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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **EASTERN DIVISION**

14 **JESSE BROWDER, MARY ED**
 15 **WHITE, OTHA TOWNSEND, &**
 16 **VERA & ROBERT BURNS**
 individually and on behalf of all
 others similarly situated,

17 Plaintiffs,

18 v.

19 **FLEETWOOD ENTERPRISES,**
 20 **INC.,**

21 Defendant.

CV 07 - 01180
 Case No.

CLASS ACTION

COMPLAINT FOR
VIOLATION OF BUS. & PROF.
CODE SECTIONS 17200 and
17500 ET SEQ., CAL. CIV.
CODE SECTION 1750 ET SEQ.,
BREACH OF WARRANTY
AND BREACH OF
CONTRACT

DEMAND FOR JURY TRIAL

24 Plaintiffs Otha Townsend, Mary White, and Jesse Browder and Vera &
 25 Robert Burns, by and through their undersigned attorneys, bring this action both on
 26 their own behalf and on behalf of a class defined below comprised of all others
 27 similarly situated (the "Class") pursuant to the California Unfair Competition Law,
 28 California Bus. & Prof. Code §§ 17200, *et seq.* and 17500, *et seq.* (the "UCL"), and

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 U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 RIVERSIDE

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1 the California Consumers Legal Remedies Act, Cal. Civ. Code §§1750, *et seq.*, as
2 well as claims for breach of contract and express warranty, against Fleetwood
3 Enterprises, Inc. (hereinafter referred to as "Fleetwood" or "defendant") and allege
4 the following all upon information and belief formed after an inquiry reasonable
5 under the circumstances and that are likely to have evidentiary support after a
6 reasonable opportunity for further investigation or discovery, except as to
7 paragraphs pertaining to Plaintiffs' own actions, which are alleged upon personal
8 knowledge:

9 INTRODUCTION

10 1. Plaintiffs bring this action both on their own behalf and on behalf the
11 Class to redress Fleetwood's deceptive, misleading and untrue advertising and
12 representations and unlawful, unfair and fraudulent business acts and practices
13 related to its manufacture, marketing, advertising, sale and distribution of its
14 manufactured homes, which conduct misled the public into believing that the R-
15 Value of the insulation of those manufactured homes was of a much higher value
16 than it was in actuality.

17 2. As discussed in detail below, Fleetwood actively misrepresented and
18 failed to adequately disclose the actual R-Values of the insulation of their
19 manufactured homes in its marketing, advertising, packaging, sale and distribution
20 of these homes, which it knew or reasonably should have known were materially
21 overstated.

22 3. Fleetwood overstated the R-Value of the insulation it installed in its
23 manufactured homes, lowering its costs and helping Fleetwood achieve greater
24 profits.

25 4. Fleetwood also failed to properly install its "stabilized" insulation,
26 which by definition meant that the R-Value of that insulation was far less than
27 represented, even if the appropriate amount of insulation was actually used.

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1 equitable monetary relief and monetary damages well in excess of \$5,000,000.00,
2 as appropriate for the particular causes of action asserted below.

3 12. This Court has jurisdiction over the subject matter of this action
4 pursuant to 28 U.S.C. § 1332(d)(2)(A), 28 U.S.C. § 1332(a)(1) and 29 U.S.C. §
5 1367.

6 13. Venue is proper in this District and Division pursuant to 28 U.S.C. §
7 1391.

8 14. Fleetwood is found, does business in or transacts business within this
9 District and Division. Fleetwood maintains its world headquarters within this
10 District and Division.

11 15. Fleetwood's improper conduct set forth herein occurred in this District
12 and Division. Fleetwood directly advertised, marketed and sold manufactured
13 homes to consumers in this District and Division. Fleetwood's world headquarters
14 are located within this District and Division and the wrongdoing described herein
15 was directed by Fleetwood from its headquarters in this District and Division.

16 16. The harm alleged herein occurred in this District and Division or
17 emanated from Fleetwood's improper conduct that occurred within this District and
18 Division.

19 FACTUAL ALLEGATIONS

20 Background

21 17. Fleetwood Enterprises, Inc., through its subsidiaries, is one of North
22 America's largest producers of recreational vehicles and manufactured homes. This
23 Fortune 1000 company was founded in 1950.

24 18. In manufacturing and distributing manufactured homes and
25 recreational vehicles, Fleetwood installs insulation in those homes. In particular,
26 insulation is installed in the roof and/or attic of the manufactured homes created by
27 Fleetwood.

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1 19. As the seller of new manufactured homes, Fleetwood is required by
2 law to provide to Plaintiffs and others similarly situated certain information that
3 discloses the type, thickness and R-value of the insulation that was installed in the
4 roof and/or attic of their homes. 16 C.F.R. § 460, *et seq.* (the “R-Value Rules”)

5 20. The Federal Trade Commission (“FTC”) has promulgated rules about
6 R-values to protect consumers against deceptive and misleading advertising claims.
7 The FTC issued the R-Value Rules to prohibit, on an industry-wide basis, specific
8 unfair or deceptive acts or practices of consumers being misled by inaccurate
9 representations about insulating capacity.

10 21. The FTC's R-Value Rules require home insulation industry members,
11 as well as Fleetwood and its retailers to provide R-value information based on the
12 results of standardized tests to consumers at the point of sale.

13 22. Fleetwood failed to comply with these FTC regulations that require
14 Fleetwood to provide correct information to consumers, either directly or through
15 its retailer agents, about the R-Value of the insulation used in its manufactured
16 homes. In fact, Fleetwood provided false and misleading information about the R-
17 Value of the insulation that was installed in the roof and/or attic of the
18 manufactured homes sold to Plaintiffs and Class Members.

19 23. An R-Value indicates the insulation’s resistance to heat flow. The
20 higher the R-value, the greater the insulating effectiveness. With few exceptions,
21 R-values range from 1 to 30. Fleetwood systemically represents that its
22 manufactured homes have a certain R-Value when in fact the actual R-Value is less
23 than what is promised and represented.

24 24. The effectiveness of the insulation's resistance to heat flow also
25 depends on how and where the insulation is installed. For example, insulation that
26 is compressed will not provide its full rated R-value. The overall R-value of a wall
27 or ceiling will be somewhat different from the R-value of the insulation itself
28 because some heat flows around the insulation through the studs and joists.

1 Therefore, it is important to properly install insulation to achieve the represented R-
2 value.

3 25. For the insulation in the roof and/or attic of the homes purchased by
4 Plaintiffs and the Class, Fleetwood uses "stabilized" insulation manufactured by US
5 GreenFiber LLC and others.

6 26. Stabilized insulation contains a special dry adhesive that, when
7 installed correctly, is activated by water and "sets up" to create a blanket-like mass.
8 Further, US GreenFiber LLC requires a certain installed moisture level so as to
9 activate the special dry adhesive in order to achieve the correct represented R-value.
10 As a result, one of the benefits is that the insulation will not migrate during
11 transportation of the manufactured home or after the manufactured home is sited.

12 27. Fleetwood, however, did not add the required moisture levels to the
13 stabilized insulation when they installed the insulation in Plaintiffs' manufactured
14 homes, or in any other home manufactured at its fabrication and manufacturing
15 plants and sold to Class members.

16 28. By failing to add the required moisture levels at the time of
17 installation, Fleetwood causes the insulation to have a materially lower R- Value
18 than what is represented and required.

19 29. As a result, the R-Value information provided by Fleetwood was false
20 and misleading to consumers.

21 30. Further, regardless of the failure to properly install the insulation,
22 Fleetwood did not even put the amount of insulation into the homes that it would
23 have needed to install in order to achieve the R-Value represented to customers.

24 31. At the time Plaintiffs' homes were manufactured Fleetwood was using
25 stabilized blown insulation and blew the insulation in the attic cavity of their homes
26 to a certain depth based on the assumption the stabilized insulation was installed
27 correctly.

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1 32. However, by failing to use moisture during the installation process
2 Fleetwood never activated the special dry adhesive in the insulation. This failure to
3 install the insulation correctly resulted in these homes having a much lower R-
4 Value than represented.

5 33. Fleetwood uses depth and coverage charts that are based on the use of
6 stabilized insulation. In light of their failure to properly install the stabilized
7 insulation, Fleetwood should utilize depth and coverage charts based on non-
8 stabilized insulation.

9 34. For instance, in Plaintiffs' homes, the insulation is insufficient to
10 produce the represented R and U Values. Instead, since Fleetwood failed to
11 properly install the insulation, the R and U Values are not as represented. Because
12 the effect of R-values is non-linear in terms of insulating capacity, the difference is
13 material.

14 35. Fleetwood also fraudulently included the U-values of the various
15 insulation, which can be used to determine the R-Value, on the "data plate"
16 included in every home prior to shipment as required by HUD regulations.

17 36. U-Values rate how much heat is lost through a material or combination
18 of materials. The lower the U-Value the better the insulation provided by that
19 material. Thus, a U-Value of 0.35 would indicate better energy efficiency than a U-
20 Value of 0.43. U-Values can also be used to determine the R-Value.

21 37. Thus, when Fleetwood represents the R-Value or component U-Value
22 of the blown insulation in its manufactured homes to its customers via advertising
23 and other disclosures required by the FTC, it routinely misrepresents the R-Value
24 of the insulation provided to consumers in these manufactured homes. Fleetwood
25 also does not disclose the material fact that to obtain the represented R-Value for
26 these homes the insulation needed to be properly installed, which it was not.

27 38. Likewise, even if Fleetwood properly installed the stabilized
28 insulation, the R-Value was misrepresented to the purchaser because Fleetwood did

1 not add enough stabilized insulation to achieve the represented R-Value, regardless
2 of the installation method.

3 39. Plaintiffs and other members of the Class have suffered injury in fact,
4 lost money or property and/or have been damaged by Fleetwood's conduct in that
5 they have (1) paid more for their manufactured homes than they would have if they
6 had known that the home was not equipped with a the amount of insulation that was
7 advertised in terms of the R-Vale of the insulation; (2) incurred millions of dollars
8 in losses in increased daily costs of heating and cooling their homes due to the
9 lower R-Value of the insulation actually installed; (3) to incur the costs of repairing
10 (or of the future repair to) the insulation to ensure that the home is actually
11 insulated at the R-Value originally represented by Fleetwood; and, (4) suffered a
12 diminution in the resale value of their homes as a result of the fact that the deficient
13 R-Value must be disclosed to prospective buyers that the insulation in the attic was
14 not correctly installed, or alternatively, Plaintiffs and the Class are or were required
15 to fix the problem prior to re-sale.

16 **Plaintiffs' Allegations**

17 40. Plaintiffs Vera and Robert Burns purchased a 2007 model Fleetwood
18 manufactured home on July 27, 2006.

19 41. The Fleetwood manufactured home the Burns purchased contains the
20 following identifying serial numbers: GAFL635A91835 and GAFL635B91835.

21 42. Plaintiff Otha Townsend purchased a 2001 model Fleetwood
22 manufactured home on September 22, 2001. Otha Townsend purchased her home
23 from "Hunter's Walk Home Center, Inc." in Montgomery, AL.

24 43. The Fleetwood manufactured home Townsend purchased contains the
25 following identifying serial number: GAFLY75A71941.

26 44. Plaintiff Jesse Browder purchased a 1999 model Fleetwood
27 manufactured home on September 14, 1999. Jesse Browder purchased her home
28 from "Pelham Housing, Inc." in Pelham, AL.

1 arbitration agreement and who had insulation installed in the
2 attic of their home at any time during the period, commencing
3 on the first date the defendant manufactured, marketed,
4 advertised, sold and/or distributed the offending product and
5 ending on the date that the Court certifies this suit as a class
6 action, that was of an R-Value less than was represented.
7 Excluded from the Class are the employees and agents of
8 defendant, the Judge and his/her relatives back to the 2nd degree
9 of affinity, officers and directors of any defendant, and counsel
10 for plaintiffs and the Class.

11 53. The Class is so numerous that joinder of all members is impracticable.
12 While the exact number of Class members will be ascertained in the course of
13 discovery, Plaintiffs estimate that Fleetwood manufactures and sells approximately
14 20,000 manufactured homes per year.

15 54. There are numerous common questions of law and fact involving and
16 affecting the parties to be represented. These common questions of law or fact
17 predominate over any questions affecting only individual members of the Class.
18 Common questions include, but are not limited to, the following:

- 19 a. Whether Fleetwood misrepresented the R-Value of the
20 insulation of its manufactured homes;
- 21 b. Whether Fleetwood's misrepresentation of the R-Value in its
22 homes was a misleading, deceptive or untrue statement as
23 defined under California Business and Professions Code §
24 17500 *et seq.*;
- 25 c. Whether Fleetwood's failure to comply with FTC's rules on
26 "LABELING AND ADVERTISING OF HOME
27 INSULATION," 16 C.F.R. 460 *et seq.*, regarding the R-Value of
28 the insulation installed in the attics of its manufactured homes

1 was unlawful, unfair or fraudulent under California Business
2 and Professions Code § 17200, *et seq.*;

3 d. Whether, by providing manufactured homes that had a lower R-
4 Value than was represented, Fleetwood violated the CLRA;

5 e. Whether, by providing manufactured homes that had a lower R-
6 Value than was represented, Fleetwood breached the contracts,
7 agreements, and/or express and implied warranties with regard
8 to Plaintiffs and the Class; and,

9 f. Whether Plaintiffs and other members of the Class have been
10 injured, damage or suffered irreparable harm and, if so, the
11 extent of their losses or harm.

12 55. Plaintiffs' claims as representatives of the Class are typical of the
13 claims of the Class. Plaintiffs will fairly and adequately protect the interests of the
14 Class, and have retained attorneys experienced in class and complex litigation as
15 their counsel who have been repeatedly appointed as adequate counsel in other
16 class actions.

17 56. The prosecution of individual actions by Class members would create
18 the risk of: (1) inconsistent or varying adjudications with respect to individual
19 members of the Class that would establish incompatible standards of conduct for
20 Fleetwood; and (2) adjudications with respect to individual members of the Class
21 that would, as a practical matter, be dispositive of the interests of the other
22 members not parties to the adjudications or substantially impair or impede their
23 ability to protect their interests.

24 57. Fleetwood has acted or refused to act on grounds generally applicable
25 to the Class, thereby making appropriate final injunctive relief or corresponding
26 declaratory relief with respect to the R-Value of the insulation included in the Class
27 members' manufactured homes.

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1 and Professions Code §17500, *et seq.* in that such promotional materials are
2 intended as inducements to purchase manufactured homes and are statements
3 disseminated by Fleetwood to Plaintiffs and the Class or intended to reach members
4 of the Class. Fleetwood knew, or in the exercise of reasonable care should have
5 known, that these statements were misleading and deceptive for the reasons set
6 forth above.

7 62. Fleetwood has prepared and distributed both within and emanating
8 from the State of California via the Internet, product fact sheets, data plates,
9 insulation labeling, product packaging, commercial advertisements and other
10 promotional materials, statements that falsely advertise the R-Value of the
11 insulation used and installed in these manufactured homes. Consumers, including
12 Plaintiffs and the Class, are among the intended targets of such representations.

13 63. The above acts of Fleetwood, in disseminating said misleading and
14 deceptive statements to consumers, including Plaintiffs and members of the Class,
15 were or are likely to deceive Plaintiffs and other members of the Class by
16 misrepresenting and failing to disclose material facts regarding the R-Value of the
17 insulation of its manufactured homes, all in violation of the “misleading prong” of
18 California Business and Professions Code § 17500.

19 64. As a result of the above violations of the misleading prong of Business
20 and Professions Code § 17500, *et seq.*, plaintiffs and Class members have lost
21 money or property as set forth above, and Fleetwood has been unjustly enriched at
22 the expense of Plaintiffs and the other members of the Class. Plaintiffs and the
23 Class, pursuant to Business and Professions Code § 17535, are entitled to an order
24 of this Court enjoining such future conduct on the part of Fleetwood, and such other
25 orders and judgments that may be necessary to provide for complete equitable
26 monetary relief by disgorging Fleetwood’s ill-gotten gains and/or restoring to any
27 person in interest some or all of the money paid for a Fleetwood manufactured

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1 home as a result of Fleetwood's wrongful conduct, including the monies Fleetwood
2 saved as a result of its wrongful acts and practices detailed herein.

3 65. WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **SECOND CAUSE OF ACTION**

5 (Business and Professions Code § 17500, *et seq.* – Untrue Advertising)

6 66. Plaintiffs repeat each and every allegation contained in the paragraphs
7 above and incorporate such allegations by reference therein.

8 67. Plaintiffs assert this cause of action for violations of California
9 Business and Professions Code § 17500, *et seq.* for untrue advertising against
10 Fleetwood.

11 68. At all material times, Fleetwood has offered for sale manufactured
12 homes containing insulation with an R-Value substantially less than is represented
13 to Plaintiffs and other members of the Class by the use of, *inter alia*, required home
14 insulation labels, fact sheets, data plates, the Internet, product packaging,
15 commercial advertisements and other promotional materials. These materials
16 misrepresented the actual R-Value of the insulation used in these homes. Said
17 advertisements and inducements were made or created within or emanated from the
18 State of California and come within the definition of advertising as contained in
19 Business and Professions Code §17500, *et seq.* in that such promotional materials
20 are intended as inducements to purchase Fleetwood brand manufactured homes are
21 statements disseminated by Fleetwood to Plaintiffs and the Class or are intended to
22 reach members of the Class. Fleetwood knew, or in the exercise of reasonable care
23 should have been known, that these statements were untrue.

24 69. Fleetwood has engaged in a pattern disseminating untrue advertising
25 and marketing regarding the R-Value of the insulation installed in its manufactured
26 homes via, *inter alia*, home insulation labels, fact sheets, the Internet, its product
27 packaging, commercial advertisements and other promotional materials, either in or
28 emanating from the State of California.

1 75. Such acts and practices of Fleetwood as described above, and each of
2 them, constitute unlawful business acts and practices.

3 76. Fleetwood manufactured, marketed, advertised, distributed and sold
4 manufactured homes in violation of the relevant FTC regulations detailed above
5 regarding the disclosure of the R-Value of the insulation included in a home that is
6 for sale, including the R-Value Rules.

7 77. Fleetwood materially misstated, misrepresented or failed to disclose
8 material facts regarding the relevant R-Value of the insulation included and
9 installed in its manufactured homes, in violation of promulgated FTC rules.

10 78. The business practices alleged above are unlawful under The Federal
11 Trade Commission Act (FTCA) § 5, which forbids deceptive advertising. They are
12 also unlawful pursuant to FTC regulations promulgated and in effect regarding the
13 disclosure and advertising of the R-Value of home insulation, including the R-
14 Value Rules. *See* 16 C.F.R. § 460, *et seq.*

15 79. The business practices alleged above are unlawful under California's
16 Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"), which
17 also forbids deceptive advertising and a host of other practices, as set forth in detail
18 herein.

19 80. The business practices alleged above are unlawful under §17200, *et*
20 *seq.* by virtue of violating Bus. & Prof. Code §17500, *et seq.*, which forbids untrue,
21 deceptive and misleading advertising.

22 81. The business practices alleged above are also unlawful as a breach of
23 an express warranty under California Commercial Code § 2313; Breach of implied
24 warranty of fitness for a particular purpose under California Commercial Code §
25 2315 and, breach of implied warranty of merchantability under California
26 Commercial Code § 2314. Plaintiffs reserve the right to identify additional
27 violations of law as later discovered.

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1 buying a product they would not have purchased absent Fleetwood's unfair
2 advertising, labeling, data plates and marketing materials or by paying more than
3 they would have paid for the unfairly advertised product had the true facts been
4 disclosed or not affirmatively represented.

5 88. There is no benefit to consumers or competition by falsely advertising
6 and misrepresenting the R-Value of insulation included and installed in a
7 manufactured home. Indeed, the harm to consumers and competition is substantial.

8 89. Plaintiffs and other members of the Class who purchased the
9 manufactured homes in question made by Fleetwood had no way of reasonably
10 knowing that the insulation in the home they bought did not have the advertised R-
11 Value. Thus, they could not have reasonably avoided the injury each of them
12 suffered because neither the packaging nor the other promotional materials included
13 any statement disclosing the material facts at issue herein, and in fact made material
14 misstatements to the contrary.

15 90. The gravity of the consequences of Fleetwood's conduct as described
16 above outweighs any justification, motive or reason therefore particularly
17 considering the available legal alternatives that exist in the marketplace, and is
18 immoral, unethical, unscrupulous, offends established public policy or is
19 substantially injurious to Plaintiffs and other members of the Class.

20 91. As a result of the above violations of the unfair prong of Business and
21 Professions Code § 17200, *et seq.*, Plaintiffs and Class members have lost money or
22 property as set forth above, and Fleetwood has been unjustly enriched at the
23 expense of Plaintiffs and the other members of the Class. Plaintiffs and the Class,
24 pursuant to Business and Professions Code § 17203, are entitled to an order of this
25 court enjoining such future conduct on the part of Fleetwood, and such other orders
26 and judgments that may be necessary to provide for complete equitable monetary
27 relief by disgorging Fleetwood's ill-gotten gains and/or restoring to any person in
28 interest some or all of the money paid for a Fleetwood manufactured home as a

1 result of Fleetwood's wrongful conduct, including the monies Fleetwood saved as a
2 result of its wrongful acts and practices detailed herein.

3 92. WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **FIFTH CAUSE OF ACTION**

5 (Business and Professions Code § 17200, *et seq.* – Fraudulent Business Acts and
6 Practices)

7 93. Plaintiffs repeat each and every allegation contained in the paragraphs
8 above and incorporate such allegations by reference herein.

9 94. Such acts and practices of Fleetwood as described above, and each of
10 them, constitute fraudulent business practices under California Business and
11 Professions Code sections § 17200, *et seq.*

12 95. As more fully described above, misrepresenting the R-value of the
13 insulation is likely to deceive reasonable manufactured home purchasers. Indeed,
14 the FTC has adopted a set of rules regarding R-value disclosures based on its
15 findings that consumers were being misled by the manner in which R-values were
16 being disclosed. Plaintiffs and other members of the Class were or likely to be
17 deceived regarding the R-Value of the insulation in their manufactured homes.

18 96. Such fraudulent business acts and practices caused Plaintiffs and
19 members of the Class to purchase a manufactured home they would not have
20 otherwise purchased or to pay more than they would have for the manufactured
21 home had they known the true R-Value of the insulation.

22 97. As a result of the above violations of the fraudulent prong of Business
23 and Professions Code § 17200, *et seq.*, plaintiffs and Class members have lost
24 money or property as set forth above, and Fleetwood has been unjustly enriched at
25 the expense of Plaintiffs and the other members of the Class. Plaintiffs and the
26 Class, pursuant to Business and Professions Code § 17203, are entitled to an order
27 of this court enjoining such future conduct on the part of Fleetwood, and such other
28 orders and judgments that may be necessary to provide for complete equitable

1 monetary relief by disgorging Fleetwood's ill-gotten gains and/or restoring to any
2 person in interest some or all of the money paid for a Fleetwood manufactured
3 home as a result of Fleetwood's wrongful conduct, including the monies Fleetwood
4 saved as a result of its wrongful acts and practices detailed herein.

5 SIXTH CAUSE OF ACTION

6 (Consumers Legal Remedies Act -- For Injunctive Relief)

7 98. Plaintiffs repeat each and every allegation contained in the paragraphs
8 above and incorporate such allegations by reference herein.

9 99. This cause of action is brought by Plaintiffs, on behalf of themselves
10 and the Class, pursuant to the Consumers Legal Remedies Act, Cal. Civ. Code
11 §§1750, *et seq.*

12 100. The policies, acts and practices heretofore described were either
13 intended to or did result in the sale of the manufactured homes in question to the
14 Plaintiffs and the Class members. Fleetwood's actions violated and continue to
15 violate the Act in at least the following respects:

16 101. In violation of Cal. Civ. Code § 1770(a)(5), Fleetwood's acts and
17 practices constitute representations that the services in question have
18 characteristics, uses, and benefits which they do not have;

19 102. In violation of Cal. Civ. Code § 1770(a)(7), Fleetwood's acts and
20 practices constitute representations that the services in question are of a particular
21 standard, quality or grade, when they are of another, and

22 103. In violation of Cal. Civ. Code § 1770(a)(9), Fleetwood's acts and
23 practices constitute advertising services with the intent not to sell them as
24 advertised.

25 104. In violation of Cal. Civ. Code § 1770(a)(16), Fleetwood's acts and
26 practices constitute a representation that the subject of a transaction has been
27 supplied in accordance with a previous representation when it has not. [Note – may
28 want to consider (2) and (3) re certification depending on facts; (14) representing

1 transaction confer rights prohibited by law in terms of re-selling with certain R-
2 value that is not correct; (19) if there is a particular contract provision need to
3 challenge as unconscionable].

4 105. Pursuant to Cal. Civ. Code § 1782, in conjunction with the filing of
5 this action, Plaintiffs have notified Fleetwood in writing of the particular violations
6 of Cal. Civ. Code § 1770 and have demanded that Fleetwood cure the problems
7 associated with the misrepresentations detailed above, which acts are in violation of
8 Cal. Civ. Code § 1770, as to both Plaintiffs and the Class members.

9 106. If Fleetwood fails to fully comply with Plaintiffs' demand, pursuant to
10 Cal. Civ. Code § 1782, Plaintiffs will request the jury award actual, punitive and/or
11 treble damages as appropriate, damages of up to \$5,000 per senior citizen or
12 disabled person, and interest thereon. In addition, Plaintiffs seek and are entitled to,
13 pursuant to Cal. Civ. Code § 1780(a)(2), an order enjoining the above-described
14 wrongful acts and practices of Fleetwood, plus equitable monetary relief, costs and
15 attorneys' fees, and any other relief the Court deems proper.

16 107. WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray
17 for relief as set forth below.

18 **SEVENTH CAUSE OF ACTION**

19 (Breach of Express Warranty)

20 108. Plaintiffs repeat each and every allegation contained in the paragraphs
21 above and incorporate such allegations by reference therein.

22 109. Fleetwood expressly warranted by specific words or actions to
23 plaintiffs and Class members, both through the issuance of its written warranty
24 accompanying all its manufactured homes and/or its advertising stressing the
25 excellence and reliability of its products in general and the R-Value of its
26 manufactured homes in particular that the manufactured homes sold to Plaintiffs
27 and the Class were free from material defects in materials and workmanship.

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1 110. The manufactured homes made by Fleetwood, at the time of sale and
2 when delivered to plaintiffs and Class members, did not conform to such warranties
3 in that they were not free from defects in materials or workmanship due to the
4 manner in which the installation in such homes was installed.

5 111. Fleetwood has failed or refused to correct the defects in the
6 manufactured homes and/or the warranty provided by Fleetwood has failed in its
7 essential purpose, causing Plaintiffs and the Class to suffer injury and damages.

8 112. Fleetwood has received notice of these defects and the accompanying
9 breach of warranty, and Fleetwood has been given the opportunity to cure or
10 attempt to cure these defects.

11 113. Fleetwood has failed or refused to correct this defect in the Class
12 members' homes despite being aware of this defect by having received complaints
13 from Class members that their homes were difficult to heat and cool, and having
14 had a reasonable opportunity to do so.

15 114. The presence of this defect and the resulting failure of the
16 manufactured homes in question to have the R-Values that were warranted and
17 represented by Fleetwood was a substantial factor in causing the damages suffered
18 by Plaintiffs and members of the Class.

19 115. Fleetwood actively suppressed these material facts about the
20 insulation, and Plaintiffs, and the Class, were ill-equipped to discover the breach of
21 warranty by Fleetwood.

22 116. As a result of this breach of warranty, Plaintiffs and the Class members
23 have suffered both direct and incidental damages as described herein.

24 117. WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray
25 for relief as set forth below.

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1 142. For an award of attorney fees pursuant to, *inter alia*, Code of Civil
2 Procedure § 1021.5 and Civil Code Section 1780;

3 143. For costs of suit herein incurred;

4 144. Pre and post-judgment interest; and/or

5 145. For such other and further relief as this court deems appropriate or
6 which is allowed for in law or equity.

7 DATED: September 17, 2007

ROSNER & MANSFIELD LLP

8
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