allege and incorporate by reference each preceding and succeeding paragraph.

303. Plaintiffs the Joneses, Cochrane, Baker and Martin bring this Count against Defendants Lubrizol, Charlotte and Cresline.

304. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

305. There is an actual controversy between Defendants and Plaintiffs concerning:

- a. whether FlowGuard Gold was defectively designed thus causing it to prematurely to fail;
- b. whether Defendants knew or should have known of the defects; and
- c. whether Defendants failed to warn against the potential unsuitability of the defectively designed FlowGuard Gold.

306. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

307. Despite the repeated failures of FlowGuard Gold, Defendants refused to acknowledge that their product is defectively designed.

308. Accordingly, based on Defendants’ failure to act, Plaintiffs seek a declaration that FlowGuard Gold is defective in its design and manufacture, as alleged herein. The defective nature of FlowGuard Gold is material and requires disclosure to all persons who own FlowGuard Gold pipes and fittings.

309. The declaratory relief requested herein will generate common answers that will settle the controversy related to the alleged defective design and manufacture of FlowGuard

Gold and the reasons for its failure. There is an economy to resolving these issues as they have the potential to eliminate the need for continued and repeated litigation.

310. Plaintiffs, seek a Court declaration of the following:

- a. All Defendants' FlowGuard Gold pipes and fittings manufactured have defects resulting in damage to property and the necessity of the removal and replacement of FlowGuard;
- b. Since Defendants knew of the defects in FlowGuard Gold, the limitations contained in the warranties are unenforceable;
- c. Defendants shall re-audit and reassess all prior warranty claims concerning FlowGuard Gold, including claims previously denied in whole or in part; and
- d. Defendants shall establish an inspection program and protocol to be communicated to customers, which will require Defendants to inspect, upon request, a customer's home or other structure to determine whether a FlowGuard Gold failure is manifest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendants, and each of them, and in favor of Plaintiffs, and to award the following relief:

A. Injunctive relief requiring Defendants to replace and/or repair all FlowGuard Gold pipes and fittings installed in homes and enjoining Defendants from continuing to pursue the policies, acts and practices described in this Complaint;

B. A declaration that Defendants must disgorge all or part of its ill-gotten profits received from the sale of the defective FlowGuard Gold pipes and fittings, and/or to make full restitution to Plaintiffs;

C. An award of all actual, general, special, incidental, statutory, treble or other multiple, punitive and consequential damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;

D. An award to Plaintiffs for economic injury due to the price premium that they paid at or following the point of sale;

E. An award of pre-judgment and post-judgment interest at the maximum rate allowable by law;

F. An award of costs and attorneys' fees, as allowed by law; and

G. Orders granting such other and further relief as may be appropriate.

JURY TRIAL DEMAND

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

Date: February 22, 2022

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