

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

<p>JIM McGAFFIN; BECKY McGAFFIN; DANIEL NUNN; and STEFANIE NUNN, <i>Plaintiffs,</i> v. ARGOS USA, LLC, <i>Defendant.</i></p>	<p>Civil Action File No.: <u>4:16-cv-00104-LGW-GRS</u> JURY TRIAL REQUESTED</p>
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SECOND AMENDED CLASS ACTION COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiffs Jim and Becky McGaffin (the “McGaffins”), and Daniel and Stefanie Nunn (the “Nunns”)¹ file this Second Amended Class Action Complaint against Defendant Argos USA LLC, (“Argos”).²

¹ Rachale and Nathan LaVoie, originally party plaintiffs to this action, have separately resolved their claims against Argos.

² Plaintiffs originally sued Cementos Argos, S.A., Argos USA Corp., Argos Cement, LLC, and Argos Ready Mix LLC. Some of these entities were merged and/or renamed on July 1, 2016. Argos USA Corp. was renamed Argos North America Corp.; Argos Cement, LLC and Argos Ready Mix LLC merged and became Argos USA LLC, with no change to their corporate ownership structure. Plaintiffs, unopposed by Argos, seek leave of court to amend as to the proper name of the corporate Defendant, with relation back to the date of the original complaint, under Fed. R. Civ. P. 15(c).

Argos, a designer, manufacturer, seller, and supplier of concrete, has breached certain duties and otherwise violated State law resulting in property damage. Plaintiffs seek relief on behalf of themselves and all others similarly situated.

INTRODUCTION

1. The Plaintiffs in this action are property owners. Their real property and personal property have been damaged by Argos's conduct in supplying and failing to warn about defective concrete poured in and around their new dwellings.
2. Argos designed, manufactured, sold, and supplied defective concrete that was not appropriate for use in slabs for residential purposes, that continuously disintegrates, that produces a fine, white dust that includes respirable crystalline silica, and that has proximately caused damage to Plaintiffs' dwellings (real property), and the contents of their dwellings (personal property other than the concrete, including but not limited to, furniture, drapes, electronics, and clothing).
3. The defective Argos concrete was poured in and around Plaintiffs' residential properties and dwellings, including in foundations, slabs underlying the entire footprint of Plaintiffs' dwellings, footings, garages, driveways, walkways and patios. Argos's defectively designed and manufactured concrete has been utilized in and around hundreds of additional dwellings in Georgia and South Carolina. Plaintiffs seek to represent those similarly situated to them in Georgia and South Carolina.

PARTIES, JURISDICTION AND VENUE

4. Plaintiffs Jim and Becky McGaffin own their lot and house at 412 Lion's Den Drive, Pooler, Chatham County, Georgia 31322. They purchased their house new from builder Beazer Homes on or about September 27, 2013. Argos concrete was used in the foundation (including the slab that lies below the entire footprint of the dwelling), and the driveway, garage, and patio areas of their property. The McGaffins are and at all pertinent times have been domiciled in and citizens of the State of Georgia.

5. Plaintiffs Daniel and Stefanie Nunn own their property and house at 4 Central Park Way, Savannah, Chatham County, Georgia 31407. They purchased their house new from builder D.R. Horton in or about November 2014. Argos concrete was used in the foundation (including the slab that lies below the entire footprint of the dwelling), and driveway, walkway, garage, and patio areas of their property. The Nuns are and at all pertinent times have been domiciled in and citizens of the State of Georgia.

6. Defendant Argos USA LLC is a foreign limited liability company. Argos USA LLC's sole member is Argos North America Corp.

7. Argos North America Corp. is a foreign corporation incorporated in Delaware. Per its filings with the Georgia Secretary of State, Argos North America Corp.'s principal place of business is at 757 North Eldridge Parkway,

Houston, Texas. Thus, Argos North America Corp. is a citizen of Delaware and Texas for purposes of diversity jurisdiction under 28 U.S.C. § 1332(d)(2)(A).

8. Based upon the citizenship of its sole member (Argos North America Corp.), Defendant Argos USA LLC is a citizen of Delaware and Texas for purposes of diversity jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Defendant Argos USA LLC's registered agent in Georgia is Corporation Service Company, 40 Technology Parkway South, #300, Norcross, Gwinnett County, Georgia 30092.

9. The matter in controversy exceeds the aggregate sum or value of \$5,000,000.00. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) and (C) because at least one member of the proposed Plaintiff Class is a citizen of a State different from any defendant.

10. Each of the Plaintiffs' dwellings has been damaged in an amount that exceeds \$75,000, exclusive of interest and costs.

11. Argos is subject to the Court's personal jurisdiction because it conducts substantial business within this State. Defendant Argos USA LLC, or its predecessors in interest, owned several concrete manufacturing plants in the State of Georgia, including plants in Savannah, Richmond Hill, Pooler, Hinesville, and Rincon, all in the State of Georgia during the relevant time period. Argos designs, formulates, manufactures, mixes and blends concrete at these plants and sells and pours concrete in locations throughout Georgia (as well as South Carolina and

other states). Argos designed, formulated, manufactured, mixed, blended and supplied the concrete poured on Plaintiffs' properties in Pooler and Savannah, Georgia. Argos has transacted business and continues to transact business in the State of Georgia, as well as in other states, and it specifically transacted business in Pooler and Savannah, Georgia when it designed, formulated, manufactured, mixed, blended, sold, supplied and/or poured the concrete at 412 Lion's Den Drive and at 4 Central Park Way. Argos has sufficient minimum contacts with Georgia and with this judicial district such that the exercise of jurisdiction over Argos would not offend traditional notions of fair play and substantial justice. By designing, formulating, manufacturing, mixing, blending, pouring, and supplying concrete in the State of Georgia, Defendant Argos reasonably could expect and foresee that it could be sued in the State of Georgia.

12. Argos is deemed to reside in any judicial district in which it is subject to personal jurisdiction. See 28 U.S.C. § 1391(c). Argos is subject to personal jurisdiction in Georgia, and a substantial part of the events giving rise to these claims occurred in this judicial district, such that venue is proper in this Court. See 28 U.S.C. § 1391(a)(1).

13. Furthermore, because Argos transacts business in Chatham County, Georgia, and because a substantial part of the acts and omissions set forth herein occurred in Chatham County, Georgia, venue is appropriate in the Savannah

Division of the Southern District of Georgia. See S.D. Ga. Local Rules 2.1 (c) and (d).

FACTS

A. Background regarding concrete in general.

14. Generally, concrete is a composite material made up of filler (aggregate) and binder (cement paste made of Portland cement and water) which together form a synthetic conglomerate. Concrete also can include supplementary cementitious materials that contribute to the properties of hardened concrete through hydraulic and/or pozzolanic activity. Such supplementary cementitious materials include fly ash, silica fume, calcine clay and shale, volcanic ash, and granulated blast furnace slag.

15. Fly ash is a by-product of burning coal. It is the residue carried from the burning zone by flue gases that are collected by mechanical or electrostatic separators. Fly ash is a pozzolanic material that can, if its calcium content is high enough, also display cementitious or hydraulic behavior. When mixed with cement and water, fly ash will react to produce various calcium-silicate hydrates and calcium-aluminum hydrates.

16. Utilizing the appropriate percentage and quality of fly ash can reduce the water demand of concrete. A well-proportioned fly ash-concrete mixture can have improved workability and can increase the cohesiveness and reduce the

segregation of concrete. But such benefits are only realized in concrete that is properly proportioned in both design and manufacture.

17. The fresh properties of concrete are influenced by the proportions of various ingredients in the mixture, including the type and amount of cementing material, water content, grade of aggregate, presence of entrained air and any chemical admixtures. The properties of fresh concrete and the mechanical properties and durability of hardened concrete are strongly influenced by the incorporation of fly ash into the mixture, and the extent of such influence depends on the class quality and composition of fly ash, as well as the composition and proportions of other ingredients in the mixture.

18. There is an optimum ratio of fly ash to cement to produce a concrete mixture that will maximize the technical, environmental, and economic benefits of fly ash without significantly impacting the rate of construction or impairing the long-term performance of the finished product. However, a poorly proportioned concrete mixture, e.g., insufficient cement with too much or poor quality fly ash, will not set and harden properly.

B. Argos's concrete was defective for the known residential, slab uses in and around Plaintiffs' (and the Class') houses.

19. Argos designs, formulates, manufactures, mixes, blends, pours, sells and otherwise places concrete into the stream of commerce, including the concrete

used in the various discrete structures in and around Plaintiffs' houses and properties.

20. Argos holds itself out as, and should be treated as, an expert in the fields of concrete design and manufacture. Concrete designers and manufacturers, including Argos, are responsible for optimizing the design and mixture of the various ingredients to supply a concrete mixture appropriate for the specified job, and in particular a concrete that will not disintegrate, pit, flake, split, crack, dust or disintegrate when used in foundations, driveways, patios, and walkways.

21. Prior to its supply of concrete for Plaintiffs, Argos decided to alter its standard residential concrete mix to utilize less costly mixtures containing excess amounts of fly ash, in particular, a concrete mixture known as "868." The cement-to-fly-ash ratio used in its 868 mix was not appropriate for residential use, particularly in slabs. Argos knew, should have known, or, at the very latest, learned of the defect when Argos received multiple complaints and began remediation work on concrete slabs in residential applications in the Savannah area in approximately fall 2013.

22. By early 2014, Argos Southeastern management personnel were aware that its 868 mix, used in residential slab and flatwork applications, exceeded the recommended maximum fly-ash content. Argos Southeastern quality control personnel recognized extreme bleeding problems with the 868 mix utilized in and

around Plaintiffs' (and the Class') homes, and that the resultant dusting issue had become a very large remedial expense for Argos in the Savannah and Hilton Head markets. Indeed, Argos has, for at least a few dwellings, though not those belonging to the named Plaintiffs, removed all floor coverings, sanded or ground down the Argos 868 mix concrete foundation slabs, and covered them with a sealant product in an attempt to remediate the dusting problem. But Argos quality control personnel determined that Argos simply could not "roll over" and pay for every Savannah-area dusting issue involving Argos concrete.

23. Argos has failed to warn about the reasonably foreseeable dangerous consequences of its 868 concrete mix, particularly when utilized in slab applications. Argos failed to warn the Plaintiffs, their builders/contractors, the builders' subcontractors, including but not limited to the concrete finishers, and others who purchased and/or own other properties and houses in and around which Argos's defective concrete was utilized. Indeed, when Argos performed remediation work on Argos concrete outside of Plaintiffs' dwellings, Argos failed to disclose to Plaintiffs that the very same defective concrete that it was removing and replacing from driveways, walkways and garage floors was utilized in the slabs underlying the entire footprint of Plaintiffs' dwellings.

24. Argos sold, supplied, delivered, and poured the 868 concrete it had designed and manufactured for use on the residential properties of Plaintiffs, and the concrete reached the properties without alteration in its condition.

25. The Argos 868 concrete used in and around the Plaintiffs' dwellings, and hundreds of others, is defective due to Argos's use of insufficient amounts of Portland cement and/or too much fly ash and/or too much poor quality fly ash in its concrete. Argos's conduct with respect to the design, manufacture, sale and supply of this defective concrete gives rise to the claims herein.

26. The 868 concrete designed, manufactured, sold, and supplied by Argos for use in Plaintiffs' properties and dwellings contained inappropriate proportions of cement and fly ash. This defective Argos concrete did not set, harden or otherwise perform properly, particularly in slab applications, with the result that it continually "dusts," as it disintegrates and releases a fine, white-colored silicate dust in Plaintiffs' dwellings and on their properties. This silicate dust has damaged Plaintiffs' dwellings and real property as well as their personal property and belongings inside the dwellings, which are constantly coated and re-coated with this fine silicate dust that cannot be fully removed, resulting in ongoing and continuing harm.

27. The McGaffins have had continuous problems with Argos's defective concrete. The concrete on the driveway, the back patio, and the garage has

“pitted” and disintegrated, manifesting a fine silicate dust. The same fine silicate dust from the concrete in the slab under the floors of the dwelling infiltrates and permeates the dwelling, coating their personal possessions throughout the home, and requiring constant cleaning.

28. Argos was notified of the problems with its concrete in and around the McGaffins’ dwelling and property and has removed and replaced the concrete on back patio and put a sealant on the concrete on the garage floor in an unsuccessful attempt to stop the dusting. The McGaffins’ driveway also develops small holes.

29. Argos has failed to conduct any remediation efforts inside the McGaffin residence. Dusting continually occurs, covering and damaging furniture and other hold belongings with a fine white silicate dust, requiring frequent changes of the HVAC filter, and constantly filling the vacuum cleaner.

30. The Nuns have also had problems with the Argos concrete in and around their dwelling and property, including their floors, driveway, and walkways. They saw a large amount of white dust being tracked inside the dwelling from the front walkway area when they were moving into their home, and the dust infiltrates and permeates the home and their personal belongings. Argos concrete dust appears when a foot is scraped back and forth over the concrete.

31. Shortly after Thanksgiving of 2013, due to deterioration and dusting, Argos removed and replaced the driveway, front walkway, and sidewalk in front of

the Nunns' dwelling. The Nunns' builder, D.R. Horton, through a representative, explained that a problem with the concrete necessitated that the driveway, front walkway and sidewalk be replaced.

32. White dust is still continually produced from the slab under the carpet in two bedrooms of the Nunn dwelling, as well as from the slab under the rest of the flooring, and this white dust constantly coats and damages their furniture and other household belongings.

33. Plaintiffs have obtained some remediation, but Argos's response has been incomplete and ineffective. Although Argos has attempted to remediate the problems with its defective concrete outside the Plaintiffs' dwellings, Argos has made no efforts to remediate the defective Argos concrete in the slabs under the floors of Plaintiffs' houses. Plaintiffs must constantly clean in a futile attempt to remove the fine silicate dust from their furniture and other household belongings. Moreover, the HVAC systems (including components and filters that require frequent changing due to the fine, white silicate dust), electronic devices (including computer equipment, televisions, stereos), furniture, carpet, rugs, clothing – literally everything in the dwellings – is constantly coated, re-coated and damaged by the fine, white silicate dust from the Argos 868 concrete.

34. Defendant Argos had a duty to Plaintiffs, and to similarly situated Persons who purchased and/or owned dwellings, to design and manufacture

concrete that would set and harden properly, and not crack, flake, pit, scale or dust. Argos, furthermore, had a duty to design and manufacture a concrete mix that contained sufficient Portland cement and otherwise was properly proportioned and thus accounted for the percentage and type of fly ash in the concrete mixture, in accordance with industry standards. And Argos had a duty to produce a nonhazardous concrete product that, when put to known and foreseeable uses, including in slab applications in and on residential properties, does not pose an unreasonable risk of injury to property.

35. Argos knew or should have known, and/or eventually learned of the defective concrete product design and of the damage to the property of Plaintiffs and other property owners. Argos also knew or should have known, and/or eventually learned of the dangers to Plaintiffs' and other property owners' real and personal property as a result of its defective concrete when it received multiple complaints from property owners regarding its altered residential concrete mixes and had to perform remediation work due to disintegration and dusting issues with these concrete mixes. Yet Argos has failed to warn regarding, or even disclose, these dangers to the real and personal property of Plaintiffs and/or others similarly situated.

36. Plaintiffs at all relevant times did not know and could not have known of the defective concrete used in and around their properties, or know of Argos's

acts and omissions giving rise to the use of such concrete in their dwellings and other property that violated Argos's duties.

37. Argos knew that the proportion of cement to fly ash or other pozzolans in its concrete mixture would have a direct effect on the concrete product's quality, integrity, and propensity to deteriorate and to create powder or dust. Argos further knew that its 868 mix concrete, as used in Plaintiffs' properties, and other new properties, was for residential applications, including slab applications. Argos also knew that some of the Argos concrete would be exposed to freezing and thawing and that it would be in continuous contact with moisture and exposed to de-icing chemicals.

38. Argos breached its duty to design and manufacture a properly proportioned concrete mixture that would not pose an unreasonable risk of injury to property for use, particularly in slab applications, at 412 Lion's Den Drive and 4 Central Park Way. Specifically, Argos's concrete was negligently designed and manufactured such that it did not have a sufficient amount of cement, but instead utilized an excessive percentage of fly ash, and it did not contain other ingredients at all or in appropriate proportions so as to account for the percentage of fly ash Defendant Argos incorporated into its design. Additionally, Argos breached its duty to ensure that its concrete did not pose a significantly increased risk of

damaging other property of reasonably foreseeable users such as Plaintiffs and the Class, and failed to warn Plaintiffs of these dangers to real and personal property.

39. The 868 concrete designed, manufactured and sold by Argos for use in and around the Plaintiffs' dwellings and properties violated standards in the concrete industry. For example, the industry-standard International Residential Code, or IRC, creates minimum regulations for one- and two-family dwellings of three stories or less. The IRC includes the Structural Concrete Building Code, ACI 318-11. Under this industry-standard regulation, Section R404.2, Concrete, Table R402.2, Minimum Specified Compressive Strength of Concrete, and Section R506.1, Concrete Floors (on Ground), provide industry standards as to the concrete utilized in Plaintiffs' (and other) dwellings. These include, among other standards, that the maximum percent of fly ash or other pozzolans conforming to ASTM C618, can comprise a maximum of 25% by weight of total cementitious materials.

40. The amount of Portland cement in relation to the percentage of fly ash in the concrete designed, manufactured, sold, and supplied by Defendant Argos at 412 Lion's Den Drive and 4 Central Park Way did not meet industry standards. Rather, Argos's cement was negligently designed and manufactured, and was defective as ultimately sold, supplied, delivered, poured, and used in Plaintiffs' dwellings and properties, resulting in damage to Plaintiffs' real and personal property.

41. Once Argos was notified of the dusting and other problems with the concrete in dwellings utilizing its 868 mix, Argos had a duty to notify and warn other residents whose dwellings or other improvements were built with and utilized Argos concrete, including the Class, of the dangers presented by its defective concrete and to remediate the defective concrete throughout those properties. Argos, however, despite that it had changed its standard “residential mix” out for a concrete mix designated “868,” which was not appropriate for use in slab applications, failed to inform builders, contractors, or Plaintiffs that it had altered its concrete design and manufacture, and was thus providing concrete that would not perform safely in slab applications, or in accordance with industry standards.

Based on the facts set forth in paragraphs 1-41 above, Plaintiffs bring the following alternative legal claims:

COUNT ONE
NEGLIGENT DESIGN AND MANUFACTURE
UNDER GEORGIA AND SOUTH CAROLINA LAW

42. Plaintiffs and the Class incorporate by reference the factual allegations in paragraphs 1 through 41, above.

43. Argos had a duty to exercise reasonable care in the design, formulation, manufacture, testing, quality assurance, quality control, delivery, supply, and sale of its concrete, including but not limited to:

(a) designing concrete that would perform in accordance with industry standards for the residential purposes intended and known to Argos, including as slabs, and that would not crack, flake, scale, pit or dust, and that would not pose a significantly increased risk of causing property damage to reasonably foreseeable users, including Plaintiffs;

(b) manufacturing concrete that would perform in accordance with industry standards, that was fit for the residential construction purposes intended and known to Argos, including slab applications, that would not crack, flake, scale, pit or dust, and that would not pose a significantly increased risk of causing property damage to reasonably foreseeable users, including Plaintiffs; and

(c) testing or otherwise ensuring that their concrete would satisfy industry standards, for the residential purposes intended, would not crack, flake, scale, pit, disintegrate or dust, and would not pose a significantly increased risk of causing property damage to reasonably foreseeable users, including Plaintiffs and their families.

44. Plaintiffs, who purchased their dwellings and other property new, were and are reasonably foreseeable users of Argos's concrete.

45. Argos failed to exercise ordinary care in the design, manufacture, sale, testing, quality assurance, quality control, warning, delivery and sale of the

concrete in that Argos knew or should have known that its concrete was likely to continuously flake and dust, such that damage to property other than the concrete were reasonably likely to occur. Argos further should have known that its concrete was defective and would damage the Plaintiffs' real and personal property (in addition to the concrete itself).

46. Argos failed to exercise ordinary care in testing its concrete. Defendant Argos did not test the design or formulation of its concrete designed, manufactured, sold to and poured in and around Plaintiffs' dwellings. Had Argos properly tested its concrete, Argos would have discovered that the design, formulation and manufacture its concrete with the ratio of cement to fly ash in said design and formulation could not and would not withstand the stress resulting from the ordinary wear and tear of the concrete, could not and would not function and perform as intended, would crack, scale, flake, pit and dust, and would cause a fine silicate dust to be continually produced and spread throughout the dwellings and other properties.

47. Argos was negligent in designing, formulating, manufacturing, delivering and selling defective concrete for use at Plaintiffs' properties and in their dwellings.

48. Argos was negligent in incorporating fly ash in excess of 25% of the mix without incorporating sufficient cement or other appropriate ingredients and admixtures in an appropriate percentage.

49. At all relevant times, it was reasonably foreseeable to Argos that its concrete would be used in dwellings and the surrounding residential property generally and in slab applications in and on Plaintiffs' dwellings and properties at 412 Lion's Den Drive and at 4 Central Park Way, in particular.

50. Argos knew or reasonably should have known of the risks and damages associated with the manner and circumstances of each Plaintiff's foreseeable use of Argos's concrete, which risks and damages would not be obvious to the general public and were not obvious to Plaintiffs or to persons working with Argos's concrete for use in and around Plaintiffs' properties.

51. Despite the fact that Argos knew or should have known that its concrete posed a serious risk of property damage to foreseeable users like Plaintiffs, Argos designed, formulated, manufactured, delivered, sold and supplied its concrete for the use in Plaintiffs' dwellings and on Plaintiffs' properties.

52. Argos knew or should have known that property owners like Plaintiffs are persons whose use of concrete was reasonably foreseeable and that the use of Argos's concrete would cause damage to real and personal property in the manner herein alleged, including property damage caused by constant exposure to a fine

silicate dust, as a result of Argos's failure to exercise ordinary care as described above, including failure to comply with industry standards.

53. Argos's conduct, as described above, and including but not limited to Argos's design and manufacture of the concrete, as well as its failure to adequately test the concrete when Argos knew or should have known of the serious risks the concrete posed, was and is negligent.

54. As a direct and proximate result of Argos's negligence, Plaintiffs have suffered property damage to their real and personal property, specifically including, but not limited to, their dwellings and all contents and other structures thereof, through use of a negligently designed and manufactured concrete product that resulted in the production of silicate dust. Plaintiffs will continue to suffer damages because the failure of the concrete is continuous and ongoing, thus causing continuous and ongoing damage to Plaintiffs' real and personal property.

55. As a direct and proximate result of the use of Argos's concrete throughout Plaintiffs' properties, as negligently designed, formulated, manufactured, sold, delivered, and poured at Plaintiffs' properties, the Plaintiffs have been harmed, injured and damaged in one or more of the followings ways:

- a) the Argos cement constantly cracks, flakes, scales, pits and generates silicate dust;

- b) the Argos cement constantly produces white, powdery dust that coats all surfaces and personal property in the Plaintiffs' dwellings, requiring daily cleaning;
- c) the white, powdery dust coats furniture, floors, clothing and appliances (including the HVAC system, components and filters in the dwellings) and has seeped into electronic devices and cannot be completely removed from this property, despite constant cleaning;
- d) the Plaintiffs must inspect and remedy, replace and remove the defective concrete and other affected property, and
- e) the white, powdery dust has caused other damages yet to be identified.

56. As a direct and proximate result of Defendant Argos's negligence, the Plaintiffs and the Class have suffered and will continue to suffer injuries, damages and losses and are entitled to compensatory damages in an amount to be determined by the trier of fact.

COUNT TWO
NEGLIGENT FAILURE TO WARN
UNDER GEORGIA AND SOUTH CAROLINA LAW

57. Plaintiffs and the Class incorporate by reference the factual allegations in paragraphs 1 through 41, above.

58. Argos, which specializes in concrete, holds itself out as and should be treated as an expert in the field of concrete.

59. Argos knew, should have known, or certainly learned through its remediation efforts, that the concrete utilized in the residential slab applications at and in Plaintiffs' dwellings and on the Plaintiffs' properties was defective due to its release and continuous production of white, powdery silicate dust into Plaintiffs' and Class Members' dwellings.

60. As described in additional detail above, the dust from Argos's concrete coats the furniture, appliances, clothing, electronic devices, and other belongings inside Plaintiffs' and the Class's dwellings. Plaintiffs and the Class must constantly clean in a futile attempt to remove, or at least minimize the damage from, the fine silicate dust that continuously settles on their furniture, appliances, clothing, electronic devices, and other belongings.

61. As a designer and manufacturer, Argos has a continuing duty to warn of dangers and risks presented by its products to foreseeable users.

62. Argos, however, has failed to warn Plaintiffs, their builders, and others with properties that include Argos' defective concrete of the dangers presented to property from the concrete, including after Argos remediated outside, exposed concrete slabs made of its defective concrete on Plaintiffs' property and

after Argos completed remediation efforts in regard to the defective concrete in the foundations of other dwellings.

63. Plaintiffs and others who purchased dwellings and properties in which Argos concrete was utilized were foreseeable users of Argos's concrete mix that deviated from industry standards.

64. Argos failed to warn Plaintiffs, their builders, other property owners, and other foreseeable persons that it's concrete would have an increased propensity to crack, flake, scale, pit or dust, and would pose a significantly increased risk of causing property damage. And Argos failed to warn Plaintiffs of known risks from defective concrete in the slabs under the floors of their dwellings even after it attempted to remediate those slab foundations in other dwellings and remediated slabs on Plaintiffs' driveways, walkways and garages.

65. As a direct and proximate result of Defendant Argos's failures to warn about its defective concrete, the Plaintiffs and the Class have suffered and will continue to suffer injuries, damages and losses and are entitled to compensatory damages for the injuries to their properties in an amount to be determined by the trier of fact.

CLASS ALLEGATIONS

66. Plaintiffs and the Class incorporate by reference the facts alleged in paragraphs 1 through 41, above.

67. Plaintiffs bring this action as a class action pursuant to Fed. Rs. Civ. P. 23(a) and 23(b)(3).

68. At this time, and subject to revision in a motion seeking class certification, Plaintiffs propose the following class definition:

All Owner(s) of ascertainable Affected Property (any Residential Property in the State of Georgia or the State of South Carolina with 868 concrete as Flatwork thereon) on March 5, 2020 with at least one yard of Eligible Concrete (the amount of 868 concrete delivered to an Affected Property (expressed in cubic yards) as shown on Argos Delivery Tickets and public records produced during the Litigation, minus any Ineligible Concrete). Excluded from the Class are:

- Owners of an Affected Property which property has been the subject of a settlement agreement with Argos as to 868 concrete;
- Owners of an Affected Property where 868 was poured only for Footers, or all 868 concrete has been Removed and Replaced from the property by Argos and/or at Argos' expense;
- Owners of an Affected Property who are Argos employees, the spouse of an Argos employee, or child of an Argos employee;
- Owners of an Affected Property who are judicial officers serving on the U.S. District Court for the Southern District of Georgia or on the U.S. Court of Appeals for the Eleventh Circuit; or

- Commercial properties where 868 concrete was poured.
69. The requirements set forth in Fed. R. Civ. P. 23(a) are satisfied:
- a) **Numerosity** is satisfied in that there are at least 250 dwellings and properties where the deficient cement/fly ash-intensive, negligently designed and manufactured concrete was delivered and sold. Joinder of all persons owning those dwellings and properties is not practical and not efficient. Batch tickets (by that or some other name) and other records in the possession of Defendant Argos make it practical and feasible to identify and describe the Class.
 - b) **Commonality** is satisfied in that there are numerous questions of law and fact common to and with all Class Members. These common issues are focused upon Defendant Argos's conduct and the concrete it designed, manufactured, sold, and supplied and they include:
- i. Whether the concrete Argos designed, manufactured and sold to Plaintiffs and others similarly situated, which concrete included insufficient cement and/or excessive fly ash, was negligently designed and/or manufactured.

- ii. Whether Defendant Argos included any or enough other ingredients or components in the concrete it designed, manufactured, sold, and supplied to Plaintiffs, and to others similarly situated, so as to constitute a properly proportioned concrete mix for residential use in slabs.
- iii. Whether the concrete designed, manufactured and sold has caused the fine silicate dust found in the Plaintiffs' dwellings, and the dwellings of others similarly situated.
- iv. Whether Defendant Argos advised, told or warned Plaintiffs, or builders and concrete finishers, that the concrete it designed, manufactured, sold, and supplied lacked sufficient cement and/ or contained the percentage fly ash it actually contained.
- v. Whether Defendant Argos acted negligently in designing, testing, manufacturing and selling concrete with the cement to fly ash ratio it adopted and supplied for use for Plaintiffs' dwellings and properties, and those others similarly situated.
- vi. Whether Defendant Argos's "batch tickets" or documents by some other name accurately reveal the design of the

concrete manufactured for and delivered and sold to Plaintiffs and others similarly situated.

- vii. Whether Defendant Argos's design, manufacture and sale of the subject concrete, satisfied industry standards for use on residential properties for home-building purposes, and in particular, for use in slab foundations.
- viii. Whether Defendant Argos designed, manufactured and sold concrete with insufficient cement and/or excessive fly ash for economic motives, and whether Defendant Argos knew when the concrete/concrete mix was designed, manufactured and sold, that it failed to meet industry standards and/or was susceptible to cracking, scaling, flaking, pitting and dusting.
- ix. Whether the fly ash used by Defendant Argos in the design and manufacture of the concrete delivered and sold for use in and around Plaintiffs dwellings and properties and in and around dwellings and properties of others similarly situated was of sufficient quality, and whether the use of such quality fly ash in the design and manufacture of the concrete was negligent.

- c) **Typicality** is satisfied in that each Plaintiff's claims arise from the same basic set of operative facts, and that some basic set of operative facts gives rise to the claims of others similarly situated. In particular, the Plaintiffs' and putative class members' claims all arise from the use of concrete designed, manufactured and sold by Defendant Argos, concrete which contained an insufficient amount of cement and/or excessive fly ash and which otherwise contained an inappropriate formulation of other ingredients to result in a properly proportioned concrete mix. The named Plaintiffs each have the same or substantially similar manifestations of harm, injury and damage involving real and personal property, including but not limited to cracking, scaling, flaking, pitting and dusting.
- d) **Adequacy** of representation is satisfied in that the named Plaintiffs each have substantive claims involving the use of Defendant Argos's negligently designed, manufactured, and tested concrete. The named Plaintiffs each have the same or very similar combinations of manifestations of harm, including but not limited to cracking, scaling, flaking, pitting and dusting, and resulting damage to real and personal property. No

Plaintiff has any interest antagonistic to the interests of others similarly situated.

Moreover, counsel for Plaintiffs and for any certified class are experienced and competent in complex litigation, negligent design and manufacturing litigation and class actions. Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. has represented and have been found to be adequate counsel to represent, thousands of persons in dozens of class action cases. Also, the members of Moss & Gilmore LLP have long term, extensive experience in complex litigation. The Plaintiffs and their retained counsel will fairly, adequately and vigorously pursue and protect the interests of all members of a certified class.

70. The requirements set forth in Fed. R. Civ. P. 23(b)(3) are satisfied:

- a) Common questions of law and fact, many of which are set forth above, **predominate** over any issues that might affect only individual members. The heart of Plaintiffs' cases, and those of all others similarly situated, focuses upon the design, manufacture, and testing of Defendant Argos's concrete and its delivery and use in dwellings and surrounding property. That

focus includes the negligence or not of the design and manufacture of the concrete, whether the contract complied with contractual specifications, industry standards and representations made by Argos, Argos's negligent conduct in designing, formulating, manufacturing, delivering and selling the concrete to Plaintiffs and others similarly situated and in failing to adequately remediate same, the adequacy or not of any testing and warnings, and the evidence that will prove or disprove that Defendant Argos's negligently designed and manufactured concrete proximately caused the Plaintiffs' harm, injuries and damages.

- b) A class action is **superior** to other available methods for the fair and efficient adjudication of this controversy. While the claims herein give rise to more than negligible damages, no other actions have been filed. A single class action would avoid potentially inconsistent adjudications which would create incompatible standards of conduct for Defendant Argos, and it would achieve maximum efficiencies as opposed to a plethora of individual actions each of which would likely lead to protracted and complex lawsuits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for certification of a class upon proper motion, for judgment in favor of Plaintiffs and against Defendant Argos, and for an award of damages, as follows:

- (a) for certification of a Federal Rule of Civil Procedure, Rule 23(b)(3) class;
- (b) for damages, to include the value of property damage and/or remediation of Plaintiffs' dwellings and other discrete structures, or alternatively for damages sufficient to demolish the existing dwellings and to replace and/or rebuild the dwellings on newly poured foundations and slabs using appropriate, non-negligently designed and manufactured concrete;
- (c) for compensatory damages, including costs to inspect and monitor the levels of crystalline silica dust in their dwellings and incidental costs associated with Plaintiffs not being able to live in their dwellings during relocation, replacement, rebuilding and/or remediation;

- (d) for damages to personal property and other household possessions due to the fine silicate dust from the defective Argos concrete;
- (e) for the costs of this action, including reasonable attorneys' fees; and
- (f) granting any and all such other and further legal and equitable relief as the Court deems necessary, just and proper.

REQUEST FOR JURY TRIAL

Plaintiffs respectfully reiterate their request that this matter be tried by a jury.

DATED: March 18, 2020.

Respectfully submitted,

/s/ Wade H. Tomlinson, III

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2020, I electronically filed the foregoing **SECOND AMENDED CLASS ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Wade H. Tomlinson, III
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ATTORNEY FOR PLAINTIFFS