

Chris A. Johnson, Esq.
Dana L. Hupp, Esq.
Martin Rogers, Esq.
WORDEN THANE P.C.
P.O. Box 4747
Missoula, Montana 59806-4747
(406) 721-3400
cjohnson@wordenthane.com
dhupp@wordenthane.com
mrogers@wordenthane.com

Attorneys for Plaintiffs

FILED JAN 30 2017

SHIRLEY A. FAUST, Clerk
By [Signature] Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

METHOD, LLC, a Washington
Limited Liability Company dba
METHOD HOMES; and METHOD
CONTRACTING LLC, a Washington
Limited Liability Company,

Plaintiffs,

-vs-

MAKE IT RIGHT FOUNDATION, a
Delaware Corporation; MAKE IT
RIGHT – MONTANA, LLC, a
Delaware Limited Liability Company;
MIR MONTANA, LLC, a purported
Montana Limited Liability Company;
MIR INNOVATIONS, LLC, A
Delaware Limited Liability Company;
MAKE IT RIGHT FOUNDATION
dba MIR MONTANA; MIR
INNOVATIONS, LLC dba MIR

Dept. No. 3 John W. Larson

Cause No. DV-17-111

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

MONTANA; SAMUEL WHITT dba MIR MONTANA; JOHN DOES 1– 50; and ABC BUSINESSES 1–20,	
--	--

Defendants.

For their Complaint against the Defendants, Plaintiffs Method, LLC dba Method Homes and Method Contracting LLC allege as follows:

PARTIES

1. Plaintiff Method, LLC is a Washington Limited Liability Company in active and good standing with its principal place of business in Washington doing business as Method Homes (“Method Homes”).

2. Plaintiff Method Contracting LLC is a Washington Limited Liability Company in active and good standing with its principal place of business in Washington (“Method Contracting”).

3. Defendant Make It Right Foundation is a Delaware corporation.

4. Defendant Make It Right – Montana, LLC is a Delaware Limited Liability Company.

5. Defendant MIR Montana, LLC is a purported Montana Limited Liability Company, which is not organized with the Montana Secretary of State.

6. Defendant MIR Innovations, LLC is a Delaware Limited Liability Company.

7. Defendant Make It Right Foundation dba MIR Montana is Defendant Make It Right Foundation doing business as “MIR Montana, LLC.”

8. Defendant MIR Innovations, LLC dba MIR Montana is Defendant MIR Innovations, LLC doing business as “MIR Montana, LLC.”

9. Defendants Samuel Whitt dba MIR Montana is an individual doing business as “MIR Montana, LLC.”

10. Defendants John Does 1–50 are individuals who may be liable under this Complaint.

11. ABC Businesses 1–20 are businesses, entities, or partnerships that may be liable under this Complaint.

JURISDICTION

12. The allegations at issue in this action took place in Montana.

13. The Court has jurisdiction over the parties pursuant to Mont. R. Civ. P. 4.

FACTS COMMON TO ALL CLAIMS

14. In the summer of 2013, Make It Right Foundation partnered with the Sioux and Assiniboine tribes of Fort Peck, Montana to build sustainable homes on the Fort Peck Reservation in Poplar, Montana. Make It Right Foundation acted as the prime contractor for the Project. It hired contractors to build Cradle-to-Cradle-inspired, LEED Platinum homes for tribal members in need of housing (the “Project”).

15. In 2014, MIR Innovations, LLC executed an AIA Document C401 – 2007 contract with Method Homes dated February 11, 2014 (“AIA Agreement”).

16. Attached as **Exhibit 1** is a true and correct copy of the AIA Agreement.

17. Pursuant to the AIA Agreement, Method Homes provided architectural designs and engineering permit sets for ten single-family manufactured homes to Defendant(s). The AIA Agreement required MIR Innovations, LLC to pay Method Homes for its services. Method Homes fully performed the contract. MIR Innovations, LLC has failed to pay Method Homes the full amount due under the AIA Agreement.

18. The Defendant(s), other than MIR Innovations, LLC, acted as either agents of MIR Innovations, LLC or as though they were in a partnership with MIR

Innovations, LLC. Employees of Defendant(s) made decisions and/or authorized actions under the AIA Agreement.

19. Defendant(s) currently owe Method Homes \$7,377.94, plus interest, costs, and attorneys' fees pursuant to the AIA Agreement.

20. Defendant(s) have refused to fully perform under the AIA Agreement by paying Method Homes amounts due and owing.

21. After Method Homes completed the initial engineering and architectural design work, MIR Montana LLC executed a Modular Home Purchase Agreement with Method Homes to manufacture and construct modular homes for the Project.

22. A true and correct copy of the Modular Home Purchase Agreement dated February 15, 2015, is attached as **Exhibit 2**.

23. The Modular Home Purchase Agreement was signed by Defendant Samuel Whitt as manager of "MIR Montana LLC."

24. Upon information and belief Samuel Whitt is an employee, agent, officer, and/or Member of the Board of Make It Right Foundation.

25. "MIR Montana LLC" is not registered with the Montana Secretary of State as a business entity.

26. Upon information and belief, "MIR Montana LLC" is not registered as a business with any Secretary of State.

27. "MIR Montana LLC" is not a legal entity recognized under State law.

28. Upon information and belief, MIR Montana LLC is a collection of individuals comprising a de facto partnership doing business as "MIR Montana" or individuals or entities doing business as "MIR Montana."

29. Under the Modular Home Purchase Agreement, Method Homes was obligated to manufacture and construct twenty modular homes in exchange for a base contract price.

30. The base contract price was modifiable based upon change orders.
31. Under the Modular Home Purchase Agreement, payment of the base contract price and adjusted base contract price were to be paid within ten days of receipt of billing.
32. Tim Duggan was an employee, agent, officer, and/or Member of the Board of Make It Right Foundation and MIR Innovations, LLC.
33. Tim Duggan was the person who authorized payments and change orders under the Modular Home Purchase Agreement.
34. Tim Duggan had both the authority and responsibility of working with Method Homes to ensure completion of the Project, including adjusting the base price of the Modular Home Purchase Agreement.
35. On March 25, 2015, Method Homes sent Tim Duggan an original working budget. The total budget was equal to the base price under the Modular Home Purchase Agreement.
36. During the time work was being done under the Modular Home Purchase Agreement, Method Homes sent any proposed changes to the base price to Tim Duggan for prior approval.
37. The bulk of the changes resulted from Defendant(s)' requests to add natural gas service to the houses, and make changes in the mechanical system for the homes.
38. Tim Duggan approved every proposed change to the base price under the Modular Home Purchase Agreement.
39. Cesar Rodriguez was Make It Right Foundation's purchasing manager at the time of the Project. Rodriguez worked with Method Homes regarding purchasing products, product specifications, and product donations. Rodriguez was involved in, and familiar with, any change to the base price of the Modular Home Purchase Agreement.

40. Method Homes manufactured and delivered 20 modular homes to Montana.

41. Method Homes fully performed under the Modular Home Purchase Agreement.

42. To date, Defendant(s) have failed to pay Method Homes the full amount due and owing under the Modular Home Purchase Agreement.

43. Defendant(s) currently owe Method Homes \$37,691.90, plus interest, costs, and attorneys' fees pursuant to the Modular Home Purchase Agreement.

44. Under the Modular Home Purchase Agreement, "MIR Montana LLC" was responsible for "all work necessary to prepare the Site for the Delivery as well as the placement, assembly, and finishing of the Modular Home."

45. Method Contracting was originally contracted to transport the modular homes to the site and install the homes.

46. Other construction professionals were to be hired by Defendant(s) to complete or finish the homes. The parties completed the first few homes in this fashion.

47. Defendant(s) were required to finish the Project by the end of December 2016 in order to comply with the terms of a Low Income Housing Tax Credit agreement.

48. Defendant(s) and Defendant(s)' employees were under pressure to meet the deadline described in the prior paragraph.

49. At some point, it became apparent to Defendant(s) that there was not enough local labor to finish the Project in time to meet Defendant(s)' deadline.

50. Tim Duggan asked that Method Contracting LLC to take over responsibility for finishing the homes within the timeframe in exchange for additional payment over and above the amount owed under the Modular Home

Purchase Agreement. Method Contracting LLC agreed (collectively, the "Contractor Agreement").

51. Method Contracting LLC sent employees on multiple trips from its manufacturing facility to Poplar, Montana on the Fort Peck Reservation to complete the homes. As a result of these trips, Method Contracting LLC's employees were unable to work on other projects at its manufacturing facility.

52. Before each trip under the Contracting Agreement, Method Contracting LLC sent Tim Duggan a proposed budget.

53. Duggan approved each budget before every trip.

54. Method Contracting LLC provided services to finish the homes as requested by Tim Duggan.

55. Method Contracting LLC's services totaled a value of \$386,178.01.

56. Defendant(s) have partially performed under the Contracting Agreement by paying a portion of the amount owed.

57. Defendant(s) have failed to pay Method Contracting LLC the full amount due and owing for the services rendered.

58. Defendant(s) currently owe \$138,276.63, plus interest, costs, and attorneys' fees, to Method Contracting LLC pursuant to the Contracting Agreement.

59. In the spring of 2016, Tim Duggan, on behalf of Defendant(s), agreed that Defendant(s) owed Plaintiffs a total of \$183,346.47 for services and goods rendered towards completion of the Project.

60. To reach the account stated, Tim Duggan and Plaintiffs engaged in several negotiation sessions. During the sessions, Tim Duggan asked Plaintiffs to give multiple credits towards the Project, which Plaintiffs granted and Plaintiffs provided proof to him of the services and goods provided. Tim Duggan and

Plaintiffs held a final session in the spring of 2016 where the parties agreed on a final change order log and the final account stated of \$183,346.47.

61. Because the AIA Agreement, Modular Home Purchase Agreement, and Contracting Agreement were all executed to further the Project, Defendant(s) accepted and treated the total of \$183,346.47 as one amount owed to the Plaintiffs.

62. On May 12, 2016, Plaintiffs discovered Tim Duggan was no longer employed by Make It Right Foundation.

63. Plaintiffs contacted Darrah Caplan. Darrah Caplan was Make It Right Foundation's Senior Executive Manager of Finance. She had the authority to pay Plaintiffs.

64. Plaintiffs sent Caplan all correspondence between Plaintiffs and Tim Duggan, including, but not limited to, invoices, change orders, a change order log, approval of orders, and budgets, which showed that Tim Duggan had previously approved all sums due and owing to Plaintiffs.

65. Upon information and belief, Darrah Caplan re-reviewed all correspondence, agreements, invoices, change orders, change order log, approvals, and budgets.

66. Darrah Caplan then assented to the correctness of the Plaintiffs' account and agreed that Plaintiffs were owed a total of \$183,346.47 from Defendants.

67. James Mazzuto, the director of Make It Right Foundation, likewise expressly stated to Plaintiffs that Defendant(s) would honor their end of the Agreements and that Plaintiffs would receive the money due and owing.

68. To date, Defendant(s) have refused to pay.

69. For over one year, and after Defendant(s) already agreed they owed \$183,346.47 under Plaintiffs' account stated, Plaintiffs have contacted the Defendant(s) to meet and confer to resolve the amounts due and owing to Plaintiffs

as required under paragraph 12 of the Modular Home Purchase Agreement. After Defendant(s) refused to meet and confer, Plaintiffs formally initiated arbitration and demanded that Defendant(s) arbitrate. Defendant(s) refused to arbitrate as required under the Modular Home Purchase Agreement.

70. True and correct copies of correspondence showing Defendant(s)' refusal to meet and confer and refusal to arbitrate is attached as **Exhibit 3**.

71. Rather than pay the account stated which Defendant(s) had already assented to, Defendant(s) intentionally stalled, delayed, requested information they already possess, and refused to pay Plaintiffs amounts due and owing. (**Exhibit 3**.)

COUNT I: BREACH OF ARBITRATION CLAUSE (MODULAR HOME PURCHASE AGREEMENT)

72. The Plaintiffs incorporate by reference the preceding paragraphs.

73. Pursuant to paragraph 12 of the Modular Home Purchase Agreement, the Method Homes and MIR Montana were obligated to submit the dispute that is the subject of this Complaint to binding arbitration. (**Exhibit 2**.)

74. Plaintiffs demanded and initiated binding arbitration under paragraph 12 of the Modular Home Purchase Agreement. (**Exhibit 3**.)

75. Defendant(s) have refused to respond to the demands for binding arbitration and have refused to engage in the formally initiated arbitration. (**Exhibit 3**.)

76. As such, Defendant(s) have breached the arbitration clause by refusing to arbitrate the dispute that is the subject of this Complaint and which falls within the arbitration clause's scope. (**Exhibit 3**.)

77. As such, Defendant(s) are deprived of any right to enforce the arbitration clause. Defendant(s) are likewise without right to enforce any other dispute resolution mechanism they may seek to enforce.

**COUNT II: WAIVER OF ARBITRATION CLAUSE (MODULAR HOME
PURCHASE AGREEMENT)**

78. The Plaintiffs incorporate by reference the preceding paragraphs.

79. Pursuant to paragraph 12 of the Modular Home Purchase Agreement, Method Homes and MIR Montana were obligated to submit the dispute that is the subject of this Complaint to binding arbitration. (**Exhibit 2.**)

80. Plaintiffs demanded and initiated binding arbitration under paragraph 12 of the Modular Home Purchase Agreement. (**Exhibit 3**)

81. Defendant(s) have refused to respond to the demands for binding arbitration and have refused to engage in the formally initiated arbitration. (**Exhibit 3.**)

82. Defendant(s) knew of Plaintiffs' right to compel arbitration.

83. Defendant(s)' refusal to respond to demands for binding arbitration and refusal to engage in the formally initiated arbitration were acts inconsistent with Plaintiffs' right to arbitrate.

84. Defendant(s)' acts caused prejudice to Plaintiffs, namely, Plaintiffs have been subjected to unnecessary delay and have incurred costs and fees which otherwise would have been avoided.

85. As such, Defendant(s) have waived the arbitration clause in paragraph 12 of the Modular Home Purchase Agreement and are deprived of any right to enforce the arbitration clause. Defendant(s) are likewise without right to enforce any other dispute resolution mechanism they may seek to enforce.

COUNT III: BREACH OF CONTRACT (AIA AGREEMENT)

86. The Plaintiffs incorporate by reference the preceding paragraphs.

87. Method Homes formed a contract, the AIA Agreement, with MIR Innovations, LLC whereby Method Homes would provide architectural and engineering services to Defendant(s) in exchange for payment. (**Exhibit 1.**)

88. Method Homes fully performed under the AIA Agreement.

89. Defendant(s) have refused to fully perform under the AIA Agreement by refusing to pay Method Homes amounts due and owing under the contract.

90. By refusing to fully perform under the agreement, Defendant(s) breached their contractual obligations to Method Homes.

91. As a direct and proximate result of Defendant(s)' conduct, Plaintiffs have been deprived of the benefit of the AIA Agreement and have sustained damages.

92. As such, Plaintiffs are entitled to recover from Defendant(s) the amounts due and owing under the AIA Agreement. In addition, Plaintiffs are entitled to additional specific and general damages, in an amount to be proven at trial.

COUNT IV: BREACH OF CONTRACT (MODULAR HOME PURCHASE AGREEMENT)

93. The Plaintiffs incorporate by reference the preceding paragraphs.

94. Defendant(s) formed a contract with Plaintiff Method Homes, namely the Modular Home Purchase Agreement. (**Exhibit 2.**)

95. Under the Modular Home Purchase Agreement, Defendant(s) were obligated to pay Method Homes a base price for the construction of twenty modular homes.

96. The base price was modified with express agreement from Defendant(s).

97. Method Homes fully performed under the Modular Home Purchase Agreement.

98. Defendant(s) have refused to fully perform under the Modular Home Purchase Agreement by refusing to pay Method Homes amounts due and owing under the contract and by refusing to arbitrate.

99. By refusing to fully perform under the agreement, Defendant(s) breached their contractual obligations to Method Homes.

100. As a direct and proximate result of Defendant(s)' conduct, Method Homes has been deprived of the benefit of the Modular Home Purchase Agreement and has sustained damages including attorneys' fees, costs, and interest.

101. As such, Method Homes is entitled to recover from Defendant(s) the amounts due and owing under the Modular Home Purchase Agreement. In addition, Method Homes is entitled to additional specific and general damages, in an amount to be proven at trial.

COUNT V: BREACH OF CONTRACT (CONTRACTOR AGREEMENT)

102. The Plaintiffs incorporate by reference the preceding paragraphs.

103. Defendant(s) formed a contract with Plaintiff Method Contracting LLC whereby Defendant(s) agreed to pay Method Contracting LLC in exchange for Method Contracting LLC's services to complete the Project, namely the Contractor Agreement.

104. Under the Contractor Agreement, Defendant(s) were obligated to pay Method Contracting LLC for its services.

105. Method Contracting LLC fully performed under the Contractor Agreement.

106. Defendant(s) have refused to fully perform under the Contractor Agreement by refusing to pay Method Contracting LLC amounts due and owing under the contract.

107. By refusing to fully perform under the agreement, Defendant(s) breached their contractual obligations to Method Contracting LLC.

108. As a direct and proximate result of Defendant(s)' conduct, Method Contracting LLC has been deprived of the benefit of the Contractor Agreement and has sustained damages.

109. As such, Method Contracting LLC is entitled to recover from Defendant(s) the amounts due and owing under the Contractor Agreement. In addition, Method Contracting LLC is entitled to additional specific and general damages, in an amount to be proven at trial.

**COUNT VI: BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING**

110. The Plaintiffs incorporate by reference the preceding paragraphs.

111. By entering into the binding contracts, the AIA Agreement, Modular Home Purchase Agreement, and Contractor Agreement, Defendant(s) agreed to abide by the covenant of good faith and fair dealing. As such, Defendant(s) were required to act in good faith and fair dealing in connection with the contracts.

112. Defendant(s) were required to deal with Plaintiffs honestly and in good faith and to not deprive Plaintiffs of the benefit of the contracts through dishonesty or abuse of discretion of performance.

113. Defendant(s) breached Plaintiffs' justified expectations that they would act in a reasonable manner in the performance of their obligations under the Agreements. Namely, Defendant(s) refused to pay Plaintiffs under the Agreements, then accepted as a proper account stated the Plaintiffs' demands, promised to pay, abandoned the promise, demanded paperwork they had already approved and accepted in an effort to stall payment, refused to meet and confer, and refused to arbitrate.

114. The injuries and damages suffered by Plaintiffs were proximately caused by Defendant(s) breach of their duty of good faith and fair dealing. Plaintiffs are entitled to specific and general damages, in an amount to be proven at trial.

COUNT VII: ACCOUNT STATED

115. The Plaintiffs incorporate by reference the preceding paragraphs.

116. Plaintiffs and Defendant(s) were engaged in a course of dealing to complete the Project.

117. After Plaintiffs had fully performed under the AIA Agreement, Modular Home Agreement, and Contractor Agreement, Defendant(s) owed an antecedent debt to Plaintiffs.

118. The account was rendered to both Tim Duggan and Darrah Caplan, in their official capacities as managers of Defendant Make It Right.

119. Both Tim Duggan and Darrah Caplan assented to the correctness of the account and agreed that Plaintiffs were owed \$183,346.47.

120. Plaintiffs demanded payment on the account and Defendant(s) have refused to pay.

121. As such, Plaintiffs are entitled to payment on the account stated. The injuries and damages suffered by Plaintiffs were proximately caused by Defendant(s) breach of their obligation to pay under the account stated. Plaintiffs are entitled to specific and general damages, in an amount to be proven at trial.

**COUNT VIII: UNJUST ENRICHMENT (ALTERNATIVELY TO
COUNTS III-IV)**

122. The Plaintiffs incorporate by reference the preceding paragraphs.

123. Defendant(s) have unjustly retained the benefit of the Plaintiffs' goods and services in furtherance of the Project, which were provided to Defendant(s) to the detriment of Plaintiffs.

124. As such, Defendant(s) have wrongfully secured a benefit, which would be unconscionable for Defendant(s) to retain, which has caused damage to Plaintiffs.

125. The injuries and damages suffered by Plaintiffs were proximately caused by Defendant(s)' unjust enrichment. Plaintiffs have suffered actual and consequential damages and expenses, in an amount to be proven at trial.

COUNT IX: ATTORNEYS' FEES AND COSTS

126. The Plaintiffs incorporate by reference the preceding paragraphs.

127. The Modular Home Purchase Agreement provides that disputes, which cannot resolve by the parties meeting and attempting to resolve them in good faith, shall be submitted to binding arbitration. Defendant(s) have breached and waived the arbitration clause, forcing Plaintiffs to file this Complaint.

128. The Modular Home Purchase Agreement requires that the substantially prevailing party shall be entitled to costs and attorneys' fees.

129. Because Plaintiffs have been forced to sue due to Defendant(s)' waiver and breach of the arbitration clause, Plaintiffs should be awarded attorneys' fees and costs as contemplated by the parties had the Defendant(s) not breached and waived the arbitration clause.

130. In the alternative, Defendant(s)' breach of that agreement, and specifically, the arbitration clause has caused Plaintiffs' damages in the form of its inability to recover attorneys' fees. Plaintiffs' attorneys' fees should be included as a part of Plaintiffs' damages.

131. Plaintiffs have incurred and will continue to incur attorneys' fees and costs because of this proceeding, in amounts that cannot yet be ascertained.

132. As such, Plaintiffs are entitled to recover attorneys' fees in bringing this action.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiffs respectfully request the following relief:

- A. That the Court enter a judgment against Defendants on all counts;
- B. That the Court find Defendants liable for actual, compensatory, consequential, and incidental damages;
- C. For a money judgment in favor of Plaintiffs and against Defendants for:

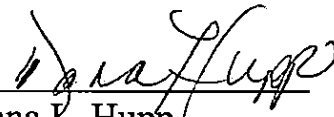
- a. Actual, compensatory, incidental, and consequential damages consistent with the other claims alleged in this Complaint;
 - b. Costs and attorneys' fees; and
 - c. Pre and post judgment interest; and
- D. For any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues presented in this Complaint that are so triable.

Dated this 30th day of January 2017.

WORDEN THANE P.C.
Attorneys for Plaintiffs

By: 
Dana L. Hupp