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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CLARKWESTERN DIETRICH BUILDING
SYSTEMS LLC d/b/a CLARKDIETRICH, an
Ohio limited liability company,

Plaintiff,

vs.

ALLSTEEL & GYPSUM PRODUCTS, INC.,
a Florida corporation; CONSOLIDATED
FABRICATORS CORP., a California
corporation; CRACO MANUFACTURING,
INC., a South Carolina corporation;
CUSTOM STUD, INC., a Minnesota
corporation, DESIGN SHAPES IN STEEL,

Case No.:

**COMPLAINT FOR VIOLATION OF THE
SHERMAN ACT, 15 U.S.C. § 1 *et seq*; THE
RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT, 18
U.S.C. §§ 1961-1968; AND CLAIMS
BASED ON STATE LAW**

DEMAND FOR JURY TRIAL

INC., a California corporation, FRAMETEK
STEEL PRODUCTS, INC., a California
corporation; and UNITED METAL
PRODUCTS, INC.; a California corporation,

Defendants.

Plaintiff ClarkWestern Dietrich Building Systems, LLC (“ClarkDietrich”) brings this action to redress the harm caused by Defendants’ conspiracy and anticompetitive conduct that caused ClarkDietrich to lose significant market share in the multi-billion dollar nationwide market for nonstructural steel framing products. ClarkDietrich is a joint enterprise formed by ClarkWestern Building Systems, LLC (“ClarkWestern”) and Dietrich Industries, Inc. (“Dietrich”), two long-time participants in the steel framing products industry. As used in this introduction, the term “ClarkDietrich” includes ClarkWestern and Dietrich prior to their formation of ClarkDietrich.

Defendants and their co-conspirators were members of a trade association of steel framing product manufacturers, the Steel Stud Manufacturers Association, Inc. (“SSMA”). When the conspiracy began, the SSMA members, which included ClarkDietrich, accounted for over 85 percent of the sales in the nationwide market for nonstructural steel framing products. Architects, contractors and others who purchase or require the use of construction products rely on trade association certifications to identify building code compliant products. Recognizing this, Defendants and their co-conspirators developed and imposed upon all SSMA members a building code compliance certification requirement that included sham standards that no building code required. They included those sham standards because they discriminated against the manufacturing process used by ClarkDietrich and ensured that its products would not be certified by the only relevant trade association as building code compliant. They knew this would harm, and hopefully eliminate, ClarkDietrich as a competitor. The sham standards were intended to neutralize ClarkDietrich’s cost advantage over Defendants arising from unique circumstances and its willingness to invest in innovative manufacturing processes.

Defendants and their co-conspirators promoted the sham code compliance certification program and their respective products as being so certified, and their conduct had the intended

effect. They caused purchasers of nonstructural steel framing products to believe falsely that ClarkDietrich products were not building code compliant, causing ClarkDietrich to lose market share. Defendants' conspiracy and boycott of ClarkDietrich has allowed Defendants to maintain artificially high prices, injuring not only ClarkDietrich but consumers and competition in the nonstructural steel frame products market throughout the country.

Upon knowledge with respect to its own acts and upon information and belief with respect to all other matters, ClarkDietrich alleges as follows:

I. JURISDICTION AND VENUE

1. ClarkDietrich brings this action pursuant to the Sherman Act, 15 U.S.C. § 1 *et seq.*; the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968; and principles of state law as set forth below.

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1332; 18 U.S.C. § 1964(c); and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2), (c)(2), and 18 U.S.C. § 1965(a). At least a substantial part of the claims alleged herein arose in this District; Each named Defendant engaged in significant acts and transactions in this District that were part of the unlawful conspiracy alleged herein; venue is proper as to certain of the co-conspirator Defendants and, therefore, proper as to all; and the ends of justice require that parties residing in other districts be brought before this Court.

4. Some of Defendants have made significant sales and derived significant revenue in this District, which sales and revenues ClarkDietrich would have made and derived but for Defendants' illegal conspiracy and boycott.

II. THE "OHIO ACTION," THE "OHIO DEFENDANTS" AND THE "NEVADA DEFENDANTS"

5. On October 31, 2013, ClarkDietrich filed a complaint in the Court of Common Pleas, Butler County, Ohio, seeking damages for antitrust violations under Ohio statutory law in the nationwide market for nonstructural steel framing products ("the Ohio Action").

6. The defendants in the Ohio actions were the same defendants named herein, with the addition of ClarkDietrich's competitors Ware Industries, Inc., d/b/a Marino\WARE; California Expanded Metal Products Company, d/b/a CEMCO; Telling Industries, LLC; Olmar Supply, Inc.; Quail Run Building Materials, Inc.; SCAFCO Corporation; and Steel Construction Systems ("the Ohio Defendants") and Steeler, Inc.

7. The defendants in the Ohio action also include two associations, Certified Steel Stud Association, Inc. ("CSSA") and Steel Stud Manufacturers Association, Inc. ("SSMA").

8. Certain defendants in the Ohio Action subsequently moved to dismiss on the alleged basis that the Ohio court lacked personal jurisdiction. On April 22, 2014, the Ohio court (per the Honorable Keith M. Spaeth) granted the motion to dismiss for lack of personal jurisdiction as to certain of the moving defendants. The Ohio Action is proceeding as to Marino\WARE, CEMCO, Telling Industries, Olmar Supply, Quail Run Building Materials, SCAFCO, Steel Construction Systems, CSSA and SSMA.

9. Defendants herein are all but one of the defendants who were dismissed in the Ohio Action for lack of personal jurisdiction and will be referred to herein as the "Nevada Defendants".

III. THE ABILITY OF PRIVATE STANDARD SETTING ORGANIZATIONS TO EXCLUDE INNOVATIVE RIVALS AND HARM COMPETITION

10. The ability of private standard setting organizations to stifle competition and exclude rivals with cost or other advantages is well-recognized.

11. "[J]oint standard setting can facilitate collusion or impede progressiveness by excluding from the market firms who threaten their rivals with lower prices, higher quality, or other innovations that consumers would prefer if given the opportunity." XIII P. Areeda & H. Hovenkamp, *Antitrust Law*, § 2230 at 431 (3d ed. 2012).

12. "[T]he association setting the standards typically although not invariably represents all or most providers within a given market; as a result, such organizations often have significant market power, at least as measured by the power to exclude others from the market." *Id.* at 432.

1 13. The antitrust laws are appropriately used to address situations “where [private]
2 rule making is used to facilitate collusion or exclusion of rivals whose competitiveness or
3 innovation threatens the relevant decision makers.” *Id.* at 437.

4 14. “There is no doubt that the members of such [private standard setting]
5 associations often have economic incentives to restrain competition and that the product
6 standards set by such associations have a serious potential for anticompetitive harm.” *Allied*
7 *Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 (1988).

8 **IV. SUMMARY OF THE ACTION**

9 15. Nonstructural steel framing products are steel studs and tracks used to create
10 interior walls of office buildings, hotels, warehouses, stores and other commercial buildings.
11 The steel products form the “skeleton” of the interior of the building. The skeleton is typically
12 covered with drywall and then painted. Because nonstructural products do not support the
13 overall structure and weight of the building, they are made from much thinner and lighter steel
14 than structural steel products, which are used in the framing and support structure of the building
15 itself. Although there is not a single instance of ClarkDietrich’s and its predecessors’ products
16 ever failing, if nonstructural steel framing products were to fail, it would not affect the integrity
17 of the structure itself.

18 16. The Nevada Defendants and the Ohio Defendants have conspired to destroy cost
19 and other competitive advantages enjoyed by ClarkDietrich through a collusive campaign of
20 disparagement and the attempted and actual adoption and enforcement of sham standards that
21 lack any technical, scientific, engineering, or safety basis, as part of a fraudulent scheme to
22 interfere with ClarkDietrich’s ability to compete fairly, to deprive it of the benefit of its lower
23 production costs, to steal ClarkDietrich’s customers and gain market share, and to drive up the
24 price for all nonstructural steel framing products. Once the sham standards were in place, the
25 conspirators used ClarkDietrich’s non-compliance with the sham building code certification
26 program to disparage its products as unsafe and non-compliant with the International Building
27 Code (sometimes “IBC” or the “Code”). The goal of this conspiracy was to eliminate from the
28 market most or all of ClarkDietrich's unique ProSTUD® line of nonstructural framing products,

1 thereby reducing the choices available to purchasers of nonstructural steel framing products and
2 driving up prices not only for these products but for all nonstructural steel framing products.

3 17. As discussed in detail below, ClarkDietrich has a significant cost advantage over
4 its rivals for three reasons: its geographic location, its investment in innovative large scale cold
5 reduction mill technology and its innovative use of equivalent or “EQ” coatings.

6 18. The Nevada and Ohio Defendants realized they were at a competitive
7 disadvantage to ClarkDietrich because of its lower production cost. Rather than attempting to
8 reduce their costs and compete fairly to the benefit of consumers, they turned to conspiracy,
9 fraud, boycott and disparagement.

10 19. The seeds of the conspiracy go back to a lawsuit one of the Ohio Defendants,
11 Marino\WARE, filed in the United States District Court for the District of New Jersey in March
12 2009 (“the New Jersey Action”), naming one of ClarkDietrich’s two members, Dietrich, as a
13 defendant. As a result of additional filings, ClarkDietrich's other member, ClarkWestern, and
14 Ohio Defendant CEMCO were added as parties. The parties to the New Jersey action
15 acknowledged that their disagreements about the interpretation of various industry standards
16 were at the center of the lawsuit.

17 20. The parties to the New Jersey Action entered into a settlement agreement
18 resolving the litigation in January 2010. The settlement agreement references Ohio Defendant
19 SSMA’s development of a program pursuant to which the SSMA would certify nonstructural
20 steel framing products as compliant with applicable building codes, the “SSMA Compliance
21 Program.” As part of the settlement of the New Jersey Action, the parties agreed to cooperate
22 with the SSMA in its development of the SSMA Compliance Program and to comply with it
23 when it became effective.

24 21. Marino\WARE and CEMCO knew that if they could fraudulently manage to add
25 anticompetitive requirements to the SSMA Compliance Program that would prove harmful to
26 Dietrich and ClarkWestern, they could argue that the settlement agreement would compel those
27 companies to comply with the anticompetitive features of the SSMA Compliance Program.
28

1 They set out to do and did just that, with the active and necessary agreement, participation and
2 support of the Nevada Defendants and the remaining Ohio Defendants.

3 22. From January to August 2010, the SSMA Technical Task Force worked to draft
4 the technical requirements for the SSMA Compliance Program. As those standards were
5 originally approved and recommended by the Technical Task Force, ClarkWestern's and
6 Dietrich's products met the requirements.

7 23. To harm ClarkDietrich, the Nevada and Ohio Defendants conspired to add and
8 added two sham elements to the SSMA Compliance Program that were *not* included in the
9 original SSMA Compliance Program approved and recommended by the Task Force: a
10 "ductility" or "elongation" requirement and a "coatings" requirement different than the one
11 adopted by the SSMA Technical Task Force. The Nevada and Ohio Defendants knew that (a)
12 neither requirement had any scientific, technical, engineering or safety justification; and (b)
13 Dietrich and ClarkWestern nonstructural steel products, produced with cold reduction mill
14 technology, could not comply with the sham elongation requirement. They also believed that
15 Dietrich and ClarkWestern nonstructural steel products, which used "equivalent coatings" (as
16 explained above and below), would not comply with the sham coatings requirement. The
17 Nevada and Ohio Defendants knew that without the ability to use equivalent coatings, Dietrich
18 and ClarkWestern could not retain their lower cost production advantage provided by the cold
19 reduction mill technology.

20 24. Prior to the SSMA vote on the final SSMA Compliance Program, the leading
21 association for users and consumers of nonstructural steel products, the Association of the Walls
22 and Ceiling Industry ("AWCI), repeatedly informed the SSMA Board of Directors and its
23 members (including the Nevada Defendants) that the elongation and coating standards included
24 in the final Program were not required by the International Building Code, were unnecessary for
25 any safety or technical reason, and were anticompetitive in that they targeted and would exclude
26 ClarkWestern's and Dietrich's innovative cold mill reduction technology.

27 25. What is more, prior to the vote by the SSMA, counsel for Dietrich wrote each of
28 the SSMA members (including all the Nevada Defendants) informing them that adopting these

unnecessary standards targeted at eliminating competition from Dietrich and ClarkWestern would violate the antitrust laws.

26. In short, prior to the SSMA member vote on the Compliance Program including the sham standards, the SSMA members, including the Nevada Defendants, had abundant evidence before them that the elongation and coatings standards were a sham and the sole purpose of their adoption was anticompetitive. This included compelling evidence from an objective, independent third party, AWCI.

27. Each of the Nevada Defendants, and other members of SSMA, traveled to Las Vegas, Nevada on or around October 20, 2010 for SSMA meetings. At the meetings and informally among the members, the SSMA Code Compliance Program was discussed. At the SSMA member meeting in Las Vegas on October 20, 2010, each of the Nevada Defendants (along with the Ohio Defendants), voted to adopt a SSMA Code Compliance Program that included both the sham elongation and coatings requirement. Each of the Nevada Defendants also separately voted on separate, discrete votes to adopt specifically the sham elongation requirement and the coatings requirement. Absent the affirmative votes by the Nevada Defendants, the sham standards would not have been adopted.

28. The adoption of the sham standards had an immediate and lasting impact on Dietrich and ClarkWestern. Defendants and their co-conspirators misled purchasers of nonstructural steel framing products, including companies the Nevada Defendants knew purchased nonstructural steel framing products from Dietrich and ClarkWestern, into believing that Dietrich and ClarkWestern products were unsafe, unfit for their intended use and not compliant with the International Building Code.

29. Dietrich and ClarkWestern formed a limited liability company that combined the bulk of their respective structural and nonstructural steel framing businesses in March 2011, creating ClarkDietrich. Prior to the collusive adoption of the SSMA Code Compliance Program, their combined market share was approximately 50 percent of the nationwide market for nonstructural steel framing products. After the adoption of the SSMA Certification Programs containing the sham elongation and coatings requirements, ClarkDietrich's ProStud® products

1 were wrongfully perceived by many purchasers, including ClarkDietrich customers, as not
2 International Building Code compliant and its market share dropped significantly, with a portion
3 of its market share loss going to the Nevada and Ohio Defendants.

4 30. The Nevada Defendants' actions have injured competition and caused and
5 continue to cause damage and injury to ClarkDietrich in its business and property.

6 **V. THE PARTIES**

7 31. ClarkDietrich is a limited liability company organized and existing under the laws
8 of Ohio, having a principal place of business at 9100 Centre Point Drive, Suite 210, West
9 Chester, Ohio 45069.

10 32. Defendant Allsteel & Gypsum Products, Inc. ("Allsteel") is a Florida corporation
11 with its principal place of business in Florida.

12 33. Defendant Consolidated Fabricators Corp. ("Consolidated") is a California
13 corporation with its principal place of business in California.

14 34. Defendant Craco Manufacturing, Inc. ("Craco") is a South Carolina corporation
15 with its principal place of business in South Carolina.

16 35. Defendant Custom Stud, Inc. ("Custom Stud") is a Minnesota corporation with its
17 principal place of business in Minnesota.

18 36. Defendant Design Shapes in Steel, Inc. ("Design Shapes") is a California
19 corporation with its principal place of business in California.

20 37. Defendant Frametek Steel Products, Inc. ("Frametek") is a California corporation
21 with its principal place of business in California.

22 38. Defendant United Metal Products, Inc. ("United Metal") is a California
23 corporation with its principal place of business in California.

24 **VI. BACKGROUND FACTS**

25 39. ClarkDietrich is in the business of designing, manufacturing and selling steel
26 framing products (studs and track) for use in the construction industry, including for use in the
27 construction of commercial structures. ClarkDietrich's proprietary line of nonstructural framing
28 products is known as ProSTUD®.

1 40. ClarkDietrich was formed by ClarkWestern Building Systems, LLC
2 ("ClarkWestern") and Dietrich Industries, Inc. ("Dietrich") in March 2011. ClarkDietrich is a
3 limited liability company the members of which are ClarkWestern and Dietrich. Prior to March
4 2011, ClarkWestern and Dietrich were independent companies that were in the business of
5 designing, manufacturing and selling steel framing products for use in the construction industry.
6 ClarkWestern and Dietrich collaborated to develop the ProSTUD® line of steel framing
7 products.

8 41. ClarkDietrich enjoys a production cost advantage over its competitors for a
9 number of reasons. Due to its geographic location, ClarkDietrich is able to buy a key input to its
10 product at less expense than its rivals. That input is "secondary steel," which is steel originally
11 intended to be used in the production of automobiles but which has surface blemishes or other
12 minor imperfections that prevent its use for that purpose. Due to its geographic location much
13 closer to areas of domestic automobile production than its rivals, ClarkDietrich pays
14 substantially lower freight costs to obtain secondary steel. Setting aside freight costs, secondary
15 steel costs less than prime steel. For most of ClarkDietrich's rivals, the freight costs to ship
16 secondary steel to their locations are so prohibitively high that they do not buy less expensive
17 secondary steel but more expensive prime steel. For competitors without reduction mills
18 purchasing secondary steel is not an option.

19 42. Another reason for ClarkDietrich's cost advantage over its rivals is its investment
20 in and use of innovative full scale cold reduction mill technology, which allows it to produce a
21 thinner sheet of steel that is more rigid (less "ductile") and stronger. This cold reduction mill
22 technology permits production of more linear feet of product from a given quantity of steel,
23 relative to ClarkDietrich's competitors, including the Nevada and Ohio Defendants who either
24 have smaller, less efficient reductions mills or no reduction mills at all. ClarkDietrich's
25 competitors, including Defendants, have production equipment that accepts narrow widths of
26 steel. In contrast, ClarkDietrich has made the investment in a cold reduction mill capable of
27 handling dramatically wider pieces of steel. This allows ClarkDietrich to process secondary steel
28 directly from the coil or sheet. Its competitors, in contrast, cannot directly process factory output

1 steel rolls, but must incur the additional handling and processing costs to cut the full size steel
2 sheets into far narrower pieces before stud production.

3 43. Relatedly, ClarkDietrich can take advantage of its larger cold reduction mill
4 because it uses equivalent (or "EQ") anti-corrosion coatings. Absent the use of EQ coatings,
5 ClarkDietrich would be unable to use its less expensive manufacturing process. These EQ
6 coatings permit ClarkDietrich to use cold reduction technology on a scale other competitors
7 cannot, while still maintaining corrosion resistance. In addition, ClarkDietrich's full scale cold
8 reduction mill allows it to apply EQ coatings after running the full sized steel sheet through its
9 reduction mill, a production feature that results in even greater cost savings. Those of
10 ClarkDietrich's competitors with smaller reduction mills cannot do that. Instead they must apply
11 EQ coatings before reducing the steel, a more expensive mode of production.

12 44. Ohio Defendants Marino\WARE, CEMCO, and Telling are economic competitors
13 of ClarkDietrich. These three companies manufacture and sell a ViperStud® line of
14 nonstructural steel framing products that compete with ClarkDietrich's ProSTUD® products.
15 Collectively Marino\WARE, CEMCO and Telling represent about 50 percent of the relevant
16 market as of the time of this Complaint.

17 45. The Ohio Defendants other than Marino\WARE, CEMCO and Telling and the
18 Nevada Defendants are also economic competitors of ClarkDietrich. They make nonstructural
19 steel framing products that compete with ProSTUD® and ViperStud® products.

20 46. Generally, in order for nonstructural steel framing products to be eligible for use
21 in the construction of commercial structures, they must comply with the International Building
22 Code.

23 47. Contractors, architects and specification writers who believe that a producer's
24 nonstructural steel framing products do not comply with the IBC will not purchase or approve
25 them for use in commercial structures. Contractors, architects and specification writers
26 commonly use trade association certifications of building code compliance to identify which
27 construction products to use and which not to use, or which construction products to require and
28

1 which not to require, in commercial buildings. When a certification program is in place, non-
 2 certified products (whether building code-compliant or not), are at a competitive disadvantage.

3 48. At all relevant times, ClarkDietrich's ProSTUD® nonstructural framing products
 4 have been fully compliant with the 2012 International Building Code (the current applicable
 5 International Building Code) and earlier versions of the Code. ClarkDietrich's ProSTUD®
 6 products have been certified to be compliant with the International Building Code by ATI
 7 Evaluation Service, an independent organization accredited by the American National Standards
 8 Institute to evaluate building products for compliance with the International Building Code. In
 9 its May 2, 2014 CCRR-0207 Report, ATI stated in part that ClarkDietrich's "ProSTUD and
 10 ProTRAK members have a protective coating which conforms to ASTM Specifications C645
 11 and have a protective coating conforming to Specification A653/A653M-G40 minimum or have
 12 a protective coating which provides an equivalent corrosion resistance to a G40 coating."

13 **VII. THE SSMA TECHNICAL TASK FORCE'S INITIAL PROPOSED STANDARDS**

14 49. In January 2010 and as alleged above, Ohio Defendant SSMA began working to
 15 establish a compliance program for determining whether nonstructural steel framing products are
 16 compliant with applicable building codes and standards (the "SSMA Compliance Program"). At
 17 the time, ClarkWestern and Dietrich were members of the SSMA, as were all of the Nevada and
 18 Ohio Defendants. The SSMA members were responsible for approximately 85 percent of all
 19 nonstructural steel product sales at the time; it was the only significant nonstructural steel trade
 20 association.

21 50. The SSMA appointed a Technical Committee Task Force (the "Task Force") to
 22 draft the SSMA Compliance Program. The Task Force included technical representatives of
 23 SSMA member companies and invited guests of AWCI, the primary trade association for users
 24 and consumers of nonstructural steel framing products.

25 51. After eight months of work, on August 19, 2010, the Task Force adopted, with no
 26 dissenting votes from the twelve-person Task Force, the SSMA Non Structural Code
 27 Compliance Certification Program Requirements, and submitted it to the SSMA Board for
 28 approval. The proposed Code Compliance Certification Program Requirements tracked the

actual requirements of the International Building Code. ClarkWestern's and Dietrich's ProSTUD® products complied fully with the Task Force's proposed requirements. The Task Force's Compliance Certification Program Requirements had (a) *no* elongation (or "ductility") requirement and (b) a coatings requirement consistent with the requirements of the IBC with which ClarkWestern's and Dietrich's ProSTUD® line of products complied.

52. Four days later, on August 23, 2010, Brent Allen, the President of the AWCI, wrote on AWCI letterhead to the SSMA Board of Directors, stating in part (emphasis added):

- "I want to thank you for allowing AWCI to be represented on the task force, and contribute to the Non-Structural Code Compliance Certification Program Requirements. *We feel this is an excellent document*, which received unanimous approval by the task force members."
- "*We request that the SSMA implement it as soon as possible.*"

VIII. THE CONSPIRACY'S ADOPTION OF SHAM STANDARDS TO INJURE CLARKDIETRICH AND COMPETITION

A. The SSMA Board Had An Economic Incentive To Adopt The Sham Standards

53. At this time, the SSMA Board President was Larry Stone of Ohio Defendant SCAFCO. The other SSMA Board members were William A. "Chip" Gardner III, President and Chief Executive Officer of Ohio Defendant Marino\WARE, Tom Porter of Ohio Defendant CEMCO, Mark Baryla of Ohio Defendant Olmar, Dan Dry of Ohio Defendant Steel-Con, Robert Clark of Ohio Defendant Quail Run, and Scott Segal of non-party MBA Building Supplies.

54. Of the seven SSMA Board seats, five were controlled by companies united in their promotion of two specific products that competed directly with ClarkWestern's and Dietrich's ProSTUD® products: ViperStud and the Supreme Framing Systems. Ohio Defendants Marino\WARE and CEMCO market the ViperStud product line; Ohio Defendants SCAFCO, Steel-Con, and Quail Run market the Supreme Framing Systems.

55. Knowing that Dietrich's and ClarkWestern's products would satisfy the SSMA Code Compliance Program as drafted and adopted by the Task Force, SCAFCO, Marino\WARE,

1 and CEMCO launched a conspiracy to hijack the development of the SSMA Compliance
 2 Program to try to eliminate ProSTUD® products produced through cold reduction technology
 3 through the adoption of two sham standards, the elongation (or ductility) requirement and a
 4 coatings requirement different from the one adopted by the Task Force. The Board rejected the
 5 Technical Task Force's Code Compliance Requirements, which tracked the actual requirements
 6 of the IBC. Instead, the Board of the SSMA proposed, and the Ohio and Nevada Defendants
 7 ratified, the inclusion of these two sham requirements and other changes to the requirements that
 8 would maximize the harm to ClarkWestern and Dietrich. Once the sham standards were in
 9 place, the Nevada Defendants intended to mislead and fraudulently steal ClarkWestern's and
 10 Dietrich's ProSTUD® customers by disparaging the ProSTUD® line of products as dangerous
 11 and not compliant with the IBC.

12 56. Before the vote of the SSMA membership on the sham requirements, each
 13 Nevada Defendant was fully informed of the conspiracy, the anticompetitive effect on
 14 ClarkWestern and Dietrich of the adoption of the sham standards and their failure to obtain
 15 SSMA Code Compliance Certification, and the benefit to each of them from removing
 16 ClarkWestern and Dietrich from the marketplace. Each agreed to join the conspiracy. Each
 17 Nevada Defendant took affirmative acts in furtherance of it, including, but not limited to, by
 18 voting to approve sham Code Compliance Requirements, with the purpose and effect of
 19 excluding ClarkWestern's and Dietrich's ProSTUD® line of products from the market.

20 **B. The Sham Elongation Requirement**

21 57. The purpose of an elongation requirement is to limit the rigidity of a product. The
 22 inclusion of such a requirement in the SSMA Compliance Program would have meant that IBC
 23 compliant products would *not* be eligible for code compliance certification under the SSMA
 24 Compliance Program. The requirement was clearly and directly targeted at the cold reduction
 25 mill technology used by ClarkWestern and Dietrich.

26 58. The inclusion of the elongation requirement in the SSMA Compliance Program
 27 meant that Dietrich's and ClarkWestern's products produced through cold reduction technology
 28 would have been ineligible for SSMA Compliance Program certification even though they

1 complied in all respects with the IBC. There is no ductility requirement in the IBC for
2 nonstructural steel framing products. Yet, the standard imposed a ductility requirement for
3 *nonstructural* framing products that was higher than the International Building Code requirement
4 for *structural* framing steel. Compliance with the requirement would have caused ClarkWestern
5 and Dietrich to abandon their cold reduction technology, which would have eliminated their cost
6 advantage.

7 **C. The Sham Equivalent Coatings Requirement**

8 59. The coatings requirement demanded by the SSMA Board was also a sham
9 designed to eliminate ProSTUD® products produced through cold reduction technology.

10 60. Nonstructural steel framing products contain a corrosion resistant protective
11 coating. One such coating is "G40," which is a galvanized coating that has a weight of 0.30
12 oz./ft² based on a single spot test. Coatings that protect against corrosion as well as or better than
13 G40 coatings are known in the industry as equivalent or "EQ" coatings. EQ coatings have been
14 used for nonstructural steel framing products since at least the early 1990s. ClarkDietrich's
15 ProSTUD® products produced by cold reduction technology contain an EQ coating that protects
16 against corrosion as well as or better than a G40 coating.

17 61. ClarkDietrich's EQ coating is a metallic coating applied to secondary steel that
18 already contains a zinc-based coating. The application is performed through a proprietary
19 chemical conversion technology adapted from the military, automotive, aerospace and
20 commercial steel roofing industries. The chemical conversion process enhances the corrosion
21 protection properties of the zinc-based galvanic coating already on the steel substrate.
22 ClarkDietrich applies a metallic coating that chemically and mechanically bonds with the zinc in
23 the base (galvanized) coating. The result is an integrated duplex protective system with
24 corrosion properties proven superior to G40-only coated materials.

25 62. The coatings standard for nonstructural steel products is set forth in ASTM C 645,
26 which has been incorporated as part of the International Building Code. Section 4.2 of ASTM C
27 645 reads as follows: "Members shall have a protective coating conforming to Specification A
28 653/A 653M-G 40 minimum or shall have a protective coating with an *equivalent corrosion*

1 *resistance.*" (Emphasis added.) Thus, the International Building Code recognizes and permits
 2 the use of EQ coatings with corrosion *resistance equivalent to or better* than a G40 coating. The
 3 permitted use of equivalent coatings has been part of ASTM C 645 since 1992. Industry
 4 participants have been supplying code compliant nonstructural steel framing products with EQ
 5 coatings for decades. Those products have performed in the field as well or better than G40
 6 coated products.

7 63. Because the coatings on ClarkWestern's and Dietrich's ProSTUD® products met
 8 these criteria, the conspirators on the SSMA Board adopted a sham coatings requirement
 9 designed to eliminate ProSTUD® products with "EQ" coatings. Although the International
 10 Building Code permits the use of EQ coatings like those used by ClarkWestern and Dietrich, the
 11 Board-proposed SSMA Certification Program included a requirement that precluded certification
 12 for products that used EQ coatings – notwithstanding the Task Force's recognition that coatings
 13 like those used by ClarkWestern and Dietrich were Code compliant.

14 64. Like the elongation requirement, the SSMA Compliance Program coatings
 15 requirement would have precluded ProSTUD® products produced through cold reduction
 16 technology from obtaining SSMA Compliance Program certification even though those products
 17 fully comply with the requirements of the International Building Code. The Task Force
 18 recognized that the Code permits the use of equivalent or "EQ" coatings like the coating used by
 19 ClarkWestern and Dietrich on most ProSTUD® products, and the SSMA Code Compliance
 20 Program developed by the Task Force included criteria for testing EQ coatings for compliance
 21 with the IBC. The Board-proposed SSMA Compliance Program, however, precluded
 22 certification under the SSMA Program for the types of products that ClarkDietrich produces
 23 using EQ coatings, *i.e.* products produced through cold reduction technology – notwithstanding
 24 the Code's acceptance, and the Task Force's recognition, of EQ coatings.

25 **D. Defendants and their Co-Conspirators Are Warned that Adopting the Sham**
 26 **Standards Would Be Anticompetitive**

27 65. On August 31, 2010, the SSMA Compliance Task Force met. In furtherance of
 28 the conspiracy, an employee (Mr. Czapla) of Ohio Defendant SCAFCO made a motion,

seconded by an employee (Mr. Zadeh) of Ohio Defendant Marino\WARE, to add an elongation requirement to the SSMA Compliance Program. The ostensible justification they provided was the elongation requirement was needed to comply with the International Building Code. In fact, the International Building Code has no such requirement, as the Technical Task Force had previously recognized.

66. Dietrich learned of the proposal to add the sham elongation requirement. On September 1, 2010, its counsel wrote to counsel for the SSMA, stating in part:

- “We are writing . . . to advise you that the SSMA and certain of its members may be about to commit an antitrust violation in the guise of a 24th hour change to a draft Code Compliance Program that has been in the works for more than 8 months.”
- The draft Compliance [Certification] Program “culminated in a program that was recently adopted by the Technical Committee without dissent. The program was then sent to the Board of Directors for approval. The Board (or a majority of it members) returned the program to the Technical Committee with instructions that it add a ‘ductility’ requirement. As explained below, there is no technical or other pro-competitive reason for such a requirement.”
- “The proposed ductility requirement (also sometimes referred to as elongation requirement) appears designed to eliminate a competitive advantage that Dietrich has over many of its competitors, including a majority of the Board members, and it will likely result in an increase in the price paid by consumers for non-structural members.”
- Dietrich’s nonstructural steel products “comply in all respects with the requirements of the International Building Code (the ‘IBC’). That is because **the IBC contains no ductility or elongation requirement for non-structural members**” (emphasis in original).

67. On September 2, 2010, Kennon Whaley of Southeastern Stud, sent an email to the SSMA Task Force Members, attaching answers he had received to questions he had propounded

to Don Allen, the SSMA Technical Director, concerning the sham ductility standard. Mr. Don Allen stated unequivocally that the IBC “does not include elongation limits for non-structural members” and the SSMA should *not* adopt such a requirement. Mr. Whaley added:

- “Southeastern Stud has been producing non-structural light gauge steel framing for over 10 years. . . . SES has sold hundreds of millions of feet of code compliant cold reduced non-structural framing. SES has never had a quality issue related to elongation due to the cold reduction process.”
- “SES uses cold reduction as a competitive advantage in our market. If elongation is forced into our compliance program (even as it is not a code requirement), it will cause irreparable harm to my company. It will increase the raw material costs for SES. It will also unnecessarily increase the cost of non-structural steel framing to the customer.”

68. The SSMA Board fired Mr. Allen, its Technical Director, after he acknowledged there was no ductility/elongation requirement for nonstructural steel products in the International Building Code.

69. On September 10, 2010, Brent Allen, the President of AWCI, again wrote to the SSMA Board of Directors to express his concern about the proposed elongation requirement, stating in part:

- “We are concerned that this new [elongation] requirement could have uncompetitive and increased cost consequences to roll formers that utilize cold reduction and high-strength steel. Further, we believe that this action is contrary to the advice of your legal and technical counsel.”
- “There is no ASTM or ANSI standard for elongation for non-structural members.”
- “For an industry trade association to develop its own standard, it needs to respond to an industry problem. There is virtually no history of ductility problems with non-structural steel members installed in the field.”

- 1 • “Clearly, the actions of the SSMA Board have to be questioned at this point. If
- 2 the Board felt that ductility was a major industry concern, th[e]n why did the task
- 3 force not address it from the start, especially since each SSMA Board member
- 4 was represented on the task force?”
- 5 • “AWCI has grave concerns regarding the status and direction of the program.
- 6 The goal of providing an industry-wide independent code compliance certification
- 7 program is not being met. The program as it now stands is not available to non-
- 8 SSMA members and *discriminates against certain manufacturing processes* [i.e.,
- 9 ClarkWestern’s and Dietrich’s cold reduction mill technology] as well as
- 10 procurement of raw materials.” (Emphasis and brackets added.)
- 11 • “Further, AWCI feels that rather than fostering an innovative and competitive
- 12 industry, SSMA is causing the opposite to happen.”

13 70. Also on September 10, 2010, counsel for Dietrich again wrote to the SSMA

14 Board of Directors, copying each SSMA member (including every one of the Nevada

15 Defendants). The eight-page single-spaced letter explained in detail why the proposed

16 ductility/elongation requirement “appears to be a blatant and unlawful restraint of trade in

17 violation of the antitrust laws of the United States.” The letter expressly explained why members

18 of SSMA (including all of the Nevada Defendants) who voted in favor of the sham ductility

19 requirement could expose their companies to antitrust liability, stating “[v]oting in favor of a

20 standard that is in violation of the antitrust laws does constitute participation in an illegal

21 scheme” and citing case law support.

22 71. During SSMA Board meetings, the SSMA Board took the highly unusual step of

23 directing the SSMA Executive Director, the SSMA Technical Director and the SSMA lawyer to

24 leave the meetings while the elongation and coatings requirements were discussed.

25 72. The SSMA Board fired the SSMA Executive Director who had been excluded

26 from the SSMA Board discussion of the SSMA Certification Program in advance of the

27 membership vote on the Program.

28

1 73. On October 6, 2010, Brent Allen, President of the AWCI, wrote to the President
2 of the SSMA, stating that adoption of the elongation requirement would risk antitrust litigation,
3 increase manufacturing costs, and create a requirement that did not exist in the International
4 Building Code and related standards. Mr. Allen also decried “scare tactics” that the SSMA had
5 engaged in via “an email campaign to bring pressure on the AWCI Board of Directors to support
6 the SSMA proposed program including the elongation test.” Mr. Allen stated that SSMA “scare
7 tactics” were “a great disservice to our industry.”

8 74. The “scare tactics” email was drafted originally by Marino\Ware CEO Chip
9 Gardner, also a SSMA board member, to customers and contractors friendly to Marino\Ware,
10 who encouraged them to send the email to the AWCI Board in an orchestrated campaign to
11 falsely create the impression of widespread support for the sham elongation requirement. The
12 email falsely stated, without a shred of technical support, that the sham ductility/elongation
13 requirement was necessary to prevent “BRITTLE STEEL”. In fact, it was a sham standard
14 entirely designed to strip ClarkWestern and Dietrich of their cost advantage through the
15 innovative use of cold reduction mill technology.

16 75. On October 18, 2010, counsel for Dietrich again wrote to SSMA Members,
17 stating in part:

18 “Simply put, we do not believe that the members of SSMA (who account for
19 approximately 85% of the sales of metal framing products) can lawfully agree to
20 adopt a program that will require the SSMA membership to abandon a decades
21 old low cost production method that yields safe and reliable IBC compliant
22 products, where the result of that agreement will be higher prices charged by
23 SSMA members and paid by consumers.”

24 76. On October 19, 2010, the eve of the SSMA vote on the Compliance Program,
25 including the sham elongation requirement, Steve Etkin, Executive Vice President of AWCI,
26 sent an email to members of AWCI, stating unequivocally that his research had establish that
27 non-structural steel “studs are not subject to elongation requirements.”
28

E. The Nevada Defendants and Ohio Defendants Collusively Adopt The Sham Standards

77. The final vote on the SSMA Compliance Program was held in Las Vegas at the October 20, 2010 meeting of the SSMA membership. Representatives of SCAFCO, Marino\WARE, and CEMCO also called for a secret ballot on the SSMA Compliance Program, even though there had never been a secret ballot in the entire history of the SSMA for a vote on standards to be set by the organization. The other Nevada and Ohio Defendants colluded to orchestrate an unprecedented secret ballot.

78. The Nevada and Ohio Defendants held enough votes to secure approval of the SSMA Compliance Program with the Board-imposed and anticompetitive elongation and coatings requirements. There were nearly enough affirmative votes just from the alliances that marketed the ViperStud® product line or the Supreme Framing System® product line: 10 of the 21 then-members of the SSMA marketed one of these two products that would benefit from eliminating or crippling ProSTUD® products.

79. The Nevada Defendants and Ohio Defendants agreed with each other to vote for the Program for the sole purpose of obtaining competitive advantages over ClarkWestern and Dietrich.

80. Defendant Allsteel voted in favor of the SSMA Compliance Program and in separate votes, also voted to adopt the sham elongation requirement and the sham coatings requirement.

81. Defendant Consolidated voted in favor of the SSMA Compliance Program and in separate votes, also voted to adopt the sham elongation requirement and the sham coatings requirement.

82. Defendant Craco voted in favor of SSMA Compliance Program and in separate votes, also voted to adopt the sham elongation requirement and the sham coatings requirement.

83. Defendant Custom Stud voted in favor of the SSMA Compliance Program and in separate votes, also voted to adopt the sham elongation requirement and the sham coatings requirement.

1 84. Defendant Design Shapes voted in favor of the SSMA Compliance Program and
2 in separate votes, also voted to adopt the sham elongation requirement and the sham coatings
3 requirement.

4 85. Defendant Frametek voted in favor of the SSMA Compliance Program and in
5 separate votes, also voted to adopt the sham elongation requirement and the sham coatings
6 requirement.

7 86. Defendant United Metals voted in favor of SSMA Compliance Program and in
8 separate votes, also voted to adopt the sham elongation requirement and the sham coatings
9 requirement.

10 87. The elongation and coatings requirements had no technical, scientific,
11 engineering, or safety basis, nor are they required by the International Building Code.

12 88. As alleged above, representatives of each of the Nevada Defendants voted in
13 favor of the sham elongation standard. They also voted to approve an anti-competitive coatings
14 requirement different from the coatings requirement proposed and adopted by the SSMA Task
15 Force in August 2010; specifically, coatings like those used by ClarkWestern and Dietrich (and
16 now used by ClarkDietrich) would have to be tested against a 250 hour exposure to a specified
17 salt spray with no more than ten percent loss of coating versus the 75 hour exposure test
18 proposed and adopted by the Task Force.

19 89. The Ohio Defendants, the Nevada Defendants and their co-conspirator SSMA
20 conspired to add the sham elongation requirement and coatings requirements for their own
21 commercial benefit, to try to eliminate ProSTUD® products, and to inflict economic harm on
22 ClarkWestern and Dietrich. While these requirements would eliminate or significantly increase
23 the cost of the ProSTUD® line of products, they would have no impact on the ViperStud® or
24 Supreme Framing System® product lines marketed by a majority of the SSMA Board members'
25 companies.

26 90. In an October 25, 2010 letter, posted on the SSMA website and otherwise
27 circulated electronically and in print, the SSMA touted the newly adopted Compliance Program
28 as “a landmark decision, because it settles all matters relating to equivalency and code

compliance once and for all,” intentionally creating the misimpression among users and purchasers of nonstructural steel framing products, including ClarkDietrich customers, that the Compliance Program tracked the requirements of the International Building Code.

F. The Anti-competitive SSMA Nonstructural Code Compliance Certification and Quality Assurance Program Requirements

91. The October 20, 2010 SSMA Code Compliance Program containing the sham requirements and adopted with the affirmative votes of the Nevada Defendants and their co-conspirators, is, by its terms a “third-party Certification Program sponsored by the Steel Stud Manufacturers Association” that is “designed so that Products qualifying for certification meet the requirements of the 2009 International Building Code (IBC), and standards reference in the IBC.” SSMA Code Compliance Program ¶¶ 1.1, 1.3. The requirements document was made available on SSMA’s website and available to all who requested it.

92. All members of the SSMA were required to apply for Code Compliance Certification within six months of its adoption. SSMA Code Compliance Program ¶ 13.1. SSMA maintained on its website a list of those member’s products that had been certified as code compliant. SSMA Code Compliance Program ¶ 15. In a change from the Task Force recommended Code Compliance requirements, the SSMA adopted Code Compliance Program required that all members place “Certification Labels” on “each unit of certified product” and only on certified products. SSMA Code Compliance Program ¶¶ 24.2, 24.8. SSMA members, including ClarkWestern and Dietrich, were required to mark non-certified product as “NOT SSMA.” SSMA Code Compliance Program ¶ 25.

93. The Nevada Defendants and the Ohio Defendants adopted and maintained the sham standards with the above requirements to ensure that their effect on ClarkWestern and Dietrich, and later ClarkDietrich, would have the maximum anticompetitive effect.

94. On October 28, 2010, Steve Etkin of AWCI wrote to Chip Gardner, President and CEO of Ohio Defendant Marino\WARE, a SSMA Board member, copying the other SSMA Board members. Mr. Etkin’s letter stated in part: “AWCI does not support the SSMA [Compliance] Program. AWCI’s position is to support a code compliance program that interprets

1 the codes and standards in the same manner as the program first proposed by the SSMA
2 Technical Tasks Force.” In the attachments to Mr. Etkin’s letter, AWCI expressed a number of
3 specific concerns with the sham standards adopted by the SSMA on October 20, 2010, including
4 that:

- 5 • “SSMA has gone outside of the code by not following specific language defined
6 by ASTM for steel ductility by including an elongation test and through their
7 interpretation of general language with current AISI requirements that apply to
8 structural steel.”
- 9 • “SSMA is creating its own standards, contrary to several within other standard
10 setting bodies, for coatings by eliminating some definitions for metallic coatings
11 allowed in the ASTM standards and thereby raises the criteria for equivalent
12 metallic coatings.”

13 95. The president of Marino\WARE, Chip Gardner, succeeded Larry Stone of
14 SCAFCO as president of the SSMA and promoted the elongation requirement as a way to
15 prohibit purportedly "brittle steel." In a November 2010 letter to AWCI, the industry's customer
16 group, Mr. Gardner wrote that "it is unsafe and irresponsible to promote any product that could
17 fail prematurely and cause injury" – a claim unsupported by a single instance of failure of
18 nonstructural steel framing products manufactured using cold reduction technology.

19 96. On November 12, 2010, in an effort to intimidate AWCI into backing the sham
20 SSMA standards, SSMA’s General Counsel wrote to AWCI, threatening to sue AWCI and its
21 President over its opposition to the sham standards. The SSMA had no good faith basis to
22 threaten a lawsuit, which would have itself been a sham.

23 97. On November 22, 2010, the Executive Vice President and Chief Executive
24 Officer of AWCI, Steven Etkin, wrote to the SSMA Board of Directors and its membership,
25 stating in part:

- 26 • “[Y]ou [SSMA] asked AWCI to revise its industry supported position and then
27 threatened to sue your customers. This is not a constructive action, and AWCI
28 will not be intimidated into shirking its responsibility to the industry.”

- 1 • “Once again, AWCI, with the unanimous support of its supplier members . . . are
2 requesting **1. SSMA to revert back to, formally adopt and publish the code**
3 **compliance program first proposed by the SSMA Tasks Force . . .**” bold in
4 original).

5 98. After the SSMA Compliance Program was adopted with the sham elongation and
6 coatings requirements, Dietrich and ClarkWestern had two undesirable options: (1) they could
7 alter their production methods by abandoning their cold reduction mills (which would have
8 increased their costs of production and the prices paid by consumers) in order to be able to obtain
9 SSMA Compliance Program certification for their products, or (2) they could continue to
10 produce International Building Code-compliant products using cold mill reduction technology
11 and with EQ coatings without any prospect of obtaining SSMA Compliance Program
12 certification.

13 99. Dietrich and ClarkWestern resigned from the SSMA in March 2011 and helped to
14 start a new industry association, the Steel Framing Industry Association ("SFIA"). The SFIA is
15 now the largest industry association, in part because a number of companies resigned from the
16 SSMA due its anticompetitive activities orchestrated in furtherance of the conspiracy.

17 100. Also in March 2011, Dietrich and ClarkWestern formed ClarkDietrich.
18 ClarkDietrich is and has been a member of the SFIA.

19 101. In July 2011, after Dietrich and ClarkWestern resigned their memberships, the
20 SSMA Board decided to eliminate the elongation requirement from the SSMA Certification
21 Program – even though the SSMA had justified this requirement just nine months earlier as
22 preventing failures from "brittle steel."

23 102. The July 2011 SSMA deletion of the elongation requirement confirms it was a
24 sham intended to force ClarkWestern and Dietrich from SSMA and, having served its purpose,
25 was no longer needed as it served no legitimate purpose.

26 103. Further evidence of the sham nature of the elongation requirement is that a
27 number of the Ohio and Nevada Defendants began using high yield, low ductility steel after
28 Dietrich and ClarkWestern left the SSMA – despite having voted for the elongation requirement

as a way to eliminate low ductility steel and inflict economic harm on Dietrich and ClarkWestern.

IX. DEFENDANTS' UNLAWFUL USE OF THE SHAM STANDARDS

104. Many project specifications require the use of steel framing products certified by the SSMA. In furtherance of the conspiracy, the SSMA distributed a flyer in April 2011. It listed the members of the SSMA with ClarkWestern and Dietrich not being on the list, having been forced out and boycotted by the sham elongation and coatings standards. Hence, ClarkWestern's and Dietrich's steel framing products were no longer authorized for use on many projects because they were no longer members of the SSMA.

105. The April 2011 SSMA flyer also prominently promoted its Compliance Program and implied that ClarkWestern's and Dietrich's products were not compliant with the International Building Code. The authors of the flyer intended for readers to believe that this was the case and, in fact, a reasonable reading of the flyer was that only products that met the requirements of the SSMA standards were International Building Code-compliant. The flyer specifically stated "SSMA developed its Code Compliance Certification Program as a means for member manufacturers to certify that structural and non-structural framing they produce complies with IBC 2009 code requirements." The natural and intended understanding was that products that were not SSMA certified did not comply with the International Building Code.

106. In furtherance of the conspiracy and in concert with the April 2011 SSMA flyer discussed in the above two paragraphs, Marino\WARE's President and Chief Executive Officer, William "Chip" Gardner III, wrote on SSMA letterhead a "to whom it may concern" letter dated April 12, 2011, in his role as the Chairman of SSMA. SSMA widely distributed this letter to its members and hundreds of other key players in the building industry through electronic and other forms of communications. Mr. Gardner stated in part:

"Clark[Western] and Dietrich are no longer certified code compliant by the SSMA program, and have been removed from the web site. Furthermore, they should be removed from all references or listings of SSMA members. This includes removing them from SSMA-member specifications. . . . Dietrich, Clark[Western] and ClarkDietrich

1 Building Systems can NO LONGER use the [SSMA] report to promote or support their
2 products. If you would like to supply SSMA certified code compliant product which
3 conforms to the [SSMA report], please refer to our web site at www.ssma.com for a
4 current list of members.”

5 107. Through its April 2011 flyer and Mr. Gardner’s April 12, 2011 letter, SSMA, in
6 furtherance of the conspiracy, accomplished one of its principal goals: enforcing the sham
7 standards and thereby precluding the use of any ClarkWestern, Dietrich and now ClarkDietrich
8 products on any of the many projects that required the use of products produced by SSMA
9 members.

10 108. In July 2011, as noted above, the SSMA released a revised version of the
11 Compliance Program. It deleted the sham elongation requirement, but retained the sham
12 coatings requirement. As a practical matter, the sham coatings requirement would separately
13 prohibit the use of ClarkDietrich’s ProSTUD® steel framing products produced through cold
14 reduction technology just as if the elongation requirement had not been deleted.

15 109. In the summer and fall of 2011, Mr. Gardner, both the Chief Executive Officer of
16 Ohio Defendant Marino\Ware and of the SSMA, realized that ClarkDietrich’s products would
17 likely satisfy the sham SSMA 250 hour salt spray coatings standard. In furtherance of the
18 conspiracy, the SSMA revised its standards yet again in late November 2011, as a practical
19 matter increasing the salt spray coatings standard from 250 to 500 (recall the Task Force
20 recommended only a 75 hour salt spray coating standard in August 2010).

21 110. In a February 2012 email to the SSMA Board of Directors from the SSMA
22 Technical Director Don Allen, the attached materials showed that SSMA knew that its sham
23 coatings standard was substantially more restrictive than the International Building Code.

24 111. In furtherance of the conspiracy in which the Nevada Defendants joined and in
25 which they actively participated and from which they never withdrew, Ohio Defendants
26 Marino\WARE, CEMCO, Telling, and the CSSA have continued to collude to disparage
27 ClarkDietrich and its EQ coatings, to promote the adoption of industry standards designed to
28

1 harm ClarkDietrich and eliminate its competitive advantage, and generally to inflict competitive
2 harm on ClarkDietrich, all in furtherance of the conspiracy. For example:

3 (a) Ohio Defendants CSSA, Marino\WARE, CEMCO, and Telling have used
4 false, misleading and deceptive tactics intended to induce contractors,
5 architects and others who purchased, used or recommended
6 ClarkDietrich's ProSTUD® nonstructural framing products into
7 incorrectly believing that those products do not comply with the IBC.

8 (b) On or about September 26, 2013, Marino\WARE, CEMCO and Telling,
9 acting through their association, the CSSA, disseminated an electronic
10 publication to thousands of industry participants nationwide, including
11 those who purchased, used or recommended ClarkDietrich's ProSTUD®
12 nonstructural framing products, stating that "EQ Coatings Are Not
13 Recognized By The Code," and that contractors who use products with an
14 EQ coating will likely incur liability for doing so. This publication was
15 distributed the day before a meeting of the Drake Group. The Drake
16 Group is a buying group consisting of 72 companies with 275 locations
17 and collectively represents one of the largest purchasers of nonstructural
18 steel framing products. This publication was timed to have maximum
19 impact on the Drake Group. Defendants knew that Drake Group members
20 purchased, used or recommended use of ClarkDietrich's ProSTUD®
21 nonstructural framing products.

22 (c) Marino\WARE's, CEMCO's, and Telling's personnel and agents have
23 continued to communicate to customers of ClarkDietrich and others in the
24 industry the false and misleading information contained in their September
25 26, 2013 publication, all in an effort to unfairly and improperly harm
26 ClarkDietrich's business and to divert sales and profits from ClarkDietrich
27 to themselves by deliberately confusing the marketplace.
28

112. The SSMA and its membership assisted the Ohio Defendants Marino\WARE, CEMCO, Telling, and the CSSA in the 2013 attacks on ClarkDietrich and its cold reduction technology. In response to a request for assistance from Marino\WARE, the SSMA, through its the new Technical Director, who is the former lead engineer at Marino\WARE, proposed an amendment to ASTM C 645 that was designed to prohibit EQ coatings like those used by ClarkDietrich on nonstructural steel framing products. There was no bona fide technical, scientific, engineering, or safety justification for that proposed amendment. All of the instances of anticompetitive disparagement stated in the previous paragraph were part of a collusive campaign by the Nevada and Ohio Defendants to influence a vote on that proposed amendment to ASTM C 645.

113. The Nevada and Ohio Defendants colluded to influence the passage of this amendment to ASTM C 645 for the purpose of inflicting competitive harm on ClarkDietrich.

114. However, industry reaction was so negative to the conspiracy's efforts to amend ASTM C 645 to preclude EQ coatings that it was apparent to the conspirators the attempt would fail, and hence they abandoned the amendment before it could be voted down.

X. THE RESULTING HARM TO COMPETITION

115. The Nevada and Ohio Defendants' actions have harmed competition in the nationwide market for nonstructural steel framing products, and that harm will continue and increase if these actions are not stopped. The goal of the Defendants' collusion is to eliminate part or all of a particular product line – ClarkDietrich's ProSTUD® – from the market and destroy competitive and cost advantages enjoyed by ClarkDietrich.

116. ClarkDietrich has received hundreds of communications from customers and has lost orders on the basis of these false, misleading and deceptive tactics. In addition, numerous current and prospective customers have stated that they will no longer purchase ClarkDietrich's ProSTUD® products with EQ coatings.

117. These false, misleading and deceptive representations have been targeted at companies and person Defendants knew had relationships with ClarkDietrich, including, among others, persons and entities that formulate architectural specifications, who have excluded or

disqualified ClarkDietrich's ProSTUD® products with EQ coatings from those specifications. Absent specific approval to the contrary, contractors must use what the architect specifies. When architectural specifications prohibit the use of products with EQ coatings, ClarkDietrich has no ability to persuade its customers, consumers and users to purchase products with EQ coatings for any project to which those specifications apply. ClarkDietrich has little or no ability or opportunity to combat changes to architectural specifications that were caused by the conspirators' false, misleading, and deceptive tactics.

XI. THE SPECIFIC ACTS BY THE NEVADA DEFENDANTS IN FURTHERANCE OF THE CONSPIRACY, THEIR FAILURE TO WITHDRAW FROM THE CONSPIRACY AND THEIR RICO "PREDICATE" ACTS

118. The Nevada Defendants engaged in conduct in furtherance of the conspiracy. Such collusive conduct was in their economic self-interest, as each of them would benefit from hobbling or eliminating ClarkWestern's and Dietrich's (and later ClarkDietrich's) ability to compete in the nationwide market for nonstructural steel framing products.

119. Each of the Nevada Defendants voted at the October 20, 2010 meeting in Las Vegas to adopt the sham standards. Absent their votes, the SSMA Certification Program containing the sham standards would not have been adopted. Their participation in the conspiracy was critical to its success.

120. The Nevada Defendants were aware that the elongation and coatings requirements were sham and anticompetitive before they voted to adopt them.

121. The Nevada Defendants were on explicit notice that voting for the sham standards could constitute an antitrust violation. *See supra* paragraph 66 & 70.

122. The Nevada Defendants knew that the SSMA Task Force, composed of technically proficient members, had recommended without dissent a Compliance Program without either the elongation or coatings requirements subsequently adopted.

123. The Nevada Defendants knew that the SSMA Board, composed of members who (a) had no technical expertise but (b) had a vested economic interest in eliminating ClarkWestern

1 and Dietrich as competitors, had rejected the Task Force's Certification Program and demanded
2 that the sham elongation and coating requirements be added.

3 124. The Nevada Defendants knew that the AWCI, the primary trade association for
4 users and consumers of nonstructural steel framing products, had vigorously and repeatedly
5 condemned the sham standards as not required by International Building Code, not serving any
6 legitimate safety goal, discriminating against ClarkWestern and Dietrich and their innovative use
7 of cold reduction mill technology, and as anticompetitive as the sham standards would increase
8 the cost to end consumers while providing no countervailing benefit.

9 125. The Nevada Defendants knew from SSMA's own Technical Director that the
10 International Building Code had no elongation requirement. *See supra* paragraph 67.

11 126. With all this information in front of them, the Nevada Defendants each went
12 ahead and voted in favor of the sham standards, without which votes the sham standards would
13 not have been adopted. In so doing, each of the Nevada Defendants affirmatively joined the
14 conspiracy and voted for the sham standards in furtherance of the conspiracy.

15 127. The aims of the conspiracy did not stop at adopting the sham standards, but (as
16 alleged above and below) also *enforcing* them, and, once adopted, using them to falsely
17 disparage ClarkWestern's, Dietrich's and ClarkDietrich's nonstructural steel framing products to
18 purchasers, users, and those who recommend use of ClarkDietrich products and who they knew
19 had relationships with ClarkDietrich. Having joined and acted affirmatively in furtherance of the
20 conspiracy, the Nevada Defendants are liable for all of the illegal conduct of the conspiracy
21 absent a meaningful and affirmative withdrawal from it.

22 128. None of the Nevada Defendants affirmatively withdrew from the conspiracy.

23 129. To effectively withdraw from a conspiracy, a conspirator must take affirmative
24 acts inconsistent with the object of the conspiracy and communicate those acts in a manner
25 reasonably calculated to reach co-conspirators. None of the Nevada Defendants took affirmative
26 acts inconsistent with the object of the conspiracy.

27 130. The Nevada Defendants engaged in at least two types of RICO predicate acts in
28 furtherance of the conspiracy:

- (a) The Nevada Defendants engaged in numerous acts of wire fraud by sending emails and making telephone calls across state lines in furtherance of the conspiracy, in violation of 18 U.S.C. § 1343. These telephone calls and emails included, but were not limited to, telephone calls and emails sent to facilitate their attendance at the October 20, 2010 SSMA meeting in Las Vegas for the express purpose of voting in favor of the sham standards.
- (b) After the adoption of the sham SSMA elongation and coatings requirements, at least Defendants Allsteel (www.allsteelproducts.com), Craco (www.cracometals.com), Custom Stud (www.customstud.com) and Frametek (www.frameteksteel.com) added language to their Internet sites promoting that their products were “SSMA Compliant”. These Defendants did so in furtherance of the conspiracy, with the specific intent and likely effect to confuse customers and to steal business from ClarkDietrich. An additional and separate act of wire fraud occurred each time an Internet user visited the websites of the Nevada Defendants containing the “SSMA Compliant” notice after the adoption of the sham standards through electronic communications that crossed state borders.
- (c) The Nevada Defendants engaged in numerous acts of mail fraud by sending letters and materials through the U.S. mail and/or through courier companies such as FedEx and UPS across state lines in furtherance of the conspiracy, in violation of 18 U.S.C. § 1341. These letters and materials included, but were not limited to, letters and materials needed or otherwise used at the October 20, 2010 SSMA meeting in Las Vegas, which were used for the express purpose of voting in favor of the sham standards. They also

1 included the November 12, 2010 letter from the SSMA's General
2 Counsel to AWCI, threatening to sue AWCI and its President over
3 its opposition to the sham standards.

4 131. What is more, the predicate acts of the conspirators include the predicate acts of
5 the Ohio Defendants, which involved numerous acts of wire fraud and mail fraud, some of which
6 are set forth *supra* in paragraphs 74, 90, 91, 92, 95, 96, 104, 106, 110 & 111(b). These amount
7 to literally thousands of emails and letters sent by SSMA and CCSA in furtherance of the
8 conspiracy. For example, the CCSA electronic publication reference in paragraph 111(b)
9 involved literally thousands of predicate acts of wire and/or mail fraud.

10 **XII. THE CONSPIRATORS NOT ONLY CONSPIRED TO ADOPT SHAM**
11 **STANDARDS, BUT THEY AFFIRMATIVELY AND AGGRESSIVELY SOUGHT**
12 **TO ENFORCE THOSE STANDARDS, WHICH STANDARDS WERE SELF-**
13 **ENFORCING IN ANY EVENT**

14 132. The Nevada and Ohio Defendants sought to enforce the sham elongation and
15 coatings standards in a number of ways including, without limitation:

- 16 (a) The publication of the SSMA Code Compliance Certification
17 Requirements containing the sham standards on its website.
- 18 (b) The publication of the Certified Member list on the SSMA
19 website, with the omission of ClarkDietrich.
- 20 (c) Requiring certification by all members and labeling of all certified
21 product units; members had to identify non-certified product units
22 as "NOT SSMA."
- 23 (d) Prohibiting any non-member from obtaining an SSMA
24 certification.

25 133. The SSMA's April 2011 flyer was an explicit effort to enforce the sham
26 elongation and coatings standards. *See supra* paragraph 105.

134. The SSMA April 12, 2011 letter to hundreds if not thousands of industry participants was another explicit effort to enforce the sham elongation and coating standards. *See supra* paragraph 106.

135. What is more, the sham elongation and coating standards were self-enforcing for at least three reasons as set forth in paragraphs 21, 58 & 64, hence adopting the standards at the same time set up their enforcement.

136. Some or all of the members of the conspiracy believed that the New Jersey settlement agreement compelled ClarkWestern and Dietrich (and later ClarkDietrich) to comply with all provisions of the SSMA Certification Program as enacted. *See supra* paragraph 21. Thus, upon their adoption, they believed ClarkWestern and Dietrich were bound to comply with the sham standards and thus they believed they could force them from the market or force them to adopt alternative, more expensive, manufacturing methods.

137. The SSMA Compliance Program standards were also self-enforcing because if a member's nonstructural steel framing products are not certified by the SSMA to be compliant, they cannot be used in the many projects that require SSMA certified products.

138. The SSMA Compliance Program standards were also self-enforcing because a member would be expelled from the organization if it failed to comply with the Program.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Conspiracy to Restrain Trade In Violation of Section 1 of the Sherman Act) **(Against All Defendants)**

139. ClarkDietrich incorporates each preceding paragraph of this Complaint as though fully set forth herein.

140. As alleged above, beginning at least as early as August 2010, and continuing thereafter, the Nevada Defendants, the Ohio Defendants and their co-conspirators SSMA and, later, the CSSA, entered into and engaged in a horizontal contract, combination or conspiracy in restraint of trade to (1) adopt sham industry standards that the conspirators knew ClarkWestern and Dietrich could not satisfy; (2) to then disparage their products and in particular their ProStud® line of framing products as unsafe and non-complaint with relevant industry codes;

1 and (3) to exclude them from the SSMA by adopting regulations ClarkWestern and Dietrich
2 could not satisfy, i.e., in substance and economic effect a group boycott, in violation of Section 1
3 of the Sherman Act, 15 U.S.C. § 1. As stated, such contract, combination or conspiracy amounts
4 to a group boycott of ClarkDietrich through the adoption and enforcement of sham standards
5 pursuant to an agreement that is so plainly anticompetitive no elaborate study of the industry is
6 needed to establish its illegality, and hence it constitutes a naked, per se violation of the federal
7 antitrust laws. What is more, such contract, combination or conspiracy is an unreasonable and
8 unlawful restraint of trade that lacks any countervailing procompetitive purpose and that
9 substantially foreclosed competition in the nationwide market for nonstructural steel framing
10 products.

11 141. The contract, combination or conspiracy of the Nevada Defendants, the Ohio
12 Defendants and their co-conspirators SSMA and CSSA occurred within the flow of, and
13 substantially affected, interstate commerce.

14 142. As a direct and proximate result of the contract, combination or conspiracy of the
15 Nevada Defendants, the Ohio Defendants and their co-conspirators SSMA and CSSA,
16 competition in the nationwide market for nonstructural steel framing products has been severely
17 decreased and ClarkDietrich has been injured and financially damaged in its business and
18 property, in amounts that are presently undetermined. ClarkDietrich has been injured in a
19 number of ways, including but not limited to the loss of past, present and future profits, the loss
20 of customers and potential customers, the loss of goodwill and product image, the loss of the
21 opportunity to compete for customers, and the prospective harm of its ProSTUD® line of
22 nonstructural framing products.

23 143. The purpose and effect of the contract, combination or conspiracy of the Nevada
24 Defendants, the Ohio Defendants and their co-conspirators SSMA and CSSA was to restrain
25 competition in the nationwide market of nonstructural steel framing products, and specifically to
26 exclude ClarkDietrich from that market.

27 144. The nationwide market for nonstructural steel framing products is an
28 economically relevant market. Nonstructural steel framing products are not reasonably

1 interchangeable with structural steel framing products, which are made of more expensive,
2 thicker gauge steel for load-bearing purposes. Nonstructural steel framing products are also not
3 reasonably interchangeable with nonstructural framing products that are not steel (such as wood),
4 because steel products are generally required for commercial construction applications because
5 they are not combustible. The relevant geographic market is nationwide because competitors in
6 the market compete on a nationwide basis.

7 145. At all relevant times, the Nevada Defendants, the Ohio Defendants and their co-
8 conspirators SSMA and CSSA had market power in the nationwide market for nonstructural
9 steel framing products. At the time the SSMA Compliance Program was adopted, the SSMA
10 represented nearly the entire relevant market. Even after ClarkWestern and Dietrich and other
11 companies left the SSMA, the Nevada Defendants and Ohio Defendants collectively represented
12 more than 50 percent of the nationwide market for nonstructural steel framing products, giving
13 them the ability to affect market-wide price and output through their collective actions.

14 **SECOND CLAIM FOR RELIEF**
15 **(Violation of RICO, 18 U.S.C. §§ 1962(c), 1962(d) and 1964(c))**
16 **(Against All Defendants)**

17 146. ClarkDietrich incorporates each preceding paragraph of this Complaint as though
18 fully set forth herein.

19 147. From at least August 2010 through an undetermined time after 2012, SSMA,
20 Marino\WARE, CEMCO and Telling constituted an association-in-fact RICO enterprise within
21 the meaning of 18 U.S.C. § 1961(4), which association-in-fact will be referred to herein as “the
22 SSMA RICO Enterprise.” The SSMA RICO Enterprise was engaged in, and its activities
23 affected, interstate commerce.

24 148. The SSMA RICO Enterprise had an ongoing organization with a framework for
25 making decisions, including but not limited to SSMA’s Board of Directors, functioned as a
26 continuing unit and had ascertainable structure and systems of authority guiding its operations,
27 separate and apart from the pattern of racketeering in which the SSMA RICO Enterprise
28 engaged.

149. The Nevada Defendants and Ohio Defendants were employed by or associated with the SSMA RICO Enterprise, but were distinct from the Enterprise.

150. The Nevada Defendants and Ohio Defendants directly and indirectly conducted and participated in the conduct of the SSMA RICO Enterprise through a pattern of racketeering, and conspired to do so, as set forth *supra* in paragraphs 23, 27, 55, 56, 68, 74, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 95, 96, 104, 105, 106, 109, 110, 111, 112, 119, 124, 127, 130 & 132(a)-(d).

151. The common and shared purpose of the SSMA RICO Enterprise was to collusively adopt sham elongation and coatings requirements and, once those sham standards were in place, to disparage ClarkWestern's, Dietrich's and, later, ClarkDietrich's ProSTUD® products as being unsafe and non-code-complaint, when in fact those products were fully compliant with the International Building Code, in an effort to eliminate those products from the market, thus allowing the Nevada Defendants and Ohio Defendants to charge higher than competitive prices.

152. The SSMA RICO Enterprise had longevity sufficient to permit it to pursue and achieve its common purpose and in fact achieved it.

153. The scheme of the Nevada and Ohio Defendants, which it achieved through their conduct or participation in the conduct of the SSMA RICO Enterprise, was inherently fraudulent. Its goal was to induce direct and indirect purchasers of nonstructural steel framing products not to buy such products from ClarkWestern, Dietrich and later ClarkDietrich, but instead to buy such products from the Nevada and Ohio Defendants, through false claims that the ProSTUD® line of products was unsafe, "BRITTLE" and non-code compliant, when in fact those products were safe and fully complied with the International Building Code. Every customer who would have purchased ProSTUD® products in the absence of the conspiracy by the Nevada and Ohio Defendants and their co-conspirator SSMA was defrauded.

154. The Nevada Defendants and Ohio Defendants used and conspired to use wire communication in furtherance of their conspiracy and racketeering enterprise, with the specific intent and for the purpose of executing their scheme or artifice to defraud, in violation of 18

1 U.S.C. § 1343, as set forth *supra* at paragraphs 74, 90, 91, 92, 95, 96, 104, 106, 110, 111(b),
2 130(b) & 132(a). They did so with the specific intent to defraud ClarkDietrich's customers and
3 with the specific intent to harm ClarkDietrich thereby.

4 155. The Nevada Defendants and Ohio Defendants sent and conspired to send mail and
5 other communication through the United States Postal Service and/or private and commercial
6 interstate carriers in furtherance of their conspiracy and racketeering enterprise, with the specific
7 intent and for the purpose of executing their scheme or artifice to defraud, in violation of 18
8 U.S.C. § 1341, as set forth *supra* at paragraphs 74, 90, 95, 96, 104 & 106.

9 156. In particular, the communications described in paragraphs 154 and 155 were sent
10 by SSMA as part of the fraudulent scheme and pattern of racketeering to literally hundreds and
11 sometimes thousands of important participants in the domestic nonstructural steel framing
12 industry, including purchasers, users and persons who recommended the use of ClarkDietrich
13 nonstructural steel framing products.

14 157. The Nevada Defendants and the Ohio Defendants knowingly engaged or
15 attempted to engage in monetary transactions in criminally derived property of a value greater
16 than \$10,000, which property was or would have been derived from specified unlawful activity,
17 including but not limited to monetary transaction of proceeds, including deposit or attempted
18 deposit or transfer or attempted transfer, of revenue generated by the Nevada Defendants and the
19 Ohio Defendants from sales of nonstructural steel framing products that they obtained, in whole
20 or in part, due to the effect of the fraudulent scheme and/or revenue generated by the Nevada
21 Defendants and the Ohio Defendants from sales of nonstructural steel framing products in
22 circumstances in which the success of the fraudulent scheme deprived ClarkDietrich of notice of
23 the potential sale or the opportunity to bid or otherwise compete for the potential sale. The
24 Nevada Defendants and the Ohio Defendants committed or attempted to commit that offense in
25 the United States. Such actions are in violation of 18 U.S.C. § 1957.

26 158. The Nevada Defendants and the Ohio Defendants knowingly traveled in interstate
27 or foreign commerce or used the mail or any facility in interstate or foreign commerce, with
28 intent to do so thereafter distributed or attempted to distribute the proceeds of any unlawful

1 activity; or promoted, managed, established, carried on, or facilitated the promotion,
2 management, establishment, or carrying on, of any unlawful activity or attempted to do so. Said
3 unlawful activity included, but was not limited to, violations of 18 U.S.C. § 1957, as described in
4 Paragraphs 74, 90, 91, 92, 95, 96, 104, 106, 110, 111(b), 130(b), 132(a), 154, 155 and 158 of this
5 Complaint.

6 159. The acts of wire and mail fraud, of engaging in prohibited monetary transactions
7 and of engaging in prohibited interstate travel or use of the mails or other facility of interstate
8 commerce had continuity, in that they occurred over the course of well more than a year.

9 160. What is more, the Nevada Defendants and Ohio Defendants intended the SSMA
10 RICO Enterprise to function for years into the future as the sham standards eliminated
11 ClarkWestern's and Dietrich's, and later ClarkDietrich's, ProSTUD® line of products. The
12 SSMA RICO Enterprise likely would have functioned for years into the future without the
13 responses of the industry to the scheme, including but not limited to (a) AWCI's protests about
14 the scheme, (b) ClarkWestern and Dietrich's forced exit from SSMA and (c) the withdrawal of
15 other industry players due to the collusive misconduct of the Nevada and Ohio Defendants.

16 161. The acts of wire and mail fraud, of engaging in prohibited monetary transactions
17 and engaging in prohibited interstate travel or use of the mails or other facility of interstate
18 commerce were related in purpose and effect, that is, to restrain and attempt to eliminate from
19 the market the innovative ProSTUD® line of products, so that the Nevada Defendants and Ohio
20 Defendants could benefit from higher than competitive prices.

21 162. The Nevada and Ohio Defendants intended to eliminate the ProSTUD® line of
22 products. To accomplish that goal, they sent and conspired to send misrepresentations about
23 ClarkWestern's, Dietrich's and later ClarkDietrich's products through the mails and wires to
24 those companies' they knew to be ClarkDietrich customers and users of ClarkDietrich's
25 nonstructural steel framing products, among others. As a result of these misrepresentations,
26 ClarkDietrich and its predecessor companies lost sales, revenues and profits by reason of a
27 pattern of mail and wire fraud, even though ClarkDietrich and its predecessor companies did not
28

1 themselves rely on the fraudulent mails and wires. *See Bridge v. Phoenix Bond & Indemn. Co.*,
2 553 U.S. 639, 649-650 (2008).

3 163. As set forth above, the Nevada Defendants and Ohio Defendants agreed and
4 conspired to violate 18 U.S.C. § 1962(c), knowing their predicate acts were part of a pattern of
5 racketeering activity and agreed to the commission of those acts to further the schemes and
6 artifices described above. That conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c),
7 in violation of 18 U.S.C. § 1962(d).

8 164. ClarkDietrich has been injured in its business or property by the Nevada
9 Defendants and Ohio Defendants' violation of 18 U.S.C. § 1962(c) and 1962(d), including injury
10 by reason of the predicate acts constituting the pattern of racketeering.

11 165. As a result of the violations of 18 U.S.C. § 1962(c) and 1962(d) by the Nevada
12 Defendants, ClarkDietrich has suffered substantial damages, in an amount to be proved at trial.

13 166. Pursuant to 18 U.S.C. § 1964(c), ClarkDietrich is entitled to recover treble their
14 general and special compensatory damages, plus interest, costs and attorneys' fees, by reason of
15 the Nevada Defendants violations of 18 U.S.C. § 1962(c).

16 **THIRD CLAIM FOR RELIEF**
17 **(Intentional Interference with Prospective Economic Advantage)**
18 **(Against All Defendants)**

19 167. ClarkDietrich incorporates each preceding paragraph of this Complaint as though
20 fully set forth herein.

21 168. ClarkDietrich possessed a prospectively economically advantageous business
22 relationship with then-current and prospective purchasers and users of nonstructural steel
23 framing products including but not limited to persons and entities that formulate architectural
24 specifications, architects and other parties who specified non-structural steel framing products
25 for use in construction. This includes members of construction product purchasing groups such
26 as the Drake Group referenced in paragraph 111(b).

27 169. These prospective business relationships contained the probability of future
28 economic benefit in the form of profitable customer relationships, contracts and specifications.

170. Because the SSMA members were in competition and knew the customer base, the Nevada Defendants knew of these prospective business relationships. Some were publicly known. Some were known within the industry. Some or all of the Defendants were often asked to submit bids on projects in direct competition to ClarkDietrich.

171. As set forth herein, through the adoption of the sham standards, the promotion of SSMA certification under the sham standards, and the use of disparaging communication to purchasers or users of nonstructural steel framing products, including those they knew to have business relationships with ClarkDietrich, the Nevada Defendants intentionally prevented ClarkDietrich from enjoying its prospective economically advantageous business relationships with those parties or otherwise to interfere with and disrupt these relationships.

172. The Nevada Defendants have no privilege or justification to prevent, disrupt or interfere with ClarkDietrich's prospective economically advantageous business relationships.

173. As a direct and proximate result of the Nevada Defendants' above-explained tortious interference, these prospective economically advantageous business relationships have been actually disrupted causing prospective customers to contract with and purchase from the Nevada Defendants or other market participants instead of with ClarkDietrich, causing ClarkDietrich to lose significant market share generally and causing reduced purchase volume from ClarkDietrich customers specifically. Similarly, as a direct and proximate result of the Nevada Defendants' above-explained tortious interference, these prospective economically advantageous business relationships have caused architects and persons and entities that formulate architectural specifications to specify the use of products manufactured by the Nevada Defendants or other market participants instead of those manufactured by ClarkDietrich.

174. As a direct and proximate result of the Nevada Defendants' tortious conduct, ClarkDietrich has suffered economic harm and damages in an amount to be proven at trial to include but not limited to lost sales, lost profits, lost market share, diminution in ClarkDietrich's business goodwill and other harms to ClarkDietrich's pecuniary interests.

175. The Nevada Defendants interfered with these relationships with malice and with the intent to cause harm to ClarkDietrich's business.

FOURTH CLAIM FOR RELIEF
(Common Law Civil Conspiracy)
(Against All Defendants)

176. ClarkDietrich incorporates each preceding paragraph of this Complaint as though fully set forth herein.

177. The Nevada Defendants, acting intentionally and in concert with each other and other third parties, conspired to intentionally interfere with ClarkDietrich's prospective economically advantageous business relationships, as set forth above.

178. The Nevada Defendants, through their concerted actions, intended to accomplish unlawful objectives for the purpose of harming ClarkDietrich.

179. As a direct and proximate result of the Nevada Defendants' civil conspiracy, ClarkDietrich has suffered damages in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)
(Against All Defendants)

180. ClarkDietrich incorporates each preceding paragraph of this Complaint as though fully set forth herein.

181. The Nevada Defendants unjustly received benefits at the expense of ClarkDietrich through the Nevada Defendants' wrongful conduct including but not limited to: unfair, anticompetitive business practices; interference with ClarkDietrich's prospective business relationships; and other unfair business practices and tortious conduct.

182. The Nevada Defendants continue to unjustly retain these benefits at the expense of ClarkDietrich. It would be unjust for the Nevada Defendants to retain any value they obtained as a result of their wrongful conduct.

183. ClarkDietrich is entitled to full restitution of all amounts in which the Nevada Defendants have been unjustly enriched at ClarkDietrich's expense.

PRAYER FOR RELIEF

WHEREFORE, plaintiff ClarkDietrich respectfully requests that the Court award the following relief:

1. A judgment that the Nevada Defendants have violated Section 1 of the Sherman Act, 15 U.S.C. § 1; 18 U.S.C. §§ 1962(c)-(d) and are liable for the torts of intentional interference with prospective economic advantage, common law civil conspiracy and unjust enrichment;

2. An award of damages in an amount to be determined at trial;

3. That ClarkDietrich be awarded, and defendants be ordered to disgorge, all payments, revenues, profits, monies and any other benefits derived or obtained as a result of the conduct alleged herein;

4. Pursuant to 15 U.S.C. § 15(a) and 18 U.S.C. 1964(c), an award of treble damages resulting from the Nevada Defendants' violations of the Sherman Act and RICO, and punitive and exemplary damages for the Nevada Defendants' other tortious conduct as plead above;

5. A constructive trust with respect to all improper revenue or other property improperly possessed or controlled by the Nevada Defendants or any agent of any Nevada Defendant;

6. Pre-judgment and post-judgment interest at the maximum legal rate;

7. ClarkDietrich's costs, expenses and reasonable attorneys' fees in bringing this action; and

8. Such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, ClarkDietrich demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 13th day of August, 2014.

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