ARBITRATION BEFORE RESOLUTE SYSTEMS, LLC

REGENCY HOMEBUILDERS, LLC

Claimant,

v. **No. 6339966**

JULIE PEREIRA AND JOE PEREIRA,

Respondents.

MOTION TO DISMISS, OR IN THE ALTERNATIVE, ANSWER OF RESPONDENTS JULIE PEREIRA AND JOE PEREIRA IN OPPOSITION TO CLAIMANT REGENCY HOMEBUILDERS, LLC'S STATEMENT OF CLAIM AND RESPONDENTS/COUNTER-CLAIMANTS' COUNTER-CLAIM

COME NOW Respondents Julie Pereira and Joe Pereira (hereinafter referred to collectively as "Pereiras" unless otherwise indicated), by and through their undersigned counsel of record, and file this Motion to Dismiss Claimant Regency Homebuilders, LLC's Statement of Claim.

In the alternative, Pereiras, by and through the undersigned counsel of record, hereby file their Answer in Opposition to Claimant Regency Homebuilders, LLC's ("Claimant") Statement of Claim ("Claim") and Counter-Claim and would state as follows:

PREFATORY STATEMENT

As demonstrated below, though Pereiras admit that certain social media posts were made, Pereiras deny any and all liability to Claimant for any and all claims brought by Claimant in this Claim. Further, Pereiras deny all allegations, either expressed or implied, that they have breached any contract, defamed Claimant, disparaged Claimant, made false statements about Claimant, and/or tortuously interfered with Claimant.

MOTION TO DISMISS

The Claim fails to state a claim upon which relief can be granted and as such, the Claim should be dismissed.

1. The Non-Disparagement Clause Contained in Paragraph 35 of the Agreement Violates the Consumer Review Fairness Act, and therefore, the Claim Should be Dismissed.

The Claim is in violation of the Consumer Review Fairness Act ("CRFA") 15 U.S.C. § 45b and should be dismissed.

The CRFA provides, "a provision of a form contract is void from the inception of such contract if such provision…prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication[.]" 15 U.S.C. § 45(b)(1)-(b)(1)(A). A "covered communication" is "a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party." 15 U.S.C. § 45b(a)(2).

Claimant included a clause in its standard form contact, New Home Sales Agreement ("Agreement"), that purported to restrain customers, such as Pereiras, from making negative statements about Claimant ("DISPARAGEMENT") (Id. at ¶ 35). The clause in the Agreement states:

> 35. ***DISPARAGEMENT***: Purchaser [Pereiras] and Seller [Claimant] covenant and agree that neither party will engage in any pattern of conduct that involves the making or publishing of written or oral statements or remarks (including without limitation, the repetition or distribution of derogatory rumors, allegations, negative reports or comments) which are disparaging, deleterious or damaging to the integrity, reputation, or good will of the Purchaser [Pereiras] or Seller [Claimant], their respective members, owners, officers, employees, and/or agents of their respective products or services. Purchaser [Pereiras] or Seller [Claimant] understand that any violation of this Section shall result in a breach of the Agreement, and the non-breaching party shall have the option to pursue all

> remedies available to it under this Agreement. This section shall survive the Agreement.

(Id. at § 35).

The United States District Court for the Eastern District of Tennessee has held that a non-disparagement clause which attempts to restrict the use of social media to express a buyer's opinion, "…that could be portrayed as negative…," violates the CRFA as it prohibits covered communication protected under the CRFA. *See* Tenn. ex rel. Skrmetti v. Ideal Horizon Benefits, LLC, No. 3:23-CV-00046-DCLC-JEM, 2023 LX 94153, at *14-15 (E.D. Tenn. Feb. 28, 2023).[1] According to the Court, it is clear that under the CRFA, offering a form contract with the proscribed provision is "treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act[.]" 15 U.S.C. § 45b(d)(1)." Id. at *16.

In this matter, the non-disparagement clause contained in Paragraph 35 of the Agreement seeks to restrict covered communication through its "negative reports or comments" language just like the non-disparagement clause at issue in Ideal Horizon, *supra*, which was found to be in clear violation of the CRFA.

As the Claim clearly states this arbitration "arises from [Pereiras] defamatory and disparaging comments regarding [Claimant's] construction of a home purchased by the Pereiras" the entire Claim should be dismissed because the non-disparagement clause of the Agreement is invalid and void *ab initio*.

In the alternative, to the extent the arbitrator finds that Claimant is asserting common law claims for defamation, false light in the public eye, and/or tortious interference with business

[1] A copy attached hereto as Exhibit "A".

relations, which Pereiras deny, Pereiras would assert that **Count I Breach of Contract** of the Claim should be dismissed due the non-disparagement clause clearly violating the CRFA.

2. <u>In the Alternative, the Claim Should Be Dismissed as there is Already a Prior Arbitration Pending Between these Parties</u>.

In the alternative, the Claim should be dismissed as there is a prior arbitration between these parties currently pending with Resolute Systems, LLC, No. 6322063, which is currently suspended.

<u>FIRST DEFENSE</u>

Now in response to the numbered paragraphs of the Claim, Pereiras would state as follows:

1. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

2. Pereiras deny the allegations contained in Paragraph 2 of the Claim.

3. Pereiras admit Claimant initiated the First Arbitration. Pereiras admit that in response Pereiras filed a counter-claim and amended counter-claim. Pereiras adopt and incorporate by reference, as if stated herein verbatim, their Amended Response to Claimant's Statement of Claim and Counter-Claim filed on May 31, 2024. Upon information and belief, Pereiras admit Resolute suspended the First Arbitration and the First Arbitration is still suspended.

4. Pereiras deny the allegations contained in Paragraph 4 of the Claim.

5. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

6. Pereiras admit the allegations contained in Paragraph 6 of the Claim.

7. Pereiras admit the allegations contained in Paragraph 7 of the Claim.

8. Pereiras deny the allegations contained in Paragraph 8 of the Claim. Pereiras would further state the Agreement speaks for itself. Pereiras deny paraphrase or characterization of the Agreement.

9. Pereiras deny the allegations contained in Paragraph 9 of the Claim. Pereiras would further state the Agreement speaks for itself. Pereiras deny paraphrase or characterization of the Agreement.

10. No response is required to the allegations contained in Paragraph 10 of the Claim. To the extent a response is required, Pereiras deny the same and would state that all arbitration proceedings involving these parties have been suspended by Resolute.

11. No response is required to the allegations contained in Paragraph 11 of the Claim. To the extent a response is required, Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras further incorporate by reference, as if stated herein verbatim, their Amended Response to Claimant's Statement of Claim and Counterclaim filed on May 31, 2024.[2]

12. Pereiras admit they entered into the Agreement to purchase a new home from Claimant in March 2020. Pereiras admit the home was to be constructed at 5055 Adagio Lane, Lakeland, Tennessee. Pereiras would further state the Agreement speaks for itself. Pereiras deny paraphrase or characterization of the Agreement.

13. Pereiras admit the allegations contained in Paragraph 13 of the Claim.

[2] A copy attached hereto as Exhibit "B".

14. Pereiras would state that the referenced Certificate of Occupancy speaks for itself. Pereiras deny paraphrase or characterization of the Certificate of Occupancy. The remaining allegations contained in Paragraph 14 of the Claim state legal conclusions and arguments of counsel to which no response is required.

15. Pereiras admit the allegations contained in Paragraph 15 of the Claim.

16. Pereiras deny the allegations contained in Paragraph 16 of the Claim.

17. No response is required because the Agreement speaks for itself. To the extent a response is required, Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant. Pereiras deny paraphrase or characterization of the Agreement. Pereiras would further state that the non-disparagement clause contained in the Agreement is invalid and void *ab initio*.

18. No response is required because the Warranty speaks for itself. Pereiras deny paraphrase or characterization of the Warranty. To the extent a response is required, Pereiras would state that Claimant was required to provide Pereiras with a ten (10) year warranty, not a one-year, limited warranty.

19. Pereiras deny the allegations contained in Paragraph 19 of the Claim. Pereiras would further state that the Warranty speaks for itself. Pereiras deny paraphrase or characterization of the Warranty.

20. Pereiras deny the allegations contained in Paragraph 20 of the Claim. Pereiras would further state that the Warranty speaks for itself. Pereiras deny paraphrase or characterization of the Warranty.

21. Pereiras deny the allegations contained in Paragraph 21 of the Claim. Pereiras would further state that the Warranty speaks for itself. Pereiras deny paraphrase or characterization of the Warranty.

22. Pereiras admit only that Pereiras made timely claims to Claimant under the warranty. Pereiras deny that said claims were timely and appropriately addressed by Claimant.

23. Pereiras admit that Mrs. Julie Pereira ("Mrs. Pereira") posts on social media websites such as Facebook and TikTok.

24. Pereiras admit the allegations contained in the first sentence of Paragraph 24 of the Claim. Pereiras deny the remaining allegations of Paragraph 24 of the Claim.

25. Pereiras admit that Mrs. Pereira has received compensation from social media websites. Pereiras are without sufficient information to admit or deny the remaining allegations contained in Paragraph 25 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

26. Pereiras admit the allegations contained in Paragraph 26 of the Claim.

27. Pereiras admit the allegations contained in Paragraph 27 of the Claim.

28. Pereiras admit the allegations contained in Paragraph 28 of the Claim.

29. Pereiras admit the allegations contained in Paragraph 29 of the Claim.

30. Pereiras admit that they have had numerous issues with their home-post closing. Pereiras would refer Claimant to Pereiras' Amended Counter-Claim filed in the First Arbitration which is attached hereto as Exhibit "B". Pereiras deny the remaining allegations contained in Paragraph 30 of the Claim.

31. Pereiras deny the allegations contained in Paragraph 31 of the Claim.

32. Pereiras deny the allegations contained in Paragraph 32 of the Claim. Pereiras further incorporate by reference, as if stated herein verbatim, their Amended Response to Claimant's Statement of Claim and Counterclaim filed on May 31, 2024.

33. Upon information and belief, Pereiras admit to Ms. Pereira posting on social media on or about January 24, 2025 about their home, including photos. Pereiras would further state that the referenced post and photo speaks for itself. Pereiras deny paraphrase or characterization of the subject post or photo.

34. Pereiras deny the allegations contained in Paragraph 34 of the Claim.

35. Pereiras deny the allegations contained in Paragraph 35 of the Claim.

36. Pereiras admit to Ms. Pereira posting on social media on or about January 24, 2025 about their home. Pereiras would further state that the referenced video speaks for itself. Pereiras deny paraphrase or characterization of the subject video.

37. Pereiras admit to Ms. Pereira posting on social media on or about January 26, 2025 about their home. Pereiras would further state that the referenced video and/or post speaks for itself. Pereiras deny paraphrase or characterization of the subject video and/or post. Pereiras do not know how many times the video has been viewed.

38. Pereiras deny the allegations contained in Paragraph 38 of the Claim.

39. Pereiras admit to Ms. Pereira posting on social media on or about January 29, 2025, about their home and the quote from Redeemers Group, Inc. Pereiras would further state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

40. Pereiras deny the allegations contained in the first sentence of Paragraph 40 of the Claim. Upon information and belief, Pereiras admit that Mrs. Pereira responded to the referenced comment and would state that said response speaks for itself. Pereiras deny paraphrase or characterization of the subject response. Pereiras deny the remaining allegations contained in Paragraph 40 of the Claim.

41. The allegations contained in Paragraph 41 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 41 of the Claim and therefore Pereiras deny the same and demand proof thereof it their rights are to be affected.

42. The allegations contained in Paragraph 42 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Ms. Pereira posting on social media on or about January 29, 2025, about their home and the quote from Redeemers Group, Inc. Pereiras would further state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant. Further, Pereiras deny the allegations contained in this Paragraph because Claimant does not identify the "structural engineer" referenced therein.

43. Pereiras admit to Mrs. Pereira posting on social media on or about January 29, 2025, about the First Arbitration. Pereiras would further state the referenced post speaks for itself. Pereiras deny paraphrase or characterize of the subject post. Pereiras are without sufficient information to admit or deny the remaining allegations contained in Paragraph 43 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

44. The allegations contained in Paragraph 44 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about January 30, 2025 and February 4, 2025, about their home. Pereiras would state that said referenced posts speak for themselves. Pereiras deny paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 44 of the Claim.

45. The allegations contained in Paragraph 45 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting a review of Claimant with the Better Business Bureau. Pereiras would state that the referenced review speaks for itself. Pereiras deny paraphrase or characterization of the subject review. Pereiras deny the remaining allegations contained in Paragraph 45 of the Claim. Pereiras deny making false statements. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

46. The allegations contained in Paragraph 46 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mr. Joe Pereira ("Mr. Pereira") posting on social media on or about January 31, 2025 about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny making false statements. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

47. The allegations contained in Paragraph 47 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira sharing on social media Mr. Pereira's social media post of January

31, 2025, about their home. Pereiras would state that the referenced post and response(s) speak for themselves. Pereiras deny paraphrase or characterization of the subject post and response(s). Pereiras deny making false statements. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

48. The allegations contained in Paragraph 48 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about February 4, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny making false statements. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

49. The allegations contained in Paragraph 49 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about February 6, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Upon information and belief, Pereiras admit to sharing the post on social media. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 49 of the Claim regarding the number of times the post(s) have been viewed or shared and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny the remaining allegations contained in Paragraph 49 of the Claim. Pereiras deny making false statements. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

50. The allegations contained in Paragraph 50 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required,

Pereiras admit to Mrs. Pereira posting on social media on or about February 6, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterize of the subject post. Pereiras are without sufficient information to admit or deny the remaining allegations contained in Paragraph 50 of the Claim because Claimant does not identify the "structural engineer" referenced therein and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

51. The allegations contained in Paragraph 51 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about February 6, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 51 of the Claim.

52. The allegations contained in Paragraph 52 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 52 of the Claim.

53. The allegations contained in Paragraph 53 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about February 10, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 53 of the Claim.

54. The allegations contained in Paragraph 54 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required,

Pereiras admit to Mrs. Pereira posting on social media on or about February 11, 2025. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 54 of the Claim.

55. The allegations contained in Paragraph 55 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about February 12, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 55 of the Claim.

56. The allegations contained in Paragraph 56 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about February 12, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterize of the subject post. Pereiras deny the remaining allegations contained in Paragraph 56 of the Claim.

57. The allegations contained in Paragraph 57 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting a GoFundMe on or about February 28, 2025. Pereiras admit to Mrs. Pereira sharing the GoFundMe on or about February 28, 2025 to "MAMA'S DEALS!" Pereiras would state that the referenced posts speak for themselves. Pereiras deny paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 57 of the Claim.

58. The allegations contained in Paragraph 58 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, no response is required to the first sentence of Paragraph 58 of the Claim. Upon information and belief, Pereiras admit to Mrs. Pereira posting on social media on or about March 17, 2025, about the GoFundMe. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

59. Pereiras admit to Mrs. Pereira posting on social media on or about March 21, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

60. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 60 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

61. Pereiras admit to Mrs. Pereira posting on social media or about April 5, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

62. The allegations contained in Paragraph 62 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about July 5, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Other than the reference to Claimant suing Pereiras, Pereiras deny the remaining allegations contained in Paragraph 62 of the Claim.

63. The allegations contained in Paragraph 63 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required,

upon information and belief, Pereiras admit that Ms. Pereira has used the hashtags #ConstructionFraud #CodeViolations in social media posts. Pereiras would state that the referenced posts speak for themselves. Pereiras deny paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 63 of the Claim.

64. The allegations contained in Paragraph 64 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media or about July 6, 2025, about their home. Pereiras would state that the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 64 of the Claim.

65. The allegations contained in Paragraph 65 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about July 7, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 65 of the Claim. Pereiras further deny the allegations contained in this Paragraph because Claimant does not identify the "structural engineer" referenced therein.

66. The allegations contained in Paragraph 66 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media or about July 9, 2025, about their home. Upon information and belief, Pereiras also admit to Mrs. Pereira posting on social media on or about July 24, 2025, August 22, 2025, September 7, 2025, and September 8, 2025, about their home. Pereiras would state that the referenced posts speak for themselves. Pereiras deny

paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 66 of the Claim.

67. The allegations contained in Paragraph 67 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about July 11, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras are without sufficient information to admit or deny the remaining allegations contained in Paragraph 67 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

68. The allegations contained in Paragraph 68 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about July 12, 2025, and July 13, 2025, about their home. Pereiras would state the referenced posts speak for themselves. Pereiras deny paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 68 of the Claim.

69. The allegations contained in Paragraph 69 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about July 13, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 69 of the Claim.

70. The allegations contained in Paragraph 70 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required,

Pereiras admit to Mrs. Pereira posting on social media on or about July 13, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 70 of the Claim regarding references to posts from November 19, 2025, November 25, 2025, January 6, 2026, January 13, 2026, and January 20, 2026, and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected Pereiras deny the remaining allegations contained in Paragraph 70 of the Claim.

71. Pereiras admit to Mrs. Pereira posting on social media on or about July 17, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras admit that they first noticed the issue with the barn door in 2022 and requested information regarding the hardware from Claimant. Pereiras admit that this issue was not raised during the warranty period. Pereiras further admit that there was not a frame around the subject door at the time of closing. Pereiras deny the remaining allegations contained in Paragraph 71 of the Claim.

72. Pereiras admit to Mrs. Pereira posting on social media on or about July 23, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

73. Pereiras admit to Mrs. Pereira posting on social media on or about July 23, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

74. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 74 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

75. The allegations contained in Paragraph 75 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about July 25, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 75 of the Claim.

76. Pereiras admit to Mrs. Pereira posting on social media on or about August 8, 2025, about their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

77. Pereiras admit the allegations contained in Paragraph 77 of the Claim.

78. The allegations contained in Paragraph 78 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about August 22, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 78 of the Claim.

79. The allegations contained in Paragraph 79 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about August 26, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 79 of the Claim.

80. The allegations contained in Paragraph 80 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit that the expert reports of Richard Edwards P.E., and Robert Kendall P.E., were dated August 29, 2025, and September 5, 2025, respectively. Pereiras would state the referenced

reports speak for themselves. Pereiras deny paraphrase or characterization of the subject reports. Pereiras deny the remaining allegations contained in Paragraph 80 of the Claim.

81. The allegations contained in Paragraph 81 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras would state that Mr. Edwards' opinion speaks for itself. Pereiras deny paraphrase or characterization of Mr. Edwards' opinion. Pereiras would state that Mr. Kendall's opinion speaks for itself. Pereiras deny paraphrase or characterization of Mr. Kendall's opinion. Pereiras deny the remaining allegations contained in Paragraph 81 of the Claim.

82. The allegations contained in Paragraph 82 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about August 30, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 82 of the Claim.

83. The allegations contained in Paragraph 83 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about August 30, 2025. Pereiras would state the referenced posts speak for themselves. Pereiras deny paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 83 of the Claim.

84. Pereiras admit to Mrs. Pereira posting on social media on or about September 5, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

85. Pereiras admit to Mrs. Pereira posting on social media on or about September 6, 2025, regarding their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

86. The allegations contained in Paragraph 86 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 86 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

87. The allegations contained in Paragraph 87 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 87 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected.

88. Pereiras admit the allegations contained in Paragraph 88 of the Claim.

89. The allegations contained in Paragraph 89 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about September 14, 2025, regarding their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras are without sufficient information to admit or deny the allegations concerning social media comments or posts from September 24, 2025, October 1, 2025, October 4, 2025, October 5, 2025, October 24, 2025, October 29, 2025, December 13, 2025, and December 24, 2025, and therefore deny the same and demand proof

thereof if their rights are to be affected. Pereiras deny the remaining allegations contained in Paragraph 89 of the Claim.

90. The allegations contained in Paragraph 90 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about September 24, 2025, regarding a contractor. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 90 of the Claim.

91. The allegations contained in Paragraph 91 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about September 25, 2025, regarding their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 91 of the Claim.

92. The allegations contained in Paragraph 92 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mr. Pereira posting on social media on or about September 28, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 92 of the Claim.

93. The allegations contained in Paragraph 93 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about September 29, 2025. Pereiras

would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 93 of the Claim.

94. The allegations contained in Paragraph 94 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit that references to Wellford and Stephens were removed from the post. Pereiras deny the remaining allegations contained in Paragraph 94 of the Claim.

95. The allegations contained in Paragraph 95 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about September 30, 2025, regarding their home. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 95 of the Claim.

96. The allegations contained in Paragraph 96 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 2, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 96 of the Claim.

97. The allegations contained in Paragraph 97 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 2, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 97 of the Claim.

98. The allegations contained in Paragraph 98 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 3, 2025, about a website coming soon. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterize of the subject post. Pereiras would further state that the referenced website speaks for itself. Pereiras deny paraphrase or characterization of the subject website. Pereiras deny the remaining allegations contained in Paragraph 98 of the Claim.

99. The allegations contained in Paragraph 99 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Upon information and belief, Pereiras admit that on or about October 4, 2025, FOX13 Memphis posted a link to a story concerning Pereiras' claim against Bryant. Pereiras would state that the referenced story speaks for itself. Pereiras deny paraphrase or characterize of the subject story. Upon information and belief, Pereiras admit that Mrs. Pereira posted comments to said story. Pereiras would state that the referenced comments speak for themselves. Pereiras deny paraphrase or characterization of the subject comments. Pereiras deny the remaining allegations contained in Paragraph 99 of the Claim.

100. The allegations contained in Paragraph 100 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 100 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

101. The allegations contained in Paragraph 101 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 8, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 101 of the Claim.

102. The allegations contained in Paragraph 102 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 16, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 102 of the Claim.

103. The allegations contained in Paragraph 103 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 17, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Upon information and belief, Pereiras admit to sharing the post on social media. Pereiras deny the remaining allegations contained in Paragraph 103 of the Claim.

104. The allegations contained in Paragraph 104 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mr. Pereira posting on social media on or about October 17, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of

the subject post. Pereiras deny the remaining allegations contained in Paragraph 104 of the Claim.

105. The allegations contained in Paragraph 105 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 21, 2025. Pereiras would state the referenced post and comment speaks for themselves. Pereiras deny paraphrase or characterization of the subject post or comment. Pereiras deny the remaining allegations contained in Paragraph 105 of the Claim.

106. The allegations contained in Paragraph 106 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 23, 2025. Pereiras would state the referenced post and comment speaks for themselves. Pereiras deny paraphrase or characterization of the subject post or comment. Pereiras deny the remaining allegations contained in Paragraph 106 of the Claim.

107. The allegations contained in Paragraph 107 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 107 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

108. The allegations contained in Paragraph 108 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required,

Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 108 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

109. The allegations contained in Paragraph 109 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 27, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 109 of the Claim.

110. The allegations contained in Paragraph 110 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about October 29, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 110 of the Claim.

111. The allegations contained in Paragraph 111 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about November 2, 2025. Pereiras would state the referenced posts speak for themselves. Pereiras deny paraphrase or characterization of the subject posts. Pereiras deny the remaining allegations contained in Paragraph 111 of the Claim.

112. The allegations contained in Paragraph 112 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about November 3, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 112 of the Claim.

113. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 113 of the Claim and therefore Pereiras deny the same and demand proof thereof it their rights are to be affected. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

114. The allegations contained in Paragraph 114 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about November 19, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 114 of the Claim.

115. The allegations contained in Paragraph 115 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about November 21, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 115 of the Claim.

116. The allegations contained in Paragraph 116 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about November 22, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 116 of the Claim concerning the referenced posts allegedly from December 19, 2025 and December 23, 2025, and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny the remaining allegations contained in Paragraph 116 of the Claim.

117. The allegations contained in Paragraph 117 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about November 25, 2025. Pereiras would state the referenced post and comment speaks for themselves. Pereiras deny paraphrase or characterization of the subject post or comment. Pereiras deny the remaining allegations contained in Paragraph 117 of the Claim.

118. Pereiras admit to Mrs. Pereira posting on social media on or about November 28, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 118 of the Claim concerning the referenced posts allegedly from January 19, 2026 and January 20, 2026, and Mrs. Pereira's alleged "last communication to Regency regarding the HVAC system" and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny the remaining allegations contained in Paragraph 118 of the Claim.

119. The allegations contained in Paragraph 119 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about December 1, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 119 of the Claim.

120. The allegations contained in Paragraph 120 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about December 1, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 120 of the Claim.

121. The allegations contained in Paragraph 121 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 121 of the Claim and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

122. The allegations contained in Paragraph 122 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 122 of the Claim and therefore Pereiras deny the same and demand proof thereof if

their rights are to be affected. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

123. The allegations contained in Paragraph 123 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about December 2, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 123 of the Claim.

124. Pereiras admit to Mrs. Pereira posting on social media on or about December 4, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post.

125. The allegations contained in Paragraph 125 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about December 5, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 125 of the Claim.

126. The allegations contained in Paragraph 126 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about December 15, 2025. Pereiras would state the referenced post and comment speaks for itself. Pereiras deny paraphrase or characterization of the subject post or comment. Pereiras deny the remaining allegations contained in Paragraph 126 of the Claim.

127. The allegations contained in Paragraph 127 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about December 23, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 127 of the Claim.

128. Pereiras admit to Mrs. Pereira posting on social media on or about December 30, 2025. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 128 of the Claim.

129. The allegations contained in Paragraph 129 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about January 13, 2026. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 129 of the Claim.

130. The allegations contained in Paragraph 130 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about January 16, 2026. Pereiras would state the referenced post speaks for itself. Pereiras deny paraphrase or characterization of the subject post. Pereiras deny the remaining allegations contained in Paragraph 130 of the Claim.

131. The allegations contained in Paragraph 131 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras admit to Mrs. Pereira posting on social media on or about January 20, 2026. Pereiras would state the referenced post and comments speak for themselves. Pereiras deny paraphrase or characterization of the subject post or comments. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 131 of the Claim concerning an alleged post from September 19, 2025, and therefore Pereiras deny the same and demand proof thereof if their rights are to be affected. Pereiras deny the remaining allegations contained in Paragraph 131 of the Claim.

132. The allegations contained in Paragraph 132 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 132 of the Claim.

133. The allegations contained in Paragraph 133 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 133 of the Claim.

134. The allegations contained in Paragraph 134 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 134 of the Claim.

135. The allegations contained in Paragraph 135 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 135, including subparagraphs, of the Claim.

136. Pereiras admit that demands have been made by Claimant but deny any and all allegations that Pereiras have defamed and/or disparaged Claimant. Pereiras deny all allegations, either expressed or implied, that they have disparaged or defamed Claimant.

137. The allegations contained in Paragraph 137 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 137 of the Claim.

138. The allegations contained in Paragraph 138 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 138 of the Claim.

139. The allegations contained in Paragraph 139 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 139 of the Claim.

140. The allegations contained in Paragraph 140 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 140 of the Claim.

141. The allegations contained in Paragraph 141 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 141 of the Claim.

142. The allegations contained in Paragraph 142 of the Claim state legal conclusions and arguments of counsel for which no response is required. To the extent a response is required, Pereiras deny the allegations contained in Paragraph 142 of the Claim.

143. Pereiras replead and incorporate by reference, as if stated herein verbatim, their Answers to the preceding paragraphs of the of Claim.

144. Pereiras deny the allegations contained in Paragraph 144 of the Claim.

145. Pereiras deny the allegations contained in Paragraph 145 of the Claim.

146. Pereiras deny the allegations contained in Paragraph 146 of the Claim.

147. Pereiras replead and incorporate by reference, as if stated herein verbatim, their Answers to the preceding paragraphs of the of Claim.

148. Pereiras deny the allegations contained in Paragraph 148 of the Claim.

149. Pereiras deny the allegations contained in Paragraph 149 of the Claim.

150. Pereiras deny the allegations contained in Paragraph 150 of the Claim.

151. Pereiras replead and incorporate by reference, as if stated herein verbatim, their Answers to the preceding paragraphs of the of Claim.

152. Pereiras deny the allegations contained in Paragraph 152 of the Claim.

153. Pereiras deny the allegations contained in Paragraph 153 of the Claim.

154. Pereiras deny the allegations contained in Paragraph 154 of the Claim.

155. Pereiras deny the allegations contained in Paragraph 155 of the Claim.

156. Pereiras replead and incorporate by reference, as if stated herein verbatim, their Answers to the preceding paragraphs of the of Claim.

157. Pereiras are without sufficient information to admit or deny the allegations contained in Paragraph 157 of the Claim and therefore Pereiras deny the same and demand proof thereof it their rights are to be affected.

158. Pereiras deny the allegations contained in Paragraph 158 of the Claim.

159. Pereiras deny the allegations contained in Paragraph 159 of the Claim.

160. Pereiras deny the allegations contained in Paragraph 160 of the Claim.

161. Pereiras deny the allegations contained in Paragraph 161 of the Claim.

162. In response to Claimant's Prayer for Relief contained within the unnumbered Paragraph of the Claim on page 40 that begins "WHEREFORE", Pereiras deny the allegations therein, including subparts 1-11, deny that they are liable to Claimant for the relief requested, and/or any relief or damages of any kind, for the claims and allegations asserted in the Claim.

163. Any and all allegations not heretofore admitted, denied, or otherwise explained are here and now denied as though set forth specifically and denied.

SECOND DEFENSE

Claimant fails to identify any specific damages to an existing business relationship with specific third parties or prospective relationship with an identifiable class of third persons. Also, Claimant fails to establish Pereiras' knowledge of the alleged business relationship and allege simply a mere awareness of Claimant's business dealings with others in general fashion. As such, Claimant's claim for tortious interference with business relations fails and should be dismissed.

THIRD DEFENSE

Claimant's defamation claim fails to state a claim upon which relief can be granted because the challenged statements are, in whole or in part, nonactionable opinion, substantially true, not "of and concerning" Claimant in a defamatory sense, not published with the requisite fault, and/or are otherwise privileged.

Further, to the extent any of Pereiras' statements are factual assertions, they are true or substantially true, and truth is an absolute defense. Further, without conceding any statement is defamatory, Pereiras' statements regarding construction issues, repairs, and conditions were based on their experiences and observations in and around the dates described in Claim and public posts and comments.

Additionally, many statements at issue are constitutionally protected opinions, rhetorical hyperbole, or expressions of personal experience not susceptible of being proven true or false, and thus are nonactionable as a matter of law.

Further, the statements, viewed in context, do not convey a defamatory meaning about Claimant, are not reasonably understood as stating verifiable facts about Claimant and/or are not "of and concerning" Claimant in a defamatory sense.

FOURTH DEFENSE

Claimant cannot prove the requisite fault standard. Pereiras did not act with negligence, much less actual malice. Pereiras based their statements on their contemporaneous experiences, contractor communications, and engineering information available to them.

FIFTH DEFENSE

To the extent statements were made in good faith to inform neighbors, local community groups, or prospective service providers about residential issues, they are protected by a qualified common-interest privilege. Pereiras' posts were made on her publicly-available Facebook page(s)/groups and other Facebook groups such as the "Lakeland Moms" Facebook group. Any qualified privilege defeats liability absent proof of actual malice, which is denied.

SIXTH DEFENSE

Pereiras' statements constitute fair comment and criticism on matters of legitimate public concern, including residential construction quality and consumer experiences with homebuilders, made without actual malice and based on disclosed facts and personal experiences detailed contemporaneously.

SEVENTH DEFENSE

Claimant cannot prove cognizable damages caused by Pereiras' statements, as required under the law. Any alleged reputational or pecuniary harm is speculative, not proximately caused by Pereiras, or otherwise barred or limited.

EIGHTH DEFENSE

To the extent any republication or amplification of statements occurred via public discourse, comments, or threads, Pereiras deny responsibility for third-party statements and reserve the defense that Claimant's own actions or public notoriety contributed to any alleged reputational content.

NINTH DEFENSE

The statements at issue constitute opinion and fair comment on matters of legitimate public interest, including Pereiras' personal experiences with home construction and builder performance. Such expressions are protected under the United States Constitution and/or Tennessee Constitution as they contribute to public discourse and consumer awareness.

TENTH DEFENSE

Claimant bears the burden to prove falsity of the statements, which it cannot do because the statements are true, substantially true, opinion, or otherwise not verifiable.

ELEVENTH DEFENSE

To the extent any claim is predicated on statements published outside the applicable limitations period including, but not limited to, Tennessee Code Annotated section 28-3-103 and Tennessee Code Annotated section 28-3-104, such claims are time-barred. Further, to the extent applicable, Pereiras assert the single-publication rule and deny any actionable republication within the limitations period absent material alteration.

Pereiras further rely upon and assert any and all other applicable statute of limitations and/or repose to the extent that said statute(s) apply to Claimant's claims.

TWELFTH DEFENSE

Punitive damages are unavailable absent clear and convincing evidence of actual malice, which is denied. Pereiras deny actual malice and rely on the engineering reports, repairs, and their personal experiences and beliefs as negating malice.

THIRTEENTH DEFENSE

Pereiras' communications were made in the context of consumer complaints and warranty-related issues and are privileged or otherwise not actionable to the extent they fairly described their experiences and requests for service/remediation.

FOURTEENTH DEFENSE

Any alleged harm to Claimant's reputation was caused in whole or in part by Claimant's own actions or omissions, by third-party commenters, or by intervening events outside Pereiras' control.

FIFTEENTH DEFENSE

Claimant failed to take reasonable steps to mitigate any alleged reputational or pecuniary harm and therefore cannot recover avoidable losses.

SIXTEENTH DEFENSE

Claimant's claims are barred in whole or in part by the First Amendment to the United States Constitution and Article I, Section 19 of the Tennessee Constitution, including protections for opinion, fair comment, and matters of public concern. Article I, Section 19 of the Tennessee Constitution guarantees the right to free speech. This provision protects expressions of opinion,

fair comment, and matters of public concern, particularly in the context of consumer experiences and residential construction quality.

SEVENTEENTH DEFENSE

To the extent Claimant alleges republication, Pereiras deny any actionable republication and assert the single-publication rule. Any subsequent references were clarifications or updates and not new publications giving rise to new claims.

EIGHTEENTH DEFENSE

The statements are too vague, indefinite, or hyperbolic to be proven false and thus are nonactionable.

NINETEENTH DEFENSE

Pereiras reserve all defenses available under Tennessee law, including any additional privileges, immunities, or statutory defenses that may become apparent through discovery, and specifically reserves the right to assert anti-SLAPP or related fee-shifting protections if and to the extent applicable under Tennessee procedure.

TWENTIETH DEFENSE

The statements, when viewed in context, do not convey a defamatory meaning about Claimant and are not reasonably understood as stating verifiable facts about Claimant. The Tennessee Constitution protects speech that does not harm reputation in a legally actionable way.

TWENTY-FIRST DEFENSE

Claimant cannot prove the requisite fault standard. Pereiras did not act with negligence or actual malice. Pereiras' statements were based on their personal experiences and available information, negating any claim of knowing falsity or reckless disregard for the truth.

TWENTY-SECOND DEFENSE

Pereiras' communications were rhetorical hyperbole, advocacy, and opinion, not verifiable statements of fact and are constitutionally protected. Courts have consistently held that accusations couched in figurative or hyperbolic language are not actionable defamation. See Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990).

TWENTY-THIRD DEFENSE

Pereiras' communications were speech on matters of public concern is entitled to heightened First Amendment protection.

TWENTY-FOURTH DEFENSE

Even if Claimant could overcome the constitutional barriers to its claims, dismissal is still required because truth is an absolute defense to defamation. Tennessee law is unequivocal: "only statements that are false are actionable, truth is, almost universally, a defense." See West v. Media Gen. Convergence, Inc., 53 S.W.3d 640, 645 (Tenn. 2001). Courts have consistently held that where the alleged defamatory statements are substantially true, or based on verifiable events, no claim for defamation can lie.

Here, Pereiras' communications were not fabricated assertions, but commentary grounded in documented issues with Pereiras' home.

Because the alleged statements are non-actionable opinion, injury to reputation cannot be presumed. See Stones River Motors, Inc. v. Mid-South Publ'g Co., 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983).

Further, Claimant's fail to plead damages with specificity. Tennessee law requires that defamation claims allege reputational harm or other cognizable injury. Quality Auto Parts Co. v. Bluff City Buick Co., 876 S.W.2d 818, 820 (Tenn. 1994). Claimant's vague references to "lost

sales" and "injury to its reputation and goodwill" are insufficient to establish actual damages. (The Claim ¶ 149).

To state a claim for defamation, Claimant must plead and ultimately prove damages, either actual harm to reputation or special damages such as financial loss. See Quality Auto Parts Co., 876 S.W.2d at 820. Conclusory assertions of reputational injury are insufficient; the complaint must allege facts showing how Pereiras' statements caused measurable harm. See Murray v. Lineberry, 69 S.W.3d 560, 564 (Tenn. Ct. App. 2001).

TWENTY-FIFTH DEFENSE

Pereiras assert that alleged statements cited as a basis for Claimant's claim were not reasonably capable of being understood in a defamatory sense or meaning.

TWENTY-SIXTH DEFENSE

Pereiras assert and rely on any and all defenses available to them pursuant to the Tennessee Public Participation Act ("TPPA") codified at Tennessee Code Annotated Section 20-17-101, *et. seq*.

TWENTY-SEVENTH DEFENSE

Pereiras assert and rely on any and all defenses available to them pursuant to the Tennessee Consumer Protection Act ("TCPA") codified at Tennessee Code Annotated Section 47-18-101, *et. seq*.

TWENTY-EIGHTH DEFENSE

For affirmative defense, Pereira's aver and rely on, to the extent allowed by law, the defenses and limitations set forth in the Tennessee Civil Justice Act of 2011, including but not limited to the caps placed on non-economic damages pursuant to *Tennessee Code Annotated* § 29-39-102 and the caps placed on punitive damages pursuant to *Tennessee Code Annotated* § 29-

39-104 and/or other provisions of the Civil Justice Act of 2011 relating to any defenses and/or other limitations upon liability or damages set forth in the Act.

Pereiras reserve all defenses as to punitive damages both as sought in this case at any time in the future and in general, based upon the Tennessee Civil Justice Act of 2011, and the protections guaranteed by the United States Constitution and the Constitution of the State of Tennessee, including rights of due process and the right not to be subjected to excessive award. Pereiras request that any hearing regarding punitive damages be bifurcated in the courts with Tennessee law as set forth in Hodges v. S. C. Toof & Company, 833 S.W. 2d 896 (Tenn. 1992) ("Toof") and/or the Tennessee Civil Justice Act of 2011 and/or any applicable Tennessee law requiring any hearing on punitive damages be bifurcated.

TWENTY-NINTH DEFENSE

Pereiras deny that punitive damages may or should be assessed as against them and ordered to Claimant in this cause. It is further denied Pereiras can be held liable for punitive damages by law or that they were guilty of any action that would merit the finding of liability, much less punitive damages.

THIRTIETH DEFENSE

Pereiras aver Claimant's claim for punitive damages is barred by the due process clause of the U.S. Constitution and by the due process clause of the Tennessee State Constitution. Additionally, Pereiras assert that they lack adequate notice either of the type of contact that could warrant an award for punitive damages under the law of the state, or the amount of such damages that could be awarded. Pereiras would further show the procedure set forth in the state of Tennessee for awarding punitive damages may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing and that this infringes upon

the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

THIRTY-FIRST DEFENSE

Pereiras would further show that no act or omission on their part was intentional, fraudulent, malicious or reckless, which under the standard set forth in the state of Tennessee, must be shown by clear and convincing evidence and, as such, any award of punitive damages under the standard set forth in the state of Tennessee is unwarranted. Pereiras further deny that they may be held liable for punitive damages under Tennessee law interpreting liability for punitive damages. As such, said punitive damage claims against Pereiras should be dismissed.

THIRTY-SECOND DEFENSE

Pereiras invoke and, alternatively, move for any and all procedural relief for litigants against whom a claim for punitive damages is made in accordance with Toof, including: (1) imposition on Claimant of the burden of proving its entitlement to punitive damages by clear and convincing evidence, and (2) a bifurcated trial to first determine liability for punitive damages in accordance with the specific standards enumerated in Toof.

THIRTY-THIRD DEFENSE

Pereiras aver Claimant's claims for punitive damages are governed by all standards of limitations regarding the determination and/or enforceability of punitive damages awards as established in the decisions of BMW of North America v. Gore, 517 U.S. 559 (1996), as well as any other relevant or applicable statutory or case law.

THIRTY-FOURTH DEFENSE

Pereiras hereby give notice to Claimant as stated in this Response that they lack sufficient knowledge or information upon which to form a belief as to the truth of a certain allegations

contained in the Claim or specific knowledge of actions on the part of persons that may have contributed to the cause of Claimant's alleged damages. Until Pereiras avail themselves of the rights of discovery, they cannot determine whether the defenses herein will be asserted at trial. Pereiras assert these defenses in this Answer to preserve their right to assert same at trial and to give Claimant notice of their intention to assert some or all of these defenses and avoid a waiver of any of these defenses.

THIRTY-FIFTH DEFENSE

The facts not having been fully developed, Pereiras adopt the following affirmative defenses: arbitration and award, assumption of risk, contributory negligence, comparative fault, discharge and bankruptcy, duress, failure of consideration, fraud, injury by a fellow servant, license, payment, release, res judicata, statute of frauds, statute of limitations, statute of repose, and any other matter constituting an avoidance of affirmative defense as may be shown by the facts in this case.

THIRTY-SIXTH DEFENSE

In the alternative, should this Claim, No. 6339966**,** not be dismissed, this Claim should be consolidated with prior arbitration No. 6322063.

THIRTY-SEVENTH DEFENSE

Claimant fails to state a claim upon which relief can be granted.

THIRTY-EIGHTH DEFENSE

Pereiras deny that they are liable for the matters, things, or wrongs charged and alleged against them in the Claim either in the manner or form alleged or in any other manner or form.

THIRTY-NINTH DEFENSE

Claimant failed to mitigate its damages and accordingly should preclude, diminish, and/or reduce the claimed damages, same being denied.

FORTIETH DEFENSE

Pereiras assert the defense of accord and satisfaction as a complete defense to the Claim.

FORTY-FIRST DEFENSE

Pereiras assert the defense of set-off.

FORTY-SECOND DEFENSE

Pereiras assert that Claimant's damages, if any, are precluded or should be reduced because of laches and unclean hands.

FORTY-THIRD DEFENSE

Pereiras assert that Claimant committed the first material breach of contract and/or any agreements between the parties.

FORTY-FOURTH DEFENSE

Pereiras assert and relies upon the Statute of Frauds.

FORTY-FIFTH DEFENSE

Pereiras assert that the Claim should be dismissed to the extent that Claimant's conduct was fraudulent.

FORTY-SIXTH DEFENSE

Pereiras reserves the right to amend the answer to the Claim, including the ability to assert additional affirmative defenses, including those revealed in discovery, and/or add potentially responsible parties.

FORTY-SEVENTH DEFENSE

The Claim is barred by the doctrines of waiver and estoppel.

FORTY-EIGHTH DEFENSE

Pereiras deny breach.

FORTY-NINTH NINTH

Claimant cannot establish that Pereiras' conduct was the actual or proximate cause of any loss of a business relationship or expectancy.

FIFTIETH DEFENSE

Pereiras aver that Claimant sustained no recoverable damages attributable to Pereiras. Any alleged damages, same being denied, are speculative, not reasonably certain, or not proximately caused by Pereiras.

FIFTY-FIRST DEFENSE

Any alleged injury was caused by intervening and superseding acts or omissions of third parties, market conditions, regulatory actions, or Claimant's own conduct, of which Pereiras would not be responsible or liable.

FIFTY-SECOND DEFENSE

Decisions by third parties were the result of their independent business judgment based on factors unrelated to Pereiras, and not induced or caused by Pereiras.

FIFTY-THIRD DEFENSE

To the extent applicable, any challenged communications constituted good-faith petitioning, reporting, or participation in official, regulatory, or quasi-judicial processes, and are protected and not improper means.

FIFTY-FOURTH DEFENSE

Pereiras did not engage in any illegal, fraudulent, defamatory, or otherwise independently tortious conduct.

FIFTY-FIFTH DEFENSE

Pereiras acted in good-faith reliance on information reasonably believed to be accurate and from reliable sources, negating improper motive or means.

FIFTY-SIXTH DEFENSE

To the extent Claimant attempts to recharacterize the claim as interference with an existing contract, Pereiras deny any knowledge of, or interference with, any binding contract and asserts all defenses applicable to such a claim.

FIFTY-SEVENTH DEFENSE

To the extent any aspect of the claim is preempted by federal or state law or protected by immunity applicable to Pereiras' status or activities, such preemption or immunity bars the claim.

FIFTY-EIGHTH DEFENSE

Pereiras allege that Claimant's claims are barred pursuant to the Doctrine of Modified Comparative Fault, which was in full force and effect in the state of Tennessee at all times pertinent. Alternatively, if the trier of fact finds that Claimant was less than fifty percent (50%) at fault for any damages suffered by Claimant, Pereiras allege that those damages should be reduced, mitigated, and diminished in direct proportion to the percentage of fault attributed to Claimant and/or by any other individuals or entities that are determined to have contributed to the subject alleged accident.

Should Claimant be found to be 50% or greater at fault, Pereiras submit that Claimant's claims are barred. If the fault of Claimant is found to be less than 50%, Pereiras assert that Pereiras' proportion of damages should be reduced by the percentage of fault assigned to others, identified and yet unidentified, including Claimant.

FIFTY-NINTH DEFENSE

Pereiras assert and rely on any and all defenses available to them pursuant to the Consumer Review Fairness Act, 15 U.S.C. § 45b.

SIXTIETH DEFENSE

Pereiras assert that pursuant to the Agreement, the Tennessee Consumer Protection Act, and/or any other applicable agreement between the parties, statutory act, and/or common law that Pereiras are entitled to their reasonable attorneys' fees, costs, expenses, and arbitration fees in having to respond and defend this action in arbitration.

WHEREFORE, **PREMISES CONSIDERED,** having fully responded to Claimant's Statement of Claim filed against them, Respondents Julie Pereira and Joe Pereira request that Claimant's Claim against Respondents Julie Pereira and Joe Pereira be dismissed with prejudice, with all costs taxed to Claimant, including arbitration fees. Failing dismissal, Respondents Julie Pereira and Joe Pereira pray for a hearing on all issues joined by the pleadings, an award of discretionary costs, their attorney's fees, arbitration fees, and for such further relief to which they may be entitled, in law or in equity.

Respectfully submitted,

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ATTORNEY FOR RESPONDENTS/COUNTER-CLAIMANTS JULIE AND JOE PEREIRA

COUNTER-CLAIM

Now having fully answered the Claim, Julie Pereira and Joe Pereira (hereinafter referred to collectively as the "Pereiras") by and through their undersigned counsel of record, assume the role of counter-claimants, and hereby assert the following Counter-Claim against Claimant/Counter-Respondent, Regency Homebuilders, LLC ("Regency") and would state as follows:

1. Pereiras incorporate by reference, as if stated herein verbatim, their Counter-Claim previously filed in Resolute Systems, LLC Arbitration No. 6322063, namely their Amended Answer and Counter-Claim to Claimant's Statement of Claim and Counterclaim dated May 31, 2024. Attached hereto as Exhibit B

2. Pereiras are a married couple who during all relevant times herein were residents of Shelby County, Tennessee.

3. Respondent Regency Homebuilders, LLC is a Tennessee limited liability company doing business in Shelby County, Tennessee.

4. On March 3, 2020, the Pereiras entered into a New Home Purchase Order and New Home Sales Agreement with Regency Homebuilders, LLC for the construction of a new home on Lot Number 6 in the Winstead Farms Subdivision, Carrington Plan 3183.

5. From March 3, 2020, through May 20, 2021, Regency issued 12 amended purchase orders to the Pereiras regarding the construction of their home.

6. On or about March 6, 2020, the Pereiras paid a $5,000 earnest money deposit to Regency.

7. On or about April 12, 2020, the Pereiras ratified the New Home Purchase Order with Regency, increasing the sales price to $533,655.

8. On or about June 17, 2020, the Pereiras and Regency ratified the sales price to $653,436, following confirmation of all design center pricing.

9. On or about June 17, 2020, the Pereiras paid Regency $119,781 via check for upgrades to the construction of their home.

10. On or about August 28, 2020, the Pereiras paid Regency $725 via check for upgrades to the construction of their home.

11. On or about August 28, 2020, the Pereiras paid Regency $500 via check for an upgrade change fee.

12. On or about November 6, 2020, the Pereiras paid Regency $2060 via check for upgrades to the construction of their home.

13. On or about November 25, 2020, the Pereiras paid Regency $11,000 via check for upgrades to the construction of their home.

14. On or about December 4, 2020, the Pereiras paid Regency $1451 via check for upgrades to the construction of their home.

15. On or about January 4, 2021, the Pereiras paid Regency $1325 via check for upgrade and a change fee.

16. On or about January 5, 2021, the Pereiras paid Regency $70 via check for upgrades to the construction of their home.

17. On or about February 26, 2021, the Pereiras paid Regency $1230 via check for upgrades to the construction of their home.

18. On or about March 13, 2021, the Pereiras paid Regency $9940 via check for upgrades to the construction of their home.

19. On or about April 19, 2021, the Pereiras paid Regency $1475 via check for upgrades to the construction of their home.

20. Per Regency, a minimum deposit of 50% is required on most standard additions for Conventional or Federal Housing Administration ("FHA") loans.

21. Per Regency, a minimum deposit of 100% is required on all additions for Veterans Administration (VA) and United States Department of Agriculture (USDA) loans.

22. The Pereiras purchased their house using a Veterans Administration (VA) loan.

23. The Notice of Value (NOV) for the home indicates Regency is to provide the Pereiras with a 10-year insurance backed warranty.

24. Regency has not provided the Pereiras with a 10-year insurance backed warranty.

25. On May 20, 2021, Regency issued an Amended Purchase Agreement with a change order for "KitchenAid under the cabinet ventdoo [sic] KVUB606DSS."

26. No additional change orders occurred after May 20, 2021.

27. The under cabinet venthood installed in the Pereiras home is not the model set forth in the Pereiras' agreement with Regency.

28. On or about June 29, 2020, 47 truckloads of pre-grading dirt were delivered to 5055 Adagio Lane, Lakeland, Tennessee.

29. On or about June 29, 2020, Regency began building up the foundation pad by approximately four to six feet above native grade using fill material.

30. Regency did not use engineered fill to build up this foundation pad four to six feet above native grade.

31. By July 4, 2020, the foundation pad was built up approximately four to six feet above native grade.

32. An invoice dated August 16, 2020, was sent by David Al-Chokhachi of AFA Engineering to Regency for engineering work at 5055 Adagio Lane, Lakeland TN totaling $1025.00.

33. On or about August 18, 2020, form boards were placed for the foundation following the substantial build-up of fill.

34. An invoice dated September 13, 2020, from David Al-Chokhachi of AFA Engineering was emailed Regency Homebuilders an Invoice for engineering work at 5055 Adagio Lane, Lakeland TN totaling $100.00.

35. David Al-Chokhachi is not a licensed Engineer.

36. AFA Engineering is not a licensed engineering firm in the state of Tennessee.

37. David Al-Chokhachi conducted the foundation survey at this residence.

38. David Al-Chokhachi conducted the finished floor elevation at this residence.

39. David Al-Chokhachi conducted the foundation inspection at this residence.

40. David Al-Chokhachi set the property corners at this residence.

41. David Al-Chokhachi conducted the recheck foundation survey at this residence.

42. Regency introduced David Al-Chokhachi to Ms. Pereira as “one of our engineers.”

43. Regency introduced David Al-Chokhachi to Ms. Pereira as the engineer who conducted the foundation inspection at their residence.

44. On October 5, 2020, C3 testing performed compaction testing on the Residence, but did not test the four (4) to six (6) feet of fill dirt above native soil.

45. As of October 5, 2020, Regency had added approximately four (4) to six (6) feet of fill dirt above native soil.

46. When building up the foundation pad approximately four (4) to six (6) feet of fill dirt above native soil, Regency did not fill in 6-inch lifts.

47. When building up the foundation pad approximately four (4) to six (6) feet of fill dirt above native soil, Regency did not test for compaction in 6-inch lifts.

48. Upon information and belief, on October 8, 2020, additional piles of fill dirt were delivered to the property.

49. On October 12, 2020, Regency poured the concrete foundation without notifying the Pereiras despite their prior request to be present for the foundation pour.

50. On October 12, 2020, an engineer's foundation inspection letter was issued in connection with the foundation pour at 5055 Adagio Lane, Lakeland, Tennessee by AFA Engineering, and rubber stamped by Linda Prather, an Engineer.

51. Upon information and belief, Linda Prather has no formal affiliation with AFA Engineering.

52. Upon information and belief, Linda Prather has never been an employee of AFA Engineering.

53. Upon information and belief, Linda Prather was at the time on October 12, 2020, the Engineer in Responsible charge at her own Engineering firm, Foundation Engineering Management.

54. The stamped foundation inspection letter was relied upon by Shelby County in issuing approval for continued construction.

55. The stamped foundation inspection letter was relied upon by Shelby County in issuing the Certificate of Occupancy.

56. The Foundation form letter was fraudulently issued and certified, and therefore the Certificate of Occupancy was issued on the basis of fraudulently provided information.

57. The Foundation form letter submitted to Shelby County by Regency represented that the foundation complied with applicable code requirements.

58. The foundation inspection letter sealed by Linda Prather failed to disclose that an unlicensed individual had performed the foundation inspection.

59. The 2015 Shelby County residential code states all footings shall bear on undisturbed or properly compacted soils a minimum of 13 inches (330 mm) below grade.

60. The soil under the Pereiras' foundation is not properly compacted to industry or Shelby County adopted residential code.

61. The Minimum Pounds Per Square Foot (PSF) for compaction in Shelby County is 1500 psf.

62. The 2025 test results on the soil at the footings of the Pereiras' residence averaged 220-660 PSF.

63. The footings on the Pereira residence do not extend a minimum of 13 inches into undisturbed soil.

64. The 2015 International Residential Code (IRC) states that all exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, crushed stone footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill. Concrete footing shall be designed and constructed in accordance with the provisions of Section R403 or in accordance with ACI 332.

65. The exterior walls of the Pereira residence are not supported on a continuous or fully grouted masonry or concrete footings, crushed stone footings, wood foundations or other approved structure systems.

66. The Shelby County residential code for drainage states:

> **401.3 Drainage and foundation elevation.** – Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard. Lots shall be graded to drain surface water away from foundation walls. The finish floor (elevation) shall be nominal 10 inches above the exterior finish grade (ground) and the finish grade shall slope a minimum of 8% (1 in 12) away from foundation for a minimum of 3 feet for drainage.

67. Since closing in June 2021, and as recently as February 19, 2026, the Pereiras have experienced ongoing drainage issues, to include issues with the slope of their yard.

68. An invoice from LawsCon with an invoice date and ship date of October 18, 2020, was sent to Regency for this residence, for slab labor and materials, seismic bolts, garage strap and concrete forms.

69. An invoice from LawsCon with an invoice date and ship date of October 28, 2020, was sent to Regency for this residence, for a concrete pump truck.

70. On December 10, 2020, the Pereiras requested the following Property survey from Regency, which they refused to provide.

71. On December 10, 2020, the Pereiras requested the Grading plan from Regency, which they refused to provide.

72. On December 10, 2020, the Pereiras requested the Foundation inspection from Regency, which they refused to provide.

73. On December 10, 2020, the Pereiras requested the Bore tests on the property with the build up/grading change that occurred in July/August from Regency, which they refused to provide.

74. On December 10, 2020, the Pereiras requested the Plans or reports that contain info on Augured/drilled piers under the footings under the house from Regency, which they refused to provide.

75. On December 10, 2020, the Pereiras requested the Previous requests for tree removal for lot 6 from Regency, which they refused to provide.

76. On December 10, 2020, the Pereiras requested the Tree Protection plan for lot 6 from Regency, which they refused to provide.

77. Upon information and belief, Regency refused to provide these documents because they knew David Al-Chokhachi was not a licensed engineer.

78. Upon information and belief, Regency refused to provide these documents because they knew AFA Engineering was not a licensed engineering firm.

79. On February 13, 2025, the Claimants learned that AFA Engineering and David Al-Chockachi were operating without proper Tennessee engineering licensure at the time relevant inspections and representations were made.

80. On February 13, 2025, the Pereira's learned that AFA Engineering was closed in 2004, upon the death of the Engineer in Responsible Charge, AF Al-Chockachi.

81. On May 20, 2021, the Pereiras hired Engineer Kevin Poe to inspect their foundation and address their concerns.

82. Upon information and belief, Regency and Kevin Poe conspired to fraudulently induce the Pereiras to close on a home with known foundation issues.

83. Regency had a professional and/or business relationship with Engineer Kevin Poe, and hired him in January and February 2022 to do work on the Pereiras home, without the agreement or consent of the Pereiras.

84. Regency's professional and/or business relationship with Engineer Kevin Poe predated the Pereiras' hiring of Kevin Poe.

85. Upon information and belief, Kevin Poe and Regency discussed the inspection of the Pereiras' residence performed on May 20, 2021, without permission of the Pereiras.

86. Such a discussion is a violation of the State of Tennessee's Rules and Code of Conduct for Architects and Engineers.

87. Kevin Poe did not disclose his professional relationship and conflict of interest as it relates to Regency, to the Pereiras.

88. The Pereiras relied on Kevin Poe's inspection of May 20, 2021, as detailed in his inspection report of May 22, 2021 to alleviate their concerns about closing on the home, and subsequently closed on the home.

89. During a phone call with Regency employee Todd Roaten on May 28, 2021 Regency disclosed that they were aware the Pereiras had hired an engineer.

90. Regency did not disclose their professional relationship with the engineer the Pereiras had hired.

91. On May 28, 2021, the Pereiras emailed Sean Carlson, Regency's owner requesting to meet.

92. On May 28, 2021, Ms. Pereira spoke to Todd Rotan of Regency about mutual cancellation of the contract.

93. On May 28, 2021, Jill Sugg sent the Pereiras an email stating *"…We have been working on completing all reasonable items from your inspection and are confident your home will be move-in-ready by Tuesday, 6/1. We have you down for a walk through with Daniel on Tuesday at 3pm, where you can see the final product. We then expect you to close on the home on or before Friday 6/4.* ***If you choose not to close on your home by the end of next week, we will consider you in breach of contract.*** *Typically, when this happens, we will hold all deposit monies and list the home for sale. Once the home sells to a new buyer and closes,* ***we will assess costs and profits to determine what amount of deposit monies will be returned to you.*** *Any losses incurred because of this breach will be deducted from the deposit refund amount."* (emphasis added)

94. On May 29, 2021, Ms. Pereira sent Jill Sugg an email stating, *"…Given Todd's indication that Regency will not release us from the contract,* ***it is our intention to proceed with closing as required per the contract****. That being said, I truly do not appreciate being low key threatened and essentially bullied into closing before the home is ready. As I mentioned above, I have requested your company provide me with the items Todd has said no to, but have yet to be*

given this requested information. I would appreciate a list by Tuesday at noon of what is going to be repaired and what the company is declining to repair. Anything short of that feels like you're intentionally backing us into a corner, preventing us from having time to address these issues effectively, and then threatening breach of contract.

95. On June 4, 2021, the Pereiras closed on the property under threat of legal action, forfeiture of their deposit and paying the differential between contract and sales price.

96. During February 2022 open trench repair, photographs revealed welded wire reinforcement was installed directly on top of the vapor barrier rather than elevated within the slab, contrary to industry standards.

97. The Pereiras' foundation had been fraudulently certified to Shelby County to meet applicable code requirements.

98. From 2022 through January 2024, the Pereiras continued to experience significant issues in their home as set forth in the amended counter claim attached hereto.

99. On January 24, 2025, the Moen faucet in the second floor bathroom was left on by a minor child such that it was dripping water. The dripping water from the 2nd floor Moen faucet landed backwards onto the countertop, and dripped onto the floor leading water to saturate the first and second floors of the Pereiras' home.

100. Regency and/or their subcontractors did not install the Moen faucets with the proper reach to extend far enough over the sink to prevent them from dripping back onto the counter.

101. The Moen faucets in the bathroom were the subject of a previously denied warranty claim submitted on May 2, 2022.

102. In the submission of the May 2, 2022, Moen warranty claim Ms. Pereira provided Regency a video of the issue.

103. In May 2025, the Pereiras learned that the 3 feet they paid $3060 for in the morning room was never added.

104. As a result of the actions and/or inactions of Regency set forth herein, the Pereiras have sustained substantial monetary damages including but not limited to damages to personal property, loss of the value of their real property, and loss of the use of their home (in whole and/or in part) during the time they have occupied it.

FIRST CLAIM—BREACH OF CONTRACT AND/OR WARRANTY

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

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

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

108. 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 Pereiras' home.

109. 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.

110. As a direct and proximate cause of Regency's actions and/or omissions constituting a breach of contract and/or warranty, the Pereiras have suffered damages to their property and other economic and compensatory damages to which the Pereiras are entitled to recover from Regency.

111. Regency is guilty of breach of contract, false advertising, fraud, and misrepresentation for representing to the Pereiras 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

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

113. 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.

114. At all times relevant herein, Regency had a duty to exercise reasonable care and skill in the provisions of its services to the Pereiras and perform all work in a workman-like manner, and according to applicable industry standards and practices.

115. 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.

116. 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.

117. In taking the aforementioned actions and in failing to take the actions that the Pereiras assert should have been taken, Regency breached their duty of care and skill to the Pereiras.

118. 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 Pereiras incurred, and continue to incur, substantial damages to their real and personal property.

119. As a direct and proximate result of Regency's other intentional, reckless, and/or negligent actions and/or omissions, the Pereiras have, and continue to incur, substantial damages.

THIRD CLAIM—VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT

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

121. 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.

122. The New Home Sales Agreement includes a non-disparagement provision as follows:

> DISPARAGEMENT: Purchaser and Seller covenant and agree that neither party will engage in any pattern of conduct that involves the making or publishing of written or oral statements or remarks (including, without limitation, the repetition or distribution of derogatory rumors, allegations, negative reports or comments) which are disparaging, deleterious or damaging to the integrity, reputation or good will of the Purchaser or Seller, their respective members, owners, officers, employees, and/or agents of their respective products or services. Purchaser and Seller understand that any violation of this Section shall result in a breach of the Agreement, and the non-breaching party shall have the option to pursue all

remedies available to it under this Agreement. This section shall survive the Agreement

123. The foregoing provision violates the Consumer Review Fairness Act ("CRFA") 15 U.S.C. § 45b and is unenforceable.

124. Notwithstanding the foregoing, Regency has falsely asserted to Plaintiffs on numerous occasions that the non-disparagement provision in the New Home Sales Agreement is enforceable and that they are in violation of it.

125. 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) including but not limited to:

a. By falsely representing to the Pereiras 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 representing to the Pereiras 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 Pereiras that Regency would return 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 Pereiras, 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 Pereiras; and/or

f. By causing a 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 Pereiras 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 Pereiras 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 Pereiras 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 Pereiras' money invested with Regency for a brand-new home, while Pereiras 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 Pereiras that they were part of the Winstead Farms HOA and as such would have pool access and access to all common area property.

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

127. As a result of Regency's violations of the TCPA, the Pereiras 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 Pereiras in the sum of three (3) times their actual damages, reasonable attorney fees, and costs of litigation.

FOURTH CLAIM—FRAUD

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

129. Regency fraudulently induced the Pereiras to enter into the New Home Purchase Order and New Home Sales Agreement by knowingly and intentionally making numerous false representations to the Pereiras including but not limited to false statements regarding the workmanship and construction of the foundation of their home, grading of the yard, membership in the Winstead Farm HOA, access to a community pool, dimensions of the construction, features of cabinets and other fixtures, installation of insulation.

130. 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 Pereiras 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.

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

132. 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 Pereiras as outlined and described in detail above.

133. 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 Pereiras that their goods and/or services were of a particular standard, quality, or grade which they do not possess.

134. Regency and/or their employees, agents, representatives, or other individuals working on their behalf, engaged in fraud and/or misrepresentation when they represented to the Pereiras that their goods and/or services had the sponsorship, approval, characteristics, ingredients, uses, benefits, and qualities that they do not actually have.

135. 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 Pereiras that this business transaction conferred or involved rights and remedies which it did not have or involve or which are prohibited by law.

136. 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 Pereiras that Regency had cured the deficiencies in the contracted services provided to the Pereiras.

137. 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 Pereiras that Regency would honor the warranties provided to the Pereiras.

138. Regency's actions were intentional, willful, malicious, and/or reckless and entitle the Pereiras to punitive damages. Regency knew of the foregoing falsehoods and made them recklessly with the malicious intent to deceive the Pereiras and to induce the Pereiras into entering into the contract and to continue to rely on Regency to repair the Pereiras' home.

139. 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 Pereiras in good faith to honor the parties' contracts and warranties, to complete the work to Pereiras' home and property in a workmanlike manner, to supply all labor, materials, tools, equipment and supervision by qualified personnel and to ensure payment for 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 the Pereiras' property and further harm the Pereiras financially.

140. As a sole, direct, and proximate cause of the above-referenced actions and/or omissions, the Pereiras have and continue to incur substantial damages.

WHEREFORE, PREMISES CONSIDERED, the Pereiras pray:

1. That the Pereiras 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.

2. That the Pereiras 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.

3. That the Pereiras be awarded prejudgment interest at the maximum rate permitted by law against Regency.

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

5. Rescission of the New Home Purchase Order, New Home Sales Agreement, and all addendums and amendments.

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

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

8. That the Pereiras be awarded such other and further relief to which the Pereiras 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 Pereiras when they move, including but not limited to the fence, generator, sprinkler system, built-in buffet and other items.

Respectfully Submitted,

By: */s/ Bryan M. Meredith*

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2026, a copy of the foregoing document was served upon all counsel of record and Resolute Systems, LLC by electronic mail and/or by depositing a copy of the same in an official depository of the U.S. Mail in a postage-paid envelope addressed as follows:

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BY: 
STEVE N. SNYDER

Neutral
As of: February 20, 2026 8:26 PM Z

Tennessee ex rel. Skrmetti v. Ideal Horizon Benefits, LLC

United States District Court for the Eastern District of Tennessee, Knoxville Division

February 28, 2023, Filed

3:23-CV-00046-DCLC-JEM

Reporter
2023 U.S. Dist. LEXIS 34118 *; 2023 LX 94153; 2023 WL 2299570

STATE OF TENNESSEE, ex rel. JONATHAN SKRMETTI, ATTORNEY GENERAL and REPORTER, and COMMONWEALTH OF KENTUCKY, ex rel. DANIEL CAMERON, ATTORNEY GENERAL, Plaintiffs, v. IDEAL HORIZON BENEFITS, LLC d/b/a SOLAR TITAN USA, et al., Defendants.

Subsequent History: Motion granted by, in part, Motion denied by, in part, Motion denied by *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2023 U.S. Dist. LEXIS 72296, 2023 WL 3079496 (E.D. Tenn., Apr. 25, 2023)*

Motion granted by *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2023 U.S. Dist. LEXIS 195535 (E.D. Tenn., July 7, 2023)*

Request granted, Costs and fees proceeding at *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2023 U.S. Dist. LEXIS 195536 (E.D. Tenn., July 7, 2023)*

Motion denied by *Tennessee ex rel. Skrmetti v. Ideal Horizon Benefits, LLC, 2023 U.S. Dist. LEXIS 145594, 2023 WL 5334650 (E.D. Tenn., Aug. 18, 2023)*

Magistrate's recommendation at *Tennessee ex rel. Skrmettti v. Ideal Horizon Bens., LLC, 2023 U.S. Dist. LEXIS 169917, 2023 WL 6064529 (E.D. Tenn., Aug. 22, 2023)*

Motion granted by, in part, Motion denied by, in part *Tennessee ex rel. Skrmettti v. Ideal Horizon Benefits, LLC, 2024 U.S. Dist. LEXIS 140274 (E.D. Tenn., Aug. 6, 2024)*

Motion denied by *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2024 U.S. Dist. LEXIS 178956, 2024 WL 4351650 (E.D. Tenn., Sept. 30, 2024)*

Motion granted by, in part, Motion denied by, in part *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2025 U.S. Dist. LEXIS 109825 (June 9, 2025)*

Motion granted by, in part, Motion denied by, in part *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2025 U.S. Dist. LEXIS 117850, 2025 WL 1727037 (June 20, 2025)*

Motion granted by *Tennessee ex rel. Skrmetti v. Ideal Horizon Bens., LLC, 2025 U.S. Dist. LEXIS 184824 (E.D. Tenn., Sept. 19, 2025)*

Core Terms

solar, consumer, cancel, install, customer, further order, solar system, deceptive, tax credit, unfair, entity, eligible, consumer protection, freeze, mosaic, preliminary injunction, receivership, custody, electric, mislead, disbursement, succeed, rescission, saving, misrepresent, agents, enjoin, deem necessary, indirectly, buyback

Counsel: [*1] For State of Tennessee, ex rel. Jonathan Skrmetti, Attorney General and Reporter, Plaintiff: Alicia Daniels-Hill, Samuel David Keen, LEAD ATTORNEYS, Tennessee Attorney General's Office, Nashville, TN; J David McDowell, LEAD ATTORNEY, Office of the Attorney General and Reporter, Nashville, TN.

For Commonwealth of Kentucky, ex rel. Daniel Cameron, Attorney General, Plaintiff: Lyndsey Antos, Philip Heleringer, LEAD ATTORNEYS, PRO HAC VICE, Office of the Attorney General (KY), Frankfort, KY; Paul Mitchel Fata, LEAD ATTORNEY, Kentucky Office of the Attorney General, Frankfort, KY.

For Craig Kelley, Defendant: Charles W Gilbreath, II, LEAD ATTORNEY, The Law Firm of Stephan Wright, Chattanooga, TN; Stephan R Wright, LEAD ATTORNEY, Wright, Cortesi & Gilbreath, Chattanooga, TN.

For Richard Atnip, Defendant: Samuel Blink, LEAD ATTORNEY, Darrow Everett, LLP, Nashville, TN; William C Killian, LEAD ATTORNEY, Cavett Abbott & Weiss, PLLC, Chattanooga, TN.

For Sarah Kirkland, Defendant: Gregory Brown, LEAD ATTORNEY, Gregory Alan Rawls, William Scott Hickerson, Lowe, Yeager and Brown, Knoxville, TN; Hugh B Ward, Jr, LEAD ATTORNEY, Lowe Yeager & Brown, PLLC, Knoxville, TN.

For Solar Mosaic, LLC, doing business [*2] as Mosaic, Defendant: Hannah Catherine Lackey, LEAD ATTORNEY, Frost Brown Todd LLP, Nashville, TN; Jeremey Goolsby, LEAD ATTORNEY, Frost, Brown, Todd LLC (Nashville), Nashville, TN; Robert J Guite, LEAD ATTORNEY, PRO HAC VICE, Sheppard, Mullin, Richter & Hampton, LLP (San Fran), San Francisco, CA; Tanya Y Bowman, LEAD ATTORNEY, PRO HAC VICE, Frost Brown Todd LLC, Louisville, KY.

For Volunteer Ventures, LLC, Intervenor: Benjamin C Mullins, LEAD ATTORNEY, Frantz, McConnell & Seymour, LLP, Knoxville, TN.

Receiver Richard Ray Ryan Jarrard, LEAD ATTORNEY, Quist, Fitzpatrick & Jarrard, PLLC, Knoxville, TN.

Judges: Clifton L. Corker, United States District Judge.

Opinion by: Clifton L. Corker

Opinion

MEMORANDUM OPINION AND ORDER

This matter came before the Court on February 27, 2023 for a preliminary injunction hearing, during which all parties in interest appeared with counsel and presented oral argument on their position of whether the Temporary Restraining Order, issued by the Court on February 7, 2023, should be converted into a preliminary injunction. Based on the evidence contained in the record, the parties' briefing, the arguments presented during the hearing, and for the reasons stated herein, the Court finds the [*3] entry of a preliminary injunction is warranted.

I. BACKGROUND

Plaintiffs State of Tennessee ("Tennessee") and Commonwealth of Kentucky ("Kentucky") by and through their respective Attorneys General commenced this civil enforcement action on February 6, 2023, alleging violations of federal and state consumer protection laws by Defendant Ideal Horizon Benefits, LLC d/b/a Solar Titan USA ("Solar Titan") and its two members and officer—Sarah Kirkland ("Kirkland"), Richard Atnip ("Atnip"), and Craig Kelley ("Kelley") (collectively, "Individual Defendants"). Specifically Plaintiffs allege Solar Titan and the Individual Defendants engaged in acts or practices that violated the *Consumer Financial Protection Act ("CFPA"), 12 U.S.C. § 5301 et seq.*, the *Consumer Review Fairness Act ("CRFA"), 15 U.S.C. § 45b*, the *Tennessee Consumer Protection Act ("TCPA"), Tenn. Code Ann. § 47-18-101 et seq.*, the *Kentucky Consumer Protection Act ("KCPA"), Ky. Rev.*

Stat § 367.110 et seq., the Tennessee Home Solicitation Sales Act, Tenn. Code Ann. § 47-18-701 et seq., and the Kentucky Home Solicitation Sales Act, Ky. Rev. Stat. § 367.140 et seq. [Doc. 3].

Plaintiffs moved *ex parte* for a Temporary Restraining Order ("TRO") against Solar Titan and the Individual Defendants, for the appointment of a receiver over Solar Titan, and an asset freeze against Solar Titan and the Individual Defendants [Doc. 5]. The Court, finding good cause to believe that Solar Titan and the Individual Defendants had engaged in acts and practices that violate state and federal consumer protection laws and that immediate and irreparable harm would result **[*4]** to consumers due to those ongoing violations, granted the extraordinary relief sought by Plaintiffs. Namely, on February 7, 2023, the Court issued a TRO temporarily enjoining the acts and practices complained of, freezing the assets of Solar Titan and the Individual Defendants, appointing a temporary receiver for Solar Titan, and granting ancillary relief [Doc. 21].

In accordance with the TRO, the Individual Defendants filed responses in opposition to Plaintiffs' request for a preliminary injunction [Docs. 44, 46, 68]. Kirkland also moved to strike the injunctive relief sought in Plaintiffs' Complaint to the extent it applied to her [Doc. 41] and moved to dissolve the TRO as it related to her [Doc. 52]. On February 26, 2023, however, Plaintiffs and Kirkland jointly moved for entry of an Agreed Order modifying the freeze of Kirkland's assets, allowing Kirkland to withdraw her Motion to Dissolve the TRO, and memorializing Plaintiffs' and Kirkland's agreement as to her Motion to Strike [Doc. 73].

On February 27, 2023, the parties appeared before the Court to present argument as to why the Court should or should not enter a preliminary injunction enjoining the violations of law alleged by **[*5]** Plaintiffs, continuing the asset freeze, permanently continuing the Receivership, and imposing such additional relief as may be appropriate. The Court entered the Agreed Order proposed by Plaintiffs and Kirkland. Thus, the sole remaining issue to be decided is whether a preliminary injunction should be issued as to Solar Titan, Atnip, and Kelley.

II. LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." Overstreet v. Lexington-Fayette Urban Cty. Gov't, 305 F.3d 566, 573 (6th Cir. 2002) (citing Leary v. Daeschner, 228 F.3d 729, 73 (6th Cir. 2000)). The factors to consider when determining whether to issue a preliminary injunction in a civil enforcement action are whether the government has demonstrated a likelihood of success, whether the balance of equities tip in the government's favor, and whether an injunction would be in the public interest. *Fed. Trade Comm'n v. Consumer Def., LLC, 926 F.3d 1208, 1212 (9th Cir. 2019)* (the irreparable harm showing normally required in private litigation is eliminated in cases involving statutory enforcement).

III. DISCUSSION

Plaintiffs assert that the Court should enter a preliminary injunction enjoining the violations of law alleged in the Civil Enforcement Complaint, continuing the Receivership, and continuing the freeze **[*6]** of the assets of Solar Titan, Atnip, and Kelley. Atnip and Kelley object to the entry of a preliminary injunction against them, including the continued asset freeze, and argue primarily that Plaintiffs cannot demonstrate a likelihood of success on the merits as to their personally liability for the alleged violations.

A. Likelihood of Success on the Merits

Plaintiffs allege the evidence before the Court leaves little doubt that Solar Titan engaged in violations of the aforementioned consumer protection laws and the Individual Defendants are personally liable for those violations. Namely, Plaintiffs claim Solar Titan misleads consumers about the characteristics and benefits of their solar systems and omits material information related to consumer loans used to fund the projects, and the Individual Defendants knew or should have known of the wrongful acts and either participated directly in them or had the

authority to control them. The likelihood of success on each of the alleged consumer protection violations are examined in turn, followed by an analysis of the Individual Defendants' liability for those alleged violations.

1. Consumer Financial Protection Act

The CFPA prohibits a "covered **[*7]** person or service provider" from "engag[ing] in unfair, deceptive, and abusive acts and practices" in the provision of financial services to consumers. *12 U.S.C. § 5536(a)(1)(B)*. The parties do not dispute that Solar Titan is a "covered person or service provider" under the CFPA. Thus, the focus is on whether Solar Titan engaged in unfair, deceptive, or abusive acts or practices in the provision of financial services to its customers.

An act or practice is unfair if it is "likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and "such substantial injury is not outweighed by countervailing benefits to consumers or to competition." *12 U.S.C.A. § 5531(c)(1)*. An act or practice is deceptive if "there is a representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances and the representation, omission, or practice is material." *Consumer Fin. Prot. Bureau v. Gordon, 819 F.3d 1179, 1192 (9th Cir. 2016)* (citation and internal quotations omitted). An act or practice is abusive if it "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service" or it "takes unreasonable advantage of—(A) a lack of understanding on the part of the consumer of the material **[*8]** risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer." *12 U.S.C. § 5531(d)*.

Plaintiffs allege Solar Titan's practices and acts are unfair, deceptive, and abusive because they misrepresent that customers will be eligible for the Federal Tax Credit and fail to inform customers that their loan payments start after the solar system is installed rather than after it is fully commissioned and operational. Both of these acts and practices are discussed in turn.

i. Federal Tax Credit Eligibility

Plaintiffs allege Solar Titan and the Individual Defendants misrepresent that the Federal Tax Credit will reduce the overall cost of a Solar Titan system and customers' loan amounts, despite the fact that not all customers will be eligible for the tax credit. Consumers who purchase a residential solar system may be eligible to receive a nonrefundable tax credit equal to 26-30% of the cost of the solar system, depending on the year of purchase. *26 U.S.C. § 25D(g)*. Plaintiffs assert Solar Titan sales **[*9]** representatives use this tax incentive as part of their sales pitch, and the structure of the financing from the lender promoted by Solar Titan, Solar Mosaic, LLC ("Mosaic"), misrepresents that all consumers are eligible for the tax credit. Plaintiffs argue the terms of the loan assume each consumer will pay a balloon payment in approximately the same amount as the tax credit prior to re-amortization, which occurs 18 months after the first payment is due, and these terms are intended to give the impression that the consumer is eligible for the tax credit and that the cost of the system and the associated loan will be lowered as a result.

Although the structure of the loan for the purchase of a Solar Titan system does provide a benefit for consumers who are eligible for the Federal Tax Credit and who put the tax credit toward the loan principal within the first 18 months, the Solar Titan Installation Agreement and the Mosaic Loan Agreement sufficiently explain the terms of the loan and explain that the benefit of the tax credit is not guaranteed. Both agreements explain three possible situations: (1) if a consumer pays down the principal by 26% during the first 18 months following installation, **[*10]** the monthly payment will remain the same after re-amortization; (2) if a consumer does not pay down the principal by at least 26% in the first 18 months, the monthly payment will increase after re-amortization; and (3) if a consumer pays down the principal by more than 26% during the first 18 months, the monthly payment will decrease after re-amortization [Doc. 10-5, pgs. 142, 144, 146, 148, 150, 152; Doc. 68-5, pg. 2]. If the agreements excluded the last

two situations, the argument that they were misleading consumers to believe that they would receive the tax credit would have more merit. But the terms clearly contemplate ineligibility for the tax credit.

Both agreements also include a disclosure regarding the Federal Tax Credit. Solar Titan's Installation Agreement provides:

> As the purchaser and owner of a solar photovoltaic system, you may qualify for certain federal, state, local or other rebates, tax credits or incentives (collectively, "Incentives"). If you have any questions as to whether and when you qualify for any Incentives and the amount of such Incentives, please consult and discuss with your personal tax or financial advisor. [Installers] make no representation, warranty **[*11]** or guarantee as to the availability or amount of such Incentives.

[Doc. 10-5, pgs. 142, 144, 146, 148, 150, 152]. Likewise, the Mosaic Loan Agreement contains the following disclaimer:

> You may be eligible for a federal solar investment tax credit. You acknowledge that eligibility for this tax credit is not guaranteed. In order to realize the benefits of the solar investment tax credit, you must have federal income liability that is at least equal to the value of the credit. We are not financially responsible for your receipt of any such tax credits. We do not provide tax advice and nothing in this Loan Agreement is intended to be used as tax advice. In order to determine your eligibility for any federal solar investment tax credit, you should make an independent assessment or consult with your independent tax advisors. Additionally, if you are not eligible to receive a federal solar investment tax credit you will not be able to use the proceeds of your tax credit to make a voluntary prepayment as described below.

[Doc. 68-5, pg. 2].

While the terms of the loan necessarily provide a benefit for those consumers who are eligible for the Federal Tax Credit, consumers who assume they will be **[*12]** eligible for and, as a result, benefit from the tax credit and enter into the Loan Agreement based on that assumption do not act reasonably. Likewise, any substantial injury to consumers who rely on the advertisement or sales pitch regarding the tax credit when purchasing a Solar Titan system is reasonably avoidable. Any representations regarding the possible benefits of the tax credit are not likely to mislead consumers acting reasonably under the circumstances, because a reasonable consumer would confirm eligibility before relying on it. Accordingly, it is unlikely that Plaintiffs will succeed on the merits of their CFPA claim based on the assertion that Solar Titan misrepresents consumers' eligibility for the tax credit.

ii. Loan Start Date

Solar Titan represents to customers that the first monthly payment on their loan "is due approximately 60 days after installation." [Doc. 10-5, pg. 142]. Plaintiffs allege this representation is unfair, deceptive, and abusive, because Solar Titan omits the fact that "installation" does not necessarily mean that the system will be fully commissioned and operational. This omission, Plaintiffs assert, leads customers to believe that their loan payments **[*13]** will not commence until after they have a functioning solar system.

Solar Titan initially operated under what was called a "complete install" which means one installation crew would go out to the customer's house and install the panels, run the electrical, and complete everything in one installation [Doc. 10-2, pg. 42-43]. Thus, "installation" actually meant installation of an operational solar system. However, Solar Titan then split the crews into a panel crew and an electrical crew [*Id.* at pg. 43]. Under that installation operation, "install" began to mean merely that panels were on the roof [*Id.*]. Once the panels were installed, Solar Titan submitted a bill of lading to Mosaic and, in turn, Mosaic disbursed funds to Solar Titan, regardless of whether the electrical crew had completed their installation [*Id.*]. Thus, numerous customers were forced to begin paying on a loan for an incomplete solar system.[1]

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[1] For example, a Kentucky consumer stated that he or she paid three payments to Mosaic before the Solar Titan system was deemed "operational." [Doc. 67-5, pg. 57].

Misrepresenting to customers when their first payments will be due is unfair—it is likely to cause substantial injury which is not reasonably avoidable because they are forced to begin payments for a product and service which they have yet to fully receive. Such misrepresentation is **[*14]** also deceptive—it is likely to mislead consumers into believing they will not have to begin paying for the solar system until it is operational. This is a material representation, because it would likely affect a consumer's decision to purchase a Solar Titan system and to finance that purchase through Mosaic. *See E.M.A. Nationwide, Inc., 767 F.3d at 631* ("A representation is material if it is likely to affect a consumer's decision to buy a product or service."). Likewise, such misrepresentation is abusive, because it materially interferes with a consumer's ability to understand the most basic term of their loan—when the loan start date begins.

Accordingly, Plaintiffs are likely to succeed on their claim that Solar Titan's acts or practices in the provision of financial services are unfair, deceptive, or abusive due to the omission of material information, which leads consumers to believe they will not be obligated to pay on their loan until their solar system is operational.

2. Consumer Review Fairness Act

The CRFA provides that "[i]t shall be unlawful for a person to offer a form contract containing a provision" that "prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered **[*15]** communication[.]" *15 U.S.C. § 45b(b)(1), (c)*. A "covered communication" is "a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party." *15 U.S.C.A. § 45b(a)(2)*.

Solar Titan included a term in its standard form contract that purported to restrain customers from making negative statements about Solar Titan on social media (a "non-disparagement provision"). The provision in the Installation Agreement states:

> Buyer agrees not to use any form of social media to express their opinion that could be portrayed as negative in the eyes of the public towards or about Ideal Horizon Benefits. Breaching acceptance of this clause by buyer can and will deem monetary compensation benefits to Ideal Horizon Benefits, LLC/Solar Titan USA.

[Doc. 10-5, pgs. 142, 144, 146, 148, 150, 152]. This provision clearly prohibits or restricts the ability of a Solar Titan customer to engage in a covered communication in violation of the CRFA.

Defendants Atnip and Kelley concede that the inclusion of this provision was unlawful but assert that they had outside **[*16]** counsel review and approve their contracts and counsel did not raise any objection to this provision [Doc. 68, pg. 27]. They further contend that they had no idea that such provision could potentially be a legal issue until they learned from the Kentucky Attorney General's Office that it was not permissible [*Id.*]. Upon learning of the impermissibility of the provision, Solar Titan removed it from the contract [Doc. 68-11, pg. 2]. But Atnip and Kelley do not state when the provision was removed, so it is unclear how many contracts actually contained the unlawful provision and, as a result, how many consumers are entitled to equitable relief.

Atnip and Kelley wrongfully assert that "only the non-disparagement provision in the contract is void," and that "Plaintiffs are placing themselves in the position of the legislative branch and writing in the law that the CRFA requires contract recission and refund." [Doc. 68, pg. 27]. The CRFA is clear that offering a form contract with the proscribed provision is "treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act[.]" *15 U.S.C. § 45b(d)(1)*. The relief available in a civil enforcement action for such a violation "may include, **[*17]** but shall not be limited to, *recission* or reformation of contracts, *the refund of money* or return of property, the payment of damages, and public notification respective the rule violation or the unfair or deceptive act or practice[.]" *15 U.S.C. § 57b(b)* (emphasis added). Thus, although not required, contract recission and refund are available remedies for the violation and Plaintiffs are likely to succeed on the merits of this claim against Solar Titan.

3. Tennessee and Kentucky Consumer Protection Acts

The TCPA prohibits "unfair or deceptive acts or practices affecting the conduct of any trade or commerce." *Tenn. Code Ann. § 47-18-104(a)*. Similarly, the KCPA prohibits "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." *Ky. Rev. Stat. § 367.170(1)*. The TCPA is "interpreted and construed consistently with the interpretations given by the [FTC]." *Tenn. Code Ann. § 47-18-115*. Thus, the same standards stated above with respect to the federal claims for unfair and deceptive practices apply equally here. To recap, an act or practice is unfair if it is "likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and "such substantial injury is not outweighed by countervailing benefits to consumers or to competition." **[*18]** *12 U.S.C.A. § 5531(c)(1)*. An act or practice is deceptive if "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material." *F.T.C. v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994)*. "A representation is material if it is likely to affect a consumer's decision to buy a product or service." *E.M.A. Nationwide, Inc., 767 F.3d at 631*.

Plaintiffs allege Solar Titan engages in unfair and deceptive acts and practices by misrepresenting and omitting material information about the characteristics of the solar systems and information related to consumer loans. The alleged misrepresentations and omissions include: (1) claiming consumers will save significant sums of money by purchasing a Solar Titan system; (2) misleading consumers to believe they will be eligible for a Federal Tax Credit by purchasing a Solar Titan system, (3) misleading consumers to believe they will benefit from "net metering"—a program under which local utility companies will "buy back" excess power produced by a Solar Titan system, (4) failing to explain when payments are due on consumers' loans in relation to when they will have an operational solar system; (5) failing to honor consumers' three-day **[*19]** statutory right of recission; and (6) misrepresenting consumers' ability to cancel their loan agreements entered into with Mosaic.

For the reasons stated above with respect to the alleged CFPA violations, Plaintiffs are unlikely to succeed on the merits of any consumer protection claim relating to representations about a consumer's eligibility for the Federal Tax Credit, but Plaintiffs are likely to succeed on the merits of the claim that failing to explain the timing of when a consumer's payments will begin on their loans is an unfair or deceptive practice. Turning to the remaining challenged acts and practices, Plaintiffs are likely to succeed on the merits of their claim that each of these acts and practices are either deceptive or unfair.

i. Representations as to Savings

First, Plaintiffs allege Solar Titan deceives customers into believing that they will save large sums of money by purchasing a Solar Titan system [Doc. 6, pg. 18]. Solar Titan claims consumers will save 50-90% on their monthly utility bills by purchasing a Solar Titan system and that they will not spend more on their solar system than they would pay "anyway" towards their electric bills [Doc. 10-5, pg. 121; Doc. 10-14, **[*20]** pg. 3].[2] In making these claims, Solar Titan sales representatives are instructed to tell customers that in the past eight years, the national average annual increase for electric bills has been 8.2%, [Doc. 10-5, pg. 119], when, in fact, the *fastest* annual rate of increase since 2008 has been 4.3% in 2021. U.S. Energy Info. Admin., *Today in Energy*, https://www.eia.gov/todayinenergy/detail.php?id=51438 (last visited February 25, 2023). Sales representatives also claimed they would choose a solar system size that would produce enough power to cover consumers' average monthly consumption, but the size guideline provided for reference overstated how much energy each system size

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[2] Solar Titan sales representatives are trained to use an "Anyway Money Pitch" during which they tell prospective customers the national average increase for electric bills over the last eight years and then estimate the money they will spend over the next 20 years on their electric bill [Doc. 10-5, pgs. 119-120]. The sales representative is then instructed to explain that the prospective customer could put the money that would be spent anyway on an electric bill ("anyway money") toward a Solar Titan system to "own and produce their own power versus continuing to rent" their electricity [*Id.* at pg. 121].

would produce [Doc. 10-3, pg. 47 (Sworn Statement of Jason Horton, former sales consultant at Solar Titan); Doc. 10-5, pgs. 135, 137 (Solar System Sizing Guidelines)].

The practices, if proven, are clearly deceptive. Representations regarding an inaccurate annual increase in the price of utility bills and savings that different sizes of Solar Titan's systems can provide are likely to mislead consumers because such representations are based on false information. Such representations are also material because the **[*21]** extent of savings a consumer will actually appreciate, or the lack thereof, would likely influence their decision to purchase such an expensive product. These representations are also likely to cause substantial injury to consumers which is not reasonably avoidable because they get locked into a hefty loan with the impression that their electric bills will decrease, when, in reality, they end up paying for the solar system without seeing any significant difference in their electric bills.

Atnip and Kelley assert any reasonable consumer would confirm guaranteed savings versus mere puffery in advertisements prior to entering into such a significant contract [Doc. 68, pg. 25]. Puffery, however, is "unverifiable exaggeration to prove a point." *Louisiana-Pacific Corp. v. James Hardie Bldg. Prods. Inc., 928 F.3d 514, 519 (6th Cir. 2019)*. Representations regarding specific factual information as to the national average annual increase in electric prices and how much power a system is capable of producing convey "quantifiable, objective fact[s]" and, thus, go beyond mere puffery and sales talk. *Id.* ("Puffery protects statements that reasonable consumers would not interpret as reliably factual."). A reasonable consumer would likely interpret such statements as reliably factual. Accordingly, **[*22]** Plaintiffs are likely to succeed on the merits of this claim.

ii. Net Metering and Buyback Participation

Next, Plaintiffs allege Solar Titan misrepresents that customers will receive credits on their electric bills for any excess power the solar system generates. Numerous consumers have filed complaints with the Tennessee Division of Consumer Affairs stating that Solar Titan sales representatives told them that they would benefit from a government buyback program, or net metering, under which the local utility company would credit the consumer for, or "buy back," power produced by the solar system above what their household consumed [Doc. 10-19, pgs. 111, 114, 117; Doc. 67-7, pg. 36]. In each of these situations, the consumers found out after the purchase and installation of the solar system that their local utility company, in fact, did not participate in any government buyback program and any excess power produced by the solar system was returned back to the grid with no benefit to the consumer [*Id.*].

Regularly representing to consumers that they will benefit from net metering or a buyback program despite the fact that their local utility company does not participate in any such program **[*23]** is deceptive. Such a material misrepresentation is likely to mislead consumers acting reasonably under the circumstances. Multiple consumer complaints expressed that they would not have purchased the Solar Titan system had they known they would not benefit from the excess power produced by the system. A customer from Alcoa, Tennessee stated she "would not have bought the solar panels" if she knew the City of Alcoa Utilities would not credit her for her electricity that was not used by her home [Doc. 10-19, pg. 111]. Another customer from Greeneville, Tennessee stated he would not have made the decision to purchase a Solar Titan system if he had known Greeneville Light and Power Service did not participate in a buyback program [Doc. 10-19, pg. 117]. Accordingly, Plaintiffs are likely to succeed on the merits of their claim that the practice of representing consumers will benefit from a buyback program when such programs are not offered in the customer's area is deceptive.

iii. Cancellation of Installation and/or Loan Agreement

Plaintiffs assert the most egregious practices by Solar Titan are failing to honor consumers' three-day statutory right of recission and misrepresenting consumers' **[*24]** ability to cancel their loan agreements. Specifically, Plaintiffs allege Solar Titan had a practice of seeking loan disbursements from Mosaic immediately after the consumer signed the Installation Agreement, rather than waiting for the three-day recission period to pass [Doc. 6, pg. 24]. If a consumer cancelled during the three-day period, Solar Titan would hold onto the funds disbursed by Mosaic rather

than notify them that the agreement was cancelled [*Id.*]. As a result, consumers who exercised their statutory right to rescind would receive monthly billing as if they had never cancelled [*Id.*].[3] Sarah Dorismar, Solar Titan's former Finance and Administration Manager, claims that she tried to stop the company's practice of seeking loan funds from Mosaic before the consumer's three-day recission period expired, but "they always said it was a cash flow issue" [Doc. 10-6, pg. 30].[4]

Further exacerbating the issue was Solar Titan's practice of delaying sale cancellations. Initially, the process when a customer exercised their three-day right of recission was that Shawna Helton, the sales manager, would be notified and would reach out to the customer to "try to save the deal." [Doc. 10-2, pg. **[*25]** 71; Doc. 10-6, pg. 31]. If Ms. Helton was unable to talk the customer out of cancelling, she would send finance a form telling them to cancel out the loan [Doc. 10-2, pg. 72; Doc. 10-6, pg. 32]. However, Ms. Helton got behind on processing cancellations, and Ms. Dorismar started processing them for customers who exercised their right to cancel despite not receiving the form from Ms. Helton [Doc. 10-6, pg. 33]. Ms. Dorismar stated that, at one point, one million dollars was taken out of the Solar Titan account due to the number of cancellations and "[Kelley] got really upset" and "didn't believe that there was actually a million dollars' worth of customers that wanted to cancel within the month." [*Id.* at pg. 30]. Thereafter, Kelley required all cancellations to be given to him for final approval [*Id.* at pg. 33]. Ms. Dorismar stated that these forms "sat on his desk for weeks" and finance "never even received a final approval." [*Id.*].

Ms. Dorismar then informed Kirkland of the delay in cancellations and Kirkland told her to process four cancellations a week from Kelley's list [*Id.*]. When the queue of cancellations for Ms. Helton to call and/or Kelley to approve reached 90 customers, Ms. **[*26]** Dorismar went to Kirkland again and explained that when a cancellation took months to process, Solar Titan was being charged a $500 fee for missing the three-day period along with interest for every month the loan was open [*Id.* at pg. 35]. Kirkland then gave Ms. Dorismar permission to process eight cancellations a week rather than four and expressed agreement with Ms. Dorismar that the company's finances were not being handled correctly [*Id.* at pg. 36]. After Ms. Dorismar left Solar Titan, she states Kirkland called her and told her that she told the lead of the finance department, Samantha Blaine, to process all of the cancellations pending on the list, but Ms. Dorismar is not sure whether that actually happened [*Id.* at pg. 38].

Plaintiffs assert Solar Titan continued to seek loan disbursements before the consumers' right to cancel expired and cancellations were not being processed or honored, causing numerous consumers to become indebted for large sums of money for a product they did not want [Doc. 6, pg. 27]. These practices are unquestionably unfair. By accepting funds from Mosaic prior to the close of the three-day recission period and delaying the processing of consumers' decisions **[*27]** to exercise their statutory right to cancel, Solar Titan caused substantial financial injury to consumers who attempted to reasonably avoid any injury by cancelling their contract. Thus, Plaintiffs are likely to succeed on the merits of their claim that Solar Titan engaged in unfair and deceptive practices in violation of the TCPA and KCPA.

4. Tennessee and Kentucky Home Solicitation Sales Acts

The Tennessee and Kentucky Home Solicitation Sales Acts both require a conspicuous "BUYER'S RIGHT TO CANCEL" notice in any home solicitation sales agreement to inform consumers that they have a three-day right of recission. *Tenn. Code Ann. § 47-18-704(b)*; *Ky. Rev. Stat. § 367.430(2)*. Under both laws, until the seller provides the proper notice of a buyer's right to cancel, the buyer may cancel the sale in any manner and by any means. *Tenn. Code Ann. § 47-18-704(d)*; *Ky. Rev. Stat. § 367.430(3)*.

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[3] Based on the record, it appears that once a cancellation was processed, Mosaic would reimburse any payments on the loan to the consumer and claw back the funds disbursed to Solar Titan, plus any interest that had accrued on the loan while the cancellation was awaiting processing [Doc. 10-6, pgs. 29, 35, 36].

[4] It is not clear who Ms. Dorismar is referring to when she says "they." Plaintiffs imply she is referring to Kirkland and Kelley [Doc. 6, pg. 25] but there is no support for that implication in her sworn statement.

Solar Titan's Installation Agreement included notice regarding a buyer's right to cancel but such notice was far from conspicuous. Rather, it was, as Plaintiffs put it, "jammed into the middle of the back page of the contract with no distinction from the rest of the convoluted and confusing contractual terms." [Doc. 6, pg. 43]. Thus, it appears that all consumers who purchased a Solar Titan system, to this date, likely **[*28]** retain the right to rescind their purchase agreements and demand a refund of any money paid. *See* Tenn. Code Ann. § 47-18-705(a) ("within ten (10) days after a home solicitation sale has been cancelled . . . the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness"); Ky. Rev. Stat. § 367.440 (same). Due to the lack of proper notice, Plaintiffs are likely to succeed on the merits of this claim against Solar Titan.

As an additional note, although both the Tennessee law and Kentucky laws are similar in many respects, they diverge regarding compensation to the seller for services performed prior to cancellation. In Tennessee, "the seller is entitled to compensation only to the extent of the fair market value for any such services performed prior to cancellation." Tenn. Code Ann. § 47-18-706(c). In contrast, Kentucky law provides "[i]f the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to **no** compensation." Ky. Rev. Stat. Ann. § 367.450(3) (emphasis added). Thus, to the extent consumers are entitled to refunds, the Tennessee consumers' refunds must be offset by compensation to the seller for services performed prior to cancellation. *See* Laymance v. Vaughn, 857 S.W.2d 36, 37 (Tenn. Ct. App. 1992).

5. Liability of Individual Defendants [*29]

To establish individual liability for the alleged consumer protection violations, Plaintiffs must show that the Individual Defendants "participated directly" in the wrongful acts or "had the authority to control them" and that they "knew or should have known" of the wrongful acts. F.T.C v. E.M.A. Nationwide, Inc., 767 F.3d 611, 636 (6th Cir. 2014); Consumer Fin. Prot. Bureau v. CashCall, Inc., 35 F.4th 734, 749 (9th Cir. 2022); Com. ex rel. Beshear v. ABAC Pest Control, Inc., 621 S.W.2d 705, 708 (Ky. Ct. App. 1981).[5]

Of the Individual Defendants, Kelley and Kirkland are the most involved in the day-to-day operations of Solar Titan. Kelley oversees and decides how Solar Titan navigates its partnerships with lenders, determines whether or when Solar Titan honors cancellation requests, oversees training for sales staff, and has met with the Better Business Bureau ("BBB") about consumer complaints [Doc. 6, pg. 49]. Similarly, Kirkland oversees loan cancellations and Solar Titan's relationships with lenders, has controlled and participated in the hiring and termination of Solar Titan's integral operations personnel, and receives all complaints from the BBB [*Id.*]. Kelley and Kirkland undoubtedly had the authority to control Solar Titan's wrongful acts and they directly participated in the delay of cancellations and the timing of loan disbursements from Mosaic.

As for Atnip, although he is a majority owner of Solar Titan, **[*30]** he does not play a substantial management role in the company and has delegated operational authority to Kelley [*Id.* at pg. 13]. Nonetheless, he still retained authority to control the alleged violations by Solar Titan and knew or should have known of, at least, the misrepresentations regarding the government buyback programs. For example, Atnip responded to the Tennessee Division of Consumer Affairs via email on multiple occasions regarding the Greeneville, Tennessee consumer's complaint about the sales representative's misrepresentations that the consumer would be able to sell back their excess power to Greeneville Light and Power System [Doc. 67-8. Pg. 185].

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[5] Atnip and Kelley argue Tennessee state law regarding piercing the corporate veil is the applicable standard to determine individual liability under the state consumer protection claims. However, the TCPA expressly provides that it "shall be interpreted and construed consistently with the interpretations given by the federal trade commission and the federal courts pursuant to § 5(A)(1) of the Federal Trade Commission Act[.]" Tenn. Code Ann. § 47-18-115. Likewise, Kentucky law applies an analogous standard to determine individual liability "when the idea of [a] separate legal entity is used to justify [a] wrong[.]" Dare to Be Great, Inc. v. Kentucky ex rel Hancock, Ky., 511 S.W.2d 224 (1974); *see* Com. ex rel. Beshear v. ABAC Pest Control, Inc., 621 S.W.2d 705, 708 (Ky. Ct. App. 1981) ("There must be evidence that the individual against whom personal liability is sought to be imposed actively participated in the [wrongful] scheme, or was aware of its existence and did nothing about it."). Thus, the Court rejects the notion that state law regarding piercing the corporate veil applies here.

In addition to the foregoing, Kelley and Atnip concede to knowledge of the non-disparagement provision in the Installment Agreement and Kirkland, at least, should have known of the inclusion of the provision. Thus, Plaintiffs are likely to succeed on the merits of their claims alleging personal liability for consumer protection violations against each of the Individual Defendants.

B. Balance of the Equities and Public Interest

Turning to the remaining preliminary injunction factors—the balance of the equities and the public interest—the **[*31]** competing interests here are, on one hand, Plaintiffs' interests in protecting consumers of the State of Tennessee and the Commonwealth of Kentucky from unfair and deceptive trade practices and, on the other hand, Solar Titan and the Individual Defendants' interest in running their company and accessing their assets. While an injunction, including an asset freeze and a Receivership, may have adverse effects, Plaintiffs' interests in consumer protection and consumer redress heavily outweigh any interest Defendants have in continuing to use their business to engage in unfair and deceptive practices and harm consumers. The public interest also supports the entry of a preliminary injunction. This case is not the normal civil litigation between two private parties. Rather, the Tennessee and Kentucky Attorneys General brought this action pursuant to the authority granted to them by Congress to enforce consumer protection laws. A preliminary injunction designed to prevent future harm to consumers and ensure availability of consumer redress certainly serves the public interest.

C. Asset Freeze

Based on the likelihood of success on the claims of individual liability for the various alleged consumer **[*32]** protection violations, the Court further finds it appropriate to continue the freeze of the Individual Defendants' assets. The Individual Defendants have financially benefitted from the alleged unfair and deceptive acts and practices. Thus, an asset freeze during the pendency of this action is reasonably necessary to preserve the possibility of meaningful consumer redress. *F.T.C v. Gem Merch. Corp., 87 F.3d 466, 469 (11th Cir. 1996)* (the "court may order preliminary relief, including an asset freeze, that may be needed to make permanent relief possible.")

Due to Atnip and Kelley's failure to provide financial disclosures, however, the Court is unable to make a reasonable approximation of Atnip and Kelley's ill-gotten gains to narrow the scope of the asset freeze. Accordingly, following the proper disclosure of financial information, Atnip and Kelley may move to modify the asset freeze.

IV. CONCLUSION

Accordingly, for the reasons stated herein, the Temporary Restraining Order entered on February 7, 2023 and further extended on February 14, 2023, is hereby **CONVERTED** into a Preliminary Injunction. Based on the above-mentioned findings and pursuant to *Fed.R.Civ.P. 65* and *66*, this Court's equitable powers, *Tenn. Code Ann. § 47-18-101, et. seq.*, and *Ky. Rev. Stat. Ann. § 367.110, et. seq.*, it is hereby **ORDERED**:

I. PROHIBITED BUSINESS ACTIVITIES [*33]

Solar Titan and the Individual Defendants ("Solar Titan Defendants") are hereby preliminarily enjoined from:

A. Making, or assisting the making of, expressly or by implication, any false or misleading statement or representation of material fact,[6] including, but not limited to:

[6] For purposes of this Order, "Material fact" means any fact that is likely to affect a person's choice of, or conduct regarding, goods or services.

(1) that an installed solar system will eliminate a homeowner's electric utility bill or reduce the homeowner's electric utility bill by an amount that is not achievable based on the specifications of the installed solar system; and

(2) that a consumer will benefit from net metering or a government buyback program by purchasing a solar system;

B. Refusing or failing to cancel a sales agreement when a consumer has exercised their right to cancel within the period of the consumer's statutory right of rescission as defined by applicable state and federal law;

C. Failing to conspicuously inform a consumer who purchases a solar system that they have the right to cancel the sales agreement at any time prior to midnight of the third business day after the date of the transaction;

D. Failing to disclose material facts about a consumer retail installment loan offered by Defendant Solar Mosaic, LLC d/b/a Mosaic or another lender **[*34]** for the purchase of a Solar Titan solar system;

E. Asserting that the sales agreement provided to the consumer contains a legally enforceable term preventing the consumer from posting a negative review about Solar Titan online;

F. Refusing or failing to take reasonable and necessary steps to complete the installation of a solar system;

G. Entering into installation agreements without the intent or ability to provide the services described in the agreement in accordance with applicable laws, rules, regulations, codes, and industry standards;

H. Submitting a bill of lading or otherwise seeking loan disbursement, in whole or in part, before a consumer's statutory right to rescind has expired.

II. ASSET FREEZE

IT IS FURTHER ORDERED that Solar Titan Defendants are preliminarily enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Asset, or any interest therein, wherever located, whether within the United States or within a jurisdiction outside the United States, that is:

(1) owned or controlled **[*35]** by any Solar Titan Defendant, in whole or in part;

(2) held for the benefit of any Solar Titan Defendant;

(3) in the actual or constructive possession of any Solar Titan Defendant;

(4) owned, controlled by, or in the actual or constructive possession of any Person directly or indirectly owned, managed, or controlled by any Solar Titan Defendant, including, but not limited to, any Assets held by or for, or subject to access by, any Solar Titan Defendant at any bank or savings and loan institution, broker-dealer escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;

B. Physically opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, any Solar Titan Defendant;

C. Obtaining a personal or secured loan encumbering the Assets of any Solar Titan Defendant; and

D. Incurring liens or other encumbrances on any Assets titled in the name, singly or jointly, of any Solar Titan Defendants.

E. Except as set forth below in this Section, the Assets affected by this Section shall include:

(1) all Assets of Solar Titan Defendants as of the time of issuance of this Order; and

(2) Assets **[*36]** obtained after the time of issuance of this Order if the Assets are derived from the conduct alleged in the Plaintiffs' Complaint or conduct that is prohibited by this Order.

F. As further provided in the Agreed Order [Doc. 75], the Assets affected by this Section **shall not include** the following accounts:

(1) Defendant Kirkland's ORNL FCU Account ending in 8490

(2) Defendant Kirkland's US Bank Account ending in 9484

(3) Defendant Kirkland's First Horizon Bank Account ending in 7814

(4) Defendant Kirkland's US Bank Account ending in 4611.

III. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls, or maintains custody of any account or Asset of any Solar Titan Defendant shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such Asset, except by further order of the Court;

B. Deny any person, except the Receiver[7] acting pursuant to Section X of this Order, access to any safe deposit box that is titled in **[*37]** the name of, individually or jointly, or otherwise subject to access by, any Solar Titan Defendant;

C. To the extent not already provided pursuant to the TRO, provide the Receiver, within five business days of receiving a copy of this Order, a sworn statement setting forth:

(1) The identification number of each such account or Asset titled in the name, individually or jointly, of any Solar Titan Defendant, or held on behalf of, or for the benefit of any Solar Titan Defendant;

(2) The balance of each such account, or a description of the nature and value of such Asset as of the close of business on the day on which this Order is served, and if the account or other Asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other Asset was remitted; and

(3) The identification of any safe deposit box that is titled in the name of, individually or jointly, or otherwise subject to access by, any Solar Titan Defendant;

D. Upon request of the Receiver, promptly provide copies of all records or other documentation pertaining to each such account or Asset, including, but not limited **[*38]** to, originals or copies of all account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

IV. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that the Solar Titan Defendants and their Representatives[8] are preliminarily enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents[9] that relate to the business, business practices, Assets, or business or personal finances of any Solar Titan Defendant; and

B. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect the Solar Titan Defendants' incomes, disbursements, transactions, and use of money.

V. FINANCIAL DISCLOSURES

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[7] For purposes of this Order, "Receiver" means the temporary receiver appointed in Section IX of this Order and any deputy receivers that shall be named by the receiver

[8] For purposes of this Order, "Representatives" means Defendants' successors, assigns, officers, agents, servants, employees, or attorneys, and any person or entity in active concert or participation with them who receives actual notice of this Order by personal service or otherwise.

[9] For purposes of this Order, the term "document" is equal in scope and synonymous in meaning to the usage of the term in *Federal Rule of Civil Procedure 34*, and includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

IT IS FURTHER ORDERED that each Solar Titan Defendant, within 48 hours of service of this Order, who has not already done so, shall prepare and deliver to Plaintiffs' counsel and the Receiver completed financial statements on the forms attached to the TRO as Attachment A (Financial Statement of Individual **[*39]** Defendant) for each Individual Defendant, and Attachment B (Financial Statement of Corporate Defendant) for Ideal Horizon Benefits, LLC d/b/a Solar Titan USA, LLC, and Solar Titan Charters, LLC d/b/a Titan Charters.

The financial statements shall be accurate as of the date of entry of this Order. Each Defendant shall include in the financial statements a full accounting of all Assets, whether located inside or outside of the United States, that are: (a) titled in the name of such Defendant, jointly, severally, or individually; (b) held by any person or entity for the benefit of such Defendant; or (c) under the direct or indirect control of such Defendant.

VI. CONSUMER CREDIT REPORT

IT IS FURTHER ORDERED that, pursuant to *Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(l)*, any consumer reporting agency may furnish a consumer credit report concerning any Defendant to Plaintiffs.

VII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that, to the extent the Solar Titan Defendants have not done so already, within five business days following entry of this Order, each Solar Titan Defendant shall:

A. Provide Plaintiffs and the Receiver with a full accounting of all funds, documents, and Assets outside of the United States, which are:

(1) titled **[*40]** in the name, individually or jointly, of any Solar Titan Defendant; or
(2) held by any person or entity for the benefit of any Solar Titan Defendant; or
(3) under the direct or indirect control, whether jointly or singly, of any Solar Titan Defendant;

B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and Assets located in foreign countries which are:

(1) titled in the name, individually or jointly, of any Solar Titan Defendant; or
(2) held by any person or entity for the benefit of any Solar Titan Defendant; or
(3) under the direct or indirect control, whether jointly or singly, of any Solar Titan Defendant; and

C. Provide Plaintiffs access to all records of accounts or Assets of any Defendant held by financial institutions located outside the territory of the United States by signing the Consent to Release of Financial Records appended to this Order within Attachments A and B.

VIII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Solar Titan Defendants and their Representatives are hereby preliminarily enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign Assets, **[*41]** or in the hindrance of the repatriation required by Section VII of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the rules of a foreign trust agreement until such time that all Assets have been fully repatriated pursuant to Section VII of this Order; and

B. Notifying any trustee, protector, or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all Assets have been fully repatriated pursuant to Section VII of this Order.

IX. APPOINTMENT OF A TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Richard Ray shall continue as Receiver of Solar Titan with full powers of an equity receiver, except as otherwise specified in this Order. The Receiver shall be solely the agent of this Court, in acting as Receiver under this Order, and shall be accountable directly to this Court.

X. RECEIVER'S DUTIES

IT IS FURTHER ORDERED that the Receiver **[*42]** is authorized and directed to accomplish the following:

A. Maintain full control of Solar Titan by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of Solar Titan, including any Solar Titan Defendant, from the control of, management of, or participation in, the affairs of Solar Titan;

B. Maintain exclusive custody, control, and possession of all Assets and documents of, or in the possession, custody, or control of, Solar Titan, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all Assets and documents of Solar Titan and other persons whose interests are under the direction, possession, custody, or control of, Solar Titan. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to Solar Titan. Provided, however, that the Receiver shall not, without prior Court approval, attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices or other violations of law alleged in the Complaint **[*43]** in this matter;

C. Maintain exclusive custody, control, and possession of all Solar Titan Assets;

D. Take all steps necessary to secure each location from which Solar Titan operates its business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable:

(1) serving this Order;

(2) completing a written inventory of all Receivership Assets[10];

(3) obtaining pertinent information from all employees and other agents of Solar Titan, including, but not limited to, the name, home address, Social Security Number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent;

(4) photographing and videotaping any or all portions of the location;

(5) securing the location by changing the locks and disconnecting any computer modems or other means of remote access to the computer or other records maintained at that location; and

(6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons **[*44]** are not removing from the premises documents or Assets of Solar Titan. Law enforcement personnel, including, but not limited to, highway patrol, police, sheriffs, or U.S. Marshals may assist the Receiver in implementing these provisions in order to keep the peace and maintain security;

E. Conserve, hold, and manage all Assets of Solar Titan, and perform all acts necessary or advisable to preserve the value of those Assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of Solar Titan, including, but not limited to, obtaining an accounting of the Assets, and preventing the unauthorized transfer, withdrawal, or misapplication of Assets;

F. Obtain all of Solar Titan's computer hardware, software, and database information from any consultant or service provider, including, but not limited to, Solar Titan's user identification, passwords, software, and backup data files:

G. Enter into contracts and purchase insurance as advisable or necessary;

H. Prevent the inequitable distribution of Assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with Solar Titan;

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[10] For purposes of this Order, "Receivership Asset" means any Asset, as defined above, which the Receiver is entitled to control and/or monitor as part of the Receivership Estate.

I. Manage and administer the business of **[*45]** Solar Titan until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes but is not limited to retaining, hiring, or dismissing any Solar Titan employees, independent contractors, or agents;
J. Choose, engage, and employ such attorneys, accountants, appraisers, and other independent contractors and technical specialists as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
K. Make payments and disbursements from the Receivership Estate[11] that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendant[12] prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure Assets of the Receivership Defendants, such as rental payments;
L. Suspend business operations of Solar Titan if, in the judgment of the Receiver, such operations cannot be continued legally and sustainably;

M. Institute, compromise, **[*46]** adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the Assets of Solar Titan, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;
N. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against Solar Titan, as the Receiver deems necessary and advisable to preserve the Assets of Solar Titan, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
O. Issue subpoenas to obtain documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the Receivership Estate;

P. Open one or more bank accounts as designated depositories for funds of Solar Titan. The Receiver shall deposit all funds of Solar Titan in such a designated account and shall make all payments and disbursements from the Receivership **[*47]** Estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;
Q. Maintain accurate records of all receipts and expenditures incurred as Receiver;
R. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency; and
S. Distribute funds, to the extent available, recovered from the Solar Titan Defendants, by:
(1) Distributing $3,500 per month to the Defendants Atnip and Kelley for the purpose of providing for reasonable housing and other living expenses, including the payment of any home mortgage, food, health insurance, recurring expenses or charges, or other reasonable living expenses;
(2) Distributing funds for the purpose of paying any non-residential mortgages.
T. Defendants Atnip and Kelley, with or without the agreement of Plaintiffs, may move to adjust the reasonable living expense amount stated above for good cause shown.

XI. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

IT IS FURTHER ORDERED that the Solar Titan Defendants, their Representatives, and any other person or entity with possession, custody, or control of property of or records relating to the Receivership Defendants shall, upon **[*48]** notice of this Order, immediately notify the Receiver of, and, upon receiving a request from the Receiver, immediately transfer or deliver to the Receiver possession, custody, and control of, the following:

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[11] For purposes of this Order, "Receivership Estate" means the totality of all money and property, real or otherwise, from the Receivership Defendant subject to the control and/or monitoring of the Receiver.

[12] For purposes of this Order, "Receivership Defendant" means Ideal Horizon Benefits d/b/a Solar Titan USA, LLC.

A. All Assets of, or traceable to, Solar Titan;
B. All documents of Solar Titan, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents, and other papers;
C. All computers and data in whatever form used to conduct the business of Solar Titan;
D. All Assets belonging to other persons or entities whose interests are under the direction, possession, custody, or control of Solar Titan; and

E. All keys, codes, and passwords necessary to gain or to secure access to any Assets or documents of Solar Titan, including but not limited to access to any Solar Titan business premises, means of communication, accounts, computer systems, or other property. In the event that any person or entity fails to deliver or transfer any Asset or otherwise fails to comply with any provision of **[*49]** this Section, the Receiver may file ex parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct any sheriff or deputy sheriff of any county, or any other law enforcement officer, to seize the Asset, document, or other item covered by this Section and to deliver it to the Receiver.

XII. PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that the Solar Titan Defendants shall provide to the Receiver, immediately upon request, the following:

A. A list of all Assets and property, including accounts, in which Solar Titan holds a legal or equitable interest, that are held in any name other than the name of Solar Titan, or by any person or entity other than Solar Titan; and
B. A list of all agents, employees, officers, servants, or those persons in active concert and participation with the Solar Titan Defendants, who have been associated or done business with Solar Titan.

XIII. COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that the Solar Titan Defendants, their Representatives, **[*50]** and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the Assets of Solar Titan. This cooperation and assistance shall include, but not be limited to: providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; advising all persons who owe money to Solar Titan that all debts should be paid directly to the Receiver; transferring funds at the Receiver's direction; and producing records related to the Assets and sales of Solar Titan. The entities obligated to cooperate with the Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers, and other financial institutions and depositories of any kind, and all third-party billing agents, common carriers, and telecommunications companies that have transacted business with **[*51]** the Receivership Defendants.

XIV. NON-INTERFERENCE WITH THE RECEIVER

IT IS FURTHER ORDERED that the Solar Titan Defendants and their Representatives are hereby preliminarily enjoined from directly or indirectly:

A. Interfering with the Receiver managing, or taking custody, control, or possession of the Assets or documents subject to this Receivership;
B. Transacting any of the business of Solar Titan except at the express direction of the Receiver;

C. Transferring, receiving, altering, selling, encumbering, pledging, ass1gnmg, liquidating, or otherwise disposing of any Assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, Solar Titan, or the Receiver; and

D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

XV. STAY OF ACTIONS

IT IS FURTHER ORDERED that, except by leave of this Court, during pendency of the Receivership ordered herein, the Solar Titan Defendants, their Representatives, and all investors, creditors, stockholders, lessors, customers, and other persons seeking to establish or enforce any claim, right, or interest against **[*52]** or on behalf of the Solar Titan Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the Assets or documents of Solar Titan, including, but not limited to:

A. Petitioning, or assisting in the filing of a petition that would cause Solar Titan to be placed in bankruptcy;

B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against Solar Titan, including the issuance or employment of process against Solar Titan, except that such actions may be commenced if necessary to toll any applicable statute of limitation;

C. Filing or enforcing any lien on any Asset of Solar Titan, taking, or attempting to take possession, custody, or control of any Asset of Solar Titan; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of Solar Titan, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise; and

D. Initiating any other process or proceeding that would interfere with the Receiver managing or taking custody, control, or possession of the Assets or documents subject to **[*53]** this receivership. Provided that this Order does not stay: (i) the commencement or continuation of a criminal action or proceeding; (ii) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (iii) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

XVI. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the Assets now held by, in the possession or control of, or which may be received by, Solar Titan. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Receiver shall not increase the hourly rates **[*54]** used as the bases for such fee applications without prior approval of the Court.

XVII. RECEIVER'S BOND

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a bond in the sum of **$25,000** with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs, pursuant to *28 U.S.C. § 754*.

XVIII. ERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, electronic mail or other electronic messaging, personal or overnight delivery, U.S. Mail or FedEx, by

agents and employees of Plaintiffs, by any law enforcement agency, or by private process server, upon any Defendant or any person (including any financial institution) that may have possession, custody or control of any Asset or document of any Defendant or that may be subject to any provision of this Order pursuant to *Rule 65(d)(2) of the Federal Rules of Civil Procedure*. For purposes of this Section, service upon any branch, subsidiary, affiliate, or office of any entity shall effectuate service upon the entire entity.

XIX. DEFENDANTS' DUTY TO DISTRIBUTE ORDER

IT IS FURTHER ORDERED that the Solar Titan Defendants **[*55]** shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, client companies, agents, attorneys, spouses and representatives, and shall, within ten days from the date of entry of this Order, provide Plaintiffs with a sworn statement that: (A) confirms that the Solar Titan Defendants have provided copies of the Order as required by this paragraph; and (B) lists the names and addresses of each entity or person to whom Defendants provided a copy of the Order. Furthermore, the Solar Titan Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns, or other persons or entities to disregard this Order or believe that they are not bound by its provisions.

XX. CORRESPONDENCE AND SERVICE ON PLAINTIFFS

IT IS FURTHER ORDERED that, for the purposes of this Order, all correspondence and service of pleadings on Plaintiffs shall be addressed to:

For Tennessee:

Electronic Mail
Samuel Keen at samuel.keen@ag.tn.gov

Alicia Daniels-Hill at alicia.daniels-hill@ag.tn.gov **[*56]**

Mail
Office of the Tennessee Attorney General
ATTN: Consumer Protection Division
P.O. Box 20207
Nashville, Tennessee 37202

Hand Delivery
Office of the Tennessee Attorney General
Consumer Protection Division
315 Deaderick Street, 20th Floor
Nashville, Tennessee 37243

For Kentucky:

Electronic Mail
Paul Fata at paul.fata@ky.gov
Lyndsey Antos at lyndsey.antos@ky.gov

Mail and Hand Delivery
Office of the Kentucky Attorney General
ATTN: Office of Consumer Protection
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40222

XXI. DURATION OF THIS ORDER

IT IS FURTHER ORDERED that this Order, including the provisions of the Asset Freeze in Section II, will expire upon entry of a final judgment in this matter.

XXII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter.

SO ORDERED:

/s/ Clifton L. Corker

United States District Judge

End of Document

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.[1] 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

[1] 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.[2]

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.[3]

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.

[2] Ms. Pereira did not convert her Facebook to "Professional mode" which allows followers until mid-2023.
[3] 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.[4]

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

[4] 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[5] 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.

[5] 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)[6]

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.

[6] 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 furdown had been built in the kitchen contrary to the contract upgrade. This furdown lowered the ceiling height and made the room seem much smaller. (Exhibit 19)

a. This required Regency to remove the furdown 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.[7] (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.

[7] 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)[8]

[8] 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.[9] 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.[10] 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)

[9] 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.

[10] 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 <u>without expansion joints.</u> (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.[11] (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.[12] 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.

[11] 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.

[12] 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.[13] (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.

[13] 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.[14] 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[15] 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

[14] The Claimants did not request this, Regency's Lender did.
[15] 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.[16] 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)

[16] 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.[17]

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)

[17] 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 ProStsone, 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 though 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.[18]

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.

[18] 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.[19]

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.[20]

h. David Al-Chokachi told Ms. Pereira that the City of Lakeland would not let him cut the trees down.[21]

[19] Per engineer and arborists reports the build-up was 3-6 feet, varying on the sides, front, and back of the home.
[20] This is contrary to what the Claimant's agent Meleah was informed by Regency's agent Amanda Hamilton.
[21] 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.[22]

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

[22] 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.[23] 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.

[23] 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 2nd 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.[24] (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.

[24] 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.[25] (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 Pluming 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 Draino and hot water. This did not resolve the issue and Legacy Plumbing and Regency failed to respond to any further

[25] 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.[26] (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)

[26] 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 regrouted 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,

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