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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

LLOYD CLEMANS, on behalf of himself and  
all similarly situated persons and entities,

Plaintiffs,

v.

NEW WERNER CO. d/b/a WERNER CO., a  
Delaware corporation;  
NEW WERNER HOLDING CO (DE), LLC  
d/b/a WERNER HOLDING CO.; a Delaware  
corporation;  
LOWE’S COMPANIES, INC., a North  
Carolina corporation; and  
LOWE’S HOME CENTERS, INC., a North  
Carolina corporation

Defendants.

CASE NO. 3:12-cv-05186-RBL

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
STATE CONSUMER PROTECTION  
ACTS AND WASHINGTON COMMON  
LAW SEEKING DAMAGES,  
RESTITUTION AND INJUNCTIVE  
RELIEF**

**(JURY DEMAND)**

Plaintiff Lloyd Clemans, on behalf of himself and all other similarly situated persons  
and entities, by and through his designated attorneys, and for this Class Action Complaint  
alleges as follows: All allegations in this First Amended Complaint are based upon the  
investigation of counsel, except the specific allegations pertaining to the named Plaintiff, which  
are based on personal knowledge. As of the date of this First Amended Complaint, no  
discovery has been conducted. As a result, it is likely that once the discovery process is

1 underway, the named Plaintiff will seek leave to amend his Complaint to add new factual  
2 allegations and/or new claims.

### 3 I. NATURE OF THE ACTION

4 1. This nationwide class action is brought under (i) the Washington Consumer  
5 Protection Act (hereinafter referred to as the “CPA”), RCW 19.86.020 *et seq.*, and the  
6 Consumer Protection and/or Unfair Business Practice Acts arising under thirty-three (33) other  
7 States and the District of Columbia, (ii) common law for unjust enrichment, (iii) Washington  
8 common law for negligent misrepresentation, (iv) Washington common law for fraudulent  
9 concealment and (v) Washington’s Product Liability Act, chapter 7.72 RCW, *et seq.*, to remedy  
10 Defendants’ wrongful actions in connection with their manufacture and sale of an inherently  
11 defective and extremely dangerous attic ladder to thousands of persons and entities throughout  
12 the nation from 2003 to present. The named Plaintiff and the Class Members seek an award of  
13 compensatory damages against Defendants, as well as an award of treble damages under  
14 chapter 19.86 RCW and other State statutes against Defendants for their intentional and willful  
15 concealment of the inherently defective and dangerous condition posed by these ladders from  
16 the public and the necessity to replace same to protect the health and welfare of Washington’s  
17 citizens.

### 18 II. SUBJECT MATTER JURISDICTION AND VENUE

19 2. This Court has original subject matter jurisdiction over this Class Action  
20 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). The named  
21 Plaintiff is a citizen of the State of Washington. Pursuant to 28 U.S.C. §§ 1332(c) and (d)(10),  
22 Defendants New Werner Co., New Werner Holding (DE), LLC, Lowe’s Companies, Inc. and  
23 Lowe’s Home Centers, Inc. are corporations organized under the laws of the States other than  
24 Washington, with their principal places of business outside the State of Washington. As a  
25 result, the named Plaintiff and the Defendants are citizens of different States under 28 U.S.C. §  
26 1332(d)(2)(A).

1           3.       Both the proposed Nationwide and Washington Classes alleged herein well  
2 exceed 100 persons. Pursuant to 28 U.S.C. § 1332(d)(6), the aggregate amount of the Class  
3 Members' claims in both of the proposed Nationwide and Washington Classes substantially  
4 exceeds \$5,000,000, and thus, exceeds the requisite amount in controversy set forth in 28  
5 U.S.C. § 1332(d)(2). Additionally, because, *inter alia*, substantially more than two-thirds of  
6 the members of the proposed Nationwide Class and one hundred percent of the proposed  
7 Washington Class Members are citizens of States different than that of the Defendants, the  
8 "local controversy exception" and "home state exception" to jurisdiction under 28 U.S.C. §  
9 1332(d)(2), as set forth under 28 U.S.C. § 1332(d)(4)(A) and (B), and the "interests of justice  
10 exception" to jurisdiction under 28 U.S.C. § 1332(d)(3) do not apply here

11           4.       Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a), (b) and  
12 (c) on the grounds that a substantial portion of the acts giving rise to the violations alleged  
13 herein occurred in this judicial district.

### 14                                   **III. THE PARTIES AND PERSONAL JURISDICTION**

15           5.       Plaintiff Lloyd Clemans (hereinafter referred to as "Plaintiff") is an individual  
16 residing in Battle Ground, Washington. Plaintiff is a member and proposed representative of a  
17 Class of Washington persons and entities who were subjected to the unlawful activity of the  
18 Defendants as more fully described herein.

19           6.       Defendant New Werner Co. d/b/a Werner Co. (hereinafter referred to as "New  
20 Werner" or "Werner Co.") is a corporation organized under the laws of the State of Delaware,  
21 with its principle place of business located at 93 Werner Road, Greenville, Pennsylvania 16125.  
22 As such, Defendant Werner Co. is a citizen of both Delaware and Pennsylvania. Service of  
23 process may be accomplished on Werner Co. through its registered agent for service of process,  
24 Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington,  
25 Delaware 19801.

1           7.       Defendant New Werner Holding Co., LLC d/b/a Werner Holding Co.  
2 (hereinafter referred to as “Werner Holding”) is a limited liability company organized and  
3 existing under the laws of the State of Delaware, with its principal place of business located at  
4 93 Werner Road, Greenville, Pennsylvania 16125. As such, Defendant Werner Holding is a  
5 citizen of both Delaware and Pennsylvania. Service of process may be accomplished on  
6 Werner Holding through its registered agent for service of process, Corporation Trust  
7 Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

8           8.       Defendant Lowe’s Companies, Inc. (hereinafter referred to as “Lowe’s  
9 Companies”) is a corporation organized under the laws of the State of North Carolina, with its  
10 principal place of business located at 1000 Lowe’s Boulevard, Mooresville, North Carolina  
11 28117. Service of process may be accomplished on Lowe’s Home through its registered agent  
12 for service of process, Corporation Service Company, 327 Hillsborough Street, Raleigh, NC  
13 27603.

14           9.       Defendant Lowe’s Home Centers, Inc. (hereinafter referred to as “Lowe’s  
15 Home”) is a corporation organized under the laws of the State of North Carolina, with its  
16 principal place of business located at 1605 Curtis Bridge Road, Wilkesboro, North Carolina  
17 28697. Service of process may be accomplished on Lowe’s Home through its registered agent  
18 for service of process, CT Corporation System, 520 Pike Street, Seattle, Washington 98101.

19           10.      This Court has both general and personal jurisdiction over all Defendants based  
20 on the fact that Defendants have had substantial and continuous contacts with Washington, as  
21 well as specific jurisdiction over all Defendants arising from their actions in the manufacture  
22 and/or sale of the defective ladders to Class Members. As a result, this Court has personal  
23 jurisdiction over all Defendants pursuant to RCW 4.28.185(1)(a), (b) and (c).

#### IV. FACTUAL ALLEGATIONS

##### A. Summary of Class Allegations

11. Defendant Werner Co., operated through Werner Holding, is a fully integrated manufacturer and distributor of ladders, stools and other climbing products that arose out of the bankruptcy of its predecessor, the Old Ladder Co. f/k/a Werner Ladder Co. (hereinafter referred to as “Old Ladder”). Old Ladder was forced into bankruptcy after certain of its members pilfered the company and left it with substantial debt and liabilities.

12. Included in these liabilities were significant product liabilities posed by an inherently defective pull-down attic ladder known as the “S2208” and “S2210.” Old Ladder knew that the S2208 and S2210 contained defective hinges made of inferior quality metal and were improperly designed, causing the ladder to break under normal consumer use. Defendants Lowe’s Companies and Lowe’s Home (hereinafter collectively referred to as “Lowe’s”), Old Ladder’s exclusive retailer for these ladders, also learned of the inherent and dangerous defects these ladders presented. Lowe’s therefore demanded that for it to continue to purchase and market these and other ladders, the entities purchasing Old Ladder’s assets in bankruptcy – Werner Co. and Werner Holding – had to indemnify it for any and all losses related to same. As a result, Defendants Werner Co. and Werner Holding agreed to indemnify the Lowe’s entities for any past and future liabilities associated with these ladders.

13. Despite their knowledge of the substantial risks posed by the S2208 and S2210 attic ladders, Defendants Werner Co. and Werner Holding continued to manufacture these ladders, and amazingly, the Lowe’s entities continued to purchase and sell them to the unsuspecting public. All the while, as consumer complaints concerning both product failure and personal injury continued to mount, Defendants Werner Co. and Werner Holding engaged in a campaign to conceal the risk that these ladders posed from the general public. Indeed, when their own employees made anonymous complaints to the Consumer Products Safety Commission concerning the safety of these specific ladders, Defendants Werner Co. and

1 Werner Holding downplayed the significance of the risks they posed and mislead this federal  
2 agency as to their own legal responsibility for the ladders by falsely claiming that such  
3 liabilities had been discharged in Old Ladder's bankruptcy.

4 14. Ultimately, in 2008, Defendants Werner Co and Werner Holding ceased the  
5 manufacture of the S2208 and S2210 ladders. By this time, however, approximately 600,000  
6 of these defective ladders were sold nationwide, thousands of which were acquired by  
7 Washington consumers.

8 15. Because of their inherent and dangerous defects, these ladders are substantially  
9 likely to fail before the end of their useful life. Further, these ladders are subject to failure in a  
10 sudden and dangerous manner in that the hinge will shear and break without warning while a  
11 person is on the ladder. The ladders are, therefore, valueless and have harmed and will  
12 continue to harm Washington consumers economically.

13 **B. Old Ladder is financially depleted by its shareholders, begins to suffer a loss of**  
14 **sales and strikes an exclusive sales arrangement with Lowe's.**

15 16. From its beginnings in the 1940s until 1997, Old Ladder had been a family-  
16 owned company based Pennsylvania and run by members of the Werner and Solot families,  
17 manufacturing various ladders in its plants located throughout the U.S.

18 17. Old Ladder underwent significant, negative changes in 1997 when a second  
19 generation of Werner and Solot family member shareholders sought to cash-out their interest  
20 and sell a majority-ownership share to Investcorp International, Inc., an outside investor with  
21 ownership tracing to Cayman Islands companies. The Werner and Solot family members  
22 distributed more than \$330 million to themselves even though the company's financial  
23 statements reflected only \$75 million in equity. The company also took on approximately \$300  
24 million in bond and bank debt to fund the second generation's cash out plan. Also, nearly \$50  
25 million was paid out in bonuses in connection with the family's cash out.

1           18.     In 2003, while Investcorp and the shareholders knew that Old Ladder's sales  
2 were declining, a second cash-out was accomplished in which Old Ladder obtained a \$180  
3 million term loan, a \$50 million credit facility, and \$65 million in new investors. The funds  
4 were used in turn to pay Investcorp and Werner and Solot family members approximately \$150  
5 million in dividends, and the transactions cost \$21.5 million in fees. In addition to this new,  
6 high level of debt, Old Ladder's operating costs increased significantly as the cost of aluminum  
7 and steel doubled between 2001 and 2006.

8           19.     While Old Ladder was being financially depleted by its shareholders and higher  
9 operating costs, foreign competition also began to strain the company's profitability. In 2002,  
10 Old Ladder's two largest customers were Home Depot and Lowe's. But beginning in 2000,  
11 Home Depot started to purchase less expensive ladder products manufactured in foreign  
12 countries, causing Old Ladder's sales at Home Depot to continue to decline.

13           20.     By January 2003, Home Depot announced it would stop selling Old Ladder's  
14 type I two-foot aluminum ladder, type II six-foot aluminum ladder, type III four-foot aluminum  
15 ladder, and type III six-foot aluminum ladder. Home Depot later announced in February 2003  
16 that it would stop selling the type II eight-foot aluminum ladder. In their place, Home Depot  
17 began selling Tricam's Chinese manufactured ladders.

18           21.     In late 2003, under threat of losing more business with Home Depot, Werner  
19 Ladder entertained an offer to sell its ladders exclusively through Lowe's. On December 11,  
20 2003, Werner Ladder and Lowe's entered into a Letter of Understanding in which Werner  
21 Ladder agreed to sell exclusively to Lowe's.

22           22.     With its shrinking market share and overwhelming debt, Old Ladder sought to  
23 reduce its overhead expenses by moving production from the United States to foreign countries.  
24 From 1997 to 2006, Old Ladder went from more than 2,700 employees to less than 1,200. The  
25 company also transferred its manufacturing of component parts to a plant in Huafeng,  
26 Duongong, China.

1 **C. Old Ladder manufactures and distributes the S2208 and S2210 attic ladders**  
2 **containing cheap, dangerous pot metal hinges that shear during normal use.**

3 23. Shortly after its exclusive sales arrangement with Lowe's was finalized, in 2003,  
4 Old Ladder began to sell and market a steel attic ladder known as the "S2200 Series Easy  
5 Access Attic Ladder" (hereinafter referred as the "S2200 Series") which came in two Model  
6 Nos.: the S2208, an eight (8) foot ladder, and the S2210, a ten (10) foot ladder for higher  
7 ceilings. Old Ladder represented to the public that these ladders would bear a 300 pound load  
8 capacity and were "OSHA certified." The S2200 Series retailed between \$200 to \$300 dollars  
9 per ladder.

10 24. The S2208 and S2210 attic ladders have three sections. Each of the three  
11 sections is connected to the adjoining section by two hinges (one on each side). To save  
12 money, Old Ladder designed and made the hinges for these ladders from a zinc aluminum die  
13 cast. Zinc aluminum (also known as "pot metal," "die-cast zinc" or "monkey metal") is an  
14 alloy consisting of inexpensive, low melting point metals.

15 25. No scientific metallurgical standard exists for pot metal, which was used by Old  
16 Ladder because it is inexpensive and can quickly and easily be cast without the need of a  
17 sophisticated foundry and specialized molds. As a result, the pot metal used to create the  
18 hinges for the S2208 and S2210 was unstable and prone to bending, cracking, shattering and  
19 shearing.

20 26. After its introduction of the S2200 Series, Old Ladder and Lowe's both began  
21 to receive complaints from consumers, informing them that the hinges had sheared and failed  
22 suddenly and dangerously, and in several instances, caused personal injuries. Old Ladder  
23 investigated and learned of the inherent defect in the ladders that caused them to be dangerous  
24 to consumers, but nevertheless, continued to sell these ladders to Lowe's. In fact, Old Ladder  
25 learned that in addition to the defective hinges, the S2200 Series was defectively designed such  
26 that even steel replacement hinges would not cure the risk and substantial likelihood that these



1 ladders would continue to shear suddenly and dangerously at the hinges during normal use and  
2 fail within their normal useful life.

3 **D. Old Ladder files for bankruptcy; New Werner Co. purchases its assets and**  
4 **continues to make and sell the S2200 Series Ladders to Lowe's in exchange for a**  
5 **broad indemnity of all past and future losses associated with these ladders.**

6 27. By 2006, Old Ladder had sold approximately 496,000 S2208 and S2210 attic  
7 ladders and had received hundreds, if not thousands, of complaints about the sudden and  
8 dangerous shearing and breaking failures caused by the defective hinges described above.

9 28. As a result of the financial stress outlined above, Old Ladder and its holding  
10 company, Werner Holding Co (DE), Inc, both filed for bankruptcy on June 12, 2006. During  
11 the pendency of Old Ladder's bankruptcy, Lowe's became subject to a number of personal  
12 injury claims related to the S2200 Series, alleging that the defective hinges caused sudden and  
13 dangerous failure of the ladders. By virtue of Old Ladder's bankruptcy filing, Lowe's became  
14 strictly liable for these claims despite the fact that it was not the manufacturer. Thus, with  
15 significant pressure from Lowe's, Old Ladder obtained an order from the bankruptcy court that  
16 stayed and prohibited any suit or claims from being filed by any person claiming personal  
17 injuries against any of Old Ladder's customers, including Lowe's.

18 29. In 2007, Werner Co. and Werner Holding were formed by several asset  
19 management firms (Black Diamond Capital Management, LLC, Breccourt Advisors and others)  
20 to purchase all or substantially all of the assets of Old Ladder and its holding company. The  
21 purpose and intent of this formation was to continue Old Ladder's manufacturing and sale of  
22 ladder products without the associated debt and liabilities of Old Ladder and its affiliates.

23 30. However, Lowe's refused to continue to purchase and sell ladders from New  
24 Werner and Werner Holding unless they agreed to indemnify Lowe's for any and all claims  
25 that have or may accrue with respect to the manufacture and sale of the S2200 Series Ladders  
26 and other products formerly made by Old Ladder, including all claims related to the sudden and

1 dangerous shearing of the defective hinges in the ladders. In 2007, New Werner and Werner  
2 Holding, therefore, agreed, in an Asset Purchase Agreement approved by the bankruptcy court,  
3 to purchase the assets of Old Ladder and to provide Lowe's with a full indemnity as to any and  
4 all claims concerning, *inter alia*, the S2200 Series Ladders. Additionally, in the Asset Purchase  
5 Agreement, New Werner assumed any and all obligations and claims of Old Ladder related to  
6 any products liability claims arising from Old Werner's products, including those claims  
7 concerning the S2200 Series Ladders.

8 31. While claims continued to mount as to the S2208 and S2210 ladders, New  
9 Werner nevertheless continued to make and sell these ladders to Lowe's throughout 2007 and  
10 2008. And Lowe's continued to sell these ladders to the consuming public.

11 **E. New Werner misleads the Consumer Product Safety Commission following an**  
12 **anonymous complaint from a former employee about the S2200 Series.**

13 32. In February 2008, a former employee of Old Ladder and/or New Werner  
14 anonymously contacted the Consumer Product Safety Commission (hereinafter the "CPSC")  
15 and alerted them to defective nature of the S2200 Series and its tendency to break at the hinge  
16 and cause injuries.

17 33. The CPSC contacted New Werner to follow-up on this complaint. Although  
18 New Werner admitted that it had received numerous complaints concerning the S2200 Series,  
19 including the receipt of 80 complaints in one week, New Werner falsely informed the CPSC  
20 that the hinge shearing was not caused by the defective design or manufacture of these ladders  
21 and their component parts, but instead, by consumers who exceeded the 300 pound weight  
22 limitation or who had improperly installed the ladders with an angle bend such that it put  
23 excessive weight on the ladders. New Werner, however, was well aware that these ladders  
24 were defective regardless of the angle of installation and that overloading was not the cause.

25 34. Indeed, New Werner knew from the complaints it had received that the nature of  
26 the hinges in combination with the design of the steel ladders were inherently defective and

1 would suddenly and dangerously fail regardless of the manner of installation. (New Werner  
2 also knew or later learned that replacing the pot-metal hinges with steel hinges provided no  
3 solution to the defect and, thus, abandoned the practice of offering replacement hinges to those  
4 consumers who complained of product failure). In 2008, New Werner decided to cease the  
5 manufacture of the S2200 Series due to the vast problems experienced by consumers.

6 Unfortunately, however, it never took steps to warn these consumers of the dangerous and  
7 defective nature of the S2200 Series.

8 35. Moreover, in an effort to dissuade the CPSC from suggesting that it recall the  
9 S2200 Series, New Werner falsely informed the CPSC that it had no responsibility for the  
10 product claims arising out of those S2200 Series ladders made and sold by Old Ladder, which  
11 constituted approximately 500,000 of the 600,000 total made and sold to consumers. New  
12 Werner intentionally omitted to inform the CPSC that, pursuant to the Asset Purchase  
13 Agreement approved in Old Ladder's bankruptcy, New Werner was legally bound to indemnify  
14 Lowe's for any and all claims concerning the S2200 Series, and therefore, was indeed  
15 responsible for same. As a result, the CPSC closed its limited investigation.

16 36. Significant claims concerning the S2200 Series continued to flood New Werner,  
17 including lawsuits for personal injuries and other damages, following the CPSC's brief  
18 investigation. As it had done with the CPSC, New Werner routinely misrepresented to  
19 claimants that Old Ladder (sometimes formerly known as Werner Ladder) had filed bankruptcy  
20 and that New Werner was in no way legally responsible for claims and injuries for its ladders.  
21 New Werner was successful in convincing most claimants to abandon suit with its misleading  
22 bankruptcy defense.

23 **F. Plaintiff Clemans purchased a S2210 ladder for his garage attic, and its hinges**  
24 **sheared during normal use.**

25 37. Plaintiff Clemans purchased an S2210 ladder and installed same in his garage  
26 attic in accordance with the manufacturer's instructions. In or about April, 2011, Plaintiff

1 Clemans pulled down the S2210 ladder to access his attic. While descending the ladder,  
2 Plaintiff Clemans stepped on the lower third of the ladder, and one of the two pot-metal hinges  
3 sheared causing the bottom of the ladder to suddenly and dangerously disconnect from the rest  
4 of the ladder and collapse.

5 38. Like all S2200 Series ladders, Plaintiff Clemans' ladder contained the same  
6 inherent defect which rendered it unsafe and valueless.

#### 7 **V. TOLLING**

8 39. Because the defects in the design and/or manufacture of the S2200 Series are not  
9 detectable until the manifestation of the damage, Plaintiff and the Class were not reasonably  
10 able to discover the problem until after the hinge failed, despite due diligence. More  
11 importantly, Defendants not only failed to disclose the S2200 Series ladders' defects but also  
12 failed to warn Plaintiff and the Class of same. Importantly, Defendant New Werner took steps  
13 to actively conceal the inherently defective hinge from the Class while falsely maintaining that  
14 the above described product failures were caused by faulty installation and improper operation.

15 40. As a result, any and all applicable statutes of limitation have been tolled by  
16 Defendants' concealment of the true facts alleged herein. Additionally, Defendants are  
17 estopped from relying upon any statutes of limitation because of their concealment of the  
18 defective nature of same.

#### 19 **VI. CLASS ACTION ALLEGATIONS**

20 41. The named Plaintiff brings this action as a Class Action pursuant to Rule 23(a)  
21 of the Federal Rules of Civil Procedure, and pursuant Rule 23(b)(3). This action satisfies the  
22 numerosity, commonality, typicality, adequacy, predominance and superiority provisions with  
23 respect to a Nationwide Class and a Washington Class.

24 42. The Nationwide Class is defined follows:

25 Plaintiff and all similarly situated consumers not residing in  
26 Washington State who, after December 11, 2002, purchased and  
currently own a S2208/S2210 Easy Access Attic Ladder or who

1 purchased a home or other structure containing an S2208/S2210 Easy  
2 Access Attic Ladder.

3 Excluded from the Class are the named Defendants, their agents,  
4 affiliates, and employees, the Judge assigned to this matter and any  
5 member of the Judge's staff and immediate family.

6 43. The Washington Class is defined follows:

7 Plaintiff and all similarly situated persons and entities residing in  
8 Washington State who, after December 11, 2003, purchased and  
9 currently own a S2208/S2210 Easy Access Attic Ladder or who  
10 purchased a home or other structure containing an S2208/S2210 Easy  
11 Access Attic Ladder.

12 Excluded from the Class are the named Defendants, their agents,  
13 affiliates, and employees, the Judge assigned to this matter and any  
14 member of the Judge's staff and immediate family.

15 44. Claims for personal injury are specifically excluded from the Nationwide Class  
16 and Washington Class definitions.

17 45. **Numerosity.** The requirements of Rule 23(a)(1) are satisfied in that there are  
18 too many Class Members for joinder of all of them to be practicable. On information and  
19 belief, these Class Members exceed over 20,000 in number for the Washington Class and over  
20 500,000 for the Nationwide Class. Both of these Classes, as defined above, meet the  
21 numerosity requirement.

22 46. **Commonality.** The claims of the Washington and Nationwide Classes raise  
23 numerous common issues of fact and/or law, thereby satisfying the requirements of Rule  
24 23(a)(2). These common legal and factual questions may be determined without the necessity  
25 of resolving individualized factual disputes concerning any Class Member, include, but are not  
26 limited to, the following questions:

**Questions of Fact**

- (i) Whether the S2208/S2210 ladders are defectively designed and/or manufactured  
such that they are not suitable for their intended use.

- 1 (ii) Whether the S2208/S2210 ladders suddenly and dangerously fail.
- 2 (iii) Whether the S2208/S2210 ladders are substantially likely to fail within their
- 3 intended useful life as a result of their defective design and/or manufacture.
- 4 (iv) Whether Defendants knew or should have known of the inherent design and/or
- 5 manufacturing defect of the S2208/S2210 ladders.
- 6 (v) Whether Defendants fraudulently concealed from and/or failed to disclose to
- 7 Plaintiff and the Class that S2208/S2210 ladders were inherently defective and
- 8 dangerous and prone to fail prematurely.
- 9 (vi) Whether Defendants failed to adequately warn Plaintiffs and the Class of the
- 10 inherent defects and dangers posed by the S2200 Series ladders

11

12 **Questions of Law**

- 13 (i) Whether Defendants' conduct in manufacturing, marketing and selling the
- 14 S2200 Series ladders constitutes a violation of the Washington Consumer
- 15 Protection Act, chapter 19.86 RCW *et seq.* and other state Consumer Protection
- 16 and Unfair Business statutes.
- 17 (ii) Whether Defendants have engaged in unfair or deceptive acts or practices when
- 18 they concealed the inherent defective conditions and dangers of the S2200
- 19 Series ladders and failed to warn Plaintiff and the Class of same.
- 20 (iii) Whether Class wide reliance may be presumed because of Defendants' material
- 21 omissions.
- 22 (iv) Whether Defendants have violated the Washington Products Liability Act by
- 23 selling a product that suddenly and dangerously fails?
- 24 (v) Whether Defendants should be declared financially responsible for notifying all
- 25 Class members of the inherent defects and dangers of the S2200 Series ladders
- 26

1 and for the costs and expenses of replacing all such units with safe and  
2 appropriate ladders.

- 3 (vi) Whether Defendants should be ordered to disgorge, for the benefit of the Class,  
4 all or part of the ill-gotten profits they received from the sale of the S2200 Series  
5 ladders or otherwise make full restitution to Plaintiff and the Class members.

6 47. **Typicality.** The claims of the named Plaintiff are typical of the unnamed Class  
7 Members because they have a common factual source and rest upon the same legal and  
8 remedial theories, thereby satisfying the requirements of Rule 23(a)(3). For example, the  
9 named Plaintiff's claims are typical of the claims of the Class because Plaintiff and all Class  
10 Members were injured or damaged by the same wrongful practices in which Defendants  
11 engaged, namely the manufacture and sale of the inherently defective and dangerous S2200  
12 Series ladders, and the intentional concealment of those defects.

13 48. **Adequacy of Representation.** The requirements of Rule 23(a)(4) are satisfied  
14 in that the named Plaintiff has a sufficient stake in the litigation to prosecute his claims  
15 vigorously on behalf of the Class Members, and the named Plaintiff's interests are aligned with  
16 those of the proposed Class. There are no defenses of a unique nature that may be asserted  
17 against Plaintiff individually, as distinguished from the other members of the Class, and the  
18 relief sought is common to the Class. Plaintiff does not have any interest that is in conflict with  
19 or is antagonistic to the interests of the members of the Class, and has no conflict with any  
20 other member of the Class. Plaintiff has retained competent counsel experienced in class action  
21 litigation, including consumer and financial services class actions, to represent him and the  
22 Class Members in this litigation.

23 49. **Predominance and Superiority.** All of the requirements for Rule 23(b)(3) are  
24 satisfied because the common factual and legal issues identified above are sufficiently cohesive  
25 to warrant adjudication by representation. In particular, the Plaintiff and the Class Members  
26 have suffered a common cause of injury, and their legal claims are based on the same common

1 nucleus of operative facts. Proof of the named Plaintiff's claims will effectively prove the  
 2 claims of all other Class Members. Class action treatment is also superior to other available  
 3 methods for the fair and efficient adjudication of this controversy because individual litigation  
 4 of the claims of all Class Members is economically unfeasible and procedurally impracticable.  
 5 The likelihood of individual Class Members prosecuting separate claims is remote, and even if  
 6 every Class Member could afford individual litigation, the court system would be unduly  
 7 burdened by individual litigation in such cases. Additionally, individual litigation would also  
 8 present the potential for varying, inconsistent or contradictory judgments while magnifying the  
 9 delay and expense to all parties and to the court system, thus resulting in multiple trials of the  
 10 same legal issue and creating the possibility of repetitious litigation. As a result, it is desirable  
 11 to concentrate litigation in this forum. Plaintiff knows of no difficulty to be encountered in the  
 12 management of this action that would preclude its maintenance as a class action.

## 13 **VII. CLAIMS FOR RELIEF**

### 14 **COUNT 1 – VIOLATION OF CONSUMER PROTECTION STATUTES**

#### 15 **NATIONWIDE CLASS**

16  
 17 50. Plaintiff incorporates all allegations of fact in all preceding paragraphs as if fully  
 18 set forth herein.

19 51. Plaintiff and Class Members are consumers and, as such, constitute "persons" as  
 20 defined by Washington's CPA, RCW 19.86.010 and fall within the meaning of the term "any  
 21 person" as contained in the CPA, RCW 19.86.090.

22 52. By its plain terms, the CPA, RCW 19.86.090 provides a private right of action  
 23 for any person who is injured in his or her business or property by an unfair and/or deceptive  
 24 act or practice.

25 53. Defendants engaged in unfair and/or deceptive acts or practices in violation of  
 26 the CPA when they: (i) manufactured, distributed and sold to the Class the S2200 Series that



1 they knew or should have known contained an inherently defective and dangerous condition  
2 that caused the ladders to fail, suddenly and dangerously, within their useful life; (ii) continued  
3 to manufacture, distribute and sell to the Class the S2200 Series after receiving substantial  
4 consumer complaints of systematic product failure; (iii) failed to disclose to the Class their  
5 actual knowledge of the defects in the S2200 Series and the substantial likelihood the ladders  
6 would suddenly and dangerously fail within their useful life, and (iv) failed to disclose to the  
7 Class the defective and unsafe nature of the S2200 Series and the substantial likelihood the  
8 ladders would suddenly and dangerously fail within their useful life.

9 54. Defendants knew or should have known that the S2200 Series were defectively  
10 designed and/or manufactured, posed a significant and dangerous risk to the general public,  
11 would suddenly and dangerously fail before the end of their useful life, and were not suitable  
12 for their intended use.

13 55. Defendants' unfair or deceptive acts occurred in Defendants' trade or business  
14 and repeatedly occurred in Defendants trade or business and were capable of injuring and did  
15 injure a substantial portion of the general public.

16 56. As a direct and proximate cause of Defendants' unfair or deceptive acts or  
17 practices, Plaintiff and the Class have suffered actual damages in that they purchased and/or  
18 installed in their homes and other structures a product that is defective, poses substantial harm  
19 and is valueless – indeed, it is a liability – due to design and/or manufacturing deficiencies and  
20 use of substandard materials that cause it to suddenly and dangerously fail before the end of its  
21 useful life. These past and future failures have caused and will continue to cause Plaintiff and  
22 the Class members to incur expenses replacing their defective S2208 and S2210 ladders.

23 57. Defendants' actions and omissions as described in this amended complaint also  
24 have violated the consumer protection statues and unfair business practices statutes of thirty-  
25 three (33) other states and the District of Columbia, because Defendants have behaved similarly  
26 with regard to consumers who reside in those states. These actions and omission include

1 intentional and repeated deception, misrepresentation and/or concealment, suppression of  
2 material facts, among other unconscionable behavior, including unfair trade practices, have  
3 affected the public interest in various states. Members of the prospective Nationwide Class  
4 seek the full measure of relief available at law and equity (to include injunctive relief and  
5 declaratory relief as available) under the laws of these thirty-three (33) states and the District of  
6 Columbia, including multiplication of actual damages as allowed by law, together with the cost  
7 of suit, including reasonable attorneys' fees. In this proposed Nationwide Class action, the  
8 state laws under which the prospective Class seeks relief include:

- 9
- 10 a. Ariz. Rev. Stat. § 44-1522, *et seq.*;
  - 11 b. Ark. Code § 4-88-101, *et seq.*;
  - 12 c. Cal. Consumer Legal Remedies Acts, Civ. Code § 1750 *et seq.*,  
13 and Cal. Bus. & Prof. Code §§ 17200 and 17500 *et seq.*;
  - 14 d. Colo. Rev. Stat. § 6-1-101, *et seq.*;
  - 15 e. Conn. Gen. Stat. § 42-110a, *et seq.*;
  - 16 f. 6 Del. Code § 2511, *et seq.*;
  - 17 g. D.C. Code § 28-3901, *et seq.*;
  - 18 h. Fla. Stat. § 501.201, *et seq.*;
  - 19 i. Haw. Rev. Stat. § 480, *et seq.*;
  - 20 j. Idaho Code § 48-601, *et seq.*;
  - 21 k. 815 ILCS § 505/1, *et seq.*;
  - 22 l. Kan. Stat. § 50-626, *et seq.*;
  - 23 m. Ky. Rev. Stat. Ann. § 367-110, *et seq.*;  
24 Ky. Rev. Stat. Ann. § 365-020, *et seq.*;
  - 25 n. Md. Com. Law Code § 13-101, *et seq.*;
  - 26 o. Mich. Stat. § 445.901, *et seq.*;

- 1 p. Minn. Stat. § 325F.68, *et seq.*;
- 2 Minn. Stat. § 325D.45, *et seq.*;
- 3 q. Vernon’s Mo. Rev. Stat. § 407.010, *et seq.*;
- 4 r. Neb. Rev. Stat. § 59-1601, *et seq.*;
- 5 Neb. Rev. Stat. § 87-301, *et seq.*;
- 6 s. Nev. Rev. Stat. § 598.0903, *et seq.*;
- 7 t. N.C. Gen. Stat. § 75-1.1, *et seq.*;
- 8 u. N.H. Rev. Stat. § 358-A:1, *et seq.*;
- 9 v. N.J. Stat. Ann. § 56:8-1, *et seq.*;
- 10 w. N.M. Stat. Ann. § 57-12-1, *et seq.*;
- 11 x. N.Y. Gen. Bus. Law § 349, *et seq.*;
- 12 y. N.D. Cent. Code § 51-15-01, *et seq.*;
- 13 z. Okla. Stat. tit 15 § 751, *et seq.*;
- 14 aa. Or. Rev. Stat. § 646.605, *et seq.*;
- 15 bb. R.I. Gen. Laws. § 6-13.1-1, *et seq.*;
- 16 cc. S.C. Code Laws § 39-5-10, *et seq.*;
- 17 dd. S.D. Code Laws § 37-24-1, *et seq.*;
- 18 ee. Tex. Bus. & Com. Code § 17.46, *et seq.*;
- 19 ff. Vt. Stat. Ann. tit. 9, § 2451, *et seq.*;
- 20 gg. Wis. Stat. § 100.18, *et seq.*

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**COUNT 2 – UNJUST ENRICHMENT**

**NATIONWIDE CLASS**

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3 58. Plaintiff incorporate all allegations of fact in all preceding paragraphs as if fully  
4 set forth herein.

5 59. A benefit was conferred upon Defendants by Plaintiff and the Nationwide Class  
6 Members by the payment for S2200 Series ladders. Defendants ultimately received and  
7 benefitted from such monetary benefit. Defendants’ acceptance and retention of such benefit  
8 under such circumstances is inequitable and unjust in light of the inherently defective and  
9 dangerous nature of the S2200 Series ladders.

10 60. As a result of Defendants’ wrongful conduct, Plaintiff and the Nationwide Class  
11 are entitled to restitution and the institution of a constructive trust disgorging all profits,  
12 benefits, and other compensation obtained by Defendants.

**COUNT 3 – NEGLIGENT MISREPRESENTATION**

**WASHINGTON CLASS ONLY**

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16 61. Plaintiff incorporates all allegations of fact in all preceding paragraphs as if fully  
17 set forth herein.

18 62. Defendants manufactured, distributed, and sold to the Class the S2200 Series  
19 ladders that they knew contained an inherently dangerous or defective condition.

20 63. Defendants continued to manufacture, distribute, and sell to the Class the S2200  
21 Series ladders after receiving substantial complaints of systematic product failure due to the  
22 dangerous or defective condition.

23 64. Defendants did not disclose this dangerous or defective condition to consumers,  
24 and the condition was not easily discoverable by consumers.

25 65. Defendants omitted this information to induce Plaintiffs to enter into a business  
26 transaction: the purchase of the S2200 Series ladders.

1           66. Had Plaintiff and the Washington Class known of the defective and dangerous  
2 nature of the S2200 Series ladders they would not have purchased them or would have  
3 purchased them only at a reduced price.

4           67. Plaintiff and the Washington Class were harmed by Defendants'  
5 misrepresentations regarding the dangerous and defective condition of the S2200 ladders and  
6 are entitled to damages as a result in an amount to be proven at trial.

7  
8   **COUNT 4 – FRAUDULENT CONCEALMENT**

9           68. Plaintiff incorporates all allegations of fact in all preceding paragraphs as if fully  
10 set forth herein.

11          69. Defendants omitted an existing fact about the S2200 ladders when they failed to  
12 disclose information regarding the S2200 Series' dangerous and defective condition.

13          70. The omission is material because the defective condition poses a grave danger to  
14 the safety of users of the S2200 ladders.

15          71. The omission rendered Defendants' representations regarding the ladders false  
16 because the ladders were in fact defective.

17          72. Defendants manufactured, distributed, and sold the S2200 ladders despite  
18 having knowledge of their defective and dangerous condition.

19          73. Defendants intended that consumers would rely on their omissions regarding  
20 safety of the S2200 ladders to bolster sales.

21          74. Plaintiffs were not aware of the defective condition and could not reasonably  
22 have discovered the defective condition.

23          75. Plaintiffs and the Washington Class relied on Defendants omission in that they  
24 paid more for the S2200 Series ladders than the ladders would have been worth had Defendants  
25 disclosed the defective condition, or they would have purchased a different ladder altogether.

1 76. Plaintiffs and the Washington Class had a reasonable right to rely on  
2 Defendants' omissions that created the false impression that the ladders were safe based on  
3 reasonable consumer expectations that ladders would not be designed such that they fail under  
4 normal conditions of use or would be substantially certain to fail before the end of their useful  
5 life.

6 77. Defendants had an affirmative duty to disclose the defective condition of the  
7 S2200 Series to consumers because they were in a superior position to know the true state of  
8 the defective S2200 Series ladders. Defendants knew of the defective and dangerous condition  
9 and the condition was not easily discoverable by consumers. Defendants breached their duty  
10 by failing to disclose the condition.

11 78. Defendants fraudulently concealed the defective condition of the S2200 Series  
12 ladders, causing damages to Plaintiffs and the Washington Class in the form of replacement  
13 and other costs.

14  
15 **COUNT 5 – WASHINGTON PRODUCTS LIABILITY ACT**

16 **WASHINGTON CLASS ONLY**

17 **As to New Werner and Werner Holdings**

18 79. Defendants New Werner and Werner Holding are "Manufacturers" or  
19 successors-in-interest to a "Manufacturer" as that term is defined under RCW 7.72.010(2).

20 80. Plaintiff and each member of the Class is a "Claimant" as defined under RCW  
21 7.72.010(5).

22 81. New Werner and Werner Holdings and/or their predecessors-in-interest  
23 manufactured the S2200 Series ladders.

24 82. The S2200 Series ladders contain a design defect that causes them to suddenly  
25 and dangerously fail or are substantially certain to suddenly and dangerously fail before the end  
26 of their useful life in that the hinges shear and break suddenly from normal use.

1 83. New Werner and Werner Holdings failed to provide warnings to consumers  
2 about the sudden and dangerous defect of the S2200 Series ladders after it learned about such  
3 defect, and continued to manufacture and sell the defective S2200 Series ladders without  
4 warnings to the consuming public.

5 84. The S2200 Series ladders does not conform to ordinary consumer expectations  
6 in that an ordinary consumer would not expect the hinges on such ladders to suddenly and  
7 dangerously shear causing the ladder to break with normal use.

8 85. Plaintiff and the Washington Class have been harmed by New Werner’s and  
9 Werner Holdings’ dangerously defective product in an amount to be proven at trial.

10  
11 **COUNT 6 – WASHINGTON PRODUCT LIABILITY ACT**

12 **WASHINGTON CLASS ONLY**

13 **As to Lowe’s Companies and Lowe’s Home**

14 86. Defendant Lowe’s Companies and Lowe’s Home are “Product Sellers” as that  
15 term is defined under RCW 7.72.010(1).

16 87. Plaintiff and each member of the Class is a “Claimant” as defined under RCW  
17 7.72.010(5).

18 88. Lowe’s Companies and Lowe’s Home knew that the S2200 Series ladders were  
19 dangerously defective. Indeed, Lowe’s Companies and Lowe’s Home were sued by various  
20 consumers because of injuries sustained due to the sudden and dangerous shearing of the hinges  
21 on the S2200 Series ladders that caused them to suddenly break while in use. Further, Lowe’s  
22 Companies and Lowe’s Home, to protect themselves from liability from the dangerously  
23 defective S2200 Series ladders, entered into an indemnity agreement with New Werner and  
24 Werner Holdings such that New Werner and Werner Holdings would be monetarily liable for  
25 such injuries.

1 89. Lowe’s Companies and Lowe’s Home failed to and intentionally concealed its  
2 knowledge of the dangerously defective S2200 Series ladders from the consuming public. In  
3 fact, Lowe’s Companies and Lowe’s Home continued to sell the dangerously defective S2200  
4 Series ladders to the consuming public without including any disclosure or warnings as to the  
5 defect.

6 90. The S2200 Series ladders does not conform to ordinary consumer expectations  
7 in that an ordinary consumer would not expect the hinges on such ladders to suddenly and  
8 dangerously shear causing the ladder to break with normal use.

9 91. Plaintiff and the Washington Class have been harmed by Lowe’s Companies’  
10 and Lowe’s Home’s intentional concealment in an amount to be proven at trial.

11  
12 **VIII. PRAYER FOR RELIEF**

13 WHEREFORE, the named Plaintiff and the Class Members demand judgment against  
14 Defendant New Werner Co. New Werner Holding Co (DE), LLC, Lowe’s Companies, Inc.,  
15 and Lowe’s Home Centers, Inc. on each Count of the Complaint and pray for the following  
16 relief:

- 17 1. Issue service of process and serve each Defendant;
- 18 2. Issue an Order certifying that this action may be maintained as a class action,  
19 appointing Plaintiff and his counsel to represent the Nationwide and Washington  
20 Classes, and directing that reasonable notice of this action be given by  
21 Defendants to all Class Members;
- 22 3. Grant any reasonable request to Amend Plaintiff’s Class Action Complaint to  
23 conform to the discovery and evidence obtained in this Class Action;
- 24 4. Empanel a jury to try this matter;
- 25 5. Award to Plaintiff and the Nationwide Class Members their compensatory  
26 damages consistent with their First Claim for Relief;



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- 6. Declare that Defendants must disgorge, for the benefit of the Nationwide Class, all or part of the ill-gotten profits it received from the sale of the S2200 Series, or to make full restitution to Plaintiff and the Class Members consistent with their Second Claim for Relief;
- 7. Grant the Washington Plaintiff Class damages consistent with their Third Claim for Relief;
- 8. Grant the Washington Plaintiff Class damages consistent with their Fourth Claim for Relief;
- 9. Grant the Washington Plaintiff Class damages consistent with their Fifth Claim for Relief;
- 10. Grant the Washington Plaintiff Class damages consistent with their Sixth Claim for Relief;
- 11. Award the Washington Class trebled damages pursuant to RCW 19.86.090 and trebled and/or exemplary damages to the Nationwide Class consistent with their applicable consumer statutes;
- 12. Grant the Washington Plaintiff Class Members their reasonable attorney’s fees and costs incurred in this litigation pursuant to RCW 19.86.090 and the Nationwide Class consistent with their respective consumer statutes.
- 13. Award costs and expenses incurred in this action pursuant to Rule 54 of the Federal Rules of Civil Procedure;
- 14. Award pre-and post-judgment interest as allowed by law;
- 15. Grant the Plaintiff and Nationwide and Washington Class Members such further relief as the Court may deem just and proper.

1 DATED this 15<sup>th</sup> day of May, 2012.

2 Respectfully submitted,

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*Counsel for Plaintiff Lloyd Clemans, and the  
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**CERTIFICATE OF SERVICE**

Pursuant to CR 5(b), I hereby certify that on May 15, 2012 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record, and that the foregoing has also been served on the following in accordance with Federal Rules of Civil procedure:

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