

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CHAD MEADOW, JOHN and SUSAN
PLISKO and KENNETH McLAUGHLIN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

NIBCO, INC.,

Defendant.

Case No. 3:15-cv-1124

District Judge Todd J. Campbell

Magistrate Judge Barbara D. Holmes

JURY DEMAND

AMENDED CLASS ACTION COMPLAINT¹

Plaintiffs Chad Meadow (“Meadow”), John and Susan Plisko (the “Pliskos”) and Kenneth McLaughlin (“McLaughlin;” collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, bring this action against Defendant NIBCO, Inc. (“NIBCO” or “Defendant”). In support thereof, Plaintiffs allege as follows based upon personal knowledge as to themselves, and on information and belief and investigation by their counsel as to other facts.

NATURE OF THE ACTION

1. NIBCO manufactures, warrants, markets and sells a line of cross-linked polyethylene (“PEX”) plumbing tubes (“PEX Tubing”), bronze, brass and polyphenylsulfone fittings which connect the PEX Tubing (“PEX Fittings”), and stainless steel, copper and polybutylene crimps and clamps which join the PEX Tubing and PEX Fittings (“PEX Clamps;” collectively, “PEX Products”)² for use throughout the United States.

¹ On May 24, 2016, the Court issued its “Memorandum” (Dkt. 62) and “Order” (Dkt. 63) on Defendant’s Partial Motion to Dismiss the Class Action Complaint. The Court directed Plaintiffs to file this Amended Class Action Complaint to conform Plaintiffs’ claims to the Memorandum and Order.

² NIBCO also manufactures, warrants, markets and sells PEX valves and PEX manifolds for use

2. This lawsuit arises out of damages sustained by Plaintiffs and the Class that were proximately caused by NIBCO's PEX Products, which were used in Plaintiffs' and Class members' homes and other structures.

3. Plaintiffs bring this class action against NIBCO on behalf of themselves and all individuals and entities that own or have owned NIBCO PEX Products, or who own or have owned homes, residences, buildings or other structures physically located in the United States, in which NIBCO PEX Products are or were installed (the "Class").³

4. NIBCO warrants that its PEX Tubing will be free from any defects in materials and workmanship for a period ranging from ten (10) years to twenty-five (25) years, dependent upon whether the entire plumbing system was composed of solely of NIBCO products or instead NIBCO components in conjunction with other manufacturers' PEX products. The industry and consumers appropriately rely on the marketing nomenclature to mean a product with a 10-year or 25-year warranty is expected to have a usable lifetime of at least 10 years or 25 years, respectively.

5. NIBCO markets itself as "AHEAD OF THE FLOW," a slogan that is a Registered Trademark of the company. NIBCO represents in its advertising and marketing to the industry and consumers that it sells high quality products, emphasizing that it has "110 years" of "manufacturing history" and is the "most reliable name in flow control," and boasting that its products "are manufactured under a Quality Management System."⁴

6. NIBCO touts the durability of its PEX Products, representing that the PEX

with the PEX Products.

³ Alternatively, or in addition to the Class, Plaintiffs bring claims on behalf of state-specific classes – the Tennessee, South Carolina and Alabama Subclasses – as defined below.

⁴ *The NIBCO Difference*, <http://www.nibco.com/> (last visited 10/16/2015); *About NIBCO*, <http://www.nibco.com/About/> (last visited 10/16/2015).

Products are “chlorine-resistant, corrosion-resistant, freeze-damage and abrasion-resistant,” and that “[t]he excellent thermal properties of PEX are ideal for hot and cold water distribution.”⁵

7. Specifically concerning NIBCO’s PEX Products, NIBCO represents to the industry and consumers that NIBCO’s “promise of quality is backed by the NIBCO warranty, customer service expertise, specification and selection assistance.”⁶

8. However, because of poor material selection, defective development and design, lack of adequate testing and/or defective manufacturing, NIBCO’s PEX Products prematurely fail on a routine basis. Specifically, the PEX Tubing is predisposed to premature oxidative failure and creep⁷ rupture, the PEX Fittings are predisposed to prematurely fail as a result of dezincification corrosion, and the PEX Clamps are predisposed to prematurely fail as a result of chloride-induced stress corrosion cracking. Consequently, the PEX Products degrade, fail and leak, causing flooding and extensive property damage, often after only a few years of service.

9. The defective NIBCO PEX Products have been, and continue to be, purchased and installed in residential and commercial buildings across the country. These PEX Products are inevitable failures waiting to happen, with the potential to cause a range of damages including flooding and property destruction.

10. Despite NIBCO’s representations regarding the high quality of its PEX Products, NIBCO knows and has known of the specific design, material and/or manufacturing defects alleged herein, that the PEX Products were not suitable for uses within water-carrying plumbing

⁵ PEX, <http://www.nibco.com/PEX/> (last visited 10/16/2015).

⁶ *See id.*

⁷ “Creep is a time-dependent deformation of a material.... It is most often occurs at elevated temperature, but some materials creep at room temperature. Creep terminates in rupture if steps are not taken to bring to a halt.” <https://www.nde-ed.org/EducationResources/CommunityCollege/Materials/Mechanical/Creep.htm> (last visited 10/20/2015).

systems and that there was a substantial risk that its PEX Products would degrade, fail and leak.

11. NIBCO has failed to disclose these risks to consumers, including Plaintiffs and the Class, and has breached its warranty by refusing to fully or adequately compensate property owners who have been injured as a result of said defects.

12. As a result of the defects in NIBCO's PEX Products, Plaintiffs and the Class have suffered and continue to suffer damages, including significant real and personal property damage caused by flooding from degraded and leaking PEX Products. In addition, Plaintiffs and the Class have suffered harm in the form of the loss of the benefit of the bargain, in that they paid for a product that was worth less than what was represented by NIBCO. Plaintiffs and the Class would not have purchased their PEX Products, or homes, residences, buildings or other structures in which the PEX Products had been installed, had they known of the defects at the time of sale. Furthermore, Plaintiffs and Class members must replace and discard their PEX Products sooner than reasonably expected.

13. The degradation and failure of the PEX Products has also caused damage to the value of Plaintiffs' real property in that the value of the Plaintiffs' homes has been stigmatized and diminished as compared to comparable homes which do not have the defective PEX Products.

14. Plaintiffs seek to recover, for themselves and the Class, all damages proximately caused by NIBCO's PEX Products, including all costs associated with repairing, removing and/or replacing their PEX Products, as well as the costs of repairing any damage to their real and personal property caused by the failure of the PEX Products to perform as represented and warranted. Plaintiffs also seek injunctive relief requiring NIBCO to modify its unfair and fraudulent practices so as to uniformly provide relief in accordance with its obligations under the

law.

PARTIES

Plaintiffs

A. Chad Meadow

15. Plaintiff Chad Meadow is an individual who resides in Murfreesboro, Tennessee.

16. Meadow is the original owner of a home built in late-2006 with NIBCO's PEX Products, including ½ inch and ¾ inch hot and cold PEX Tubing, PEX Fittings and PEX Clamps.

17. Meadow's PEX Tubing has experienced six (6) leaks since August 2014. Each of these leaks was in the wall of the respective piece of PEX Tubing, away from the fittings. The leaks caused damage to the walls, ceilings and floors of Meadow's home and resulted in the formation of mold.

18. Meadow's first leak occurred in or around August 2014 in the ceiling and wall of Meadow's laundry room and downstairs bathroom. The leaking section of PEX Tubing was removed and replaced. Meadow sent the damaged piece of PEX Tubing from this leak to NIBCO as part of his warranty claim.

19. The second leak occurred in October 2014 in the wall and floor of Meadow's upstairs bathroom. The leaking section of PEX Tubing was removed and replaced.

20. The third leak occurred in October 2014 in between Meadow's garage ceiling and kitchen floor, causing the floor to buckle. This PEX Tubing line was shut off.

21. The fourth leak occurred in November 2014 in the same area as the first leak, disabling the use of the upstairs shower. This PEX Tubing line was shut off.

22. These leaks caused mold to form in the area between the first floor ceiling and the floor of the second level.

23. Meadow received an estimate of nearly \$20,000 for the repair of all damage and re-plumbing of the home. This estimate specifically excluded mold remediation.

24. After the third leak occurred, Meadow contacted NIBCO to submit a warranty claim. As part of his claim, Meadow sent NIBCO the damaged piece of PEX Tubing from his first leak.

25. NIBCO denied Meadow's warranty claim, stating that it did not find Meadow's PEX Tubing to be defective and giving the excuse that Meadow's PEX Tubing was "overstressed at some point." However, Meadow's water system was equipped with a pressure reduction valve on the main PEX intake line and a pressure relief valve on his water heater.

26. After receiving the warranty claim denial, Meadow had Bradley Plumbing, Inc. check the pressure on Meadow's water system at Meadow's expense. The testing revealed that the system was functioning properly and the water pressure was well within NIBCO's specifications.

27. Meadow experienced a fifth leak in March 2015. This leak was located in the PEX Tubing leading to his downstairs shower.

28. Following the fifth leak, Meadow replaced all but two of his hot water PEX Tubing lines in winter 2015. The two he did not replace at that time were low-usage lines in difficult to access areas.

29. In August 2015, Meadow experienced a sixth leak, on one of the two hot water lines that he had not previously replaced.

30. Meadow would not have purchased and installed the PEX Products and exposed his real and personal property to flooding and water damage, as well as exposing himself to a risk of personal injury due to mold, had NIBCO disclosed the propensity for the PEX Products to

fail.

B. John and Susan Plisko

31. Plaintiffs John and Susan Plisko are individuals who reside in Clover, South Carolina.

32. The Pliskos are the original owners of a home built in 2008 with NIBCO's PEX Products, including $\frac{3}{4}$ inch PEX Tubing and PEX Fittings.

33. The Pliskos' PEX Tubing has had at least five (5) leaks since August 2014. The leaks caused damage to the walls, ceilings and floors of the Pliskos' home.

34. The Pliskos' first leak occurred in August 2014 near the Pliskos' water heater and resulted in water spraying out of the PEX Tubing onto the ceiling and expansion tank.

35. The second leak occurred in September 2014 when the PEX Tubing in the wall behind the Pliskos' water heater split, causing water to leak down into the Pliskos' living room.

36. In November 2014, another piece of PEX Tubing in the wall behind the Pliskos' water heater leaked, again causing water to leak down into the Pliskos' living room.

37. The fourth leak occurred in February 2015 in an area in Pliskos' laundry room wall near the second and third leaks. In order to repair this leak, the Pliskos had to replace PEX Fittings, along with the PEX Tubing.

38. The fifth leak occurred in March 2015 in the Pliskos' first floor bathroom.

39. In March 2015, the Pliskos' contacted NIBCO to file a warranty claim. As part of the claim, on March 24, 2015, the Pliskos' sent NIBCO a piece of their PEX Tubing that had leaked.

40. After testing the Pliskos' PEX Tubing, NIBCO issued an Evaluation Response Letter in April 2015 stating that "the likely cause of the failure of [the Pliskos' NIBCO] product

is due to a possible manufacturing defect.”

41. When the Pliskos asked NIBCO if they would be offered any compensation as a result of the manufacturing defect, NIBCO’s Technical Service Advisor responded that NIBCO would “reimburse the customer for normal and reasonable charges associated with the repair.”

42. However, instead of honoring its warranty and reimbursing the Pliskos’ for the damage caused by their defective NIBCO Products, NIBCO backtracked and changed its tune.

43. On May 11, 2014, NIBCO’s Technical Services Manager emailed the Pliskos and claimed that NIBCO’s “findings are the tubing sample [the Pliskos] sent back is not defective and not covered under warranty.” Additionally, in an attempt to shift blame, the Technical Services Manager included a laundry list of questions about the Pliskos’ water system.

44. Despite NIBCO’s revised “findings,” an inspection of the Pliskos’ water system in April 2015 showed that the installation, water pressure and temperature were all within specifications.

45. The Pliskos would not have purchased and installed the PEX Products and exposed their real and personal property to flooding and water damage, as well as exposing themselves to a risk of personal injury, had NIBCO disclosed the propensity for the PEX Products to fail.

C. Kenneth McLaughlin

46. Plaintiff Kenneth McLaughlin is an individual who resides in Mobile, Alabama.

47. McLaughlin purchased his new construction home in or around 2010. The home was built with NIBCO’s PEX Products, including ½ inch and ¾ inch PEX Tubing.

48. McLaughlin’s PEX Tubing has experienced at least **twenty (20)** leaks since February 2014. The leaks have caused extensive damage to the walls, ceilings, floors and

insulation of McLaughlin's home, including in the home's bedrooms, bathrooms, kitchen, living room, attic and closets. The leaks are too numerous to recount individually herein.

49. To date, McLaughlin has incurred expenses in excess of \$4,000 for the repair of the leaks, sheet rock and painting.

50. McLaughlin contacted NIBCO in July 2014 to submit a warranty claim. He was informed that NIBCO would reimburse him for the cost of one leak, but McLaughlin has not been reimbursed by NIBCO.

51. As part of his claim, McLaughlin sent NIBCO two damaged pieces of PEX Tubing from the leaks in his home.

52. On February 4, 2015, a NIBCO Technical Services Advisor emailed McLaughlin to tell him that NIBCO's lab did not find leaks in the samples McLaughlin sent in. Following this email, McLaughlin received an Evaluation Response Letter from NIBCO stating that NIBCO "could not duplicate any leakage with the sample" McLaughlin sent, and that "NIBCO is not willing to participate in any credit or claim reimbursement at this time."

53. This denial of McLaughlin's warranty claim was made despite the fact that the samples of PEX Tubing unquestionably leaked while installed in McLaughlin's home.

54. McLaughlin would not have purchased a home that had NIBCO's PEX Products installed therein and exposed his real and personal property to flooding and water damage, as well as exposing himself to a risk of personal injury, had NIBCO disclosed the propensity for the PEX Products to fail.

Defendant

55. Defendant NIBCO, Inc. is an Indiana corporation with its principal place of business located at 1516 Middlebury Street Elkhart, Indiana 46516-4740. NIBCO manufactures

its products for use in commercial, industrial and institutional construction, and for the residential and irrigation markets. NIBCO operates ten manufacturing plants in the United States, Mexico and Poland, and has more than 2,000 employees.

JURISDICTION AND VENUE

56. This Court has jurisdiction over this class action pursuant to 28 U.S.C. §1332(d), as this matter is brought as a class action under Rule 23 of the Federal Rules of Civil Procedure. Moreover, there are more than 100 Class members residing in multiple states, and the amount in controversy exceeds Five Million Dollars (\$5,000,000.00). The requirement of minimal diversity is met as the dispute is between citizens of different states. Plaintiffs are residents and citizens of Tennessee, South Carolina and Alabama, and Defendant NIBCO is an Indiana Corporation and citizen of Indiana. The Court also has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

57. Venue is proper in this District pursuant to 28 U.S.C. § 1391, *et seq.* because a substantial part of the events giving rise to the claim occurred in this District. Additionally, NIBCO regularly conducts substantial business in this District, including by the sale and distribution of its PEX Product.

SUBSTANTIVE ALLEGATIONS

A. NIBCO's Defective PEX Products

58. NIBCO sells various plumbing products including PEX Tubing, PEX Fittings, PEX Clamps, and other plumbing accessories.

59. NIBCO states on its website that it is a "recognized leading provider of valves, fittings and flow control products for commercial, industrial and institutional construction as

well as residential and irrigation markets.”⁸

60. PEX is an acronym for cross-linked polyethylene. Polyethylene (denoted by “PE”) is the raw material and the letter “X” in the acronym “PEX” refers to the cross-linking “chemical bonding” of the polyethylene across its molecular chains.

61. NIBCO touts its PEX tubing as possessing “superior characteristics” due to NIBCO’s cross-linking process. Specifically, NIBCO states the following about its PEX manufacturing process:

Cross-linking is the process that gives NIBCO DURA-PEX tubing its superior characteristics. The long, simple chains in a polyethylene molecule are altered to form a more stable, three-dimensional network. This process changes the material from a thermoplastic into a thermoset. A thermoset differs from a thermoplastic because a thermoset cannot be melted and then reformed. This change in molecular structure creates a polyethylene product with enhanced mechanical properties. Many manufacturers use a chemical additive to activate the crosslinking process, but NIBCO employs a sterile, electron beam process that provides superior properties. This process, which is called PEX-c, delivers the highest quality PEX tubing available today, while reducing the use of chemicals.⁹

B. NIBCO’s Defective PEX Tubing

62. Despite NIBCO’s attestations to the quality and superiority of its PEX Tubing, consumers all across the United States have experienced water damage and catastrophic PEX Tubing failures caused by slow growth cracking mechanisms indicative of oxidative failure and/or creep rupture. These slow growth cracking mechanisms have been caused by the insufficient stabilization and/or improper cross-linking of the PEX material used by NIBCO to manufacture its PEX Tubing.

⁸ *About NIBCO*, <http://www.nibco.com/About/> (last visited 10/16/2015).

⁹ *See* NIBCO, NIBCO® DURA-PEX® Piping Systems, Catalog C-PEX-0509, 4 (Apr. 29, 2009); *see also* NIBCO, NIBCO® PEX Piping Systems, Catalog C-PEX-1013, 4 (Oct. 1, 2013) (describing identical cross-linking process for NIBCO’s PEX tubing that also gives the tubing “superior characteristics” and “delivers the highest quality PEX tubing available today”).

63. NIBCO's PEX Tubing comes with an express warranty (the "Warranty") that warrants against defects in the materials and workmanship of the Tubing. Specifically, NIBCO's Warranty states, *inter alia*, the following:

NIBCO INC. warrants that when NIBCO® PEX tube is used with NIBCO® PEX fittings, and NIBCO® valves and installation accessories, they will, under normal conditions, use and service in potable water and radiant heat systems, be free from defects in materials and workmanship for a period of twenty-five (25) years from the date of purchase when installed by a licensed professional contractor. This 25-year warranty is voided if any non-NIBCO products are used in the PEX system. NIBCO INC. warrants NIBCO PEX tube, when used under normal conditions, use and service in potable water and radiant heat systems with brass insert fittings meeting NSF/ANSI 61, ASTM F1807 and ASTM F877 to be free from defects in materials and workmanship for a period of ten (10) years form the date of purchase.¹⁰

64. Plaintiffs complied with their obligations under the Warranty. NIBCO, however, has failed to fulfill its obligation to replace the defective PEX Tubing and compensate Plaintiffs for the foreseeable property damage it caused.

65. To the extent that NIBCO's Warranty purports to limit or eliminate certain contractual rights afforded to Plaintiffs (*e.g.*, on the type of recoverable damages or the ability to recover property damages), such limitations are unconscionable and unenforceable under the circumstances.

C. Failure of NIBCO's Defective PEX Tubing

66. Consumers who purchased and installed NIBCO's PEX Tubing have experienced splitting, cracking and leaking of these products in their residential and commercial plumbing systems, causing water leaks that have and will cause extensive damage to homes, businesses and personal property of the consumers as a result of water leaks from the PEX Tubing.

67. During the foreseeable and intended use, the NIBCO PEX Tubing is exposed to elements in residential and commercial plumbing systems which cause the NIBCO PEX Tubing

¹⁰ A copy of NIBCO's PEX warranty is attached hereto as Exhibit 1.

to split, crack and prematurely fail as a result of oxidative failure and creep rupture.

68. NIBCO knew or should have known that the PEX Tubing it manufactured, marketed, warranted and sold were susceptible to premature failure. The design, materials choices, and manufacturing practices of the PEX Tubing have created damaged products that begin to degrade on their first day of use, even if properly installed in their intended environment.

D. NIBCO's Defective PEX Fittings and Clamps

69. In addition to its PEX Tubing, NIBCO also manufactures and sells the fittings, crimps, clamps, valves and installation accessories required to install a completed residential or commercial plumbing system.

70. NIBCO manufactures and sells PEX Fittings that purportedly conform to ASTM standard F1807.

71. The ASTM is a globally recognized organization (formerly known as the American Society for Testing and Materials) that develops international voluntary consensus standards. The F1807 standard applies to metal insert fittings for use with SDR9 cross-linked polyethylene (PEX) tubing, which is manufactured and/or sold by NIBCO.

72. F1807 insert fitting systems typically use a crimped stainless steel or copper ring to secure the PEX tubing to the fitting. The brass alloy fitting is inserted into the PEX tubing using a special tool that crimps a copper ring or stainless steel clamp around the outside of the tubing, which, in turn, creates a seal between the PEX tubing and the brass fitting.

73. Not only does NIBCO manufacture and sell ASTM F1807 fittings, but it encourages consumers to purchase and install the fittings with its PEX Tubing. NIBCO's Warranty covers 10 years if only its PEX Tubing is installed, but NIBCO increases its Warranty

coverage to 25 years if its PEX Fittings, valves, and installation accessories (including PEX Clamps) are used in conjunction with its PEX Tubing.

74. NIBCO's ASTM F1807 fittings are easily identified by a "NIBCO" stamp placed on the brass insert fittings.

75. NIBCO's PEX Tubing comes with an express warranty that warrants against defects in the materials and workmanship of the PEX Fittings and accessories. Specifically, NIBCO's Warranty states, *inter alia*, the following:

NIBCO Inc. warrants that when NIBCO® PEX tube is used with NIBCO® PEX fittings, and NIBCO® valves and installation accessories, they will, under normal conditions, use and service in potable water and radiant heat systems, be free from defects in materials and workmanship for a period of twenty-five (25) years from the date of purchase when installed by a licensed professional contractor.

76. Plaintiffs complied with their obligations under the Warranty. NIBCO, however, has failed to fulfill its obligation to replace any defective PEX Fittings or PEX Clamps and compensate Plaintiffs and Class members for the property damage the PEX Fittings and PEX Clamps caused.

77. To the extent that NIBCO's Warranty purports to limit or eliminate certain contractual rights afforded to Plaintiffs (*e.g.*, on the type of recoverable damages, or the ability to recover property damages), such limitations are unconscionable and unenforceable under the circumstances.

E. Failure of NIBCO's Defective PEX Fittings and PEX Clamps

78. Consumers who purchased and installed NIBCO's PEX Fittings and PEX Clamps have experienced cracking and leaking of these products in their residential and commercial plumbing systems, causing water leaks that have and will cause extensive damage to homes, businesses and personal property of the consumers as a result of water leaks from the plumbing

system.

79. During the foreseeable and intended use, the NIBCO PEX Fittings are exposed to elements in residential and commercial plumbing systems which cause the NIBCO PEX Fittings to corrode and prematurely fail as the result of dezincification corrosion.

80. After undergoing dezincification, the PEX Fittings prematurely fail and become brittle, sponge-like and/or plugged. As a result, a continuous network of tiny holes develops in the PEX Fittings, allowing water to weep through the walls of the fitting. Weakened fittings may crack or break, causing significant water damage. They may become plugged with corrosion product causing a low water pressure condition. Corroded fittings may also allow chloride-rich water to weep through the wall of the fittings, wetting the adjacent PEX Clamp and causing the PEX Clamp to fail due to chloride-induced stress corrosion cracking.

81. NIBCO knew or should have known that the PEX Fittings and PEX Clamps it manufactured, marketed, warranted and sold were susceptible to premature failure through dezincification corrosion and chloride-induced stress corrosion cracking, respectively.

82. The design, materials choices, and manufacturing practices of the PEX Fittings and PEX Clamps have created damaged products that begin to fail on their first day of use, even if properly installed in their intended environment. Upon information and belief, Defendant no longer advertises these defective PEX Fittings on its website due to the design defect and susceptibility to dezincification. Currently, Defendant advertises fittings that are “dezincification resistant.”¹¹

83. The stainless steel PEX Clamps fail slowly over time due to a fracture mechanism known as “chloride-induced stress corrosion cracking,” which is caused by defective design

¹¹ See, e.g., <http://www.nibco.com/PEX/PEX-Fittings/PEX-Metal-Fittings/> (last visited 10/16/2015).

and/or defective manufacturing by Defendant. For stress corrosion cracking to occur, a susceptible material must be simultaneously exposed to tensile stress and chlorides.

84. The failing PEX Clamps are manufactured from a stainless steel alloy that is known to be susceptible to stress corrosion cracking in the presence of chlorides, and these clamps are used in a design where simultaneous exposure to static tensile stress and chlorides is (or should have been) reasonably anticipated. Stress corrosion cracking could not occur in the PEX Clamps if the clamps were manufactured from a material that is not susceptible to chloride-induced stress corrosion cracking. Alternate materials that are generally immune to chloride-induced stress corrosion cracking (exhibiting little or no susceptibility) and that are approved for plumbing applications in the United States were readily available at little or no additional cost at the time the failing clamps were manufactured by NIBCO.

85. Additionally, the failing PEX Clamps are designed in a manner that allows tensile stresses to exceed the yield strength of the material during normal installation (meaning that the tensile stresses are so high that the clamp permanently changes shape during installation, through a process known as “necking”). The clamps are designed in such a way that the tensile stresses created during normal and proper installation promote chloride-induced stress corrosion cracking, and the tensile stress condition is made even more detrimental by other aspects of the clamp design and/or manufacture (*e.g.*, smearing of surface material, sharp edges, etc.). Stress corrosion cracking cannot occur in the absence of static tensile stress, so the PEX Clamp could not have failed in the manner that it did if commonly accepted principles of engineering design and manufacturing had been employed to sufficiently reduce tensile stresses.

86. Chlorides are one of the most abundant compounds on the planet. They are routinely found in potable water, solder flux, masonry materials, concrete curing accelerants,

perspiration, flame retardants, and numerous other materials routinely encountered in building construction. The presence of chlorides is (or should have been) reasonably anticipated and accounted for in the design and manufacture of the PEX Clamps.

87. NIBCO acknowledges that liquid and paste fluxes for soldering applications of copper and copper-alloy fittings are corrosive and that they contain chlorides of zinc and ammonia.¹² Additionally, NIBCO provides step-by-step brazing instructions to the installer. These instructions specify the application of flux. The final step requires that the finished brazed assembly be wiped with a rag until all flux is removed.¹³ NIBCO fails to warn the installer against allowing chloride-rich flux to come into contact with the stainless steel PEX Clamp. Nevertheless, NIBCO knows or should have known that it is impossible to completely remove all traces of chloride-rich flux, and that by wiping the flux with a rag it is near certain that the chloride-rich flux will be smeared onto the adjacent stainless steel PEX Clamp.

88. Additionally, NIBCO knows or should have known that chlorides from any source would be problematic for the stainless steel PEX Clamps. NIBCO fails to disclose these vulnerabilities.

CLASS ACTION ALLEGATIONS

89. This action is brought and is properly maintained as a nationwide class action pursuant to FED. R. CIV. P. 23 on behalf of a class defined as follows:

All individuals and entities that own or have owned NIBCO PEX Products, or who own or have owned homes, residences, buildings or other structures physically located in the United States, in which NIBCO PEX Products are or were installed (the “Class”). Excluded from the Class is NIBCO, any entity in which NIBCO has a controlling interest, and NIBCO’s legal representatives, assigns and successors.

¹² See NIBCO, NIBCO® Copper Fittings, Catalog C-CF-0513, pg. 37 (May 9, 2013).

¹³ See *id.*, pg. 47.

90. Alternatively, or in addition to the nationwide Class claims, Plaintiffs brings these claims under FED. R. CIV. P. 23 on behalf of themselves and on behalf of Subclasses of individuals and entities residing in Tennessee, South Carolina and Alabama (the “Tennessee Subclass,” the “South Carolina Subclass” and the “Alabama Subclass”). The Tennessee Subclass is defined as:

All individuals and entities that own or have owned NIBCO PEX Products; or who own or have owned homes, residences, buildings or other structures physically located in the State of Tennessee, in which NIBCO PEX Products are or were installed. Excluded from the Tennessee Subclass is NIBCO, any entity in which NIBCO has a controlling interest, and NIBCO’s legal representatives, assigns and successors.

The South Carolina Subclass is defined as:

All individuals and entities that own or have owned NIBCO PEX Products; or who own or have owned homes, residences, buildings or other structures physically located in the State of South Carolina, in which NIBCO PEX Products are or were installed. Excluded from the South Carolina Subclass is NIBCO, any entity in which NIBCO has a controlling interest, and NIBCO’s legal representatives, assigns and successors.

The Alabama Subclass is defined as:

All individuals and entities that own or have owned NIBCO PEX Products; or who own or have owned homes, residences, buildings or other structures physically located in the State of Alabama, in which NIBCO PEX Products are or were installed. Excluded from the Alabama Subclass is NIBCO, any entity in which NIBCO has a controlling interest, and NIBCO’s legal representatives, assigns and successors.

91. Plaintiffs reserve the right to redefine the Class (and/or Subclasses) prior to the certification of the Class.

92. The Class is so numerous that individual joinder of all Class members is impracticable. The actual number of Class members is unknown at this time, but numbers in the thousands.

93. There are numerous questions of law and fact that are common to Plaintiffs and

the Class that are susceptible to common answers by way of common proof and that predominate over any questions that may affect individual Class members, including, without limitation:

- a. Whether NIBCO's PEX Products are defective;
- b. Whether NIBCO's PEX Products suffer from common design defects, as alleged herein;
- c. Whether the design and/or manufacturing defects concerning NIBCO's PEX Products result in the PEX Products being prone to degradation, rupture, leaking and failure to perform the task for which they were designed;
- d. Whether NIBCO knew or should have known of the defect in the PEX Products prior to putting them into the stream of commerce for purchase by Plaintiffs and the Class;
- e. Whether NIBCO properly advises consumers about the likelihood of the PEX Products premature failure;
- f. Whether NIBCO owes a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, warranting and marketing of the PEX Products;
- g. Whether NIBCO breached its duty to Plaintiffs and the Class by designing, manufacturing, advertising and selling to Plaintiffs and the Class defective PEX Products;
- h. Whether NIBCO breached its duty to Plaintiffs and the Class by failing promptly to remove the defective PEX Products from the marketplace or take other remedial action;
- i. Whether the PEX Products fail to perform in accordance with the

reasonable expectations of ordinary consumers;

j. Whether the PEX Products fail to perform as advertised, marketed and warranted;

k. Whether NIBCO breached its implied warranties to Plaintiffs and the Class by advertising, marketing and selling PEX Products that were not of a merchantable quality, nor fit for the ordinary purpose for which they were sold;

l. Whether Plaintiffs and the Class are entitled to compensatory damages, and the amount of such damages for the replacement and remediation of the PEX Products;

m. Whether NIBCO has been unjustly enriched by its conduct, as alleged herein; and

n. Whether NIBCO should be required to notify all Class members about their defective PEX Products.

94. Plaintiffs have the same interests in this matter as all Class members, and their claims are typical of all Class members.

95. Plaintiffs will fairly and adequately represent the interests of the Class members and do not have interests adverse to the Class. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in the prosecution of consumer class actions. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class, and have the financial resources to do so.

96. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for NIBCO, and/or because adjudications with respect to individual Class members would as a practical

matter be dispositive of the interests of non-party Class members.

97. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate both declaratory and injunctive relief with respect to the Class as a whole. The members of the Class are entitled to injunctive relief as set forth below.

98. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because as set forth above, questions of law and fact common to the Class predominate over questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Furthermore, the likelihood that individual members of the Class will prosecute separate actions is remote given the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of damages at issue for most individual Class members. This action will be prosecuted in a manner to ensure the Court's able management of this case as a class action, and Plaintiffs know of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

FRAUDULENT CONCEALMENT

99. At all relevant times, NIBCO affirmatively concealed from Plaintiffs and the Class the defects inherent in the PEX Products.

100. NIBCO had a duty to inform Plaintiffs and the Class of the defects. Specifically, NIBCO has known for years of the problems and defect outlined herein through various complaint forums (including, without limitation, its own warranty program) and as the result of claims being filed against NIBCO related to the defects by insurance companies. Notwithstanding its duty to inform Plaintiffs and Class members, NIBCO has never disclosed the

defects to Plaintiffs and the Class. To the contrary, NIBCO consistently maintains that it is the “most reliable name in flow control,” its PEX Products are “chlorine-resistant, corrosion-resistant, freeze-damage and abrasion-resistant,” and that “[t]he excellent thermal properties of PEX are ideal for hot and cold water distribution.”

101. Plaintiffs and the Class could not have discovered the defect or NIBCO’s attempts to avoid disclosure of the defects alleged herein. Thus, the running of the applicable statutes of limitation have been tolled with respect to any claims that Plaintiffs or the Class members have brought or could have brought as a result of the unlawful or fraudulent course of conduct described herein.

102. In addition, NIBCO is estopped to plead any statute of limitations because it failed to disclose facts that it was obligated to disclose concerning the defects in the PEX Products. NIBCO actively concealed and misrepresented to Plaintiffs and the Class members facts that were essential to understanding that Plaintiffs and the Class members had claims against NIBCO, and NIBCO thus acted to prevent Plaintiffs and the Class members from learning that they possessed claims against NIBCO. Had Plaintiffs and the Class been aware of the facts which NIBCO misrepresented and concealed, they would have commenced suit against NIBCO before the running of any statute of limitations alleged to be applicable to this case.

103. NIBCO is further estopped from asserting any statute of limitations defense, contractual or otherwise, to the claims alleged herein by virtue of its fraudulent concealment.

FIRST CAUSE OF ACTION
Violation of the Tennessee Products Liability Act
Tenn. Code Ann. § 29-28-101, et seq.
(Plaintiff Chad Meadow individually and on behalf of the Tennessee Subclass)

104. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

105. Meadow brings this cause of action on behalf of himself and on behalf of the members of the Tennessee Subclass against Defendant.

106. Meadow brings this cause of action for violation of the Tennessee Products Liability Act, Tenn. Code Ann. § 29-28-101, *et seq.* (“TPLA”).

107. This product liability claim under the TPLA includes the following theories: breach of implied warranty of merchantability, strict liability design defect, strict liability manufacturing defect, strict liability post-sale failure to warn, negligence and negligent post-sale failure to warn, and specifically incorporates by reference the allegations contained in paragraphs 117-125, 128-137, 152-155 and 158-164.

108. NIBCO designed, manufactured, assembled, distributed, marketed and sold the PEX Products, including the PEX Products that were installed in Meadow’s home in Murfreesboro, Tennessee.

109. The PEX Products were expected to, and did, reach Meadow’s home without substantial change in the conditions in which they were designed, manufactured, assembled, distributed, marketed and sold by NIBCO.

110. The PEX Products, as designed, manufactured, assembled, distributed, marketed and sold by NIBCO were in a defective condition and were defective and unreasonably dangerous when they left NIBCO’s possession and/or control.

111. The PEX Products were defectively designed and/or manufactured for the reasons set forth above.

112. The PEX Products were defective for the following reasons: (1) they were not reasonably safe for ordinary and intended use; (2) NIBCO failed to provide Meadow and other Tennessee Subclass members with adequate and sufficient warnings regarding the known and

foreseeable risks and dangers inherent in the PEX Products; and (3) the design, methods of manufacture, and testing of the PEX Products were inadequate and produced defective products.

113. Meadow and/or other reasonably expected users of the PEX Products could not, by the exercise of reasonable care, have discovered the defects and/or deficiencies posed by the PEX Products.

114. Because of NIBCO's violations of the Tennessee Products Liability Act, Meadow and the Tennessee Subclass suffered damages, including but not limited to any damage to real and personal property caused by the degradation and leaking of the PEX Products, and any other compensatory or consequential damages. Meadow and the Tennessee Subclass reserve their right to seek all damages available by statute or law.

SECOND CAUSE OF ACTION

Breach of Implied Warranty of Merchantability (Plaintiffs John and Susan Plisko individually and on behalf of the Class and the South Carolina Subclass)

115. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

116. The Pliskos bring this cause of action on behalf of themselves and on behalf of the members of the Class and the South Carolina Subclass against Defendant.

117. NIBCO is a merchant of PEX Products.

118. The PEX Products are goods.

119. NIBCO's implied warranty of merchantability accompanied its sale of the PEX Products to Plaintiffs and the Class.

120. NIBCO impliedly warranted that its PEX Products were fit for their ordinary use.

121. NIBCO's design and the repeated failure of its PEX Products made them defective and, thus, unfit for the ordinary purposes for which they are used. The PEX Products are not fit

for ordinary use.

122. Any effort by NIBCO to disclaim or otherwise limit its responsibility for its defective PEX Products is unconscionable under the circumstances, including because NIBCO knew that its PEX Products were unfit for normal use and had latent defect(s). Through its conduct, NIBCO breached its implied warranty of merchantability and is liable to Plaintiffs and the Class.

123. Plaintiffs and the Class have sustained damages as a result of NIBCO's breaches.

124. Plaintiffs and the Class have provided notice to NIBCO regarding the problems they experienced with their PEX Products and, notwithstanding such notice, NIBCO has failed and refused to remedy the problems. Further, NIBCO had actual knowledge of the defect.

125. As a result of NIBCO's breach of the implied warranty of merchantability, Plaintiffs and the Class have incurred damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Strict Liability -- Design Defect and Manufacturing Defect¹⁴ (Plaintiffs John and Susan Plisko individually and on behalf of the Class and the South Carolina Subclass)

126. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

127. The Pliskos bring this cause of action on behalf of themselves and on behalf of the members of the Class and the South Carolina Subclass against Defendant.

128. NIBCO designed and manufactured the PEX Products, and sold or distributed the PEX Products to Plaintiffs and the Class.

¹⁴ Pursuant to the Memorandum and Order, Plaintiffs' strict liability claims (including Meadow's strict liability theories under the TPLA and McLaughlin's AEMLD cause of action) and negligence claims (including Meadow's negligence theories under the TPLA) are limited i.) to PEX Tubing for Meadow and McLaughlin and PEX Tubing and Fittings for the Pliskos, and ii.) to damages besides damage to the PEX Products themselves.

129. The PEX Products were defective in their design, and were defective when they left NIBCO's possession or control.

130. The PEX Products defectively manufactured and posed a substantial likelihood of harm when they left NIBCO's possession or control.

131. NIBCO knew, or should have known, that the PEX Products contained a non-obvious danger in their material composition. NIBCO knew that the PEX Products were highly susceptible to failure under expected installation conditions and ordinary use, and that consumers would not replace their PEX Products without an instruction to do so.

132. NIBCO failed to inform Plaintiffs and the Class as to the PEX Products' susceptibility to failure. NIBCO failed to warn consumers that it was necessary to replace the PEX Products, even if the PEX Products had not yet failed.

133. The PEX Products were defective due to inadequate warnings, inadequate inspection and testing, and inadequate reporting regarding the results of quality control testing, or lack thereof.

134. Had Plaintiffs and the Class been adequately warned concerning the likelihood that the PEX Products would fail, they would have taken steps to avoid damages by replacing the PEX Products or by not purchasing them.

135. NIBCO, after learning that its PEX Products could degrade and fail, had a post-sale duty to warn consumers of the possibility that leaking and flooding could result from the failure of its PEX Products, even when used for their intended purpose.

136. NIBCO is strictly liable for the injuries that the defective PEX Products have caused Plaintiffs and the Class.

137. As a direct and proximate result of the defective condition of the PEX Products,

Plaintiffs and the Class have incurred damages to both their PEX Products and to other personal and real property in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Violation of the Alabama Extended Manufacturers Liability Doctrine (Plaintiff Kenneth McLaughlin individually and on behalf of the Alabama Subclass)

138. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

139. McLaughlin brings this cause of action on behalf of himself and on behalf of the members of the Alabama Subclass against Defendant.

140. McLaughlin brings this cause of action pursuant to the Alabama Extended Manufacturers Liability Doctrine, specifically includes the following theories: design defect, manufacturing defect and post-sale failure to warn, and specifically incorporates by reference the allegations contained in paragraphs 128-137.

141. NIBCO designed, manufactured, distributed, marketed, promoted, supplied and sold and otherwise released the defective and unreasonably dangerous PEX Products into the stream of commerce and to consumers, and therefore had a duty to warn users of the known risks associated with PEX Products.

142. The PEX Products were expected to, and did, reach McLaughlin's home without substantial change in the conditions in which they were designed, manufactured, assembled, distributed, marketed and sold by NIBCO.

143. At the time of the damages sustained by McLaughlin, the PEX Products were in the substantially same condition as they were on the date of their original manufacture, sale and/or distribution.

144. The PEX Products in use in McLaughlin's home were being used as intended.

145. The PEX Products were unreasonably dangerous and defective and created an unreasonable risk of water loss and damage to expected and anticipated users.

146. The PEX Products were defectively designed and/or manufactured for the reasons set forth above.

147. The PEX Products were defective for the following reasons: (1) they were not reasonably safe for ordinary and intended use; (2) NIBCO failed to provide McLaughlin and other class members with adequate and sufficient warnings regarding the known and foreseeable risks and dangers inherent in the PEX Products; and (3) the design, methods of manufacture, and testing of the PEX Products were inadequate and produced defective products.

148. McLaughlin and/or other reasonably expected users of the PEX Products, could not, by the exercise of reasonable care, have discovered the defects and/or deficiencies posed by the PEX Products.

149. Because of NIBCO's violations of the Alabama Extended Manufacturers Liability Doctrine, McLaughlin and the Alabama Subclass suffered damages, including but not limited to any damage to real and personal property caused by the degradation and leaking of the PEX Products, and any other compensatory or consequential damages. McLaughlin and the Alabama Subclass reserve their right to seek all damages available by statute or law.

FIFTH CAUSE OF ACTION

Negligence

(Plaintiffs John and Susan Plisko and Kenneth McLaughlin individually and on behalf of the Class, the South Carolina Subclass and the Alabama Subclass)

150. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

151. The Pliskos and McLaughlin bring this cause of action on behalf of themselves and on behalf of the members of the Class, the South Carolina Subclass and the Alabama

Subclass against Defendant.

152. NIBCO was negligent in that it failed to use reasonable care when it designed, manufactured, assembled, labeled, tested, distributed and sold its PEX Products.

153. As the manufacturer and/or seller of a consumer product, NIBCO owed a duty to Plaintiffs and the Class to provide a safe and quality product, and to provide a product that would perform as it was intended and expected. NIBCO also owed a duty to Plaintiffs and the Class to provide adequate instructions and warnings for proper and safe use of the product. NIBCO further owed a duty to provide Plaintiffs and the Class with information related to the PEX Products' reasonable expected life span and information related to its maintenance and replacement.

154. NIBCO breached each of these duties.

155. As a direct and proximate result of NIBCO's negligence, Plaintiffs and Class members have suffered economic losses for the damages in an amount to be determined at trial for inadequate value, cost of repair and replacement of their defective PEX Products, as well as damage to other real and personal property which resulted from a failure of the PEX Products, causing flooding to the property of the Plaintiffs and Class members.

SIXTH CAUSE OF ACTION
Negligent Post-Sale Failure to Warn
(Plaintiff Kenneth McLaughlin individually and on behalf of the Class and the Alabama Subclass)

156. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

157. McLaughlin brings this cause of action on behalf of himself and on behalf of the members of the Class and the Alabama Subclass against Defendant.

158. NIBCO manufactured, designed, sold and/or distributed defective PEX Products to

Plaintiffs and the Class.

159. NIBCO knew or reasonably should have known that its PEX Products were defective and dangerous and/or were likely to be dangerous when used in a reasonably foreseeable and expected manner.

160. NIBCO knew or reasonably should have known that Plaintiffs and the Class would not realize that their PEX Products were defective and posed a danger of causing substantial property damage, both to the product itself, as well as to other real and personal property of Plaintiffs and Class members.

161. NIBCO failed to adequately warn of the danger or instruct Plaintiffs and the Class that the PEX Products' actual useful life would be far less than reasonably expected.

162. A reasonable manufacturer, distributor, assembler, or seller under the same or similar circumstances would have warned of these dangers.

163. NIBCO's negligent failure to warn or instruct Plaintiffs and the Class was a substantial factor in causing the harm to the Plaintiffs and Class, placing their real and personal property at risk.

164. As a direct and proximate result of the defective condition of the PEX Products, Plaintiffs and the Class have incurred damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

Unjust Enrichment

(Plaintiff Chad Meadow individually and on behalf of the Class and the Tennessee Subclass)

165. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

166. Meadow brings this cause of action on behalf of himself and on behalf of the members of the Class and the Tennessee Subclass against Defendant.

167. Substantial benefits have been conferred on NIBCO by Plaintiff and the Class by purchasing the PEX Products, and NIBCO knowingly and willingly accepted and enjoyed those benefits.

168. NIBCO knew or should have known that payments received from Plaintiff and the Class for the PEX Products were paid with the expectation that the PEX Products would perform as represented.

169. NIBCO's retention of these benefits is inequitable.

170. Plaintiff and the Class are entitled to recover from NIBCO all amounts wrongfully collected and improperly retained by NIBCO, plus interest.

171. As a direct and proximate cause of NIBCO's wrongful conduct and unjust enrichment, Plaintiff and the Class are entitled to an accounting, restitution, attorneys' fees, costs and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request the following relief:

- a. an Order certifying the Class (and/or Subclasses) and appointing Plaintiffs as the Class Representatives, and appointing the undersigned counsel as Class Counsel;
- b. an award of all actual, general, special, incidental, statutory, treble or other multiple, punitive and consequential damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;
- c. an award of pre-judgment and post-judgment interest at the maximum rate allowable by law;
- d. an award of reasonable attorneys' fees and reimbursement of costs incurred by

Plaintiffs and Plaintiffs' counsel in connection with this action;

e. an award for declaratory, equitable and injunctive relief enjoining NIBCO from continuing to pursue the policies, acts and practices described in this Complaint; and

f. such other and further relief as the Court deems just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES

Dated: June 15, 2016

RESPECTFULLY SUBMITTED,

By: /s/ Jacob M. Polakoff

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CERTIFICATE OF SERVICE

I, Jacob M. Polakoff, hereby certify that on this 15th day of June, 2016, I caused to be served, through the Court's ECF system, Amended Class Action Complaint in connection with the above-captioned matter, upon the following:

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