

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

APR 25 2005

JOHN MENDES
EXECUTIVE OFFICER & CLERK

By T. Ducharme Deputy

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5 San Francisco, CA 94133
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8
9 Attorneys for Defendant
10 MONIER INC.

11 IN THE SUPERIOR COURT OF CALIFORNIA
12 IN AND FOR THE COUNTY OF PLACER

13 RICHARD WALLACE and TIM
14 McADAMS, on behalf of themselves, all
15 others similarly situated, and as private
16 attorney general,

17 Plaintiffs,

18 vs.

19 MONIER LIFETILE LLC, a California
20 limited liability company; MONIER-
21 RAYMOND COMPANY; MONIER
22 ROOF TILE, INC., a California
23 corporation; MONIER COMPANY;
24 MONIER, INC., a California corporation,
25 and DOES 1 through 50,

26 Defendants.

Case No. S CV 16410

Unlimited Civil Action

ANSWER OF MONIER INC. TO
UNVERIFIED SECOND AMENDED
CLASS ACTION COMPLAINT

Complaint Filed: 11/14/03
Trial Date: October 17, 2005

facsimile document

27 Defendant Monier Inc. answers the second amended class action complaint (hereafter
28 "complaint") of Plaintiffs Richard Wallace and Tim McAdams, on behalf of themselves, all
others similarly situated, and as private attorneys general (hereafter collectively "plaintiffs"
unless specifically stated otherwise) as follows:

This answering defendant, pursuant to Code of Civil Procedure Section 431.30 (d),
generally denies the allegations of the complaint, and further denies that plaintiffs have been

ANSWER OF MONIER INC.

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Filed by fax by
Alliance LawWork Services

1 damaged or injured in any amount or sum, or at all, by reason of any act or omission on the part
2 of this answering defendant.

3 FIRST AFFIRMATIVE DEFENSE

4 This answering defendant alleges that the First Cause of Action of plaintiff Wallace fails
5 to state facts sufficient to constitute a cause of action against this answering defendant.

6 SECOND AFFIRMATIVE DEFENSE

7 This answering defendant alleges that the First Cause of Action of plaintiff McAdams
8 fails to state facts sufficient to constitute a cause of action against this answering defendant.

9 THIRD AFFIRMATIVE DEFENSE

10 This answering defendant alleges that the First Cause of Action of some or all of the
11 unnamed class member plaintiffs fails to state facts sufficient to constitute a cause of action
12 against this answering defendant.

13 FOURTH AFFIRMATIVE DEFENSE

14 This answering defendant alleges that the Second Cause of Action of plaintiff Wallace
15 fails to state facts sufficient to constitute a cause of action against this answering defendant.

16 FIFTH AFFIRMATIVE DEFENSE

17 This answering defendant alleges that the Second Cause of Action of plaintiff McAdams
18 fails to state facts sufficient to constitute a cause of action against this answering defendant.

19 SIXTH AFFIRMATIVE DEFENSE

20 This answering defendant alleges that the Second Cause of Action of some or all of the
21 unnamed class member plaintiffs fails to state facts sufficient to constitute a cause of action
22 against this answering defendant.

23 SEVENTH AFFIRMATIVE DEFENSE

24 This answering defendant alleges that the Third Cause of Action of plaintiff Wallace fails
25 to state facts sufficient to constitute a cause of action against this answering defendant.

26 EIGHTH AFFIRMATIVE DEFENSE

27 This answering defendant alleges that the Third Cause of Action of plaintiff McAdams
28 fails to state facts sufficient to constitute a cause of action against this answering defendant.

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NINTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the Third Cause of Action of some or all of the unnamed class member plaintiffs fails to state facts sufficient to constitute a cause of action against this answering defendant.

TENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the complaint on behalf of the unnamed class member plaintiffs in both classes as defined fails for lack of an ascertainable class.

ELEVENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that, as to each separate cause of action, that action on behalf of the unnamed class member plaintiffs in both classes as defined fails because there is not a predominance of common questions of law and/or fact.

TWELFTH AFFIRMATIVE DEFENSE

This answering defendant alleges that, as to each separate cause of action, that action on behalf of the unnamed class member plaintiffs in both classes as defined fails because the claims of the class representatives, plaintiffs Wallace and McAdams, are not typical of the claims of the class member plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that, as to each separate cause of action, that action on behalf of the unnamed class member plaintiffs in both classes as defined fails because the class representatives, plaintiffs Wallace and McAdams, do not adequately represent the interests of the unnamed class member plaintiffs.

FOURTEENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the first cause of action of plaintiff Wallace is barred by the statute of limitations in California Civil Code Section 1783.

FIFTEENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the first cause of action of plaintiff McAdams is barred by the statute of limitations in California Civil Code Section 1783.

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SIXTEENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the first cause of action of some or all of the unnamed class member plaintiffs of the defined class is barred by the statute of limitations in California Civil Code Section 1783.

SEVENTEENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that plaintiffs did not receive some or all of the alleged express misrepresentations alleged in the first cause of action and the cause of action fails as to those misrepresentations.

EIGHTEENTH AFFIRMATIVE DEFENSE

This answering defendant is informed and believes, and thereon alleges, that some or all of the plaintiffs did not enter into a transaction for the sales of goods with this answering defendant, and therefore as to those plaintiffs and unnamed class member plaintiffs, their first cause of action fails.

NINETEENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that some or all of the unnamed class member plaintiffs purchased residences on which defendant's product was already installed, and therefore, as to those unnamed class member plaintiffs, their first cause of action fails pursuant to Civil Code §1754.

TWENTIETH AFFIRMATIVE DEFENSE

This answering defendant is informed and believes and thereon alleges that, to the extent the trier of fact finds any literature of any prior company to be unfair or deceptive pursuant to Civil Code §1770(a)(5) and (7) as alleged, and finds that answering defendant is a successor company for purposes of liability, there was no intent on the part of the prior company to violate §1770, and the understanding of the properties of the color coat of the tile was a bona fide error, and therefore the first cause of action fails pursuant to Civil Code §1784 as to those plaintiffs receiving said literature.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

This answering defendant alleges that, to the extent the trier of fact finds any literature published by this answering defendant to be unfair or deceptive pursuant to Civil Code §1770(a)(5) and (7) as alleged, there was no intent on the part of this answering defendant to violate §1770 and was a bona fide error, and therefore the first cause of action fails pursuant to Civil Code §1784 as to those plaintiffs receiving said literature.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This answering defendant alleges that there was a lack of deception as to some or all of the plaintiffs, and therefore, as to those plaintiffs, the first cause of action fails.

TWENTY-THIRD AFFIRMATIVE DEFENSE

This answering defendant alleges that the second cause of action of plaintiff Wallace is barred by the statute of limitations in California Business & Professions Code Section 17208.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the second cause of action of plaintiff McAdams is barred by the statute of limitations in California Business & Professions Code Section 17208.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the second cause of action of some or all of the unnamed class member plaintiffs is barred by the statute of limitations in California Business & Professions Code Section 17208.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This answering defendant alleges that plaintiffs did not receive some or all of the alleged express misrepresentations alleged in the second cause of action and therefore the second cause of action fails as to those misrepresentations.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the literature received by plaintiff Wallace was not likely to deceive, and therefore the second of action fails.

1 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

2 This answering defendant alleges that the literature received by plaintiff McAdams was
3 not likely to deceive, and therefore the second of action fails.

4 TWENTY-NINTH AFFIRMATIVE DEFENSE

5 This answering defendant alleges that the literature received by some or all of the
6 unnamed class member plaintiffs was not likely to deceive, and therefore the second cause of
7 action fails as to those unnamed class member plaintiffs.

8 THIRTIETH AFFIRMATIVE DEFENSE

9 This answering defendant alleges that some or all of the literature referenced in the
10 complaint is mere “puffing” and therefore cannot sustain a claim under the second cause of action
11 as to those plaintiffs who received said literature.

12 THIRTY-FIRST AFFIRMATIVE DEFENSE

13 This answering defendant is informed and believes and thereon alleges that plaintiff
14 Wallace lacks standing to bring the first cause of action on behalf of some of the unnamed class
15 member plaintiffs, and the first cause of action fails.

16 THIRTY-SECOND AFFIRMATIVE DEFENSE

17 This answering defendant is informed and believes and thereon alleges that plaintiff
18 McAdams lacks standing to bring the first cause of action on behalf of some of the unnamed class
19 member plaintiffs, and the first cause of action fails.

20 THIRTY-THIRD AFFIRMATIVE DEFENSE

21 This answering defendant is informed and believes and thereon alleges that plaintiff
22 Wallace lacks standing to bring the second cause of action on behalf of some of the unnamed
23 class member plaintiffs, and the second cause of action fails.

24 THIRTY-FOURTH AFFIRMATIVE DEFENSE

25 This answering defendant is informed and believes and thereon alleges that plaintiff
26 McAdams lacks standing to bring the second cause of action on behalf of some of the unnamed
27 class member plaintiffs, and the second cause of action fails.

28

1 THIRTY-FIFTH AFFIRMATIVE DEFENSE

2 This answering defendant is informed and believes and thereon alleges that plaintiff
3 Wallace is not an adequate representative under the second cause of action.

4 THIRTY-SIXTH AFFIRMATIVE DEFENSE

5 This answering defendant is informed and believes and thereon alleges that plaintiff
6 McAdams is not an adequate representative under the second cause of action.

7 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

8 This answering defendant alleges that the second cause of action violates the due process
9 clause of the Constitution.

10 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

11 This answering defendant alleges that it received no pecuniary benefit as a result of any
12 alleged unlawful, unfair or fraudulent business act or practice, or any deceptive, untrue or
13 misleading advertising.

14 THIRTY-NINTH AFFIRMATIVE DEFENSE

15 This answering defendant alleges that plaintiffs have an adequate remedy at law.

16 FORTIETH AFFIRMATIVE DEFENSE

17 This answering defendant alleges that the third cause of action of plaintiff Wallace is
18 barred by the statute of limitations in California Commercial Code Sections 2725(1) and 2725(2).

19 FORTY-FIRST AFFIRMATIVE DEFENSE

20 This answering defendant alleges that the third cause of action of plaintiff McAdams is
21 barred by the statute of limitations in California Commercial Code Sections 2725(1) and 2725(2).

22 FORTY-SECOND AFFIRMATIVE DEFENSE

23 This answering defendant alleges that the third cause action of some or all of the unnamed
24 class member plaintiffs is barred by the statute of limitations in California Commercial Code
25 Sections 2725(1) and 2725(2).

26 FORTY-THIRD AFFIRMATIVE DEFENSE

27 This answering defendant is informed and believes and thereon alleges that plaintiff
28 Wallace failed to provide notice to this answering defendant of any alleged breach of the express

1 warranty within a reasonable time after he discovered or should have discovered the alleged
2 breach and is therefore barred from any remedy pursuant to California Commercial Code Section
3 2607(3)(A) for the third cause of action.

4 FORTY-FOURTH AFFIRMATIVE DEFENSE

5 This answering defendant alleges that the third cause of action fails as to plaintiff
6 McAdams because he never received any type of express warranty.

7 FORTY-FIFTH AFFIRMATIVE DEFENSE

8 This answering defendant alleges that plaintiff McAdams failed to provide notice to this
9 answering defendant of any alleged breach of the express warranty within a reasonable time after
10 he discovered or should have discovered the alleged breach and is therefore barred under from
11 any remedy pursuant to California Commercial Code Section 2607(3)(A) for the third cause of
12 action.

13 FORTY-SIXTH AFFIRMATIVE DEFENSE

14 This answering defendant alleges that the third cause of action fails as to some or all of the
15 unnamed class member plaintiffs because they never received any type of express warranty.

16 FORTY-SEVENTH AFFIRMATIVE DEFENSE

17 This answering defendant alleges that some or all of the unnamed class member plaintiffs
18 failed to provide notice to this answering defendant of any alleged breach of the express warranty
19 within a reasonable time after he/she discovered or should have discovered the alleged breach and
20 those unnamed class members are therefore barred from any remedy pursuant to California
21 Commercial Code Section 2607(3)(A) for the third cause of action.

22 FORTY-EIGHTH AFFIRMATIVE DEFENSE

23 This answering defendant is informed and believes and thereon alleges that plaintiff
24 Wallace accepted the goods in question after he had knowledge of any alleged non-conformity
25 and is therefore barred from rejecting the goods pursuant to California Commercial Code Section
26 2607(2) under the third cause of action.

27 FORTY-NINTH AFFIRMATIVE DEFENSE

28 This answering defendant is informed and believes and thereon alleges that plaintiff

1 McAdams accepted the goods in question after he had knowledge of any alleged non-conformity
2 and is therefore barred from rejecting the goods pursuant to California Commercial Code Section
3 2607(2) under the third cause of action.

4 FIFTIETH AFFIRMATIVE DEFENSE

5 This answering defendant is informed and believes and thereon alleges that some or all of
6 the unnamed class member plaintiffs accepted the goods in question after he/she had knowledge
7 of any alleged non-conformity and those unnamed class member plaintiffs are therefore barred
8 from rejecting the goods pursuant to California Commercial Code Section 2607(2) under the third
9 cause of action.

10 FIFTY-FIRST AFFIRMATIVE DEFENSE

11 This answering defendant is informed and believes, and thereon alleges, that plaintiff
12 Wallace did not have the required privity with this answering defendant to maintain the third
13 cause of action.

14 FIFTY-SECOND AFFIRMATIVE DEFENSE

15 This answering defendant is informed and believes, and thereon alleges, that plaintiff
16 McAdams did not have the required privity with this answering defendant to maintain the third
17 cause of action.

18 FIFTY-THIRD AFFIRMATIVE DEFENSE

19 This answering defendant alleges that some or all of the unnamed class member plaintiffs
20 did not have the required privity with this answering defendant to maintain the third cause of
21 action.

22 FIFTY-FOURTH AFFIRMATIVE DEFENSE

23 This answering defendant is informed and believes, and thereon alleges, that some of the
24 plaintiffs have roofs where the tiles were not installed according to the printed installation
25 recommendations of this answering defendant, or not installed in accordance with appropriate
26 building codes and/or trade practices in that specified area, and therefore the third cause of action
27 fails to those plaintiffs.

28

1 FIFTY-FIFTH AFFIRMATIVE DEFENSE

2 This answering defendant is informed and believes, and thereon alleges, that each separate
3 cause of action is barred by the statute of limitations/repose in California Code of Civil Procedure
4 Sections 337.1(a)(1), 337.1(a)(2) and 337.1(a)(3).

5 FIFTY-SIXTH AFFIRMATIVE DEFENSE

6 This answering defendant is informed and believes, and thereon alleges, that each separate
7 cause of action is barred by the statute of limitations/repose in California Code of Civil Procedure
8 Sections 337.15(a)(1) and 337.15(a)(2).

9 FIFTY-SEVENTH AFFIRMATIVE DEFENSE

10 This answering defendant is informed and believes, and thereon alleges, that, to the extent
11 that any cause of action for relief is not covered by another statute of limitations, that cause of
12 action is then barred by the statute of limitations in California Code of Civil Procedure Section
13 343.

14 FIFTY-EIGHTH AFFIRMATIVE DEFENSE

15 This answering defendant is informed and believes, and thereon alleges, that the
16 complaint and each of the causes of action is barred by the provisions of Section 1473 of the Civil
17 Code.

18 FIFTY-NINTH AFFIRMATIVE DEFENSE

19 Defendant is informed and believes, and thereon alleges, that some or all of the plaintiffs
20 failed to mitigate damages that they contend they suffered and their causes of action are therefore
21 barred from recovery.

22 SIXTIETH AFFIRMATIVE DEFENSE

23 This answering defendant is informed and believes, and thereon alleges, that some or all
24 of the plaintiffs unreasonably delayed in bringing this action against defendant and that such
25 delay substantially prejudiced this defendant, and their causes of action are therefore barred by
26 the doctrine of laches.

27 SIXTY-FIRST AFFIRMATIVE DEFENSE

28 This answering defendant is informed and believes, and thereon alleges, that some or all

1 of the plaintiffs have waived their rights to assert the claims in each of their causes of action.

2 SIXTY-SECOND AFFIRMATIVE DEFENSE

3 This answering defendant is informed and believes, and thereon alleges, that some or all
4 of the plaintiffs are hereby estopped from asserting the claims in each of their causes of action.

5 SIXTY-THIRD AFFIRMATIVE DEFENSE

6 This answering defendant is informed and believes and thereon alleges that some or all of
7 the plaintiffs acted with unclean hands and are therefore barred from recovering some or all of its
8 damages in this case.

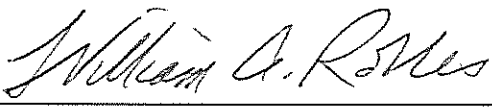
9 SIXTY-FOURTH AFFIRMATIVE DEFENSE

10 This answering defendant alleges that as to each cause of action individually there are
11 manageability issues in handling the case as to the class as defined.

12 WHEREFORE, this answering defendant prays that plaintiffs take nothing by their action,
13 and that this defendant be dismissed and for the costs of suit incurred herein, and for such other
14 and further relief as this court deems just and proper.

15 Dated: April 25, 2005

LAW OFFICES OF ROBLES & CASTLES

17 By: 
18 William A. Robles
19 Attorneys for Defendant MONIER INC.

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PROOF OF SERVICE

I, William A. Robles, hereby declare:

I am a resident of the State of California and over the age of eighteen years, and am not a party to the within action. My business address is Law Offices of Robles & Castles, 540 Pacific Avenue, San Francisco, California 94133. On April 25, 2005, stated below, I served the within document(s):

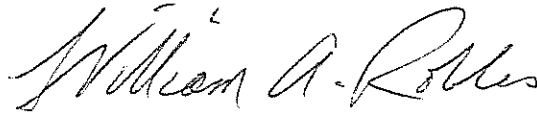
ANSWER OF MONIER INC. TO UNVERIFIED SECOND AMENDED COMPLAINT

(x) By mail, by placing said document(s) in an envelope addressed as shown below. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Said correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the date stated below to the addressees stated below, following the firm's ordinary business practices.

Steven Weinmann
Berding & Weil LLP
3240 Stone Valley Road West
Alamo, CA 94507

Michael F. Ram
Levy Ram & Olson LLP
639 Front Street, 4th Floor
San Francisco, CA 94111

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Francisco, California on April 25, 2005.



William A. Robles