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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ASHTON WOODS HOLDINGS L.L.C.;
BEAZER HOMES HOLDINGS CORP.; D.R.
HORTON LOS ANGELES HOLDING
COMPANY, INC.; HOVNANIAN
ENTERPRISES, INC.; KB HOME;
MERITAGE HOMES CORPORATION.; M/I
HOMES, INC.; PULTE HOME
CORPORATION; THE DREES COMPANY;
THE RYLAND GROUP, INC.; TOLL
BROTHERS, INC.; TRI POINTE HOMES,
INC.,

Plaintiffs,

vs.

USG CORPORATION; NEW NGC, INC.;
LAFARGE NORTH AMERICA, INC.;
CONTINENTAL BUILDING PRODUCTS,
INC.; CERTAINTEED CORPORATION;
AMERICAN GYPSUM COMPANY LLC;
TIN INC., d/b/a/ TEMPLE-INLAND, INC.;
PACIFIC COAST BUILDING PRODUCTS,
INC.,

Defendants.

Case No.: 3:15-cv-01247

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

COMPLAINT

Plaintiffs Ashton Woods Holdings L.L.C., Beazer Homes Holdings Corp., D.R. Horton Los Angeles Holding Company, Inc., Hovnanian Enterprises, Inc., KB Home, Meritage Homes Corporation, M/I Homes, Inc., Pulte Home Corporation, The Drees Company, The Ryland Group, Inc., Toll Brothers, Inc., and TRI Pointe Homes, Inc. (collectively “Plaintiffs”), by and through their attorneys, bring this Complaint (“Complaint”) against Defendants USG Corporation (including its wholly-owned subsidiaries, United States Gypsum Company and L&W Supply Corporation), New NGC, Inc., LaFarge North America Inc., Continental Building Products, Inc., CertainTeed Corporation, American Gypsum Company LLC, TIN Inc., d/b/a Temple-Inland Inc., and Pacific Coast Building Products, Inc. (collectively “Defendants”), on personal knowledge as to each Plaintiff’s own activities, and on information and belief as to the activities of others. Defendants, who manufacture, sell, and distribute gypsum wallboard (“wallboard”) in the United States conspired to and did illegally raise, fix, maintain, and/or stabilize the price of wallboard in contravention of federal and state laws from at least September 2011 to the present.

NATURE OF THE ACTION

1. This action alleges that Defendants – who collectively control the U.S. market for wallboard, agreed, combined, and/or conspired among themselves to raise, inflate, fix, maintain, and/or stabilize the price of gypsum wallboard from at least September 2011 to the present (the “Conspiracy Period”).

2. Together, Plaintiffs are among the United States’ largest homebuilders. Plaintiffs purchase and use large quantities of wallboard, including wallboard manufactured by Defendants, for use in homebuilding projects nationwide.

3. Since the beginning of 2012, when Defendants’ collusive price increases took effect, the U.S. homebuilding industry has collectively spent more than \$1.5 billion on wallboard materials. Of that total, the Plaintiffs identified in this Complaint have purchased in excess of \$500 million in wallboard materials.

4. Throughout the Conspiracy Period, Plaintiffs maintained in each state where they built and sold homes and other properties—including in Alabama, Arizona, California, Colorado,

1 Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois,
2 Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi,
3 Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma,
4 Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia,
5 Washington, West Virginia, and Wisconsin—inventories of gypsum wallboard manufactured by
6 Defendants that they purchased at supra-competitive prices for use in their building projects.

7 5. During the Conspiracy Period, the conspiracy affected hundreds of millions of
8 dollars of commerce in California and throughout the United States. Defendants agreed to
9 eliminate competition and fix the prices of gypsum wallboard that they knew would be sold in
10 and used throughout California and across the United States.

11 6. Because Defendants are horizontal competitors, their conspiracy is a *per se*
12 violation of Section 1 of the Sherman Act of 1890, 15 U.S.C. § 1 (“Sherman Act”), and violates
13 the applicable state laws referenced herein. Defendants are jointly and severally liable for all of
14 the acts and conduct of all members of the conspiracy, and each participant in the wrongful acts is
15 responsible as a joint tortfeasor for all damages ensuing from the wrong, regardless of the degree
16 of its activity.

17 7. Gypsum wallboard—also commonly known as drywall, sheetrock, or
18 plasterboard—is the basic material used to form walls and ceilings in over ninety percent of all
19 new residential and commercial structures. On average, a new home built in the United States
20 contains more than 7.31 metric tons of gypsum, wallboard’s primary component. The major
21 manufacturers of wallboard have aggregate, annual domestic sales of more than \$3 billion.

22 8. Gypsum wallboard has no competitively significant substitutes due to its unique
23 properties, including being easily and safely installed and resisting fire at the lowest available
24 cost. It is a commodity product, meaning that consumers freely substitute gypsum wallboard
25 manufactured by one Defendant for that manufactured by another and differentiate between
26 manufacturers primarily based on cost. The gypsum wallboard market bears many indicia of a
27 market amenable to collusion, as it features (1) high barriers to entry; (2) price inelasticity; (3) a
28 high degree of concentration; and (4) easy opportunities to conspire.

1 9. Starting as least as early as September 2011 and continuing through to the present
2 day, Defendants and potentially others unnamed herein agreed and conspired amongst themselves
3 to raise, inflate, fix, stabilize, and/or maintain the prices at which they sold gypsum wallboard in
4 the United States, beginning with large and coordinated price increases becoming effective on or
5 about January 1 or 2, 2012. Defendants announced these coordinated increases during late
6 September through November 2011.

7 10. Contemporaneously with their price increase announcements, Defendants
8 abolished the long-standing competitive pricing practice of using “job quotes” to establish prices
9 for gypsum wallboard their customers intended to use in specific projects.¹ For decades
10 beforehand, using job quotes had been standard industry practice in the gypsum wallboard
11 industry. Job quotes specified set pricing for gypsum wallboard for the life of a particular
12 construction project (which could extend for months or even years), regardless of price
13 fluctuations in the gypsum industry. The simultaneous and sudden elimination of the job quote
14 practice facilitated Defendants’ ability to monitor each other and insure collective compliance
15 with their price-fixing scheme, ushering in a period of rising prices for gypsum wallboard and
16 ensuring that customers could not avoid the immediate impact of those rising prices. Further,
17 these simultaneous and sudden letters regarding price increases and the cessation of job quotes in
18 and of themselves constituted additional discussions among Defendants concerning the
19 conspiracy, and monitoring compliance therewith. Each Defendant knew that it would learn from
20 its customers of the letters sent by each of the other Defendants, and would accordingly know its
21 competitors had followed through on their pricing agreements.

22 11. Coordination amongst Defendants was necessary in order to implement this
23 dramatic change in prices and end the prevailing industry practice of providing job quotes.
24 Without knowing that the other major wallboard manufacturers would also raise prices
25 dramatically, while eliminating job quotes, any single Defendant doing so would have attracted

26 _____
27 ¹ Before September 2011, the exact amount of Defendants’ wallboard sales covered by job
28 quotes is unknown to Plaintiffs, but Defendants may have had as much as 40 percent of their sales
subject to job quotes prior to their actions to curtail this practice.

1 an overwhelmingly negative reaction from consumers, resulting in loss of market share and hence
2 revenue to its competitors. This fear would have been particularly applicable to Defendant
3 American Gypsum, the first Defendant to send any of the price increase letters. It is implausible
4 that American Gypsum—a smaller player in the gypsum wallboard market—would have taken
5 the risk of increasing prices and eliminating job quotes without assurance that its competitors
6 would follow suit. Previously, one of the two largest gypsum wallboard manufacturers
7 (Defendant USG or Defendant National Gypsum) took the lead in announcing price increases.

8 12. Defendants implemented the 2012 price increases despite little prospect for
9 substantial increases in construction activity and despite substantial overcapacity for producing
10 gypsum wallboard. This combination of factors makes it highly implausible that any Defendant
11 would act independently in raising prices substantially and eliminating job quotes. Moreover,
12 Defendants successfully maintained the inflated pricing throughout 2012, which is particularly
13 revealing given the traditional experience in the industry, where prices historically changed
14 multiple times in any given year.

15 13. Defendants facilitated and implemented their conspiracy throughout the United
16 States, including through their offices and operations in California, Illinois, North Carolina,
17 Virginia, and nationwide. Numerous meetings in the gypsum wallboard and building supply
18 industries also provided easy and convenient opportunities for Defendants to collude to hatch and
19 then maintain their anticompetitive scheme. For example, Defendants participated in multiple
20 trade association meetings, including meetings of the Gypsum Association and the Association of
21 the Wall & Ceiling Industry (“AWCI”).

22 14. Notably, Defendants attended an AWCI Industry Executives’ Conference and
23 Committee Meeting in Coeur d’Alene, Idaho from September 13–16, 2011, where topics such as
24 how “effective control systems are critical to maintaining margins,” how “changes in quoting
25 policies are affecting the way contractors bid and estimate jobs, and the way suppliers and
26 distributors stock inventory,” as well as “the reason for the changes to quoting policies” were
27 discussed. Just days after this meeting, Defendants announced their price increases and ceased
28 the job quotes policy. In subsequent years, Defendants attended AWCI Industry Executives’

1 Conference and Committee Meetings in Florida (2012), California (2013), and Maryland (2014),
2 as detailed herein. Throughout this period, Defendants communicated by email and other means,
3 including communications among and with Defendant employees located throughout the United
4 States, including those in California, Illinois, North Carolina, and Virginia.

5 15. Defendants' changes in practice beginning in the fall of 2011 constituted an abrupt
6 and dramatic disruption in how they had operated previously, the sort of sharp change that no
7 Defendant would have attempted absent collusion. Defendants' price increase announcement
8 letters contained remarkably similar language and provided for an unusually long lead time
9 between the date of the letter and the effective date of the policy change—two and one half to
10 over three months—when, previously, 30 to 45 days had been the industry standard.

11 16. Each Defendant's announcement letter also indicated that the manufacturer
12 intended to implement the price increase on the same date as each other Defendant—the
13 beginning of the next calendar year—whereas, historically, manufacturers implemented pricing
14 increases on divergent and unique dates based on their individual business judgment. Further, the
15 announcement letters each indicated that the increased price would remain in effect for the entire
16 following calendar year when, previously, announcement letters contained no pre-set term of
17 effectiveness and, as a practical matter, remained in effect for around 90 days.

18 17. In the summer and fall of 2012, Defendants again announced price increases
19 within a short time of each other, each of which was to take effect on January 1, 2013. Again,
20 these price increases were for markedly similar amounts. And again, these price increases
21 excluded the possibility of independent action based on historical experience in the industry, for
22 they were sent several months in advance of the increase and were intended to remain in effect for
23 the entire next calendar year.

24 18. In the fall of 2011, and then again in the fall of 2012, Defendants restricted the
25 supply of gypsum wallboard any individual customer could purchase. Defendants did so to
26 facilitate their collective ability to raise and adhere to higher prices. Absent the supply restriction,
27 customers with the ability to store inventory would have stockpiled supplies of cheaper gypsum
28 wallboard in the interim between the announcement date and the effective date of the price

1 increases, as was the normal practice in the industry. Defendants restricted supply even though
2 the industry featured a massive amount of unused capacity, which was as high as fifty percent.
3 No Defendant would restrict supply without assurances that its competitors would do the same, as
4 customers otherwise would have simply turned to competing suppliers to meet their needs,
5 leaving the Defendant who tried to restrict supply with reduced sales and profits.

6 19. Another coordinated price increase was announced in 2013, and then again in
7 2014. Similar to the previous two price increases, each Defendant's increase took effect on
8 January 1 of the following year and was to remain in effect for the entire calendar year.

9 20. Because of Defendants' collusion, Plaintiffs paid artificially higher prices for
10 gypsum wallboard than they would have paid in a competitive market.

11 **JURISDICTION AND VENUE**

12 21. Plaintiffs bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to
13 obtain equitable and injunctive relief for violations of Section 1 of the Sherman Act (15 U.S.C.
14 §1). This Court has subject matter jurisdiction under 28 U.S.C. § 1331 for claims that arise under
15 federal law and under 28 U.S.C. § 1337 for federal antitrust claims in particular. Plaintiffs also
16 assert claims for damages, to seek restitution, and secure other relief under state antitrust, unfair
17 competition, consumer protection, and unjust enrichment laws.

18 22. The Court additionally has subject matter jurisdiction over these state law claims
19 under 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form
20 part of the same case or controversy.

21 23. Under 15 U.S.C. § 15(a) and 22 and 28 U.S.C. §§ 1391(b), (c), and (d), this District
22 has venue over the action, for Defendants resided, transacted business, were found, and/or had
23 agents in this District, and this District was the situs of a substantial portion of the affected
24 interstate trade and commerce discussed herein during the Conspiracy Period.

25 24. Each Defendant is subject to personal jurisdiction before this Court because,
26 among other reasons, each of them (a) transacted business, (b) sold and/or distributed gypsum
27 wallboard, (c) maintained substantial contacts, and/or (d) engaged in an illegal and
28 anticompetitive concerted action with respect to gypsum wallboard throughout the United States

1 and in this District in particular. The jointly agreed upon scheme had the intended effect of
 2 injuring persons residing in, located in, and/or doing business throughout the United States,
 3 including in the Northern District of California. By artificially establishing supra-competitive
 4 prices, the scheme restrained trade unreasonably and negatively affected the market for gypsum
 5 wallboard, harming persons throughout the United States and this District who purchased gypsum
 6 wallboard, including Plaintiffs. Each Defendant transacted business, sold and distributed
 7 wallboard, maintained substantial contacts, and/or committed overt acts in furtherance of their
 8 illegal scheme and price-fixing conspiracy throughout the United States and in this District.

9 **INTRADISTRICT ASSIGNMENT**

10 25. Pursuant to Local Rules 3-5(b) and 3-2(c), this action may be assigned to any
 11 Division of the Northern District of California because Defendants conducted significant business
 12 and operations throughout the Northern District of California.

13 **INTERSTATE TRADE AND COMMERCE**

14 26. Defendants' activities, as described herein, were within the flow of and had a
 15 substantial effect on, the interstate commerce of the United States, including in this District, as
 16 Defendants intended.

17 27. Defendants manufactured, distributed, and sold gypsum wallboard in an
 18 uninterrupted and continuous flow of interstate commerce among the United States and its
 19 territories. Defendants' anticompetitive scheme consequently inflicted a direct, substantial, and
 20 reasonably foreseeable effect on interstate commerce.

21 **PARTIES AND OTHER ACTORS**

22 **Plaintiffs**

23 28. Plaintiff Ashton Woods Holdings L.L.C. ("Ashton Woods") is a Georgia limited
 24 liability company with its principal place of business in Roswell, Georgia. Ashton Woods
 25 Holdings L.L.C. is the exclusive owner by express assignment of all antitrust claims arising from
 26 the injuries caused by Defendants described herein to all Ashton Woods entities, subsidiaries, and
 27 affiliates. Ashton Woods purchased wallboard directly from L&W Supply Corporation, a
 28

1 wholly-owned subsidiary of Defendant USG Corporation, and purchased wallboard indirectly
2 from one or more of the Defendants during the Conspiracy Period. Ashton Woods purchased
3 such wallboard for use in homes built in at least the following states: Arizona, Florida, Georgia,
4 North Carolina, South Carolina, and Texas. As a result of the misconduct alleged herein, Ashton
5 Woods has suffered injury in that it has paid more for gypsum wallboard than it would have paid
6 in the absence of Defendants' misconduct and is continuing to be overcharged for gypsum
7 wallboard that it buys.

8 29. Plaintiff Beazer Homes Holdings Corp. ("Beazer") is a Delaware corporation with
9 its principal place of business in Atlanta, Georgia. Beazer purchased wallboard indirectly from
10 one or more of the Defendants during the Conspiracy Period. Beazer purchased such wallboard
11 for use in homes built in at least the following states: Arizona, California, Delaware, Florida,
12 Georgia, Indiana, Maryland, Nevada, New Jersey, New York, North Carolina, Pennsylvania,
13 South Carolina, Tennessee, Texas, and Virginia. As a result of the misconduct alleged herein,
14 Beazer has suffered injury in that it has paid more for gypsum wallboard than it would have paid
15 in the absence of Defendants' misconduct and is continuing to be overcharged for gypsum
16 wallboard that it buys.

17 30. Plaintiff D.R. Horton Los Angeles Holding Company, Inc. ("D.R. Horton") is a
18 California corporation with its principal place of business in Fort Worth, Texas. D.R. Horton Los
19 Angeles Holding Company, Inc. is the exclusive owner by express assignment of all antitrust
20 claims arising from the injuries caused by Defendants described herein caused to all D.R. Horton
21 entities, subsidiaries, and affiliates. D.R. Horton purchased wallboard directly from L&W Supply
22 Corporation, a wholly-owned subsidiary of Defendant USG Corporation, and purchased
23 wallboard indirectly from one or more of the Defendants during the Conspiracy Period. D.R.
24 Horton purchased such wallboard for use in homes built in at least the following states: Alabama,
25 Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana,
26 Louisiana, Maryland, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, North Carolina,
27 Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia,
28 Washington, and Wisconsin. As a result of the misconduct alleged herein, D.R. Horton has

1 suffered injury in that it has paid more for gypsum wallboard than it would have paid in the
2 absence of Defendants' misconduct and is continuing to be overcharged for gypsum wallboard
3 that it buys.

4 31. Plaintiff Hovnanian Enterprises, Inc. ("Hovnanian") is a Delaware corporation
5 with its principal place of business in Red Bank, New Jersey. Hovnanian is the exclusive owner
6 of all antitrust claims arising from the injuries described herein caused to all subsidiaries of
7 Hovnanian or affiliates that are owned or controlled by Hovnanian. Hovnanian purchased
8 wallboard indirectly from one or more of the Defendants during the Conspiracy Period.
9 Hovnanian purchased such wallboard for use in homes built in at least the following states:
10 Arizona, California, Delaware, the District of Columbia, Florida, Georgia, Illinois, Maryland,
11 Minnesota, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia,
12 and West Virginia. As a result of the misconduct alleged herein, Hovnanian has suffered injury
13 in that it has paid more for gypsum wallboard than it would have paid in the absence of
14 Defendants' misconduct and is continuing to be overcharged for gypsum wallboard that it buys.

15 32. Plaintiff KB Home ("KB Home") is a Delaware corporation with its principal
16 place of business in Los Angeles, California. KB Home purchased wallboard indirectly from one
17 or more of the Defendants during the Conspiracy Period. KB Home purchased such wallboard
18 for use in homes built in at least the following states: Arizona, California, Colorado, Florida,
19 Maryland, Nevada, New Mexico, North Carolina, Texas, and Virginia. As a result of the
20 misconduct alleged herein, KB Home has suffered injury in that it has paid more for gypsum
21 wallboard than it would have paid in the absence of Defendants' misconduct and is continuing to
22 be overcharged for gypsum wallboard that it buys.

23 33. Plaintiff Meritage Homes Corporation ("Meritage Homes") is a Maryland
24 corporation with its principal place of business in Scottsdale, Arizona. Meritage Homes
25 purchased wallboard indirectly from one or more of the Defendants during the Conspiracy Period.
26 Meritage Homes purchased such wallboard for use in homes built in at least the following states:
27 Arizona, California, Colorado, Florida, Georgia, North Carolina, South Carolina, Tennessee, and
28 Texas. As a result of the misconduct alleged herein, Meritage Homes has suffered injury in that it

1 has paid more for gypsum wallboard than it would have paid in the absence of Defendants'
2 misconduct and is continuing to be overcharged for gypsum wallboard that it buys.

3 34. Plaintiff M/I Homes, Inc. ("M/I Homes") is an Ohio corporation with its principal
4 place of business in Columbus, Ohio. M/I Homes, Inc. is the exclusive owner by express
5 assignment of all antitrust claims arising from the injuries caused by Defendants described herein
6 caused to all M/I Homes entities, subsidiaries, and affiliates. M/I Homes purchased wallboard
7 indirectly from one or more of the Defendants during the Conspiracy Period. M/I Homes
8 purchased such wallboard for use in homes built in at least the following states: Florida, Illinois,
9 Indiana, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Texas, and Virginia. As a
10 result of the misconduct alleged herein, M/I Homes has suffered injury in that it has already paid
11 more for gypsum wallboard than it would have paid in the absence of Defendants' misconduct
12 and is continuing to be overcharged for gypsum wallboard that it buys.

13 35. Plaintiff Pulte Home Corporation ("Pulte Homes") is a Michigan corporation with
14 its principal place of business in Atlanta, Georgia. Pulte Homes purchased wallboard indirectly
15 from one or more of the Defendants during the Conspiracy Period. Pulte Homes purchased such
16 wallboard for use in homes built in at least the following states: Arizona, California, Florida,
17 Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri,
18 Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode
19 Island, South Carolina, Tennessee, Texas, Virginia, and Washington. As a result of the
20 misconduct alleged herein, Pulte Homes has suffered injury in that it has paid more for gypsum
21 wallboard than it would have paid in the absence of Defendants' misconduct and is continuing to
22 be overcharged for gypsum wallboard that it buys.

23 36. Plaintiff The Drees Company ("Drees") is a Kentucky corporation with its
24 principal place of business in Fort Mitchell, Kentucky. Drees purchased wallboard indirectly
25 from one or more of the Defendants during the Conspiracy Period. Drees purchased such
26 wallboard for use in homes build in at least the following states: the District of Columbia, Florida,
27 Indiana, Kentucky, Maryland, North Carolina, Ohio, Tennessee, Texas, and Virginia. As a result
28 of the misconduct alleged herein, Drees has suffered injury in that it has paid more for gypsum

1 wallboard than it would have paid in the absence of Defendants' misconduct and is continuing to
2 be overcharged for gypsum wallboard that it buys.

3 37. Plaintiff The Ryland Group, Inc. ("Ryland Group") is a Maryland corporation with
4 its principal place of business in Westlake Village, California. Ryland Group purchased
5 wallboard indirectly from one or more of the Defendants during the Conspiracy Period. The
6 Ryland Group purchased such wallboard for use in homes built in at least the following states:
7 Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Maryland,
8 Minnesota, Nevada, New Jersey, North Carolina, Pennsylvania, South Carolina, Texas, and
9 Virginia. As a result of the misconduct alleged herein, Ryland Group has suffered injury in that it
10 has paid more for gypsum wallboard than it would have paid in the absence of Defendants'
11 misconduct and is continuing to be overcharged for gypsum wallboard that it buys.

12 38. Plaintiff Toll Brothers, Inc. ("Toll Brothers") is a Delaware corporation with its
13 principal place of business in Horsham, Pennsylvania. Toll Brothers is the exclusive owner by
14 express assignment of all antitrust claims arising from the injuries caused by Defendants
15 described herein to all Toll Brothers entities, subsidiaries, and affiliates. Toll Brothers purchased
16 wallboard indirectly from one or more of the Defendants during the Conspiracy Period. Toll
17 Brothers purchased such wallboard for use in homes built in at least the following states: Arizona,
18 California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Illinois,
19 Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North
20 Carolina, Pennsylvania, South Carolina, Texas, Virginia, and Washington. As a result of the
21 misconduct alleged herein, Toll Brothers has suffered injury in that it has paid more for gypsum
22 wallboard than it would have paid in the absence of Defendants' misconduct and is continuing to
23 be overcharged for gypsum wallboard that it buys.

24 39. Plaintiff TRI Pointe Homes, Inc. ("TRI Pointe") is a Delaware corporation with its
25 principal place of business in Irvine, California. TRI Pointe, through its wholly-owned entities,
26 Tri Pointe Contractors, L.P., The Quadrant Corporation, Winchester Homes, Inc., Maracay
27 Homes, L.L.C., Trendmaker Homes, Inc., Pardee Homes, and Pardee Homes of Nevada,
28 purchased wallboard indirectly from one or more of the Defendants during the Conspiracy Period

1 for use in homes built in at least the following states: Arizona, California, Colorado, Maryland,
 2 Nevada, Texas, Virginia, and Washington. As a result of the misconduct alleged herein, TRI
 3 Pointe has suffered injury in that it has paid more for gypsum wallboard than it would have paid
 4 in the absence of Defendants' misconduct and is continuing to be overcharged for gypsum
 5 wallboard that it buys.

6 **Defendants**

7 40. Defendant USG Corporation is a public corporation organized, existing, and doing
 8 business under the laws of the State of Delaware, with its headquarters in Chicago, Illinois.
 9 Through its wholly-owned subsidiaries, United States Gypsum Company and L&W Supply
 10 Corporation, USG Corporation is a leading manufacturer and distributor of gypsum wallboard.
 11 USG Corporation and its subsidiaries are referred to collectively as "USG." During the
 12 Conspiracy Period, USG manufactured and sold gypsum wallboard to buyers across the United
 13 States, including in at least the following states: Alabama, California, Florida, Iowa, Indiana,
 14 Maryland, Oklahoma, Oregon, Pennsylvania, Texas, Utah, and Virginia. In 2011, approximately
 15 25% of American gypsum wallboard sales were made by USG.

16 41. Defendant New NGC, Inc. ("National Gypsum") is a wholly-owned subsidiary of
 17 Delcor, Inc., which is referred to as National Gypsum Company, and is a privately-held
 18 corporation organized, existing, and doing business under the laws of the State of Delaware, with
 19 its headquarters in Charlotte, North Carolina. National Gypsum manufactured and distributed
 20 gypsum wallboard to buyers in the United States during the Conspiracy Period. National Gypsum
 21 operates a gypsum wallboard plant in Richmond, California (located within the Northern District
 22 of California) and maintains other gypsum wallboard plants in at least the following states:
 23 Arizona, Florida, Georgia, Iowa, Kansas, Maryland, Michigan, New Hampshire, New Jersey,
 24 North Carolina, and Texas. In 2011, approximately 23% of American gypsum wallboard sales
 25 were made by National Gypsum.

26 42. Defendant LaFarge North America Inc. ("LaFarge"), a wholly-owned subsidiary
 27 of LaFarge S.A., is a corporation organized, existing, and doing business under the laws of the
 28 State of Maryland, with its headquarters in Reston, Virginia. LaFarge manufactured and

1 distributed gypsum wallboard to buyers in the United States during the Conspiracy Period (until it
2 sold its gypsum operations/business in 2013). In 2011, approximately 8% of American gypsum
3 wallboard sales were made by LaFarge.

4 43. Defendant Continental Building Products, Inc. ("Continental") is a corporation
5 organized, existing, and doing business under the laws of the State of Delaware, with its
6 headquarters in Herndon, Virginia. Continental also maintains locations in Florida, Kentucky,
7 and New York. Continental was formed in 2013 when it acquired Defendant LaFarge's gypsum
8 operations/business. Continental has manufactured and distributed gypsum wallboard to buyers
9 in the United States since 2013 and throughout the rest of the Conspiracy Period.

10 44. Defendant CertainTeed Corporation ("CertainTeed"), a wholly-owned subsidiary
11 of Saint-Gobain Corp., is a corporation organized, existing, and doing business under the laws of
12 the State of Delaware, with its headquarters in Valley Forge, Pennsylvania. CertainTeed
13 maintains locations in numerous states, including gypsum wallboard plants in Arkansas,
14 California, Iowa, Kentucky, Massachusetts, Nevada, New Jersey, Washington, and West
15 Virginia. CertainTeed manufactured and distributed gypsum wallboard to buyers in the United
16 States during the Conspiracy Period. In 2011, approximately 13% of American gypsum
17 wallboard sales were made by CertainTeed.

18 45. Defendant American Gypsum Company LLC ("American Gypsum"), a wholly-
19 owned subsidiary of Eagle Materials, Inc. ("Eagle Materials"), is a corporation organized,
20 existing, and doing business under the laws of the State of Delaware, with its headquarters in
21 Dallas, Texas. American Gypsum manufactured and distributed gypsum wallboard to buyers in
22 the United States during the Conspiracy Period. In 2011, approximately 10% of American
23 gypsum wallboard sales were made by American Gypsum. Eagle Materials and American
24 Gypsum maintain wallboard distribution yards in California and wallboard plants in Colorado,
25 Oklahoma, New Mexico, and South Carolina.

26 46. Defendant TIN Inc., d/b/a Temple-Inland Inc. ("Temple-Inland"), a wholly-owned
27 subsidiary of International Paper Co., is a corporation organized, existing, and doing business
28 under the laws of the State of Delaware, with its headquarters in Austin, Texas. In 2013,

Georgia-Pacific acquired Temple-Inland's building products division (including its gypsum wallboard business). Temple-Inland manufactured and distributed gypsum wallboard to buyers in the United States during the Conspiracy Period until it was acquired in 2013. In 2011, approximately 7% of American gypsum wallboard sales were made by Temple-Inland.

47. Defendant Pacific Coast Building Products, Inc., a privately-held corporation organized, existing, and doing business under the laws of the State of California with its headquarters in Rancho Cordova, California, together with its wholly-owned subsidiaries, PABCO Building Products, LLC and PABCO Gypsum Company (collectively referred to herein as "PABCO"), manufactured and distributed gypsum wallboard to buyers in the United States during the Conspiracy Period. PABCO operates gypsum board manufacturing plants in Newark, California (located within this District) and Las Vegas, Nevada. In 2011, 4% of American gypsum wallboard sales were made by PABCO.

CO-CONSPIRATORS AND AGENTS

48. The acts taken by Defendants, as alleged herein, were authorized, ordered, and condoned by their respective parent companies and authorized, ordered, and performed by their officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of their business affairs.

49. Various other persons, corporations, or firms not named as Defendants herein have participated in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

FACTUAL ALLEGATIONS

A. Gypsum Wallboard

50. Gypsum is a very soft sulfate mineral composed of calcium sulfate dihydrate, with the chemical formula $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$, commonly extracted from mines in the United States and elsewhere or synthetically produced using residue from coal-burning plants. It is one of the most widely used minerals in the world and is mined in seventeen states and many other parts of the world.

51. Gypsum is extracted through mining or quarrying veins of ore that occur close to

1 the surface of the earth. Gypsum deposits lie in flat beds of typically about six to eight feet in
2 thickness, but sometimes of twenty to thirty feet. They are often inter-layered with limestone or
3 shale.

4 52. One hundred pounds of gypsum contains approximately twenty-one pounds of
5 chemically-combined water. To produce wallboard, gypsum must be partially dehydrated or
6 calcined. This involves crushing the raw gypsum into a powder, drying it, and heating it to 350
7 degrees Fahrenheit to remove the chemically-bound water. In 2010, the states where most
8 gypsum was calcined were Nevada, Iowa, and California.

9 53. Manufacturers create gypsum wallboard by sandwiching a core of wet gypsum
10 between two sheets of heavy paper. When the core sets and is dried in a large drying chamber,
11 the sandwich becomes rigid and strong enough for use as a building material. Manufacturers also
12 sometimes sandwich gypsum between fiberglass mats for use primarily in the exterior of
13 commercial buildings, but that product occupies a smaller niche market distinct from the gypsum
14 wallboard market and the uses for which gypsum wallboard is employed.

15 **B. Gypsum Wallboard's Use in Construction**

16 54. Production of gypsum wallboard consumes around 90% of gypsum mined in the
17 United States. Generally, contractors install wooden pieces of frame and workers then attach
18 gypsum wallboard to this frame with either screws or nails before seaming individual sheets of
19 gypsum wallboard together using a special drywall compound, leaving an even and flat surface.

20 55. Historically, roughly 50% of construction gypsum wallboard goes to new
21 residential construction, although that percentage is around 35% currently. The current
22 percentages of wallboard consumption are around 55% for home remodel and repair and 10% for
23 commercial applications. Further, over 90% of the new homes constructed in the United States
24 use gypsum wallboard. A typical American single-family home, newly constructed, contains
25 over 6144 square feet and 7.31 metric tons of gypsum wallboard.

26 56. Wallboard differs from products like plywood, hardboard, and fiberboard because
27 of the non-combustible core, primarily comprised of fire-resistant gypsum. It also differs from
28 glass-faced sheathing materials.

C. Gypsum Wallboard is a Commodity

57. According to the Gypsum Association, gypsum wallboard is “a family of sheet products consisting of a noncombustible core primarily of gypsum with a paper surfacing or facing.” Defendants’ gypsum wallboard products are functionally interchangeable. Gypsum wallboard made by one manufacturer does not differ significantly from that made by another, and builders and consumers can easily substitute one manufacturers’ gypsum wallboard for another’s. Once the installer removes the paper striping identifying the manufacturer of the wallboard as part of the installation process, neither an installer nor a customer could tell which manufacturer produced the wallboard in that building project.

58. Manufacturers sell gypsum wallboard in standardized dimensions: width, length, and thickness. The most commonly found thicknesses are 1/2 inch and 5/8 inch, while the most commonly produced height and length is 12 feet by 4 feet. 1/2 inch board is typically used for residential applications and 5/8 inch is typically used for commercial applications where fireproofing is needed. Generally, the 5/8 inch wallboard is faced with vermiculite or glass. Manufacturers sell considerably more 1/2 inch board than 5/8 inch board.

59. In markets consisting of standardized and interchangeable products, price drives consumers’ purchasing decisions. Because price is the primary driver of competition, a competitor selling its product at a lower price than its competitors gains market share, and a competitor selling its product at a higher price than its competitors loses market share. Gypsum wallboard is such a market: indeed, one Defendant has characterized gypsum wallboard as a “commodity,” where the primary difference between sheets of gypsum wallboard made by different manufacturers is the price at which each manufacturer sells its gypsum wallboard.²

60. To be competitive, wallboard manufacturers must adhere to standards set by the American Society for Testing Materials (“ASTM”) and Underwriters’ Laboratories (“UL”) to be compliant with applicable building codes for construction projects. Compliance with these standards commoditizes wallboard since the standards effectively dictate the quality and

² See, e.g., Temple-Inland, Inc., Quarterly Report (Form 10-Q) 21 (Nov. 7, 2011).

1 composition of the vast majority of wallboard sold in the United States (including that sold by
2 Defendants).

3 61. In the industry, wallboard manufacturers refer to costs per thousand square feet of
4 wallboard. It costs approximately \$105 to make 1000 square feet of wallboard. Of that sum,
5 approximately \$60 is for raw material (*i.e.*, rock and paper), broken down as follows: \$20 for
6 rock, \$35 for paper, and \$5 for other ingredients (silicon/glass). Of that \$105, approximately an
7 additional \$35 is for “converting costs,” broken down as follows: \$15 for labor, \$8 for electricity,
8 and \$12 for natural gas. The remaining \$10 covers miscellaneous costs.

9 62. The cost of manufacturing wallboard is highly sensitive to the price of natural gas.
10 For example, each \$1 increase in the cost of an mbtu of natural gas results in increased
11 manufacturing costs of \$3–4 per thousand square feet because the furnaces used in the process of
12 manufacturing wallboard consume large quantities of natural gas.

13 63. The cost of wallboard amounts to approximately 25 to 40% of the price charged by
14 a typical contractor installing gypsum wallboard. The remainder is largely attributable to labor
15 costs.

16 64. Gypsum manufacturers also make wallboard using synthetic gypsum, typically
17 recovered from coal-fired power plants during the scrubbing process. The costs of acquiring
18 gypsum from this source are lower than from other sources. However, the quantities available are
19 limited and manufacturers have long-term contracts with individual power plants, preventing this
20 source from serving the entire gypsum industry.

21 65. Commodity products are more amenable to collusion among competitors. Because
22 the competing products are interchangeable, competition is largely focused on price, making it
23 easier for competitors to collude and coordinate their collusion relative to industries where
24 competition focuses more heavily on non-price terms, such as features, network effects, or service
25 quality.

26 **D. Gypsum Wallboard is Unique, Making It Distinct from Other Wall and**
27 **Ceiling Materials**

28 66. Because gypsum wallboard offers a variety of unique benefits unavailable in other

products, the vast majority of all new residential and commercial construction projects in the United States use gypsum wallboard. As explained in the article *Living with Gypsum: From Raw Material to Finished Products*, published by the EuroGypsum organization:

Gypsum is virtually indispensable for the interiors of homes and offices, and indeed all types of building where people congregate such as schools, shops, airports, et c. Its superior performance in providing everyday comfort, in fire resistance, thermal and sound insulation, heralds an ever greater role for it in buildings of the future. In fact, the safety and protection of people and property against fire, and the effective thermal and acoustic insulation of buildings depends, more often than not, on the unique properties of Gypsum. And many of the attractive features of modern interiors would be impossible without the versatility of Gypsum as a building material.³

67. Workers can install gypsum wallboard much more easily than other products.⁴ Indeed, two experienced workers can install gypsum wallboard in an entire house in one or two days whereas it would take them a week or so to cover the equivalent surfaces with plaster. There is a network of gypsum wallboard installers who can easily install wallboard but who do not have the skills and training to install other materials to fashion walls or ceilings, even if such materials were available. No comparable network exists for any alternative wall or ceiling product. Indeed, gypsum wallboard is easy enough to use that many amateur home carpenters install it themselves.

68. In North America, gypsum wallboard is by far the most commonly used interior finish when fire resistance classifications are required. Its noncombustible core contains nearly 21% chemically-combined water, which, under high heat, slowly releases as steam. Because steam will not exceed 212 degrees Fahrenheit under normal atmospheric pressure, it retards the transfer of heat and the spread of fire very effectively. Even after complete calcination of the gypsum wallboard (i.e., after it releases all the water from its core under high heat), gypsum wallboard continues to serve as a heat-insulating barrier. Indeed, tests conducted in accordance

³ *Living with Gypsum: From Raw Material to Finished Products*, Euro Gypsum, 7, http://www.eurogypsum.org/_Uploads/dbsAttachedFiles/livingwithgypsum.pdf.

⁴ See Gypsum Ass'n, *Using Gypsum Board for Walls and Ceiling Sections* § 1 (2013) (ease of installation is an outstanding advantage of using gypsum board for walls and ceilings).

1 with a standard known as ASTM E 84 show that gypsum wallboard has a low flame-spread index
2 and a low smoke-density index.⁵

3 69. Moreover, safety concerns—particularly with respect to Chinese gypsum
4 wallboard—and transportation costs prevent imported gypsum wallboard from constituting an
5 adequate substitute for domestically-produced gypsum wallboard. The industry experience in
6 2005 underscores the point. At that time, demand for drywall exceeded U.S. gypsum wallboard
7 manufacturers' capacity and some companies accordingly began importing Chinese drywall for
8 approximately six to eight months. They stopped because of safety issues, performance failures,
9 and because of the cost of paying ocean freight for shipments from China. No significant
10 importation of drywall from China took place before or since that time and U.S. demand has
11 never exceeded capacity since that brief period in 2005.⁶

12 70. Because drywall fills the void between wall studs at a cheap price, there is no
13 economically viable substitute for drywall. While consumers can put a premium product between
14 studs for sound-proofing or other purposes, only a tiny percentage of customers are willing to
15 bear the expense of doing so for highly-specialized applications.

16 71. In their non-litigation business discussions and analyses, the wallboard
17 manufacturers consistently refer to the United States sales of wallboard as a market.

18 72. Accordingly, there are no adequate substitutes for gypsum wallboard and gypsum
19 wallboard in the United States constitutes a distinct market.

20 **E. The Gypsum Wallboard Industry**

21 73. Collectively, gypsum wallboard sales in the United States, predominated by
22 Defendants, exceed \$3 billion dollars annually. Most gypsum wallboard companies, including
23 the named Defendants herein, are vertically integrated. In other words, these Defendants
24 participated in successive steps in the production process, starting with mining and fabricating
25 other principal components such as paper, and then using these inputs to fabricate gypsum

26 ⁵ See *id.*

27 ⁶ H. Shipp, *Gypsum Product Manufacturing in the U.S.*, Ibis World Indus. Report 25 (2013)
28 (“Imports . . . represent a relatively small portion of domestic demand, at 1.8%.”).

1 wallboard as it is sold to customers. As the U.S. Geological Survey's *Mineral Yearbook* states:

2 The U.S. gypsum industry consisted primarily of a few large,
3 vertically integrated companies that mined gypsum and
4 manufactured wallboard, plaster, and other gypsum products.
5 Companies with the most mines were USG Corp. (USG) with eight
6 mines; Georgia Pacific LLC (GP) with seven mines; National
7 Gypsum Co. (NGC) with six mines; CertainTeed Corp. with six
8 mines; American Gypsum with three mines; Temple Inland Inc.
9 (TI) with two mines; and PABCO Gypsum with one mine. For
10 2010, these seven companies produced 74% of the total U.S. crude
11 gypsum.⁷

12 74. Traditionally, gypsum manufacturers provide two categories of discounts to their
13 direct purchaser customers: functional discounts and volume discounts. Functional discounts are
14 discounts from the manufacturers' list price and apply to every dollar purchase by a customer.
15 Volume discounts are typically discounts rebated after customers pass certain purchase volume
16 thresholds. Manufacturers typically pay rebates at the end of the calendar year, which encourages
17 many direct purchasers not to switch suppliers until the end of the year to avoid losing the
18 advantage of the volume rebate.

19 **F. The Gypsum Wallboard Market Is Amenable To Collusion**

20 75. The gypsum wallboard market's structural features make collusion particularly
21 feasible and attractive. Specifically, the gypsum wallboard market: (1) is highly concentrated,
22 (2) features inelastic prices, (3) has high barriers to entry, (4) offers numerous opportunities for
23 collusion, and (5) produces a commodity product.

24 **1. The Gypsum Wallboard Market in the United States is Amenable to Collusion Because It Is Highly Concentrated.**

25 76. The smaller the number of firms that dominate a market, the more highly
26 concentrated it is. The gypsum wallboard market in the United States is very highly concentrated
27 by any measure. Taken together, Defendants make more than 90% of American gypsum
28 wallboard sales, with the four largest Defendants in 2011 – USG, National Gypsum, CertainTeed,
and American Gypsum – accounting for approximately 71% of those sales:

⁷ Robert D. Crangle, Jr., *2010 Minerals Yearbook: Gypsum*, U.S. Geological Survey 33.1 (May 2012), <http://minerals.usgs.gov/minerals/pubs/commodity/gypsum/myb1-2010-gypsu.pdf>.

<u>Manufacturer</u>	<u>Approximate Market Share in 2011</u>
USG	25%
National Gypsum	23%
CertainTeed	13%
American Gypsum	10%
LaFarge	8%
Temple-Inland	7%
PABCO	4%

77. The level of market concentration grew over the last two decades. In the 1990s, the market included several smaller regional manufacturers, with only one or two plants each. Before 1997, there were as many as thirteen companies in the United States manufacturing gypsum wallboard at 78 plants. Defendants' SEC filings mentioned "smaller, regional competitors" in the United States before 2002. After 2002, however, the industry consolidated and references to smaller, regional competitors ceased. The number of market participants steadily declined as well until, by 2010, just eight companies in the United States manufactured gypsum wallboard at 62 plants. The wallboard market has become even more concentrated in recent years with additional consolidations and acquisitions.

78. Basic industrial organization economics teach that higher levels of concentration foster the formation and operation of cartels by reducing the number of firms needed to agree to fix prices and monitor a cartel.

79. The measure industrial organization economists frequently use in evaluating market concentration is "CR₄": the share of product sales accounted for by the four largest firms in a given industry. A seminal study of Department of Justice price-fixing investigations found that 76% of cartels occurred in sectors with a CR₄ score of 50% or higher, which was approximately double the average CR₄ for manufacturing. As demonstrated above, the CR₄ for the gypsum wallboard market as of 2011, when the collusive conduct began, was at least 71%, a

1 level of market concentration highly conducive to cartelization. *See also* H. Shipp, *Gypsum*
 2 *Product Manufacturing in the U.S.*, Ibis World Indus. Report 27 (2013) (“The four largest players
 3 currently account for 88.9% of industry revenue.”).

4 80. As is typical in highly concentrated markets, prior to the fall of 2011, one of the
 5 two largest gypsum wallboard manufacturers (Defendant USG or Defendant National Gypsum)
 6 generally initiated price increases, which the other manufacturers tended to follow. However,
 7 prior to the fall of 2011, Defendants LaFarge and American Gypsum developed reputations as
 8 price-cutters.

9 81. This increased market concentration facilitated the conspiracy because a potential
 10 cartel would need only to conspire with, and police, a limited number of companies to be
 11 successful. This concentration facilitated not only the fixing of prices but also the coordination of
 12 pricing terms (including the elimination of job quote pricing). Moreover, because Defendants
 13 owned and controlled approximately ninety percent of the wallboard manufacturing capacity in
 14 the United States in 2011, they collectively had the market power to impose and sustain the large
 15 price increases described herein.

16 2. The Gypsum Wallboard Market in the United States is Amenable to 17 Collusion Because Prices for Gypsum Wallboard Are Inelastic.

18 82. “Elasticity” describes the sensitivity of the amount demanded of a product to a
 19 change in the price charged for it. The more sales of a certain product decline as the price of that
 20 product increases, the more elastic the prices of that product. Conversely, inelastic pricing exists
 21 when the amounts sold of a certain product do not decline significantly even when the price of
 22 that product increases significantly.

23 83. In other words, when customers have few or no practical alternatives to a given
 24 product in the form of cheaper products of similar quality and functionality, they will pay higher
 25 prices for the product they need with relatively little reduction in the quantity they purchase.

26 84. For a cartel to profit by raising prices above competitive levels, pricing must be
 27 inelastic. Otherwise, the price increase would result in such a substantial decline in quantities
 28 sold as customers purchased substitute products or declined to buy altogether, rendering the price

1 increase counter-productive for cartel members. Thus, price inelasticity facilitates collusion.

2 85. Pricing for gypsum wallboard is highly inelastic, as there are no adequate
3 economic substitutes for the product. As established above, nearly all new construction and
4 renovation for commercial or residential buildings in this country utilize gypsum wallboard
5 because no product with equivalent functionality is available. There are no close substitutes for
6 wallboard that builders can use as a replacement, because wallboard differs from other
7 construction materials in its composition, functional characteristics, customary uses, and lower
8 cost. It is also different from other construction materials such as plaster or lumber because of
9 ease of application, smooth finish, and fire-resistant and moisture-controlling qualities. Thus, the
10 cartel's substantial increase in gypsum wallboard prices predictably did not lead to a substantial
11 drop in the quantities sold, for there were simply no feasible alternative materials that buyers
12 could use.

13 86. In short, Defendants took advantage of the high inelasticity of gypsum wallboard
14 demand in order to raise prices to supra-competitive levels, generating more revenue and profit
15 than they could have obtained in a competitive marketplace.

16 **3. The Gypsum Wallboard Market in the United States is Amenable to**
17 **Collusion Because It Features High Barriers to Entry.**

18 87. Without barriers to entry, cartels that raise prices to supra-competitive levels
19 attract new entrants seeking the supra-competitive profits accompanying those prices. Left
20 unchecked, that process would result in steadily increasing supply exerting downward pressure on
21 prices, ultimately driving them back to competitive levels. Where high barriers to entry exist,
22 however, new entrants are less likely to enter the market or refrain from entering it altogether.
23 Thus, barriers to entry facilitate the formation and maintenance of cartels.

24 88. Substantial barriers preclude, reduce, or make entry into the gypsum wallboard
25 market so difficult in the United States as to prevent the existence of new entrants from providing
26 a competitive discipline to the market.

27 89. One such barrier to entry into the gypsum wallboard market is the daunting capital
28

1 required.⁸ Entry into the gypsum wallboard market would require around \$300 million, for
 2 capital items such as a new plant with equipment, before considering other requirements such as
 3 obtaining regulatory approvals, building out the transportation and electrical infrastructure for
 4 distribution, and acquiring labor with the requisite skill and experience. Constructing the plants
 5 and acquiring the equipment in particular would be a lengthy process requiring at least 18 to 36
 6 months, if not longer, because such items must conform to the particular requirements of the
 7 operation and its location. As an example of the cost of merely acquiring one gypsum plant, a
 8 plant located in Nashville, Arkansas sold for \$97 million in 1997. American Gypsum stated in
 9 2005 that it would cost \$125 million to build a new wallboard manufacturing plant in South
 10 Carolina. This estimate proved on target, as National Gypsum in fact spent \$125 million
 11 constructing a new wallboard facility in Mt. Holly, North Carolina in 2007.

12 90. Moreover, as alleged above, most gypsum wallboard manufacturers are vertically
 13 integrated. Therefore, to compete profitably in the gypsum wallboard market, a new entrant
 14 would have to put together the components necessary to operate at the various vertical levels
 15 occupied by the incumbents. Consequently, the new entrant would have to acquire or purchase
 16 access to one of a limited number of gypsum sources, develop a distribution network of
 17 warehouses and shipping, and build out the sales and customer service staff to market and support
 18 its products. Illustrative of the costs, Celotex Corporation sold its gypsum wallboard business in
 19 2000 for \$345 million.⁹

20 91. Additionally, imports do not provide a reasonably interchangeable substitute for
 21 domestic wallboard. Because of safety and quality concerns associated with foreign wallboard,
 22 and with Chinese wallboard in particular, as well as transportation costs associated with imports,
 23 purchasers have no meaningful alternative to domestic wallboard. Imports account for *de*

24
 25 ⁸ H. Shipp, *Gypsum Product Manufacturing in the U.S.*, Ibis World Indus. Report 26 (2013)
 26 (“Barriers faced by new competitors in this industry are high [T]o compete in the more
 27 technologically complex wallboard segment of this industry, new entrants must invest heavily in
 28 capital equipment and into establishing a regional market foothold.”).

⁹ *Id.* at 27 (“The highly concentrated structure of the industry restricts entry to new
 competitors.”).

1 *minimis* sales of domestic wallboard.

2 92. These high barriers to entry inspired and enabled Defendants' anti-competitive
3 scheme, reassuring the conspirators that new entrants could not emerge to undercut their
4 supracompetitive prices or offer an alternative to their supply restrictions and prohibition of job
5 quote pricing.

6 **4. The Gypsum Wallboard Market in the United States is Amenable to**
7 **Collusion Because of the Numerous Opportunities for Defendants to**
8 **Collude.**

9 93. Defendants had numerous opportunities to agree to fix prices and coordinate
10 pricing policies through analyst phone calls and trade association activities. The Gypsum
11 Association (the "Association"), founded in 1930, is comprised almost entirely of the Defendants,
12 with most Defendants having a representative appointed to the Association's Board.¹⁰ Every
13 April, the Association holds a meeting of the Board of Directors. In April 2010, that meeting
14 took place in Woodlands, Texas; in April 2011, in San Francisco, California; in April 2012, in
15 New Orleans, Louisiana; and in April 2013, in Tucson, Arizona. During 2011–2012, the
16 following individuals were on the Association's Board of Directors: Past Chairman Stephen
17 Raley (Temple-Inland), First Vice President John K. Donaldson (CertainTeed), Second Vice
18 President Joseph Holmes (USG), and Treasurer Craig Robertson (National Gypsum). For 2012–
19 2013, the following individuals were on the Board of Directors: Chairman Joseph Holmes (USG),
20 First/Second Vice Chairman Craig Robertson (National Gypsum), and Treasurer Ryan Lucchetti
(PABCO).

21 94. The Association conducts quarterly meetings and a yearly conference attended by
22 many employees of Defendants, including their CEOs and executives. The meetings feature not
23 only formal seminars and presentations, but also more informal dinners, sporting activities, and
24 side trips, where the conspirators could easily and freely discuss pricing.

25 95. Further, there have been between 100 and 200 associations, chapters, or

26 _____
27 ¹⁰ The Association currently includes all Defendants except for Defendants LaFarge and Temple-
28 Inland. Because Defendants LaFarge and Temple-Inland sold their respective gypsum wallboard
businesses, they are no longer members of the Association.

1 committees at various levels—including regional, state, and metropolitan—which invited gypsum
2 manufacturers to events that those manufacturers attended, where their executives could
3 communicate.

4 96. In addition, each Defendant also belongs to the Association of the Wall & Ceiling
5 Industry (“AWCI”). Most notably, representatives of Defendants attended an AWCI Industry
6 Executive Conference meeting in Coeur d’Alene, Idaho from September 13–16, 2011, with over
7 140 attendees. The attendees at these meetings typically stay at the same hotel. Defendant USG
8 sponsored the entire event while Defendant National Gypsum sponsored the golf tournament. On
9 September 15, 2011, a “Supplier and Manufacturers Committee” meeting occurred. On
10 September 16, 2011, the Gypsum Board Committee met. During the overall conference,
11 attendees discussed topics, including how “effective control systems are critical to maintaining
12 margins,” how “changes in quoting policies are affecting the way contractors bid and estimate
13 jobs, and the way suppliers and distributors stock inventory,” as well as “the reason for the
14 changes to quoting policies.” Just days after this meeting, Defendants began announcing the
15 coordinated price increases and changes in their job quotes policies.

16 97. Shortly after these announcements, Defendants met in mid-October at the Gypsum
17 Association trade meeting in Las Vegas, Nevada, attended by over 280 delegates. One of the
18 express purposes of the meeting was to “give industry participants the opportunity to meet
19 together . . . [and] bring themselves up-to-date with the latest developments” in the industry. At
20 that meeting, Dr. Bob Bruce, owner of Innogyps, Inc., and a leading observer of the gypsum
21 industry, acknowledged that the industry faced difficult economic conditions and warned
22 explicitly that those conditions did not support a (non-collusive) price increase. In particular, he
23 stated “[t]he industry needs to achieve in the region of 85% capacity utilization to be able to push
24 through price raises, rather than the 55% level we are at right now.” Executives at gypsum
25 manufacturers have stated, based on their experience in the industry, that Dr. Bruce’s statement
26 was accurate. Another predicted shortly before the fall 2011 price announcements, “Significant
27 industry excess capacity will persist into the near-term keeping downward pressure on operating
28 rates . . . sales prices and profits.” In other words, price increases traditionally follow high

1 capacity utilization rates, not low capacity utilization rates.

2 98. Similarly, Eagle Materials, the parent corporation of Defendant American
3 Gypsum, estimated that capacity utilization needed to be approximately 90% in order for U.S.
4 wallboard manufactures to exercise pricing power unilaterally. Defendants understood that any
5 efforts by individual manufacturers to impose substantial price increases in this competitive
6 environment would have been doomed to failure.

7 99. Meetings involving the Drywall Finishing Council (“DWFC”) provided another
8 opportunity to collude. Defendants USG, National Gypsum, CertainTeed, Continental and
9 American Gypsum are members of DWFC and attend its annual convention each fall and its
10 annual spring social event. Among the DWFC events that Defendants attended and which
11 provided an opportunity for Defendants to collude and conspire include:

- 12 (a) DWFC 2011 Spring Meeting held on April 5, 2011 at the Embassy Suites
13 Hotel in Las Vegas, Nevada;
- 14 (b) DWFC 2011 Fall Meeting held on September 20, 2011 at the Hampton Inn—
15 Tropicana Hotel in Las Vegas, Nevada;
- 16 (c) DWFC 2012 Spring Meeting held on April 16, 2012 at the Holiday Inn in
17 Charlotte, North Carolina;
- 18 (d) DWFC 2012 Fall Meeting held on September 18, 2012 at the New York, New
19 York Hotel in Las Vegas, Nevada;
- 20 (e) DWFC 2013 Spring Meeting held on March 19, 2013 at the Embassy Suites
21 Riverwalk—Downtown Hotel in San Antonio, Texas;
- 22 (f) DWFC 2013 Fall Meeting held on October 1, 2013 at the Embassy Suites
23 Convention Center in Las Vegas, Nevada;
- 24 (g) DWFC 2014 Spring Meeting held on April 1, 2014 at the Embassy Suites
25 Convention Center in Las Vegas, Nevada; and
- 26 (h) DWFC 2014 Fall meeting on September 23, 2014 at the Embassy Suites
27 Convention Center in Las Vegas, Nevada.

28 100. Similarly, some Defendants belong to a trade association known as Drywall &
Interior System Contractors Association, which provided yet another opportunity for Defendants
to collude.

101. These numerous industry meetings, among others, provided opportunities for

1 competitors to discuss otherwise confidential information, including the price of gypsum
2 wallboard, elimination of competitive job quotes, restriction of gypsum wallboard supply, and
3 implementation as well as maintenance of the conspiracy described herein.

4 102. For example, just as in September 2011 when all Defendants attended the AWCI
5 Executive's Conference in Coeur d'Alene, Idaho, Defendants met again in subsequent years and
6 had further opportunity to conspire. From September 11–14, 2012, Defendants attended the
7 AWCI Executive's Conference held at the Loews Miami Beach Hotel in Miami, Florida. From
8 September 17–20, 2013, Defendants attended the AWCI Executive's Conference held at the US
9 Grant Hotel in San Diego, California. And Defendants again met from October 7–10, 2014 at the
10 Sheraton Inner Harbor Hotel in Baltimore, Maryland. Each of these industry meetings, in which
11 Defendants customarily stay at the same hotel, provided further opportunities for Defendants to
12 discuss their collusive activities and plans.

13 103. There are also close connections between certain Defendants' executives and sales
14 personnel. For example, many former USG employees have migrated to American Gypsum,
15 allowing these two companies to communicate by way of current American Gypsum employees
16 communicating with their former comrades at USG. Most significant of these American Gypsum
17 employees is Keith Metcalfe, Vice President of Marketing Sales and Distribution of American
18 Gypsum (and Vice President of Gypsum Sales at Eagle Materials), who signed American
19 Gypsum's letters eliminating job quotes and announcing price increases on September 20, 2011
20 and August 22, 2012, and who also is a former USG employee. Similarly, the National Account
21 Manager at American Gypsum, Charles Olson, held that same position at USG. Further, the
22 Director of Sales at American Gypsum since 2003, David Bates, was a district sales manager for
23 USG from 1994 until his move to American Gypsum. Additionally, David Powers, President of
24 American Gypsum, was formerly a senior executive at USG. The significance of these channels
25 of communications is evident from the fact that American Gypsum sent the first price
26 announcement letter followed almost immediately by USG.

27 104. Communications from manufacturers to their client-distributors provided another
28 opportunity to collude. Given the relationship between the manufacturers and their direct

1 customers, distributors often relay communications from one manufacturer to competing
 2 manufacturers. For example, when one manufacturer sends out a letter announcing a price
 3 change effective in the future, a distributor will frequently show that letter to a competing
 4 manufacturer and inquire what the competing manufacturer will do and if the competing
 5 manufacturer can beat the price contemplated in the letter. Because this sort of communication
 6 occurs routinely in the industry, manufacturers know before sending out any communications to
 7 distributors that their competitors will see those communications. This allows manufacturers to
 8 communicate reliably with each other via letters from each of them to their own customers in
 9 order to arrange for and continue collective action.

10 **5. The Gypsum Wallboard Market in the United States is Amenable to**
 11 **Collusion Because Wallboard Is a Commodity Product.**

12 105. A commodity product is one that is essentially uniform across producers. Thus,
 13 while the quality of a given commodity may differ slightly from manufacturer to manufacturer,
 14 any one manufacturer's product is essentially interchangeable with another's. Gypsum wallboard
 15 is a commodity product.

16 106. Gypsum wallboard must meet specified minimum standards established by the
 17 ASTM and UL in order to be compliant with applicable building codes for construction projects.
 18 Such compliance renders nearly all gypsum wallboard identical in all material aspects.

19 107. In addition, gypsum wallboard is sold primarily in two standardized sizes: 1/2 inch
 20 thick wallboard and 5/8 inch thick wallboard. Wallboard is primarily produced in 12 by 4 foot
 21 sheets.

22 108. Defendants' gypsum wallboard products are functionally interchangeable.
 23 Gypsum wallboard made by one manufacturer does not differ significantly from that made by
 24 another, and builders and consumers—including Plaintiffs—can easily substitute one
 25 manufacturers' gypsum wallboard for another's. Once the installer removes the paper striping
 26 identifying the manufacturer of the wallboard as part of the installation process, neither an
 27 installer nor a customer could tell which manufacturer produced the wallboard in a construction
 28 project.

1 **6. The Gypsum Wallboard Industry’s History of Collusive Behavior.**

2 109. The price-fixing conspiracy alleged herein is not Defendants’ first experience with
3 violating antitrust and unfair competition laws. For example, the European competition authority
4 in 2002 fined four gypsum companies—including two companies selling gypsum wallboard in
5 the United States, Defendant LaFarge, and a predecessor of Defendant CertainTeed (BPB PLC)—
6 \$455 million for conspiring to inflate prices from 1992 through 1998.

7 110. As far back as 1948, in *United States Gypsum Co. v. National Gypsum Co.*, 333
8 U.S. 364 (1948), the United States Supreme Court determined there was sufficient evidence to
9 uphold a complaint alleging that gypsum wallboard manufacturers, including Defendant USG,
10 violated the Sherman Act by colluding to fix prices on not only gypsum wallboard, which was
11 then patented, but also affiliated products, by means of standardizing the production and final
12 output of gypsum wallboard, regulating distribution, and instituting a regime of minimum resale
13 prices.

14 111. In 1971, a federal court found gypsum manufacturers, including Defendants USG
15 and National Gypsum, engaged in a conspiracy to fix the price of gypsum wallboard. *See Wall*
16 *Prods. Co. v. Nat’l Gypsum Co.*, 326 F. Supp. 295 (N.D. Cal. 1971).

17 112. Later in the 1970s, a jury (after a nineteen week trial) convicted gypsum
18 manufacturers, including Defendants USG and National Gypsum, of committing felonies by
19 engaging in a nationwide cartel inflating gypsum wallboard prices. While those convictions were
20 reversed on appeal due to faulty jury instructions, on remand from the United States Supreme
21 Court, the Third Circuit found the evidence sufficient to support the conclusion that the
22 Defendants had conspired to violate the antitrust laws. *See United States v. U.S. Gypsum Co.*,
23 600 F.2d 414, 419–20 (3d Cir. 1979).

24 **G. Defendants’ Collusion**

25 113. Beginning at least as early as mid-September 2011, Defendants implemented a
26 multi-faceted anticompetitive scheme to raise gypsum wallboard prices to supra-competitive
27 levels and maintain them there, to eliminate the prevailing industry practice of providing “job
28 quotes,” and to restrict the supply of gypsum wallboard.

114. Prior to the fall of 2011, gypsum manufacturers typically announced price increases to their customers by way of letters 30 to 45 days before the effective date of the increase.

115. Prior to the fall of 2011, because of the commodity nature of wallboard and fluctuations in input prices, gypsum manufacturers typically announced multiple price changes per year (*i.e.*, approximately every 90 days).

1. Gypsum Manufacturers' Failed Efforts to Increase Prices Prior to the Fall of 2011.

116. Prior to the fall of 2011, price competition in the gypsum wallboard industry was thriving. Defendant LaFarge, in particular, was known in the industry to seek to increase its market share through lower pricing.

117. In the first three quarters of 2011, individual gypsum manufacturers attempted to impose smaller price increases on multiple occasions. Each such attempt failed because of price competition. When individual manufacturers informed their customers that they were increasing prices, those customers would in turn inform the manufacturers that they could purchase gypsum wallboard elsewhere for lower prices. If the manufacturer nevertheless insisted on an increase, they would lose the customer to a lower-priced competitor.

118. Moreover, if a manufacturer lost customers to competitors due to price competition, it could not immediately regain those customers by dropping prices. This is because competing manufacturers use volume rebate programs to incentivize customers to refrain from switching to competitors absent significantly lower pricing by the competitor. Because customers only receive volume rebates when they achieve certain purchase volume thresholds from an individual manufacturer in a particular year, switching the manufacturer from whom they purchase mid-year would put those rebates at risk.

119. Similarly, big box retail customers like Home Depot and Lowe's typically stock only one manufacturer's product in any given region, and there are costs to Home Depot and Lowe's in switching from one manufacturer to another. Consequently, if a manufacturer announces a price increase that causes such stores to switch vendors, the manufacturer may well

1 never sell product through that store again.

2 120. Thus, the consequences of independently raising prices was not just a short-term
3 and temporary drop in business, but rather a long-term (and potentially permanent) loss of a
4 customer, even if the manufacturer later reversed its price increase.

5 2. Defendants' Fall 2011 Collusive Price Increases.

6 121. Between the AWCI meeting in Coeur d'Alene, Idaho in September 2011 and the
7 Gypsum Association trade meeting in Las Vegas, Nevada in October 2011, six of the seven
8 Defendant manufacturers sent letters to their American customers uniformly announcing that their
9 gypsum wallboard prices would spike by an unprecedented **35% in January 2012**, an
10 inexplicable increase in the face of such weak demand. The seventh Defendant manufacturer,
11 Temple-Inland, released the same price increase announcement soon thereafter in November
12 2011. Each Defendant also announced that—unlike historical pricing, which fluctuated multiple
13 times per year—these price increases would remain in place throughout 2012.

14 122. Each Defendant's announcement contained remarkably similar language:

- 15 • On September 20, 2011, Defendant American Gypsum stated: "Effective January 1,
16 2012, we will implement a 35% price increase on all gypsum wallboard products.
17 This increased price (up 35%) will be your price for the entire year 2012. This
18 increase applies to all segments of the business." This price increase letter was signed
19 by Keith Metcalf, Sr. VP of Marketing, Sales & Distribution.
- 20 • On September 28, 2011, Defendant USG stated that "new pricing . . . will be effective
21 on all wallboard purchases beginning January 1, 2012." USG stated that this price
22 increase would be in effect "for all of 2012." USG subsequently imposed
23 substantially the same price increase as its co-conspirators effective January 1, 2012.
24 This letter was signed by Greg Salah, USG's Senior Vice President of Sales &
25 National Accounts and was sent from USG's Chicago, Illinois headquarters.
- 26 • On September 30, 2011, Defendant National Gypsum stated: "National Gypsum
27 Company will implement a price increase of 35% on all wallboard products, to be
28 effective on January 1, 2012. It is our intention that the resultant price (up 35%) will
apply for all 2012." This "price bulletin" was sent from National Gypsum's Charlotte,
North Carolina corporate office and covered the "[e]ntire U.S. and all Export"
markets.
- On October 3, 2011, Defendant CertainTeed stated that customers would receive a
new price schedule on November 15 for "all wallboard products." This letter was
erroneously dated October 3, 2012, although the body of the letter makes clear that it

was actually issued on October 3, 2011. CertainTeed later stated that “our price increase, intended to be in effect for the calendar 2012 year, will range between 35% and 37% for all gypsum wallboard products.” Both communications were sent from CertainTeed’s Tampa, Florida address.

- On October 4, 2011, Defendant LaFarge stated “on Monday, January 2nd 2012 we will implement a 35% increase on all our wallboard products.” Tellingly, this letter contained an error identical to the one committed by CertainTeed: it was also mistakenly dated October 4, 2012. A second letter reflecting the correct date of October 4, 2011 was later issued. The fact that LaFarge made the same dating mistake as CertainTeed strongly suggests that LaFarge’s letter was copied from CertainTeed’s, or that both were copied from the same source. LaFarge’s letters were signed by Stephen DeMay (Vice President of Sales) and Isabelle Shiffrin (Vice President of Strategy and Marketing) and sent from LaFarge’s Reston, Virginia address.
- On October 12, 2011, Defendant PABCO stated: “Effective January 1, 2012, [PABCO] will implement a 35% price increase across all product lines. This increase will establish pricing for the calendar year 2012.”
- On November 29, 2011, Defendant Temple-Inland communicated to customers that, “effective January 1, 2012,” it was imposing a 35% price increase on “all products” for the calendar year 2012. This price increase announcement was distributed from Temple-Inland’s Diboll, Texas address.

123. In December 2011, one distributor summarized the situation as follows: “As you are probably now aware, all of the drywall manufacturers have revised their pricing strategies beginning in 2012 The manufacturer letters that have been published vary slightly from manufacturer to manufacturer but it amounts to approximately 35% across the gypsum wallboard category.”¹¹ Another large distributor wrote in a November 2011 letter to customers (emphasis in original): “Over the last 45 days the gypsum manufacturers have adopted a new pricing policy that eliminates all job quotes scheduled to ship in 2012. In lieu of job quotes, one price will be provided for the entire year and this ‘one year’ price will represent a **35% increase** over current pricing levels.”

124. Unlike the prior attempts to increase prices, this price increase “stuck.” That the price increase did so came as a surprise to long-time industry participants who were unaware of Defendants’ collusion. Due to that ignorance, they predicted that the announced price increases

¹¹ See David Pelletier, *2012 Drywall Price Increase Explanation*, Nat’l Lumber (Dec. 20, 2011), <http://nationallumber.wordpress.com/2011/12/20/2012-drywall-price-increase-explanation/>.

1 would fail as had so many others in the preceding years. One distributor incorrectly predicted,
2 “The whole thing will . . . slowly but surely collapse.” Another opined, “It’s pretty basic
3 economics; demand is simply too low . . . to allow for an increase and policy change this drastic.”
4 Furthermore, a manufacturing executive with decades of experience in the wallboard industry
5 indicated that these changes and the manner in which they were imposed were unprecedented and
6 troubling from an antitrust perspective. The executive was not aware of any legitimate business
7 reasons for the actions taken through Defendants’ price increase announcement letters, nor could
8 he see how those actions could be consistent with the unilateral interest of any wallboard
9 manufacturer in a competitive marketplace.

10 125. The price increase “stuck” because Defendants policed the conspiracy and did not
11 undercut one another. As one example, after receiving the letters from Defendants referenced
12 above, an official of Home Depot approached several gypsum manufacturers (including several
13 Defendants) and said any one of them could have the considerable volume of sales for which he
14 was responsible at Home Depot if they simply held their 2011 price throughout 2012. He said he
15 had “no takers.”

16 126. Throughout 2012, purchasers of Defendants’ gypsum board paid substantially
17 higher prices for drywall than they did the previous years. Indeed, Defendants’ control of the
18 market was so vast that even non-conspirators were able to increase prices without fear of
19 competition. In short, in 2012, there was a large and historically unprecedented increase in the
20 price paid for gypsum wallboard. Unlike previous years, no Defendant has retracted its price
21 increase, and the ability of customers to make Defendants compete against each other on price
22 has been virtually eliminated. Rather, as an industry analyst reported in 2012, the price increase
23 “continues to hold nearly in full.”

24 127. This price increase reflected a historically unprecedented means both of pricing
25 gypsum wallboard and of announcing price increases. It is implausible that Defendants each
26 independently decided to implement this wholly new practice to the industry.

27 128. Moreover, this new strategy was inconsistent with independent decision-making
28 and with sound business practice. If any manufacturer had attempted to implement these changes

1 independently, they would have suffered the predictable consequences of failing to price
2 competitively, *i.e.*, losing customers, market share, and revenue.

3 129. Many aspects of this increase were unusual and cannot be explained by a
4 Defendant acting in its rational self-interest absent collusion.

5 130. First, the 35% price increase for gypsum wallboard was the largest in more than
6 ten years and the only such increase ever attempted in a market with such weak demand. In the
7 face of declining demand and thriving, price-based competition, no rational manufacturer would
8 take the risk of implementing such a price change absent assurance that its competitors intended
9 to implement similar increases. This is so because each Defendant was aware that, by doing so, it
10 would suffer both a short- and long-term loss of business and market share. Indeed, lone actors
11 prior to fall of 2011 suffered just these consequences, forcing them to reduce their prices to
12 competitive levels.

13 131. Second, all of the Defendants indicated that they would implement this price
14 increase on virtually the same date, either January 1 or January 2, 2012. Previously, Defendants
15 typically announced their own price changes with disparate effective dates scattered throughout
16 the calendar year. They did so in order to take advantage of (or escape the consequences of)
17 unpredictable fluctuations in input prices, demand, and other factors—flexibility creating
18 competitive benefits. It is implausible that these factors led each Defendant to decide
19 independently to implement a price increase at precisely the same time as each other Defendant,
20 particularly in light of the historically unprecedented nature and size of the increase.

21 132. Third, Defendants' announcements indicate the price hikes were to be effective for
22 the entirety of 2012. Previously, many Defendants had changed prices more frequently than on
23 an annual basis, typically on a quarterly basis. For example, in the first eight months of 2008,
24 there were four announced price changes by gypsum wallboard manufacturers. Such a practice
25 made sense from a business perspective, as frequent price changes allowed manufacturers to
26 respond effectively to fluctuations in input prices, demand, and other factors. No Defendant
27 would abandon this competitive practice without knowledge that its competitors would do the
28 same.

133. Fourth, Defendants made the fall 2011 price announcements far in advance of their effective date—another change from historical practice, where price increase announcements were made 30–45 days in advance of their effective date. Historical practice enabled manufacturers to correlate their pricing to the input costs, demand, and competitive conditions in place on the effective date of the increase. This ensured their pricing was as competitive as possible in light of their underlying costs, which frequently fluctuated. No Defendant would give up this competitive advantage absent knowledge others would do the same. Indeed, the most plausible explanation for this change is that Defendants intended to signal their adherence to a pricing agreement.

134. Fifth, American Gypsum—the Defendant with the smallest market share of the four largest Defendants in 2011—sent the first of the price increase letters. This was a change from historical practice, where competitors with larger market share such as Defendant USG or Defendant National Gypsum, drove the price increases. It is implausible that American Gypsum, the smallest player, would have taken the risk of increasing prices and eliminating job quotes without assurance that its competitors would follow suit. Indeed, given the prevailing market conditions and the previous inability of individual companies to impose smaller price increases in the absence of collusion, the initiation of such a huge price increase by American Gypsum (and other actions described herein) would—in the absence of a conspiracy—have failed in the marketplace and had negative business consequences for American Gypsum, including, *e.g.*, loss of customers, erosion of market share, and loss of valuable goodwill in the marketplace. That is to say, absent collusion, American Gypsum’s actions, and those of the other Defendants, would not have made economic sense.

135. Sixth, the price hikes announced in the fall of 2011 were largely implemented when specified and maintained materially throughout the year, whereas earlier price announcements were frequently modified after announcement. For example, some gypsum manufacturers announced price changes effective in November 2010, then subsequently delayed those increases and rolled them out in two installments: one in March 2011 and one in May 2011. The fact that no subsequent changes in the price hikes announced in 2011 occurred further

1 suggests coordination.

2 136. Seventh, the large spike in gypsum wallboard prices in the fall of 2011 was not in
 3 response to, or in expectation of, increased demand. The reality was precisely the opposite:
 4 industry analysts warned investors that in 2012 “demand for drywall would be no better this year
 5 than last.”¹² National Gypsum stated that the level of wallboard quantities purchased “has
 6 essentially been flat and at historically low levels” and projected that the “outlook for the next 12
 7 to 18 months might at best be described as a slow ‘climb out.’”¹³ CertainTeed projected in
 8 October 2011 that “[t]he housing market is still anemic with little expectation of real
 9 improvement in the coming year.” Similarly, in October 2011, USG stated that it believed that
 10 the market is “going to be flat next year.”¹⁴ Defendant Eagle Materials indicated that low
 11 volumes and low capacity utilization “continues to negatively impact gypsum wallboard pricing
 12 and profitability. We do not anticipate wallboard demand to improve significantly during the
 13 remainder of Fiscal Year 2012.” Similarly, analysts at the time believed that wallboard market
 14 “[c]onditions are expected to remain weak in the near term.” Such reduced or stable demand
 15 economically suggests reduced or stable pricing; the fact that Defendants successfully raised
 16 prices in the face of these conditions suggests collusion.

17 137. Indeed, before the announcement in the fall of 2011 of Defendants’ collusive price
 18 spike, gypsum wallboard prices had been falling for three straight months: down 0.6% in July
 19 2011, 1.7% in August 2011, and 1.7% in September 2011.¹⁵ Defendants anticipated the soft
 20 market for their products to continue, but still announced large increases in gypsum wallboard
 21 prices. Economic facts could neither justify nor uphold the price hike, and thus the only plausible
 22

23 ¹² See Kristin Jones, *USG Reports Narrowed Quarterly Loss*, Market Watch (Apr. 17, 2012),
 24 <http://www.marketwatch.com/story/usg-reports-narrowed-quarterly-loss-2012-04-17>.

25 ¹³ See National Gypsum, *Price Bulletin* (Sept. 30, 2011), available at
 26 http://www.hearthstonehomes.com/eletter/NatGyp_093011.pdf.

27 ¹⁴ See USG’s CEO Discusses Q3 2011 Results—*Earnings Call Transcript*, Seeking Alpha,
 28 available at <http://seekingalpha.com/article/300939-usgs-ceo-discusses-q3-2011-results-earnings-call-transcript>.

¹⁵ See Peter Grist, *Sharp Rise in Gypsum Prices Likely in New Year*, Eye on Housing (Nov. 3, 2011), <http://eyeonhousing.wordpress.com/2011/11/03/sharp-rise-in-gypsum-prices-likely-in-new-year/>.

1 explanation for its existence was Defendants' conspiratorial conduct.

2 138. Eighth, the costs of the major inputs into gypsum wallboard were stable or even
3 falling in 2011 and 2012. Accordingly, there was no increase in production or selling costs that
4 would explain the large price increase. Indeed, average wholesale natural gas prices (which, as
5 noted above, wallboard pricing is highly sensitive to) fell by 31% in 2012.¹⁶ Moreover, as alleged
6 above, most of the Defendants are vertically integrated. Consequently, they could and did exert
7 control over the other major component costs that go into gypsum wallboard, components such as
8 the mineral itself and paper.

9 139. Ninth, Defendants announced and then imposed their price hikes when the
10 industry was experiencing extensive overcapacity. This overcapacity resulted largely from the
11 decline in construction caused by the financial crisis. According to the Census Bureau,
12 construction spending in the United States dropped from a peak of \$1,198 billion in 2006 to
13 \$787.4 billion in 2011, the year Defendants announced their upcoming price increases and
14 discontinuance of the practice of job quotes. Similarly, gypsum production declined from
15 roughly 15,700,000 metric tons in 2007 to 9,400,000 metric tons in 2011,¹⁷ even though much of
16 the capacity that produced the higher figure was still available four years later. It is well-known
17 in the industry that the existence of overcapacity typically drives prices down.

18 140. Defendants openly acknowledge this excess capacity. In October 2011, Defendant
19 USG stated: "Currently, there is significant excess wallboard production capacity industry wide in
20 the United States. Industry capacity in the United States was approximately 32.9 billion square
21 feet. We estimate that the industry capacity utilization rate was approximately 52% during the
22 first nine months of 2010. We project that the industry capacity utilization will remain at
23 approximately that level for the balance of 2011."¹⁸ Historical experience in the industry in non-

24
25 ¹⁶ See U.S. Energy Info. Admin., *2012 Brief: Average Wholesale Natural Gas Prices Fell 31% in 2012* (Jan. 8, 2013), available at <http://www.eia.gov/todayinenergy/detail.cfm?id=9490>.

26 ¹⁷ Robert D. Crangle, Jr., *2012 Minerals Yearbook: Gypsum*, U.S. Geological Survey, 70 (May 2012), <http://minerals.usgs.gov/minerals/pubs/commodity/gypsum/mcs-2012-gypsu.pdf>.

27 ¹⁸ See USG Corp., Quarterly Report (Form 10-Q) 28 (Oct. 31, 2011), available at
28 <http://www.sec.gov/Archives/edgar/data/757011/000095012311093430/c65920e10vq.htm>; see also USG: *A Great Bet On A North America Housing Turnaround* (June 11, 2012),

collusive periods demonstrates that, when capacity utilization drops below 90%, prices fall.¹⁹

141. Tenth, Defendants timed the effective date of the price increase at the beginning of January, a time when customers otherwise had maximum flexibility because they had just received their volume rebates for the previous year and could switch to purchasing from another supplier without undercutting the volume of purchases required to maximize their rebate for the calendar year. If any individual Defendant were going to attempt such a large price increase, absent collusion, they would not attempt to impose it when it was easiest for customers to switch to another manufacturer's product. Indeed, prior to this price increase, individual Defendants implemented price increases on various and disparate dates.

142. Despite all of the factors described above, Defendants increased prices for gypsum wallboard without fear that their customers could turn to competitors who were selling at a lower price, precisely because those competitors had agreed not to sell at a lower price. Without such conspiratorial conduct, gypsum wallboard prices should have remained relatively stable in light of costs and market expectations. That prices rose substantially and for all Defendants in 2012, despite competitive conditions dictating stable prices, indicates collusive behavior.

143. In the absence of collusion, the independent self-interest of each Defendant would have led it to keep its prices relatively stable to reap the benefit in terms of increased sales to customers dissatisfied with a competitor's price increases. Simply put, any one Defendant, or even a small subset of Defendants, could not have maintained sharp price increases given market conditions, for it would have lost revenues when customers responded by purchasing gypsum wallboard from other companies that did not sharply increase prices; and in turn, those companies had large amounts of idle production capacity and thus could easily have supplied additional gypsum wallboard to meet additional customer demand. Consequently, only collective action enabled Defendants to jointly impose price increases.

144. Defendants' price announcements and subsequent implementation of price

<http://seekingalpha.com/article/650501-usg-a-great-bet-on-a-north-america-housing-turnaround/> ("The utilization rate in the Gypsum industry is around 55%.")

¹⁹ See JPMorgan Report (quoting Eagle) at 16.

1 increases announced in the fall of 2011 had their intended effect of raising wallboard prices for
2 Plaintiffs to supra-competitive levels throughout 2012.

3 **3. Defendants' Collusive Elimination of Job Quotes.**

4 145. In the same letters announcing the 2012 price increase, Defendants announced that
5 they were immediately eliminating job quotes. This was another dramatic and simultaneous
6 change from prior practice.

7 146. Job quotes (also called "price protection") have been a standard feature of the
8 gypsum wallboard industry for decades. In fact, one distributor said the practice ran so deep that
9 it was "ingrained" in the industry. This practice guaranteed customers a set price (or an initial
10 price with a series of specified adjustments) for gypsum wallboard for a construction project that
11 might take months or years to complete. Specifically, manufacturers provided job quotes to a
12 supply yard or distributor delineating a specific volume, tied to a product and a job, for a specific
13 period. Depending on the length of time, the job quote might include price escalators. Job quotes
14 did not necessarily run for the entire length of time that it was anticipated the project would take
15 to complete, but often were for a specified lesser period, such as six to nine months. From the
16 customer's point of view, a key provision of the job quote was the price protection provisions,
17 pursuant to which the manufacturer bore the risk of volatility for the price of inputs into gypsum
18 wallboard.

19 147. Typically, manufacturers provided job quotes to a distributor or yard that was
20 attempting to help a specified contractor obtain a job by winning a bid. Theoretically, the
21 distributor or yard could have issued its own job quote to the customer for a project without
22 manufacturer support, but in practice that virtually never happened because distributors and yards
23 were unwilling to take on the risk of loss that would result if the manufacturer raised prices
24 during the life of the job quote.

25 148. Defendants sharply altered the competitive landscape in the industry in the fall of
26 2011 by abolishing this traditional pricing practice. Prior to 2011, job quotes governed the prices
27 for a quantity varying between 30–70 percent of gypsum wallboard sold in the United States.
28 That is one reason why an industry observer described the elimination of job quotes as

1 “groundbreaking” and “turning the world upside down.”²⁰

2 149. The coordinated elimination of job quotes constituted another form of price-fixing
3 by Defendants. Prices set forth in job quotes were almost always discounted. Consequently, by
4 eliminating the practice of job quotes, Defendants were eliminating an important component of
5 price competition.

6 150. Defendants’ elimination of job quotes also made it impossible for customers to
7 circumvent the increased pricing by “locking in” fall 2011 prices for long-term projects by
8 soliciting and receiving competitive job quotes prior to the price increases’ effective date. It
9 therefore improved the effectiveness of the conspiracy.

10 151. The elimination of job quotes also improved Defendants’ ability to monitor the
11 cartel, and thus enforce the conspiracy. Previously, the use of job quotes made it difficult for a
12 competitor to monitor the prices charged by rivals in the industry. Had job quote pricing
13 remained in place, it would have been harder for one cartel member to determine whether a low
14 price given to a particular customer by another cartel member was pursuant to a job quote or was
15 instead “cheating” on the cartel price. By eliminating this opportunity for subterfuge, Defendants
16 improved their ability to monitor each other and thus discipline other cartel members in
17 furtherance of their overall price-fixing conspiracy. By ending the job quote pricing practice
18 collectively, Defendants ensured that they could easily, accurately, and comprehensively observe
19 each other’s prices.

20 152. Job quotes were also a tool Defendants’ customers used to negotiate against
21 Defendants. It was unusual for a gypsum manufacturer to volunteer job quotes to customers.
22 Rather, customers requested them. For example, if two competitors were competing for a
23 particular project, a customer would seek a job quote from each as a means of distinguishing the
24 two. Defendants’ collective abandonment of this practice removed competitive discipline from
25 the gypsum wallboard market.

26 153. Defendants’ agreement to eliminate job quotes increased prices, shifted the risk of

27 ²⁰ http://frameworksmagazine.com/library/wallboard_update2011-10-03.pdf.
28

future price increases squarely to customers, and was expressly designed to allow Defendants to profit from the January 2012 price increase, as well as any future price increases. As one industry research analyst stated: “The elimination of job quotes paves the way for a meaningful price increase. That, in a nutshell, is the story.”²¹ Considering both the elimination of job quotes and the price increases announced in the fall of 2011, one distributor described the alteration of the structure of the market as “drastic.” Combining the abolition of job quotes with price hikes maintained throughout the calendar year allowed Defendants to achieve much higher prices for gypsum wallboard in 2012 than in preceding years.

154. As with the price hike announcements, Defendants’ 2011 announcements abolishing job quotes bear uncanny similarities, indicative of collusion (all emphasis added):

- “Our past job quote policy is no longer appropriate as we seek to improve the consistency and administrative efficiency of our pricing policies. In light of the changing market, **USG will no longer offer job quotes and/or price protection on wallboard, effective immediately.**” (USG letter, Sept. 28, 2011).
- “The practice of providing job quotes is broken and counterproductive to meaningful and consistent price management needed to support profitability. Therefore, **effective immediately, we will discontinue for all product lines the policy of providing job quotes.**” (National Gypsum letter, Sept. 30, 2011).
- “In review of our business practices and policies for bringing products to market, we have noted a significant increase in the amount of job quote requests and find the process to be inefficient and administratively burdensome. Accordingly **we find it necessary to cease all job quotes immediately.**” (CertainTeed letter, Oct. 3, 2011 bearing the erroneous issue date of Oct. 3, 2012).
- “Effective immediately, we will no longer be providing job quotes.” (American Gypsum letter, Sept. 20, 2011).
- “[E]ffective immediately, we will cease all job quotations.” (LaFarge letter, Oct. 4, 2011 with corrected date).
- “Effective immediately, [PABCO] will discontinue the policy of providing job quotes.” (PABCO letter, Oct. 12, 2011).

²¹ Brian Johnson, *Not Good Timing: Drywall Prices Rising*, Fin. & Comm. (Feb. 16, 2012) (quoting Kathryn Thompson, Senior Research Analyst for the Thompson Research Group), <http://finance-commerce.com/2012/02/%e2%80%98not-good-timing%e2%80%99-drywall-prices-rising/>.

- Defendant Temple-Inland also informed its customers that it was eliminating its policy of providing job quotes.

155. Defendants implemented this significant change in their business practices at virtually the same time and in virtually the same manner. Defendants not only agreed to eliminate any new job quotes, “effective immediately,” but Defendants also set nearly the same deadline for honoring any job quotes that were previously provided. For example, Defendant USG indicated that it would “honor any job quotes that have been committed to USG with a purchase order by October 15, 2011.” Defendant CertainTeed told customers that “we will require all existing projects be confirmed with a firm purchase order or written notice of intent by October 14, 2011. This policy will be strictly enforced.” Defendant National Gypsum said it would honor job commitments previously made provided such commitments could be verified with a signed Notice of Intent by “October 14, 2011. Defendant LaFarge’s October 4, 2011 letter provided that it would only honor outstanding job quotes that had been validated “not later than October 14, 2011. This policy will be strictly enforced.”

156. Unilaterally abolishing job quotes contravened the self-interest of any one Defendant. Any independent Defendant singly discontinuing the practice of making job quotes available would have triggered an extremely hostile customer reaction, leading to plummeting revenues and lost profits as customers flocked to competitors offering job quotes. Conversely, once multiple Defendants acted to eliminate job quotes, it would have been in the individual self-interest of any given Defendant to restore job quotes and thus win over its competitors’ customers. The fact that none of the Defendants was willing to defy the others by doing so is inconsistent with normal competitive behavior.

157. In short, no one Defendant held the market power to eliminate the practice of providing job quotes by itself. Only by colluding could Defendants eliminate the practice to further suppress competition.

158. Defendants timed the elimination to further their efforts to negotiate and implement their anticompetitive scheme. In the letters quoted above, Defendants announced that they were eliminating the practice of providing job quotes immediately, but not implementing the

1 price hikes until months later. Consequently, each Defendant had the opportunity to prove its
2 “good faith” commitment to the anticompetitive scheme by immediately implementing the
3 elimination of job quotes. If other Defendants backed out of the scheme by failing to publicly
4 announce their elimination of job quotes, then any given Defendant would know that the scheme
5 had collapsed before implementing its own price increase the following January. That Defendant
6 could then back away from its price increase long before actually assessing it against customers
7 and thereby avoid the risk of losing the patronage of those customers to Defendants who did not
8 comply with the scheme.

9 159. The timing of the announcements concerning job quotes also confirms the
10 existence of the conspiracy in another way. Traditionally in the gypsum industry, the quantity of
11 gypsum sold declines in winter as construction activity softens. Consequently, prices frequently
12 change in February, as purchases accelerate in anticipation of increased construction volume in
13 the spring. As a result, autumn has historically been the time of greatest demand for job quotes,
14 as purchasers wish to lock in a price for a project that will extend beyond the February price
15 fluctuations. Absent collusion, no individual Defendant would have an independent interest in
16 declining to provide job quotes at the time when demand for those job quotes is highest, because
17 customers in that event would likely switch to competing manufacturers who continued the
18 historical practice of providing job quotes.

19 160. Defendants have reaffirmed their refusal to offer job quotes since the initial
20 announcements in the fall of 2011. On September 6, 2012, National Gypsum stated that “our
21 elimination of the practice of providing job quotes remains in effect and is strictly enforced.”
22 CertainTeed stated on September 13, 2012, that it “continues our policy of not providing price
23 quotes to customers for specific projects.” Similarly, USG stated on November 16, 2012 that it
24 “will not provide job quotes or price protection for any wallboard products” in 2013. The other
25 Defendants also continued to refuse to provide job quotes. In each of these statements,
26 Defendants refer to the key price protection aspect of job quotes. Thus, while Defendants may
27 agree to supply a particular job, and may provide a quote for the supply, Defendants no longer
28 assure their customers that that price will “stick” during the entirety of the job. Defendants

1 instead keep the discretion to raise prices mid-job, regardless of their initial quote (and, as a result
 2 of the agreement described here, they can do so with no fear that a competitor will undercut their
 3 pricing). The elimination of price protection perniciously harmed competition, as alleged herein.

4 161. Moreover, because of their overwhelming market power, Defendants' refusal to
 5 offer job quotes has reduced the ability of customers to demand job quotes, even when that
 6 customer is dealing with a non-conspiring manufacturer, because customers can no longer
 7 plausibly threaten to seek job quotes from another market participant.

8 162. Commentary within the industry about the sudden and coordinated elimination of
 9 job quotes by Defendants reflected confusion and concern and correctly predicted that
 10 homebuilders (including Plaintiffs) would be hardest hit by Defendants' collusive decision to
 11 simultaneously eliminate job quotes:

- 12 • Industry analysts at Thompson Research Group ("TRG"), which tracks drywall prices,
 13 stated: "American Gypsum's Sept. 20, 2011 announcement of the elimination of job
 14 quotes in the wallboard industry has turned the industry upside down. In conjunction
 15 with this announcement, American Gypsum also announced a 35 percent price
 increase starting Jan. 1, 2012."²²
- 16 • "American Gypsum's announcement about the elimination of price quotes is so
 17 groundbreaking, according to TRG, because it takes the negative pricing dynamics
 18 away from the manufacturers. . . . Eliminating job quotes shifts the pricing risk to
 19 distributors and away from manufacturers. . . . Price protection limits the
 effectiveness of price increases. In the absence of meaningful volume growth over the
 next couple of years, eliminating job quotes effectively shores up earnings through
 more disciplined industry pricing."²³
- 20 • "TRG industry distributor contacts (which account for between 70 and 75 percent of
 21 wallboard sales) are telling TRG that they fully support eliminating job quotes, and the
 22 biggest hit would be to the large, national homebuilders that have been squeezing the
 industry mercilessly on pricing."²⁴
- 23 • "Last year, major manufacturers announced that they were eliminating the practice of
 24 job quotes in 2012. In the past, job quotes provided pricing protection for customers,
 25 particularly for large projects. However, this practice also limited the effectiveness of
 price increases implemented by manufacturers. Most manufacturers announced that

26 ²² *Wallboard Industry: A Game Changing Strategy in Play*, Thompson Res. Grp. (Oct. 3, 2011),
 27 <http://www.awci.org/cd/archiveArticles.pl?id=1258>.

28 ²³ *Id.*

²⁴ *Id.*

they are implementing a 30%–35% increase in wallboard prices effective in 2012. The manufacturers’ pricing increases appear to be holding up.”²⁵

4. Defendants’ Fall 2011 Supply Restrictions.

163. Prior to the fall of 2011, price increases announced by Defendants did not involve supply restrictions. Accordingly, many customers would respond by buying increased quantities of gypsum wallboard in the interval between the announcement of the price increase and the effective date of the increase to “stockpile” for the upcoming year. This practice helped customers resist price increases. Further, this increase in gypsum wallboard purchases in the interval resulted in reductions of the amount demanded for gypsum wallboard shortly after the effective date, a consequence making it more difficult for manufacturers to maintain the price increase. As a result, manufacturers sometimes announced price increases that they knew they could not maintain in the long run in order to boost sales during the interval for cash flow reasons.

164. By contrast, when Defendants announced price hikes and abolished job quotes in the fall of 2011, they also implemented supply restrictions. Around September 2011, Defendants USG, National Gypsum, American Gypsum, PABCO, and CertainTeed prohibited purchasers from buying a greater quantity of gypsum wallboard than they had bought in comparable periods earlier in the year. For example, Defendant CertainTeed stated in a letter dated October 26, 2012 that “to address the likelihood of increased product demand, prior to the new price, CertainTeed reserved the right to regulate shipments prior to the increase.”

165. This policy reduced the ability of cartel members to cheat on the cartel by way of making large sales of gypsum wallboard at the lower prices prevalent before the price hikes took effect, and prevented customers from stockpiling gypsum wallboard purchased at lower prices.

166. To enforce the supply restrictions, Defendants monitored purchasers to prevent them from increasing inventory in an effort to evade the price hikes. Defendants also notified each other, as a part of their concerted action, when a particular customer holds out the prospect of building up inventory excessively. They have then notified such customers, typically

²⁵ *Fitch Revises USG’s Outlook to Stable*, Fitch Ratings, Sept. 7, 2012, available at <http://www.reuters.com/article/2012/09/07/idUSWNA488920120907>.

1 distributors, that they have begun monitoring its purchases.

2 167. With respect to the announcement in 2012 of price increases to take effect in 2013,
3 one analyst noted that “most distributors were reminded of their limited ability to procure product
4 ahead of last year’s price increase, which was driven in large part by controlled distribution and
5 manufacturers rather uniformly taking down their plants for maintenance in mid to late
6 December, which severely limited distributors’ ability to procure product at that time.” The
7 analyst went on to state that, around mid-September 2012, “manufacturers implemented a
8 national allocation program,” limiting distributors’ ability to place new orders to reflect their
9 average quantities purchased over the last one or two quarters.

10 168. Defendants imposed these supply restrictions in the face of an excessively large
11 amount of unused capacity, as alleged above. Indeed, Defendant USG recognized in 2012 that
12 the manufacturer’s capacity utilization was still at a “historically low” level.

13 169. Restricting supply contravenes the independent interests of any individual
14 Defendant, especially in light of the overcapacity in the industry. Had an individual manufacturer
15 in a truly competitive market attempted to restrict the amount of purchases by a given buyer, the
16 buyer would have solicited competing manufacturers, who would have been eager to utilize their
17 unused capacity to fill such orders. The fact that Defendant manufacturers individually and
18 openly renounced the opportunity to profit by letting customers stock up toward the end of the
19 year is inconsistent with normal competitive behavior. Consequently, a gypsum wallboard
20 manufacturer restricting supply independently would almost certainly lose the specific order and
21 would likely lose the customer permanently by causing the customer to buy from another
22 manufacturer who was not imposing such restrictions. By acting collusively rather than
23 independently, Defendants successfully imposed both sharp price hikes and supply restrictions,
24 each secure in the knowledge that its co-conspirators would not win over dissatisfied customers.

25 **5. Defendants’ Fall 2012 Collusive Price Increase Announcements.**

26 170. Defendants announced a second simultaneous and unjustifiable price increase in
27 2012. Similar to the previous increase, each Defendant’s increase took effect on or about January
28 1, 2013 and remained in place for all of 2013. Specifically:

- 1 • Defendant American Gypsum confirmed on August 22, 2012 that, effective on
2 January 1, 2013 and applying throughout 2013, it would impose an additional **25%**
3 price increase on all gypsum board products. This letter was signed by Keith Metcalf
(Senior VP of Marketing, Sales & Distribution) and covered the entire “United States”
area.
- 4 • Defendant National Gypsum stated on September 6, 2012, that it “will increase prices
5 on its entire Gypsum Wallboard product line . . . by **30%** across the board. It is once
6 again, our intention that this increase will be good for the entire calendar year of 2013.
7 In addition, our elimination of the practice of providing job quotes remains in effect
and is strictly enforced.” (Emphasis added). This letter was sent from National
Gypsum’s Charlotte, North Carolina corporate office.
- 8 • Defendant CertainTeed stated on September 13, 2012, that it “will increase price
9 effective with shipments on January 2, 2013 by **30%**. This increase amount will apply
10 to all gypsum board products and is intended to be in effect for the entire year.”
(Emphasis added). CertainTeed also stated that it was continuing “our policy of not
11 providing job quotes to customers for specific projects.” This letter was sent from
CertainTeed’s Tampa, Florida address.
- 12 • Defendant LaFarge stated on October 15, 2012 that effective January 1, 2013, prices
13 of all wallboard products would increase by **30%** and “[t]his price increase applies to
14 all our gypsum board products and is intended to be in effect for all of 2013.” This
letter was signed by Stephen DeMay (Vice President of Sales) and Robbe Pearson
(Senior Director of Marketing & Commercial Performance) and sent from LaFarge’s
15 Reston, Virginia address.
- 16 • Defendant PABCO stated on October 24, 2012 that “[e]ffective January 1, 2013,
17 PABCO Gypsum will implement a **30%** price increase across all product lines. This
increase will establish pricing for the Calendar Year 2013.” (Emphasis in original).
18 On information and belief, this letter was sent from PABCO’s Rancho Cordova,
California address.
- 19 • Defendant USG stated on November 16, 2012 that, effective January 1, 2013, “USG
20 will not provide job quotes or price protection for any wallboard products,” and that
price increases on the order of **30%** would be imposed on customers “in effect for all
21 of 2013.” This letter was signed by Greg Salah (Senior Vice President of Sales &
22 National Accounts) and sent from USG’s Chicago, Illinois address.
- 23 • Defendant Temple-Inland stated on November 26, 2012 that, effective December 30,
24 2012, Temple-Inland “will be increasing the price **30%** on all gypsum wallboard
products.” (Emphasis added). This letter was sent from Temple-Inland’s Diboll,
25 Texas address.

26 171. Defendants imposed this second round of sharp price hikes even though excess
27 capacity remained a persistent feature of the market. No single Defendant, acting independently,
28

could hope to adhere to such high prices because competitors would employ excess capacity to increase supply, undercutting such a sharp price hike. As USG stated in April 2012 (months before announcing a second price hike):

[T]here is significant excess wallboard production capacity industry-wide in the United States. Industry capacity in the United States was approximately 31.9 billion square feet as of January 1, 2012. We estimate that the industry capacity utilization was approximately 54% during the first quarter of 2012 compared to 51% during the first quarter of 2011 and 56% during the fourth quarter of 2011. We project that the industry capacity utilization rate will remain at approximately the current level for the balance of 2012.

172. Further, USG acknowledged that “such a low level of capacity utilization” puts “pressure on gypsum wallboard selling prices and gross margins.”

173. Capacity utilization in the industry continued to remain very low in 2013. Defendant USG estimated that industry capacity utilization was 52% in the first quarter of 2013 and projected that the utilization rate would increase only “slightly” in 2013.

174. Defendants enabled the fall 2012 price hikes by maintaining the supply restrictions implemented in fall 2011. USG, National Gypsum, American Gypsum, Temple-Inland, LaFarge, and CertainTeed each announced their intent to restrict purchase volume for fall 2012. For example, around September 18, 2012, USG stated that it had “put in a controlled distribution policy for our customers” and, consequently, customers “know there’s a ceiling on what they can purchase.”

175. Defendants’ price increases in 2013 resulted in even higher supra-competitive prices than had been in place in 2012. After surveying retailers and distributors, industry analysts stated that the 2013 price increases were successful.²⁶

6. Defendants’ 2014 Collusive Price Increase Announcements.

176. In 2013, Defendants again announced a simultaneous and unjustifiable price increase. Similar to the previous two price increases, each Defendant’s increase took effect on

²⁶ J.P. Morgan North America Equity Research, *USG Corporation: Survey Points to Successful Wallboard Price Increase for 2013* (Feb. 27, 2013).

January 1, 2014 and remained in place for all of 2014. Specifically:

- Defendant American Gypsum stated on April 5, 2013 that, effective January 1, 2014, it will be increasing “wallboard prices by **20%**.” (Emphasis added). American Gypsum further indicated that the increase would apply for all wallboard purchases “for the 2014 calendar year.” This letter was signed by Keith Metcalf (Senior VP of Marketing, Sales & Distribution).
- Defendant National Gypsum stated on September 6, 2013 that it “will increase prices . . . by **20%** across the board” effective January 1, 2014, and that it “is our intention that this increase will be good for the entire calendar year of 2014.” (Emphasis added). This letter was sent from National Gypsum’s Charlotte, North Carolina corporate office.
- Defendant CertainTeed announced on September 10, 2013 that it “will increase price[s] effective with shipments on January 1, 2014 by **20%**” and that this “increase amount . . . is intended to be in effect for the entire year.” (Emphasis added). This letter was sent from CertainTeed’s Tampa, Florida address.
- On September 23, 2013, Defendant PABCO announced that prices “will be increased by **20%** on all shipments effective January 1, 2014” and that this “increase will be good for the entire 2014 calendar year.” (Emphasis added.) This letter was sent on letterhead including PABCO’s Rancho Cordova, California and Newark, California addresses.
- Defendant Continental Building Products announced on September 30, 2013 that “effective with orders shipped on and after Wednesday, January 1st, 2014, the price of our products will be increased by . . . **20%**.” (Emphasis added). In addition, Continental stated that the increased price “is intended to be in effect for all of 2014.” This letter was sent from Continental’s Reston, Virginia address.
- Defendant USG announced on November 15, 2013 that it too was raising all wallboard prices effective January 1, 2014. This letter was sent by Greg Salah (Senior Vice President of Sales & National Accounts) and sent from USG’s Chicago, Illinois address.

177. Defendants’ price increases that took effect on January 1, 2014 again resulted in higher supra-competitive prices than had been in place during the previous year. And, again, Defendants’ 2014 price increases were largely successful, even as wallboard demand remained stagnant and excess capacity remained persistent in the market.

7. Defendants’ Proposed 2015 Price Increase Announcements.

178. In 2014, Defendants again began preparing to implement another simultaneous and coordinated price increase effective on or about January 1, 2015. Although it is not yet known

whether Defendants' prices will remain at supracompetitive levels for all of 2015, Defendants announced plans to increase wallboard prices for 2015 by approximately 15 to 20% over already inflated 2014 prices. Specifically:

- Defendant American Gypsum announced on May 9, 2014 that it intends to increase all wallboard prices by **15%** over 2014's prices and that the new price will apply to "all . . . wallboard purchases for the 2015 calendar year." (Emphasis added). This letter was signed by Keith Metcalf (Senior VP of Marketing, Sales & Distribution).
- Defendant National Gypsum announced on September 5, 2014 that, effective "with all shipments on and after Thursday, January 1, 2015," all prices will increase "by **20%** across the board." (Emphasis added). National Gypsum added that "our elimination of the practice of providing job quotes remains in effect and is strictly enforced." This letter was sent from National Gypsum's Charlotte, North Carolina corporate office.
- Defendant CertainTeed announced on September 25, 2014 that, effective January 5, 2015, "CertainTeed Gypsum will increase price effective with shipments on January 5, 2015 by **20%**. This increase amount will apply to all gypsum board products and is intended to be in effect for the entire year." (Emphasis added). This letter was sent from CertainTeed's Tampa, Florida address.
- Defendant Continental Building Products announced on October 20, 2014 that "effective with orders shipped on or after Thursday, January 1st, 2015, the price of our products will be increased by the following amount: **ALL WALLBOARD PRODUCTS 20%**. This price increase applies to all our gypsum board products and is intended to be in effect for all of 2015." (Emphasis added.) This letter was sent from Continental's Herndon, Virginia address.

8. Defendants' Price Increases Were Successful.

179. Defendants' collusive price increase announcements were successful in consistently raising the price of wallboard. For example, Defendant USG's corporate documents have consistently shown that USG's average realized selling price for drywall has substantially increased each quarter since Defendants' collusive price increase scheme began.

180. In particular, Defendant USG's 10-Q/10-K documents filed with the Securities & Exchange Commission show: an overall average price of \$111.27/thousand square feet ("tsf") in 2011²⁷; an overall average price of \$131.70/tsf in 2012 (18.36% increase from 2011)²⁸; an overall

²⁷ USG, Corp., Annual Report (Form 10-K) 31 (Feb. 14, 2012), *available at* <http://www.sec.gov/Archives/edgar/data/757011/000119312512059658/d256694d10k.htm>.

²⁸ USG, Corp., Annual Report (Form 10-K) 28 (Mar. 3, 2014), *available at* <http://www.sec.gov/Archives/edgar/data/757011/000075701114000047/usg10-k12312013.htm>.

average price of \$154.04/tsf in 2013 (16.96% increase from 2012; cumulative 38.44% increase from 2011)²⁹; and an overall average price of \$166.99/tsf for the first and second quarters of 2014 (8.40% increase from 2013; cumulative 50.07% increase from 2011).³⁰

181. Defendants' coordinated and collusive price increases resulted in similar actual price increases for each other Defendant as well.

H. The Price Increases Were Passed Through To Plaintiffs.

182. The structure of the gypsum industry is such that Defendants' conspiracy impacted Plaintiffs by causing them to pay higher prices for gypsum wallboard than they would have absent the conspiracy.

183. The chain of distribution between Defendant manufacturers and Plaintiff homebuilders is short.

184. Defendants primarily sell gypsum wallboard to distributors (including those distributors they own), who then sell to the homebuilder (like Plaintiffs). The margins at distributors are sufficiently thin that price increases for gypsum wallboard force them to increase prices immediately when the cost of gypsum wallboard increases. Thus, however Plaintiffs sourced wallboard (from distributors or from Defendants directly), Defendants' conspiracy resulted in increased and supra-competitive prices for wallboard purchased by Plaintiffs.

185. The structure of Defendants' conspiracy increased the likelihood that distributors would pass on price increases to Plaintiffs. When a manufacturer of gypsum wallboard increases prices, distributors receive letters describing the price increase. Distributors, in turn, show those letters to their customers to explain why they are increasing prices. Indeed, many gypsum wallboard distributors posted Defendants' fall 2011 letters on their web pages to coach their customers—including Plaintiffs—to accept the passed-on overcharges.

186. Similarly, economic literature describes how price increases with long durations lead to pass-through of those increases. Because Defendants implemented year-long increases,

²⁹ *Id.*

³⁰ USG, Corp., Quarterly Report (Form 10-Q) 29 (July 24, 2014), available at <http://www.otcm Markets.com/edgar/GetFilingPdf?FilingID=10108714>.

they increased the likelihood that those increases would be passed on.

187. However, unlike distributors—who routinely passed on wallboard cost increases to customers like Plaintiffs—Plaintiffs are generally not able to pass on the wallboard price increases to their customers (home buyers). Plaintiffs sell fully-constructed homes and other buildings and do not break out the cost of wallboard or other components when negotiating a sale price for that fully-constructed building. Instead, home prices are traditionally dictated by a number of other factors unrelated to building material costs, such as square footage and the price of comparable homes in a particular real estate market.

I. ANTITRUST IMPACT AND INJURY

188. Beginning by at least September 2011 and continuing through the present, Defendants engaged in a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain, and/or stabilize wallboard prices in the United States.

189. Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were to artificially raise, fix, maintain, and/or stabilize wallboard prices in the United States. These activities included:

- (a) Participation in meetings, conversations, and communications to discuss and fix, raise, maintain, and/or stabilize the price and pricing terms for the sale of wallboard in the United States;
- (b) Agreement during those meetings, conversations, and communications to charge prices at specified levels and otherwise to fix, raise, maintain, and/or stabilize prices of wallboard sold in the United States;
- (c) Agreement during those meetings, conversations, and communications to discontinue the industry practice of providing job quotes, in furtherance of their conspiracy to fix, raise, maintain, and/or stabilize the prices of wallboard sold in the United States;
- (d) Agreement during those meetings, conversations, and communications to restrict the supply of wallboard to their customers; and
- (e) Taking numerous steps, as set forth above, to implement and maintain the conspiracy.

190. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating the unlawful agreement described in this Complaint.

191. Defendants' unlawful agreement and conspiracy has had the following effects,

among others:

- (a) Restraining or eliminating price competition with respect to gypsum wallboard;
- (b) Raising, fixing, stabilizing, and/or maintaining prices for gypsum wallboard at artificially inflated levels; and
- (c) Depriving purchasers of gypsum wallboard of the benefits of the interplay of free and unrestrained competitive forces.

192. During the Conspiracy Period, Plaintiffs paid supra-competitive prices for gypsum wallboard.

193. Because of the violations of the antitrust laws alleged herein, Plaintiffs have sustained injury to their businesses or property, having paid higher prices for gypsum wallboard than they would have paid in the absence of Defendants' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **VIOLATION OF SECTION ONE OF THE SHERMAN ACT** **(On Behalf of All Plaintiffs Against All Defendants)**

194. Plaintiffs incorporate and re-allege each allegation set forth in the preceding paragraphs of this Complaint as if set forth in full at this point.

195. Beginning at a time presently unknown to Plaintiffs, but at least as early as September 2011 and continuing through the present, Defendants and their co-conspirators have engaged in a continuing agreement or conspiracy in restraint of trade to artificially raise, fix, maintain, and/or stabilize the prices of gypsum wallboard in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

196. Defendants' conduct featured anticompetitive activities, the purpose and effect of which were to artificially raise, fix, maintain, and/or stabilize the price of gypsum wallboard sold in the United States. These activities included:

- (a) participation in meetings, conversations, and communications to discuss the

- price and pricing terms for the sale of gypsum wallboard in the United States;
- (b) agreement during those meetings, conversations, and communications to charge prices at specified levels and otherwise to fix, raise, maintain, and/or stabilize prices of gypsum wallboard sold in the United States;
- (c) agreement during those meetings, conversations, and communications to discontinue the industry practice of providing job quotes, in furtherance of their conspiracy to fix, raise, maintain, and/or stabilize prices of gypsum wallboard sold in the United States;
- (d) agreement during those meetings, conversations, and communications to impose supply restrictions in furtherance of their conspiracy to fix, raise, maintain, and/or stabilize prices of gypsum wallboard sold in the United States; and
- (e) taking numerous steps, as set forth herein, to implement and maintain the conspiracy, including monitoring compliance of fellow conspirators.

197. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating the unlawful agreements, combinations, and/or conspiracies described in this Complaint.

198. Defendants' contract, combination, or conspiracy constitutes an unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and applicable state laws discussed herein.

199. The alleged contract, combination, or conspiracy among competitors constitutes a *per se* violation of the federal antitrust laws.

200. As a result of Defendants' unlawful conduct, Plaintiffs have been injured in their businesses and property because they have paid more for gypsum wallboard manufactured by Defendants (or their subsidiaries or controlled affiliates) than they would have paid absent Defendants' combination and conspiracy.

201. Defendants' unlawful conduct has had at least the following effects:

- (a) Restraining, suppressing, and/or eliminating price competition with respect to

gypsum wallboard;

(b) Raising, fixing, stabilizing, and/or maintaining prices for gypsum wallboard sold by Defendants, their co-conspirators, and others at artificially inflated, supra-competitive levels throughout the United States; and

(c) Depriving purchasers of gypsum wallboard of the benefits of the interplay of free and unrestrained competitive forces.

202. Gypsum wallboard products are identifiable, discrete physical products that remain essentially unchanged when incorporated into a construction project. As a result, gypsum wallboard follows a traceable physical chain of distribution from Defendants to Plaintiffs, and any costs attributable to gypsum wallboard are likewise traceable through the chain of distribution to Plaintiffs.

203. Defendants' antitrust violations are continuing and will continue unless enjoined by this Court.

204. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, Plaintiffs are entitled to a final and permanent injunction against Defendants, preventing and restraining the violations alleged herein.

205. Pursuant to the Clayton Act, Plaintiffs are entitled to the costs of prosecuting this suit, including reasonable attorneys' fees and expert fees.

206. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, each Plaintiff demands a jury trial as to all issues triable by a jury.

SECOND CLAIM FOR RELIEF
VIOLATIONS OF SECTION ONE OF THE SHERMAN ACT
(On Behalf of Plaintiffs Ashton Woods and D.R. Horton Against Defendant USG)

207. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

208. Beginning at least as early as September 2011, and continuing thereafter to the present, Defendant USG (by and through its wholly-owned subsidiary L&W Supply Corporation) and its co-conspirator Defendants, by and through their officers, directors, employees, agents,

1 and/or other representatives, engaged in anticompetitive activities, the purpose and effect of
2 which were to artificially raise, fix, maintain, and/or stabilize the price of wallboard sold in the
3 United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

4 209. Defendant USG and its co-conspirator Defendants entered into a continuing
5 agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain,
6 and/or stabilize prices for wallboard in the United States.

7 210. Defendant USG and its co-conspirator Defendants entered into a continuing
8 agreement, understanding, and conspiracy in restraint of trade to eliminate job quotes in
9 furtherance of its conspiracy to fix, raise, maintain, and/or stabilize the price of wallboard in the
10 United States.

11 211. Defendant USG and its co-conspirator Defendants entered into a continuing
12 agreement, understanding, and conspiracy in restraint of trade to impose supply restrictions in
13 furtherance of its conspiracy to fix, raise, maintain, and/or stabilize prices for wallboard sold in
14 the United States.

15 212. Defendant USG and its co-conspirator Defendants took numerous steps, as set
16 forth herein, to implement and maintain the conspiracy to fix, raise, maintain, and/or stabilize the
17 price of wallboard in the United States, including monitoring compliance of fellow conspirators.

18 213. Plaintiffs Ashton Woods and D.R. Horton have been injured in their businesses
19 and property by reason of Defendant USG's and its co-conspirator Defendants' participation and
20 role in the unlawful combination, contract, conspiracy, and agreement. Plaintiffs Ashton Woods
21 and D.R. Horton paid more for wallboard purchased directly from USG's wholly-owned
22 subsidiary L&W Supply Corporation than they otherwise would have paid absent USG's and its
23 co-conspirator Defendants' unlawful conduct. This injury is of the type the federal antitrust laws
24 were designed to prevent and flows from that which makes Defendant USG's and its co-
25 conspirator Defendants' conduct unlawful.

26 214. Accordingly, Plaintiffs Ashton Woods and D.R. Horton seek damages, to be
27 trebled pursuant to federal antitrust law, and costs of suit, including reasonable attorneys' fees
28 and expert fees.

THIRD CLAIM FOR RELIEF
VIOLATIONS OF STATE ANTITRUST AND RESTRAINT OF TRADE LAWS
(On Behalf of All Plaintiffs Against All Defendants)

215. Plaintiffs incorporate by this reference the allegations in the above paragraphs as if fully set forth herein.

216. More than 60% of the nation's gypsum wallboard is manufactured by Defendants headquartered in states that permit indirect purchaser damage recovery actions. For example, Defendant PABCO is headquartered in California with significant business operations across the state; Defendant USG and its subsidiaries maintain offices within Illinois and are headquartered in Chicago, Illinois; Defendant National Gypsum maintains offices within North Carolina and is headquartered in Charlotte, North Carolina; and Defendant Continental (formerly Defendant LaFarge) maintain offices within Virginia and are headquartered in Virginia.

217. **California.** Defendants have entered into agreements in restraint of trade subject to and in violation of the California Business & Professions Code §§ 16750(a), *et seq.* (the "Cartwright Act"):

218. During the Conspiracy Period, Defendants had a substantial business presence in California. Defendant PABCO is organized under the laws of the state of California, is headquartered in Rancho Cordova, California, and operates one of its two major gypsum wallboard plants in Newark, California. Defendants USG, National Gypsum, CertainTeed, and American Gypsum also maintain wallboard manufacturing/distribution plants and/or sales or other offices throughout the state of California. Moreover, all Defendants sell wallboard (directly and/or through distributors) to customers in California.

219. Defendants facilitated the conspiracy alleged herein through their offices and operations in California, as well as through their participation at association meetings held in California. For example, in April 2010, Defendants attended a Gypsum Association Board of Directors meeting in San Francisco, California. Defendants attended at least one AWCI meeting in San Diego, California at the US Grant Hotel (from September 17–20, 2013), at which Defendants had the opportunity to and likely did take acts in furtherance of their price-fixing scheme. Defendants' conduct within California in furtherance of the conspiracy caused injury to

1 Plaintiffs both in California and throughout the United States through, *inter alia*, artificially
2 increased prices for gypsum wallboard.

3 220. Certain Plaintiffs—including Plaintiffs Beazer, D.R. Horton, Hovnanian, KB
4 Home, Meritage Homes, Pulte Homes, Ryland Group, Toll Brothers, and TRI Pointe—likewise
5 have a significant business presence in California. For example, Plaintiff KB Home is
6 headquartered in Los Angeles, California, Plaintiff Ryland Group is headquartered in Westlake
7 Village, California, and Plaintiff TRI Pointe is headquartered in Irvine, California. During the
8 Conspiracy Period, certain Plaintiffs also purchased at artificially-inflated prices gypsum
9 wallboard manufactured by Defendants from distributors within California for use in projects
10 within California. In addition, certain Plaintiffs built, marketed, and sold homes and other
11 residential properties containing gypsum wallboard manufactured by Defendants to customers in
12 California. As a result of Plaintiffs' presence in California and the substantial business they
13 conduct in California, Plaintiffs are entitled to the protection of the laws of California.

14 221. Beginning at least as early as September 2011 and continuing thereafter to the
15 present, Defendants and their co-conspirators entered into and engaged in a continuing unlawful
16 trust in restraint of trade to fix, raise, stabilize, and/or maintain prices of and allocate markets for
17 gypsum wallboard at supra-competitive levels in violation of the Cartwright Act. Defendants'
18 conduct substantially affected California commerce.

19 222. The aforesaid violations of Section 16720 of the California Business &
20 Professions Code consisted, without limitation, of a continuing unlawful trust and concert of
21 action among Defendants and their co-conspirators, the substantial terms of which were to fix,
22 raise, maintain, and/or stabilize the prices of and to allocate the markets for gypsum wallboard.

23 223. The alleged unlawful trust in restraint of trade among competitors constitutes a *per*
24 *se* violation of the Cartwright Act.

25 224. For the purpose of forming and effectuating the unlawful trust, Defendants and
26 their co-conspirators have done those things which they combined and conspired to do, including
27 but in no way limited to the acts, practices, and course of conduct set forth above and the
28 following:

- (a) to fix, raise, maintain, and/or stabilize the price of gypsum wallboard at artificially inflated, supra-competitive levels throughout the United States;
- (b) to restrain, suppress, and/or eliminate price competition with respect to gypsum wallboard; and
- (c) to deprive purchasers of gypsum wallboard of the benefits of the interplay of free and unrestrained competitive forces.

225. The combination and conspiracy alleged herein has had, *inter alia*, the following effects:

- (a) price competition in the sale of gypsum wallboard has been restrained, suppressed, and/or eliminated in the State of California;
- (b) prices for gypsum wallboard sold by Defendants, their co-conspirators, and others have been fixed, raised, maintained, and/or stabilized at artificially high, non-competitive levels in the State of California; and
- (c) those who purchased gypsum wallboard from Defendants, their co-conspirators, and others have been deprived of the benefit of free and open competition.

226. As a result of Defendants' unlawful conduct, Plaintiffs paid supra-competitive, artificially inflated prices for the gypsum wallboard they purchased during the Conspiracy Period.

227. As a direct and proximate result of Defendants' conduct within California and elsewhere, Plaintiffs have been injured in their business and property by paying more for gypsum wallboard purchased in California and elsewhere in the United States from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy. As a result of Defendants' violations of Section 16720 of the California Business & Professions Code, Plaintiffs are entitled to treble damages and costs of suit, including reasonable attorneys' fees and expert fees, pursuant to Section 16750(a) of the California Business & Professions Code.

228. In the event that the Court does not apply California law on a nationwide basis, Plaintiffs allege the following violations of state antitrust and restraint of trade laws in the alternative.

229. Illinois. Defendants' conspiracy alleged herein is subject to and in violation of the Illinois Antitrust Act, 740 Illinois Code 10/1, *et seq.*:

230. During the Conspiracy Period, Defendants had a substantial business presence in

1 Illinois. Defendant USG and its wholly-owned subsidiary, Defendant United States Gypsum
2 Company, are headquartered in Chicago, Illinois. Defendant National Gypsum also maintains a
3 wallboard manufacturing/distribution plant in Waukegan, Illinois. Moreover, each Defendant
4 sells wallboard (directly or through distributors) to customers in Illinois.

5 231. Defendants facilitated the conspiracy described in this Complaint through their
6 offices and operations in Illinois, and caused injury to Plaintiffs in Illinois and throughout the
7 United States as a result of having to pay supra-competitive prices for gypsum wallboard
8 manufactured by Defendants.

9 232. Certain Plaintiffs—including Plaintiffs D.R. Horton, Hovnanian, M/I Homes,
10 Pulte Homes, Ryland Group, and Toll Brothers—conducted a substantial volume of business in
11 Illinois during the Conspiracy Period, including through the sale of homes in Illinois containing
12 gypsum wallboard manufactured by Defendants. As a result of their presence in Illinois and the
13 substantial business they conduct in Illinois, Plaintiffs are entitled to the protection of the laws of
14 Illinois.

15 233. Defendants' conspiracy restrained, suppressed, and/or eliminated competition in
16 the sale of gypsum wallboard in Illinois and fixed, raised, maintained, and/or stabilized gypsum
17 wallboard prices in Illinois at artificially high, non-competitive levels. As a result, Defendants'
18 conspiracy substantially affected Illinois commerce.

19 234. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have
20 been injured in their businesses and property by paying more for gypsum wallboard purchased in
21 Illinois from Defendants, their co-conspirators, and others than they would have paid in the
22 absence of Defendants' combination and conspiracy, and are entitled to relief under Illinois
23 Antitrust Act, 740 Illinois Code 10/1, *et seq.*

24 235. **North Carolina.** Defendants' conspiracy alleged herein is subject to and in
25 violation of North Carolina Gen. Stat. §§ 75-1, *et seq.*:

26 236. During the Conspiracy Period, Defendants had a substantial business presence in
27 North Carolina. Defendant National Gypsum maintains offices within North Carolina and is
28 headquartered in Charlotte, North Carolina. Defendant National Gypsum also maintains

1 wallboard manufacturing/distribution plants and/or sales or other offices in North Carolina.
2 Moreover, Defendants sell wallboard (directly or through distributors) to customers in North
3 Carolina.

4 237. Defendants facilitated the conspiracy alleged herein through their offices and
5 operations in North Carolina, as well as through their participation at association meetings held in
6 North Carolina. For example, on April 16, 2012, Defendants jointly attended the DWFC 2012
7 Spring Meeting held at the Holiday Inn in Charlotte, North Carolina.

8 238. During the Conspiracy Period, certain Plaintiffs purchased at their offices and
9 facilities in North Carolina gypsum wallboard products manufactured by Defendants that were
10 sold at artificially-inflated prices because of Defendants' price-fixing conspiracy.

11 239. Certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton,
12 Drees, Hovnanian, KB Home, Meritage Homes, M/I Homes, Pulte Homes, Ryland Group, and
13 Toll Brothers—conducted a substantial volume of business in North Carolina during the
14 Conspiracy Period, including through the sale of homes within North Carolina containing gypsum
15 wallboard manufactured by Defendants. As a result of their presence in North Carolina and the
16 substantial business they conduct in North Carolina, Plaintiffs are entitled to the protection of the
17 laws of North Carolina.

18 240. Defendants' conspiracy restrained, suppressed, and/or eliminated competition in
19 the sale of gypsum wallboard in North Carolina and fixed, raised, maintained, and/or stabilized
20 gypsum wallboard prices in North Carolina at artificially high, non-competitive levels. As a
21 result, Defendants' conspiracy substantially affected North Carolina commerce.

22 241. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
23 injured in their businesses and property by paying more for gypsum wallboard purchased in North
24 Carolina from Defendants, their co-conspirators, and others than they would have paid in the
25 absence of Defendants' combination and conspiracy, and are entitled to relief under North
26 Carolina Gen. Stat. §§ 75-1, *et seq.*

27 242. **Virginia.** Defendants' conspiracy alleged herein is subject to and in violation of
28 Virginia Code §§ 59.1-198, *et seq.*

1 243. During the Conspiracy Period, Defendants had a substantial business presence in
2 Virginia. Defendants LaFarge and Continental maintain offices within Virginia and are
3 headquartered in Reston and Herndon, Virginia, respectively. Defendants USG and Continental
4 maintain wallboard manufacturing/distribution plants and/or sales or other offices in Virginia.
5 Moreover, each Defendant sells wallboard (directly or through distributors) to customers in
6 Virginia.

7 244. Defendants facilitated the conspiracy described in this Complaint through their
8 offices and operations in Virginia and caused injury to certain Plaintiffs in Virginia and
9 throughout the United States as a result of having to pay supra-competitive prices for gypsum
10 wallboard manufactured by Defendants.

11 245. Certain Plaintiffs—including Plaintiffs Beazer, D.R. Horton, Drees, Hovnanian,
12 KB Home, M/I Homes, Pulte Homes, Ryland Group, Toll Brothers, and TRI Pointe—conducted a
13 substantial volume of business in Virginia during the Conspiracy Period, including through the
14 sale of homes within Virginia containing gypsum wallboard manufactured by Defendants. As a
15 result of their presence in Virginia and the substantial business they conduct in Virginia, Plaintiffs
16 are entitled to the protection of the laws of Virginia.

17 246. Defendants' conspiracy restrained, suppressed, and/or eliminated competition in
18 the sale of gypsum wallboard in Virginia and fixed, raised, maintained, and/or stabilized gypsum
19 wallboard prices in Virginia at artificially high, non-competitive levels. As a result, Defendants'
20 conspiracy substantially affected Virginia commerce.

21 247. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
22 injured in their business and property by paying more for gypsum wallboard purchased in
23 Virginia from Defendants, their co-conspirators, and others than they would have paid in the
24 absence of Defendants' combination and conspiracy, and are entitled to relief under Virginia
25 Code §§ 59.1-198, *et seq.*

26 248. By reason of the foregoing, Defendants' price fixing conspiracy is also subject to
27 and in violation of the following state antitrust statutes as a result of certain Plaintiffs and
28 Defendants' business presence in these states as well as the business operations in these states that

relate to the claims alleged herein: Alabama Code §§ 6-5-60, *et seq.*; Arizona Revised Stat. §§ 44-1401, *et seq.*³¹; District of Columbia Code Ann. §§ 28-4501, *et seq.*; Idaho Code §§ 48-108, *et seq.*; Michigan Comp. Laws Ann. §§ 445.771, *et seq.*; Minnesota Stat. §§ 325D.50, *et seq.*; Mississippi Code Ann. §§ 75-21-1, *et seq.*; Nevada Rev. Stat. Ann. §§ 598A, *et seq.*³²; New Mexico Stat. Ann. §§ 57-1-1, *et seq.*; New York General Business Law §§ 340, *et seq.*³³; Oregon Rev. Stat. §§ 646.705, *et seq.*; South Carolina Code Ann. §§ 39-3-30, *et seq.*; Tennessee Code §§ 47-25-101, *et seq.*; Utah Code Ann. §§ 76-10-3103, *et seq.*; West Virginia Code §§ 47-18-1, *et seq.*; and Wisconsin Stat. §§ 133.01, *et seq.*

249. **Alabama.** Defendants have entered into agreements in restraint of trade subject to and in violation of Alabama Code §§ 6-5-60, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Alabama. Defendants facilitated the conspiracy described in this Complaint through their operations in Alabama and caused injury to certain Plaintiffs in Alabama and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiff D.R. Horton—conducted a substantial volume of business in Alabama during the Conspiracy Period, including through the sale of homes within Alabama containing gypsum wallboard manufactured by Defendants. As a result of their presence in Alabama and the substantial business they conduct in Alabama, Plaintiffs are entitled to the protection of the laws of Alabama;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Alabama and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Alabama at artificially high, non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected Alabama commerce; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Alabama from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under Alabama Code §§ 6-5-60, *et seq.*

³¹ In compliance with Arizona's Antitrust Act, Ariz. Rev. Stat. § 44-1415, Plaintiffs notified the Arizona Attorney General of the existence of this action.

³² In compliance with the Nevada Unfair Trade Practices Act, Nev. Rev. Stat. Ann. § 589A.210(3), Plaintiffs provided the Nevada Attorney General with a copy of this Complaint.

³³ In compliance with New York Gen. Bus. Law § 340(5), Plaintiffs provided the New York Attorney General with a copy of this Complaint.

1 *seq.*

2 250. **Arizona.** Defendants have entered into agreements subject to and in restraint of
3 trade in violation of Arizona Revised Stat. §§ 44-1401, *et seq.*:

- 4 (a) Defendants sell wallboard (directly or through distributors) to customers in
5 Arizona. Defendants facilitated the conspiracy described in this Complaint
6 through their operations in Arizona, as well as through their participation at
7 association meetings held in Arizona. For example, in April 2013, Defendants
8 jointly attended a meeting of the Gypsum Association's Board of Directors in
9 Tucson, Arizona;
- 10 (b) Certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton,
11 Hovnanian, KB Home, Meritage Homes, Pulte Homes, Ryland Group, Toll
12 Brothers, and TRI Pointe—conducted a substantial volume of business in
13 Arizona during the Conspiracy Period, including through the sale of homes
14 within Arizona containing gypsum wallboard manufactured by Defendants. As a result of their presence in Arizona and the substantial business they
15 conduct in Arizona, Plaintiffs are entitled to the protection of the laws of
16 Arizona;
- 17 (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition
18 in the sale of gypsum wallboard in Arizona and fixed, raised, maintained,
19 and/or stabilized gypsum wallboard prices in Arizona at artificially high, non-
20 competitive levels;
- 21 (d) As a result, Defendants' conspiracy substantially affected Arizona commerce;
22 and
- 23 (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have
24 been injured in their businesses and property by paying more for gypsum
25 wallboard purchased in Arizona from Defendants, their co-conspirators, and
26 others than they would have paid in the absence of Defendants' combination
27 and conspiracy, and are entitled to relief under Ariz. Rev. Stat. §§ 44-1401, *et*
28 *seq.*

251. **District of Columbia.** Defendants have entered into agreements subject to and in
restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.*:

- 22 (a) Defendants sell wallboard (directly or through distributors) to customers in the
23 District of Columbia. Defendants facilitated the conspiracy alleged herein
24 through their operations in the District of Columbia and caused injury to
25 certain Plaintiffs in the District of Columbia and throughout the United States
26 as a result of having to pay supra-competitive prices for gypsum wallboard
27 manufactured by Defendants;
- 28 (b) Certain Plaintiffs—including Plaintiffs Drees, Hovnanian, and Toll Brothers—
conducted a substantial volume of business in the District of Columbia during
the Conspiracy Period, including through the sale of homes within the District
of Columbia containing gypsum wallboard manufactured by Defendants. As a
result of their presence in the District of Columbia and the substantial business
they conduct in the District of Columbia, Plaintiffs are entitled to the
protection of the laws of the District of Columbia;

- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in the District of Columbia and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in the District of Columbia at artificially high, non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected commerce in the District of Columbia; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in the District of Columbia from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under District of Columbia Code Ann. §§ 28-4501, *et seq.*

252. **Idaho.** Defendants have entered into agreements subject to and in restraint of trade in violation of Idaho Code §§ 48-108, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Idaho. Defendants took actions within the state of Idaho to implement and further their conspiracy, including jointly attending an AWCI Industry Executive Conference in Coeur d'Alene, Idaho from September 13–16, 2011;
- (b) Certain Plaintiffs—including Plaintiff D.R. Horton—conducted a substantial volume of business in Idaho during the Conspiracy Period, including through the sale of homes within Idaho containing gypsum wallboard manufactured by Defendants. As a result of their presence in Idaho and the substantial business they conduct in Idaho, Plaintiffs are entitled to the protection of the laws of Idaho;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Idaho and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Idaho at artificially high, non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected Idaho commerce; and
- (e) As a direct and proximate result of Defendants' conduct, Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Idaho from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under Idaho Code §§ 48-108, *et seq.*

253. **Michigan.** Defendants have entered into agreements subject to and in restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Michigan. Defendants facilitated the conspiracy alleged herein through their operations in Michigan and caused injury to certain Plaintiffs in Michigan and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;

- (b) Certain Plaintiffs—including Plaintiffs Pulte Homes and Toll Brothers—conducted a substantial volume of business in Michigan during the Conspiracy Period, including through the sale of homes within Michigan containing gypsum wallboard manufactured by Defendants. As a result of their presence in Michigan and the substantial business they conduct in Michigan, Plaintiffs are entitled to the protection of the laws of Michigan;
- (c) Defendants’ conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Michigan and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Michigan at artificially high, non-competitive levels;
- (d) As a result, Defendants’ conspiracy substantially affected Michigan commerce; and
- (e) As a direct and proximate result of Defendants’ conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Michigan from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants’ combination and conspiracy, and are entitled to relief under Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

254. **Minnesota.** Defendants have entered into agreements subject to and in restraint of trade in violation of Minnesota Stat. §§ 325D.50, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Minnesota. Defendants facilitated the conspiracy alleged herein through their operations in Minnesota and caused injury to certain Plaintiffs in Minnesota and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiffs D.R. Horton, Hovnanian, Pulte Homes, Ryland Group, and Toll Brothers—conducted a substantial volume of business in Minnesota during the Conspiracy Period, including through the sale of homes within Minnesota containing gypsum wallboard manufactured by Defendants. As a result of their presence in Minnesota and the substantial business they conduct in Minnesota, Plaintiffs are entitled to the protection of the laws of Minnesota;
- (c) Defendants’ conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Minnesota and fixed, raised, maintained, and stabilized gypsum wallboard prices in Minnesota at artificially high, non-competitive levels;
- (d) As a result, Defendants’ conspiracy substantially affected Minnesota commerce; and
- (e) As a direct and proximate result of Defendants’ conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Minnesota from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants’ combination and conspiracy, and are entitled to relief under Minnesota Stat. §§ 325D.50, *et seq.*

255. **Mississippi.** Defendants have entered into agreements subject to and in restraint of trade in violation of Mississippi Code Ann. §§ 75-21-1, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Mississippi. Defendants facilitated the conspiracy alleged herein through their operations in Mississippi and caused injury to certain Plaintiffs in Mississippi and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiff D.R. Horton—conducted a substantial volume of business in Mississippi during the Conspiracy Period, including through the sale of homes within Mississippi containing gypsum wallboard manufactured by Defendants. As a result of their presence in Mississippi and the substantial business they conduct in Mississippi, Plaintiffs are entitled to the protection of the laws of Mississippi;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Mississippi and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Mississippi at artificially high, non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected Mississippi commerce; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Mississippi from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under Mississippi Code Ann. §§ 75-21-1, *et seq.*

256. **Nevada.** Defendants have entered into agreements subject to and in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Nevada. Defendants facilitated the conspiracy alleged herein through their operations in Nevada and caused injury to certain Plaintiffs in Nevada and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Defendants also took steps within the state of Nevada to further their conspiracy, including joint attendance at the following meetings: (i) DWFC 2011 Spring Meeting on April 5, 2011 at the Embassy Suites Hotel in Las Vegas, Nevada; (ii) DWFC 2011 Fall Meeting on September 20, 2011 at the Hampton Inn—Tropicana Hotel in Las Vegas, Nevada; (iii) Gypsum Association trade meeting in mid-October 2011 in Las Vegas, Nevada; (iv) DWFC 2012 Fall Meeting on September 18, 2012 at the New York, New York Hotel in Las Vegas, Nevada; (v) DWFC 2013 Fall Meeting on October 1, 2013 at the Embassy Suites Convention Center in Las Vegas, Nevada; (vi) DWFC 2014 Spring Meeting on April 1, 2014 at the Embassy Suites Convention Center in Las Vegas, Nevada; and (vii) DWFC 2014 Fall Meeting on September 23, 2014 at the Embassy Suites Convention Center in Las Vegas,

Nevada;

- (c) Certain Plaintiffs—including Plaintiffs Beazer, D.R. Horton, KB Home, Pulte Homes, Ryland Group, Toll Brothers, and TRI Pointe—conducted a substantial volume of business in Nevada during the Conspiracy Period, including through the sale of homes within Nevada containing gypsum wallboard manufactured by Defendants. As a result of their presence in Nevada and the substantial business they conduct in Nevada, Plaintiffs are entitled to the protection of the laws of Nevada;
- (d) Defendants’ conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Nevada and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Nevada at artificially high, non-competitive levels;
- (e) As a result, Defendants’ conspiracy substantially affected Nevada commerce; and
- (f) As a direct and proximate result of Defendants’ conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Nevada from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants’ combination and conspiracy, and are entitled to relief under Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

257. **New Mexico.** Defendants have entered into agreements subject to and in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in New Mexico. Defendants facilitated the conspiracy alleged herein through their operations in New Mexico and caused injury to certain Plaintiffs in New Mexico and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiffs D.R. Horton, KB Home, and Pulte Homes—conducted a substantial volume of business in New Mexico during the Conspiracy Period, including through the sale of homes within New Mexico containing gypsum wallboard manufactured by Defendants. As a result of their presence in New Mexico and the substantial business they conduct in New Mexico, Plaintiffs are entitled to the protection of the laws of New Mexico;
- (c) Defendants’ conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in New Mexico and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in New Mexico at artificially high, non-competitive levels;
- (d) As a result, Defendants’ conspiracy substantially affected New Mexico commerce; and
- (e) As a direct and proximate result of Defendants’ conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in New Mexico from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants’

combination and conspiracy, and are entitled to relief under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

258. **New York.** Defendants have entered into agreements subject to and in restraint of trade in violation of New York General Business Law §§ 340, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in New York. Defendants facilitated the conspiracy alleged herein through their operations in New York and caused injury to certain Plaintiffs in New York and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiffs Beazer, Pulte Homes, and Toll Brothers—conducted a substantial volume of business in New York during the Conspiracy Period, including through the sale of homes within New York containing gypsum wallboard manufactured by Defendants. As a result of their presence in New York and the substantial business they conduct in New York, Plaintiffs are entitled to the protection of the laws of New York;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in New York and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in New York at artificially high, non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected New York commerce; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in New York from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under New York General Business Law §§ 340, *et seq.*

259. **Oregon.** Defendants have entered into agreements subject to and in restraint of trade in violation of Oregon Revised Stat. §§ 646.705, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Oregon. Defendants facilitated the conspiracy alleged herein through their operations in Oregon and caused injury to certain Plaintiffs in Oregon and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiff D.R. Horton—conducted a substantial volume of business in Oregon during the Conspiracy Period, including through the sale of homes within Oregon containing gypsum wallboard manufactured by Defendants. As a result of their presence in Oregon and the substantial business they conduct in Oregon, Plaintiffs are entitled to the protection of the laws of Oregon;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Oregon and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Oregon at artificially high, non-

competitive levels;

- (d) As a result, Defendants' conspiracy substantially affected Oregon commerce; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Oregon from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under Oregon Revised Stat. §§ 646.705, *et seq.*

260. **South Carolina.** Defendants have entered into agreements subject to and in restraint of trade in violation of South Carolina Code Ann. §§ 39-3-30, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in South Carolina. Defendants facilitated the conspiracy alleged herein through their operations in South Carolina and caused injury to certain Plaintiffs in South Carolina and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton, Hovnanian, Meritage Homes, Pulte Homes, Ryland Group, and Toll Brothers—conducted a substantial volume of business in South Carolina during the Conspiracy Period, including through the sale of homes within South Carolina containing gypsum wallboard manufactured by Defendants. As a result of their presence in South Carolina and the substantial business they conduct in South Carolina, Plaintiffs are entitled to the protection of the laws of South Carolina;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in South Carolina and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in South Carolina at artificially high, non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected South Carolina commerce; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in South Carolina from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under South Carolina Code Ann. §§ 39-3-30, *et seq.*

261. **Tennessee.** Defendants have entered into agreements subject to and in restraint of trade in violation of Tennessee Code §§ 47-25-101, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Tennessee. Defendants facilitated the conspiracy alleged herein through their operations in Tennessee and caused injury to certain Plaintiffs in Tennessee and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;

- (b) Certain Plaintiffs—including Plaintiffs Beazer, D.R. Horton, Drees, Meritage Homes, and Pulte Homes—conducted a substantial volume of business in Tennessee during the Conspiracy Period, including through the sale of homes within Tennessee containing gypsum wallboard manufactured by Defendants. As a result of their presence in Tennessee and the substantial business they conduct in Tennessee, Plaintiffs are entitled to the protection of the laws of Tennessee;
- (c) Defendants’ conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Tennessee and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Tennessee at artificially high, non-competitive levels;
- (d) As a result, Defendants’ conspiracy substantially affected Tennessee commerce; and
- (e) As a direct and proximate result of Defendants’ conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Tennessee from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants’ combination and conspiracy, and are entitled to relief under Tennessee Code §§ 47-25-101, *et seq.*

262. **Utah.** Defendants have entered into agreements subject to and in restraint of trade in violation of Utah Code Ann. §§ 76-10-3103, *et seq.*:

- (a) Defendants sell wallboard (directly or through distributors) to customers in Utah. Defendants facilitated the conspiracy alleged herein through their operations in Utah and caused injury to certain Plaintiffs in Utah and throughout the United States as a result of having to pay supra-competitive prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiff D.R. Horton—conducted a substantial volume of business in Utah during the Conspiracy Period, including through the sale of homes within Utah containing gypsum wallboard manufactured by Defendants. As a result of their presence in Utah and the substantial business they conduct in Utah, Plaintiffs are entitled to the protection of the laws of Utah;
- (c) Defendants’ conspiracy restrained, suppressed, and/or eliminated competition in the sale of gypsum wallboard in Utah and fixed, raised, maintained, and/or stabilized gypsum wallboard prices in Utah at artificially high, non-competitive levels;
- (d) As a result, Defendants’ conspiracy substantially affected Utah commerce; and
- (e) As a direct and proximate result of Defendants’ conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Utah from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants’ combination and conspiracy, and are entitled to relief under Utah Code Ann. §§ 76-10-3103, *et seq.*

263. **West Virginia.** Defendants have entered into agreements subject to and in

1 restraint of trade in violation of West Virginia Code §§ 47-18-1, *et seq.*:

- 2 (a) Defendants sell wallboard (directly or through distributors) to customers in
3 West Virginia. Defendants facilitated the conspiracy alleged herein through
4 their operations in West Virginia and caused injury to certain Plaintiffs in West
5 Virginia and throughout the United States as a result of having to pay supra-
6 competitive prices for gypsum wallboard manufactured by Defendants;
- 7 (b) Certain Plaintiffs—including Plaintiff Hovnanian—conducted a substantial
8 volume of business in West Virginia during the Conspiracy Period, including
9 through the sale of homes within West Virginia containing gypsum wallboard
10 manufactured by Defendants. As a result of their presence in West Virginia
11 and the substantial business they conduct in West Virginia, Plaintiffs are
12 entitled to the protection of the laws of West Virginia;
- 13 (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition
14 in the sale of gypsum wallboard in West Virginia and fixed, raised, maintained,
15 and/or stabilized gypsum wallboard prices in West Virginia at artificially high,
16 non-competitive levels;
- 17 (d) As a result, Defendants' conspiracy substantially affected West Virginia
18 commerce; and
- 19 (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have
20 been injured in their businesses and property by paying more for gypsum
21 wallboard purchased in West Virginia from Defendants, their co-conspirators,
22 and others than they would have paid in the absence of Defendants'
23 combination and conspiracy, and are entitled to relief under West Virginia
24 Code §§ 47-18-1, *et seq.*

25 264. **Wisconsin.** Defendants have entered into agreements subject to and in restraint of
26 trade in violation of Wisconsin Stat. §§ 133.01, *et seq.*:

- 27 (a) Defendants sell wallboard (directly or through distributors) to customers in
28 Wisconsin. Defendants facilitated the conspiracy alleged herein through their
operations in Wisconsin and caused injury to certain Plaintiffs in Wisconsin
and throughout the United States as a result of having to pay supra-competitive
prices for gypsum wallboard manufactured by Defendants;
- (b) Certain Plaintiffs—including Plaintiff D.R. Horton—conducted a substantial
volume of business in Wisconsin during the Conspiracy Period, including
through the sale of homes within Wisconsin containing gypsum wallboard
manufactured by Defendants. As a result of their presence in Wisconsin and
the substantial business they conduct in Wisconsin, Plaintiffs are entitled to the
protection of the laws of Wisconsin;
- (c) Defendants' conspiracy restrained, suppressed, and/or eliminated competition
in the sale of gypsum wallboard in Wisconsin and fixed, raised, maintained,
and/or stabilized gypsum wallboard prices in Wisconsin at artificially high,
non-competitive levels;
- (d) As a result, Defendants' conspiracy substantially affected Wisconsin
commerce; and

(e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured in their businesses and property by paying more for gypsum wallboard purchased in Wisconsin from Defendants, their co-conspirators, and others than they would have paid in the absence of Defendants' combination and conspiracy, and are entitled to relief under Wisconsin Stat. §§ 133.01, *et seq.*

FOURTH CLAIM FOR RELIEF
VIOLATIONS OF STATE CONSUMER PROTECTION
AND UNFAIR COMPETITION LAWS
(On Behalf of All Plaintiffs Against All Defendants)

265. Plaintiffs incorporate by this reference the allegations in the above paragraphs as if fully set forth herein.

266. Defendants have engaged in unfair, unconscionable, deceptive, and fraudulent acts or practices and unfair methods of competition subject to and in violation of: California's Unfair Competition Law, California Bus. & Prof. Code §§ 17200, *et seq.*; Colorado Rev. Stat. Ann. §§ 6-1-105, *et seq.*; District of Columbia Code §§ 28-3901, *et seq.*; Florida Stat. §§ 501.201, *et seq.*; Georgia Code Ann. §§ 10-1-390, *et seq.*³⁴; Louisiana Rev. Stat. §§ 51:1401, *et seq.*³⁵; Massachusetts Gen. Laws, chap. 93A; Nevada Rev. Stat. §§ 598.0903, *et seq.*; New Mexico Stat. Ann. §§ 57-12-1, *et seq.*; North Carolina Gen. Stat. §§ 75-1.1, *et seq.*; South Carolina Code Ann. §§ 39-5-10, *et seq.*; and Utah Code Ann. §§ 13-11-1, *et seq.*

267. **California.** Defendants have engaged in unfair competition subject to and in violation of California's Unfair Competition Law, California Bus. & Prof. Code §§ 17200, *et seq.*:

- (a) Defendants committed acts of unfair competition, as defined by Section 17200, *et seq.*, by engaging in a conspiracy to fix and stabilize the price of gypsum wallboard, as described in this Complaint;
- (b) The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants, as described herein, constitute a common and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of Section 17200, *et seq.*, including, but not limited to: (1) violation of Section 1 of the Sherman Act;

³⁴ Pursuant to Georgia Code Ann. § 10-1-399(b), written demands for relief were delivered to each Defendant on January 23, 2015. Defendants' responses to those demands were either inadequate or nonexistent.

³⁵ Pursuant to Louisiana Rev. Stat. § 51:1409(B), Plaintiffs notified the Louisiana Attorney General of the existence of this action.

and (2) violation of the Cartwright Act;

- (c) Defendants' acts, omissions, misrepresentations, practices, and non-disclosures are unfair, unconscionable, unlawful, and/or fraudulent independently of whether they constitute a violation of the Sherman Act or the Cartwright Act;
- (d) Defendants' acts or practices are fraudulent or deceptive within the meaning of Section 17200, *et seq.*;
- (e) Defendants' conduct affecting certain Plaintiffs in California and throughout the United States was carried out, effectuated, and perfected within the State of California and Defendants maintained offices and facilities in California where their employees engaged in communications, meetings, and other activities in furtherance of Defendants' conspiracy;
- (f) During the Conspiracy Period, certain Plaintiffs—including Plaintiffs Beazer, D.R. Horton, Hovnanian, KB Home, Meritage, Pulte Homes, Ryland Group, Toll Brothers, and TRI Pointe—conducted a substantial volume of business in California, including building, marketing, and selling homes containing Defendants' drywall within California. In addition, certain Plaintiffs maintained inventories of gypsum wallboard manufactured and sold by Defendants, their co-conspirators, and others and operated offices within California. As a result of their presence in California and the substantial business they conduct in California, Plaintiffs are entitled to the protection of the laws of California; and
- (g) By reason of the foregoing, Plaintiffs are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business acts and practices described above.

268. **Colorado.** Defendants have engaged in unfair, unconscionable, or deceptive acts and/or practices subject to and in violation of Colorado Rev. Stat. Ann. §§ 6-1-105, *et seq.*:

- (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining, at artificial and/or non-competitive levels, the prices at which gypsum wallboard was sold, distributed, or obtained in Colorado;
- (b) The foregoing conduct constitutes an “unlawful trade practice” within the meaning of Colorado Rev. Stat. Ann. § 6-1-105;
- (c) Defendants' illegal activities occurred in the course of Defendants' business;
- (d) Defendants' illegal activities significantly impact the public as actual or potential consumers of Defendants' goods, as Defendants' illegal price-fixing scheme resulted in increased prices for gypsum wallboard, which is installed in nearly every home built in the state of Colorado;
- (e) Certain Plaintiffs—including Plaintiffs D.R. Horton, KB Home, Meritage, Ryland Group, Toll Brothers, and TRI Pointe—suffered injury to their businesses and property in that they paid supra-competitive, artificially inflated prices for gypsum wallboard manufactured by Defendants, their co-conspirators, and others;

- (f) As a direct and proximate result of Defendants' conduct, certain Plaintiffs have been injured and are entitled to relief under Colorado Rev. Stat. Ann. §§ 6-1-105, *et seq.*

269. **District of Columbia.** Defendants have engaged in unfair competition subject to and in violation of District of Columbia Code §§ 28-3901, *et seq.*:

- (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining, at artificial and/or non-competitive levels, the prices at which gypsum wallboard was sold, distributed, or obtained in the District of Columbia;
- (b) The foregoing conduct constitutes an "unlawful trade practice" within the meaning of District of Columbia Code § 28-3904. Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for gypsum wallboard as Defendants had the sole power to set that price and Plaintiffs had little to no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing gypsum wallboard because there was no alternative source of supply through which Plaintiffs could avoid the overcharges;
- (c) Defendants' conduct with regard to sales of gypsum wallboard, including their illegal conspiracy to secretly fix the price of gypsum wallboard at supra-competitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefitted Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs. The suppression of competition that has resulted from Defendants' conspiracy has ultimately resulted in unconscionably higher prices for purchasers so that there was a gross disparity between the price paid and the value received for gypsum wallboard;
- (d) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout the District of Columbia; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout the District of Columbia; (iii) Plaintiffs were deprived of free and open competition; and (iv) certain Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard; and
- (e) As a direct and proximate result of Defendants' conduct, certain Plaintiffs—including Plaintiffs Drees, Hovnanian, and Toll Brothers—have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of District of Columbia Code §§ 28-3901, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

270. **Florida.** Defendants have engaged in unfair competition subject to and in violation of Florida Stat. §§ 501.201, *et seq.*:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated

throughout Florida; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout Florida; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;

- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected Florida commerce and consumers;
- (c) Defendants sell wallboard (directly or through distributors) to customers in the Florida. Defendants took actions within the state of Florida to implement and further their conspiracy, including jointly attending an AWCI Executive's Conference at Loews Miami Beach Hotel in Miami, Florida from September 11–14, 2012. Defendant CertainTeed disseminated price increase letters on October 3, 2011, September 13, 2012, and September 10, 2013, implementing Defendants' conspiracy from its offices in Florida. Other Defendants conspired with CertainTeed in violation of Florida law;
- (d) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton, Drees, Hovnanian, KB Home, Meritage, M/I Homes, Pulte Homes, Ryland Group, and Toll Brothers—have been injured and are threatened with further injury; and
- (e) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Stat. §§ 501.201, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

271. **Georgia.** Defendants have engaged in unfair competition subject to and in violation of Georgia Code Ann. §§ 10-1-390, *et seq.*:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout Georgia; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout Georgia; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;
- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected Georgia commerce and consumers;
- (c) Defendants took actions within the state of Georgia to implement and further their conspiracy;
- (d) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton, Hovnanian, Meritage, Pulte Homes, and Ryland Group—have been injured and are threatened with further injury; and
- (e) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Georgia Code Ann. §§ 10-1-390, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

272. **Louisiana.** Defendants have engaged in unfair competition subject to and in

violation of Louisiana Rev. Stat. §§ 51:1401, *et seq.*:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout Louisiana; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout Louisiana; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;
- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected Louisiana commerce and consumers;
- (c) Defendants took actions within the state of Louisiana to implement and further their conspiracy, including jointly attending a Gypsum Association Board of Director's Meeting in New Orleans, Louisiana in April 2012;
- (d) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs—including Plaintiff D.R. Horton—have been injured and are threatened with further injury; and
- (e) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Louisiana Stat. §§ 51:1401, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

273. **Massachusetts.** Defendants have engaged in unfair competition subject to and in violation of Massachusetts Gen. Laws, chap. 93A:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout Massachusetts; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout Massachusetts; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;
- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected Massachusetts commerce and consumers;
- (c) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs have been injured and are threatened with further injury;
- (d) Certain Plaintiffs—including Plaintiffs Pulte Homes and Toll Brothers—conducted a substantial volume of business in Massachusetts during the Conspiracy Period, including through the sale of homes within Massachusetts. As a result of their presence in Massachusetts and the substantial business they conduct in Massachusetts, Plaintiffs are entitled to the protection of the laws of Massachusetts; and
- (e) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, chap. 93A, and, accordingly, Plaintiffs seek all relief available under that statute.

274. **Nevada.** Defendants have engaged in unfair competition subject to and in

violation of Nevada Rev. Stat. §§ 598.0903, *et seq.*:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout Nevada; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout Nevada; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;
- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected Nevada commerce and consumers;
- (c) Defendants took actions within the state of Nevada to implement and further their conspiracy, including jointly attending the meetings and gatherings listed herein;
- (d) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs—including Plaintiffs Beazer, D.R. Horton, KB Home, Pulte Homes, Ryland Group, Toll Brothers, and TRI Pointe—have been injured and are threatened with further injury; and
- (e) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nevada Rev. Stat. §§ 598.0903, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

275. **New Mexico.** Defendants have engaged in unfair competition subject to and in violation of New Mexico Stat. Ann. §§ 57-12-1, *et seq.*:

- (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which gypsum wallboard was sold, distributed, or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs;
- (b) The aforementioned conduct constitutes an “unconscionable trade practice” in violation of New Mexico Stat. Ann. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the prices paid by them for gypsum wallboard. Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged;
- (c) Defendants' conduct with regard to sales of gypsum wallboard, including their illegal conspiracy to secretly fix the price of gypsum wallboard at supra-competitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefitted Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs. The suppression of competition that has resulted from Defendants' conspiracy has ultimately resulted in unconscionably higher prices for purchasers so that there was a gross disparity between the price paid and the value received for gypsum wallboard;
- (d) Defendants' unlawful conduct has had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or

eliminated throughout New Mexico; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout New Mexico; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;

(e) During the Conspiracy Period, Defendants' illegal conduct substantially affected New Mexico commerce and consumers; and

(f) As a direct and proximate result of Defendants' conduct, certain Plaintiffs—including Plaintiffs D.R. Horton, KB Home, and Pulte Homes—have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Stat. §§ 57-12-1, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

276. **North Carolina.** Defendants have engaged in unfair competition subject to and in violation of North Carolina Gen. Stat. §§ 75-1.1, *et seq.*:

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which gypsum wallboard was sold, distributed, or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs;

(b) Defendants' price-fixing conspiracy could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation, and maintenance of Defendants' price-fixing conspiracy. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs could not possibly have been aware. Defendants created the illusion of competitive pricing controlled by market forces rather than supra-competitive pricing driven by Defendants' illegal conspiracy. Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of the conspiracy to outsiders;

(c) The conduct of Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of North Carolina consumers in an honest marketplace in which economic activity is conducted in a competitive manner;

(d) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout North Carolina; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout North Carolina; (iii) Plaintiffs were deprived of free and open competition; and (iv) certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton, Drees, Hovnanian, KB Home, Meritage Homes, M/I Homes, Pulte Homes, Ryland Group, and Toll Brothers—paid supra-competitive, artificially inflated prices for gypsum wallboard;

(e) During the Conspiracy Period, Defendants marketed, sold, or distributed gypsum wallboard in North Carolina, and Defendants' illegal conduct

substantially affected North Carolina commerce and consumers;

- (f) During the Conspiracy Period, each of the Defendants named herein, directly or indirectly and through affiliates they dominated and controlled, manufactured, sold, and/or distributed gypsum wallboard in North Carolina; and
- (g) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. §§ 75-1.1, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

277. **South Carolina.** Defendants have engaged in unfair competition subject to and in violation of South Carolina Code Ann. §§ 39-5-10, *et seq.*:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout South Carolina; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout South Carolina; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;
- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected South Carolina commerce and consumers;
- (c) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs—including Plaintiffs Ashton Woods, Beazer, D.R. Horton, Hovnanian, Meritage, Pulte Homes, Ryland Group, and Toll Brothers—have been injured and are threatened with further injury; and
- (d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of South Carolina Code Ann. §§ 39-5-10, *et seq.*, and, accordingly, Plaintiffs seek all relief available under that statute.

278. **Utah.** Defendants have engaged in unfair competition subject to and in violation of Utah Code Ann. §§ 13-11-1, *et seq.*:

- (a) Defendants' unlawful conduct had at least the following effects: (i) gypsum wallboard price competition was restrained, suppressed, and/or eliminated throughout Utah; (ii) gypsum wallboard prices were raised, fixed, maintained, and/or stabilized at artificially high levels throughout Utah; (iii) Plaintiffs were deprived of free and open competition; and (iv) Plaintiffs paid supra-competitive, artificially inflated prices for gypsum wallboard;
- (b) During the Conspiracy Period, Defendants' illegal conduct substantially affected Utah commerce and consumers;
- (c) As a direct and proximate result of Defendants' unlawful conduct, certain Plaintiffs—including Plaintiff D.R. Horton—have been injured and are threatened with further injury; and
- (d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. §§ 13-11-1, *et seq.*, and, accordingly,

Plaintiffs seek all relief available under that statute.

FIFTH CLAIM FOR RELIEF
VIOLATIONS OF STATE UNJUST ENRICHMENT LAWS
(On Behalf of All Plaintiffs Against All Defendants)

279. Plaintiffs incorporate by this reference the allegations in the above paragraphs as if fully set forth herein.

280. By reason of their unlawful conduct, Defendants should make restitution to Plaintiffs.

281. Plaintiffs, by overpaying for gypsum wallboard, have conferred a benefit on Defendants. Defendants knowingly accepted and retained the overpayments such that it would be inequitable for Defendants to keep the inflated profits.

282. The detriment suffered by Plaintiffs, and Defendants' unjust enrichment, were related to and flowed from the wrongful conduct alleged herein, including, without limitation, Defendants' unlawful and anti-competitive acts described above which fixed, raised, maintained, and/or stabilized the purchase price of gypsum wallboard at supra-competitive levels.

283. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits conferred through over-payments by Plaintiffs. Plaintiffs accordingly are entitled to disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiffs may seek restitution.

284. Plaintiffs base their claims for unjust enrichment and disgorgement of profits upon common law principles of unjust enrichment recognized in each of their respective states.

DEMAND FOR JURY TRIAL

285. Pursuant to Federal Rule of Civil Procedure 38(b), each Plaintiff hereby demands a trial by jury of all issues triable to a jury.

DEMAND FOR RELIEF

286. Wherefore, Plaintiffs demand judgment against Defendants as follows:

- (a) That the contract, combination, or conspiracy, and the acts done in furtherance thereof by Defendants be adjudged to have violated Section 1 of the Sherman

Act, 15 U.S.C. § 1, and applicable state laws described herein.

- (b) That judgment be entered for Plaintiffs on the first claim awarding injunctive relief.
- (c) That judgment be entered for Plaintiffs on the second claim for damages, trebled as allowed by law.
- (d) That judgment be entered for Plaintiffs on the third claim for damages, trebled as allowed by law.
- (e) That judgment be entered for Plaintiffs on the fourth claim for relief for damages and/or restitution as allowed by law.
- (f) That judgment be entered for Plaintiffs on the fifth claim for relief ordering restitution of amounts paid by them in excess of a competitive price as allowed by law.
- (g) That Plaintiffs recover pre- and post-judgment interest as permitted by law.
- (h) That Plaintiffs recover their costs of suit, including attorneys' fees and expert fees, as provided by law.
- (i) For such other and further relief as is just and proper under the circumstances.

DATED: March 17, 2015

/s/ Brian R. Strange

Brian R. Strange

Keith Butler

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