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2 **INTRODUCTION**

3 1. PLAINTIFFS bring this action as owners of homes in the Coral Lakes development,
4 located in Cape Coral, Florida built using defective drywall designed, manufactured, and processed in
5 China.

6 2. The drywall used to build PLAINTIFFS' homes is defective and emits levels of sulfur,
7 methane and/or other volatile organic compounds that cause corrosion of air-conditioner and
8 refrigerator coils, copper tubing, electrical wiring, computer wiring, and other household items, as
9 well as creates noxious, "rotten egg-like" odors. The drywall was inherently defective and not
10 suitable for its intended use.

11 3. PLAINTIFFS bring this action as owners of homes in a development commonly
12 known as "CORAL LAKES" in Cape Coral, Florida. PLAINTIFFS' homes were designed,
13 constructed and sold to them by DEFENDANTS ENGLE HOMES, INC., EH/TRANSEASTERN
14 LLC, TOUSE HOMES, INC., TOUSA HOMES, L.P. and DOES 1-1000. The homes contain and
15 were designed and built using defective products and components including, but not limited to
16 drywall and related components which were designed, manufactured, and processed in China.

17 4. PLAINTIFFS are informed and believe and thereon allege that the drywall system
18 which was used to build PLAINTIFFS' homes is defective and contains harmful components
19 including but not limited to iron disulfide, fly ash and industrial waste products which are harmful to
20 health and property.

21 5. PLAINTIFFS are informed and believe and thereon allege that the drywall was
22 manufactured using waste products and consequently emits harmful gases including but not limited
23 to hydrogen sulfide, carbonyl sulfide, sulfur dioxide, cordon disulfide, methane and/or other volatile
24 organic compounds that cause damage to property and physical injury.

25 6. PLAINTIFFS are informed and believe and thereon allege that the drywall system and
26 the gases that it emits, causes and contributes to contamination of PLAINTIFFS' homes.
27 PLAINTIFFS are informed and believe and thereon allege that the drywall system, and the gases that
28 it emits, causes and contributes to problems including but not limited to corrosion of air-conditioner

1 and refrigerator coils, copper tubing, electrical wiring, computer wiring, exposed metals, pipes,
2 fixtures, framing and rough carpentry hardware, nails and other household items and building
3 materials, as well as creates noxious, “rotten egg-like” odors. The drywall was inherently defective
4 and not suitable for intended use.

5 7. PLAINTIFFS are informed and believe and thereon allege that the drywall system and
6 the gases that it emits, causes and contributes to physical injuries including but not limited to
7 shortness of breath, dizziness, headaches, fatigue, insomnia, eye irritations, and respiratory
8 difficulties as well as many other symptoms for anyone exposed to breathing these gases.

9 **JURISDICTION AND VENUE**

10 8. This action is founded upon Florida state law including, but not limited to, common
11 law violations and violations of the Florida Deceptive and Unfair Trade Practices Act, Florida
12 Statutes § 501.201 *et seq.*, which are subject to the jurisdiction of this court.

13 9. Venue is proper in that Defendants ENGLE HOMES, INC., EH/TRANSEASTERN
14 LLC, TOUSA HOMES, INC., TOUSA HOMES, L.P.. and DOES 1-1000 are authorized to conduct
15 and do conduct significant amounts of business in Lee County as well as throughout the State of
16 Florida. In particular, Defendants maintain offices in Lee County, Florida and a substantial part of
17 the events and omissions giving rise to PLAINTIFFS’ claims occurred in Lee County, Florida.

18 10. Plaintiff, JOYCE DOWDY is and at all relevant times has been a resident of Lee
19 County, Florida and was the trustee of the Joyce Dowdy Revocable Trust.

20 11. Plaintiffs LARRY AND TERRI TORPY are and at all relevant times have been
21 residents of Lee County, Florida.

22 12. Plaintiffs CHERYL AND HENRY SCHLICHTTE are and at all relevant times have
23 been residents of Lee County, Florida.

24 13. Plaintiffs LILLIANE LARRY AND TERRI TORPY are and at all relevant times have
25 been residents of Lee County, Florida.

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PARTIES

14. PLAINTIFFS are individuals residing in the County of Lee, State of Florida.

15. The subject of this action are the lands with single family dwellings and other improvements thereon, owned by PLAINTIFFS respectively, (hereinafter collectively referred to as the "PROPERTY" or "PROPERTIES") located in the County of Lee, State of Florida, described as follows:

1	Joyce Dowdy Revocable Trust	2553 Deerfield Lake Court, Cape Coral, Florida 33909
2	Larry and Terri Torpy	2569 Deerfield Lake Court, Cape Coral, Florida 33909
3	Cheryl and Henry Schlichte	3036 Lake Manatee Court, Cape Coral, Florida 33909
4	Mr. and Mrs. Marcinkiewicz	2528 Sawgrass Lake Court, Cape Coral, Florida 33909

16. PLAINTIFFS are informed and believe and based thereon allege that at all times herein mentioned and material hereto that ENGLES HOMES, INC., a Florida Corporation, was and is a corporation authorized to conduct business in Florida and engaged in business in the County of Lee and were the developers and/or general contractors of the PROPERTIES and the project(s) within which the PROPERTIES are located.

17. PLAINTIFFS are informed and believe and based thereon allege that at all times herein mentioned and material hereto that EH/TRANSEASTERN LLC, a Delaware Company, was and is a company authorized to conduct business in Florida and engaged in business in the County of Lee and were the developers and/or general contractors of the PROPERTIES and the project(s) within which the PROPERTIES are located.

18. PLAINTIFFS are informed and believe and based thereon allege that at all times herein mentioned and material hereto that TOUSA HOMES, INC., a Florida Corporation, was and is a corporation authorized to conduct business in Florida and engaged in business in the County of Lee and were the developers and/or general contractors of the PROPERTIES and the project(s) within which the PROPERTIES are located.

19. PLAINTIFFS are informed and believe and based thereon allege that at all times herein mentioned and material hereto that TOUSA HOMES, L.P., a Delaware Partnership, was and is a partnership authorized to conduct business in Florida and engaged in business in the County of

1 Lee and were the developers and/or general contractors of the PROPERTIES and the project(s)
2 within which the PROPERTIES are located.

3 20. The names and capacities, whether individual, corporate, associate or otherwise of
4 certain developers, builders, general contractors, subcontractors and/or their alter egos sued herein
5 as DOES 1 through 1000 inclusive, are presently unknown, and PLAINTIFFS will amend the
6 Complaint to insert the same when ascertained. PLAINTIFFS are informed and believe and based
7 thereon allege that each of these Defendants was a resident of said County and State and/or have
8 principal offices or were doing business in said County and State and were and are responsible in
9 some way for the happenings and damages alleged in this complaint. Said Defendants, along with
10 the Defendants named above, will hereinafter be referred to as "DEFENDANTS".

11 21. In order to build and construct said PROPERTIES and project(s), DEFENDANTS
12 hired, retained, employed, or contracted for the services of certain persons or entities to plan, design,
13 and prepare drawings and specifications for the building of the PROPERTIES and project(s). The
14 identities of said persons or entities, whether individual, corporate or otherwise, sued herein as Does
15 101 through 200, are presently unknown to PLAINTIFFS who therefore sue such persons by their
16 fictitious names. PLAINTIFFS are informed and believe and thereon allege that said persons or
17 entities are wholly or in some part responsible for the occurrences set forth in the complaint. Said
18 Defendants, along with the Defendants named above, will hereinafter be referred to as
19 "DEFENDANTS".

20 22. In order to build and construct said project, DEFENDANTS hired, retained,
21 employed, or contracted with persons or entities to provide for labor and materials in the
22 construction of the PROPERTIES and project(s). The identities of said persons or entities, whether
23 individual, corporate, or otherwise, sued herein as Does 201 through 300 are presently unknown to
24 PLAINTIFFS who therefore sue such persons by their fictitious names. PLAINTIFFS are informed
25 and believe and thereon allege that said persons or entities are wholly or in some part responsible for
26 the occurrences set for in the Complaint in accordance with their individual scope of work. Said
27 Defendants, along with the Defendants named above, will hereinafter be referred to as
28 "DEFENDANTS".

1 27. The defective drywall can not only affect air conditioners and refrigerators, but can
2 affect and require replacement of household items, including but not limited to microwaves, lighting
3 fixtures, faucets and silverware.

4 28. In addition, the defective drywall has a noxious odor, akin to the smell of rotten eggs.

5 29. Upon information and belief, over 10 million square feet of defective drywall was
6 used in the construction of Florida homes between 2004 and 2006, including in the subject
7 PROPERTIES and others in the project(s).

8 30. DEFENDANTS' actions will require PLAINTIFFS to remedy all defective drywall,
9 performing extensive remedial repairs to the PROPERTIES, and then repair the damaged property
10 made visible during the performance of these repairs.

11 31. As a result, PLAINTIFFS have suffered, and continue to suffer damages as a result of
12 DEFENDANTS' use of defective drywall and the corrosive effects of the sulfur compounds. These
13 damages include, but are not limited to, the costs of inspection, the costs and expenses necessary to
14 replace and remove the defective drywall, adjoining components, electrical wiring, inferior finishes
15 and personal property.

16 32. DEFENDANTS' actions also resulted in substantial diminution in the value of
17 PLAINTIFFS' homes.

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21 **EQUITABLE TOLLING OF THE APPLICABLE STATUTES OF LIMITATIONS**

22 33. The running of any statute of limitations has been tolled by reason of
23 DEFENDANTS' fraudulent concealment. DEFENDANTS, through failing to disclose a known
24 defect to PLAINTIFFS, and misrepresenting the PROPERTIES as safe for its intended use, actively
25 concealed from PLAINTIFFS the true risks associated with their homes containing the defective
26 drywall.

1 39. PLAINTIFFS seek class action status because this community is approximately 370
2 acres and consists of approximately 600 homes and/or town homes. As a result, members of the
3 class are so numerous that separate joinder of each member is impracticable.
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5 40. Each homeowner named within this lawsuit will have a claim that is identical to all
6 other homeowners within this community whose homes have been built with Chinese and/or
7 defective drywall. Therefore, the claims of the homeowners named within this lawsuit raise
8 questions of fact and law common to the questions of law and fact raised by the claim of each
9 member of the class.

10 41. Each named Plaintiff in this action, as the representative party, has a claim that is
11 typical of the claim or defense of each member of the class.
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13 41. The representative parties can fairly and adequately protect and represent the interests
14 of each member of the class.

15 42. Finally, the prosecution of separate claims by individual members of the class would
16 create a risk of either inconsistent or varying adjudications concerning individual members of the
17 class which would establish incompatible standards of conduct for the party opposing the class; or
18 adjudications concerning individual members of the class which would, as a practical matter, be
19 dispositive of the interests of other members of the class who are not parties to the adjudications, or
20 substantially impair or impede the ability of other members of the class who are not parties to the
21 adjudications to protect their interests; or the questions of law and fact common to the claim of the
22 representative parties that are named in this lawsuit and the claim of each member of the class
23 predominate over any question of law or fact affecting only individual members of the class, and that
24 class representation is superior to other available methods for the fair and efficient adjudication of the
25 controversy.
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43. The questions of law and fact that are common to the claim of the representative parties and to the claim of each member of the class are as follows:

a. Each member owns a residence, either home or town home, located within the community known as Coral Lakes;

b. Each member of the class owns a residence that has been built with defective drywall;

c. The legal theories to obtain a recovery for each representative party will be the same as for the members of the class;

d. The scientific evidence that will be presented to prove that this product is defective and that it is toxic and that it has an affect on other parts of the home and/or appliances will be the same for the representative parties and the members of the class.

e. The measure of damages will be the same for the representative party and for the members of the class.

44. Each representative party that is named in this case owns a home that is within the community known as Coral Lakes; each representative party that is named in this case owns a home that has been built with defective drywall; each representative party that is named in this case has sustained damage that is the same type of damage sustained by members of the class.

45. Each representative party that is named in this case will fairly and adequately protect and represent the interests of each member of the class.

FIRST CAUSE OF ACTION ON BEHALF OF CLASS
STRICT PRODUCTS LIABILITY

1 46. PLAINTIFFS, and all other similarly situated, repeat and reallege the foregoing
2 paragraphs, inclusive, and incorporates the same as if set forth herein at length.

3 47. DEFENDANTS and each of them, at all times herein mentioned were in the business
4 of developing and mass producing homes in and within the County where the PROPERTIES are
5 located, and selling them to members of the public at large.

6 48. DEFENDANTS and each of them, developed and mass produced the PROPERTIES
7 and/or otherwise participated in the stream of commerce for sale of the PROPERTIES in the
8 project(s) where the PROPERTIES are located.

9 49. At all times herein mentioned and material hereto, DEFENDANTS knew and
10 intended that the PROPERTIES would be purchased by members of the public at large, and used by
11 them without further inspection for defects.

12 50. PLAINTIFFS, AND ALL OTHER SIMILARLY SITUATED, purchased the
13 PROPERTIES from DEFENDANTS and moved into them with their families.

14 51. At the time of the purchase by PLAINTIFFS, and all other similarly situated, the
15 PROPERTIES were defective and unfit for its intended purposes because DEFENDANTS did not
16 construct the PROPERTIES in a workmanlike manner as manifested by, but not limited to,
17 numerous drywall defects which have resulted in damage to the homes and their component parts.

18 52. The drywall used in the PROPERTIES was in an unsafe, defective, and inherently
19 dangerous condition which was unreasonably dangerous to the homes and, in particular,
20 PLAINTIFFS' PROPERTIES.

21 53. The drywall was so defective in design or formulation or manufacture that when it left
22 the hands of the manufacturer and/or suppliers and was used by DEFENDANTS, the foreseeable
23 risks exceeded the benefits associated with the design, formulation or manufacture of the drywall.

24 54. At all times herein mentioned, the drywall used by DEFENDANTS was in a defective
25 condition and unsafe, and DEFENDANTS knew, had reason to know, or should have known that
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1 the drywall was defective and unsafe, especially when used in the form and manner in the
2 PROPERTIES.

3 55. DEFENDANTS knew, or should have known, that at all times herein mentioned the
4 drywall used by DEFENDANTS was/is inherently dangerous and unsafe.
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6 56. PLAINTIFFS, and all other similarly situated, utilized the drywall for the purposes
7 and manner normally intended.

8 57. DEFENDANTS had a duty to utilize a product that was not unreasonably dangerous
9 for its normal, intended use.

10 58. The drywall utilized by DEFENDANTS was designed, constructed, manufactured,
11 delivered, inspected and/or sold in a defective condition and was unreasonably dangerous to its
12 intended users, including PLAINTIFFS, AND ALL OFTHER SIMILARLY SITUATED .
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14 59. DEFENDANTS manufactured, processed, distributed, delivered, supplied, inspected
15 and/or sold the defective PROPERTIES which created an unreasonable risk to the PLAINTIFFS'
16 homes as well as to the health of the PLAINTIFFS. DEFENDANTS are, therefore, strictly liable for
17 the injuries sustained by PLAINTIFFS. AND ALL OTHERS SIMILARLY SITUATED.
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19 60. PLAINTIFFS, and all others similarly situated, acting as a reasonably prudent person,
20 could not discover that the drywall utilized by DEFENDANTS was defective as herein mentioned or
21 perceive its danger.

22 61. The defects in the drywall utilized by DEFENDANTS were a substantial factor in
23 causing PLAINTIFFS' injuries and/or placing PLAINTIFFS at increased risk of damage and/or
24 harm. This is also true for all others similarly situated.
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26 62. As a direct and proximate result of the defective condition of the drywall used by
27 DEFENDANTS in the PROPERTIES, PLAINTIFFS, and all others similarly situated, suffered, and
28 will continue to suffer, damages.

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68. PLAINTIFFS repeat and reallege the foregoing paragraphs, inclusive, and incorporates the same as if set forth herein at length.

69. DEFENDANTS had a duty to exercise reasonable care in designing, constructing, manufacturing, delivering, inspecting and/or selling the PROPERTIES before being placed into the stream of commerce, including a duty to assure that the PROPERTIES and drywall would perform as intended and would not cause and did not cause damage as described herein.

70. DEFENDANTS breached their duty by failing to exercise ordinary care in the designing, constructing, manufacturing, delivering, inspecting and/or selling the PROPERTIES with defective drywall in that DEFENDANTS knew or should have known that the PROPERTIES were defective with the drywall used therein, did not function as intended and/or created a high risk of unreasonable, dangerous side effects, including, but not limited to, corrosion to air-conditioning and refrigerator units, wires, tubes and pipes, and caused allergic reactions, sinus and throat infection, eye irritation, breathing hazards, and other health concerns.

71. The negligence of the DEFENDANTS, their agents, servants, and/or employees, included, but was not limited to, the following acts and/or omissions:

- a. negligently failing to adequately and correctly warn PLAINTIFFS and the public of the dangers of the drywall used by DEFENDANTS in the PROPERTIES;
- b. negligently failing to recall or otherwise notify users at the earliest date that it became known that the drywall in the PROPERTIES was, in fact, dangerous and defective;
- c. negligently representing that the drywall was safe for its intended purpose when, in fact, its safety is questionable;
- d. negligently distributing the drywall in a manner which was dangerous to its users;
- e. negligently delivering the drywall in a manner which was dangerous to its users;

- 1 f. concealing information concerning reports of adverse effects of the drywall
2 used in the PROPERTIES while knowing that the drywall was unsafe,
3 dangerous and non-conforming with accepted industry standards; and
4 g. improperly concealing and/or misrepresenting information from PLAINTIFFS
5 and/or the public, concerning the severity of risks and dangers to Defendants’
6 drywall and/or the manufacturing defect.

7 72. DEFENDANTS were negligent in the design, construction, manufacture, delivery,
8 inspection and/or sale of the subject PROPERTIES with defective drywall in that they:

- 9 a. failed to use due care in constructing the PROPERTIES with adequate
10 drywall so as to avoid the aforementioned risks when the drywall was used for
11 its intended purpose;
12 b. failed to conduct adequate testing to determine the safety of the drywall; and
13 c. failed to warn PLAINTIFFS prior to the sale of the PROPERTIES, either
14 directly or indirectly, orally or in writing, about the defective nature of the
15 drywall used therein; and were otherwise negligent.

16 73. Upon information and belief, despite the fact that DEFENDANTS knew or should
17 have known that the drywall used in the PROPERTIES caused unreasonably dangerous side effects
18 due to its manufacturing defect, DEFENDANTS continued to design, construct, manufacture,
19 deliver, inspect and/or sell the subject PROPERTIES to PLAINTIFFS and/or the consuming public.

20 74. DEFENDANTS knew or should have known that consumers such as PLAINTIFFS,
21 and all others similarly situated, would foreseeably suffer damage and injury, both physical and
22 economic, and/or be at an increased risk of suffering damage and injury as a result of
23 DEFENDANTS’ failure to exercise ordinary care, as well as DEFENDANTS’ negligent use of
24 defective drywall, as set forth herein.

25 75. DEFENDANTS actions and/or inactions, as set forth herein, by virtue of violating
26 statutes, ordinances and/or rules and/or regulations, constitutes negligence per se.
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83. The DEFENDANTS herein breached the aforesaid express warranties, as DEFENDANTS' used defective drywall.

84. DEFENDANTS expressly represented to PLAINTIFFS, and all others similarly situated, that the PROPERTIES were safe, efficacious, and fit for use for the purposes intended, that the drywall used in the PROPERTIES was of merchantable quality, did not produce any dangerous side effects, and was adequately tested and fit for its intended use.

85. DEFENDANTS knew or should have known that the aforesaid representations and warranties were false, misleading and untrue in that the PROPERTIES, with the defective drywall used therein, were not fit for the use intended and, in fact, produced severe and extensive damage to PLAINTIFFS', and all others similarly situated, homes because defective drywall was negligently used therein.

86. DEFENDANTS expressly represented to PLAINTIFFS, and all others similarly situated, that the PROPERTIES were safe, efficacious, and fit for use for the purposes intended, that the drywall used therein was of merchantable quality, did not produce any dangerous side effects, and was adequately tested and fit for its intended use.

87. As a result of the foregoing acts and omissions, PLAINTIFFS, and all others similarly situated, require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. PLAINTIFFS, and all others similarly situated, are informed and believe, and further allege, that PLAINTIFFS, and all others similarly situated, will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

FOURTH CAUSE OF ACTION ON BEHALF OF THE CLASS
BREACH OF IMPLIED WARRANTY

1 88. PLAINTIFFS repeat and reallege the foregoing paragraphs, inclusive, and
2 incorporates the same as if set forth herein at length.

3 89. At all times herein, DEFENDANTS designed, constructed, manufactured, delivered,
4 inspected and/or sold the subject PROPERTIES with defective drywall.

5 90. DEFENDANTS utilized defective drywall for use in the construction of
6 PLAINTIFFS' homes and DEFENDANTS knew of the use for which the drywall was intended and
7 impliedly warranted the product to be of merchantable quality and fit for such use.
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9 91. DEFENDANTS impliedly represented and warranted to PLAINTIFFS, and all others
10 similarly situated, that the drywall used in the PROPERTIES was safe and of merchantable quality
11 and fit for the ordinary use for which said product was to be used.
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13 92. Said representations and warranties aforementioned are false, misleading, and
14 inaccurate in that the drywall used in the PROPERTIES were unsafe, unreasonably dangerous,
15 improper, not merchantable quality, and defective and cause damage and injury to PLAINTIFFS, and
16 all others similarly situated.

17 93. PLAINTIFFS, and all others similarly situated, relied on said implied warranty of
18 merchantability of fitness for a particular use and purpose.
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20 94. PLAINTIFFS reasonably relied upon the skill and judgment of DEFENDANTS as to
21 whether the drywall used in the PROPERTIES was of merchantable quality and safe and fit for its
22 intended use.

23 95. The defective drywall used in the PROPERTIES was placed into the stream of
24 commerce by DEFENDANTS in a defective, unsafe, and inherently dangerous condition and the
25 products and materials were expected to, and did, reach users, handlers, and persons coming into
26 contact with said product without substantial change in the condition in which they were sold.
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1 which evinced reckless, willful, indifference to the health, safety and welfare of the PLAINTIFFS
2 herein.

3 104. At the time the aforesaid representations were made by DEFENDANTS,
4 PLAINTIFFS, and all others similarly situated, were unaware of the falsity of said representations
5 and reasonably believed them to be true.
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7 105. In reliance upon said representations, PLAINTIFFS', and all others similarly situated,
8 homes were built using defective drywall thereby sustaining damage and injury and/or being at an
9 increased risk of sustaining damage and injury in the future.

10 106. DEFENDANTS knew, and were aware, or should have been aware, that the drywall
11 used in the PROPERTIES had not been sufficiently tested, was defectively manufactured and/or
12 lacked adequate and/or sufficient warnings.
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14 107. DEFENDANTS knew, or should have known, that the drywall used in the
15 PROPERTIES had a potential to, could, and would cause severe damage and injury to
16 PLAINTIFFS, and all others similarly situated.

17 108. DEFENDANTS brought the defective drywall to the market and acted fraudulently,
18 wantonly, and maliciously to the detriment of PLAINTIFFS, and all others similarly situated.
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20 109. By reason of the foregoing, PLAINTIFFS, and all others similarly situated,
21 experienced, and/or are at risk of experiencing, financial damage and injury.

22 110. As a result of the foregoing acts and omissions, PLAINTIFFS, and all others similarly
23 situated, require and/or will require extensive reconstruction and repairs, and will incur repair and
24 replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses.
25 PLAINTIFFS, and all others similarly situated, are informed and believe, and further allege that
26 PLAINTIFFS, and all others similarly situated, will in the future be required to pay for additional
27 repairs and/or replacement costs, and/or medical, care, attention, and services.
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SIXTH CAUSE OF ACTION ON BEHALF OF THE CLASS
FRAUDULENT CONCEALMENT

111. PLAINTIFFS repeat and reallege the foregoing paragraphs, inclusive, and incorporates the same as if set forth herein at length.

112. At all times material hereto, DEFENDANTS misrepresented the safety of the PROPERTIES and the defective drywall used therein.

113. DEFENDANTS knew, or were reckless in not knowing, that its representations were false.

114. DEFENDANTS fraudulently concealed, and/or intentionally omitted, the fact that the drywall used in the PROPERTIES caused corrosion to air-conditioning and refrigerator units, electrical wires and copper tubes, and caused allergic reactions, coughing, sinus and throat infection, eye irritation, breathing hazards, and other health concerns.

115. DEFENDANTS fraudulently concealed, and/or intentionally omitted, the fact that DEFENDANTS were aware of the complaints regarding defects in the type of drywall used in the PROPERTIES.

116. DEFENDANTS fraudulently concealed and/or intentionally omitted the fact that the drywall used in the PROPERTIES was negligently manufactured.

117. DEFENDANTS were under a duty to disclose to PLAINTIFFS, and all others similarly situated, the aforementioned as it pertains to the defective drywall used in the PROPERTIES.

118. DEFENDANTS' concealment and omissions of material facts concerning, *inter alia*, the use of defective drywall in the PROPERTIES was made purposefully, willfully, wantonly, and/or recklessly to mislead PLAINTIFFS, and all others similarly situated, and/or the consuming public.

1 119. DEFENDANTS’ concealment and omissions of material facts concerning, *inter alia*,
2 the use of defective drywall was made purposefully, willfully, wantonly, and/or recklessly to mislead
3 PLAINTIFFS, and all others similarly situated, and/or the consuming public

4 120. DEFENDANTS knew that PLAINTIFFS, and all others similarly situated, and/or the
5 consuming public had no way to determine the truth behind DEFENDANTS’ concealment and
6 omissions and that these included material omissions of facts surrounding DEFENDANTS’ use of
7 defective drywall as alleged herein.

8 121. PLAINTIFFS, and all others similarly situated, and/or the public, reasonably relied on
9 facts revealed which negligently, fraudulently and/or purposefully did not include facts that were
10 concealed and/or omitted by DEFENDANTS.

11 122. As a result of the foregoing acts and omissions, PLAINTIFFS, and all others similarly
12 situated, require and/or will require extensive reconstruction and repairs, and will incur repair and
13 replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses.
14 PLAINTIFFS, and all others similarly situated, are informed and believe, and further allege that
15 PLAINTIFFS, and all others similarly situated, will in the future be required to pay for additional
16 repairs and/or replacement costs, and/or medical, care, attention, and services.
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20 **SEVENTH CAUSE OF ACTION ON BEHALF OF THE CLASS**
21 **VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

22 123. PLAINTIFFS repeat and reallege the foregoing paragraphs, inclusive, and
23 incorporates the same as if set forth herein at length.

24 124. This action is brought to secure redress for the unlawful, deceptive and unfair trade
25 practices, perpetrated by DEFENDANTS.

26 125. PLAINTIFFS, and all others similarly situated, are “consumers” and the subject
27 transactions are “trade or commerce” as defined by Florida Statute §501.203(8).
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1 126. DEFENDANTS' actions and/or omissions as described herein violate Florida
2 Statutes, §501.201, *et seq.*, which was enacted to protect the consuming public from those who
3 engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in
4 the conduct of any trade or commerce.

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6 127. Specifically, DEFENDANTS misrepresented and omitted material information
7 regarding Defendants' use of defective drywall in the PROPERTIES and by failing to disclose known
8 risks.

9 128. DEFENDANTS' misrepresentations and concealment of material facts constitute
10 unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the
11 knowing concealment, suppression, or omission of material facts with the intent that others rely on
12 such concealment, suppression, or omission in connection with the sale and use of Defendants'
13 homes in violation of Florida Statutes, §501.201, *et seq.*

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15 129. DEFENDANTS violated Florida Statutes, §501.201, *et seq.*, by knowingly and falsely
16 representing that the PROPERTIES and drywall used therein was fit to be used for the purpose for
17 which they were intended, when DEFENDANTS knew it was deceptive, dangerous, ineffective,
18 unsafe and by other acts alleged herein.

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20 130. DEFENDANTS engaged in the deceptive acts and practices alleged herein in order to
21 sell more homes to the public, including PLAINTIFFS, and all others similarly situated.

22 131. Said acts and practices on the part of DEFENDANTS were and are illegal and
23 unlawful pursuant to Florida Statute §501.204.

24 132. As a direct and proximate result of DEFENDANTS' violations of Florida Statutes,
25 §501.201, *et seq.*, PLAINTIFFS, and all others similarly situated, have suffered damages.
26 PLAINTIFFS are entitled to compensatory damages, equitable and declaratory relief, punitive
27 damages, costs and reasonable attorney's fees.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Plaintiff Class Members demand judgment against the Defendants, jointly and severally, as follows:

- a. Equitable, injunctive, and declaratory relief;
- b. Damages in an amount to be determined at trial, but in an amount exceeding twenty-five thousand dollars;
- c. Pre-judgment and post-judgment interest at the maximum rate allowable at law;
- d. Treble, exemplary, and/or punitive damages in an amount to be determined at trial;
- e. The costs and disbursements incurred by PLAINTIFFS in connection with this action, including reasonable attorneys' fees;
- f. All statutory damages;
- g. Disgorgement of DEFENDANTS' profits from the sale of the PROPERTIES;
- h. Reimbursement for all costs and expenses incurred in the repair of any purchase price paid, including, but not limited to, insurance co-payments, interest on these amounts from the date of purchase, attorneys' fees and costs, non-pecuniary damages, as well as any other legal or equitable relief to which PLAINTIFFS may be entitled;
- i. Such other and further relief under all applicable state and federal law and any other relief the Court deems just and appropriate.

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DEMAND FOR JURY TRIAL

Plaintiffs, the Joyce Dowdy Revokable Trust and Larry and Terri Torpy, hereby demand a trial by jury as to all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served by process server on the Defendant.

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Dated: March ____, 2009