

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MICHAEL HARNEY,

Plaintiff, on his own behalf and
on behalf of all others similarly
situated,

v.

**ASSOCIATED MATERIALS, LLC, dba
ALSIDE, a Delaware limited liability
company; and ASSOCIATED
MATERIALS INCORPORATED, dba
ALSIDE, a Delaware corporation,**

Defendants.

Case No. 3:16-cv-1587-SI

ORDER

Michael H. Simon, District Judge.

Plaintiff, Michael Harney, filed a putative class action complaint against Associated Materials, LLC and Associated Materials Incorporated (collectively “Defendants”) on August 4, 2016. ECF 1. Plaintiff alleges that Defendants manufactured, marketed, and sold defective siding. Plaintiff asserts several claims, including breach of an express warranty contract, breach of implied warranties for fitness and merchantability, negligence, unjust enrichment, and unlawful trade practices. Plaintiff also seeks declaratory judgments and injunctive relief from the Court.

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Defendants filed a Motion to Dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) on December 5, 2016. ECF 27. Defendants' argue that Plaintiff's Complaint lacks factual assertions necessary to support several of his claims. Plaintiff's memorandum in response to Defendants' motion asserts numerous facts not alleged in his Complaint. In their reply, Defendants correctly note that these new facts may not be considered by the Court in resolving Defendants' motion because they are not alleged in the Complaint.

The Court interprets Plaintiff's response as requesting leave to file an amended complaint. The Court GRANTS Plaintiff leave to amend his complaint, DENIES Defendants' pending Motion to Dismiss (ECF 27) as moot, and will evaluate the merits of any subsequent motion to dismiss by Defendants after Plaintiff files his First Amended Complaint. Plaintiff has until February 20, 2017, to file his First Amended Complaint.

IT IS SO ORDERED.

DATED this 6th day of February, 2017.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge