Defendant PACIFIC COAST BUILDING PRODUCTS dba ANDERSON TRUSS ("Anderson Truss") submits this Separate Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment or, in the Alternative, Summary Adjudication as to the Second Amended Complaint.
Amended Complaint of Plaintiff CILKER APARTMENTS, LLC ("Plaintiff"). For simplicity, the references to evidence will correspond to the designations in the Appendix of Exhibits.

Supporting statement:

**ISSUE 1 – PLAINIF'S FIRST, SECOND, THIRD, SIXTH, AND SEVENTH CAUSES OF ACTION (BASED ON CONTRACT OR WARRANTY) FAIL BECAUSE PLAINTIFF IS NOT IN PRIVITY OF CONTRACT WITH ANDERSON TRUSS.**

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<td><strong>2.</strong> Western National Construction (&quot;WNC&quot;) was the General Contractor for the Project. On July 1, 2000, Plaintiff and WNC entered into a contract (&quot;Prime Contract&quot;) for construction of the Project.</td>
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<td><strong>Evidence:</strong> Exh G; Exh I; 2/5/03 Payment, Exhibit J (&quot;Exh J&quot;); Exh K, p. 1; Exh L, ¶17;</td>
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3. The Project was constructed between 2002 and 2004.

**Evidence:** Bid Summary, Exhibit B ("Exh B"); Exh H; Exh I; Exh J; Exh K, p. 1; Exh L, ¶17; Exh M, ¶2, 45; Merry Dec, Exhibit N ("Exh N"), ¶4, 7, 8; Merry Dec, Exhibit O ("Exh O"), ¶4-7; Merry Dec, Exhibit P ("Exh P"), ¶8; Exh Q, p. 66:5-7; Love Deposition Transcript, Exhibit S ("Exh S"), 78:16 – 79:4, 80:4-7, 85:16-20, 104:17-21, 105:2-10, 105:24 – 106:9; Burba Dec, ¶¶4, 8.

4. Anderson Truss manufactures roof truss systems. At all relevant times, Anderson Truss was an active California corporation in good standing.

**Evidence:** Exh B; Preliminary Change Order Request, Exhibit C ("Exh C"); 10/15/02 Invoice, Exhibit D ("Exh D"); Purchase Order Request, Exhibit E ("Exh E"); Purchase Order, Exhibit F ("Exh F"); Exh Q, p. 129:13-19, 133:8-18; Exh R, p. 274:2-6; Burba Dec, ¶3.

5. Anderson Truss manufactured, delivered, and provided drawing packages for roof trusses for the Project.

**Evidence:** Exh A; Exh B; Exh C; Exh D; Exh E; Exh F; Exh I; Exh Q, p. 129:13-19, 133:8-18; Burba Dec, ¶¶3, 4, 6, 7.

6. The majority of truss packages were delivered to the Project by Anderson Truss no later than July of 2002.

**Evidence:** Exh A; Exh B; Exh C; Exh D; Exh F; Exh I; Exh Q, p. 115:16-19; Exh R, p. 390:7-10; Exh S, p. 78:16 – 79:4, 80:4-7, 85:16-20, 104:17-21, 105:2-10, 105:24 – 106:9; Burba Dec, ¶¶4, 8.
7. The roof trusses delivered to the Project by Anderson Truss were incorporated into the rough framing. Installation of roof trusses at the Project was within the scope of work of rough framers. There were three (3) separate rough framers that worked on the Project.


8. The first framer on the Project, Multi-Building Structures, Inc. (“MBS”), stopped performing its work on the Project prior to mid-2002.

**Evidence:** Exh A; Exh K, p. 1; Exh Q, p. 69:7-10; Exh R, p. 275:15-18, 350:4-13.


10. Madera Construction was retained to complete the rough framing on the Project and correct the defective work previously performed by MBS.


**Evidence:** Exh K, p. 1; Exh N, ¶ 4, 7; Exh O, ¶ 2-6; Exh P, ¶ 8; Exh Q, p. 23:16-21, 32:5-7,
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<td>Anderson Truss delivered additional roof truss packages in October 2002 due to architectural and structural changes to the plans. This was Anderson Truss’s final truss delivery to the Project.</td>
<td><strong>Evidence:</strong> Exh B; Exh C; Exh D; Exh E; Exh F; Exh H; Exh I; Exh J; Exh Q, p. 117:17-25, 129:2-5, 129:13-19; Exh R, p. 350:4-13, 350:24 - 351:11, 390:7-10; Burba Dec, ¶4.</td>
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17. In August 2003, Madera Framing, Inc. ("Madera Framing") replaced Madera Construction as the framer on the Project. Madera Framing completed the rough framing for the Project on September 11, 2003.


18. As of September 2003, all roof truss systems were installed and all rough framing at the Project was completed.


19. On December 1, 2003, Madera Framing filed a Complaint in Santa Clara County Superior Court for unpaid work on the Project. Plaintiff and WNC were named defendants in the Complaint.

**Evidence:** Exh K, p. 1; Exh N, ¶¶10, 12; Request for Judicial Notice ("RJN") 1.

20. Within the action, WNC claimed that Madera Construction and Madera Framing's work (i.e., rough framing) was deficient and defective.

**Evidence:** Exh K, p. 1; RJN1.


22. Within the Settlement Agreement, Plaintiff released and discharged Madera Construction and Madera Framing "from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or related to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein."

Evidence: Exh K, p. 3-4.

23. Within paragraph 3 of the Settlement Agreement, Plaintiff retained claims related to the Project "only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed." It was the intention of Plaintiff in executing the Settlement Agreement that the Settlement Agreement "shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3...."

Evidence: Exh K, p. 3-4.

24. Destructive testing is not necessary to inspect roof trusses at the Project. The roof trusses are readily visible within the attic and may be observed by reasonable inspection.

Evidence: Burba Dec, ¶6.

25. On December 13, 2013, Plaintiff filed its Complaint for Damages related to construction defects at the Project.

Evidence: Exh L.
26. On September 25, 2015, Plaintiff filed its Second Amended Complaint alleging: 1) breach of contract; 2) breach of implied warranty; 3) breach of express warranty; 4) negligence; 5) strict liability; 6) express contractual indemnity; and, 7) breach of third party beneficiary contract. Anderson Truss was named to the Second Amended Complaint as a defendant to all causes of action alleged therein.

**Evidence:** Exh M.

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**ISSUE 2 – PLAINTIFF’S SECOND AND THIRD CAUSES OF ACTION (RESPECTIVELY, FOR IMPLIED AND EXPRESS WARRANTY) FAIL BECAUSE PLAINTIFF’S CLAIMS ARE BARRED BY THE ONE-YEAR LIMITATIONS PERIOD UNDER CIVIL CODE SECTION 1791.1.**

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### DEFENDANT’S SEPARATE STATEMENT OF UNDISPUTED FACTS

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2. Western National Construction ("WNC") was the General Contractor for the Project. On July 1, 2000, Plaintiff and WNC entered into a contract ("Prime Contract") for construction of the Project.

**Evidence:** Exh G; Exh I; 2/5/03 Payment, Exhibit J ("Exh J"); Exh K, p. 1; Exh L, ¶17; Exh M, ¶2, 45.

3. The Project was constructed between 2002 and 2004.

**Evidence:** Bid Summary, Exhibit B ("Exh B"); Exh H; Exh I; Exh J; Exh K, p. 1; Exh L, ¶17; Exh M, ¶2, 45; Merry Dec, Exhibit N ("Exh N"), ¶4-7; Merry Dec, Exhibit O ("Exh O"), ¶4-7; Merry Dec, Exhibit P ("Exh P"), ¶8; Exh Q, p. 66:5-7; Love Deposition Transcript, Exhibit S ("Exh S"), 78:16 – 79:4, 80:4-7, 85:16-20, 104:17-21, 105:2-10, 105:24 – 106:9; Burba Dec, ¶4, 8.

4. Anderson Truss manufactures roof truss systems. At all relevant times, Anderson Truss was an active California corporation in good standing.

**Evidence:** Exh B; Preliminary Change Order Request, Exhibit C ("Exh C"); 10/15/02 Invoice, Exhibit D ("Exh D"); Purchase Order Request, Exhibit E ("Exh E"); Purchase Order, Exhibit F ("Exh F"); Exh Q, p. 129:13-19, 133:8-18; Exh R, p. 274:2-6; Burba Dec, ¶3.

5. Anderson Truss manufactured, delivered, and provided drawing packages for roof trusses for the Project.

**Evidence:** Exh A; Exh B; Exh C; Exh D; Exh E; Exh F; Exh I; Exh Q, p. 129:13-19, 133:8-18; Burba Dec, ¶3, 4, 6, 7.

6. The majority of truss packages were delivered to the Project by Anderson Truss no later than
July of 2002.


7. The roof trusses delivered to the Project by Anderson Truss were incorporated into the rough framing. Installation of roof trusses at the Project was within the scope of work of rough framers. There were three (3) separate rough framers that worked on the Project.


8. The first framer on the Project, Multi-Building Structures, Inc. ("MBS"), stopped performing its work on the Project prior to mid-2002.


10. Madera Construction was retained to complete the rough framing on the Project and correct the defective work previously performed by MBS.


12. At the time Madera Construction first began work on the Project (2002), roof trusses and roof sheathing were already installed. Defects with the installation of roof trusses were observed.


13. Anderson Truss delivered additional roof truss packages in October 2002 due to architectural and structural changes to the plans. This was Anderson Truss’s final delivery to the Project.

Evidence: Exh B; Exh C; Exh D; Exh E; Exh F; Exh H; Exh I; Exh J; Exh Q, p. 117-172; Exh R, p. 129-6:12; Exh F, p. 274-274:27; 275:15-18; 350:4-13, 350:24-351:11, 390:7-10; Burba Dec, ¶6.

14. There were no written contacts between Anderson Truss and either WNC or Plaintiff. Anderson Truss delivered roof trusses to the Project pursuant to Purchase Orders with WNC.

Evidence: Exh D, p. 1-2; Exh E; Exh F; Burba Dec, ¶6.

15. There were no third-party beneficiary provisions in the purchase orders between Anderson Truss and WNC.

Evidence: Exh E; Exh F.
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<td><strong>20.</strong> Within the action, WNC claimed that Madera Construction and Madera Framing's work (i.e., rough framing) was deficient and defective. <strong>Evidence:</strong> Exh K, p. 1; RJN1.</td>
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22. Within the Settlement Agreement, Plaintiff released and discharged Madera Construction and Madera Framing "from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or related to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein."

**Evidence:** Exh K, p. 3-4.

23. Within paragraph 3 of the Settlement Agreement, Plaintiff retained claims related to the Project "only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed." It was the intention of Plaintiff in executing the Settlement Agreement that the Settlement Agreement "shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3..."

**Evidence:** Exh K, p. 3-4.

24. Destructive testing is not necessary to inspect roof trusses at the Project. The roof trusses are readily visible within the attic and may be observed by reasonable inspection.

**Evidence:** Burba Dec, ¶6.
25. On December 13, 2013, Plaintiff filed its Complaint for Damages related to construction defects at the Project.

Evidence: Exh L.

26. On September 25, 2015, Plaintiff filed its Second Amended Complaint alleging: 1) breach of contract; 2) breach of implied warranty; 3) breach of express warranty; 4) negligence; 5) strict liability; 6) express contractual indemnity; and, 7) breach of third party beneficiary contract. Anderson Truss was named to the Second Amended Complaint as a defendant to all causes of action alleged therein.

Evidence: Exh M.

ISSUE 3—PLAINTIFF'S FIRST, SECOND, THIRD, SIXTH, AND SEVENTH CAUSES OF ACTION (BASED ON CONTRACT OR WARRANTY) FAIL BECAUSE PLAINTIFF'S CLAIMS ARE BARRED BY THE FOUR-YEAR LIMITATIONS PERIOD UNDER UNIFORM COMMERCIAL CODE SECTION 2725.

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**Evidence:** Exh G; Exh I; 2/5/03 Payment, Exhibit J ("Exh J"); Exh K, p. 1; Exh L, ¶17; Exh M, ¶2, 45.

3. The Project was constructed between 2002 and 2004.

**Evidence:** Bid Summary, Exhibit B ("Exh B"); Exh H; Exh I; Exh J; Exh K, p. 1; Exh L, ¶17; Exh M, ¶2, 45; Merry Dec, Exhibit N ("Exh N"), ¶4, 7, 8; Merry Dec, Exhibit O ("Exh O"), ¶4-7; Merry Dec, Exhibit P ("Exh P"), ¶8; Exh Q, p. 66:5-7; Love Deposition Transcript, Exhibit S ("Exh S"), 78:16 - 79:4, 80:4-7, 85:16-20, 104:17-21, 105:2-10, 105:24 - 106:9; Burba Dec, ¶¶4, 8.

4. Anderson Truss manufactures roof truss systems. At all relevant times, Anderson Truss was an active California corporation in good standing.

**Evidence:** Exh B; Preliminary Change Order Request, Exhibit C ("Exh C"); 10/15/02 Invoice, Exhibit D ("Exh D"); Purchase Order Request, Exhibit E ("Exh E"); Purchase Order, Exhibit F ("Exh F"); Exh Q, p. 129:13-19, 133:8-18; Exh R, p. 274:2-6; Burba Dec, ¶3.

5. Anderson Truss manufactured, delivered, and provided drawing packages for roof trusses for the Project.

*SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PACIFIC COAST BUILDING PRODUCTS DBA ANDERSON TRUSS’S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AS TO PLAINTIFF’S SECOND AMENDED COMPLAINT*
Evidence: Exh A; Exh B; Exh C; Exh D; Exh E; Exh F; Exh I; Exh Q, p. 129:13-19, 133:8-18; Burba Dec, ¶¶3, 4, 6, 7.

6. The majority of truss packages were delivered to the Project by Anderson Truss no later than July of 2002.


7. The roof trusses delivered to the Project by Anderson Truss were incorporated into the rough framing. Installation of roof trusses at the Project was within the scope of work of rough framers. There were three (3) separate rough framers that worked on the Project.


8. The first framer on the Project, Multi-Building Structures, Inc. ("MBS"), stopped performing its work on the Project prior to mid-2002.


10. Madera Construction was retained to complete the rough framing on the Project and correct the defective work previously performed by MBS.


12. At the time Madera Construction first began work on the Project (2002), roof trusses and roof sheathing were already installed. Defects with the installation of roof trusses were observed.


13. Anderson Truss delivered additional roof truss packages in October 2002 due to architectural and structural changes to the plans. This was Anderson Truss’s final truss delivery to the Project.


14. There were no written contacts between Anderson Truss and, either, WNC or Plaintiff. Anderson Truss delivered roof trusses to the Project pursuant to Purchase Orders with WNC.
Evidence: Exh D, p. 1-2; Exh E; Exh F; Burba Dec, ¶6.

15. There were no third-party beneficiary provisions in the purchase orders between Anderson Truss and WNC.

Evidence: Exh E; Exh F.

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Evidence: Exh B; Exh J; Exh R, p. 274:2-6; Burba Dec, ¶6.

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Evidence: Exh K, p. 1; RJN1.


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Evidence: Burba Dec, ¶6.

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Evidence: Exh L.

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Evidence: Exh M.

ISSUE 4 — ALL OF PLAINTIFF'S CAUSES OF ACTION AGAINST ANDERSON TRUSS FAIL BECAUSE PLAINTIFF'S CLAIMS ARE BARRED BY THE TEN-YEAR LIMITATIONS PERIOD UNDER CODE OF CIVIL PROCEDURE SECTION 337.15.

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Conditional Waiver and Release, Exhibit H
("Exh H"); Mechanic’s Lien, Exhibit I ("Exh I");
Settlement Agreement, Exhibit K ("Exh K"), p.
1; 12/26/13 Complaint, Exhibit L ("Exh L"), ¶1,
17; Second Amended Complaint, Exhibit M
("Exh M"), ¶1; Merry Deposition Transcript, Vol
I, Exhibit Q ("Exh Q"), p. 14:9-15; Merry
Deposition Transcript, Vol II, Exhibit R ("Exh
R"), p. 274:22 - 275:2; Burba Declaration
("Burba Dec"), ¶2.

2. Western National Construction ("WNC") was
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Evidence: Exh G; Exh I; 2/5/03 Payment,
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8. The first framer on the Project, Multi-Building Structures, Inc. ("MBS"), stopped performing its work on the Project prior to mid-2002.


Madera Construction was retained to complete the rough framing on the Project and correct the defective work previously performed by MBS.


Madera Construction worked on the Project from approximately mid-2002 until mid-2003.


At the time Madera Construction first began work on the Project (2002), roof trusses and roof sheathing were already installed. Defects with the installation of roof trusses were observed.


Anderson Truss delivered additional roof truss packages in October 2002 due to architectural and structural changes to the plans. This was Anderson Truss’s final truss delivery to the Project.

Evidence: Exh B; Exh C; Exh D; Exh E; Exh F; Exh H; Exh I; Exh J; Exh Q, p. 117:17-25, 129:2-5, 129:13-19; Exh R, p. 350:4-13, 350:24
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19. On December 1, 2003, Madera Framing filed a Complaint in Santa Clara County Superior Court for unpaid work on the Project. Plaintiff and WNC were named defendants in the Complaint.

Evidence: Exh K, p. 1; Exh N, ¶¶10, 12; Request for Judicial Notice ("RJN") 1.

20. Within the action, WNC claimed that Madera Construction and Madera Framing's work (i.e., rough framing) was deficient and defective.

Evidence: Exh K, p. 1; RJN1.


22. Within the Settlement Agreement, Plaintiff released and discharged Madera Construction and Madera Framing "from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or related to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein."

Evidence: Exh K, p. 3-4.

23. Within paragraph 3 of the Settlement Agreement, Plaintiff retained claims related to the Project "only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed." It was the intention of Plaintiff in executing the Settlement Agreement that the
<table>
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<tr>
<th>Settlement Agreement “shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3…”</th>
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<tbody>
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<td><strong>Evidence:</strong> Exh K, p. 3-4.</td>
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</table>

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<th>24. Destructive testing is not necessary to inspect roof trusses at the Project. The roof trusses are readily visible within the attic and may be observed by reasonable inspection.</th>
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<td><strong>Evidence:</strong> Burba Dec, ¶6.</td>
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<tr>
<th>25. On December 13, 2013, Plaintiff filed its Complaint for Damages related to construction defects at the Project.</th>
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<td><strong>Evidence:</strong> Exh L.</td>
</tr>
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<tr>
<th>26. On September 25, 2015, Plaintiff filed its Second Amended Complaint alleging: 1) breach of contract; 2) breach of implied warranty; 3) breach of express warranty; 4) negligence; 5) strict liability; 6) express contractual indemnity; and, 7) breach of third party beneficiary contract. Anderson Truss was named to the Second Amended Complaint as a defendant to all causes of action alleged therein.</th>
</tr>
</thead>
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<td><strong>Evidence:</strong> Exh M.</td>
</tr>
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</table>
### DEFENDANT'S SEPARATE STATEMENT OF UNDISPUTED FACTS

<table>
<thead>
<tr>
<th>Moving Parties' Undisputed Material Facts and Supporting Evidence</th>
<th>Opposing Party's Response and Supporting Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Plaintiff is the owner of certain real property known as One Pearl Place Apartments located at One Pearl Place in San Jose, California (the “Project”). The Project consists of 182 residential units divided between two buildings.</td>
<td>1.</td>
</tr>
<tr>
<td>2. Western National Construction (“WNC”) was the General Contractor for the Project. On July 1, 2000, Plaintiff and WNC entered into a contract (“Prime Contract”) for construction of the Project.</td>
<td>2.</td>
</tr>
<tr>
<td><strong>Evidence:</strong> Exh G; Exh I; 2/5/03 Payment, Exhibit J (“Exh J”); Exh K, p. 1; Exh L, ¶17; Exh M, ¶2, 45.</td>
<td></td>
</tr>
<tr>
<td>3. The Project was constructed between 2002 and 2004.</td>
<td>3.</td>
</tr>
</tbody>
</table>
### Evidence

**4.** Anderson Truss manufactures roof truss systems. At all relevant times, Anderson Truss was an active California corporation in good standing.

**Evidence:** Exh B; Preliminary Change Order Request, Exhibit C ("Exh C"); 10/15/02 Invoice, Exhibit D ("Exh D"); Purchase Order Request, Exhibit E ("Exh E"); Purchase Order, Exhibit F ("Exh F"); Exh Q, p. 129:13-19, 133:8-18; Exh R, p. 274:2-6; Burba Dec, ¶3.

**5.** Anderson Truss manufactured, delivered, and provided drawing packages for roof trusses for the Project.

**Evidence:** Exh A; Exh B; Exh C; Exh D; Exh E; Exh F; Exh I; Exh Q, p. 129:13-19, 133:8-18; Burba Dec, ¶3, 4, 6, 7.

**6.** The majority of truss packages were delivered to the Project by Anderson Truss no later than July of 2002.

**Evidence:** Exh A; Exh B; Exh C; Exh D; Exh F; Exh I; Exh Q, p. 115:16-19; Exh R, p. 390:7-10; Exh S, p. 78:16 – 79:4, 80:4-7, 85:16-20, 104:17-21, 105:2-10, 105:24 – 106:9; Burba Dec, ¶4, 8.

**7.** The roof trusses delivered to the Project by Anderson Truss were incorporated into the rough framing. Installation of roof trusses at the Project was within the scope of work of rough framers. There were three (3) separate rough framers that worked on the Project.

8. The first framer on the Project, Multi-Building Structures, Inc. ("MBS"), stopped performing its work on the Project prior to mid-2002.


10. Madera Construction was retained to complete the rough framing on the Project and correct the defective work previously performed by MBS.


12. At the time Madera Construction first began work on the Project (2002), roof trusses and roof sheathing were already installed. Defects with the installation of roof trusses were observed.

13. Anderson Truss delivered additional roof truss packages in October 2002 due to architectural and structural changes to the plans. This was Anderson Truss’s final truss delivery to the Project.


14. There were no written contacts between Anderson Truss and, either, WNC or Plaintiff. Anderson Truss delivered roof trusses to the Project pursuant to Purchase Orders with WNC.

Evidence: Exh D, p. 1-2; Exh E; Exh F; Burba Dec, ¶6.

15. There were no third-party beneficiary provisions in the purchase orders between Anderson Truss and WNC.

Evidence: Exh E; Exh F.

16. All roof trusses manufactured and delivered to the Project by Anderson Truss were complete at the time of delivery.

Evidence: Exh B; Exh J; Exh R, p. 274:2-6; Burba Dec, ¶6.

17. In August 2003, Madera Framing, Inc. (“Madera Framing”) replaced Madera Construction as the framer on the Project. Madera Framing completed the rough framing for the Project on September 11, 2003.
| Evidence: Exh K, p. 1; Exh N, ¶¶7, 8, 10; ¶¶4-7; Exh P, ¶8; Exh Q, p. 23:16-21, 32:5-7, 43:10-11, 43:25 - 43:3, 44:13-14, 65:4-9, 115:24 – 116:3, 117:17-25, 129:2-5; Madera Framing, Inc.'s Responses to Special Interrogatories, Exhibit T (“Exh T”), p. 2:12-13. 18. As of September 2003, all roof truss systems were installed and all rough framing at the Project was completed. 19. On December 1, 2003, Madera Framing filed a Complaint in Santa Clara County Superior Court for unpaid work on the Project. Plaintiff and WNC were named defendants in the Complaint. 20. Within the action, WNC claimed that Madera Construction and Madera Framing's work (i.e., rough framing) was deficient and defective. 21. On July 7, 2004, Plaintiff, WNC, and Madera executed a Settlement Agreement and Release (“Settlement Agreement”). 22. Within the Settlement Agreement, Plaintiff released and discharged Madera Construction and Madera Framing “from any and all claims,
demands, arbitrations, actions, or causes of action, that arise out of or related to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein."

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23. Within paragraph 3 of the Settlement Agreement, Plaintiff retained claims related to the Project "only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed." It was the intention of Plaintiff in executing the Settlement Agreement that the Settlement Agreement "shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3..."

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24. Destructive testing is not necessary to inspect roof trusses at the Project. The roof trusses are readily visible within the attic and may be observed by reasonable inspection.

Evidence: Burba Dec, ¶6.

25. On December 13, 2013, Plaintiff filed its Complaint for Damages related to construction defects at the Project.

Evidence: Exh L.

26. On September 25, 2015, Plaintiff filed its Second Amended Complaint alleging: 1) breach of contract; 2) breach of implied warranty; 3) breach of express warranty; 4) negligence; 5) strict liability; 6) express contractual indemnity; and, 7) breach of third party beneficiary contract.
Anderson Truss was named to the Second Amended Complaint as a defendant to all causes of action alleged therein.

Evidence: Exh M.

Dated: February 24, 2016

PORTER SCOTT
A PROFESSIONAL CORPORATION

By

Chad S. Tapp
Cruz Rocha
Attorneys for Defendant/Cross-Defendant PACIFIC COAST BUILDING PRODUCTS dba ANDERSON TRUSS
PROOF OF SERVICE

I am a citizen of the United States and a resident of Sacramento County, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 350 University Avenue, Suite 200, Sacramento, California.

On February 25, 2016, I served a copy of the following document(s):

SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PACIFIC COAST BUILDING PRODUCTS DBA ANDERSON TRUSS’S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AS TO PLAINTIFF’S SECOND AMENDED COMPLAINT

in the following manner:

X SANTA CLARA E-FILE/SERVE: I caused to be served the above-listed document(s) on designated recipients through electronic transmission via the Santa Clara E-File/Serve system. Upon completion of said transmission of said documents, a certified receipt is issued to filing party acknowledging receipt by SC E-File/Serve’s system. Once SC E-File/Serve has served all designated recipients, proof of electronic service is returned to the filing party. The documents will then be available for download on the Santa Clara E-File/Serve website.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was signed at Sacramento, California on February 25, 2016.

Ruth Johnson

E-FILED: Feb 25, 2016 10:56 AM, Superior Court of CA, County of Santa Clara, Case #1-13-CV-258281 Filing #G-81193