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**FILED**  
 DEC 17 2009

FRESNO COUNTY SUPERIOR COURT  
 By TLC TLC - DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF FRESNO

11 ISMAEL ACOSTA and MARIA BENITEZ, on their )  
 12 own behalf and as an INDIVIDUAL HOMEOWNER )  
 13 CLASS REPRESENTATIVES on behalf of all others )  
 14 similarly situated, and TONY ANDERSON, DAWN )  
 15 ANDERSON, TRINIDAD ANGUIANO, )  
 16 YOLANDA ARIAS, ANDREA CALDERA )  
 17 BRUNO, ARMANDO CABRAL, ESTHER )  
 18 CABRAL, PATRICIA CARPIO, CHRISTOPHER )  
 19 CHADWICK, MELISSA CHADWICK, SAI )  
 20 CHANTHANAO, ANONG CHANTHANAO, )  
 21 GONZALO CHAVEZ, FIDELMAR COLIN, )  
 22 CARLOS CONTRERAS, BIANCA CONTRERAS, )  
 23 ELLA LOUISE CRAVER, JAMES DAVIS, )  
 24 PONCIANO PEREZ DOMINGUEZ, SCOTT )  
 25 DOMMER, ELIZABETH DOMMER, LUZ )  
 26 FAJARDO, RAMONA SALINAS, MARIANO )  
 27 FLORES, MARIO FLORES, MARIA FLORES, )  
 28 LISA FRIES, RICHARD GALLEGOS, OLIVIA )  
 GALLEGOS, JOSE GARCIA, RICHARD GOMEZ, )  
 CHRISTINA GOMEZ, ARTURO LEYVA )  
 GUTIERREZ, GLADYS GUZMAN, JEFFREY L. )  
 HENSLEY, MENG HER, MOR VANG HER, )  
 ZONG NYOUA HER, DOMINIC HEREDIA, )  
 DAVID HOLDER, DANIEL HULL, DANNELLE )  
 HULL, MELVIN KNOWLTON, CHARLES LAND, )  
 PEGGY LAND, LOEUN LAY, SYLVIA LEON, )  
 FALCON LEVINGSTON, JAMES LOCKWOOD, )  
 MARGARET LOCKWOOD, ANTONIO LOPEZ, )  
 CHRIS LOPEZ, ROSIE LOPEZ, CHRISTIAN )  
 LOPEZ, BLANCHE LOPEZ, ELIZABETH LOPEZ-

CASE NO.: 09 CE CG 04752 AMS

*CVE 134572*  
 COMPLAINT FOR DAMAGES

**CLASS ACTION ALLEGATIONS**

- 1. VIOLATION OF CIVIL CODE SECTION 896
- 2. STRICT PRODUCTS LIABILITY

**GENERAL ALLEGATIONS**

- 3. VIOLATION OF CIVIL CODE SECTIONS 896 & 897
- 4. STRICT PRODUCTS LIABILITY
- 5. NEGLIGENCE
- 6. NEGLIGENCE PER SE
- 7. BREACH OF IMPLIED WARRANTY (FITNESS)
- 8. BREACH OF IMPLIED WARRANTY (MERCHANTABILITY)
- 9. BREACH OF EXPRESS WARRANTY

This case has been assigned to Judge Alan M. Simpson for all purposes

1 SIERRA, ALBERT LOVE JR., ROSAENA  
2 MACIAS, MARYANN ROSALES MARIN, ANGIE  
3 MARQUEZ, ANTONIO MARQUEZ, PATRICIA  
4 MARQUEZ, AUBREY MCFALL, LISA MCFALL,  
5 SUSAN MCNEICE, HERMAN MELENDEZ,  
6 LEENA MENDOZA, AGUSTIN L. MORENO,  
7 FERMIN MORONES, TINA MORONES,  
8 MAURICIO MORONES, DENISE MORONES,  
9 JASON MULLIKIN, SARA MULLIKIN, DEREK  
10 NIX, LISA NIX, JOHN OJEDA, MARJORIE  
11 OJEDA, WILLIAM E. OLINGER, REYNA J.  
12 PINEDA, KATHLEEN PUCKETT, FEDERICO  
13 QUINTO, PRISCILLA QUINTO, SATNAM  
14 RAKKAR, CLARA RAMIREZ, MARCO  
15 RAMIREZ, LUCY ESQUIUEL, BRENDEN  
16 REILLY, YADIRA ESPINO, ROGELIO RIVERA,  
17 MARISA RIVERA, BETTY ROSALES, MICHAEL  
18 RYAN, ADELA RYAN, BETTY J. SANDERS,  
19 JARROD SILVIUS, THERESA SILVIUS, GLEN  
20 SMITH, JAUNITA SMITH, JOAQUIN SOLTERO,  
21 MARIA DUENA, DAVID TOLLESON,  
22 KATHRYN TOLLESON, CRUZ TURNER, BRETT  
23 TURNER, MARIO VILLARAMA, KAM  
24 KHAMNHOTH, DEANA WELCH, RANGER  
25 XIONG, CHONG YANG, YI CHA YANG, XIONG  
26 YANG, RUBEN ZAMORA and ROES 1-400  
27 inclusive,

28 PLAINTIFFS,

vs.

29 SYNERGY – GOLDEN DAWN, LLC, a California  
30 Limited Liability Company; and DOES 1-300  
31 inclusive,

32 DEFENDANTS.

33 PLAINTIFFS, for all causes of action against DEFENDANTS, and each of them, demand a jury  
34 trial and allege as follows:

### 35 CLASS ACTION ALLEGATIONS

36 1. PLAINTIFFS are informed and believe and based thereon allege that at all times herein  
37 mentioned and material hereto SYNERGY – GOLDEN DAWN, LLC (hereinafter referred to as  
38 “SYNERGY” or “THE DEVELOPER”) was a California Corporation, authorized to conduct business in  
California and engaged in business in the County of Fresno. SYNERGY developed and mass produced

1 homes now owned by members of the class.

2 2. PLAINTIFFS are informed and believe and based thereon allege that SYNERGY failed to  
3 comply with the requirements established by Civil Code section 912(f). As a result, PLAINTIFFS are  
4 not required to complete the prelitigation requirements established by Civil Code sections 910-938 prior  
5 to filing this action.

6 **FIRST CAUSE OF ACTION**

7 **CLASS ACTION – VIOLATION OF CIVIL CODE SECTION 896**

8 **(AGAINST SYNERGY – GOLDEN DAWN, LLC)**

9 **(AS TO THOSE HOMES SOLD AFTER JANUARY 1, 2003)**

10 3. PLAINTIFFS, ISMAEL ACOSTA and MARIA BENITEZ, brings this action on their own  
11 behalf, and as an INDIVIDUAL HOMEOWNER CLASS REPRESENTATIVES on behalf of all others  
12 similarly situated, pursuant to section 382 of the California Code of Civil Procedure. The class which  
13 ISMAEL ACOSTA and MARIA BENITEZ seek to represent is comprised of and defined as follows:

14 All persons or entities who now own homes within tracts 4706, 5066, and  
15 GOLDEN DAWN, in the County of Fresno that were manufactured and  
16 sold by SYNERGY – GOLDEN DAWN, LLC.

17 4. **NUMEROSITY** – PLAINTIFFS are informed and believe and thereon allege that the class,  
18 consisting of the owners of approximately 300 homes, estimated to comprise nearly 600 persons, is so  
19 numerous that the joinder of all such parties would be impracticable and burdensome. The disposition of  
20 PLAINTIFFS' claims in a class action will benefit the parties and the court and will further the interests  
21 of justice.

22 5. **COMMONALITY** – There is a well-defined community of interest in the questions of law  
23 and fact involved in the case. THE DEVELOPER is liable to members of the class for selling homes  
24 that contained actionable construction defects as defined by Civil Code section 896. These violations  
25 have directly and similarly harmed the representative parties and the other class members.

26 6. Each and every home sold by THE DEVELOPER, after January 1, 2003, in the tracts listed  
27 above contains the following violations of Civil Code section 896:

28 7. **SUBCLASS 1 (WINDOW DEFECTS) – Violation of Civil Code section 896(a)(2):** In the

1 homes built by THE DEVELOPER in the tracts listed above, no quality control system was in place to  
2 ensure that the windows met the functionality standard established by Civil Code section 896. In the  
3 homes built by THE DEVELOPER in the tracts listed above, the windows fail to comply with the  
4 functionality standards established by Civil Code section 896(a)(2) in that the windows and their systems  
5 allow water to pass beyond, around, or through the window or its designed or actual moisture barriers.

6 **8. SUBCLASS 2 (ROOF DEFECTS) – Violation of Civil Code section 896(a)(4):** In the  
7 homes built by THE DEVELOPER in the tracts listed above, no quality control system was in place to  
8 ensure that the roofing component met the functionality standard established by Civil Code section 896.  
9 In the homes built by THE DEVELOPER in the tracts listed above, the roofing component was  
10 defectively manufactured and fails to comply with the functionality standards established by Civil Code  
11 section 896(a)(4) in that the roofing component on each home allows water to enter the structure or to  
12 pass beyond, around, or through the designed or actual moisture barriers.

13 **9. SUBCLASS 3 (STUCCO DEFECTS) – Violation of Civil Code section 896(a)(10):** In the  
14 homes built by THE DEVELOPER in the tracts listed above, no quality control system was in place to  
15 ensure that the stucco met the functionality standard established by Civil Code section 896. In the  
16 homes built by THE DEVELOPER in the tracts listed above, the stucco fails to comply with the  
17 functionality standards established by Civil Code section 896(a)(10) in that the stucco and exterior walls,  
18 including pot shelves, horizontal surfaces and plant-ons allow unintended water to pass into the structure  
19 or to pass beyond, around, or through the designed or actual moisture barriers.

20 **10. SUBCLASS 4 (STUCCO DEFECTS) – Violation of Civil Code section 896(g)(2):** In the  
21 homes built by THE DEVELOPER in the tracts listed above, the stucco also fails to comply with the  
22 functionality standard established by Civil Code section 896(g)(2) in that the stucco contains significant  
23 cracks or separations.

24 **11. SUBCLASS 5 (SLAB DEFECTS) – Violation of Civil Code section 896(b)(1):** In the  
25 homes built by THE DEVELOPER in the tracts listed above, no quality control system was in place to  
26 ensure that the slabs met the functionality standard established by Civil Code section 896. In the homes  
27 built by THE DEVELOPER in the tracts listed above, the slabs fail to comply with the functionality  
28 standards established by Civil Code section 896(b)(1) in that the slabs contain significant cracks or

1 vertical displacement.

2 12. **SUBCLASS 6 (FRAME DEFECTS) – Violation of Civil Code section 896(b)(4):** In the  
3 homes built by THE DEVELOPER in the tracts listed above, no quality control system was in place to  
4 ensure that the framing component met the functionality standard established by Civil Code section 896.  
5 In the homes built by THE DEVELOPER in the tracts listed above, the framing component was  
6 defectively manufactured and fails to comply with the functionality standards established by Civil Code  
7 section 896(b)(4) in that the homes do not materially comply with the design criteria for earthquake and  
8 wind load resistance, as set forth in the applicable government building codes, regulations and  
9 ordinances.

10 13. All the homes built by THE DEVELOPER in the tracts listed above have suffered damage  
11 because of the aforementioned actionable construction defects. But for the violations of Civil Code  
12 section 896, the members of the class would not have been harmed. These violations were present in the  
13 homes at the time they were originally sold by THE DEVELOPER and have caused the same harm to  
14 the members of the class.

15 14. To correct the aforementioned defects and to bring the homes into compliance with Civil  
16 Code section 896, the same repairs must be made to each and every home built by THE DEVELOPER  
17 in the tracts listed above. The cost of repairing the homes and bringing them into compliance with Civil  
18 Code section 896 can be determined using simple formulas.

19 15. Any additional violations of Civil Code section 896 can be adequately addressed through the  
20 selection of additional class representatives and the creation of additional subclasses as more information  
21 becomes available.

22 16. **TYPICALITY** – The aforementioned violations have caused similar harm to all the  
23 members of the class. The claims of the representative parties in this case are typical of those of the  
24 class. No quality control system was in place during the construction of the homes in the above-  
25 mentioned tracts. As a result, THE DEVELOPER constructed and sold homes that did not satisfy the  
26 functionality standards established by Civil Code section 896. The claims of the representative parties  
27 and every other class member arise from the aforementioned violations of Civil Code section 896.

28 17. **ADEQUACY** – The representative parties in this case will fairly and adequately represent

1 the interests of the class. There are no conflicts of interest between the representative parties and the  
2 members of the class. The representative parties have the same interest and have suffered the same  
3 injury as the members of the class. The representative parties and the members of the class have all been  
4 harmed by THE DEVELOPER'S construction and sale of homes, which were defectively manufactured  
5 and contained violations of Civil Code section 896.

6 18. **COMMON QUESTIONS OF LAW AND FACT PREDOMINATE** – Common questions  
7 of law and fact exist as to all the members of the class and predominate over any questions that affect  
8 only individual members of the class. These common questions of law and fact include, without  
9 limitation:

- 10 (a) whether THE DEVELOPER sold homes that contained actionable window defects as  
11 defined by Civil Code section 896(a)(2);
- 12 (b) whether THE DEVELOPER sold homes that contained actionable roof defects as defined  
13 by Civil Code section 896(a)(4);
- 14 (c) whether THE DEVELOPER sold homes that contained actionable stucco defects as  
15 defined by Civil Code sections 896(a)(10) and 896(g)(2);
- 16 (d) whether THE DEVELOPER sold homes that contained actionable slab defects as defined  
17 by Civil Code section 896(b)(1);
- 18 (e) whether THE DEVELOPER sold homes that contained actionable frame defects as  
19 defined by Civil Code section 896(b)(4);
- 20 (f) the cost to repair any actionable window defects as defined by Civil Code section 896  
21 (a)(2);
- 22 (g) the cost to repair any actionable roof defects as defined by Civil Code section 896(a)(4);
- 23 (h) the cost to repair any actionable stucco defects as defined by Civil Code sections  
24 896(a)(10) and 896(g)(2);
- 25 (i) the cost to repair any actionable slab defects as defined by Civil Code section 896(b)(1);
- 26 (j) the cost to repair any actionable frame defects as defined by Civil Code section 896(b)(4).

27 19. **CLASS ACTION IS THE SUPERIOR PROCEDURAL MECHANISM** – Class action is  
28 the superior procedural mechanism in this case. It will allow the court to avoid a multiplicity of similar,

1 smaller actions. If all the members of the class were forced to bring suit on their own behalf, the court  
2 would be confronted with hundreds of essentially identical cases. These cases would be more effectively  
3 litigated in a single, efficient class action.

4 20. In addition, the expensive nature of this litigation would defeat a single plaintiff's attempt to  
5 initiate an individual action. The damages suffered by many individual class members may be relatively  
6 small compared to the costs of litigation, making it economically unfeasible to pursue remedies other  
7 than a class action. The high costs of hiring engineers, inspection teams, and consultants would make it  
8 impossible for a single plaintiff to bring suit on their own behalf. This is particularly true for many of  
9 the members of this class who are disadvantaged minorities with no economic access to the court.

10 21. Consequently, there would be a failure of justice if the present class action is not maintained.  
11 The interests of justice and efficiency will be best served by the use of a class action.

12 22. **THE CLASS IS ASCERTAINABLE** – The names and addresses of the owners of homes  
13 built by THE DEVELOPER in the tracts listed above are a matter of public record. Notice can be  
14 provided to the class members via first class mail using techniques and a form of notice similar to those  
15 customarily used in class actions.

16 **SECOND CAUSE OF ACTION**

17 **CLASS ACTION – STRICT PRODUCTS LIABILITY**

18 **(AGAINST SYNERGY – GOLDEN DAWN, LLC)**

19 23. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 22  
20 as though set forth fully herein.

21 24. **THE DEVELOPER was a seller of products** – PLAINTIFFS are informed and believe and  
22 thereon allege that at all times herein mentioned and material hereto THE DEVELOPER was authorized  
23 to conduct business in California, engaged in business in the County of Fresno, and was the developer  
24 and/or general contractor of homes in the tracts listed above. THE DEVELOPER developed and mass  
25 produced homes in the tracts listed above now owned by the members of the class.

26 25. **The homes sold by THE DEVELOPER were defectively manufactured** – The homes  
27 built and sold by THE DEVELOPER in the tracts listed above were defectively manufactured because  
28 they differ from their intended design. THE DEVELOPER intended the homes to comply with the

1 applicable building code and government approved plans.

2 26. During construction, THE DEVELOPER delegated responsibilities to subcontractors that  
3 actually performed the work. However, THE DEVELOPER was ultimately responsible for ensuring that  
4 the construction of the homes in the tracts listed above complied with the building code and government  
5 approved plans. It is unlawful for any person or corporation to construct any building or structure, or  
6 cause or permit any building or structure to be constructed in violation of the building code or  
7 government approved plans.

8 27. The representative class members will be able to establish the liability of THE DEVELOPER  
9 through generalized proof. All homes owned by members of the class were constructed by  
10 subcontractors hired by THE DEVELOPER. During the construction of each and every home in the  
11 above mentioned tracts, THE DEVELOPER failed to establish a quality control system. Supervision is a  
12 non-delegable duty. Because there was no quality control system in place, the homes constructed by  
13 THE DEVELOPER in the tracts listed above do not comply with the building code or government  
14 approved plans.

15 28. As a result of THE DEVELOPER'S defective manufacturing process, all the homes  
16 produced contained latent defects. The latent defects in the homes built by THE DEVELOPER are the  
17 result of deviations from the building code, government approved construction plans and manufacturer  
18 specifications. Because the homes built by THE DEVELOPER in the tracts listed above do not conform  
19 to the building code, government approved construction plans and manufacturer specifications; they  
20 differ from their intended design and were defectively manufactured.

21 29. **But for the defective manufacture of the homes, the members of the class would not**  
22 **have been harmed** – THE DEVELOPER'S failure to institute any quality control system during the  
23 construction of the homes has caused the same harm to all the class members. Each home manufactured  
24 by THE DEVELOPER in the tracts listed above contains the same frame and roof defects.

25 30. **SUBCLASS 1 (FRAME DEFECTS)** – In all the homes built by THE DEVELOPER in the  
26 tracts listed above, the framing component was defectively manufactured. In the homes built by THE  
27 DEVELOPER in the tracts listed above, no quality control system was in place to ensure that the  
28 framing component was manufactured according to the building code and government approved plans.



1 31. All the homes built by THE DEVELOPER in the tracts listed above have suffered damage  
2 because of the defects in the framing component. The defects in the homes were present at the time they  
3 were originally sold by THE DEVELOPER and have caused the same harm to the members of the class.

4 32. The frame defects have caused damage to the stucco on all the homes built by THE  
5 DEVELOPER in the tracts listed above. To correct the manufacturing defects in the homes, the stucco  
6 must be removed from each house so that necessary repairs can be made. The cost of repairing the  
7 framing component can be determined using a simple formula.

8 33. **SUBCLASS 2 (ROOF DEFECTS)** – In the homes built by THE DEVELOPER in the tracts  
9 listed above, the roofing component was defectively manufactured. In the homes built by THE  
10 DEVELOPER in the tracts listed above, no quality control system was in place to ensure that the roofing  
11 component offered proper weather protection.

12 34. All the homes built by THE DEVELOPER in the tracts listed above have suffered damage  
13 because of the defects in the roofing component. The defects in the homes were present at the time they  
14 were originally sold by THE DEVELOPER and have caused the same harm to the members of the class.

15 35. The roof defects have caused damage to all the homes built by THE DEVELOPER in the  
16 tracts listed above. To correct the manufacturing defects in the homes, the roof component must be  
17 removed from each house so that necessary repairs can be made. The cost of repairing the roof  
18 component can be determined using a simple formula.

19 36. **TYPICALITY** – The claims of the representative parties in this case are typical of those of  
20 the class. The claims of the representative parties and every other class member arise from the defective  
21 conditions of the homes as complained of herein. The injuries and damages of each member of the class  
22 were caused by THE DEVELOPER'S defective manufacturing process as alleged herein.

23 37. No quality control system was in place during the construction of the homes in the above-  
24 mentioned tracts. As a result of THE DEVELOPER'S defective manufacturing process, the homes  
25 constructed did not conform to their intended design and contained latent defects. The latent defects in  
26 the homes have directly and similarly harmed the representative parties and the other class members.  
27 The representative parties, like the other class members, can only be made whole by removing the stucco  
28 and roof components from their homes so that necessary repairs can be made.

1           38. **ADEQUACY** – The representative parties in this case will fairly and adequately represent  
2 the interests of the class. There are no conflicts of interest between the representative parties and the  
3 members of the class. The representative parties have the same interests and have suffered the same  
4 injury as the members of the class.

5           39. The representative parties and the members of the class have been harmed by THE  
6 DEVELOPER’S failure to institute quality control procedures during the construction and manufacture  
7 of the products; mass-produced single family dwellings in the tracts listed above.

8           40. Any variations in damages caused to the class members by THE DEVELOPER’S conduct  
9 can be adequately addressed through the selection of additional class representatives and the creation of  
10 additional subclasses as more information becomes available.

11           41. **COMMON QUESTIONS OF LAW AND FACT PREDOMINATE** – THE  
12 DEVELOPER is strictly liable for selling defectively manufactured homes. Because of its defective  
13 manufacturing process, THE DEVELOPER produced homes that do not comply with the building code,  
14 government approved construction plans, and manufacturer specifications. As a result, the homes do not  
15 conform to their intended design and contain latent defects. These defects have caused similar harm to  
16 all the members of the class. The damages suffered by members of the class do not vary greatly. The  
17 cost to repair the homes built by THE DEVELOPER in the tracts listed above can be determined by  
18 using a simple formula.

19           42. Common questions of law and fact exist as to all the members of the class and predominate  
20 over any questions that affect only individual members of the class. These common questions of law  
21 and fact include, without limitation:

- 22           (a) whether THE DEVELOPER sold homes that were defectively manufactured;
- 23           (b) whether THE DEVELOPER sold homes that contained frame defects;
- 24           (c) whether THE DEVELOPER sold homes that contained roof defects;
- 25           (d) whether frame defects in the homes sold by THE DEVELOPER caused harm to members of  
26           the class;
- 27           (e) whether roof defects in the homes sold by THE DEVELOPER caused harm to members of the  
28           class.

1 43. **CLASS ACTION IS THE SUPERIOR PROCEDURAL MECHANISM** – Class action is  
2 the superior procedural mechanism in this case. It will allow the court to avoid a multiplicity of similar,  
3 smaller actions. If all the members of the class were forced to bring suit on their own behalf, the court  
4 would be confronted with hundreds of essentially identical cases. These cases would be more effectively  
5 litigated in a single, efficient class action.

6 44. In addition, the expensive nature of this litigation would defeat a single plaintiff's attempt to  
7 initiate an individual action. The damages suffered by many individual class members may be relatively  
8 small compared to the costs of litigation, making it economically unfeasible to pursue remedies other  
9 than a class action. The high costs of hiring engineers, inspection teams, and consultants would make it  
10 impossible for a single plaintiff to bring suit on their own behalf. This is particularly true for many of  
11 the members of this class who are disadvantaged minorities with no economic access to the court.

12 45. Consequently, there would be a failure of justice if the present class action is not maintained.  
13 The interests of justice and efficiency will be best served by the use of a class action.

14 46. **THE CLASS IS ASCERTAINABLE** – The names and addresses of the owners of homes  
15 built by THE DEVELOPER in the tracts listed above are a matter of public record. Notice can be  
16 provided to the class members via first class mail using techniques and a form of notice similar to those  
17 customarily used in class actions.

#### 18 **GENERAL ALLEGATIONS**

19 47. PLAINTIFFS are all owners of real property within tracts 4706, 5066, and GOLDEN  
20 DAWN in the County of Fresno, State of California.

21 48. The subjects of this action are the land with single-family dwellings and other improvements  
22 thereon, owned by PLAINTIFFS respectively (hereinafter collectively referred to as the "PROPERTY")  
23 located in the County of Fresno, State of California. The individual PLAINTIFFS listed above include  
24 those that purchased their homes directly from THE DEVELOPER and those that did not.

25 49. PLAINTIFFS are informed and believe and based thereon allege that the following  
26 ORIGINAL PURCHASER PLAINTIFFS purchased their homes directly from THE DEVELOPER:

| Last Name | First Name | Number | Street         |
|-----------|------------|--------|----------------|
| Acosta    | Ismael     | 316    | N. Shelly Ave. |

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| Benitez    | Maria          | 316  | N. Shelly Ave.     |
| Anderson   | Tony           | 247  | N. Burgan Ave.     |
| Anderson   | Dawn           | 247  | N. Burgan Ave.     |
| Anguiano   | Trinidad       | 6569 | E. Laurel Ave.     |
| Arias      | Yolanda        | 6556 | E. Kerckhoff Ave.  |
| Bruno      | Andrea Caldera | 6508 | E. Laurel Ave.     |
| Colin      | Fidelmar       | 6289 | E. Huntington Ave. |
| Contreras  | Carlos         | 6576 | E. Kerckhoff Ave.  |
| Contreras  | Bianca         | 6576 | E. Kerckhoff Ave.  |
| Craver     | Ella Louise    | 6517 | E. Huntington Ave. |
| Davis      | James          | 6328 | E. Fillmore Ave.   |
| Fajardo    | Luz            | 6282 | E. Platt Ave.      |
| Salinas    | Ramona         | 6282 | E. Platt Ave.      |
| Flores     | Mariano        | 6578 | E. Laurel Ave.     |
| Flores     | Mario          | 306  | N. Shelly Ave.     |
| Flores     | Maria          | 306  | N. Shelly Ave.     |
| Fries      | Lisa           | 6404 | E. Balch Ave.      |
| Gallegos   | Richard        | 6577 | E. Kerckhoff Ave.  |
| Gallegos   | Olivia         | 6577 | E. Kerckhoff Ave.  |
| Garcia     | Jose           | 6308 | E. Balch Ave.      |
| Gomez      | Richard        | 6518 | E. Laurel Ave.     |
| Gomez      | Christina      | 6518 | E. Laurel Ave.     |
| Gutierrez  | Arturo Leyva   | 257  | N. Burl Ave.       |
| Hensley    | Jeffrey L.     | 6527 | E. Kerckhoff Ave.  |
| Her        | Meng           | 6364 | E. Platt Ave.      |
| Her        | Mor Vang       | 344  | N. Cypress Ave.    |
| Her        | Zong Nyoua     | 344  | N. Cypress Ave.    |
| Hull       | Daniel         | 6556 | E. Platt Ave.      |
| Hull       | Dannelle       | 6556 | E. Platt Ave.      |
| Land       | Charles        | 6558 | E. Laurel Ave.     |
| Land       | Peggy          | 6558 | E. Laurel Ave.     |
| Leon       | Sylvia         | 6519 | E. Laurel Ave.     |
| Levingston | Falcon         | 241  | N. Cypress Ave.    |
| Lockwood   | James          | 245  | N. Douglas Ave.    |
| Lockwood   | Margaret       | 245  | N. Douglas Ave.    |

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| Lopez    | Antonio    | 291  | N. Cypress Ave.    |
| Lopez    | Chris      | 272  | N. Burl Ave.       |
| Lopez    | Rosie      | 272  | N. Burl Ave.       |
| Lopez    | Christian  | 6287 | E. Huntington Ave. |
| Love Jr. | Albert     | 6546 | E. Kerckhoff Ave.  |
| Marquez  | Angie      | 324  | N. Cypress Ave.    |
| Marquez  | Antonio    | 334  | N. Cypress Ave.    |
| Marquez  | Patricia   | 334  | N. Cypress Ave.    |
| McFall   | Aubrey     | 112  | N. Shelly Ave.     |
| McFall   | Lisa       | 112  | N. Shelly Ave.     |
| McNeice  | Susan      | 6548 | E. Huntington Ave. |
| Melendez | Herman     | 201  | N. Filbert Ave.    |
| Mendoza  | Leena      | 6331 | E. Balch Ave.      |
| Moreno   | Agustin L. | 6293 | E. Huntington Ave. |
| Morones  | Fermin     | 6494 | E. Balch Ave.      |
| Morones  | Tina       | 6494 | E. Balch Ave.      |
| Morones  | Mauricio   | 6352 | E. Balch Ave.      |
| Morones  | Denise     | 6352 | E. Balch Ave.      |
| Mullikin | Jason      | 6566 | E. Kerckhoff Ave.  |
| Mullikin | Sara       | 6566 | E. Kerckhoff Ave.  |
| Nix      | Derek      | 6527 | E. Platt Ave.      |
| Nix      | Lisa       | 6527 | E. Platt Ave.      |
| Pineda   | Reyna J.   | 6314 | E. Fillmore Ave.   |
| Quinto   | Federico   | 6579 | E. Fillmore Ave.   |
| Quinto   | Priscilla  | 6579 | E. Fillmore Ave.   |
| Rakkar   | Satnam     | 6375 | E. Fillmore Ave.   |
| Ramirez  | Clara      | 6558 | E. Fillmore Ave.   |
| Ramirez  | Marco      | 356  | N. Shelly Ave.     |
| Esquiuel | Lucy       | 356  | N. Shelly Ave.     |
| Rivera   | Rogelio    | 284  | N. Cypress Ave.    |
| Rivera   | Marisa     | 284  | N. Cypress Ave.    |
| Rosales  | Betty      | 6281 | E. Platt Ave.      |
| Silvius  | Jarrod     | 6507 | E. Huntington Ave. |
| Silvius  | Theresa    | 6507 | E. Huntington Ave. |
| Soltero  | Joaquin    | 374  | N. Cypress Ave.    |

|    |           |         |      |                    |
|----|-----------|---------|------|--------------------|
| 1  | Tolleson  | David   | 267  | N. Burl Ave.       |
| 2  | Tolleson  | Kathryn | 267  | N. Burl Ave.       |
| 3  | Turner    | Cruz    | 6499 | E. Laurel Ave.     |
| 4  | Turner    | Brett   | 6499 | E. Laurel Ave.     |
| 5  | Villarama | Mario   | 6341 | E. Platt Ave.      |
| 6  | Khamnhoth | Kam     | 6341 | E. Platt Ave.      |
| 7  | Yang      | Chong   | 6330 | E. Platt Ave.      |
| 8  | Yang      | Yi Cha  | 6301 | E. Huntington Ave. |
| 9  | Yang      | Xiong   | 6301 | E. Huntington Ave. |
| 10 | Zamora    | Ruben   | 6397 | E. Balch Ave.      |

50. PLAINTIFFS are informed and believe and based thereon allege that the following

PLAINTIFFS were subsequent purchasers of homes manufactured and sold by THE DEVELOPER:

| Last Name    | First Name      | Number | Street             |
|--------------|-----------------|--------|--------------------|
| Cabral       | Armando         | 333    | N. Burgan Ave.     |
| Cabral       | Esther          | 333    | N. Burgan Ave.     |
| Carpio       | Patricia        | 255    | N. Douglas Ave.    |
| Chadwick     | Christopher     | 254    | N. Cypress Ave.    |
| Chadwick     | Melissa         | 254    | N. Cypress Ave.    |
| Chanthanao   | Sai             | 182    | N. Shelly Ave.     |
| Chanthanao   | Anong           | 182    | N. Shelly Ave.     |
| Chavez       | Gonzalo         | 235    | N. Douglas Ave.    |
| Dominguez    | Ponciano Perez  | 190    | N. Shelly Ave.     |
| Dommer       | Scott           | 6294   | E. Fillmore Ave.   |
| Dommer       | Elizabeth       | 6294   | E. Fillmore Ave.   |
| Guzman       | Gladys          | 323    | N. Burgan Ave.     |
| Heredia      | Dominic         | 6567   | E. Kerckhoff Ave.  |
| Holder       | David           | 6587   | E. Huntington Ave. |
| Knowlton     | Melvin          | 6538   | E. Huntington Ave. |
| Lay          | Loeun           | 198    | N. Shelly Ave.     |
| Lopez        | Blanche         | 366    | N. Shelly Ave.     |
| Lopez-Sierra | Elizabeth       | 366    | N. Shelly Ave.     |
| Macias       | Rosaena         | 293    | N. Burgan Ave.     |
| Marin        | MaryAnn Rosales | 196    | N. Douglas Ave.    |
| Ojeda        | John            | 6415   | E. Balch Ave.      |

|    |         |            |      |                    |
|----|---------|------------|------|--------------------|
| 1  | Ojeda   | Marjorie   | 6415 | E. Balch Ave.      |
| 2  | Olinger | William E. | 6310 | E. Huntington Ave. |
| 3  | Puckett | Kathleen   | 236  | N. Shelly Ave.     |
| 4  | Reilly  | Brenden    | 363  | N. Burgan Ave.     |
| 5  | Espino  | Yadira     | 363  | N. Burgan Ave.     |
| 6  | Rosales | Betty      | 353  | N. Burgan Ave.     |
| 7  | Ryan    | Michael    | 6518 | E. Huntington Ave. |
| 8  | Ryan    | Adela      | 6518 | E. Huntington Ave. |
| 9  | Sanders | Betty J.   | 336  | N. Shelly Ave.     |
| 10 | Smith   | Glen       | 6289 | E. Kerckhoff Ave.  |
| 11 | Smith   | Jaunita    | 6289 | E. Kerckhoff Ave.  |
| 12 | Soltero | Joaquin    | 383  | N. Burgan Ave.     |
| 13 | Duena   | Maria      | 383  | N. Burgan Ave.     |
| 14 | Welch   | Deana      | 6528 | E. Huntington Ave. |
| 15 | Xiong   | Ranger     | 158  | N. Filbert Ave.    |

16 51. PLAINTIFFS are informed and believe and based thereon allege that at all times herein  
17 mentioned and material hereto SYNERGY – GOLDEN DAWN, LLC was a California Limited  
18 Liability Company, authorized to conduct business in California and engaged in business in the County  
19 of Fresno. SYNERGY developed and mass produced homes now owned by PLAINTIFFS.

20 52. The names and capacities, whether individual, corporate, associate or otherwise of certain  
21 developers, builders, general contractors, subcontractors and/or their alter egos sued herein as **DOES 1**  
22 **through 100** inclusive, are presently unknown, and PLAINTIFFS will amend the COMPLAINT to  
23 insert the same when ascertained. PLAINTIFFS are informed and believe and based thereon allege that  
24 each of these Defendants was a resident of said County and State and/or have principal offices or were  
25 doing business in said County and State and were and are responsible in some way for the occurrences  
26 and damages alleged in this COMPLAINT. Said Defendants, along with THE DEVELOPER named in  
27 paragraph 1 above, will hereinafter be referred to collectively as the “**DEVELOPER DEFENDANTS.**”

28 53. As a result of the DEVELOPER DEFENDANTS’ complete and total failure to supervise the  
work of the subcontractors, the homes built by the DEVELOPER DEFENDANTS in the tracts listed  
above were constructed with willful and reckless disregard of the building code, government approved

1 construction plans, and manufacturer specifications.

2 54. The DEVELOPER DEFENDANTS were aware that the homes in the tracts listed above  
3 would be purchased without inspection for latent defects. The DEVELOPER DEFENDANTS were  
4 aware that members of the public would rely on the DEVELOPER DEFENDANTS' skill and expertise  
5 in the construction of the homes. The failure of the homes to conform to the building code, government  
6 approved construction plans, and manufacturer specifications was known to the DEVELOPER  
7 DEFENDANTS or should have been known to someone in the DEVELOPER DEFENDANTS'  
8 position. The latent defects in the homes could not have been present absent the DEVELOPER  
9 DEFENDANTS' knowledge or the DEVELOPER DEFENDANTS' complete and total failure to inspect  
10 and supervise the construction of the homes.

11 55. The damage to the homes was the direct result of a willful and reckless failure to establish  
12 and implement an effective quality control system. The failure to establish a quality control system was  
13 the result of the DEVELOPER DEFENDANTS' efforts to achieve costs savings during construction.

14 56. Because the DEVELOPER DEFENDANTS willfully and knowingly performed work that  
15 was contrary to the building code, government approved construction plans, and manufacturer  
16 specifications the DEVELOPER DEFENDANTS are liable.

17 57. In order to build and construct said PROPERTY and project(s) the DEVELOPER  
18 DEFENDANTS hired, retained, employed, or contracted for the services of certain persons or entities to  
19 plan, design, and prepare drawings and specifications for the building of the PROPERTY and project.  
20 The identities of said persons or entities, whether individual, corporate or otherwise, sued herein as  
21 **DOES 101 through 200**, are presently unknown to PLAINTIFFS who therefore sue such persons by  
22 their fictitious names. PLAINTIFFS are informed and believe and thereon allege that said persons or  
23 entities are wholly or in some part responsible for the occurrences set forth in this COMPLAINT. These  
24 Defendants will hereinafter be referred to as the "**DESIGN DEFENDANTS.**"

25 58. In order to build and construct said project the DEVELOPER DEFENDANTS hired,  
26 retained, employed, or contracted for persons or entities to provide for labor and materials in the  
27 construction of the PROPERTY and project(s). The identities of said persons or entities, whether  
28 individual, corporate, or otherwise, sued herein as **DOES 201 through 300** are presently unknown to



1 PLAINTIFFS who therefore sue such persons by their fictitious names. PLAINTIFFS are informed and  
2 believe and thereon allege that said persons or entities are wholly or in some part responsible for the  
3 occurrences set forth in the COMPLAINT. These Defendants will hereinafter be referred to as the  
4 **“CONTRACTOR DEFENDANTS.”**

5 59. PLAINTIFFS are informed and believe and based thereon allege that at all times herein  
6 mentioned, Defendants and each of them were the agents, servants, employees, assistants, and  
7 consultants of their co-Defendants and were acting within the course and scope of their agency and  
8 authority of such agency and employment.

9 60. PLAINTIFFS have incurred, and during the pendency of this action, will incur expenses for  
10 attorney’s fees and costs. Such attorney’s fees and costs are necessary for the prosecution of this action.

11 **THIRD CAUSE OF ACTION**  
12 **VIOLATION OF CIVIL CODE SECTIONS 896 & 897**  
13 **(AGAINST THE DEVELOPER DEFENDANTS)**  
14 **(AS TO THOSE HOMES SOLD AFTER JANUARY 1, 2003)**

15 61. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 60  
16 as though set forth fully herein.

17 62. DEVELOPER DEFENDANTS violated Civil Code sections 896 and 897 by selling homes  
18 that did not comply with the applicable functionality standards.

19 63. The homes sold by DEVELOPER DEFENDANTS to PLAINTIFFS contain the following  
20 violation of Civil Code section 896:

- 21 (a)(1) Doors allow unintended water to pass beyond, around, or through the door or its designed  
22 or actual moisture barriers;
- 23 (a)(2) Windows, patio doors, deck doors, and their systems allow water to pass beyond, around,  
24 or through the window, patio door, or deck door or its designed or actual moisture barriers;
- 25 (a)(3) Windows, patio doors, deck doors, and their systems allow excessive condensation to  
26 enter the structure and cause damage to other components;
- 27 (a)(4) Roofs, roofing systems, chimney caps, and ventilation components allow water to enter  
28 the structure or to pass beyond, around, or through the designed or actual moisture

1 barriers;

2 (a)(7) Foundation systems and slabs allow water or vapor to enter into the structure so as to  
3 cause damage to other building components;

4 (a)(8) Foundation systems and slabs allow water or vapor to enter into the structure so as to limit  
5 the installation of the type of flooring materials typically used for the particular  
6 application;

7 (a)(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and  
8 drainage systems, are installed in such a way as to cause water or soil erosion to enter into  
9 or come in contact with the structure so as to cause damage to other components;

10 (a)(10) Stucco, exterior siding and exterior walls, including pot shelves, horizontal surfaces,  
11 columns, and plant-ons allow unintended water to pass into the structure or to pass  
12 beyond, around, or through the designed or actual moisture barriers;

13 (a)(11) Stucco, exterior siding and exterior walls allow excessive condensation to enter the  
14 structure and cause damage to other components;

15 (a)(12) Retaining and/or site walls, and their associated drainage systems, allow unintended water  
16 to pass beyond, around, or through the designed or actual moisture barriers so as to cause  
17 damage;

18 (a)(13) Retaining and/or site walls, and their associated drainage systems, allow water to flow  
19 outside the areas designated by design;

20 (a)(14) The lines and components of the plumbing system, sewer system, and utility systems leak;

21 (a)(15) Plumbing lines, sewer lines, and utility lines have corroded so as to impede the useful life  
22 of the systems;

23 (a)(16) Sewer systems were not installed in such a way as to allow the designated amount of  
24 sewage to flow through the system;

25 (a)(17) Shower and bath enclosures leak water into the interior of walls, flooring systems, or the  
26 interior of other components;

27 (a)(18) Ceramic tile and tile countertops allow water into the interior of walls, flooring systems, or  
28 other components so as to cause damage;

- 1 (b)(1) Foundations, load bearing components, and slabs contain significant cracks or significant  
2 vertical displacement;
- 3 (b)(3) Foundations, load bearing components, and slabs, and underlying soils do not materially  
4 comply with the design criteria set by applicable government building codes, regulations,  
5 and ordinances for chemical deterioration or corrosion;
- 6 (b)(4) The homes do not materially comply with the design criteria for earthquake and wind load  
7 resistance, as set forth in the applicable government building codes, regulations and  
8 ordinances;
- 9 (c)(1) Soils and/or engineered retaining walls have caused damage to the homes;
- 10 (c)(3) Soils have become unusable for the purpose represented at the time of original sale or for  
11 the purpose for which that land is commonly used;
- 12 (d)(1) The homes do not materially comply with the design criteria of the applicable  
13 government building codes, regulations, and ordinances for fire protection;
- 14 (d)(2) Fireplaces, chimneys, chimney structures, and chimney termination caps were constructed  
15 and installed so as to cause an unreasonable risk of fire outside the fireplace enclosure or  
16 chimney;
- 17 (d)(3) Electrical and mechanical systems were constructed and installed in such a way so as to  
18 cause an unreasonable risk of fire;
- 19 (e) Plumbing and sewer systems do not operate properly and materially impair the use of the  
20 homes;
- 21 (f) Electrical systems do not operate properly and materially impair the use of the homes;
- 22 (g)(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios contain cracks  
23 that display significant vertical displacement or that are excessive;
- 24 (g)(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including pot shelves,  
25 horizontal surfaces, columns and plant-ons contain significant cracks or separations;
- 26 (g)(3) Manufactured products, including, but not limited to, windows, doors, roofs, plumbing  
27 products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets,  
28 paint, and appliances were installed so as to interfere with the products' useful life or

1 utility;

2 (g)(4) Heating systems are not capable of maintaining a room temperature of 70 degrees  
3 Fahrenheit at a point three feet above the floor in any living space;

4 (g)(5) Air-conditioning systems are not consistent with the size and efficiency design criteria  
5 specified in Title 24 of the California Code of Regulations;

6 (g)(6) Attached structures do not comply with interunit noise transmission standards set by  
7 applicable government building codes, ordinances or regulations;

8 (g)(7) Irrigation systems and drainage systems do not operate properly and cause damage to  
9 landscaping and other external improvements;

10 (g)(8) Untreated wood posts were installed in contact with soil so as to cause unreasonable decay  
11 to the wood;

12 (g)(9) Untreated steel fences and adjacent components were installed so as to suffer unreasonable  
13 corrosion;

14 (g)(10) Paint and stains were applied in such a manner so as to cause improper deterioration of the  
15 building surfaces;

16 (g)(11) Roofing materials were not installed so as to avoid materials falling from the roof;

17 (g)(12) Landscaping systems survived for less than one year;

18 (g)(13) Ceramic tile and tile backing were not properly installed;

19 (g)(14) Dryer ducts were not installed and terminated pursuant to manufacturer installation  
20 requirements;

21 64. Pursuant to Civil Code section 897, DEVELOPER DEFENDANTS are also liable to  
22 PLAINTIFFS to the extent that any other building function or component has caused damage to  
23 PLAINTIFFS.

24 65. Because of the defective conditions of the PROPERTY as previously alleged, PLAINTIFFS  
25 have been specifically damaged in the following ways, as well as others which will be inserted with  
26 leave of court when ascertained:

27 (a) PLAINTIFFS will be forced to incur expenses for the restoration and repair of the  
28 PROPERTY to cure the defects and/or deficiencies. The exact amount of the damages is

1 presently unknown, except that the costs will exceed the jurisdictional minimum of this  
2 court.

3 (b) PLAINTIFFS have been damaged through the diminution in value of the PROPERTY.  
4 PLAINTIFFS are unaware of the precise amount of such damage but will establish such  
5 amount at time of trial.

6 (c) PLAINTIFFS have been forced to retain expert consultants to analyze and determine the  
7 method of repairing the aforementioned defects and deficiencies. PLAINTIFFS are  
8 unaware of the precise amount of such damage but will establish such amount at time of  
9 trial.

10 **FOURTH CAUSE OF ACTION**  
11 **STRICT PRODUCTS LIABILITY**  
12 **(AGAINST THE DEVELOPER DEFENDANTS)**

13 66. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 65  
14 as though set forth fully herein.

15 67. DEVELOPER DEFENDANTS and each of them, at all times herein mentioned were in the  
16 business of developing and mass producing and/or distributing residential homes in and, within the  
17 County and State, and selling them to members of the public at large.

18 68. Within the last ten years, the DEVELOPER DEFENDANTS and each of them, developed  
19 and mass produced the PROPERTY and/or otherwise participated in the stream of commerce for sale of  
20 the PROPERTY and in the projects where the PROPERTY is located.

21 69. At all times herein mentioned and material hereto, the DEVELOPER DEFENDANTS knew  
22 and intended that the PROPERTY would be purchased, leased and/or occupied as a residential premises  
23 by members of the public at large without further inspection for defects.

24 70. After purchasing homes built by the DEVELOPER DEFENDANTS, PLAINTIFFS became  
25 aware of the following design and/or manufacturing defects and deficiencies:

26 Defective design, construction and installation of drywall and sound proofing systems;

27 Defective design, construction and installation of fences and retaining walls;

28 Defective design, construction and installation of ornamental iron;

- 1 Defective design, construction and installation of cabinets and wood trim;
- 2 Defective design, construction and installation of fireplaces and chimneys;
- 3 Defective design, construction and installation of rain gutters and downspouts;
- 4 Defective design, construction and installation of tubs and shower doors;
- 5 Defective design, construction and installation of paint and painting systems;
- 6 Defective design, construction and installation of sheet metal components and sheet metal systems;
- 7 Defective design, construction and installation of plaster components and plaster systems;
- 8 Defective design, construction and installation of plumbing components and plumbing systems;
- 9 Defective design, construction and installation of roof components and roofing systems;
- 10 Defective design, construction and installation of water proofing components and systems;
- 11 Defective design, construction and installation of electrical wiring and electrical systems;
- 12 Defective design, construction and installation of concrete slabs, floors, foundations and walkways;
- 13 Defective design, construction and installation of masonry;
- 14 Defective design, construction and installation of framing components and structural systems;
- 15 Defective design, construction and installation of windows and sliding doors;
- 16 Defective design, construction and installation of HVAC components and HVAC systems;
- 17 Defective design, construction and installation of drainage components and drainage systems;
- 18 Defective design, construction and installation of insulation and insulation systems;
- 19 Defective design and use of soil, grading, and compaction.

20       71. The defects alleged herein above are defects that were not apparent by reasonable inspection  
21 of the PROPERTY at the time of purchase.

22       72. Because of the defective conditions of the PROPERTY as herein above alleged,  
23 PLAINTIFFS have been specifically damaged in the following ways, as well as others which will be  
24 inserted with leave of court when ascertained:

25       (a) PLAINTIFFS will be forced to incur expenses for the restoration and repair of the PROPERTY  
26 to cure the defects and/or deficiencies. The exact amount of the damages is presently  
27 unknown, except that the costs will exceed the jurisdictional minimum of this court.

28       (b) PLAINTIFFS have been damaged through the diminution in value of the PROPERTY.

1 PLAINTIFFS are unaware of the precise amount of such damage but will establish such  
2 amount at time of trial.

3 (c) PLAINTIFFS have been forced to retain expert consultants to analyze and determine the  
4 method of repairing the aforementioned defects. PLAINTIFFS are unaware of the precise  
5 amount of such damage but will establish such amount at time of trial.

6 73. DEVELOPER DEFENDANTS and each of them, as developers, mass producers, builders  
7 and sellers and/or otherwise within the stream of commerce are strictly liable and responsible to  
8 PLAINTIFFS for all damage suffered as a result of the above described defects and deficiencies in the  
9 PROPERTY.

10 **FIFTH CAUSE OF ACTION**

11 **NEGLIGENCE**

12 **(AGAINST ALL DEFENDANTS)**

13 74. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 73  
14 as though set forth fully herein.

15 75. The aforementioned Defendants so carelessly and negligently planned, constructed,  
16 modified, inspected, and/or performed work and services at the PROPERTY as to proximately cause  
17 damages to the systems, buildings, and improvements as herein above alleged.

18 76. Because of the carelessness and negligence of each of the Defendants and as a proximate  
19 result thereof, PLAINTIFFS have been damaged as previously alleged herein above.

20 77. The damages described herein above were the result of defects not apparent by reasonable  
21 inspection of the PROPERTY at the time of purchase. These latent defects were caused by the  
22 negligently and carelessly performed work of the Defendants.

23 **SIXTH CAUSE OF ACTION**

24 **NEGLIGENCE PER SE**

25 **(AGAINST ALL DEFENDANTS)**

26 78. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 77  
27 as though set forth fully herein.

28 79. Various provisions of the then-applicable building codes placed on the defendants a non-

1 delegable duty to construct, plan, design and/or inspect the PROPERTY in accordance with the  
2 requirements of said building codes. The Defendants breached their duty by negligently constructing,  
3 planning, designing and/or inspecting the PROPERTY in violation of the then-applicable building codes.

4 80. As a proximate cause of said building code violations in the PROPERTY which were  
5 caused by the defendants, PLAINTIFFS have been damaged as previously alleged.

6 **SEVENTH CAUSE OF ACTION**

7 **BREACH OF IMPLIED WARRANTY (FITNESS)**

8 **(AGAINST THE DEVELOPER DEFENDANTS)**

9 **(AS TO ORIGINAL PURCHASER PLAINTIFFS ONLY)**

10 81. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 80  
11 as though set forth fully herein.

12 82. At all times herein mentioned and material hereto DEVELOPER DEFENDANTS were the  
13 merchants and sellers of newly constructed residential housing, the type of merchandise sold to  
14 PLAINTIFFS as herein above alleged and described.

15 83. DEVELOPER DEFENDANTS, and each of them, at the time and place of the sale of the  
16 PROPERTY, impliedly warranted that it was properly constructed and fit for use as homes.

17 84. The PROPERTY was not properly constructed, and not fit for its intended use, and is  
18 defective as previously alleged herein above.

19 85. After purchasing homes built by the DEVELOPER DEFENDANTS, PLAINTIFFS  
20 discovered the defective quality of the PROPERTY. PLAINTIFFS thereafter gave DEVELOPER  
21 DEFENDANTS, and each of them, due and timely notice of the defective quality of the above  
22 mentioned items.

23 86. The defects described herein above caused by the breaches of warranty by DEVELOPER  
24 DEFENDANTS, and each of them, were defects not apparent by reasonable inspection of the  
25 PROPERTY at the time of purchase. The defects and damages were latent and were not reasonably  
26 apparent to PLAINTIFFS until or about the time of notification to the DEVELOPER DEFENDANTS.

27 87. Because of the foregoing breaches of implied warranties by DEVELOPER DEFENDANTS,  
28 and each of them, PLAINTIFFS have been specifically damaged as herein alleged.



1 **EIGHTH CAUSE OF ACTION**

2 **BREACH OF IMPLIED WARRANTY (MERCHANTABILITY)**

3 **(AGAINST THE DEVELOPER DEFENDANTS)**

4 **(AS TO ORIGINAL PURCHASER PLAINTIFFS ONLY)**

5 88. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 87  
6 as though set forth fully herein.

7 89. At all times herein mentioned and material hereto DEVELOPER DEFENDANTS were the  
8 merchants and sellers of newly constructed housing, the type of merchandise sold to PLAINTIFFS as  
9 herein above alleged and described.

10 90. DEVELOPER DEFENDANTS, and each of them, at the time and place of the sale of the  
11 PROPERTY, impliedly warranted that it was properly constructed and of merchantable quality.

12 91. The PROPERTY was not properly constructed, and not of merchantable quality in that it  
13 was defective as previously alleged herein above.

14 92. After purchasing homes built by the DEVELOPER DEFENDANTS, PLAINTIFFS  
15 discovered the defective quality of the PROPERTY. PLAINTIFFS thereafter gave DEVELOPER  
16 DEFENDANTS, and each of them, due and timely notice of the defective quality of the above  
17 mentioned items.

18 93. The defects described herein above caused by the breaches of warranty by DEVELOPER  
19 DEFENDANTS, and each of them, were defects not apparent by reasonable inspection of the  
20 PROPERTY at the time of purchase. The defects and damages were latent and were not reasonably  
21 apparent to PLAINTIFFS until or about the time of notification to the DEVELOPER DEFENDANTS.

22 94. Because of the foregoing breaches of implied warranties by DEVELOPER DEFENDANTS,  
23 and each of them, PLAINTIFFS have been specifically damaged as alleged herein above.

24 **NINTH CAUSE OF ACTION**

25 **BREACH OF EXPRESS WARRANTY**

26 **(AGAINST THE DEVELOPER DEFENDANTS)**

27 **(AS TO ORIGINAL PURCHASER PLAINTIFFS ONLY)**

28 95. PLAINTIFFS repeat and reallege and incorporate by this reference paragraphs 1 through 94

1 as though set forth fully herein.

2 96. DEVELOPER DEFENDANTS expressly warranted through the Real Estate Purchase  
3 Contracts, and other documents that the subject properties were designed, constructed, developed,  
4 inspected, and manufactured, in accordance with all the applicable Federal, State and municipal law,  
5 ordinances, rules and regulations and that the subject properties were structurally sound, free of all  
6 material defects and designed and constructed for their intended purposes. Defendants further warranted  
7 that the homes and soils constructed thereon were in good working order and condition with no  
8 deficiencies therein.

9 97. PLAINTIFFS relied on Defendants' express representations. Defendants breached said  
10 warranties in that the properties were not properly designed and constructed and were defective as set  
11 forth above.

12 98. The damages described hereinabove were caused by the breaches of warranty by the  
13 Defendants at the time of purchase. The defects and damages were latent and were not reasonably  
14 apparent to PLAINTIFFS.

15 99. As a proximate cause of said breach of warranty by the Defendants, PLAINTIFFS have  
16 been damaged as previously alleged.

17 WHEREFORE, PLAINTIFFS pray for judgment against the Defendants, and each of them, as  
18 follows:

19 **ALL CAUSES OF ACTION:**

- 20 1. For costs of restoration and repairs to the PROPERTY in excess of the jurisdictional  
21 minimum of this court;  
22 2. For costs of investigation;  
23 3. For diminution of value of the PROPERTY according to proof at time of trial;  
24 4. For such other and further relief as the court deems just and proper.

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1 DATED: December 15, 2009

LAW OFFICES OF DANIL MONTELEONE

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3 \_\_\_\_\_  
4 Danil Monteleone, Esq.  
5 Jeffrey T. Belton, Esq.  
6 Mark A. Abell, Esq.  
7 Attorneys for PLAINTIFFS

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