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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**

13 JENNIFER BEAUDET; RONALD
14 BEAUDET; JOHN DALLAH; and
15 SHARON DALLAH; individually, on behalf
16 of all others similarly situated, and in the
17 public interest,

18 Plaintiffs,

19 vs.

20 WESTERN PACIFIC HOUSING –
21 NORCO ESTATES, LLC, a limited liability
22 company; LAMCO HOUSING, INC., a
23 corporation; SCHULER HOMES, INC., a
24 corporation; D.R. HORTON, INC., a
25 corporation; and DOES 1 through 100,
26 inclusive;

27 Defendants.

) Case Number: 369796
) JAMS Ref No.: 1200031905

28 **SECOND AMENDED AND
SUPPLEMENTED COMPLAINT FOR:**

-) **1) FRAUD IN THE INDUCEMENT;**
) **2) FRAUDULENT CONCEALMENT;**
) **3) REAL ESTATE NON-**
) **DISCLOSURE;**
) **4) VIOLATION OF BUS. & PROF.**
) **CODE §§17200 et seq.;**
) **5) DECLARATORY RELIEF; and**
) **6) NEGLIGENCE**

) Honorable Charles Field
) Honorable Edward Wallin (Ret.)

) **CLASS AND REPRESENTATIVE
ACTION**

1 Plaintiffs, on behalf of themselves, all others similarly situated, and in the public
2 interest, on personal knowledge as to their own acts and on information and belief based
3 on investigation of their counsel and ongoing discovery as to all other allegations, allege
4 as follows:

5
6 **1. NATURE OF THE ACTION**
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8 1. Plaintiffs bring this action on behalf of themselves and a class of all similarly
9 situated individuals. In addition, plaintiffs bring this action in the public interest under
10 California Business & Professions Code, sections 17200 *et seq.* This action alleges
11 common law, statutory, and equitable claims under California law.
12

13 2. This complaint concerns a massive fraud perpetrated on plaintiffs and other
14 unsuspecting members of the public and the class. Defendants sold plaintiffs and others
15 residential homes without disclosing adverse material facts about the property to plaintiffs
16 and the others who purchased the homes, and actively concealed those adverse material
17 facts. Defendants perpetrated this scheme on plaintiffs and others so that defendants
18 could make millions of dollars in additional revenue and profits, and so that certain of
19 defendants' employees and agents could make hundreds of thousands of dollars in
20 additional compensation, all at the expense of plaintiffs and the others who purchased
21 these homes.
22

23 3. Plaintiffs are individuals who purchased residential homes in a development
24 of approximately 218 homes in three tracts located in the Norco Hills community in the
25 town of Norco, California, known as Crestmont, Bridlecrest, and Rose Canyon
26 (collectively, "Hidden Valley"). The homes were developed, built, and sold by defendants.
27 Plaintiffs and members of the class purchased their homes from defendants based upon
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1 defendants' uniform false and misleading statements, defendants' failure to disclose
2 adverse material facts concerning the homes, and defendants' concealment of adverse
3 material facts concerning the homes. The adverse material information defendants
4 concealed and failed to disclose to plaintiffs and members of the class includes the
5 existence of dangerous conditions adjacent to, and possibly on, the property the homes
6 are built on, that dramatically and negatively affect the value and desirability of the homes,
7 and also potentially affect the health, safety and welfare of the families that live in the
8 homes.

9
10 4. Defendants developed Hidden Valley directly adjacent to a facility owned
11 and operated by Wyle Laboratories ("Wyle Labs"). The Wyle Labs property in Norco is
12 referenced herein as the "Wyle Property." Completely unknown to plaintiffs and members
13 of the class at the time they purchased their homes from defendants and thereafter, and
14 actively concealed from plaintiffs and the class by defendants, was the fact that Wyle Labs
15 is a hazardous testing facility which, among other things: (1) handles, stores, and/or
16 generates no less than twelve of the Nation's top twenty most hazardous substances;
17 (2) handles and tests depleted radioactive uranium munitions; (3) is designated by the
18 Environmental Protection Agency ("EPA") as a "large quantity generator" of hazardous
19 waste; and (4) endangers the neighboring homes and residents with potential harmful
20 environmental conditions. Moreover, these disclosures were *required* to be made to
21 plaintiffs by defendants under California Law. Defendants intentionally, actively, and/or
22 negligently concealed this and other material adverse information about the homes and
23 the Wyle Property, as alleged herein, in order to sell the homes in the Hidden Valley.

24
25 5. Defendants also willfully, intentionally, and/or negligently limited the
26 disclosure in the sale documents for plaintiffs' and class members' homes concerning the
27 existence of the Wyle Labs facility, and the condition of the Wyle Property, to a few
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1 sentences which merely identified Wyle Labs as an "industrial research facility," and did
2 not disclose anything more about Wyle Labs, or any of the adverse material facts alleged
3 herein, all of which were well known to defendants. Defendants even intentionally or
4 negligently misspelled "Wyle" in the sale documents as "Wiley" in order to mislead
5 plaintiffs and class members, and to ensure that the true identity of Wyle Labs and the
6 dangerous condition of the Wyle Property would not be discovered by plaintiffs, class
7 members, or others who might purchase defendants' homes in the future. If the
8 misspelled "Wiley" Labs is searched on the internet, for example, it reveals innocuous
9 results, such as a research facility run by Harvard University that photographs crystallized
10 structures.

11
12 6. In addition to defendants' unlawful conduct concerning Wyle Labs and the
13 Wyle Property as alleged herein, defendants also intentionally and/or negligently failed to
14 disclose the existence of an adjacent battery disposal site known as "Norco Battery,"
15 which has been designated as a Superfund site by EPA. Although "cleaned up" pursuant
16 to its Superfund designation in 1988, the Norco Battery property still contains buried
17 hazardous waste (mostly lead and acid) encased in concrete.

18
19 7. Defendants also failed to disclose to plaintiffs and class members, and
20 intentionally and/or negligently concealed from each of them, planned future developments
21 in the Norco Hills area that would, among other things, increase traffic and congestion in
22 the area and the neighborhood streets and generally affect the value and desirability of the
23 homes. Defendants knew that the City of Norco had already approved these additional
24 developments.

25
26 8. Although defendants undoubtedly paid a substantially reduced price for the
27 land on which it built the homes in the Hidden Valley based upon its proximity to Wyle
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1 Labs and Norco Battery, defendants fraudulently and/or negligently induced plaintiffs and
2 the other families and individuals to purchase homes in the Hidden Valley by concealing
3 this adverse material information, knowing full well that if full disclosure were made as
4 *required* by California law, such disclosure would have rendered it extremely difficult, if not
5 impossible, to sell the homes.

6 7 **2. PARTIES**

8 9 **Plaintiffs**

10 9. Plaintiffs Jennifer Beudet and Ronald Beudet are residents of Norco,
11 California. They purchased, as husband and wife, a home in Hidden Valley in March of
12 2001. This home was located at lot 92 of tract map no. 25779, and is known by its
13 address at 1254 Blacksmith Way, Norco, County of Riverside, State of California, 92860.
14 Mr. and Mrs. Beudet paid defendants \$369,990 for the home.

15
16 10. Plaintiffs John Dallah and Sharon Dallah are residents of Norco, California.
17 They purchased, as husband and wife, a home in Hidden Valley in March of 2001. This
18 home was located at lot 96, tract map no. 25779, and is known by its address at 1132 El
19 Paso Drive, Norco, County of Riverside, State of California, 92680. Mr. and Mrs. Dallah
20 paid defendants \$364,990 for the home.

21
22 11. Former plaintiffs Nick Ripoly and Michelle Ripoly have been dismissed
23 without prejudice as named plaintiffs.

24 25 **Defendants**

26 12. Defendant Western Pacific Housing -- Norco Estates, LLC, ("Western
27 Pacific") is a limited liability company qualified and licensed to do business in the State of
28

1 California. Western Pacific conducts substantial business in the State of California,
2 including the County of Riverside, and has a registered agent for service of process within
3 the State of California.

4
5 13. Defendant LAMCO Housing, Inc. ("LAMCO") is a corporation qualified and
6 licensed to do business in the State of California. LAMCO conducts substantial business
7 in the State of California, including the County of Riverside, and has a registered agent for
8 service of process within the State of California. LAMCO is a managing member of
9 Western Pacific.

10
11 14. Defendant Schuler Homes, Inc. ("Schuler") is or was a corporation qualified
12 and licensed to do business in the State of California. Schuler conducts or conducted
13 substantial business in the State of California, including the County of Riverside, and has a
14 registered agent for service of process within the State of California. Western Pacific and
15 LAMCO merged with Schuler in April 2001, thereby elevating Schuler's reported gross
16 annual revenues to over 1.3 billion, and rendering it among the 15 largest real estate
17 developers in the United States.

18
19 15. Defendant D.R. Horton, Inc. ("D.R. Horton") is a corporation qualified and
20 licensed to do business in the State of California. D.R. Horton conducts substantial
21 business in the State of California, including the County of Riverside, and has a registered
22 agent for service of process within the State of California. After this case was
23 commenced, in February 2002 D.R. Horton became the successor by merger to Schuler
24 Homes, Inc. D.R. Horton is now one of the largest homebuilders in the United States.

25
26 **The Doe Defendants**

27 16. The true names of the defendants sued herein as Does 1 through 100 ("Doe
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1 defendants") are either unknown to plaintiffs, or their specific role in the unlawful and
2 wrongful conduct, scheme, and enterprise alleged herein is presently unknown to plaintiffs,
3 and therefore plaintiffs sue the Doe defendants by such fictitious names. Plaintiffs will
4 seek leave to amend this complaint to allege the true names and capacities of the Doe
5 defendants at such time as they have been ascertained. Plaintiffs believe they will be able
6 to identify Doe defendants after appropriate discovery has been completed.

7
8 17. The Doe defendants may include, but are not limited to, the directors,
9 officers, managers, employees, agents, representatives, real estate agents, affiliates,
10 and/or other persons or entities who engaged in, assisted, aided and abetted, or conspired
11 with any of the defendants in the commission of any part of the unlawful conduct, scheme,
12 and/or enterprise alleged herein.

13
14 18. The defendants are collectively referenced in this complaint as the
15 "defendants." Unless stated otherwise, "defendants" shall also mean and include the
16 plural and singular, and will include all of the defendants collectively, and any of them
17 individually.

18 19 **Concerted Action**

20 19. At all relevant times, defendants pursued a common course of conduct,
21 acted in concert with one another, and conspired with one another to accomplish the
22 offenses complained of herein, performed acts and concealed material information, and
23 omitted to state adverse material facts, in furtherance thereof; or in the case of D.R.
24 Horton is the successor by merger to such other defendants. In addition to the wrongful
25 conduct alleged herein, which gives rise to defendants' primary liability, defendants further
26 aided and abetted, and knowingly assisted one another, in perpetrating the illegal and
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1 wrongful conduct complained of herein or, in the case of D.R. Horton, is the successor by
2 merger to such other defendants.

3
4 20. Whenever this complaint alleges an act, deed or transaction by a
5 corporation, partnership, or other business entity, the allegation means that the
6 corporation, partnership, or other business entity engaged in the act, deed or transaction
7 by or through its owners, partners, directors, officers, managers, employees, agents,
8 and/or representatives while acting within the course and scope of their employment,
9 partnership or agency; were actively engaged in the management, direction, and/or control
10 of the entity; and/or were transacting the entity's ordinary business or its affairs.

11
12 **3. JURISDICTION AND VENUE**

13
14 21. This is an action for damages, restitution, injunctive relief, and other
15 appropriate relief arising under California law, including California Business & Professions
16 Code section 17200 et. seq., Civil Code section 1102 et seq., and the common law. At
17 this time, there are no claims alleged under federal law or the laws of the United States.

18
19 22. The amount in controversy exceeds the jurisdictional minimum of this Court.

20
21 23. Defendants Western Pacific, LAMCO, Schuler, and D.R. Horton are qualified
22 to do business in the State of California, and conduct substantial business in the State of
23 California, including the County of Riverside. The unlawful acts and practices alleged
24 herein occurred in, and concern property and real estate located in, the County of
25 Riverside, State of California.

1 **4. CLASS ALLEGATIONS**

2
3 24. This action is brought on behalf of all individuals who purchased a home
4 from defendants in the Hidden Valley development prior to January 15, 2002, excluding
5 defendants' employees and counsel (the "Class").
6

7 25. Although the precise number of members of the Class is unknown to
8 plaintiffs at this time and can only be determined by appropriate discovery, plaintiffs
9 believe based upon, among other things, the size of the Hidden Valley development
10 (approximately 218 homes), that the Class of individuals affected by the actions and
11 conduct of the defendants is so numerous that joinder of all members of the Class could
12 be impracticable. The exact number and identity of the members of the Class can be
13 ascertained through records maintained by defendants. Plaintiffs may seek modification of
14 the definition of the Class alleged herein if discovery reveals that modification of the Class
15 is appropriate.
16

17 26. Plaintiffs and members of the Class have been deprived of their property,
18 rights and expectancies, and have been injured and have sustained damages as a result
19 of the illegal and unlawful conduct, scheme and enterprise alleged herein. The fraudulent,
20 negligent, unlawful, and/or wrongful conduct alleged herein was engaged in by defendants
21 pursuant to a uniform practice and pattern of behavior and business conduct, which
22 included the uniform omissions of material adverse facts, misrepresentations, non-
23 disclosures, and concealment as alleged herein, all of which is common to all members of
24 the Class, and pursuant to which plaintiffs and other members of the Class have been
25 harmed and have sustained damages and as a result of which defendants were unjustly
26 enriched.
27
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1 27. Plaintiffs are committed to the vigorous prosecution of this action, and have
2 retained competent counsel experienced in class actions. Plaintiffs, like all other members
3 of the Class, were injured by reason of the conduct engaged in by defendants as alleged
4 herein. Accordingly, plaintiffs are adequate representatives of the Class and will fairly and
5 adequately protect the interests of the Class.

6
7 28. A class action is superior to other available methods for the fair and efficient
8 adjudication of the claims asserted in this complaint.

9
10 29. Plaintiffs' claims are typical of the claims of the members of the Class
11 because plaintiffs and members of the Class were all fraudulently, negligently, and/or
12 wrongfully induced to purchase homes from defendants in the Hidden Valley development
13 as a result of: (a) defendants' failure to disclose to plaintiffs and the other members of the
14 Class material adverse facts concerning the homes, (b) defendants' concealment of the
15 same material adverse facts from plaintiffs and the other members of the Class concerning
16 the homes, and (c) defendants' false and/or misleading statements to plaintiffs and the
17 other members of the Class as alleged herein.

18
19 30. Questions of law and fact common to members of the Class predominate
20 over questions affecting only individual Class members. The common questions include,
21 inter alia, the following:

22 (a) Whether defendants fraudulently induced members of the Class to
23 purchase the homes;

24 (b) Whether the sales contracts and disclosure materials contained
25 fraudulent and/or negligent misrepresentations and/or omissions of adverse
26 material facts as alleged herein;

1 (c) Whether defendants omitted adverse material facts in their
2 statements to plaintiffs and other members of the Class before they purchased the
3 homes;

4 (d) Whether defendants participated in a conspiracy to defraud plaintiffs
5 and Class members by means of omission of adverse material facts, and/or the
6 concealment of adverse material facts, as alleged herein;

7 (e) Whether defendants aided and abetted, and/or conspired with one
8 another, in their commission of the illegal and unlawful conduct alleged herein;

9 (f) Whether defendants violated any of the statutes alleged herein;

10 (g) Whether plaintiffs and Class members were fraudulently induced to
11 enter into uniform sales contracts with defendants for the purchase of the homes
12 based on the omissions and concealment alleged herein;

13 (h) Whether plaintiffs and members of the Class were harmed and/or
14 damaged as a result of the fraudulent, negligent, unlawful, and/or wrongful conduct
15 alleged herein and, if so, what is the proper measure of damages;

16 (i) Whether the uniform sales contracts plaintiffs and the other Class
17 members entered into with defendants to purchase their homes are adhesion
18 contracts and/or void as a matter of law;

19 (j) Whether the uniform sales contracts plaintiffs and the other Class
20 members entered into with defendants to purchase their homes contain
21 unconscionable provisions in violation of California law, including Section 1670.5 of
22 the Civil Code; and

23 (k) Whether plaintiffs and members of the Class are entitled to the
24 rescission of their home purchases as a result of, among other things, defendants'
25 conduct as alleged herein.

26
27 **5. DEFENDANTS' UNLAWFUL CONDUCT**
28

1

2 **Background**

3 31. During the Class period, plaintiffs and all other members of the class
4 purchased homes from defendants located in the Hidden Valley development in Norco,
5 California. The homes were purchased pursuant to a form adhesion written sales
6 agreement between plaintiffs and Class members, on the one hand, and Western Pacific
7 on the other hand. The agreement was entitled "Agreement of Purchase and Sale,
8 Deposit Receipt and Joint Escrow Instructions" (the "Agreement"). The Agreement
9 included a form Disclosure Statement (the "Disclosure Statement"), which consisted of
10 certain disclosures regarding each home and the surrounding Norco Hills neighborhood in
11 which the homes are located.

12

13 **Defendants' Deceptive Disclosure About Wyle Labs**

14 32. The only written disclosure defendants made to plaintiffs and Class
15 members about Wyle Labs was contained in the Disclosure Statement, paragraph 21,
16 which reads as follows:

17 INDUSTRIAL FACILITY. This subdivision is located adjacent to Wiley
18 Labs, an industrial research facility. All inquires regarding Wiley Labs
19 and the nature of any activities conducted at the facility should be
20 addressed to Wiley Labs.

21 33. Western Pacific admitted that it made no other disclosure to plaintiffs and
22 Class members concerning Wyle Labs aside from the disclosure identified above.

23 **The Truth About Wyle Labs**

24 34. In fact, the homes are not adjacent to a so-called "Wiley" Labs. The "Wiley
25 Labs," as identified and spelled in the Disclosure Statement is, in fact, a research facility
26 affiliated with Harvard University that is dedicated to crystallography – the photography of
27 crystalline structures for scientific and industrial applications. "Wiley Labs" does not store
28

1 or otherwise handle and test hazardous materials and "spent" radioactive materials that
2 are, in fact, still radioactive.

3
4 35. The misidentification of the "Wiley" Labs facility, whether intentional or
5 negligent, is material and highly significant. A prospective purchaser who inquires
6 regarding "Wiley" Labs via the internet, for example, finds either: (i) the above-described
7 Harvard laboratory, which is listed by "Yahoo.com" in response to an internet search for
8 "Wiley Labs," or (ii) "Wiley.com," which is a web site owned by John Wiley & Sons, a
9 global publisher of scientific, technical, and educational materials.

10
11 36. In fact, the Hidden Valley homes are adjacent to Wyle Labs, which is a
12 hazardous testing facility focusing on aerospace and U.S. Department of Defense
13 products, consisting of a four hundred-plus acre site designed primarily for testing various
14 hazardous and dangerous substances, systems, and munitions, including ordnance
15 systems, weapon systems, remediation, and environmental matters. In fact, Wyle Labs is
16 much more than an "industrial research facility." Defendants knew, and should have
17 disclosed to plaintiffs and Class members, and concealed from them, the following
18 material information about Wyle Labs and the Wyle Property:

19 (a) Wyle Labs is identified by the EPA as a "large quantity generator" of
20 hazardous waste. A "large quantity generator" is defined by the EPA as a facility
21 which generates or accumulates, in any single month, (i) 1.1 tons of hazardous
22 waste; (ii) 2.2 pounds of "acute" hazardous waste; or (iii) more than 220 pounds of
23 spill clean-up material contaminated with "acute" hazardous waste;

24 (b) Wyle Labs is located in a portion of Norco zoned for heavy industrial
25 use. The Wyle Labs facility performs special research projects involving
26 environmental matters and the testing of (i) aerospace components and systems,
27 (ii) pump, valve, piping and propulsion systems, and (iii) ordnance and weapon
28

1 systems (including explosive ordinance storage and detonation). Documentation
2 from the City of Norco recognize potential harmful environmental conditions
3 resulting from this industrial usage adjacent to the Hidden Valley. Many of the
4 industrial uses for which Wyle Property is zoned are incompatible with residential
5 housing.

6 (c) At least twelve of the twenty most hazardous substances listed by the
7 Agency for Toxic Substances and Disease Registry ("ATSDR") have been, or
8 currently are, handled, stored, or generated at the Wyle Labs facility, including, but
9 not limited to, Lead, Vinyl Chloride, Benzene, various PCBs, Chloroform,
10 Trichloroethylene, and Dibenz Anthracene. In particular, of the top twenty
11 hazardous substances listed on the ATSDR list, the following are now or have been
12 handled, stored, or generated by Wyle Labs on the Wyle Property:

- 13 -- No. 2: Lead
- 14 -- No. 4: Vinyl Chloride
- 15 -- No. 5: Polychlorinated Biphenyls ("PCBs")
- 16 -- No. 6: Benzene
- 17 -- No. 8: Benzo(a)pyrene
- 18 -- No. 9: Polychclic Aromatic Hydrocarbons ("PAHs")
- 19 -- No. 10: Benzo(b)fluoranthene
- 20 -- No. 11: Chloroform
- 21 -- No. 13: Aroclor 1254
- 22 -- No. 14: Aroclor 1260
- 23 -- No. 15: Trichloroethylene ("TCE")
- 24 -- No. 16: Dibenz[a,h]anthracene;

25 (d) All of the twelve hazardous substances from the ATSDR list specified
26 above have been identified by the Office of Environmental Health and Hazardous
27 Substances (the "OEHHA") as known carcinogens. In addition, Wyle Labs has also
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1 handled, stored, or generated numerous other chemicals identified by the OEHHA
2 as known carcinogens, including but not limited to, Dichlorethene, Hydrazine, Tetra
3 Chloroethylene, Toluene, and Xylene. Wyle has also handled, stored, or generated
4 multiple products containing petroleum hydrocarbons, including gasoline, diesel
5 fuel, oil, and various solvents;

6 (e) In addition to the hazardous waste and toxic substances identified
7 above, Wyle Labs handles and tests depleted uranium munitions which are known
8 to contain traces of highly radioactive particles, and holds a Radioactive Material
9 License which was amended on January 31, 2001 to extend its expiration from
10 January 16, 2005 to January 16, 2008;

11 (f) The soil and water on or near the Wyle Labs Wyle Property has been
12 contaminated by multiple toxic chemicals, including lead, PCBs, TCEs,
13 Dichlorethene, Hydrocen, Tetra Chloroeththylene, Acetone, and multiple petroleum
14 hydrocarbons;

15 (g) Wyle Labs is a potential noise nuisance, as evidenced in part by
16 Norco City documentation identifying adjacent heavy industrial land use as the
17 "highest noise producer in the City of Norco";

18 (h) The Homes are located in a fire hazardous area, as evidenced by
19 Norco city documentation identifying the Norco Hills as a "historically high
20 urban-wild land fire hazard area"; and

21 (i) Wyle is *not* spelled "Wiley."

22
23 37. Each of the above-described attributes of Wyle Labs and the Wyle Property
24 was known to defendants at the time defendants sold the Homes to plaintiffs and
25 members of the Class, but was concealed from plaintiffs and members of the Class by
26 defendants as alleged herein.
27
28

1 38. For example, defendants have admitted that, prior to selling the first home in
2 Hidden Valley, they possessed a Phase I environmental site assessment dated July 6,
3 1998 (“Phase I Report”) concerning the Hidden Valley property. This report was prepared
4 in connection with the proposed subdivision development of the Hidden Valley property
5 and defendants knew its contents.

6
7 39. The Phase I Report categorized Wyle Labs in a “generator class” defined by
8 the Resource Conservation & Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”) as
9 follows:

10 Generates 100kg./month but less than 1000kg./month of non-acutely
11 hazardous waste.

12 (Emphasis added.) This amounts to between 220 and 2,200 lbs. of hazardous waste per
13 month.

14
15 40. The Phase I Report also stated:

16 This site, “Wyle Labs”, is listed on the State LUST Database of
17 leaking underground storage tanks as having soil affected by VOCs
18 and TPH. The remediation status is listed as requiring additional
19 characterization.

20 (Emphasis added.) “VOCs” means “volatile organic compounds” and “TPH” means “total
21 petroleum hydrocarbons.”

22
23 41. The Phase I Report identified the Wyle Labs - Norco Facility as a CERCLIS /
24 NFRAP site as of February 1998.

25
26 42. The Phase I Report elaborated on the meaning of “CERCLIS” as follows:
27
28

1 The CERCLIS List contains sites which are either proposed to or on
2 the National Priorities List (NPL) and sites which are in the screening
3 and assessment phase for possible inclusion on the NPL.
4

5 43. The Phase I Report elaborated on the meaning of “National Priorities List
6 (NPL)” as follows:

7 The National Priorities List (NPL) is the EPA’s database of
8 uncontrolled or abandoned hazardous waste sites identified for
9 priority remedial actions under the Superfund program. A site must
10 meet or surpass a predetermined hazard ranking system score, be
11 chosen as a state’s top priority site, or meet three specific criteria set
12 jointly by the US Dept of Health and Human Services and the US
13 EPA in order to become an NPL site.
14

15 44. Defendants have also admitted that, prior to selling the first home in Hidden
16 Valley, they possessed a “Preliminary Noise Assessment for the Proposed Norco Hills
17 Residential Development Tract” (“Noise Assessment Report”) concerning the Hidden
18 Valley property. This report was prepared in connection with the proposed subdivision
19 development of the Hidden Valley property and defendants knew its contents.
20

21 45. The Noise Assessment Report discussed Wyle Labs as follows:

22 For the operations conducted at Wyle Laboratories, the critical limits
23 at the project site will be 75 dBA outdoors, and 55 dBA indoors.
24 These are maximum noise levels that are not to be exceeded at any
25 time.

26 The Noise Assessment Report continued as follows:

27 **Noise Levels Generated by Wyle Laboratories**
28

1 Measurements of noise levels generated at Wyle Laboratories were
2 not possible. The testing is not rigidly scheduled, and takes place on
3 an intermittent basis. Therefore, assumptions about noise levels that
4 would be generated at Wyle Laboratories were based upon available
5 data taken at similarly exposed sites. It is our understanding that the
6 noise generated by product testing at Wyle Laboratories will be short
7 term or impulsive noise, similar in nature to pile driving or blasting.
8 Data on pile driving noise and blasting noise indicate that noise levels
9 will be approximately 100 dBA at a distance of 50 feet.

10 (Emphasis added.) The Noise Assessment Report further stated:

11 For the proposed project, the maximum sound levels (Lmax) are the
12 most critical, and must not exceed 75 dBA in the proposed residential
13 areas.

14 . . .

15 Testing that occurs between 200 and 900 feet behind the property
16 line will generate significant noise levels at the proposed project site.
17 Exterior mitigation measures will be required in order for the
18 proposed project to meet the 75 dBA exterior noise criteria.

19 . . .

20 A number of second story building faces in the project may be
21 exposed to noise levels in excess of 75 dBA. In order to meet the 55
22 dBA interior criteria, homes would therefore need to achieve an
23 outdoor to indoor noise reduction of more than 20 dB.

24 (Emphasis added.)

25
26 46. From these two reports alone, generated for the purpose of developing
27 Hidden Valley, Western Pacific irrefutably knew that Wyle Labs was reported to (i) be a
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1 significant generator of hazardous chemicals; (ii) have soil affected by VOCs and TPH;
2 (iii) be a CERCLIS / NFRAP site; (iv) possibly be a National Priorities List site; (v) conduct
3 tests on an intermittent basis that generated significant noise, similar to pile driving or
4 explosive detonation, in excess of maximum permissible residential noise levels (75 dBA
5 outdoors), which would adversely affect the development and require special mitigation
6 measures.

7
8 47. Western Pacific also knew (or had no reason to doubt) that the Wyle site
9 was zoned "M-2," as evidenced by numerous documents in its possession so indicating,
10 including but not limited to the City of Norco ordinance granting tentative approval to the
11 subdivision, correspondence from Wyle Laboratories itself, and documents by and to
12 Western Pacific executives.

13
14 48. Western Pacific knew or had no reason to doubt that Wyle was spelled
15 "Wyle" and not "Wiley," as evidenced by the volume of documentation in Western Pacific's
16 possession that spelled Wyle correctly. These documents include but are not limited to
17 the documents discussed in the preceding paragraphs, such as the Phase I Report and
18 Noise Assessment Report, plus correspondence from Wyle Laboratories on Wyle
19 letterhead and voluminous paperwork with Mr. Frank M. Wyle. Western Pacific acted
20 fraudulently, negligently, or deceptively in misspelling Wyle as "Wiley" in Western Pacific's
21 disclosure to home buyers.

22
23 49. Western Pacific also knew or had no reason to doubt the exact address and
24 location of Wyle Labs, as evidenced by various documents in Western Pacific's
25 possession that identified Wyle Labs by name, address, and location (zero miles from the
26 border of the project), including but not limited to the Phase I Report, correspondence from
27
28

1 Wyle Laboratories on Wyle letterhead, and visual observations prior to grading that was
2 intended to prevent homebuyers from making similar observations.

3 4 **Defendant's Failure to Disclose Anything About Norco Battery**

5 50. No reference to Norco Battery (also called B&H Battery) was contained in
6 any of the written materials or sales documents provided to the plaintiffs, including the
7 Disclosure Statement.

8 9 **The Truth About Norco Battery**

10 51. In truth and in fact, plaintiffs' and Class members' homes are located very
11 near a highly toxic battery disposal site that was given Superfund designation by the EPA.
12 Although "cleaned up" in 1988 pursuant to its designation as a Superfund site, the Norco
13 Battery property still contains buried and highly toxic hazardous waste encased in
14 concrete. Defendants knew, and should have disclosed to plaintiffs and Class members,
15 and concealed from them, the following material information about Norco Battery:

16 (a) The Norco Battery, a battery disposal site that had been designated a
17 Superfund site by the EPA, is located very near the Hidden Valley;

18 (b) Although the Superfund "clean-up" was completed in 1988, highly
19 toxic and hazardous battery chemicals, such as lead, acid, and other toxic waste,
20 remain buried at the site encased in treated soil and concrete; and

21 (c) The heavy construction activity required for building the Hidden
22 Valley and the other nearby housing developments create a risk that the
23 containment casing of the hazardous waste may be compromised. In addition,
24 explosive blasts at the nearby Wyle Labs facility create a similar risk.

25
26 52. Each of the above-described facts about Norco Battery were known to
27 defendants at the time defendants sold the homes to plaintiffs and members of the Class,
28

1 but were concealed from plaintiffs and members of the Class by Defendants as alleged
2 herein.

3
4 53. For example, defendants have admitted that, prior to selling the first home in
5 Hidden Valley, they possessed a Phase I environmental site assessment dated July 6,
6 1998 ("Phase I Report") concerning the Hidden Valley property. This report was prepared
7 in connection with the proposed subdivision development of the Hidden Valley property
8 and defendants knew its contents.

9
10 54. The Phase I Report gave a site description of Norco Battery as follows:
11 Battery breaker site, lead contam. in soils on-site off. Lead levels as
12 high as 80,000 ppm. PRP stabilized site. Excavated off-site soils,
13 deposited them on-site w/ liner. Awaiting PRP to begin PH II cement
14 fixation burial on-site.

15
16 55. The Phase I Report identified Norco Battery as a CERCLIS / NFRAP site as
17 of February 1998.

18
19 56. The Phase I Report elaborated on the meaning of "CERCLIS" as follows:
20 The CERCLIS List contains sites which are either proposed to or on
21 the National Priorities List (NPL) and sites which are in the screening
22 and assessment phase for possible inclusion on the NPL.

23
24 57. The Phase I Report elaborated on the meaning of "National Priorities List
25 (NPL)" as follows:

26 The National Priorities List (NPL) is the EPA's database of
27 uncontrolled or abandoned hazardous waste sites identified for
28

1 priority remedial actions under the Superfund program. A site must
2 meet or surpass a predetermined hazard ranking system score, be
3 chosen as a state's top priority site, or meet three specific criteria set
4 jointly by the US Dept of Health and Human Services and the US
5 EPA in order to become an NPL site.

6
7 58. Before selling the first home in Hidden Valley, defendants knew the specific
8 location of Norco Battery and its location relative to the Hidden Valley development.

9
10 **Defendants' Deceptive Disclosure About Future Development**

11 59. The Disclosure Statement provided by Defendants to plaintiffs and the Class
12 members makes reference to certain potential future developments in the Norco Hills area.
13 The Disclosure Statement notes that each development "might" "obstruct or impair the
14 view from or otherwise affect" residents of Norco Hills, and "the City of Norco may extend
15 Corona Avenue to Hidden Valley Parkway." Defendants made no reference to any
16 potential extension of Norco Hills Road, which runs adjacent to Hidden Valley and at that
17 time dead-ended at a golf course. Likewise, defendants made no reference to a large
18 Sav-On store that would soon be built as the anchor store in what would become a large
19 commercial site adjacent to Hidden Valley.

20
21 **The Truth About Future Development**

22 60. At the time the Disclosure Statement was distributed, defendants were fully
23 aware of the following information:

24 (a) A planned community of approximately six hundred homes had
25 already been approved in the adjacent hillsides and open space, which was
26 scheduled for construction in the near future.

1 (b) The City of Norco had already approved the extension of Norco Hills
2 Road (adjacent to the Hidden Valley) so that the road would no longer dead-end at
3 the golf course, but would rather extend to other major streets as an access road
4 for the new communities, thereby increasing traffic significantly.

5 (c) A large Sav-On store was going to be built as the anchor store for the
6 adjacent commercial site, thereby adversely affecting home values.

7
8 61. Each of the above-described facts about future development, including road
9 expansion, and the resulting impact on the homes in Hidden Valley were known to
10 defendants at the time defendants sold the homes to plaintiffs and members of the Class,
11 but were concealed from plaintiffs and members of the Class by defendants as alleged
12 herein.

13
14 **FIRST CAUSE OF ACTION**
15 **(Fraud in the Inducement**
16 **Against All defendants)**

17 62. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as
18 though fully set forth herein.

19 63. Defendants made false and/or misleading statements of material fact to
20 plaintiffs and members of the Class in connection with the sale of the homes to plaintiffs
21 and the Class under the law, and information to plaintiffs and members of the Class in
22 connection with the sale of the homes to plaintiffs and the Class as alleged herein; and/or
23 fraudulently concealed adverse material facts and information from plaintiffs and members
24 of the Class in connection with the sale of the homes to plaintiffs and the Class as alleged
25 herein.
26
27
28

1 64. Defendants made the false or misleading statements as though fully
2 disclose the adverse material information alleged herein, but nevertheless intentionally
3 omitted to state or disclose this adverse material information to, and fraudulently
4 concealed this adverse material information from, plaintiffs and members of the Class as
5 alleged herein.

6
7 65. Defendants failed to disclose and concealed the alleged adverse material
8 information with full knowledge that it would have been important to plaintiffs and each
9 member of the Class in making their decision about whether or not to purchase a home in
10 Hidden Valley from defendants. Defendants also knew the alleged adverse material
11 information was information a reasonable person would have used in making a decision
12 about (a) whether or not to purchase a home in Hidden Valley from defendants at all, and
13 (b) how much to pay for such a home, assuming a willingness to purchase in the first
14 place.

15
16 66. Plaintiffs and Class members were completely unaware of, and had no
17 knowledge of, the adverse material information alleged herein before they purchased from
18 defendants.

19
20 67. In reasonable reliance upon the uniform false and misleading statements
21 alleged herein, and without being able to evaluate or consider the adverse material
22 information that defendants failed to disclose and concealed from plaintiffs and the Class,
23 plaintiffs and each member of the Class were fraudulently induced to purchase homes
24 from defendants to their detriment, and/or paid materially more than they would have paid
25 for the homes had they known about the adverse material information that was concealed
26 from them as alleged herein.

1 68. Had the adverse material information alleged herein been disclosed to
2 plaintiffs and members of the Class, plaintiffs and the Class members would not have
3 purchased homes from defendants, or would have paid substantially less for the homes
4 they purchased from defendants.

5
6 69. Each of the defendants was aware of the overall fraudulent scheme
7 described herein, and knowingly and willfully provided substantial assistance to the other
8 defendants and the fraudulent scheme as alleged herein. Therefore, each of the
9 defendants is liable to plaintiffs and the other members of the Class as an aider and
10 abettor of the fraudulent scheme.

11
12 70. Each of the defendants knowingly agreed to combine and conspire together
13 for the purpose of effectuating the fraudulent scheme alleged herein, and acted to further
14 the completion of that scheme as described herein. Therefore, each of the defendants is
15 liable to plaintiffs and the other members of the Class as a co-conspirator in connection
16 with the fraudulent scheme.

17
18 71. As a direct result of the fraudulent conduct alleged herein, plaintiffs and
19 members of the Class were fraudulently induced to enter into contracts to purchase homes
20 from defendants, and did enter into contracts to purchase homes from defendants.

21
22 72. As a direct and proximate cause of the fraudulent conduct alleged herein,
23 plaintiffs and members of the Class are entitled to rescind their Agreements for the
24 purchase of their homes from defendants, among other things. Plaintiffs intend the service
25 of this complaint to serve as notification of plaintiffs' and Class members' entitlement to
26 rescission of the Agreement alleged herein.

1 73. As a direct and proximate cause of the unlawful conduct alleged herein,
2 plaintiffs and members of the Class have been harmed and have suffered damages.

3
4 74. As a direct and proximate cause of the fraudulent conduct alleged herein,
5 plaintiffs and members of the Class have incurred significant expenses, financial loss, and
6 consequential damages which, in the event of rescission, plaintiffs and members of the
7 Class will seek to recover from defendants in an amount to be determined according to
8 proof at the time of trial, and as requested in the Prayer.

9
10 75. As a result of the fraudulent inducement alleged herein, the Agreements
11 plaintiffs and Class members entered into with defendants are void as a matter of law and
12 public policy and are unenforceable, and therefore plaintiffs and members of the Class are
13 not bound by any provisions of the Agreements, including any provisions purportedly
14 waiving the right to collect punitive damages and the constitutional right to a jury trial, or
15 any provisions calling for a judicial reference or mediation of any disputes related to or
16 arising out of the Agreements. As such, plaintiffs and members of the Class are entitled to
17 pursue all of their rights and remedies as allowed by the laws of the State of California, in
18 the Courts of the State of California.

19
20 76. Defendants engaged in the fraudulent conduct alleged herein, plaintiffs with
21 malice, fraud and oppression. Defendants also acted with a wanton, willful and reckless
22 disregard for defendants' duties under the law, the rights of plaintiffs and the Class under
23 the law, and the effects defendants' unlawful conduct would have on plaintiffs and
24 members of the Class. Accordingly, punitive damages are not only appropriate in this
25 case, but should be awarded to plaintiffs and each member of the Class as a result of the
26 egregious and fraudulent conduct alleged herein. As a result, plaintiffs seek punitive and
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28

1 exemplary damages as provided by Section 3294 of the California Civil Code in an amount
2 sufficient to punish defendants and to deter such conduct in the future.

3 WHEREFORE, plaintiffs and the Class pray for relief as set forth below.
4

5 **SECOND CAUSE OF ACTION**
6 **(Fraudulent Concealment**
7 **Against All defendants)**

8 77. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as
9 though fully set forth herein.

10 78. As a result of the fraudulent conduct alleged herein, defendants fraudulently
11 concealed material adverse information from plaintiffs and members of the Class which
12 concerned the homes plaintiffs and members of the Class purchased from defendants.
13

14 79. Defendants were under a duty to disclose the information alleged herein to
15 plaintiffs and Class members pursuant to Section 1102 of the Civil Code, the common law,
16 and applicable City of Norco resolutions and/or ordinances governing development of
17 Hidden Valley.
18

19 80. Defendants intentionally concealed the material adverse information alleged
20 herein with the intent to defraud plaintiffs and other Class members.
21

22 81. Plaintiffs and Class members were unaware of the adverse material
23 information alleged herein, and would not have acted as they did had they known of the
24 concealed material adverse information alleged herein.
25
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1 not within the diligent attention and observation of plaintiffs and the Class, and
2 nevertheless failed to disclose this information, as alleged herein.

3
4 87. Pursuant to Section 1102 of the California Civil Code, defendants had an
5 absolute duty to disclose to plaintiffs and members of the Class the material adverse
6 information alleged herein.

7
8 88. Pursuant to California common law, defendants had an absolute duty to
9 disclose to plaintiffs and members of the Class the material adverse information alleged
10 herein.

11
12 89. As a direct and proximate result of defendants' fraudulent conduct as
13 alleged herein, plaintiffs and Class members have been injured and damaged in an
14 amount to be determined according to proof at the time of trial.

15 WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

16
17 **FOURTH CAUSE OF ACTION**
18 **(Violation of Business & Professions Code §§ 17200 *et seq.***
19 **Against all defendants)**

20 90. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as
21 though fully set forth herein.

22 91. By their fraudulent and unlawful conduct as alleged herein, defendants, and
23 each of them, engaged in an unlawful business act or practice in violation of Business &
24 Professions Code Section 17200 *et seq.*

1 members of the Class are entitled to pursue all of their rights and remedies as allowed by
2 the laws of the State of California, in the Courts of the State of California.

3
4 96. As a result of defendants' fraudulent and illegal conduct, including the
5 unconscionable contract provisions as alleged herein, plaintiffs request a declaration by
6 this Court that the Agreement is null and void, or otherwise subject to rescission based on
7 fraud, and that the aforementioned contract provisions are unconscionable, in whole or in
8 part, pursuant to Section 1670.5 of the Civil Code and/or California common law, and are
9 therefore void and unenforceable as a matter of California law and public policy.

10
11 **SIXTH CAUSE OF ACTION**
12 **(Negligence**
13 **Against all defendants)**

14 97. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as
15 though fully set forth herein.

16 98. Defendants had a duty under California law and applicable City of Norco
17 resolutions and/or ordinances governing development of Hidden Valley to fully disclose the
18 information alleged herein.

19
20 99. Defendants negligently breached its duty of disclosure.

21
22 100. The adverse material information that Defendants misdisclosed, failed to
23 disclose, or omitted would have been important to plaintiffs and each member of the Class
24 in making their decision about whether to purchase a home in Hidden Valley from
25 defendants. The adverse material information was information that a reasonable person
26 would have used in making a decision about (a) whether to purchase a home in Hidden
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1 Valley from defendants at all, and (b) how much to pay for such a home, assuming a
2 willingness to purchase in the first place.

3
4 101. Plaintiffs and Class members were completely unaware of, and had no
5 knowledge of, the adverse material information alleged herein before they purchased from
6 defendants.

7
8 102. In reasonable reliance upon the uniform disclosure statements alleged
9 herein, and without being able to evaluate or consider the adverse material information
10 that defendants failed to disclose, plaintiffs and each member of the Class were induced to
11 purchase homes from Defendants to their detriment, and/or paid materially more than they
12 would have paid for the homes had they known about the adverse material information
13 that was not disclosed to them as alleged herein.

14
15 103. As a direct and proximate result of defendants' negligent conduct as alleged
16 herein, plaintiffs and Class members have been injured and damaged in an amount to be
17 determined according to proof at the time of trial.

18 WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiffs, on behalf of themselves, the members of the Class, and
22 in the public interest, pray for judgment and relief as follows:

23 1. With respect to the Class claims, a declaration that the action is a proper
24 class action and that plaintiffs and their counsel are representatives thereof;

25 2. For general, compensatory, and consequential damages in an amount to be
26 determined according to proof at the time of trial;

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