

**ARBITRATION BEFORE RESOLUTE SYSTEMS, LLC**

**REGENCY HOMEBUILDERS, LLC,**

**Claimant /  
Counter-  
Respondent**

**v.**

**JULIE PEREIRA,**

**Respondent /  
Counter-  
Claimant.**

**No. 6016378**

**RESPONDENT'S AMENDED ANSWER  
AND COUNTER-CLAIM**

COMES NOW Respondent Julie Pereira ("Respondent" or "Ms. Pereira") and submits the following Amended Answer to the allegations in Claimant Regency's Statement of Claim, as follows:

1. Respondent is without sufficient knowledge to form a belief as to the truth of paragraph one of the Statement of Claim, and therefore it is denied.
2. The first sentence of paragraph two of the Statement of Claim is admitted. The second sentence of paragraph two of the Statement of Claim is denied. The third sentence of paragraph two of the Statement of Claim is denied.<sup>1</sup> The fourth sentence of paragraph two of the Statement of Claim is admitted, only to the extent that Regency by and through its warranty department frequently instructed the

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<sup>1</sup> Such a clause is unlawful and unenforceable under the Federal Consumer Review Fairness Act of 2016.

Respondent to contact its subcontractors directly. Additionally, the Respondent was required to direct and oversee repair work inside her own home, as Regency rarely accompanied its subcontractors, despite several requests by the Respondent to Regency for it to supply an employee for this oversight. The remaining allegations of the Statement of Claim in the fourth sentence of paragraph two are denied. The fifth sentence of paragraph two of the statement of claim is denied. The sixth sentence of paragraph two of the Statement of Claim is denied.

3. The Respondent is without sufficient knowledge to form a belief as to the truth of paragraph three of the Statement of Claim, and therefore it is denied.
4. Paragraph four of the Statement of Claim is denied. The Respondent resides at 5055 Adagio Lane, Lakeland, Tennessee.
5. Paragraph five of the Statement of Claim is admitted.
6. Paragraph six of the Statement of Claim is admitted.
7. Paragraph seven of the Statement of Claim is admitted.
8. Paragraph eight of the Statement of Claim is denied.
9. Paragraph nine of the Statement of Claim is admitted.
10. Paragraph ten of the Statement of Claim is admitted.

11. Paragraph eleven of the Statement of Claim is denied. The total sales price was \$682,182.00.

12. Paragraph twelve of the Statement of Claim is denied.

13. Paragraph thirteen of the Statement of Claim is admitted.

14. Paragraph fourteen of the Statement of Claim is denied.

15. Paragraph fifteen of the Statement of Claim is denied. The Agreement speaks for itself and is the best evidence thereof.

16. Paragraph sixteen of the Statement of Claim is admitted.

17. Paragraph seventeen of the Statement of Claim is denied as written. The Agreement speaks for itself and is the best evidence thereof.

18. Paragraph eighteen of the Statement of Claim is denied as written. The Agreement speaks for itself and is the best evidence thereof.

19. Paragraph nineteen of the Statement of Claim is denied as written. The Agreement speaks for itself and is the best evidence thereof.

20. Paragraph twenty of the Statement of Claim is denied as written. The Agreement speaks for itself and is the best evidence thereof.

21. Paragraph twenty-one of the Statement of Claim is admitted, only to the extent that Ms. Pereira made claims under her warranty. The remaining allegations of paragraph twenty-one are denied.

22. Paragraph twenty-two of the Statement of Claim is admitted.

23. Paragraph twenty-three of the Statement of Claim is denied.

24. Paragraph twenty-four of the Statement of Claim is admitted, only to the extent that Ms. Pereira repeatedly contacted Regency's vendors and subcontractors because of instruction to do so from Regency. The remaining allegations of paragraph twenty-four are denied.

25. Paragraph twenty-five of the Statement of Claim is admitted.

26. Paragraph twenty-six of the Statement of Claim is admitted.

27. Paragraph twenty-seven of the Statement of Claim is denied.

28. Paragraph twenty-eight of the Statement of Claim is admitted.

29. Paragraph twenty-nine of the Statement of Claim is admitted.

30. Paragraph thirty of the Statement of Claim is denied as written.

31. The first sentence of paragraph thirty-one of the Statement of Claim is admitted.

The second sentence of paragraph thirty-one of the Statement of Claim is denied. The third sentence of paragraph thirty-one of the Statement of Claim is denied.

32. The first sentence of paragraph thirty-two of the Statement of Claim is denied.

The second sentence of paragraph thirty-two of the Statement of Claim is admitted, only to the extent that Ms. Pereira publicized her grievances on Facebook. Nothing posted regarding Ms.

Pereira's experiences was untrue. The remaining allegations of paragraph thirty-two are denied.

33. Paragraph thirty-three of the Statement of Claim is admitted.

34. Paragraph thirty-four of the Statement of Claim is admitted, only to the extent that that Ms. Pereira gave instructions and directions to the subcontractors in Regency's absence, as it was necessary for them to complete the warranty work they were sent to do, and Ms. Pereira instructed a subcontractor to stop doing work on her foundation until an employee from Regency was present to clarify an important issue. The remaining allegations of paragraph thirty-four are denied.

35. Paragraph thirty-five of the Statement of Claim is denied.

36. Paragraph thirty-six of the Statement of Claim is denied.

37. Paragraph thirty-seven of the Statement of Claim is admitted.

38. The first sentence of paragraph thirty-eight of the Statement of Claim is admitted. As of June 13, 2021, there was a punch list of issues already submitted for warranty claims, and other issues the Claimant was supposed to be handling outside of the warranty process, that were all a result of an incomplete and rushed closing, not of the Respondent's own volition. Exhibit C to the Statement of Claim was not seen by or signed by Ms. Pereira until a month after closing. The second sentence of paragraph thirty-eight of the Statement of Claim is denied.

39. Paragraph thirty-nine of the Statement of Claim is admitted.

40. The first sentence of paragraph forty of the Statement of Claim is denied to the extent that nothing posted regarding Ms. Pereira's experiences was untrue. The second

sentence of paragraph forty of the Statement of Claim is denied to the extent that Ms. Pereira did not have Facebook “followers” at the time of these Facebook posts.<sup>2</sup>

41. Paragraph forty-one of the Statement of Claim is admitted.

42. Paragraph forty-two of the Statement of Claim is admitted.

43. The first sentence of paragraph forty-three of the Statement of Claim is admitted. The second sentence of paragraph forty-three of the Statement of Claim is Denied. The third sentence of paragraph forty-three of the Statement of Claim is admitted.<sup>3</sup>

44. Paragraph forty-four of the Statement of Claim is denied as written.

45. Paragraph forty-five of the Statement of Claim is denied

46. The first sentence of paragraph forty-six of the Statement of Claim admitted.

The second sentence of paragraph forty-six of the Statement of Claim is denied.

47. Paragraph forty-seven of the Statement of Claim is admitted.

48. Paragraph forty-eight of the Statement of Claim is admitted, only to the extent Ms. Pereira posted what is quoted. The remaining allegations of the Statement of Claim in paragraph forty-eight are denied.

49. Paragraph forty-nine of the Statement of Claim is denied as written.

50. Paragraph fifty of the Statement of Claim is denied as written.

51. Paragraph fifty-one of the Statement of Claim is admitted.

52. Paragraph fifty-two of the Statement of Claim is admitted.

53. Paragraph fifty-three of the Statement of Claim is admitted.

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<sup>2</sup> Ms. Pereira did not convert her Facebook to “Professional mode” which allows followers until mid-2023.

<sup>3</sup> This Manufacturers’ representative is one of Regency’s suppliers and told Ms. Pereira he does not want to lose their business.

54. The first sentence of paragraph fifty-four of the Statement of Claim is admitted.

The second sentence of paragraph fifty-four of the Statement of Claim is denied.<sup>4</sup>

55. Paragraph fifty-five of the Statement of Claim is denied as written. See footnote 3.

56. Paragraph fifty-six of the Statement of Claim is Denied.

57. Paragraph fifty-seven of the Statement of Claim is denied.

58. Paragraph fifty-eight of the Statement of Claim is denied.

59. Paragraph fifty-nine of the Statement of Claim is denied as written.

60. Respondent incorporates the responses in paragraph 1-59 as if fully set forth herein.

61. Admitted this is what Section 35 of the Agreement states. Denied that Respondent defamed or disparaged Claimant.

62. Paragraph sixty-two of the Statement of Claim is denied.

63. Respondent is without sufficient knowledge to form a belief as to the truth of paragraph sixty-three, and therefore it is denied.

64. Respondent incorporates the responses in paragraph 1-63 as if fully set forth herein.

65. Paragraph sixty-five of the Statement of Claim is denied as written.

66. Paragraph sixty-six of the Statement of Claim is admitted, only to the extent that Regency by and through their warranty department frequently instructed the respondent to contact their subcontractors directly. Additionally, the Respondent was required to direct and

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<sup>4</sup> Ms. Pereira was not given a copy of this report until months later and only upon her request.

oversee repair work inside her home, as Regency rarely accompanied their subcontractors, despite several requests to Regency to supply an employee for oversight.

67. Paragraph sixty-seven of the Statement of claim is denied.

68. Respondent incorporates the responses in paragraph 1-67 as if fully set forth herein.

69. Paragraph sixty-nine of the Statement of Claim is denied.

70. Paragraph seventy of the Statement of Claim is denied.

71. The first sentence of paragraph seventy-one of the Statement of Claim is admitted, only to the extent that Ms. Pereira did not retract her posts. The second sentence of paragraph seventy-one of the Statement of Claim is denied. The third sentence of paragraph seventy-one of the Statement of Claim is denied. Respondent is without sufficient knowledge to form a belief as to the truth of the fourth sentence of paragraph seventy-one of the Statement of Claim, and therefore it is denied.

72. The first sentence of Paragraph seventy-two of the Statement of Claim is denied.

73. Any and all remaining allegations not heretofore admitted, explained, or denied are categorically denied. The Respondent denies any and all liability in this matter.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

The Statement of Claim fails to state a claim upon which relief can be granted.



## **SECOND DEFENSE**

The Respondent denies that she is liable for the matters, things, or wrongs charged and alleged against her in the Statement of Claim either in the manner or form alleged or in any other manner or form.

## **THIRD DEFENSE**

The Respondent alleges that the Claimant failed to mitigate its damages and accordingly should preclude, diminish, and/or reduce the claimed damages.

## **FOURTH DEFENSE**

The Respondent asserts the defense of accord and satisfaction as a complete defense to claims. The Respondent further alleges the defense of set-off.

## **FIFTH DEFENSE**

The Respondent asserts and raises the affirmative defenses that the Claimant's damages, if any, are precluded or should be reduced because of laches and unclean hands.

## **SIXTH DEFENSE**

The Respondent alleges that the Claimant committed the first material breach of contract and/or any agreements between the parties.

## **SEVENTH DEFENSE**

The Respondent relies upon and raises any and all applicable statute of limitations and repose to the extent these statutes apply to the Claimant's claims.

## **EIGHTH DEFENSE**

The Respondent relies upon and raises the defense of the Statute of Frauds.

## **NINTH DEFENSE**

The Respondent relies upon and raises the defense of the Tennessee Public Participation Act, Tennessee's recently enacted anti-SLAPP Statute.

## **COUNTER-CLAIM**

Now having fully answered and respondent to the original Statement of Claim, the Respondent assumes the role of counter-claimant and adds her spouse, Joseph Pereira, as an additional claimant. As such, Joseph and Julie Pereira ("Claimants"), by and through their undersigned attorney, hereby allege and aver, as follows:

1. Claimants are a married couple who during all relevant times herein were residents of Shelby County, Tennessee.
2. Respondent Regency Homebuilders, LLC is a Tennessee limited liability company doing business in Shelby County, Tennessee.
3. The Claimants incorporate and adopt the jurisdiction and venue information from the original Statement of Claim as if fully stated herein.
4. On March 3, 2020, the Claimants entered into a New Home Purchase Order with Regency for Lot Number 6, Subdivision Winstead Farms, Carrington plan number 3183. (Exhibit 1)
5. On March 6, 2020, the Claimants paid a \$5,000.00 Earnest Deposit for lot 6. (Exhibit 2)

6. On May 6, 2020, Madison Neal of Regency informed the Claimants that the City of Lakeland would not let Regency remove the two large (specimen) Trees in the yard. (Exhibit 3)

7. On May 11, 2020, Madison Neal of Regency informed the Claimants that estimating will price out the French drains they had requested for the yard. (Exhibit 4)

8. On May 13, 2020, Madison Neal of Regency informed the Claimants that the French drains will need to be quoted closer to landscaping. (Exhibit 5)

9. On April 12, 2020, the Claimants ratified the New Home Purchase Order with Regency, increasing the sales price to \$533,655.00. (Exhibit 6)

10. On May 4, 2020, the Claimants visited the Regency design center to select their upgrades.

11. On June 17, 2020, the Claimants and Regency ratified the sales price to \$653,436, following confirmation of all design center pricing. (Exhibit 7)

12. Pursuant to the New Home Purchase Order, the Claimants were pre-approved with a VA Home loan and were required to pay 100 percent (100%) of their upgrades in cash/check.

13. On June 17, 2020, the Claimants provided Regency with check number 302 for \$119,781.00. (Exhibit 8)

14. On July 4, 2020, the Claimants visited Lot 6 and were surprised to discover it had been built-up significantly. This build up was not discussed with the claimants, and they were surprised to see this given their discussion with Regency agent Amanda Hamilton about their

excitement of having a flat, spacious backyard that their six (6) children could enjoy, and where they could place a swing set for their three (3) youngest children. (Exhibit 9)

15. On July 8, 2020, the Claimants again visited the lot and it had been built-up even more and compacted three (3) to six (6) feet, from the street line to the back, respectively. Their backyard was now a hillside, versus the flat property they contracted for. (Exhibit 10)

a. Measurements on the side yard by the trees raised it four (4) feet.

b. Measurements on the side yard with the existing house raised it a little over two (2) feet.

c. Measurements in the back yard raised it by six (6) feet.

16. On September 21, 2020, during their first meeting on site with Recency's Builder Daniel, the Claimants expressed their concern about the trees and tree roots in proximity to the house, as well as the backyard that had become a hillside. (Exhibit 11)

a. Daniel and later Todd assured the Claimants that final landscaping would yield a functional backyard with just a slight slope for water runoff.

b. Regency indicated since the City of Lakeland prohibited them from and denied<sup>5</sup> their request to remove the two specimen trees, they would be unable to build-up the north side of the yard and the Claimants would have a slope only there, due to the trees.

17. On or around October 5, 2020, the plumbing installation occurred.

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<sup>5</sup> A Public Disclosure request yielded no previous request for tree removal on this property through Shelby County or the City of Lakeland.

18. On October 12, 2020, the foundation was poured. The Claimants had requested notification so they could be present for this event, but they were never notified. (Exhibit 12)<sup>6</sup>

19. On October 29, 2020, the Claimants notified Regency that the “bonus room to extra bedroom” door (i.e., the room above the three-car garage) was not built per the contract and needed to be modified to fit the double French doors they paid an upgrade for versus the narrow door in existence. (Exhibit 13)

20. On or around October 30, 2020, the Claimants notified Regency that the “bonus room back bedroom” was built incorrectly per the contract upgrade. (Exhibit 14)

21. On November 6, 2020, the Claimants notified Regency that the morning room at the back of the house was incorrectly framed per the contract. The Claimants paid an upgrade fee for a vaulted ceiling, wood beams, and a triangle transom window in the morning room. Instead, Regency framed a low pitch. (Exhibit 15)

a. Instead of tearing down this portion and re-framing it correctly, Regency added additional posts and used hurricane straps to vault the ceiling and create space for the window.

22. On November 24, 2020, the Claimants hired Jones Brothers Tree Service to evaluate the condition of the two (2) specimen trees in their yard. (Exhibit 16)

a. Mike Mabe (ISA Certified Arborist) recommended tree removal prior to occupancy due to damage caused during construction.

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<sup>6</sup> The disparity in date between the inspection and signing of the report should bring into question as to whether the foundation was indeed ever inspected.

23. On November 25, 2020, the Claimants hired Harrison Tree Service to evaluate the condition of the two (2) specimen trees in their yard. Harrison Tree Service wrote a letter regarding the condition of the trees. (Exhibit 17)

24. On December 2, 2020, the Claimants notified Regency that the triple outdoor living area (OLA) door from the living room to the exterior was off placement by almost 2 feet per the contractual design. (Exhibit 18)

25. On December 2, 2020, the Claimants notified Regency that the furdawn had been built in the kitchen contrary to the contract upgrade. This furdawn lowered the ceiling height and made the room seem much smaller. (Exhibit 19)

a. This required Regency to remove the furdawn and also raise the floor of the attic above the kitchen to accommodate the taller (per contract) ceilings the Claimants had already paid for.

26. Due to their concerns about the “build up” under the foundation of their home, the Claimants made a written request for Regency to provide the following: (Exhibit 20)

a. Property Survey

b. Grading Plan

c. Foundation Inspection

d. Bore Tests on property

e. Plans or reports that contain info on augured/drilled piers under the footings

f. Previous requests for tree removal for lot 6

g. Tree protection plan for lot 6

To date, Regency has failed to provide these requested documents.

27. On December 10, 2020, in a text from their real estate agent Meleah, the Claimants were notified that Amanda Hamilton of Regency had told their agent that there were piers put in under the home.<sup>7</sup> (Exhibit 21)

28. On January 10, 2021, following a request from Madison with Regency, Ms. Pereira submitted a draft design of the outdoor kitchen. The Claimants were unaware that they would be required to draft the design of this space and it was never previously discussed as such. (Exhibit 22)

29. On January 13, 2021, the Claimants requested Regency meet with them regarding the French drains they wanted throughout the yard, due to drainage concerns they were already seeing. (Exhibit 23)

a. Regency assured them that French drains were not necessary and that if drainage became an issue, they would come fix the issue under warranty.

30. On January 15, 2021, the Claimants received approval from the Lakeland City Manager to remove the two specimen trees damaged during construction, and were recommended to be removed prior to occupancy for safety reasons. (Exhibit 24)

a. Despite causing the damage that led to the recommendation of the trees' removal from two separate arborists, Regency refused to remove the trees and told the Claimants they could do it at their own cost for \$7500. Regency required the Claimants to use only their company, even though other less expensive and insured options were available.

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<sup>7</sup> In a conversation in February 2022 the company that poured the foundation indicated there were not any piers placed.

b. Per information sent from Regency's agent Amanda to the Claimant's agent, the specimen tress had their large roots cut to the portion running under the foundation on the north side of the house. To prevent future foundation issues, Regency's agent Amanda told agent Meleah that piers were placed in the space where the roots had been cut to prevent the foundation from sinking. (See Exhibit 21)

1. The Claimants were later informed in February 2022 by the engineer who planned and oversaw the inspection of the foundation that no piers had been placed.

c. Regency had previously told the Claimants that the City of Lakeland would not allow them to remove the trees, more specifically, that the city had told them "no".

i. FOIA requests to the City of Lakeland did not substantiate this claim from Regency. The trees were on the 2006 Lakeland tree plan to remain, but Regency made no further request to the City, not even when the roots were cut, and the construction was clearly killing the trees. Regency did not take any action to mitigate the damage they caused to these trees, and then passed the cost of their negligence onto the Claimants. (Exhibit 24i)

31. On February 3, 2021, the Claimants discovered there had been a miscommunication about the washer and dryer hook-ups in the garage. The Claimants were unaware that a "stub out" doesn't mean it will be ready for hook-ups upon move in, and the Claimants were informed they will have to pay for this work after they close. (Exhibit 25)<sup>8</sup>

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<sup>8</sup> At the design center the Claimants made it clear that they were purchasing two washers and two dryers for the new home, and that the garage washer and dryer would be used for Mr. Pereira's firefighting gear.



a. Ms. Pereira reached out to Ray at Legacy Plumbing to see if it would be easier and less expensive to fix the hook-up issue before drywall was hung. Ray indicated yes and that they would do the work if Regency allowed it. Regency refused to allow this.

32. On February 8, 2021, Ms. Pereira reached out to Regency again reminding them that they wanted to add extra drainage. (Exhibit 26)

33. On February 11, 2021, Ms. Pereira reached out to Regency again reminding that they wanted to add extra drainage. (Exhibit 27)

34. On February 22, 2021, Ms. Pereira again reached out to Regency reminding them that they wanted to add extra drainage. (Exhibit 28)

35. Claimants received a text from their agent Meleah that the initial closing would be scheduled for April 3, 2021. (Exhibit 29)

36. On March 3, 2021, the Claimants discovered a miscommunication about the paint color of their walls, per emails with Madison in the Regency design center. The Claimants ended up not asking Regency to repaint, so as to not delay closing. (Exhibit 30)

37. On March 9, 2021, Claimants met with Daniel, Todd, and Jay from Regency and agent Meleah at the property to discuss the sloping of the backyard (versus the flat level property at the time of the initial contract and all contracts ratified through September 2020) and the outdoor living area upgrades. Regency advised the Claimants on how they were going to build out the 12' concrete pad addition that was paid for in May 2020. The 12' extension would be more than 3 feet above native soil, and per code would require safety elements like stairs and a wall. The following was discussed: (Exhibit 31)

a. The addition of a seat wall or railing was required to meet code.

b. Height of seat wall was to be like the Kensington model.

c. Seat (i.e., cap) of the seat wall was to be grey stone.

d. Create a seat wall on two of the three walls. One on the north side of the house and one on the west.

e. Discussed how it may need 1-2 feet of brick on the third wall depending on the drop from patio to grass.

f. Stairs would be required per code, and they would be grey stone per Todd's recommendation.

g. Despite all of this being necessitated from Regency's grade change to the yard, they passed the \$1,250.00 expense of this wall and stairs onto the Claimants, even though a cost of roughly \$600 for the seat wall was discussed at this meeting.

38. Per an email from Madison with Regency on March 10, 2021, the seat wall price would be \$1,250. Claimants agreed to pay this despite this not being what was discussed, as they did not want to cause any delays to the April 15, 2021 closing. (Exhibit 32)

39. On March 5, 2021, the Claimants were told that closing by April 15, 2021 (the date the Claimants' rate lock of 2.5% expired) "shouldn't be a problem" (Exhibit 33)

40. On March 10, 2021, Claimants discovered Regency installed the wrong stair railings in 3 places throughout the house. (Exhibit 34)

41. Regency and the Claimants discussed the specimen tree removals in depth. The Claimants requested their information be shared with their neighbors, as the trees split their lot and their neighbors to the north. The Claimants wanted to ask if the neighbors would be willing to split the \$7,500 cost. Regency informed the Claimants that the neighbors did not want their

contact information and therefore Regency did not give it to them.<sup>9</sup> The Claimants initially told Regency they might just want to wait until after the closing to remove the trees, since Regency was requiring use of their (more expensive) company. Regency told the Claimants that the neighbors liked the trees and did not want them removed, so the Claimants should remove the trees now while Regency owned both properties.<sup>10</sup> Regency also told the Claimants that tree removal would alter the grading, and altering the grading voided the foundation warranty, but if Regency did the tree removal prior to closing nothing would be voided. The Claimants had the trees removed for \$7,500 on March 20, 2021. Their agent Meleah's Broker was gracious enough to split the cost.

42. On March 29, 2021, the Claimants visited the house and discovered that the oak stair treads had been stained a red-brown color. The Claimants' floors are a grey brown and this clashed. The Claimants' agent Meleah got involved in pushing to have the stairs fixed and stained a color that was relatively close to their floor color. The second attempt was mediocre at best, but the Claimants did not want to delay closing and did not press the issue. (Exhibit 35)

43. During a visit to the house on April 1, 2021, the Claimants discovered all closets had wire shelving. The contract specified several bedrooms and an upstairs hall closet that were not to have any shelving. This was eventually resolved by Regency. (Exhibit 36)

44. During the same visit to the house on April 1, 2021, the Claimants discovered that the incorrect backsplash had been installed, and then removed, in the kitchen. (Exhibit 37)

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<sup>9</sup> The Claimants later learned Regency told the neighbors the same thing, that the Claimants did not want their contract information- both of which are untrue.

<sup>10</sup> The neighbors would later tell the Claimants they did not want the trees either.

45. The Claimants and their agent Meleah were contacted by Regency on April 2, 2021, and informed that they wanted to do a first walk through on April 7, 2021. (Exhibit 38)

46. On April 2, 2021, the Claimants contacted private inspector Gene Ballin to see if he could conduct an inspection with such short notice. (Exhibit 39)

a. Regency was previously made aware that the Claimants desired an inspection, and the contract indicated as such. This short notice given to the Claimants was quite burdensome, especially considering the house was not close to inspection ready.

b. Gene Ballin was available Sunday April 4, 2021, for an inspection of the house.

47. On April 3, 2021, the Claimants discovered that the Regency had installed a rectangle mirror in the master bathroom in violation of the contract. Per the contract there should be no mirror in this space. Regency later removed the mirror, but it damaged the walls. Regency did a quick, mediocre patch and paint job. This mediocre patch and paint job later required the Claimants to hire a painter to re-paint the wall after closing since Regency refused. (Exhibit 40)

48. On Sunday April 4, after securing and paying for childcare, the Claimants met their agent Meleah and inspector Gene Ballin at the house.

49. The inspector Gene Ballin was unable to inspect the house as “mechanical and electrical finals had not been completed.” In fact, the house did not even have an HVAC unit yet, appliances were missing, and critical elements were not hooked up. The inspector was not able perform the inspection, despite Regency insisting the home was ready for inspection and leaving the house unlocked for this purpose. (Exhibit 41)

a. The Claimant paid Gene Ballin \$100 for his time and travel to and from the house and the initial walk around where he discovered the house was not ready to inspect.

50. On April 5, 2021, Claimant reminded Jay at Regency of the following unresolved issues: (Exhibit 42)

a. All shelving contrary to the contract needs to be removed.

b. Need to discuss/finalize drainage under driveway.

c. Need to remove master bathroom mirror.

d. Need to remove the entry way bathroom mirror and paint the area.

51. On April 6, 2021, the Claimants visited the house after the carpet and pad had been installed in all upstairs bedrooms. (Exhibit 43)

a. Regency had cut, stained, and hung the three upstairs barn doors prior to the carpet and pad being installed, and made no allowances for the space needed under the doors. This caused the barn doors to hang at an angle (see photograph). After much deliberation between Regency, the Claimants and their agent, Regency agreed to remove the three barn doors and cut them equally on top and bottom so they would fit and not look uneven.

52. On April 7, 2021, the Claimants attended their first walk through with Regency, but their agent Meleah informed Regency that this was not a walk through as the house was not even 75% complete, and Claimants would need an official first walk through when the house was at 90% and the appraisal was ordered. (Exhibit 44)

53. On April 18, 2021, Regency notified Claimants that the vent hood had arrived, but they ordered the wrong model. (Exhibit 45)

54. On April 20, 2021, Ms. Pereira was informed by Todd with Regency that they would be removing the existing outdoor living patio. Ms. Pereira was told this would be to get a better pour and without aggregate rock to do the stamped concrete per the contract. (Exhibit 46)

55. Claimants discovered the damaged outdoor living area gas line in the garage. It had been punctured and it was determined that this was the real reason for the existing patio removal. Claimants asked Daniel with Regency if they would be running the gas flex line through PVC pipe this time, so they would not have to chop through the concrete in the future if there are any issues. Daniel told Claimants he would look into it, but the new concrete was poured before this ever happened. Unfortunately, this would eventually mean costly repairs that were totally preventable. (Exhibit 47)

56. On April 28, Ms. Pereira had a discussion with Daniel regarding the area of the yard where all the drainage will funnel through. (Exhibit 48)

a. This is the same area that is now constantly flooding.

57. The outdoor living area and outdoor kitchen 24' concrete pad was poured and stamped. Regency removed the expansion joints that existed on the previous 12' pad that had been removed, and the 24' patio was poured without expansion joints. (Exhibit 49)

58. Claimants discovered Regency had bricked the seat wall too high (not the height of the Kensington referenced in discussions), and all three sides were bricked instead of just the two sides as discussed. (Exhibit 50)

a. During the meeting on March 9, 2021, Todd discussed the height of the seat wall (just like the Kensington which was 19" and had a cap on it).

b. During the same meeting, Todd also discussed using grey stone for the steps off the patio to the yard.

c. During the same meeting, Todd discussed using a grey cap, similar to the stone cap at the Kensington model on the seat wall.

1. Items a. and b. were eventually rectified; c. was not.

59. On April 30, 2021, the patio had another 2 inches poured on top of it, because the first stamped concrete job was substandard. The Patio was now several feet above the 3 feet allowed by the County without assessments and compaction testing of the soil.<sup>11</sup> (Exhibit 51)

60. On May 5, 2021, the Claimants discovered the wrong garage motors were installed. Per contract, the Claimants had paid for an upgrade.

61. On May 7, 2021, the correct vent hood finally arrived, and installation occurred on May 11, 2021. (Exhibit 52)

62. Thereafter, the vent hood was installed significantly lower than discussed for design and for other kitchens of this caliber.<sup>12</sup> Daniel with Regency informed the Claimants' agent Meleah and the Claimants that it was this low because Shelby County code only allows for so many inches from the cooktop, which the Claimants later found to be untrue. The new vent hood was larger in height than the one initially ordered (incorrect vent hood), causing it to hang lower than the design planned for.

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<sup>11</sup> Roughly 3 feet of soil was added to the backyard in September 2020, and then roughly 3 feet, 2 inches was added in April 2021. This made it 6 feet above native soil and therefore compaction testing was required but did not occur. This part of the patio is now failing (dropping) with differential.

<sup>12</sup> The vent hood extends 24 inches out from the wall and is only 30.75 inches from the counter. Due to the depth of protrusion and low height, the Claimants and guests frequently hit their head on the vent hood while cooking.

a. The Claimant's two oldest boys cannot use the stove without hitting their head on the venthood.

63. On or around May 7, 2021, Todd informed the Claimants that the "soft close hinges throughout" does not include any of the built-ins. The contract does not list this exclusion and the Claimants thought their built-ins included the price of soft close hinges. (Exhibit 53)

64. On May 20, 2021, the Claimants spoke to Daniel regarding the tree line in the back yard that was elevated above the rest of the yard. This was (and still is) causing the water to flow backwards and has created major drainage issues. Claimants also asked Daniel about bringing more dirt in to level the yard more, as well as inquired about a drain on the side between their house and the neighbors. (Exhibit 54)

a. Said trees have since been removed at the Claimants' expense.

65. The Claimants conducted a private inspection with Gene Ballin. The inspector noted dishwasher damage and that running the dishwasher tripped the circuit breaker. (Exhibit 55)

66. On May 24, 2021, the Claimants emailed a copy of the inspection report to Todd and Daniel, along with a spreadsheet detailing issues to resolve based on the inspection, including the dishwasher. (Exhibit 56)

67. On May 25, 2021, Claimants asked Daniel about updates on a closing date. Daniel told Ms. Pereira her he believed it was going to be the following Thursday (June 1, 2021). (Exhibit 57)



68. On May 26, 2021, Daniel let the Claimants know that he was working on the home inspection report and their list and requested to meet the following Tuesday (June 1, 2021) to go over the remaining items from the inspection report. (Exhibit 58)

69. After visiting the house on May 28, 2021, the Claimants decided to e-mail Regency's part-owner Sean Carlson. The Claimants desired to meet in person at the house so they could show him all the issues and request mutual cancellation of the contract with a full refund of the money paid to date. (Exhibit 59)

70. On May 28, 2021, Todd called Ms. Pereira in response to the email she sent to Mr. Carlson. Todd told Ms. Pereira they could schedule the closing for Wednesday, Thursday, or Friday (June 2, 3 or 4, 2021) and assured Ms. Pereira the house would be ready after the final walk through on Tuesday June 1, 2021, in the afternoon.<sup>13</sup> (Exhibit 60)

71. During this phone call, Ms. Pereira discussed the price increase from \$600-700 to \$1200 on the seat wall, the cap for the top of the seat wall and the caps for the stairs, as that is not what was discussed in person, but that the Claimants went ahead and signed off on it because they did not want to delay closing any further. Todd insisted they were told that the price was \$1,200 when they met on site, and that he never said he would put stone on top of the wall. Ms. Pereira reiterated that the Claimants heard him say this, as well as their agent Meleah. (Exhibit 61) Ms. Pereira told Todd they were not closing without this being completed. Todd told the Claimants they did not pay for it and it was not on an addendum.

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<sup>13</sup> The Claimants never had an initial walk through, so this should not have been the final. There was no "walk through" scheduled for June 1, it was scheduled as a meeting with Daniel to go over the items on the independent inspection list.

72. During this phone call Todd relayed his plan that they would all meet Tuesday, June 1, 2021, at 3:00 p.m. to do the final walk through. This should have been the first walk though, as the one almost two months prior to this date was not a walk though as relayed by Claimants' agent Meleah, due to the house being less than 75% complete. Todd said the house was going to be ready for the Claimants to move in, and that if there were a couple little things, Todd said Regency would take care of it, but if there was another two-page list Regency would not take care of it because the house is going to be up to Todd's standards. Todd then told Ms. Pereira that if they don't show up to the closing, they will be in breach of contract and Regency will put the house on the market and sell it for whatever they can, ideally \$680,000. Todd also told Ms. Pereira that the expense of selling the house would fall on them. Todd informed Ms. Pereira that if the house sells for less than the price they had contracted for, then that expense will be deducted from the money they have on deposit. Most of this conversation was again reiterated in an email from Jill Sugg to Julie Pereira on May 28, 2021. (Exhibit 62)

73. Todd informed Ms. Pereira that the stone he bought for the steps cost Regency \$600.

74. Todd informed Ms. Pereira that the owner Sean Carlson agreed with this plan, and that for the last two weeks they had been working hard to get the house ready.

75. Todd informed Ms. Pereira that the house would be ready for final inspection on Tuesday, June 1, 2021, and the only thing not ready was the outdoor living area kitchen due to damaged and missing appliances.

76. Todd informed Ms. Pereira that he was unaware they had paid for an outdoor trash can for the outdoor kitchen, so he was going to need to research that.

77. Ms. Pereira informed Todd that it was never relayed to them that the June 1, 2021, meeting at 3:00 p.m. was a final walkthrough. Ms. Pereira informed Todd that her husband Joe Pereira would be unable to attend as he was working a 24-hour shift, and was unsure if their agent Meleah would be able to be present as well. Todd told Ms. Pereira that Tuesday, June 1, 2021, was to be their final walkthrough. (See Exhibit 60)

78. Ms. Pereira explained to Todd that since they would not close by June 1, 2021, as previously relayed by Daniel, they had to extend their rate lock again and Ms. Pereira did not feel they should have to finance this cost again when the delays had been caused solely by Regency's staff. Todd then began to argue with Ms. Pereira about who caused the delays, citing the tree removal, and tried to blame the Claimants for the vent hood issue. The vent hood issue was caused by Regency's error in ordering and incorrectly venting the space. The Claimants made no request to change the vent hood of their own volition, until they were informed of ordering and placement issues. Daniel with Regency is the person who suggested a different, lower profile vent hood. (The Claimants are unaware of any changes made to the vent hood, as the one installed is a variation of the one in the contract. The hood is just not installed at the height discussed due to depth). Todd admitted that Regency put the backsplash on hold, which put the plumbing inspection on hold, which put the mechanical inspection on hold for a week, which was not requested by the Claimants. (Exhibit 63)

79. Todd informed Ms. Pereira that he would not give them their money back and cancel the contract.

80. Todd informed Ms. Pereira that builders were experiencing unpresented delays in these times. (This does not explain why homeowners, who contracted 5-8 months after the Claimants, closed months prior to the Claimants)

81. Ms. Pereira discussed the timeline with Todd, such as being told the house would be ready before Thanksgiving, but for sure before Christmas 2020. Then Regency didn't break ground until September and Ms. Pereira expressed that they still don't know why no construction occurred from May until September 2020. Todd informed Ms. Pereira it was because the Claimants requested a preconstruction appraisal.<sup>14</sup> The Claimants later learned this was an unnecessary step as they had the funds to cover an appraisal gap if needed. The delay in appraisal actually was due to the delay in permits not being submitted in a timely manner to the County. On more than one occasion, agent Meleah reached out to Regency for the status of this delay on their end. (Exhibit 64)

82. Ms. Pereira expressed appreciation for Regency accommodating some of their change requests early on in the building process<sup>15</sup> while also discussing some of the major issues they ran into that caused significant delays and had nothing to do with the Claimants' requests.

83. Ms. Pereira detailed some concerns with the master bedroom regarding the structure and integrity, and Todd reminded Ms. Pereira they hired a structural engineer to inspect the house. The structural engineer was Poe Engineering, and the Claimants did not

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<sup>14</sup> The Claimants did not request this, Regency's Lender did.

<sup>15</sup> Change requests incur a \$500 fee plus the actual cost of the change.

know the relationship between Regency and Poe at the time. Todd told Ms. Pereira that he never saw the report, although the Claimants personally sent it to Todd via email.

84. Todd informed Ms. Pereira that Regency “is ready to close and that the house is ready.” Ms. Pereira informed Todd that she did not think it was fair that she had to spend another \$1,600 to lock the interest rate again since they weren’t closing until June 1, 2021.<sup>16</sup> Ms. Pereira informed Todd they had spent over \$7,000 in excess rent for the delays on the house. Todd again informed Ms. Pereira that the house was going to be ready for move in the following week. Ms. Pereira again relayed concern about having only one walk through. Ms. Pereira was again told the house will be ready for move in.

85. On May 28, 2021, the Claimants received a response on their email to Sean Carlson, from Jill Sugg. Ms. Sugg’s email indicated the house would be ready for move in, and that Regency had gone above and beyond for the Claimants. (Exhibit 65)

86. The Claimants’ response to Jill Sugg’s email indicated they felt they were being “low key threatened and essentially bullied into closing before the home is ready.” (Exhibit 66)

87. The June 1, 2021, meeting scheduled for this date was changed to a “final walkthrough” by Regency despite the Claimants’ objections. The Claimants did not have any recourse as Regency already told them they would be in breach of contract and Regency would sell the house, potentially at a loss and sales cost to the Claimants. This would also render the Claimants homeless with six (6) children as their rental had already been re-rented. (Exhibit 67)

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<sup>16</sup> The Claimants then learned their broker was able to shop another lender and get them an even lower rate of 2.25% without having to lock or pay.

88. During this walk through, the house was still missing many items and when looking through photos, the Claimants discovered the “permabase throughout” was not installed in all the bathrooms as per the contract. This was a \$3,538 upgrade. It was also discovered that Redguard was not used on the floor (\$795) per the contract, walls (\$895) plus a \$500 change fee charge. The Claimants requested a refund of \$5,658 but were only refunded \$4,703.

89. During this walk through the visually damaged dishwasher was discussed again. Ms. Pereira and agent Meleah were assured the dishwasher had been inspected and the issue was solely cosmetic. Regency indicated it had already ordered a new dishwasher front panel that would fix the front and side dents.

90. The Claimants closed on the house on June 4, 2021, but due to the later afternoon closing they were not given the keys until Monday, June 7, 2021. When the Claimants drove to the house Friday evening to take some photographs to send to friends and family, they discovered Regency still had employees working on the house inside and out.<sup>17</sup>

91. On June 14, 2021, Regency instructed Ms. Pereira to reach out directly to some of their vendors/subcontractors to get warranty work completed on tickets she had submitted on June 11, 2021. (Exhibit 68)

92. Per the Claimants’ agreement with Regency, a loaner fridge was to be dropped off on June 16, 2021, as the Claimants had been working in the house throughout the day. The loaner fridge was not delivered until June 21, 2021. (Exhibit 69)

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<sup>17</sup> This was not authorized by the Claimants nor did Regency ask permission.

93. The Claimants finally moved in on June 25, 2021 (due to short closing notice) and spent their first night in the home.

94. On the afternoon of June 27, 2021, the Claimants noticed warping of their floors in the kitchen and then water seeping through their floorboards. Legacy plumbing was called, and they discovered the damaged dishwasher that was noted earlier on the inspection report and that had been pointed out to Regency several times, had a golf ball size dent in the back right corner, which had busted the seal open about halfway across the back of the dishwasher. This seal breakage caused the dishwasher to dump water out of the backside when used. The water had been leaking since it was installed in March 2021, as the dishwasher was run several times a month by Regency or its subcontractors, as well as Ms. Pereira. (Exhibit 70)

95. On the afternoon of June 28, 2021, a Regency flooring subcontractor came to remove wet and damaged floorboards.

96. Service Master was called to the house by Regency later that day on June 28, 2021, and removed more flooring and water that had begun seeping to the other side of the kitchen and morning room. Service Master set up a dehumidifier and fans. (Exhibit 71)

97. Service Master returned on Wednesday June 30, 2021, to do a moisture reading; however, it was unable to do the thermal imaging the Claimants requested. (Exhibit 72)

98. Service Master returned on Thursday July 1, 2021, to do a moisture reading. (Exhibit 73)

99. On July 1, 2021, Regency's warranty department contacted Ms. Pereira to discuss re-installing the floors. Ms. Pereira reached out to Service Master to find out if it had

made a recommendation regarding replacing the island. Service Master indicated that it had, and it was on its way back to the house to check the moisture levels again. (Exhibit 74)

100. Service Master returned again July 5, 2021, to check moisture readings. Service Master informed Ms. Pereira that the island was dry to industry standards, and it informed Regency of such. Ms. Pereira disagreed and requested further testing and studies, especially with their two-year old's history of severe asthma that required intubation in the ICU in October 2020. (Exhibit 75)

101. Regency indicated it did not want to replace the island, and thought it was fine "as is" but offered to have the Claimants meet with Regency's "best cabinet guy" to see what he had to say.

102. On July 12, 2021, the Claimants discovered that Regency had ordered and installed two (2) incorrect dishwashers per model numbers on the contract and in several emails. The dishwashers installed looked the exact same on the exterior, with subtle differences on the interior, but each dishwasher was roughly \$200 less per dishwasher than the upgrade the Claimants requested and paid for. (Exhibit 76)

103. On July 14, 2021, Ms. Pereira met with Regency's cabinet specialist, who indicated he would recommend that Regency replace the island due to the duration of the water damage, the type of material the island was made out of (particle board), and their son's medical history.

104. Regency finally agreed to replace the entire island that was damaged by Regency's negligence causing the kitchen flood, and new island cabinets and flooring were ordered. The Claimants were told this process was going to take about 8 weeks, and the



existing island was left in place, so the Claimants still had access to water and electricity to cook.

105. New kitchen cabinets arrived, and Regency plumbing (subcontractor Legacy Plumbing) was on site to disconnect the plumbing on August 25, 2021.

106. The following day on August 26, 2021, ProStone arrived to remove the kitchen counter. Later that same day, electricians disconnected all power to the kitchen. (Exhibit 77)

107. Ms. Pereira discovered that the center cabinet, which holds the forty-pound stainless steel farmhouse sink, was damaged to the extent that its integrity was compromised. After discussion with Regency and recommendation of ProStone, a new center cabinet needed to be ordered. (Exhibit 78)

a. The Claimants were informed Regency will keep the cabinet doors from this damaged cabinet and utilize them on the replacement cabinet which will cut down on time.

b. The cabinet doors were inadvertently tossed by the cabinet installer due to lack of communication from Regency, and the Claimants had to wait for new cabinet doors for several weeks after the kitchen island was completed.

108. During the time period from at least June 27, 2021 to August 26, 2021, toxic black mold grew on the island cabinets, island knee wall, and concrete. Service Master obtained a sample for Regency, which was not swabbed well and did not grow anything. The Claimants hired their own mold company, and their samples grew toxic black mold. (Exhibit 79)

109. To remove the island on August 26, 2021, the water had been turned off on August 25, 2021. Electricity and gas had been turned off on August 26, 2021. The Claimants

were without water, gas, or electricity in their kitchen for 35 days, until September 29, 2021.

(Exhibit 80)

a. The Claimants have not been reimbursed for their food expenses incurred during this time.

110. On September 3, 2021, the Claimants submitted a warranty claim for insulation issues in the bonus room and bedroom number 6. Both of these rooms have “dead space” that was not filled with any blow-in insulation. To date, this issue remains unresolved, as these rooms/walls overheat in the summer and get ice cold in the winter. (Exhibit 81)

111. Ms. Pereira was informed the replacement island cabinet would arrive on Friday, September 17, 2021. Based on this, Regency made arrangements for installation to begin on Monday, September 20, 2021. (Exhibit 82)

112. On September 20, 2021, Regency’s cabinet installer arrived at the Claimants’ house to install the replacement center kitchen cabinet that arrived at ProStone on Friday, September 17, 2021, along with the other cabinets that had been left in the Claimants’ garage for weeks.

113. Ms. Pereira had a meeting for work that morning, so she got the installation crew squared away, double checked with the installer that he had the new cabinet, (he confirmed he did) and let them get to work.

114. Later that morning, the cabinet installer informed Ms. Pereira he was finished with the kitchen island install. Ms. Pereira was shocked to discover the damaged center cabinet had been installed. After several phone calls to ProStone and Regency, the following was determined and/or what happened: (Exhibit 83)

a. Ms. Pereira had been asking the installer about the replacement kitchen cabinet and the installer thought Ms. Pereira was asking about the Master Bathroom linen stack that was not a Regency/warranty item that ProStone was also installing the same day. The replacement kitchen cabinet was not at the Claimants' home.

b. The replacement cabinet never arrived on September 17, 2021, but nobody did the due diligence at Regency or ProStone to ensure the order arrived as scheduled.

c. The cabinet installer installed a visually damaged cabinet.

d. The cabinet installer had to remove the damaged cabinet, leaving the Claimants without an island again, including no electricity or water to the kitchen.

115. On September 20, 2021, Metro Appliance arrived with the two "replacement" dishwashers for the damaged/incorrectly ordered dishwashers. These were the wrong dishwashers again. They were not the model number listed in the 2020 contract and they were not the model numbers that Ms. Pereira listed two separate times in the email to Regency and Metro Appliance in July 2021. (Exhibit 84)

116. KitchenAid informed the Claimants that the model dishwasher on their 2020 contract was not even available to order at that time. The Claimants asked Jeremy with Metro Appliance if they could provide a loaner second dishwasher while they wait on theirs. (Exhibit 85)

118. On October 4, 2021, Metro Appliance arrived to deliver the backordered Frigidaire built-in refrigerator and freezer unit to the Claimants. Metro was unable to install the built-in unit due to a shortage of outlets. (Exhibit 86)

a. Ms. Pereira contacted Regency's office and asked for Elizabeth to discuss issues with the built-in unit, but was told she was out, and Alix was out to lunch. The person at the front desk recommended Ms. Pereira call Otto Electric herself.

b. Ms. Pereira contacted Todd to let him know what was going on with the built-in unit.

c. Ms. Pereira contacted Otto Electric directly, as she had done in the past, to let them know what was going on and ask how soon they could come out for an outlet installation so they could get their refrigerator and freezer installed.

d. Ms. Pereira also immediately and simultaneously emailed Regency, Alix Kirk (Regency Warranty), Todd, Todd with Otto Electric and their agent Meleah. Regency expressed no issues with Ms. Pereira contacting Otto Electric directly or emailing them, as she had done dozens of times previously.

119. On October 6, 2021, Metro Appliance arrived again with the Frigidaire built-in refrigerator and freezer and installed it in the Claimants' household.

120. Metro Appliance then informed Ms. Pereira that the refrigerator/freezer was raised as high as the legs would allow and that there was still a gap above the cabinet space. Metro Appliance informed Ms. Pereira it could not put the trim kit parts on the fridge and freezer until there was a panel to cover the gap. (Exhibit 87)

121. Ms. Pereira was then required to contact Pro Stone, Regency and Todd by email with a photograph and an explanation of the issue per Metro Appliance. The refrigerator and freezer were unusable until this installation occurred, so Ms. Pereira and her family were now utilizing a loaner refrigerator in the garage.

a. Regency did not express any issues with Ms. Pereira contacting ProStone directly, as it had directed her to do so many times previously.

122. On Friday October 8, 2021, ProStone arrived to install the cabinet trim for the refrigerator and freezer unit.

123. On the same date, Ms. Pereira called Metro Appliance to let it know the trim was done and it could come to finish the installation so the Claimants could use their refrigerator and freezer unit. Metro informed Ms. Pereira they were not available that day.

a. Ms. Pereira contacted Todd via text and then by telephone to express her frustration. Todd informed Ms. Pereira he was unaware that any of this was to be taking place that day, and stated he would “pull someone from Metro from another jobsite if I need to, to make sure this is done.” By 4:00 p.m., nobody had arrived to take care of the issue and Todd was not answering his telephone or responding to texts. The Claimants were unable to use their built-in refrigerator and freezer through the weekend. (Exhibit 88)

124. On October 11, 2021, Metro finally installed the refrigerator and freezer, but the wrong trim kit had been ordered (per the contract). At this point the Claimants did not want to delay installation any longer, so they begrudgingly accepted the (incorrect) trim kit they had. (Exhibit 89)

a. Metro was also supposed to deliver a loaner dishwasher on this date. Ms. Pereira called Jeremy with Metro directly, and he informed her that he had forgotten about it.

125. The Claimants’ back yard had exhibited drainage problems prior to this date, but there were more pressing matters. On October 7, 2021, Ms. Pereira documented the issues with water flow and submitted a warranty claim to Regency. The Claimants made many

requests in writing during the build process to add drainage/French drains, which Regency repeatedly denied would be necessary. (Exhibit 90)

a. Initially, Regency agreed to have an employee come look at the drainage issue, but after repeated attempts to schedule with them, Regency refused to come.

b. Regency subsequently agreed to send their landscaper out on Monday, November 9, 2021, so Ms. Pereira rearranged her work schedule to meet the landscaper, but he was a no show.

c. Regency then maintained that no standing water could be seen in the photos or videos (despite the inches of standing water Ms. Pereira was walking through in the videos) and refused to send anyone out.

126. The Claimants noticed that since the kitchen floors were replaced following the kitchen flood, the floating flooring (NatureTek Laminate Cumberland oak) was bouncing up and down to the extent it could be felt and observed, and it was making noises/air was flowing through the seams where the floorboards meet.

127. The north hallway between bedroom 2 and bedroom 3 in front of bath 2 had this issue at occupancy, but the bounce was so minor initially that the Claimants were told it was a non-issue and these are floating floors, so they're expected to move.

128. By October 26, 2021, the flooring issue rose to the level of being a nuisance, and the Claimants were worried about the integrity of the floorboards over time with this issue. Ms. Pereira submitted a warranty claim for the flooring issue. Ms. Pereira also reached out to the manufacturer Mohawk, who informed her that the flooring should not be moving up and

down as it was in the video they were sent. Mohawk indicated that if the subfloor was unlevel, it can cause the type of movement being seen. (Exhibit 91)

a. On October 28, 2021, Elizabeth with Regency informed the Claimants that subfloor squeaks or movements are not covered under the warranty.

b. Ms. Pereira forwarded information from Mohawk to Regency and asked them to comply with Mohawk's request for the builder (Regency) to submit a claim and reminded Elizabeth that they were discussing slab, not a subfloor.

c. Regency eventually replied that Derek the hardwood representative would be contacting the Claimants directly.

d. Mohawk representative Derek told Ms. Pereira that some bounce was normal but that if it still bounced after they installed the quarter round, to have him (Derek) come back.

e. Claimants later learned that Derek was one of the main flooring suppliers to Regency, which posed a major conflict of interest and made Derek unable to render an objective, non-biased opinion about the flooring issues, as his paycheck was tied to his [positive] relationship with Regency.

129. On October 28, 2021, the Claimants' agent Meleah sent an email to Regency, renewing her previous request that Regency get someone to oversee the order and accuracy of the repairs on the Claimants' property. (Exhibit 92)

130. On November 3, 2021, Ms. Pereira notified Metro Appliance that the KitchenAid model KDPM704KPS in the 2020 contract, that had been ordered incorrectly on two separate occasions, was available for ordering again. Ms. Pereira received no response. (Exhibit 93)

131. On November 8, 2021, Ms. Pereira emailed Regency to follow up on the status of ordering the KitchenAid dishwashers before they were backordered and unavailable to order again.

132. On November 8, 2021, Ms. Pereira submitted a warranty claim due to the trash compactor panel being the wrong size. All the cabinets in the kitchen were “full overlay” and the appliance panel should also be “fully overlay” to match the cabinets, so one can see barely any reveal of the framing. The panel originally ordered was not even a partial overlay. After much back and forth with Regency and ProStone about this, ProStone agreed to remake the panel and this issue is fully resolved. (Exhibit 94)

133. On November 10, 2021, Ms. Pereira followed up with Regency asking if the KitchenAid dishwashers had been ordered. Regency replied that they did not know and would follow up. After much back and forth with Regency and Metro Appliance, Ms. Pereira spoke to Jeremy with Metro directly on November 11, 2021, and he indicated that the dishwashers had indeed been ordered. (Exhibit 95)

134. On November 10, 2021, Regency notified the Claimants that the backyard drainage issues had been assessed, that there was no drainage issue or standing water, and that they were closing the ticket.

a. To date, nobody from Regency or their subcontractors has ever met with the Claimants or set foot on their property (per security cameras, locked interior gates, and Ms. Pereira working from home) to observe or resolve this drainage/flooding issue.

135. On November 15, 2021, Ms. Pereira contacted Regency regarding some issues, and renewed her verbal request made to Elizabeth and Todd that any further work done in the



Pereira household will require a Regency employee to accompany the subcontractors as a project manager to oversee the work that they do. Ms. Pereira indicated she did not have the time to manage these repairs anymore. (Exhibit 96)

136. On November 18, 2021, Ms. Pereira submitted a warranty claim to Regency regarding the hinges on the front panels (doors) of the built-in cabinets/lockers located in the great room and the garage entry way. They were separating from the base and the doors were starting to break. Regency indicated this was not covered under warranty and it was considered damaged if it was not noted on the walkthrough at closing. Ms. Pereira replied that these built-ins were brought to Todd's attention several times from the poor paint job, to the craftsmanship issues, and the lack of soft close hinge. Ms. Pereira indicated this was a structural portion of the cabinet that is failing, and it affects functionality. Regency again refused to even send someone to look at the issue and indicated they were closing the ticket. Ms. Pereira reminded Regency that they had only lived in the house for five months and cabinets should not be falling apart on every single door hinge. (Exhibit 97)

137. On November 18, 2021, Ms. Pereira submitted a warranty ticket letting Regency know that they are missing 3 kitchen pulls from the recently re-installed kitchen cabinets. Regency requested a photograph from the Claimants.

138. On November 22, 2021, the Claimants hired consulting engineers Brough & Stevens to evaluate their drainage issues and concerns about their kitchen floors bouncing/lifting. (Exhibit 98)

a. The Claimants' engineer cited a drainage issue and recommended an underground French drain system with inlets. To date the builder has not installed the drains

and despite 6 consecutive days of temperatures in the upper 80's the Claimants backyard remained a swamp as of April 2024.

b. Curiously, Regency quoted the Claimants' engineers report in their claims against the Claimants, but only cherry-picked portions of the report to fit their narrative and escape responsibility for fixing the drainage issue.

139. On December 8, 2021, a Regency subcontractor was repairing the neighbor's fence from damage that had occurred during the construction of the Claimants' home. This was the sixth repair attempt according to the Claimants and the neighbors. The Regency subcontractors accessed the fence from the neighbor's yard, but as they were removing boards, they came on to the Claimants' property without their consent. They opened the Claimants' gate and began entering and exiting from the Claimants' fence and backyard. Ms. Pereira saw the commotion on the security camera and proceeded to her backyard. Ms. Pereira found a Regency subcontractor using her 3-foot-high fence that separated part of her side yard, as a **table** for boards they were working on cutting and nailing on the neighbor's fence. Ms. Pereira immediately told them to stop utilizing her property and to enter and exit through the neighbor's yard, not hers. Ms. Pereira also sent an email to Regency about this trespass.

(Exhibit 99)

140. On December 23, 2021, Ms. Pereira called ProStone just as she had many times in the past, to see if new quarter round was ordered for the kitchen island. Ms. Pereira spoke to Kristen and was told someone would call her back right away.

a. Ms. Pereira did not hear back from ProStone so she followed up an hour later. Ms. Pereira was told that per her Regency contract, ProStone cannot have communication with

her, and that all communication must go through Regency. At this point, having done business with ProStone after closing, in the master bath with a bath linen stack and a counter dining room built-in, Ms. Pereira asked for a quote to just buy the shoe mold herself since this had become such a long, drawn-out process. Ms. Pereira was told they would not be unable to do that for her given the situation with Regency.

141. On December 23, 2021, Ms. Pereira called Metro Appliance, as she had many times in the past to check on the status of the dishwashers. Ms. Pereira was told that everyone was currently closed for the holidays, and that Jeremy with Metro Appliance was waiting to hear back from Elizabeth about the dishwashers. Ms. Pereira was told that all communication with her has to occur with Regency's approval first.

142. On December 29, 2021, Ms. Pereira submitted a warranty ticket to Regency regarding the status of the KitchenAid dishwashers. (Exhibit 100)

a. On Monday, January 3, 2022, Regency responded that they were communicating with Jeremy from Metro Appliance.

b. Having heard nothing and being prohibited from contacting Jeremy herself, on January 12, 2022, Ms. Pereira followed up with Regency on the status of the dishwashers.

c. Regency informed Ms. Pereira that it would likely be another 4-6 months before the dishwashers come in. Metro graciously offered to upgrade the Claimants to model KDPM804KBS, which the Claimants considered until they learned that they are only available in black stainless steel and would require the front panel to be swapped.

d. For the first time, Regency then indicated that the dishwashers would be ordered in the black stainless steel, but that stainless steel covers will be ordered to replace the

front panel and will be switched on arrival. Given the history, and after reaching out to the manufacturer, the Claimants declined and decided to stick with the original model in the 2020 contract.

143. On December 30, 2021, Ms. Pereira submitted a warranty ticket regarding the shoe mold/quarter round that still had still not been installed on the kitchen island. It had been over 2 months at this point and the Claimants wanted all repairs to be completed. This warranty ticket also included a renewed request for the trash compactor panel. Ms. Pereira put Regency on notice that this was not their usual method of operation, as they had previously required her to do all the legwork and manage the construction and warranty claims on her own hours. (Exhibit 101)

144. On December 31, 2021, the first-floor hallway bathroom #2 sink fell from its undermount on the left side, randomly. Ms. Pereira immediately turned off the water, submitted a warranty ticket, and called Legacy Plumbing on their emergency number. (Exhibit 102)

a. After a delay due to getting permission from Regency to come to the Claimants' home, Legacy Plumbing disconnected all the plumbing in the bathroom and took the sink to the garage to store until ProStone could come by the next week after the holiday weekend.

b. On January 3, 2022, Ms. Pereira followed up with Regency, asking if plumbers would be coordinated the same day (one can only compromise their work schedule so much).

c. Bathroom #2 sink was installed on January 6, 2022, but Ms. Pereira expressed concern to Regency about the other sinks, and requested they come and inspect them. Ms.

Pereira informed Regency that after consulting with a commercial plumber not associated with them, ProStone used a silicone only product, versus a silicone epoxy mix. This was an issue in this home because these sinks were installed not flush, allowing for gaps and water to seep through those gaps. Additionally, when the sink that fell was reinstalled, there was no bracing of the sink to the underside of the cabinet for 12-24 hours. ProStone just used silicone, some clips, used more silicone and off they went in about an hour. Ms. Pereira remained (and remains) concerned about the integrity of these 5 sinks in her home, but Regency has refused to inspect them. This concern was renewed when Ms. Pereira initially believed the sink fell due to a missing clip on the left side of the undermount; however, the clip was later found. Therefore, the cause remains unknown but is of grave concern to the Claimants given the amount of water damage this family endured in less than 8 months.

145. On January 3, 2022, Ms. Pereira submitted a warranty ticket for the bonus closet door that would not close. This portion of the house had shifted so significantly that the door was not merely “a tight squeeze,” rather it was impossible to close. (Exhibit 103)

146. On January 9, 2022, Claimants awoke to find puddles of water around the window frame of the triangle transom window off their morning room, as well as on the floor. A warranty ticket was submitted. (Exhibit 104)

147. Later in the day on January 9, 2022, Claimants discovered a puddle of water in their garage at the man door leading out the back of the garage to the side yard. This man door is an exterior door that leads from the garage to the south side of the home. A warranty ticket was submitted. (Exhibit 105)

148. On January 14, 2022, James with All Trim (carpenter) arrived to install the island shoe mold/quarter round and fix the bonus room door that would not close. From the time the ticket was submitted to current, the second-floor bathroom door shifted so significantly that it was not closing properly either.

a. Following this installation, Ms. Pereira submitted a warranty ticket to Regency regarding the trim installation. Photographs were attached of the butchered looking shoe mold/quarter round, as well as information that the trim carpenters had damaged the floor with a small through and through gouge in the floor. Regency denied responsibility and refused to replace the shoe mold/quarter round or repair the damaged floor. (Exhibit 106)

1. The shoe mold/quarter round was so unsightly that Ms. Pereira obtained a quote from ProStone to replace it herself.

2. The shoe mold, quarter round was later replaced following a visit from Regency builder Daniel who agreed that the installation was not acceptable.

3. The gouge in the flooring was later repaired with some wax and coloring by the company that removed and replaced the floors following the belly in the cleanout pipe.

b. Ms. Pereira again asked Regency to please not send any subcontractors to their house without a Regency builder accompanying them as she could not manage or oversee these projects.

149. On January 15, 2022, Ms. Pereira submitted a warranty claim to Regency because all of their toilets had been backing up over the past 1-2 weeks, even when not in use. The last straw was when the upstairs toilet backed up, which defies gravity. (Exhibit 107)

150. On January 18, 2022, Ms. Pereira had not received a response to this plumbing issue from Regency, so she followed up. (Exhibit 108)

a. Regency informed Ms. Pereira that per the contract they have 10 days to address warranty claims.

b. Regency also informed Ms. Pereira that plumbing isn't warrantied after 45 days for clogs and sent over a warranty document indicating such. This document also clearly stated construction defects are covered for 1 year.

1. Ms. Pereira requested proof that she had seen this "walkthrough agreement" page of the warranty document and signed it. To date, Regency has failed to supply a copy of the document with the Claimants' initials on the first page indicating the Claimants received this document at/prior to closing.

2. The second page of the "walkthrough agreement" with Ms. Pereira's signature on it, was actually signed over a month after closing (July 7, 2021- closing was rushed by Regency for June 4, 2021). Ms. Pereira was asked to sign this by the builder Jay while she was in the middle of her workday at her home office, during the chaos of Jay and a few Regency subcontractors in her home assessing the kitchen flood damage and repairs. Ms. Pereira denies seeing or being presented with this document prior to, or during closing on June 4, 2021.

c. Ms. Pereira requested Regency investigate this as a construction defect, but Regency refused and told her she must bring someone out on her own expense and if they find something, Regency will deal with it from there.

151. Regency continued to refuse to assist, so on January 19, 2022, Ms. Pereira contacted the City of Lakeland to check the main. The City of Lakeland found rocks and

construction debris, but they were unable to get any closer to the Claimants' house as their equipment didn't fit in the smaller pipes.

152. On January 21, 2022, one of the decorative panels fell off the back side of the island. Luckily, nobody was near it at the time. A warranty ticket was submitted for this. Regency/ProStone later re-installed this when they replaced the island shoe mold/quarter round again. (Exhibit 109)

153. On January 21, 2022, Ms. Pereira submitted a warranty claim to have the front door adjusted. It had shifted so much that there was a large gap that was not only letting cold air in, but one could completely see through the gap in the French front doors. (Exhibit 110)

a. The front door adjustment and replacement of the weather stripping was not completed until March 21, 2022.

154. On January 21, 2022, Legacy Plumbing arrived to investigate the toilets backing up and overflowing. Initially, the Claimants were to pay for this expense, but once it was determined to be a construction defect, Regency took over the cost. Legacy Plumbing found a belly of water about 10-16 feet long in the cleanout under the foundation of the Claimants' house.<sup>18</sup>

155. Ms. Pereira was told to expect communication from Regency on January 24, 2022, to go over the plan for chopping up the foundation through the center of the house and fixing the pipe.

a. There was no communication until around 5:00 p.m.

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<sup>18</sup> Regency and Legacy Plumbing would later allege this was a "hump" further down from the belly. The photographs, videos and measurements taken with a level do not support this "hump" theory.



b. Following this telephone call, there was still no actual plan to repair the problem or provide the Claimants with a functional toilet(s).

c. The toilets continued to back up, so the Claimants were turning the water on and off between usage. This mitigated the issue slightly but there were still several instances of water backing up into the toilets randomly.

156. On January 25, 2022, Ms. Pereira received another telephone call from Regency about the plans, but still no solid plans as they stated they are still trying to get everything in order.

a. To keep toilets from overflowing and further ruining their home, Ms. Pereira was constantly plunging toilets and turning water on and off for use. Given that all 4 toilets were backed up, the Claimants' family didn't really have an alternative for using the bathroom.

157. Initial work began on the "belly" on January 31, 2022. This was 10 days after the belly was discovered and more than 20 days since the issue first became known.

158. On January 31, Ms. Pereira submitted a warranty ticket requesting Regency stain her side of the fence they repaired, as Regency had dishonestly told her neighbor in an email that they could not stain the Claimants' side of the fence because Regency did not have permission to enter the Claimants' property. Ms. Pereira reminded Regency in an email that she informed them they only needed to obtain permission if they needed to access the backyard. (Exhibit 111)

159. On the morning of January 31, 2022, AFA engineer David Al-Chokachi just happened to be in the neighborhood, so he stopped by. This is the person/company who signed off on the Claimants' foundation. Ms. Pereira questioned him about the exposed rebar and

extensive honeycombing in the foundation that several people told them was a concern for water retention with freezing/expanding/contracting issues. David Al-Chokaci told Ms. Pereira the honeycombing was fine and normal. (Exhibit 112)

a. Ms. Pereira learned they did not vibrate the slab on the large monolithic pour.

b. David Al-Chokachi said they placed postholes, but he did not know how many, and he could not tell Ms. Pereira where they were.

c. David Al-Chokachi informed Ms. Pereira that no bore testing was done on the property.

d. David Al-Chokachi informed Ms. Pereira that compaction tests were required but he was not sure why.

e. Regency employee Todd stated during this meeting that he did not know how high the house had been built up.<sup>19</sup>

f. David Al-Chokachi informed Ms. Pereira that the house has trenched footings.

g. David Al-Chokachi told Ms. Pereira that no piers were placed where the 2 large specimen tree roots were cut from under the foundation.<sup>20</sup>

h. David Al-Chokachi told Ms. Pereira that the City of Lakeland would not let him cut the trees down.<sup>21</sup>

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<sup>19</sup> Per engineer and arborists reports the build-up was 3-6 feet, varying on the sides, front, and back of the home.

<sup>20</sup> This is contrary to what the Claimant's agent Meleah was informed by Regency's agent Amanda Hamilton.

<sup>21</sup> This is not supported by public disclosure records. The City has no record of Regency requesting to remove these trees.

i. David Al-Chokachi said “No” and Todd with Regency said “Yes” at the same time when Ms. Pereira asked if a backhoe trenching the footings would have caused the plumbing line to be pushed back.

160. Most of January 31, 2022 was spent moving furniture and tarping the Claimants’ house to prevent dust from going everywhere. Most of this was done by Regency or its crews, but Ms. Pereira kept getting pulled in to answer questions or direct where she wanted things, while she was attempting to work from home. (Exhibit 113)

a. The flooring company was not able to come by and remove flooring until later in the evening, so Ms. Pereira had to call her mother to go get her kids from after-school care, as she was stuck at the house.

161. On the evening of January 31, 2022, the Claimants showered and dressed their kids for bed in the bathroom upstairs. This is not typical, and that bathroom had not been used for showering since Christmas. After Mr. Pereira finished showering the three little kids, he went back in the bathroom to hang the towels/clean up, and that’s when he discovered water all over the floor and backing up from the toilet. Ms. Pereira had just walked down the stairs to get the Nebulizer for her youngest son when she saw the water coming out of the load bearing wall behind the refrigerator and onto the concrete. Mr. Pereira came downstairs right behind her and also noticed the water. Some of the flooring on the other side of the wall and in front of the built-in refrigerator had been pulled up, so the Claimants could see the water slowly making its way to the kitchen and the island. (Exhibit 114)

a. Ms. Pereira called Legacy Plumbing's emergency line, but they informed Ms. Pereira that since they would be there in the morning to deal with the bigger issue, they were not going to come out that evening.

162. On the morning of February 1, 2022, subcontractors started cutting into the concrete with a jackhammer versus a concrete saw. (Exhibit 115)

163. The subcontractors opened the first hole and visually determined, without a level, that they had the correct fall on the pipe.

a. The subcontractors opened a second hole to the left of the first hole, about 12 feet away. They determined, again without a level, that this also had the correct fall.

b. Ms. Pereira did not see anyone use a level to measure the fall, which should have been heading down and to the north. When the plumbers came back from lunch, Ms. Pereira pointed out that the fall was not correct as she had measured it with a level. Ms. Pereira pointed this out to Todd with Regency and was told by Todd that Legacy checked it and it was right. Ms. Pereira asked them to check the fall again in the first hole. They begrudgingly finally measured with a level, and determined that Ms. Pereira was indeed correct, and the presumed fall was incorrect.

c. Ms. Pereira was alarmed to see how soft the dirt was, and it didn't seem very compacted at all. There was also no indication that the pipe had been bedded with anything other than dirt.<sup>22</sup>

d. The plumbers and Ms. Pereira discovered that this plumbing line runs under a load bearing wall. Ms. Pereira briefly saw the picture of the plans for this part of her home on

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<sup>22</sup> Sand or crushed gravel is required per conversation with the Shelby County Plumbing inspector.

Erik Huckabee's (Legacy Plumbing owner) telephone. In this plan, the pipe is drawn parallel to the wall, at least a foot if not more away from the wall and not under the loadbearing wall.

164. On the evening of February 1, 2022, Regency removed more concrete by jack hammering more holes.

165. On the morning of February 2, 2022, Regency subcontractors tarped off the rest of the house because this project was turning out to be much larger than expected. The only way to the master bedroom was through the French doors off the master bedroom. The only way to bedroom 2 and 3 on the first floor was through a door on the back patio. The only way to the kitchen was through the other door on the back patio. The only way upstairs was through the master bedroom French doors. (Exhibit 116)

a. Legacy Plumbing began to trench the length of the hallway, connecting the small holes they had made, and connecting to get to the pipe.

b. Ms. Pereira again expressed her concern about this pipe being under a load bearing wall (following a conversation with a family member who is a commercial plumber and helped build Husky Stadium in Washington).

166. Regency gave the Claimants two separate checks totaling \$4,400 to cover lodging and meal expenses from February 1, 2022, through February 11, 2022.

167. No work was done on the house on February 3, 2022, due to the weather and the impending ice storm. Ms. Pereira sent several emails to various departments at Shelby County expressing her concerns for the lack of oversight, and trying to get a permit pulled for a plumbing inspection. (Exhibit 117)

a. The chief plumbing inspector for Shelby County opined that “the slab backfill was soft to start with,” after viewing the videos Ms. Pereira emailed to him.

168. On February 3, 2022, Ms. Pereira requested Regency and Legacy pull a permit to have Shelby County conduct an inspection (Exhibit 118)

169. No work was done on February 4, 2022, due to weather. Ms. Pereira spoke to Todd on the phone about her request to pull a permit. Todd informed Ms. Pereira that more than likely they (Shelby County) would just want to come do a site inspection, but stated Regency would pull a permit if the City wanted them to. Todd then told Ms. Pereira that they probably could not pull a permit, and then changed his mind and told her he is not really sure if they can or cannot. Todd then told Ms. Pereira that both he and Erik the master plumber “...have enough pull with Code Enforcement, both of us do a lot of work and pay them a lot of money to inspect stuff...”, so Regency could get this done.

170. Construction/repairs started again on February 7, 2022, and Legacy Plumbing connected all the smaller holes to get one long trench about 26 feet and 2-3 feet wide through the center of the Claimants’ home. (Exhibit 119)

171. The Shelby County plumbing inspector failed Legacy on their first inspection on February 8, 2022.

a. The Shelby County plumbing inspector agreed with Ms. Pereira’s request to bed the pipe with sand and not soil (the Claimants preferred gravel but they were told it was not an option).

b. During this inspection, Ms. Pereira addressed her concerns about the pipe running under the load bearing wall, as well as the fact that nobody had been able to source

the footing that was supposed to be exposed at this point due to how far back they had excavated. Ms. Pereira expressed concern that there was no grade beam, there was no rebar, and was zero indication that a footing was where a footing should be. (Exhibit 120)

c. During this inspection, Ms. Pereira and Erik from Legacy Plumbing had a conversation about Ms. Pereira's request to use only sand to bed under the pipe, as well as CDF.<sup>23</sup> Erik informed Ms. Pereira that he would be using a combination of sand and dirt. Ms. Pereira again asked that they use just straight sand. At this point the plumbing inspector chimed in and told Erik that if they used any dirt, he would have to do compaction studies.

d. The plumbing inspector told Erik and Ms. Pereira that if the house was indeed built up 3-6 feet, Regency would have needed to do a compaction study on the whole slab. Ms. Pereira informed the plumbing inspector that Regency refused to give her a copy of that compaction study.

e. The plumbing inspector suggested to Erik with Legacy that he get a pitch level to get his fall more accurate and even, because the fall was still inconsistent from point A to point B.

f. Before the plumbing inspector left, he told Erik that he really did need to get some sand to be on the safe side.

172. On February 8, 2022, Mike with Poe Engineering arrived to discuss the plan of filling the hole.

a. Mike agreed that he did not see any indication of a footing. When Todd arrived a bit later, Ms. Pereira informed Todd of this information.

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<sup>23</sup> CDF is Controlled Density Fill or Flowable Fill.

b. Mike informed everyone that the plan would be to use sand under the pipe and then backfill with flowable fill (CDF).

173. On February 9, 2022, Ms. Pereira met with Regency's concrete person about the plan. Ms. Pereira was told they would be using CDF, then concrete on top of that with rebar and a vapor barrier.

174. On February 9, 2022, Legacy failed the second plumbing inspection again due to inconsistent fall and being too flat.

175. On February 10, 2022, Ms. Pereira submitted a warranty request for a copy of the house plans, specifically to show where the footings/grade beams were required to be per the architectural design and load requirements. Ms. Pereira also renewed her request for them to use sand and not dirt. (Exhibit 121)

a. In this warranty request to Regency, Ms. Pereira conveyed the conversation with the Regency engineer and Todd who agreed that they would excavate back further under the load bearing wall to confirm footing placement. Ms. Pereira asked that Regency be sure that is done "today" before any more sand and flowable fill (CDF) was added.

b. Ms. Pereira also stated that only sand should be used to bed the pipe and support it in the flowable fill. Dirt or soil was not to be used.

c. In this warranty request to Regency, Ms. Pereira also asked about the letter that Todd and the engineer had mentioned they would write. Elizabeth from the Regency warranty department said she would get with Todd on that question. Regency's attorney was included in this response and was made aware that Ms. Pereira was asking for a copy of this letter.



1. The Claimants were never provided with a copy of this letter until Regency filed their Statement of Claim against Ms. Pereira, which was received by Ms. Pereira's then-attorney on May 3, 2022.

176. During a discussion with Todd on February 10, 2022, Ms. Pereira was informed that they would use sand to bed the pipe since they do not use gravel in Tennessee.

a. Todd told Ms. Pereira that the concrete was thicker in the area where she had concerns about a grade beam or footing. Photographs and videos do not support this. (Exhibit 122)

b. Todd told Ms. Pereira it was now irrelevant that the footing was missing from the load bearing wall, because the flowable fill will take care of it. Unfortunately, CDF and some concrete does not make for a sufficient footing.

c. Todd informed Ms. Pereira that their engineer would turn a letter into code enforcement and that the Claimants would be provided with a copy of the letter certifying the concerns about the foundation and missing footing. The first time Ms. Pereira ever saw a copy of that letter was when she viewed Regency's Statement of Claim.

d. Todd told Ms. Pereira that there were no signs of structural issues whatsoever and that he was not going to address Ms. Pereira's concerns about "Well, if we are missing a footing here, where else are we missing a footing?" The Claimants did and still do have grave structural concerns such as doors not closing, floors lifting, pipes shifting under the slab, the north side toilet backing up constantly, stair stepping cracks appearing on the north and northeast side of the house, cracks straight up and through the brick, and the back patio cracked through and through and dropping with tangible differential showing.

e. Todd told Ms. Pereira "...the grade beam is somewhat there, I didn't measure and it's all the way in there, but that grade beam is going to be somewhere between 6-8 inches thick, which is generally thicker than what the regular slab would be" (a grade beam is not anywhere near this load bearing wall in question that the pipe runs under).

f. Todd told Ms. Pereira "...if we took that wall out, the upstairs would still be there", referring to the wall that is load bearing and missing a footing.

g. Todd told Ms. Pereira "The concrete is thicker under that wall where we dug out." Per videos, photographs and measurements Ms. Pereira took, the concrete is not any thicker in this area.

177. During another call later that morning, Todd told Ms. Pereira that Regency's engineer Mike Lacy would put everything in writing. Todd told Ms. Pereira that Mr. Lacy approved of all of this and would be the one to inspect it after the CDF was placed.

a. Todd told Ms. Pereira that Regency agreed they would excavate under the wall a bit more before the flowable fill was poured.

178. During the afternoon of February 10, 2022, Ms. Pereira directed the concrete subcontractors to stop working. Nobody let Ms. Pereira know what was going on, per her conversations with Todd the day before and earlier that same day, prior to the pouring of the CDF. Mr. Lacy was going to excavate further under the load bearing wall to see if they could find a footing. Ms. Pereira walked outside to find the supervisor hanging out in his truck. He saw her approaching and got out to meet her. Ms. Pereira asked him who he was, as she had never seen him before. Nobody from Regency was present at this time. Ms. Pereira then asked for

Mike or the concrete guy, as she needed to talk to Mike first before they poured any more flowable fill.

a. Ms. Pereira called Todd to let him know that she had asked the guys to stop pouring the CDF until she could talk to Mike and figure out what was going on.

b. Ms. Pereira was also surprised to learn that the plumbing inspector had been to the house, and passed Legacy Plumbing, but nobody had informed Ms. Pereira or let her know he was there. Ms. Pereira was at home, working in her office and was accessible on this date.

179. Mike, Regency's engineer, came back out later on February 10, 2022. He had the subcontractors excavate back under the load bearing wall as they had all previously discussed would happen. (Exhibit 123)

a. Ms. Pereira and Mr. Lacy confirmed that they could not feel or see any kind of footing. They had excavated back under the wall about 43 inches, which should be more than enough if a footing was placed where a footing should be. It was concluded that there was (and still is) no footing under this load bearing wall in the center of the home.

b. CDF was poured in the trench, a vapor barrier was added, rebar was added, and it sat overnight.

180. On February 10, 2022, Ms. Pereira requested copies of all the plans for the house. To date, Regency has not complied with this request.

181. On February 11, 2022, the concrete was poured on top of the CDF.

182. On Saturday, February 12, 2022, a Regency subcontractor dropped off two young men to remove all the tarps from inside the Claimants' home and used a wheelbarrow to

remove the remainder of dirt from inside the home. This was the extent of the cleaning, and Ms. Pereira was left to spend several hours sweeping, using the shop vacuum left in her garage by a subcontractor, and mopping her own first floor living space so it could be occupied again. (Exhibit 124)

183. On February 12, 2022, the Claimants found a crack in the concrete that runs from their doorway entrance to where the trench was. This crack was about 6 feet total in length, but bifurcated about 2.5 feet down into the six-foot length. (Exhibit 125)

184. On February 15, 2022, Ms. Pereira submitted a warranty claim about new cracks in the concrete about 11 feet long from the trench to the front door, and that about halfway up, the crack bifurcated in another direction. The crack seemed to have grown several feet in a few days. (Exhibit 126)

185. On or around February 18, 2022, Todd with Regency arrived with a mold and water specialist to assess the water damage from the 2nd floor bathroom. The specialist used an infrared camera to detect any water under the tile floor in the 2<sup>nd</sup> floor bathroom, as well as the walls that the water came down through. The specialist was unable to detect any water. This assessment was done 2.5 weeks after the water leak.

a. Ms. Pereira expressed concern that it had been 2.5 weeks since the leak, so no detectible water made sense, but mold growth wouldn't necessarily show up this soon. Ms. Pereira requested they pull up some of the tile to be sure of this, but Regency refused to do so.

186. On February 22, 2022, the Claimants' roof leaked into their attic and a warranty claim was submitted. Regency sent a roofer to fix the issue the following day. The roofer arrived without a Regency employee and had to be directed by Ms. Pereira. (Exhibit 127)

187. On February 24, 2022, the Claimants roof leaked again and another warranty claim was submitted.

a. This time a Regency employee accompanied the roofer to respond.

188. On February 24, 2022, Regency drywall patched the walls that were damaged while doing the belly plumbing repair. The subcontractors arrived without a Regency employee and had to be directed by Ms. Pereira.

189. On February 24, 2022, the Regency's flooring company came by to assess and do some work on the concrete. The flooring subcontractors arrived without a Regency employee and had to be directed by Ms. Pereira.

190. On February 25, 2022, the Claimants' second floor toilet was backing up again. Regency scheduled Legacy Plumbing to come assess the issue. The toilet was taken completely apart, and construction debris was found. Legacy Plumbing believed this was what had been causing some of the backup issues with the second-floor toilet.

191. On March 1, 2022, the flooring company used leveling concrete on the area of the home that had been trenched. (Exhibit 128)

192. On March 2, 2022, Metro Appliance arrived to move the built-in refrigerator and freezer so the flooring could be assessed to dry out. Ms. Pereira spent an extensive amount of time on the phone with Todd from Regency regarding this issue as it was not explained to the Claimants that they would have to store these in their garage over the weekend. Ms. Pereira also submitted a warranty ticket for this issue. (Exhibit 129)

193. On March 3, 2022, William Cannon Heating and Air came by to address the ongoing airflow issues. William Cannon Heating and Air arrived without a Regency employee and had to be directed by Ms. Pereira.

a. This airflow issue is ongoing and is still unresolved.

194. On March 4, 2022, all the flooring was re-laid, reusing most of the original flooring. (Exhibit 130)

195. On March 7, 2022, the Claimants found the triangle transom morning room window to be leaking again and submitted a warranty claim. (Exhibit 131)

a. This issue was repaired by resealing the exterior of the windows on March 10, 2022. Unfortunately, they left a stain of black silicone on the Claimants' seat wall which is made of white brick. Regency made no mention of this to the Claimant, nor did they offer to try and clean or repair it.

b. The Claimants have concerns that this resealing of the exterior windows trapped water that had already entered and will create a moldy nightmare over time.

196. On March 7, 2022, Regency drywall arrived to begin sanding and preparing the walls to be painted. The drywall subcontractors arrived without a Regency employee and had to be directed by Ms. Pereira.

197. On March 28, 2022, the painters arrived to paint most of the walls in the main areas downstairs, due to the damage caused by the pipe belly repair.

198. On May 2, 2022, Ms. Pereira submitted a warranty ticket regarding the Moen faucet in bathroom #2. The faucet had been placed about ½ an inch further away than the

faucets in the remainder of the home. This spacing causes the water to run onto the counter tops and had flooded the Claimants bathroom twice. (Exhibit 132)

a. Regency informed the Claimants “...all faucets are in the same spot and the water isn’t usually at a drip pace. If you are not happy with this, I can only recommend purchasing another faucet.”

b. Ms. Pereira responded that this was not true, because the faucet in question is ½ an inch further back than the other 4 faucets in the home and this is the only one having an issue. Ms. Pereira requested someone come look at it. Ms. Pereira also provided photographs of a sample installation, and the different installation lengths of the sinks on her home.

c. On May 7, 2022, Ms. Pereira followed up, requesting Regency to please have someone come look at the sink. Against her objections, Regency closed the ticket.

199. On May 2, 2022, Ms. Pereira submitted a warranty ticket regarding black permanent marker on her floors that was used when the flooring company removed flooring and re-used it. Ms. Pereira attempted the removal solutions provided by Regency, but on May 7, 2022, informed Regency she was unsuccessful.

a. Ms. Pereira had not heard back from Regency on this warranty claim, so she sent a follow up on May 16, 2022.

b. Ms. Pereira still had not heard back from Regency on this warranty claim so she sent another follow up on May 18, 2022.

200. On or around May 3, 2022, Ms. Pereira called Legacy Plumbing and informed them the toilets were backing up again and requested a non-warranty call per the feedback from Regency.

a. Legacy Plumbing put a camera in the line on May 6, 2022, and saw no belly.

However, Legacy Plumbing had concerns about waste that they observed getting caught in the pipes. Ms. Pereira was told they would need to return the following week with owner Erik Huckabee.

201. On May 6, 2022, Ms. Pereira submitted a warranty ticket indicating they were experiencing the first-floor toilets backing up again and were having to plunge them. Ms. Pereira also informed them what Legacy found and stated that they believe this was now a warranty issue again. (Exhibit 133)

202. On May 11, 2022, Legacy Plumbing arrived to do more investigation. Legacy Plumbing decided they needed to clean the pipes and they also replaced 2 of the 3 first floor toilets with high velocity flushing toilets.

203. On May 18, 2022, a warranty claim was submitted for the ceiling light boxes in several rooms shifting and separating from the ceiling. This was resolved, but the issue has resurfaced. The Claimants are now out of warranty.<sup>24</sup> (Exhibit 134)

204. On May 18, 2022, a warranty claim was submitted for the outdoor living area mantle that was never properly secured to the wall. This issue was resolved after it was discovered that the mantle had never been attached to the brick. The mantle had been attached to support squares with 2 screws. (Exhibit 135)

205. On May 18, 2022, a warranty claim was submitted for the ongoing HVAC issues that persist in 2 of the bedrooms.

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<sup>24</sup> It is believed this continues to occur due to foundation issues causing the shifting.



206. On May 18, 2022, a warranty claim was submitted for the noise issue with the water spigot on the north side of the house. Legacy Plumbing had been out several times, but the issue persisted. Per feedback from another plumber, the Claimants believed the issue was that the pipe was undersized with a high-water velocity pipe that was causing vibration and harmonics. Repeatedly changing out the exterior will not resolve the issue; the pipes needed to be replaced with a larger size.

207. On May 24, 2022, a warranty claim was submitted for repainting behind one of the toilets the plumbers replaced. These toilets were replaced because the Claimants continued to have issues with their toilets backing up, even after the repairs and subsequent pipe was cleaned out. The Claimants were told that the toilet replacement was done as a favor of the plumbing company, they had no say in replacing the toilets and therefore would not be painting. (Exhibit 136)

208. On May 24, 2022, a warranty claim was submitted for repainting areas missed by the painters after the belly of water and concrete slab repairs. Instead of unplugging the carbon monoxide detector and then performing the painting, they painted around and even on it. There were several other areas that required similar touch ups, including the ceiling for which the Claimants do not have paint for. (Exhibit 137)

209. On May 24, 2022, a warranty claim was submitted for the continued issues with mainly the north toilet on the first floor. Legacy Plumbing offered to install a new toilet in this bathroom as well. Swapping the toilet did not resolve the issue and the problem persists to date. Ms. Pereira still must use a plunger on this toilet several times a week.

210. Several other minor repairs were submitted via warranty from May 2022 through August 2022, including repeat issues with the garage doors, gutters leaking and incorrect/lacking placement, the front door needing to be adjusted due to a large gap letting in cold air, and a new issue of a nonfunctional outlet. There was also a ticket submitted for the mirror that was starting to detach from the wall in the main floor bathroom. This ticket was closed without resolution despite Ms. Pereira's objections.

211. On June 27, 2022, a warranty claim was submitted for the kitchen sink faucet that was loose and had significant movement. Regency informed the Claimants that their warranty expired June 4, 2022, and that Regency could no longer honor any new warranty request after that date.

The Claimants' kitchen was not repaired and made functional after the dishwasher flood until September 29, 2022. The Claimants believe the warranty on this item should have been extended one year from the date of repair. The inner plastic gasket that sits between the sink and the counter was "chewed up" because it was misaligned when the kitchen faucet was reinstalled, in addition to the inside mechanisms of the faucet likely coming loose due to several installations and removals. The Claimants paid for this repair themselves on March 9, 2023, after the kitchen sink became completely nonfunctional. (Exhibit 138)

212. On July 14, 2022, Elizabeth from Regency emailed the Claimants and notified them that the dishwashers *"on the contract are not coming in"* and they *"don't believe they ever will."* Regency offered \$100 for the "upgrade" price of the two (2) dishwashers. (Exhibit 139)

The Claimants declined and indicated they were willing to wait for the dishwashers on the contract. The Claimants also informed Regency that \$100 for both dishwashers was not remotely close to the cost of the upgrade they had paid for in early 2020- over two (2) years prior. It is also worth noting that the Claimants did not have two of the same dishwashers as Elizabeth indicated in her email; one was a handle-free KitchenAid and the other was a handle GE model that had been loaned to the Claimants while they waited for their dishwashers from the 2020 contract to arrive. There was extensive email communication between the Claimants and Elizabeth from Regency where she refused to comply with the contract and was extremely rude in her communication with the Claimants. (Exhibit 140-151)

213. On August 22, 2022, Regency closed the ticket regarding the loud and sticking garage doors. Quality Insulation and the painters indicated that the problem was Regency did not allow the black paint on the garage doors to dry between coats and told the Claimants they would be dealing with the garage door panels sticking, cracking and “jumping” indefinitely if not repaired. (Exhibit 152)

214. On September 12, 2022, Ms. Pereira communicated with Regency at their request to let them know that the front gutter issue, which had been ongoing since closing in June 2021, had been resolved by the installation of an additional/new gutter at the front of the home. Although this had improved the issue significantly, the new gutter was not sealed well against the house and leaks. (Exhibit 153)

215. On October 19, 2022, Ms. Pereira contacted Regency to request the board/remnant for the top of the trash compactor to fill the gap (per conversations with Todd).

This request had been pending since April 2022 and was still unresolved. This is a safety issue to prevent the trash compactor from tipping when changing the bags. (Exhibit 154)

216. On January 10, 2023, the Claimants hired Poe Engineering again to provide a report on cracks in the brick that had been expanding, ongoing drainage issues, and differential in the back patio. (Exhibit 155)

217. On January 25, 2023, Ms. Pereira emailed Regency Warranty, Daniel and Todd to request information on what hardware was used for the barn doors and where it could be purchased. The barn door track in the master bedroom to bath has warped because Regency failed to install a bolt in one of the required spots on the track. The Claimants were not asking for repair, only information so they could make the repairs themselves. Elizabeth's response was to go through their attorneys. The track is still warped, and there is no header to re-secure this track for the heavy barn door if it were to be taken down and repaired/replaced. The door/wall needs to be reframed to facilitate this repair.<sup>25</sup> (Exhibit 156)

218. On January 30, 2023, Regency closed a ticket the Claimants had initiated on or around September 7, 2022, regarding the north toilet still having issues. Regency and the Claimants exchanged many emails regarding the plumbing issue with the north toilet. Legacy Plumbing made several visits to the Claimants' home in late 2022 to assess this issue. Legacy acknowledged that there was an issue of water being retained in the cleanout plumbing, and even recommended Ms. Pereira try some self-help resolutions such as Drano and hot water. This did not resolve the issue and Legacy Plumbing and Regency failed to respond to any further

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<sup>25</sup> The Claimants were told to go through the attorneys for this. There is no reason to go through the attorneys for a warranty item other than for Regency to intentionally and with malice, run up the Claimant's legal fees.

requests for assistance on the matter. To date, this toilet issue is still unresolved and a constant issue. (Exhibit 157)

a. Previously on November 8, 2022, Elizabeth contacted Ms. Pereira to inform her they were closing the ticket for the toilets.

b. Previously on December 8, 2022, Ms. Pereira contacted Elizabeth to inform her they were still having issues with the toilet on the north side and asked that it be looked at/worked on. No response was received.

c. On January 30, 2023, Ms. Pereira contacted Elizabeth again, referencing the December 8, 2022, email with no follow up. Elizabeth told Ms. Pereira to go through the attorneys. To date this issue is ongoing with no resolution.<sup>26</sup> (Exhibit 158)

219. On May 29, 2023, the Claimants hired RamJack to take measurements of their foundation due to concerns of exterior cracking and continued problems with the plumbing under the concrete slab and lack of a footing under the load bearing wall in the kitchen. (Exhibit 159)

220. Several months prior to April 24, 2023, Winstead Farms HOA notified the two neighborhoods built by Regency in 2019-2023 that they were not ever members of the Winstead Farms HOA and did not have voting rights, or rights to any of the common area properties or pool. The Pereira's were one of the homes that were notified of this issue. A vote was to be had of the "legacy" homeowners to determine if the neighborhoods would merge to become one. That vote failed on or around April 24, 2023. (Exhibit 160)

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<sup>26</sup> There is no reason to go through the attorneys for a warranty item other than for Regency to intentionally and with malice, run up the Claimants' legal fees.

221. On May 24, 2023, over three (3) years later and after extensive work by Ms. Pereira to get Regency to comply, both dishwashers on the early 2020 contract were finally delivered and installed. There was an issue with the right-side dishwasher not having flooring underneath, whereas the left side did. This resulted in the dishwasher being installed at an angle. Unfortunately, after consulting with KitchenAid because of issues this angle was causing with the racks staying in place while loading, it was determined that the dishwasher would need to be removed, flooring be installed under the dishwasher, and then the dishwasher would need to be reinstalled. This was completed on June 20, 2023, and the Claimants are now finally satisfied with the resolution of the KitchenAid dishwasher issue.

222. On August 18, 2023, Winstead Farms HOA (Legacy) informed the Regency built homeowners (the Claimants' neighborhood) that the merger did not pass. Therefore, the Claimants are officially not a part of Winstead Farms. This effectively removes the Claimants' pool access and access to all common area property. (Exhibit 161)

a. As result, the Claimants have paid \$700 in dues for 2021, 2022, and 2023 for an HOA to which they do not even belong.

b. The Claimants' pool access and access to all common area property has been terminated as they are not members of the Winstead Farms HOA. The Claimants paid a premium for this lot and this neighborhood (versus Regency's Kensington neighborhood down the street) solely because of the neighborhood pool.

c. Regency is guilty of breach of contract, false advertising, fraud, and misrepresentation for representing to the Claimants that they were part of the Winstead Farms HOA and as such would have pool access and access to all common area property.

223. On August 18, 2023, after several rain-free days and record high temperatures, the Claimants' backyard was still plagued with half a dozen mosquito ridden pools of water. The southwest corner of the yard and most of the western part of the yard along the back of the fence was still full of pools of water and was completely unusable. (Exhibit 162)

224. Due to the worsening drainage issues in the backyard, the Claimants obtained a bid to install French Drains with an inlet per the engineer's recommendations. The Claimants also obtained a bid to install a retaining wall to prevent ongoing drainage issues from adjacent Regency homes and level their backyard. This drainage issue has become a safety issue in addition to basic functionality, as the Claimants have a rampant breeding ground of mosquitos and mold that affects their severely asthmatic child. This retaining wall will allow the Claimants to return the property status quo when they:

- a. Signed the initial contract and discussed yard plans with Amanda Hamilton of Regency.
- b. Made significant structural changes to the home during the initial contracting period.
- c. Designed the outdoor kitchen during the initial contracting period.
- d. Designed the extended Outdoor Living Area (OLA) during the initial contracting period.

This bid also includes demolition and removal of the extended (uncovered) back patio that houses the outdoor kitchen. The patio is failing due to improper compacting, missing, or inadequate piers/post holes (see previous photographs and timeline, as well as lack of compaction test for build-up over 3 feet per Shelby County code requirements) and has

become a tripping hazard/danger. The Claimants have not yet obtained a bid to replace the patio and outdoor kitchen but are in the process of doing so. (Exhibit 163)

225. Installing a retaining wall will also require removal of the existing fence, and replacement of the fence once the retaining wall has been completed. (Exhibit 164 & 165)

226. The home continues to have issues with stair stepping cracks on the North side of the home (tree removal), cracks in the front walkway/stair, separation of bricks on the North side of the home where the outdoor kitchen chimney meets the home and this area has already been regouted once by Regency only to come apart again. (Exhibit 166)

227. On November 20, 2023, the Winstead Farms HOA Board elected to vote again about combining the neighborhoods. This second vote failed, and the Pereira's were notified by a letter dated December 13, 2023. The Pereira's were stripped of their voting rights, rights to any of the common area properties or and access to the Neighborhood pool, which is the number one reason why they bought in this neighborhood. (Exhibit 167)

#### **FIRST CLAIM—BREACH OF CONTRACT AND/OR WARRANTY**

1. The allegations of all other paragraphs and claims are incorporated as if fully rewritten herein.

2. Regency contracted with the Claimants to design, build, and sell to the Claimants a new home, which was to be and remains the Claimants' primary residence.

3. This claim is for breach of contract and/or warranty against Regency. Upon information and belief, Regency drafted and are in possession of the written contracts and warranties between the parties.



4. Further, there is implied in every contract for work or services a duty to perform it skillfully, carefully, diligently, and in a workmanlike manner. This duty applies to general contracts and builders of homes such as Regency and is non-delegable, and therefore, Regency is liable for all acts and/or omissions of any and all subcontractors who performed work on the Claimants' home.

5. Regency and/or their employees, agents, or other individuals acting on their behalf, materially breached the parties' contracts and/or warranties by engaging in the following actions and/or omissions as outlined and described in detail above.

6. As a sole, direct, and proximate cause of Regency's actions and/or omissions constituting a breach of contract and/or warranty, have resulted in damages to the Claimants' property and other economic and compensatory damages to which the Claimants are entitled to recover from Regency.

7. Regency is guilty of breach of contract, false advertising, fraud, and misrepresentation for representing to the Claimants that they were part of the Winstead Farms HOA and as such would have pool access and access to all common area property.

#### **SECOND CLAIM—NEGLIGENCE**

8. The allegations of all other paragraphs and claims are incorporated as if fully rewritten herein.

9. At all times relevant herein, Regency had a duty to exercise reasonable care and skill to strictly comply with the terms and conditions of the contract and/or warranties.

10. At all times relevant herein, Regency had a duty to exercise reasonable care and skill in the provisions of its services to the Claimants and perform all work in a workman-like

manner, and according to applicable industry standards and practices.

11. At all times relevant herein, Regency had a duty to exercise reasonable care and skill to select employees, agents, representatives, and/or sub-contractors who would perform all work in a professional workmanlike manner and according to applicable industry standards and practices.
12. At all times relevant herein, Regency had a duty to exercise reasonable care and skill to supervise employees, agents, representatives, and/or sub-contractors who would perform work to the property.
13. In taking the aforementioned actions and in failing to take the actions that the Claimants assert should have been taken, Regency breached their duty of care and skill to the Claimants.
14. As a direct and proximate result of the above-referenced acts and omissions, which amount to common law negligence and violations of statutes of the State of Tennessee on the part of Regency, its employees, officers and agents, the Claimants incurred, and continue to incur, substantial damages to their real and personal property.
15. As a direct and proximate result of Regency's other intentional, reckless, and/or negligent actions and/or omissions, the Claimants have, and continue to incur, substantial damages.

**THIRD CLAIM—VIOLATIONS OF THE  
TENNESSEE CONSUMER PROTECTION ACT**

16. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

17. This claim is for violations of the Tennessee Consumer Protection Act of 1977 as stated in T.C.A. § 47-18-104(b) (hereinafter referred to as the “TCPA”) by Regency and/or their agents, employees, representatives, and/or other individuals acting on their behalf.
18. As a result of the above, inter alia, Regency committed one or more unfair and/or deceptive acts or practices in violation of T.C.A. § 47-18-104(b) in one or more of the following ways:
- a. By falsely representing to the Claimants that Regency would perform the work in strict accordance with the parties’ contract, local codes and regulations, and in accordance with industry standards and practices, while knowingly performing work at the property using sub-standard practices not in accordance with local codes, the parties’ contract, and regulations; and/or
  - b. By falsely represented to the Claimants that Regency would supply all labor, materials, tools, equipment, and supervision by qualified personnel and would perform all work in a professional workmanlike manner, and then providing unqualified personnel, unlicensed contractors, and/or performing the majority of work in a sub-standard and unprofessional manner; and/or
  - c. By misrepresenting to the Claimants that Regency coming to complete and/or cure deficiencies in the work, while refusing and/or otherwise failing to show up as represented; and/or
  - d. By concealing known and material facts from the Claimants, either intentionally, recklessly or negligently; and/or

- e. By refusing and/or otherwise failing to comply with the terms and conditions of the agreements and/or contracts with the Claimants; and/or
- f. By causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services; and/or
- g. By causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another; and/or
- h. By falsely representing to the Claimants that their goods and/or services had the sponsorship, approval, characteristics, ingredients, uses, benefits, and qualities that they do not actually have; and/or
- i. By falsely representing to the Claimants that their goods and/or services were of a particular standard, quality or grade, or that their goods are of a particular style or model, when they are of another; and/or
- j. By falsely representing to the Claimants that this business transaction, guarantees, and warranties conferred or involved rights and remedies which it did not have or involve or which are prohibited by law; and/or
- k. By becoming unjustly enriched with tens of thousands of dollars' worth of Claimants' money invested with Regency for a brand-new home, while Claimants received a property with numerous defects; and/or
- l. By representing that a person is a licensed contractor, when in fact that person has not been properly licensed pursuant to the laws of the State of Tennessee, rules, and regulations.

m. By representing to the Claimants that they were part of the Winstead Farms HOA and as such would have pool access and access to all common area property.

19. It is patently unfair for Regency to have been allowed not to fulfill its duty of care and skill to work with the Claimants in good faith to honor the parties' agreements by timely completing all of the contracted and warranted work in a workmanlike manner.

20. As a result of the Regency's violations of the TCPA, the Claimants have and continue to incur substantial damages. As a result of Regency's intentional, willful, and/or knowing violations of the TCPA, Regency is liable to the Claimants in the sum of three (3) times their actual damages, reasonable attorney fees, and costs of litigation.

#### **FOURTH CLAIM—FRAUD**

21. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

22. This claim is for fraud and/or misrepresentation against Regency.

23. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they falsely represented to the Claimants that Regency would perform the work in strict accordance with the parties' agreement, local codes and regulations, and in accordance with industry standards and practices, while knowingly performing work at the property using sub-standard practices not in accordance with local codes, the parties' agreement, and regulations.

24. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they falsely represented

to the Claimants that Regency would supply all labor, materials, tools, equipment and supervision by qualified personnel and would perform all work in a professional workmanlike manner.

25. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they concealed known and material facts from the Claimants as outlined and described in detail above.
26. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they falsely represented to the Claimants that their goods and/or services were of a particular standard, quality, or grade which they do not possess.
27. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when he represented to the Claimants that their goods and/or services had the sponsorship, approval, characteristics, ingredients, uses, benefits, and qualities that they do not actually have.
28. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they falsely represented to the Claimants that this business transaction conferred or involved rights and remedies which it did not have or involve or which are prohibited by law.
29. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they falsely represented to the Claimants that that Regency had cured the deficiencies in the contracted services provided to the Claimants.

30. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they falsely represented to the Claimants that that Regency would honor the warranties provided to the Claimants.
31. Regency's actions were intentional, willful, malicious, and/or reckless and entitle the Claimants to punitive damages. Regency knew of the foregoing falsehoods and made them recklessly with the malicious intent to deceive the Claimants and to induce the Claimants into entering into the contract and to continue to rely on Regency to repair the Claimants' home.
32. In addition, or in the alternative, Regency's actions and/or omissions were negligent in that Regency failed to exercise due care to work with the Claimants in good faith to honor the parties' contracts and warranties, to complete the work to Claimants' home and property in a workmanlike manner, to supply all labor, materials, tools, equipment and supervision by qualified personnel and pay said materials, and to cure deficiencies as agreed and per the contracts and warranties and subsequent promises to do so. Regency should have reasonably foreseen that its herein-stated actions and/or omissions would result in damage to Claimants' property and further harm Claimants financially.
33. As a sole, direct, and proximate cause of the above-referenced actions and/or omissions, the Claimants have and continue to incur substantial damages.

**WHEREFORE, PREMISES CONSIDERED,** the Claimants pray:

1. That this matter be submitted to arbitration.
2. That the Claimants be awarded a judgment against Regency in the minimum

amount of \$500,000.00 in compensatory damages or an amount to be more specifically determined at a later date.

3. That the Claimants be awarded a judgment against Regency for punitive or treble damages at the maximum rate permitted by law and/or pursuant to the Tennessee Consumer Protection Act, reasonable attorney's fees, and the costs of litigation.

4. That the Claimants be awarded prejudgment interest at the maximum rate permitted by law against Regency.

5. That the Claimants be awarded reasonable attorney fees incurred in this matter pursuant to the contracts and warranties between the parties, Claimants' claim for violations of the Tennessee Consumer Protection Act, and/or any other claims that allow the recovery of attorney fees against Regency.

6. That the Claimants be awarded discretionary costs as this Court deems appropriate.

7. That the Claimants be awarded the court costs and other expenses of this action.

8. That the Claimants be awarded such other and further relief to which the Claimants may be entitled by law, including but not limited to rescission of any and all agreements between the parties, moving costs, differential of the 2.25% interest rate that was obtained versus the current rate, the approximate \$60,000 in items added to the house after moving in that cannot be taken with the Claimants when they move, including but not limited to the fence, generator, sprinkler system, built-in buffet and other items.

Respectfully submitted,



HOWELL & FISHER, PLLC

*/s/ Steve Elliott*

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