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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN DIEGO**

17 DAN KAPLAN, On Behalf of Himself and All  
18 Others Similarly Situated,

19 Plaintiffs,

20 v.

21 FIDELITY NATIONAL HOME  
22 WARRANTY COMPANY, a California  
Corporation, and DOES 1-20,

23 Defendants.

JCCP NO. 4806

CASE NO. 37-2008-00087962-CU-BT-CTL

**SIXTH AMENDED CLASS ACTION COMPLAINT  
FOR:**

BREACH OF CONTRACT;

BREACH OF THE IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING;

TORTIOUS BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND FAIR DEALING;

VIOLATION OF CIVIL CODE § 1710(3);

VIOLATION OF CIVIL CODE § 1710(4);

VIOLATION OF BUSINESS & PROFESSIONS  
CODE § 17200; AND

VIOLATION OF BUSINESS & PROFESSIONS  
CODE § 17500.

1 JAMES BAKER, On Behalf of Himself and  
All Others Similarly Situated,

2 Plaintiffs,

3 v.

4 FIDELITY NATIONAL HOME  
5 WARRANTY COMPANY, a California  
6 Corporation, and DOES 1-20,

7 Defendants.

CASE NO. 37-2008-00088433-CU-BT-CTL

**JURY TRIAL DEMANDED**

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1 **I. NATURE OF THE ACTION**

2 1. Defendant Fidelity National Home Warranty Company engages in fraud, deceit, false  
 3 advertising, and unfair business practices. It is no wonder, then, that the Internet is littered with  
 4 complaints from customers who have been duped by Fidelity’s fraud. Fidelity tells its customers one  
 5 thing (that it will provide repairs and replacements of covered items for one low service call fee of  
 6 \$55), and then does the polar opposite – refuses to honor the terms of its contracts, and encourages  
 7 its contractors to make their money from the insured, not from Fidelity, by charging the insured  
 8 amounts significantly in excess of the service call fee:

<b><u>What Fidelity Promises in Its Advertisements</u></b>	<b><u>What Fidelity Really Does</u></b>
<p>10 “<i>Full replacement of covered items</i> - if we            11 can’t fix it, we’ll replace it.”</p>	<p>Refuses to replace covered systems. Internally, Fidelity’s position is: “Given the average price for a policy, how reasonable would it be to believe the company would replace anything in the house that might break?”</p>
<p>14 Promises <i>replacement coverage</i> of appliances            15 and covered systems costing \$1,250 to \$7,500.</p>	<p>Tells its contractors to repair rather than replace items; imposes arbitrary “replacement ratios” on its contractors, and penalizes contractors who exceed such ratio by refusing to give them work. <i>During the Class Period Fidelity paid its contractors an average net fee per claim as low as \$130.</i></p>
<p>18 Promises to dispatch repairmen who are            19 licensed, bonded, and “carefully screened.”</p>	<p>Spends millions lobbying the California Department of Insurance for less regulation, claiming that “Many of the contractors are small mom and pop operations or a couple of guys working out of a pick up truck.”</p>
<p>21 Promises to pay all covered claims for “one low            22 service fee.”</p>	<p>Pays its contractors significantly below retail rates. Tells its contractors not to create any paper trail of amounts customers are charged over the \$55 service call fee: “Invoices should NOT have the following: Retail work paid by the homeowner reflected as part of the total bill.”</p>

1           2.       This action is brought as a class action on behalf of a nationwide Plaintiffs' class (the  
2 "Class") consisting of all persons and entities who made a claim under a home warranty plan<sup>1</sup> issued  
3 by Fidelity National Home Warranty Company ("FNHW" or "Fidelity") during the period from July  
4 18, 2002 through the present (the "Class Period").

5           3.       Defendant FNHW is engaged in the business of selling home warranty plans in  
6 California and throughout the Western United States. During the Class Period, FNHW failed to  
7 comply with its contractual duties, breached the implied covenant of good faith and fair dealing,  
8 committed promissory fraud, engaged in deceit, violated California Insurance Code § 332, and  
9 violated the State's Unfair Competition Law.

10 **II.     JURISDICTION AND VENUE**

11           4.       This Court has jurisdiction over all causes of action asserted herein under the  
12 California Constitution, Article VI, § 10, because this case is a cause not given by statute to other  
13 trial courts. This action is not removable to federal court. The amount in controversy as to the  
14 named Plaintiffs does not exceed \$75,000, exclusive of interest and costs.

15           5.       This Court retains general jurisdiction over each named defendant who is a resident  
16 of California. Additionally, this Court has specific jurisdiction over each named non-resident  
17 defendant because these defendants maintain sufficient minimum contacts with California to render  
18 jurisdiction by this Court permissible under the traditional notions of fair play and substantial justice.  
19 FNHW is a California corporation and its principal place of business is located in California.  
20 Moreover, all Defendants' conduct emanated from California, and there was a significant  
21 aggregation of contacts between Defendant's conduct and the claims of all class members. In  
22 addition, Plaintiffs' contracts with FNHW were entered into in San Diego County. Finally,  
23 exercising jurisdiction over any non-resident defendants is reasonable under these circumstances.

24           6.       Venue is proper in this Court because Plaintiffs' contracts with Defendant were  
25 entered into here, a substantial portion of the transactions and wrongs complained of herein occurred  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The home warranty plans sold by Defendant are also sometimes referred to herein as "home protection contracts."

1 in this County, and Defendants have received substantial compensation in this County by doing  
2 business here and engaging in numerous activities that had an effect in this County.

3 **III. PARTIES**

4 7. Plaintiff Dan Kaplan is the holder of a home protection contract issued by Defendant  
5 FNHW during the Class Period. Plaintiff Kaplan's home protection contract with Defendant is  
6 attached to this complaint as **Exhibit A** and is incorporated herein by reference.

7 8. Plaintiff James Baker was the owner of at least four (4) home protection contracts  
8 issued by Defendant FNHW during the Class Period. The first policy was acquired in 2004. A copy  
9 of Mr. Baker's 2007-08 policy is attached to this complaint as **Exhibit B** and is incorporated herein  
10 by reference. Plaintiff Baker originally acquired his Fidelity home protection contract as part of  
11 escrow on the purchase of his home. Plaintiff Baker thereafter renewed the policy multiple times  
12 based on uniform and standardized written renewal marketing materials sent to him by Fidelity, and  
13 relied upon such materials when renewing his contract.

14 9. Plaintiffs Kaplan and Baker are referred to collectively herein as "Plaintiffs."

15 10. FNHW is a California corporation with its principal place of business at  
16 1850 Gateway Boulevard, Suite 400, Concord, California 94520. During the time period covered in  
17 this Complaint, FNHW sold home warranty plans in the State of California as well as in Arizona,  
18 Nevada, Colorado, Washington, and Oregon.

19 11. Various other individuals, partnerships, corporations, and other business entities,  
20 unknown to the Plaintiffs, have participated in the violations alleged herein and have performed acts  
21 and made statements in furtherance thereof.

22 12. The true names and capacities, whether individual, corporate, associate or otherwise,  
23 of defendants named in this action as DOES 1-20, inclusive, are unknown to Plaintiffs, which  
24 therefore sues these defendants by such fictitious names. Plaintiffs will amend this complaint to  
25 show their true name(s) and capacities when they have been ascertained. Plaintiffs are informed and  
26 believe, and on that basis allege, that each of these fictitiously-named Defendants is responsible in  
27 some manner for the occurrences herein alleged, and that Plaintiffs' injuries as herein alleged were  
28 proximately caused by conduct of these fictitiously-named Defendants.

1           13.     Plaintiffs are informed and believe, and on that basis allege, that at all relevant times  
2 herein mentioned, each of the Defendants was the agent, principal, representative, and/or employee  
3 of each of the other Defendants, and in doing the things mentioned herein, was acting within the  
4 scope of said agency, representation, and/or employment with permission of each co-defendant.

5           14.     The acts charged in this Complaint have been done by Defendants or were ordered or  
6 done by Defendants' officers, agents, employees, or representatives, while actively engaged in the  
7 management of Defendants' affairs.

8 **IV.    CLASS ACTION ALLEGATIONS**

9           15.     Plaintiffs bring this action both on behalf of themselves and as a class action under  
10 California Code of Civil Procedure § 382 on behalf of the following class (the "Class"):

11                   All persons and entities in the United States who, during the period from  
12                   July 18, 2002 through the present (the "Class Period"), made a claim  
13                   under a home warranty plan issued by Defendant Fidelity National Home  
14                   Warranty Company.

15           16.     Excluded from the Class are Defendant, its employees, parents, subsidiaries,  
16 affiliates, all governmental agencies or entities, defendants' co-conspirators and anyone acting on  
17 their behalf.

18           17.     Plaintiffs do not know the exact number of Class members because such information  
19 is in the exclusive control of Defendants. Upon information and belief, there are hundreds of  
20 thousands of Class members, geographically dispersed throughout the United States, such that  
21 joinder of all class members is impracticable. When the class notice was disseminated to class  
22 members, over 400,000 notices were mailed.

23           18.     Plaintiffs' claims are typical of the claims of the Class in that:

24                   (a)     Plaintiffs are members of the Class;

25                   (b)     Plaintiffs were exposed to Defendant's false advertising, and relied upon such  
26 advertisements;

27                   (c)     Plaintiffs and all Class members were damaged by the same wrongful conduct  
28 of Defendant and its co-conspirators as alleged herein; and

                  (d)     the relief sought for the Class is common to the Class.



1           19. Numerous questions of law or fact arise from Defendant's unfair and anticompetitive  
2 conduct that are common to the Class. Among the questions of law or fact common to the Class are:

3           (a) Whether Defendant sold and/or issued home protection contracts to Plaintiffs  
4 and the Class;

5           (b) Whether Defendant engaged in false advertising, in violation of Cal. Bus. &  
6 Prof. Code Section 17500;

7           (c) Whether Defendant engaged in unfair and/or unlawful business practices  
8 during the Class Period;

9           (d) Whether Defendant violated Civil Code Section 1710 in connection with the  
10 sale of the home protection contracts;

11           (e) Whether Defendant had a duty to disclose and omitted to disclose material  
12 facts to Plaintiffs and the Class, in violation of Insurance Code Section 332; and

13           (f) Whether class-wide declaratory, injunctive and restitutionary relief is  
14 appropriate and, if so, the proper measure of the declaratory, injunctive, and restitutionary  
15 relief.

16           20. These questions of law or fact are common to the Class and predominate over any  
17 other questions affecting only individual class members.

18           21. Plaintiffs will fairly and adequately represent the interests of the Class in that:

19           (a) Plaintiffs are typical holders of the home warranty plans issued by Defendant;

20           (b) Plaintiffs were listed as the insureds on the home warranty plans issued by  
21 Defendant, and made one or more claims under such policies;

22           (c) Plaintiffs were harmed as a result of Defendant's unlawful, unfair and/or  
23 fraudulent business practices; and

24           (d) Plaintiffs have no conflicts with any other member of the Class.

25           22. Plaintiffs have retained competent counsel experienced in class action litigation.

26           23. A class action is superior to the alternatives, if any, for the fair and efficient  
27 adjudication of this controversy.  
28

1           24.     Prosecution of separate actions by individual class members would create the risk of  
2 inconsistent or varying adjudications, establishing incompatible standards of conduct for the  
3 Defendants.

4           25.     Injunctive relief is appropriate as to the Class as a whole because Defendants have  
5 acted or refused to act on grounds generally applicable to the Class.

6           26.     Plaintiffs reserve the right to expand, modify, or alter the class definition in response  
7 to information learned during discovery.

8 **V.     SUBSTANTIVE ALLEGATIONS**

9           **A.     Introduction**

10           27.     Fidelity sells home protection contracts. Under the home protection contracts,  
11 Fidelity promises to repair or replace home appliances and home systems such as electrical systems,  
12 heating, venting, and air conditioning systems (“HVAC”), pools and spas, plumbing systems, and  
13 other items. The home protection plans issued to Class Member during the Class Period contain a  
14 contractual obligation on the part of Fidelity to repair *or replace* covered systems that fail due to  
15 normal wear and tear. The contractual term stated:

16                     “FNHW [Fidelity] will repair or replace covered systems and appliances  
17                     which mechanically malfunction due to insufficient maintenance, rust,  
18                     corrosion or sediment, unless otherwise noted in the contract.”

19           28.     Moreover, one of Fidelity’s trademark phrases is that “If we can’t repair it, we’ll  
20 replace it.” Fidelity promises “*Full replacement of covered items* - if we can’t fix it, we’ll replace  
21 it.” (emphasis added).

22           29.     In addition, Fidelity promises that all its customers will have to pay for if they have to  
23 file a claim is the low “Service Call Fee,” which during the Class Period has ranged from \$40 to \$55.  
24 The Service Call Fee is the amount that Fidelity’s customer has to pay to the contractor who is  
25 dispatched to respond to the customer’s claim.

26           30.     FNHW advertises that it “provides both the homebuyer and seller with ‘peace of  
27 mind’ when it comes to repairs and/or replacement of a home’s major systems and appliances. At  
28 FNHW we provide ourselves on superior customer service, including quick response time and

1 efficient solutions for homeowners' problems and needs. *The homeowner only makes one call and*  
2 *pays only a small service fee when a problem or repair need arises.*"

3 31. In reality, if one of Fidelity's customers files a claim, and the claim is approved, the  
4 customer is forced to spend, on average, significantly more than the Service Call Fee.

5 32. FNHW also advertises that "[w]e consistently deliver value to our customers. With  
6 Fidelity National Home Warranty, you will consistently receive quality coverage, professional home  
7 repairs, and timely, courteous customer service. *If we can't repair it, we will replace it.* So settle in  
8 and enjoy your home . . . knowing that your major mechanical systems, plumbing and appliances are  
9 covered by a Fidelity National Home Warranty contract. RELAX, we've got you covered!" In  
10 truth, the holder of an FNHW home warranty plan is anything but "covered."

11 33. Fidelity pays its contractors significantly below retail rates, and significantly below  
12 the rates at which competent contractors would agree to work if the amount received from Fidelity  
13 constituted the only amount the contractor would receive for his or her work.

14 34. Fidelity encourages its contractors to earn their money mostly from Fidelity's  
15 customers, not from Fidelity. *For example, during the Class Period Fidelity paid its contractors*  
16 *an average net fee per claim as low as \$130.* Fidelity concealed this startling low figure to its  
17 customers, and instead told its customers that Fidelity would fully cover any necessary repair or  
18 replacement of covered systems.

19 35. Fidelity never had any intention of complying with its promise under the home  
20 warranty plans to *replace* items covered under the home warranty plan if they could not be repaired.  
21 As Fidelity candidly admitted:

22 *Given the average price for a policy, how reasonable would it be to*  
23 *believe the company would replace anything in the house that might*  
24 *break?*

25 36. Thus, during the Class Period, Fidelity engaged in, and continues to engage in,  
26 promissory fraud. It promises that it will *replace* covered systems if they cannot be repaired, but has  
27 no intention of doing so at the time it enters into the home warranty contracts with Class Members.  
28 Moreover, it knows that if one of its insureds files a claim and Fidelity "approves" the claim, the  
insured will, on average, have to pay significantly in excess of the Service Call Fee.

1           37.     Moreover, while it does not pay its contractors retail rates, Fidelity allows (and  
2 indeed encourages) its contractors to charge full retail rates to Fidelity's customers. Instead of  
3 looking out for the best interests of its customers and requiring its contractors to charge Fidelity's  
4 customers fair rates for labor and materials, Fidelity leaves its contractors free to charge whatever  
5 they want to the holders of Fidelity's home warranty plans. Not only does Fidelity adopt an  
6 outrageous and duplicitous "Hear No Evil, See No Evil, Speak No Evil" mantra with respect to the  
7 retail rates its contractors can charge Fidelity's customers, but Fidelity leaves its contractors  
8 completely free to gouge its customers for bogus "non-covered" items and bogus "upgrades."  
9 Fidelity knows that the "extra" items its contractors routinely charge its customers are not legitimate  
10 and, even if warranted, are many multiples of the Service Call Fee.

11           38.     Fidelity not only does not police its own contractors with respect to charges they  
12 impose on Fidelity's customers above and beyond the coverage Fidelity agrees to provide (if any)  
13 under the home warranty plans, but Fidelity makes sure there will be no paper trail of its disloyal  
14 conduct by emphatically insisting that its contractors do not provide any information whatsoever in  
15 the invoices submitted to Fidelity about how much the contractors charge Fidelity's customers for  
16 allegedly "non-covered" work and "extras."

17           39.     For example, Fidelity's website contains the following policy for its contractors:

18                   Invoices should NOT have the following:  
19                   Retail work paid by the homeowner reflected as part of the total bill.

20           40.     Fidelity tells its customers that it will provide "Local, licensed, insured, dependable  
21 and pre-screened technicians."

22           41.     However, in reality, Fidelity does *nothing whatsoever* to pre-screen its technicians as  
23 to dependability, competency, or customer service. Indeed, the only requirements to become a  
24 Fidelity "Preferred Service Vendor" are: (1) the contractor must be licensed in his or her trade;  
25 (2) the contractor must carry \$1 million in general liability insurance; and (3) the contractor must  
26 provide proof of worker's compensation insurance or a waiver thereof.

27           42.     Tellingly, here is how Fidelity itself characterizes its contractors:  
28

- 1 • “Many of the contractors are small mom and pop operations or a  
2 couple of guys working out of a pick up truck.”
- 3 • “This is a high volume/low profit margin business for some  
4 contractors, and just meant to even out workflow for others.”

5 43. Instead of screening its contractors for dependability, reliability, and customer  
6 service, Fidelity just selects contractors who will work for its significantly below market rates and  
7 protect its bottom line.

8 44. An individual who purchased a home warranty plan from FNHW and desired to  
9 submit a claim was required under the terms of the plan to either call 1-800-300-1420 or visit the  
10 company’s website at [www.homewarranty.com](http://www.homewarranty.com).

11 45. After the individual contacts FNHW, FNHW’s uniform home protection contract  
12 (drafted by FNHW and containing substantially identical language for each member of the Class)  
13 represents that FNHW will “contact a qualified contractor within 3 hours during normal business  
14 hours, and 48 hours on weekends and holidays. The contractor will then call the contract holder  
15 directly to schedule a mutually convenient appointment during normal business hours.” Each home  
16 warranty plan uniformly states that “[t]here is a \$50 service fee for each trade call, paid to the  
17 contractor at the time of service.” The homeowner is required to pay the \$50 service fee even if the  
18 contractor decides that the homeowner’s claim is not covered under FNHW’s warranty plan.

19 46. During the Class Period, Fidelity conducted business in the following states:  
20 California, Arizona, Texas, Nevada, Oregon, Washington, and Colorado. Fidelity’s home warranty  
21 plans in all these states are substantially identical, and Fidelity places identical “sample” contracts on  
22 its website for these states for consumers wanting to purchase its home warranty plans. Moreover,  
23 when Fidelity sends its third party contractors to its customers’ homes after customers file claims,  
24 Fidelity does not provide the contractors with a copy of the actual home warranty plan. Instead,  
25 when a contractor agrees to work for Fidelity, Fidelity just provides the contractor with a copy of the  
26 sample home warranty plan from its website, thus underscoring the fact that Fidelity does not believe  
27 there are any important differences in its home warranty plans.  
28

1           **B.     Allegations Regarding the Named Plaintiffs' Claims**

2           47.     During the term of his home warranty plan, Plaintiff Kaplan made four claims, three  
3 of which FNHW failed to properly adjust and improperly denied as being uncovered. On the first  
4 occasion, Mr. Kaplan made a claim concerning a leaky toilet. In response to Mr. Kaplan's claim,  
5 FNHW sent a third-party plumber who said the pipe under the toilet was broken and the bolt holding  
6 down the seal was missing. This third-party plumber asserted that the problems with the toilet were  
7 construction defects and therefore were uncovered under Mr. Kaplan's plan. After making this  
8 determination, the plumber refused to put the toilet back and left it in the middle of Mr. Kaplan's  
9 bathroom. Incredibly, the plumber still charged Mr. Kaplan the \$50 service fee. Mr. Kaplan's wife  
10 then contacted the developer who sent out its own plumber who told Mrs. Kaplan that the pipe was  
11 not broken and the bolt was not missing. When told of these facts, Fidelity sent another plumber  
12 who, after again charging a \$50 service fee, put the toilet back and resealed it. However, the  
13 plumber did the job improperly and the toilet continued to leak. Mr. Kaplan ultimately had to reseal  
14 the toilet and tighten the bolts himself, after which the leak stopped.

15           48.     On another occasion, Plaintiff Kaplan made a claim regarding his kitchen-sink faucet.  
16 FNHW sent a third-party plumber to investigate the claim. The plumber offered Mr. Kaplan three  
17 choices: **Option One:** The plumber could buy the cheapest faucet he could find at Home Depot and  
18 install it, which would be covered under the home warranty plan. **Option Two:** Mr. Kaplan could  
19 purchase a faucet of his own choosing, but the plumber would have to charge Mr. Kaplan around  
20 \$400 to install the faucet and replace both angle stops. **Option Three:** Mr. Kaplan could accept \$80  
21 in lieu of repair as provided for in the home warranty plan. Mr. Kaplan chose the third option and  
22 installed a faucet of his own choosing by himself. Mr. Kaplan only had to replace one angle stop,  
23 which cost just \$6 for the part.

24           49.     On the third occasion, Plaintiff Kaplan made a claim after his washing machine  
25 overflowed. FNHW called a plumber. Predictably, the plumber denied the claim and charged  
26 Mr. Kaplan \$50 for the service call.

27           50.     During the term of his home warranty plan, Plaintiff Baker made six claims for items  
28 covered under his plan. In each instance, Defendant failed to properly adjust and/or improperly

1 denied the claim as being uncovered. On the first occasion, Mr. Baker made a claim concerning a  
2 shower that was delivering insufficient hot water. In response to the claim, Defendant sent a third-  
3 party plumber who inspected the shower and confirmed that it was broken. This plumber asserted  
4 that the problem with the shower derived from a valve that was not working properly and that was  
5 purportedly not covered under Mr. Baker's plan because it was out of code. After the plumber made  
6 this determination, he provided Mr. Baker with a description of the part in the valve that was not  
7 covered. Mr. Baker then left his home and, at his own cost, purchased a part meeting this  
8 description. At the plumbing store where Mr. Baker purchased the part, he was informed that it was  
9 not out of code. Upon returning to his house, Mr. Baker gave this part to the plumber, who then  
10 repaired the shower. However, rather than covering the claim as required under the home warranty  
11 plan, after completing this repair the plumber gave Mr. Baker an invoice for \$370 for bogus and  
12 alleged "non-covered" costs, which Mr. Baker was forced to pay out of his own pocket.

13 51. On another occasion, Mr. Baker made a claim to Defendant concerning his oven that  
14 was not working properly. Defendant dispatched a contractor, but the contractor failed to fix the  
15 oven immediately. Instead, it took two or more contractors four or more visits over a period of six  
16 months to fix the oven. At one point, one of the contractors concluded that the oven needed a new  
17 circuit board, but the contractor indicated that he was going to try to fix the oven by exploring other  
18 options first, before ordering a new circuit board. Finally, after nearly six months, a new circuit  
19 board was purchased and installed in the oven. As a result of Defendant's conduct and the  
20 contractors' inability to fix the oven, Mr. Baker was not able to use the oven for nearly six months.  
21 By failing to promptly repair or replace the oven, which was clearly covered under the home  
22 warranty plan, Defendant wrongfully denied Mr. Baker benefits due under the home warranty plan.

23 52. On a third occasion, Mr. Baker made a claim to Defendant concerning the toilet that  
24 was not working properly. In response, Defendant sent one of its contractors, who came out, took  
25 some parts from the toilet that needed to be replaced, and then left without fixing the toilet. After  
26 the visit, Mr. Baker found out that the contractor was subsequently fired by his company. Several  
27 more contractors came out to Mr. Baker's house, who failed to procure the part that was necessary to  
28

1 repair the toilet. Ultimately, it took approximately two-and-a-half months for the toilet to be  
2 repaired, during which time the toilet was not operational.

3 53. On a fourth occasion, Mr. Baker made a claim concerning his garage doors that were  
4 not rolling properly. Defendant denied the claim on the basis that the problem was with the garage  
5 door cables, which were not covered by Mr. Baker's plan. Mr. Baker subsequently had the garage  
6 doors fixed by a third-party contractor. That contractor told Mr. Baker that the problem was not  
7 with the cables but rather with the roller, which was covered under Defendant's home warranty plan.  
8 However, due to Defendant's wrongful denial of the claim, Mr. Baker had to pay his own contractor  
9 to repair the garage door by replacing the roller.

10 54. On a fifth occasion, Mr. Baker made a claim regarding the pool sweep that was  
11 broken. Defendant denied the claim as not covered under Mr. Baker's policy. This denial was  
12 improper because a pool sweep is expressly covered under Mr. Baker's policy. Moreover, when Mr.  
13 Baker renewed his original policy and specifically inquired about pool coverage, Defendant's  
14 representative represented that the pool sweep would be among the covered items if Mr. Baker  
15 obtained optional pool/spa coverage, which Mr. Baker subsequently obtained.

16 55. On a sixth occasion, Mr. Baker made a claim regarding his dishwasher. Despite  
17 numerous calls, it took Defendant eleven days to finally send a contractor over to Mr. Baker's house  
18 to fix the problem.

19 56. As it turns out, FNHW's wrongful business practices are not isolated, but represent  
20 uniform and systematic unfair business practices.

21 **C. Fidelity's Violation of Ins. Code section 332**

22 57. This Court has previously ruled that Fidelity's home protection contracts are contracts  
23 of insurance. The contracts are subject to various provisions of the California Insurance Code. For  
24 example, California Insurance Code § 12743(b) specifically imposes the obligations of Insurance  
25 Code §§ 330-334 and 361 on home protection companies. Pursuant to these provisions, it is settled  
26 that an insurer and its insured have a "special relationship," under which an insurer's obligations are  
27 greater than those of a party to an ordinary commercial contract. Among other things, these  
28 obligations preclude an insurer such as Fidelity from concealing material facts from its customers.



1 Further, California Insurance Code § 12743(b) specifically imposes the obligations of Insurance  
2 Code §§ 330-334 and 361 on home warranty companies.

3 58. Pursuant to California Insurance Code §332, Fidelity, as a party to the home  
4 protection plans/insurance contracts, had a duty to communicate to each Class Member all material  
5 facts within Fidelity's knowledge which the Class Members had no means of ascertaining.

6 59. During the Class Period, the following material facts were within Fidelity's  
7 knowledge:

8 (a) Fidelity either has actual knowledge that its customers will have to pay, on  
9 average, substantially more than the Service Call Fee to have claims resolved, or Fidelity has  
10 no basis to represent that its insureds will only have to pay the Service Call Fee for any  
11 covered claim. Fidelity's uniform written contracts and uniform written advertising  
12 brochures state that the insured will only have to pay "one low Service Call Fee." For  
13 example, a typical brochure sent by Fidelity to its customers facing renewal during the Class  
14 Period stated: "With Fidelity National Home Warranty *you only pay \$40 per trade call – no*  
15 *matter how expensive the work of a covered item, or how large the repair bill.*" Fidelity (a)  
16 either had actual knowledge that this was false, since it incentivizes its contractors to gouge  
17 its customers with large and allegedly "non-covered" charges; or (b) lacked any factual basis  
18 to make this claim, since Fidelity instructs its contractors not to include any amounts on the  
19 invoices submitted to Fidelity about how much the contractors charge Fidelity's insureds  
20 over and above the Service Call Fee. If Fidelity intentionally ensures that there will be no  
21 paper trail (at least at Fidelity's offices) about how much its contractors charge its insureds  
22 above and beyond the Service Call Fee, then Fidelity has no way of knowing how much its  
23 insureds are being charged for allegedly covered items above and beyond the Service Call  
24 Fee. In fact, larger and more expensive claims result in significant charges by Fidelity's  
25 contractors to Fidelity's customers. Fidelity knows this, since it incentivizes its contractors  
26 to make their money from Fidelity's customers, not from Fidelity. Yet, Fidelity conceals all  
27 these highly material facts from its customers.  
28

1           (b) Fidelity discourages and penalizes its contractors from recommending  
2 replacements (rather than repairs) of items covered under the home warranty contracts. One  
3 of Fidelity's trademark phrases, which is also a term of every home warranty contract, is that  
4 "If we can't repair it, we'll replace it." Fidelity promises "*Full replacement of covered items*  
5 - if we can't fix it, we'll replace it." (emphasis added). However, Fidelity fails to disclose  
6 the material fact that it tells its contractors to repair rather than replace items even where a  
7 replacement is necessary and even under situations where repairing rather than replacing an  
8 item would pose a threat to the safety of Fidelity's customer. Fidelity regularly sends faxes  
9 to its contractors telling them to "keep your replacement percentage down" and telling them  
10 to keep their replacement percentage to an arbitrary, very low percentage. Fidelity does the  
11 same thing orally by having its heads of contractor relations call the contractors and tell them  
12 the same thing. For example, in California, Gino Rolley is Fidelity's Head of Contractor  
13 Relations for Northern California. Rolley regularly calls Fidelity's contractors and tells them  
14 to reduce the number of replacements (versus repairs) they perform and to keep their  
15 replacement percentage below an arbitrary and extremely low threshold. The replacement  
16 percentage has nothing whatsoever to do with how often items covered by Fidelity's home  
17 warranty contracts actually need replacement, but instead is arbitrarily chosen by Fidelity and  
18 with the sole purpose of keeping costs to Fidelity to an absolute minimum, without any  
19 regard whatsoever to the best interests of Fidelity's customers. Thus, Fidelity tells its  
20 contractors to refuse to perform replacements even when something cannot really be  
21 repaired. This directly contradicts Fidelity's promise to its customers that "If we can't repair  
22 it, we'll replace it." Contractors whose replacement percentage is higher than what Fidelity  
23 wants are penalized immediately by receiving either no work from Fidelity or no significant  
24 volume of work from Fidelity.

25           (c) In addition to discouraging and penalizing its contractors for recommending  
26 replacements rather than repairs, for the rare expensive replacements that Fidelity does  
27 authorize (*i.e.*, the replacement of a heater or air conditioner), the consumer will end up  
28 paying out of their pocket, above and beyond what they have already paid for the policy

1 premium and Service Call Fees, significant additional sums of money. Thus, for example, for  
2 any claim where Fidelity authorizes a replacement of an HVAC component, if Fidelity paid  
3 its contractor \$140, the consumer would, on average, end up paying significantly more than  
4 the Service Call Fee, even though Fidelity authorized the replacement and asserted that the  
5 claim was “covered” under the home warranty contract.

6 (d) Fidelity pays its contractors significantly below retail rates, and significantly  
7 below the rates at which competent contractors would agree to work if the amount received  
8 from Fidelity constituted the only amount the contractor would receive for his or her work.

9 (e) While it does not pay its contractors retail rates, Fidelity allows (and indeed  
10 encourages) its contractors to charge full retail rates to Fidelity’s customers. Instead of  
11 looking out for the best interests of its customers and requiring its contractors to charge  
12 Fidelity’s customers fair rates for labor and materials, *Fidelity leaves its contractors free to*  
13 *charge whatever they want to the holders of Fidelity’s home warranty plans. Fidelity does*  
14 *absolutely nothing to ensure that its contractors charge its customers fair rates for parts*  
15 *and labor above the Service Call Fee.* Not only does Fidelity adopt an outrageous and  
16 duplicitous “Hear No Evil, See No Evil, Speak No Evil” mantra with respect to the retail  
17 rates its contractors can charge Fidelity’s customers, but Fidelity leaves its contractors  
18 completely free to gouge its customers for bogus “non-covered” items and bogus “upgrades.”  
19 Fidelity knows that the “extra” items its contractors routinely charge its customers are not  
20 legitimate and, even if warranted, are many multiples of the price that any reputable  
21 contractor out of the yellow pages would normally charge for any extras.

22 (f) Fidelity’s remarkable failure to ensure that its contractors charge Fidelity’s  
23 insureds fair rates for parts and labor for any amounts over the Service Call Fee stands in  
24 stark contrast to Fidelity’s insistence that Fidelity itself receive fair rates for parts and labor  
25 from such contractors. This is evident from the standard home warranty plan. Fidelity has  
26 the right to select the contractor, and a consumer does not have the right to select a contractor  
27 of his or her choosing. However, in rare instances Fidelity cannot dispatch a contractor of its  
28 choosing to respond to a claim. In such instances, the insured is allowed to contact a

1 contractor of his or her choice, but Fidelity makes sure that the consumer satisfy, to Fidelity's  
2 demanding standard, that such contractor *will only charge Fidelity* fair rates:

3 "Should FNHW grant the contract holder authorization to contact an  
4 independent service contractor directly to perform a covered service,  
5 FNHW will provide reimbursement based on the following conditions:

- 6 • The contract holder selects an independent contractor that is  
7 qualified, licensed and insured;
- 8 • The independent service contractor provides fair and reasonable  
9 rates on parts and labor;
- 10 • The contract holder must contact FNHW to confirm that service  
11 work is covered under the warranty contract by calling FNHW at  
12 1-800-208-3151 once the independent contractor arrives at the  
13 property, and prior to contractor performing any repairs for which  
14 the contract holder may seek reimbursement.

15 (g) Fidelity not only does not police its own contractors with respect to charges its  
16 contractors impose on Fidelity's customers above and beyond the coverage Fidelity agrees to  
17 provide (if any) under the home warranty plans, but Fidelity makes sure there will be no  
18 paper trail of its disloyal conduct by emphatically insisting that its contractors do not provide  
19 any information whatsoever in the invoices submitted to Fidelity about how much the  
20 contractors charge Fidelity's customers for allegedly "non-covered" work and "extras."

21 (h) Fidelity encourages its contractors to earn their money mostly from Fidelity's  
22 customers, not from Fidelity. For example, during the Class Period Fidelity paid its  
23 contractors an average net fee per claim as low as \$130. Fidelity never disclosed this  
24 startling low figure to its customers, and instead allowed its customers to believe that it  
25 would fully cover any necessary repair or replacement of covered systems.

26 (i) Fidelity meticulously and methodically tracks how much it is charged by its  
27 contractors, but intentionally does not keep track of how much Fidelity contractors charges  
28 Fidelity's customers for items allegedly not covered by the home warranty plan. Fidelity's  
intentional, conscious effort to avoid any paper trail of how much its contractors gouge its  
customers is reflected in the training materials it sends its contractors when they enroll with

1 Fidelity. In those materials, Fidelity instructs the contractors not to include any information  
2 in invoices about amounts charged to the customer above the Service Call Fee.

3 (j) Fidelity encourages a “race to the bottom” with respect to its contractors.  
4 Contractors are ranked almost exclusively based on lowest cost charged to Fidelity.  
5 Contractors are free, however, to charge the homeowner whatever they want. Each month,  
6 Fidelity compiles a list of the “average cost” per call for each of its contractors. Fidelity’s  
7 head of contractor relations in each geographic area (for example, Gino Rolley in Northern  
8 California) disseminate the total average cost per call for each trade to Fidelity’s contractors  
9 in such trade. Fidelity’s head of contractor relations tells the contractors that if they want to  
10 continue to receive work from Fidelity, they need to keep their average cost per call at or  
11 below this figure, and that contractors will not receive any work or any significant volume of  
12 work from Fidelity if they charge Fidelity more than this figure. Thus, even if a contractor  
13 had negotiated a flat rate with Fidelity, if the monthly “average cost” per call figure  
14 disseminated to the contractor by the head of contractor relations at Fidelity was lower than  
15 the contractor’s flat rate, the contractor would have to charge Fidelity less than his or her  
16 negotiated flat rate in order to continue to receive any significant volume of calls from  
17 Fidelity. This nefarious, carefully orchestrated policing system is in place before a consumer  
18 ever obtains a home warranty plan from Fidelity, and before a contractor signs up to work for  
19 Fidelity;

20 (k) Fidelity does not carefully screen its contractors, but instead hires any  
21 contractor who agrees to work for its rock bottom rates. It does nothing to ensure the quality  
22 of its contractors, and imposes no required qualifications other than being licensed and  
23 insured. Tellingly, here is how Fidelity itself characterizes its contractors:

- 24 • “Many of the contractors are small mom and pop operations or a  
25 couple of guys working out of a pick up truck.”
- 26 • “This is a high volume/low profit margin business for some  
27 contractors, and just meant to even out workflow for others.”

28 60. During the Class Period, Fidelity concealed these material facts from Plaintiffs and

the Class.

1 61. Plaintiffs and the Class were unaware of these concealed facts, and had no means of  
2 ascertaining such concealed facts.

3 62. As a result of Defendant's concealment of these facts, Defendant violated Ins. Code  
4 Section 332. Defendant's violation of Ins. Code Section 332 constitutes an unlawful, fraudulent,  
5 and/or unfair business practice under Cal. Bus. & Prof. Code Section 17200.

6 **D. Fidelity's False Advertising**

7 **1. False and Misleading Advertisements in Fidelity's Home Warranty Plans**

8 63. In its uniform, standardized home protection contract, Fidelity stresses the following  
9 potential huge costs (faced by someone without a home protection contract) of repairing and  
10 replacing the appliances and systems which are covered by its contracts:

11 "Protect Yourself With the Fidelity National Home Warranty Plan."

<u>Typical Repair or Replacement</u>	<u>With FNHW</u>	<u>Without FNHW</u>
Gas/Electrical Heating System	\$40	\$200 - \$3000
Plumbing System	\$40	\$150 - \$5000
Toilet	\$40	\$250 - \$1000
Electrical System	\$40	\$250 - \$2500
Water Heater	\$40	\$500 - \$1500
Dishwasher	\$40	\$150 - \$1000
Oven/Range	\$40	\$200 - \$1500
Garbage Disposal	\$40	\$200 - \$500
Microwave Oven	\$40	\$200 - \$750
Trash Compactor	\$40	\$200 - \$750
Garage Door Opener	\$40	\$150 - \$750
Central Vacuum	\$40	\$500 - \$1500
Exhaust and Ceiling Fans	\$40	\$100 - \$500
Whirlpool Bath Unit	\$40	\$200 - \$1000

27 **Typical Repair or Replacements**      **With FNHW**      **Without FNHW**  
28 **For Optional Coverage**

1	Air Conditioning Unit	\$40	\$350 - \$3500
2	Pool/Spa	\$40	\$200 - \$3000
3	Clothes Washer & Dryer	\$40	\$250 - \$1000
4	Kitchen Refrigerator	\$40	\$500 - \$2000

5           64.     These statements in Fidelity’s home warranty plans (*see, e.g.*, Exhibits A-B) are false  
6 and misleading because the central thrust of the ads – that a person who buys a Fidelity home  
7 warranty plan will only have to pay the low Service Call Fee “no matter how extensive the work of a  
8 covered item, or how large the repair bill” – is simply false. In reality, Fidelity’s customers end up  
9 paying very significant sums of money above and beyond the Service Call Fee for covered claims.  
10 Fidelity conceals this fact, and also instructs its contractors not to put any information on the  
11 invoices submitted to it above amounts charged to its contractors above the Service Call Fee.

12           65.     Moreover, Fidelity’s statements regarding these large potential costs are likely to  
13 deceive the public because Fidelity promises to pay for these expensive **replacements** if a consumer  
14 purchases a home warranty plan, but Fidelity fails to disclose the material fact that it tells its  
15 contractors to repair rather than replace items even where a replacement is necessary and even under  
16 situations where repairing rather than replacing an item would pose a threat to the safety of Fidelity’s  
17 customer.

18           66.     Fidelity also fails to disclose that it does not pay, on average, anywhere close to these  
19 amounts for replacements. Instead, in the rare instance in which Fidelity authorizes a replacement, it  
20 pays on average just a fraction of the amounts referenced above in its home protection contracts.  
21 During the Class Period, Fidelity paid its contractors **as low as an average of \$130 per claim**. That  
22 average includes **both repairs and replacements** of covered systems.

23           67.     In addition, the chart above in ¶ 63 is false and misleading because it contains  
24 numbers that Fidelity simply “made up” and simply copied from a similar advertisement used by one  
25 of its competitors – American Home Shield. Plaintiff propounded a “person most knowledgeable”  
26 deposition to Fidelity regarding its advertisements, specifically including the advertisements such as  
27 that referenced in ¶ 63. In response, Fidelity designated Laurie K. Eder as its PMK on the issue of  
28 the advertisements and the bases for such advertisements, and Ms. Eder was deposed on May 6,

1 2010. At her deposition, when asked how Fidelity came up with the numbers set forth in these  
2 advertisements about the potential costs to homeowners who do not have a Fidelity home warranty  
3 plan, she testified as follows:

4 Q: Where did you get those numbers from?

5 A: It was an estimated range based on a review of competitors' range  
6 estimates.

7 Q: Besides looking at your customers' estimated ranges, did you talk  
8 with any third parties?

9 A: No.

10 Q: Did you hire an outside company to come up with the estimated  
11 range?

12 A: No.

13 Q: Did you talk to your competitors about how they came up with their  
14 estimated range?

15 A: No.

16 68. Moreover, the chart in ¶ 63 is false and misleading because it falsely suggests that  
17 Fidelity will pay the indicated amounts to replace covered systems, when in fact Fidelity does not  
18 pay anywhere close to such amounts, on average, when it agrees to replace covered items. Fidelity's  
19 promise to replace covered systems is also false and misleading because Fidelity conceals the fact  
20 that it regularly sends faxes to its contractors telling them to "keep your replacement percentage  
21 down" and telling them to keep their replacement percentage to an arbitrary, very low percentage.  
22 Fidelity does the same thing orally by having its heads of contractor relations call the contractors and  
23 tell them the same thing. Fidelity's Head of Contractor Relations regularly calls Fidelity's  
24 contractors and tells them to reduce the number of replacements (versus repairs) they perform and to  
25 keep their replacement percentage below an arbitrary and extremely low threshold. The arbitrary  
26 and low replacement percentage has nothing whatsoever to do with how often items covered by  
27 Fidelity's home warranty contracts actually need replacement, but instead is arbitrarily chosen by  
28 Fidelity and with the sole purpose of keeping costs to Fidelity to an absolute minimum, without any  
regard whatsoever to the best interests of Fidelity's customers. Thus, Fidelity tells its contractors to



1 refuse to perform replacements even when something cannot really be repaired. This directly  
2 contradicts Fidelity's promise to its customers that ***"With Fidelity National Home Warranty you  
3 only pay \$40 per trade call – no matter how extensive the work of a covered item, or how large  
4 the repair bill" and "If we can't fix it, we'll replace it."*** Contractors whose replacement  
5 percentage is higher than what Fidelity wants are penalized immediately by receiving either no work  
6 from Fidelity or no significant volume of work from Fidelity.

7 69. In addition to discouraging and penalizing its contractors for recommending  
8 replacements rather than repairs, for the rare replacements that Fidelity does authorize (*i.e.*, the  
9 replacement of a heater or air conditioner), the consumer will end up paying out of their pocket,  
10 above and beyond what they have already paid for the premium and service call fees, very  
11 significant sums of money, equivalent if not in excess of what Fidelity pays its contractor, even  
12 though Fidelity authorized the replacement and asserted that the claim was "covered" under the  
13 home protection contract.

14 **2. False and Misleading Advertisements in Materials Sent to Insureds at the**  
15 **Time the Policy Is Purchased**

16 70. After one of Fidelity's home warranty plans is purchased, Fidelity sends a uniform  
17 written brochure to its insureds which states:

18 Quality Coverage. If we can't fix it, we'll replace it! Unlike some "repair  
19 only" contracts, your FNHW plan covers repairs and/or replacements of  
20 covered systems and appliances when needed. Service work is guaranteed  
– without an additional service fee – 30 days on labor and 90 days on  
parts.

21 Quality Repairs. Why search the yellow pages trying to find a qualified  
22 repair technician when we are standing by ready to provide you with the  
23 best? All of our technicians are licensed and insured, ready to repair or  
replace your covered system or appliance as needed. All for one low  
service trade call fee.

24 71. These representations were and are false and misleading because they conceal the  
25 material facts noted *supra* in ¶ 59.

26 72. The brochure sent by Fidelity to its customers at the time that a copy of the home  
27 warranty plan is sent also states: "If service is needed, we'll do all the calling for you. We'll contact  
28 a qualified technician within 3 hours during normal business hours, and 48 hours on weekends and

1 holidays. Soon after, a certified technician will call you to make convenient arrangements to arrive  
2 at your home and make the needed covered repairs. No hassle, no worry.” This representation is  
3 false and materially misleading because, in truth, Fidelity does not certify or pre-screen its  
4 contractors and makes no effort to ensure that its contractors are qualified. In fact, the only  
5 requirements to be a Fidelity contractor are: (1) the contractor should be licensed; (2) the contractor  
6 has Worker’s Compensation insurance or be exempt (in fact, most of Fidelity’s contractors claim to  
7 be exempt because they are small “mom and pop” businesses); and (3) the contractor fills out a short  
8 one-page online application listing their name and address and what trades they cover. There is  
9 absolutely nothing about the application process that addresses whether the contractor is  
10 well-qualified or has a history of complaints. Fidelity does not perform background checks of its  
11 contractors and does not check their records with the Better Business Bureau.

12 73. The brochure sent by Fidelity to its customers at the time that a copy of the home  
13 warranty plan is sent also states:

14 “Dear Homeowner: By now you should have received your Home  
15 Warranty contract.

16 “What is the \$40 Service Call fee and how do I pay it? The service fee is  
17 your co-pay, or deductible for each service trade call.”

18 74. The brochures sent to Fidelity customers at the time the home warranty plan is  
19 purchased are personally signed by Billy Jensen, Fidelity’s president. Jensen reviews and approves  
20 Fidelity’s advertisements and brochures, according to Laurie Eder, Fidelity’s “person most  
21 knowledgeable” on the subject. Jensen has actual knowledge that all Fidelity’s advertisements and  
22 brochures are false and highly misleading, and indeed that is why he approves the ads – to deceive  
23 consumers and induce them to purchase and receive home warranty plans which generate significant  
24 profits for Fidelity but which do not provide the promised benefits.

25 75. These statements and brochures were sent to Plaintiffs, and Plaintiffs relied upon  
26 them. The statements are false and misleading because they state that the Service Call Fee is the  
27 only amount that a consumer who is the insured will have to pay. They also conceal the information  
28 set forth in ¶ 59.

1                   **3. Fidelity's False Advertisements to Real Estate Agents**

2           76. Fidelity sells its home warranty plans primarily through real estate agents, and  
3 primarily through escrow. To induce real estate agents to sell its plans, Fidelity sends uniform  
4 written materials to the agents as to which items to emphasize when selling the plans to home buyers  
5 and sellers. Fidelity tells real estate agents to repeat these selling points to home buyers and sellers,  
6 and the agents do so.

7           77. For home sellers, Fidelity tells real estate agents to emphasize the following points,  
8 which are contained on Fidelity's website under a page entitled "Benefits to the Seller." Fidelity  
9 advertises that:

10                   **"Benefits to Seller**

11                   "Home warranties offer protection against costly repairs to sellers while  
12 the home is listed for sale, and peace of mind for the buyer (and seller)  
13 after the close of sale. In addition, homes listed with a home warranty are  
14 more attractive to potential buyers, and tend to sell faster and closer to the  
15 asking price."

16                   "The benefits of a Fidelity National Home Warranty plan for someone  
17 trying to sell their home far outweigh the cost:

18                   Value added incentive to attract buyers

19                   Minimal cost - premium not paid until closing

20                   Budget/cash flow protection on unexpected repairs

21                   Reduced after sale worries - if a breakdown does happen after closing,  
22 the buyer will call us, not the seller

23                   "Statistically, homes listed with a home warranty sell faster  
24 and closer to the asking price."

25           78. For home buyers, Fidelity provides uniform written brochures and scripts to real  
26 estate agents stating that they should give the brochures to home buyers and also advise buyers  
27 orally of the following benefits of a Fidelity home protection contract:

28                   **"Benefits to Home Buyer"**

                  "A home warranty plan provides budget protection and peace of mind for  
home buyers who otherwise might not be able to handle unexpected repair  
bills at a time when they are usually least affordable.

1 “The benefits of a Fidelity National home warranty plan include:

- 2 ▪ Budget/cash flow protection on unexpected repairs
- 3 ▪ Convenience of one call, *one small service fee* and prompt response
- 4 ▪ Most major systems and appliances covered under the standard plan
- 5 ▪ Provides added home protection from costly repairs *or replacement*
- 6 ▪ Provides ongoing home protection – renewable year after year!
- 7 ▪ ***Full replacement of covered items*** - if we can’t fix it, we’ll replace it “

8 79. Fidelity’s website also contains marketing newsletters which it encourages real estate  
9 agents to download, print, and disseminate to consumers. The newsletters can be customized to  
10 include the real estate agent’s name and address, and Fidelity encourages the real estate agents to use  
11 the newsletters as marketing tools. These uniform marketing newsletters are in turn sent to  
12 consumers on behalf of Fidelity and the agent. The newsletters contain uniform false and misleading  
13 statements about the benefits of Fidelity home protection contracts, such as the following statement:

14 ***Repair, Replace, Relax with Fidelity National Home Warranty***  
15 ***(FNHW).*** A home warranty from FNHW provides both the home buyer  
16 and seller with “peace of mind” when it comes to repairs ***and/or***  
17 ***replacement*** of a home’s major systems and appliances. FNHW prides  
itself on superior customer service, including quick response time and  
efficient solutions for homeowners’ problems and needs.”

18 80. These advertisements directed to home sellers and buyers, directly and through real  
19 estate agents, are false and misleading. Among other things, Fidelity has absolutely no statistically  
20 significant evidence for its representation that “homes listed with a home warranty sell faster and  
21 closer to the asking price.” Moreover, its statement that its home warranty plans offer “budget/cash  
22 flow protection on unexpected repairs” is false and misleading because Fidelity conceals the material  
23 facts noted *supra* in ¶ 59. Its promise that a consumer covered by a Fidelity home protection  
24 contract will only have to pay “one small service fee” is false and misleading since Fidelity’s  
25 customers are forced to spend on average many multiples of the Service Call Fee for covered claims.  
26 Finally, Fidelity’s promise and representation that its home warranty plans provide “full replacement  
27 of covered items” is false since Fidelity instructs its contractors not to replace covered systems, and  
28 penalizes contractors who have a higher replacement ratio than the arbitrary ration mandated by

1 Fidelity. To be sure, Fidelity never even tells its customers that it imposes a replacement ratio on its  
2 contractors and will not give work to them if they exceed such ratio. These undisclosed facts are all  
3 highly material facts that would influence the decision of a consumer to purchase or receive a  
4 Fidelity home warranty plan in the first place, and the subsequent decisions, after a plan is received,  
5 to keep the plan and/or renew it in the future.

6 **4. Fidelity's Website Advertising**

7 81. Fidelity's website contains the following representations and statements:

8 Statement 1:

9 "Homeowner Benefits"

10 "The benefits of a Fidelity National Home Warranty plan far outweigh the cost."

- 11 • One call  
12 • One small service fee  
13 • Most major systems & appliances covered under the basic plan  
14 • Superior customer service  
15 • Quick, efficient response time

16 "The cost of a service plan is a small investment to make to preserve your  
17 peace of mind! The average cost of a home warranty is \$250-400 - just a  
service call or two, and the warranty has paid for itself!"

18 Reason Statement 1 Was Likely to Deceive the Public:

19 Fidelity concealed the fact that it tells its contractors to repair rather than replace covered  
20 systems. Fidelity also conceals the fact that in the rare instance in which it replaces a covered  
21 system, it pays its contractors, on average, just a fraction of the going retail rate to replace the item,  
22 leaving the contractors to make their money from Fidelity's customer. Contractors whose  
23 replacement percentage is higher than what Fidelity wants are penalized immediately by receiving  
24 either no work from Fidelity or no significant volume of work from Fidelity. Fidelity's website  
25 advertisements also conceal the fact that, in addition to discouraging and penalizing its contractors  
26 for recommending replacements rather than repairs, for the rare replacements that Fidelity does  
27 authorize (*i.e.*, the replacement of a heater or air conditioner), the consumer will end up paying out  
28 of their pocket, above and beyond what they have already paid for the premium and service call fees,

1 very significant sums of money – equivalent if not in excess of what Fidelity pays its contractor.  
2 Thus, for example, on average, for any claim in which Fidelity authorizes a replacement of an  
3 HVAC component, if Fidelity paid its contractor \$200, the consumer would, on average, end up  
4 paying at least \$200, if not more, out of his or her pocket, even though Fidelity authorized the  
5 replacement and asserted that the claim was “covered” under the home protection contract. Fidelity  
6 also conceals the fact that its customers often have to make many calls to have their claim resolved,  
7 not “one call.” Forcing customers to make repeated calls in order to get a claim resolved is one of  
8 Fidelity’s dirty tricks which it uses in the hope that customers will get fed up and just pay to have the  
9 problem fixed on their own. Consumers who have a broken water heater or a broken air conditioner  
10 cannot afford to wait 2-3 weeks and make multiple calls in order to have their claim resolved.

11  
12 Statement 2:

13 “The average cost of a home warranty is \$250-400 - just a service call or two, and the  
14 warranty has paid for itself!”

15 Reason Statement 2 Was Likely to Deceive the Public:

16 Fidelity concealed the fact that it tells its contractors to repair rather than replace covered  
17 systems. Fidelity also conceals the fact that in the rare instance in which it replaces a covered  
18 system, it pays its contractors, on average, just a fraction of the going retail rate to replace the item,  
19 leaving the contractors to make their money from Fidelity’s customer. This statement is also highly  
20 misleading and likely to deceive for the same reasons noted *supra* in ¶ 59.

21  
22 Statement 3:

23 “Let’s face it – all home warranty companies offer similar coverage, at a similar cost. What  
24 you won’t find everywhere is a proven commitment to personalized customer service. With Fidelity  
25 National Home Warranty, you can count on:

26 “Local, licensed, insured, dependable and pre-screened technicians.”

27 Fidelity also represents the following on its website:  
28

1 "As one of the fastest growing home warranty companies in the country,  
2 we continually seek partnerships with *licensed, qualified contractors.*"

3 Reason Statement 3 Was Likely to Deceive the Public:

4 These representations are false and materially misleading because, in truth, Fidelity makes no  
5 effort to carefully pre-screen its contractors or to ensure that its contractors are dependable or  
6 qualified. In fact, the only requirements to be a Fidelity contractor are: (1) the contractor should be  
7 licensed; (2) the contractor has liability and Worker's Compensation insurance or be exempt (in fact,  
8 most of Fidelity's contractors claim to be exempt because they are small "mom and pop"  
9 businesses); and (3) the contractor fills out a short one-page online application listing their name and  
10 address and what trades they cover. There is absolutely nothing about the application process that  
11 addresses whether the contractor is well-qualified or has a history of complaints. Fidelity does not  
12 perform background checks of its contractors and instead states on its website that it only performs  
13 an "Internet search" of its contractors. Fidelity also does not check its contractors' records with the  
14 Better Business Bureau. Moreover, Fidelity conceals the fact that it does not put its contractors  
15 through a reference verification. The application form to become a Fidelity contractor does not even  
16 contain a field for references.

17 Statement No. 4:

18 "A home warranty plan provides budget protection and peace of  
19 mind for home buyers who otherwise might not be able to handle  
20 unexpected repair bills at a time when they are usually least affordable."

21 "At FNHW we pride ourselves on superior customer service,  
22 including quick response time and efficient solutions for homeowners'  
23 problems and needs. *The home owner only makes one call and pays only  
24 one small service fee when a problem or repair arises.*"

25 "Additionally, home buyers can move in with confidence knowing  
26 that their budget and new home is *protected against unexpected  
27 mechanical failures.*"

28 Fidelity promises its customers that it will provide: *"added home  
29 protection from costly repairs or replacement." Fidelity promises that:  
30 "If we can't repair it, we'll replace it."*

Reason Statement No. 4 Was Likely to Deceive the Public:

1           The statements in the above paragraphs are false and likely to deceive the public because  
2 they omit the material fact that Fidelity tells its contractors to repair rather than replace items even  
3 where a replacement is necessary and even under situations where repairing rather than replacing an  
4 item would pose a threat to the safety of Fidelity's customer. They also conceal the material facts  
5 noted *supra* in ¶ 59.

6           82. Fidelity's website also contains, and contained at all relevant times during the Class  
7 Period, uniform advertisements directed at home sellers and buyers touting the benefits to both  
8 buyers and sellers of a Fidelity home warranty plan. Fidelity also primarily markets its products  
9 through real estate agents, and instructs them to stress these same alleged benefits to home buyers  
10 and sellers when trying to convince them to include a Fidelity home warranty plan as part of the  
11 purchase and sale of a home. Real estate agents repeat this information to buyers and sellers of  
12 homes. Fidelity's website advertising directed to home buyers and sellers states

13 Statement No. 5:

14           **Benefits to Homeowner**

15           **HELP is only a phone call away!**

16           The benefits of a Fidelity National home warranty plan far outweigh the  
17 costs.

- 18           • One call
- 19           • *One small service fee*
- 20           • Most major systems & appliances covered under the basic plan
- 21           • Superior customer service
- 22           • Quick, efficient response time

23           The cost of a service plan is a small investment to make to preserve your  
24 peace of mind! The average cost of a home warranty is \$250-400 - *just a  
service call or two, and the warranty has paid for itself!*

25           **Benefits to Home Buyer**

26           A home warranty plan provides budget protection and peace of mind for  
27 home buyers who otherwise might not be able to handle unexpected repair  
bills at a time when they are usually least affordable.

28           The benefits of a Fidelity National home warranty plan include:



- 1                   • Budget/cash flow protection on unexpected repairs  
2                   • Convenience of one call, one small service fee and prompt response  
3                   • Most major systems and appliances covered under the standard plan  
4                   • Provides added home protection from costly repairs or replacement  
5                   • Provides ongoing home protection – renewable year after year!  
6                   • Full replacement of covered items - if we can't fix it, we'll replace it  
7                   Benefits to Seller

8                   Home warranties offer protection against costly repairs to sellers while the  
9                   home is listed for sale, and peace of mind for the buyer (and seller) after  
10                  the close of sale. In addition, *homes listed with a home warranty are  
11                  more attractive to potential buyers, and tend to sell faster and closer to  
12                  the asking price.*

13                  The benefits of a Fidelity National home warranty plan for someone trying  
14                  to sell their home far outweigh the cost:

- 15                  • Value added incentive to attract buyers  
16                  • Minimal cost - premium not paid until closing  
17                  • Budget/cash flow protection on unexpected repairs  
18                  • Reduced after sale worries - if a breakdown does happen after that  
19                  closing, the buyer will call the warranty company, not the seller

20                  *“Statistically, homes listed with a home warranty sell faster  
21                  and closer to the asking price.”*

22                  Reason Statement No. 5 Was Likely to Deceive the Public:

23                  Fidelity website advertisements and representations conceal the fact that Fidelity tells its  
24                  contractors to repair rather than replace covered systems, and that Fidelity imposes arbitrary  
25                  “replacement ratios” on its contractors. Fidelity also conceals the fact that in the rare instance in  
26                  which it replaces a covered system, it pays its contractors, on average, just a fraction of the going  
27                  retail rate to replace the item, leaving the contractors to make their money from Fidelity’s customer.  
28                  Contractors whose replacement percentage is higher than what Fidelity wants are penalized  
                      immediately by receiving either no work from Fidelity or no significant volume of work from  
                      Fidelity. Fidelity’s website advertisements also conceal the fact that, in addition to discouraging and

1 penalizing its contractors for recommending replacements rather than repairs, for the rare  
2 replacements that Fidelity does authorize (*i.e.*, the replacement of a heater or air conditioner), the  
3 consumer will end up paying out of their pocket, above and beyond what they have already paid for  
4 the premium and service call fees, very significant sums of money -- equivalent if not in excess of  
5 what Fidelity pays its contractor.

6 Fidelity's website advertisements to real estate agents and home buyers and sellers are also  
7 false and misleading since Fidelity has absolutely no statistically significant evidence to demonstrate  
8 that homes listed with a home warranty sell faster and closer to the asking price. It also has no  
9 evidence to prove that its insureds only have to pay "one small service fee" for a covered claim. In  
10 fact, its insureds pay significantly more than the service fee for any covered claim, and Fidelity  
11 conceals this fact. Fidelity not only conceals this fact from its insureds and the public, but it attempts  
12 to avoid any paper trail of its fraudulent conduct by instructing its contractors not to include any  
13 information in the invoices the contractors submit to Fidelity about amounts the contractors charge  
14 Fidelity's customers above the service call fee.

15 **5. Fidelity's False Advertising to Existing Customers when Soliciting**  
16 **Renewals**

17 83. Fidelity is very aggressive in soliciting its existing clients to renew their Fidelity  
18 home protection contracts. Customers who could not get Fidelity to return multiple calls seeking  
19 service after a claim is made suddenly find themselves bombarded by unsolicited written solicitation  
20 brochures and telephonic marketing calls from Fidelity when it is time to renew the home protection  
21 contracts.

22 84. Fidelity solicits renewals by (1) sending uniform renewal solicitation brochures to its  
23 customers; and (2) having telemarketers hired by Fidelity call Fidelity's customers and pressuring  
24 them to renew. Fidelity gives its telemarketers both copies of its written renewal solicitation  
25 brochures and uniform written scripts to repeat to Fidelity's customers on the calls. Both the written  
26 brochures and the scripts instruct the telemarketers to emphasize the following alleged benefits of a  
27 Fidelity home protection contract:  
28

1 (a) Fidelity will repair or replace covered systems (“Unlike some ‘repair only’  
2 contracts, your FNHW/CHW plan includes replacements of covered systems and appliances  
3 when needed”);

4 (b) Fidelity will promptly dispatch a contractor to respond to any claim;

5 (c) The policy is likely to pay for itself the first time the customer makes a claim;

6 (d) If the customer does not renew, the customer could be faced with very large  
7 bills if an appliance or home system needs to be replaced. When mentioning these large  
8 potential expenses, the telemarketer is instructed to mention the figures set forth in the chart  
9 on the home protection contract (see Ex. A and Ex. B hereto).

10 (e) The customer will only have to pay “one small service fee” for covered claims  
11 (currently, the fee is \$55, but was as low as \$40 during the beginning of the Class Period)  
12 (e.g., “You only pay \$40 per trade call – no matter how extensive the work of a covered item,  
13 or how large the repair bill”) and (“Along with handling all the details and eliminating the  
14 risk of working with unqualified contractors, we can also potentially save you hundreds –  
15 even thousands – of dollars on repair bills. The chart below shows typical repair costs – with  
16 and without a warranty”);

17 (f) Fidelity offers superior customer service;

18 (g) Fidelity carefully screens the repairmen it uses to respond to customer claims  
19 (“All of our contractors are licensed, insured and trustworthy professionals.”) and (“All of  
20 our technicians are licensed and insured, ready to repair or replace your covered appliance or  
21 major mechanical system as needed. All for one low service trade call fee of \$40”).

22 85. These representations were and are false and misleading for the same reasons set  
23 forth *supra* in ¶ 59. The representation that the policy was likely to pay for itself with the very first  
24 claim filed by a customer was also false and misleading since Fidelity does not pay an average  
25 amount for covered claims anywhere near the premium for the policy.

26 86. Plaintiff Baker received both written brochures soliciting him to renew his Fidelity  
27 home warranty plan and telephone calls soliciting him to renew his policy. His first policy expired  
28 in 2005. Based on the concerted written and telephonic solicitations Mr. Baker received from

1 Fidelity, he eventually renewed his policy in the fall of 2005. Thereafter, he received brochures and  
2 telephone calls soliciting him to renew his policy each year it was up for renewal in 2006, 2007, and  
3 2008. The brochures and telephone calls Mr. Baker received emphasized the points noted above  
4 about the alleged benefits of a Fidelity home warranty insurance policy.

5 **VI. CAUSES OF ACTION**

6 **FIRST CLAIM FOR RELIEF**

7 **(Breach of Contract)**

8 **(On Behalf of Plaintiffs)**

9 87. Plaintiffs reallege and incorporate by reference each and every allegation above as if  
10 fully set forth herein.

11 88. Defendants have entered into contracts with Plaintiffs under which Defendants agreed  
12 to provide home protection contracts to Plaintiffs. A true and correct copy of Plaintiffs' home  
13 warranty plans are attached hereto as **Exhibits A** and **B**. Under the terms of those contracts,  
14 Defendants are required to provide the coverage set forth in the contracts.

15 89. Plaintiffs complied with all their obligations under the contracts.

16 90. Plaintiffs have been deprived of the benefits of their agreements with Defendants.

17 91. Defendants breached their contracts with Plaintiffs by taking actions to deprive  
18 Plaintiffs of the benefits of the contracts and by refusing to provide the coverage set forth in the  
19 contracts.

20 92. As a result of Defendants' breach of contract, Plaintiffs have suffered damages.

21 93. Defendants are accordingly liable to Plaintiffs for breach of contract. Plaintiffs seek  
22 actual damages and/or restitution and an injunction ordering Defendants to comply with the  
23 obligations of the contracts entered into by Plaintiffs and Defendants.

24 **SECOND CLAIM FOR RELIEF**

25 **(Contractual Breach Of The Implied Covenant Of Good Faith And Fair Dealing)**

26 **(On Behalf Of Plaintiffs And The Class)**

27 94. Plaintiffs reallege and incorporate by reference each and every allegation above as if  
28 fully set forth herein.

1           95.     There is a covenant of good faith and fair dealing implied in every contract. This  
2 implied covenant requires each contracting party to refrain from doing anything to injure the right of  
3 the other to receive the benefits of the agreement.

4           96.     Defendants breached the implied covenant of good faith and fair dealing in their  
5 contracts with Plaintiffs and the Class by economically incentivizing contractors to shift the majority  
6 of expenses associated with any repair or replacement work to the consumer, by instructing  
7 contractors to avoid replacement of covered systems even when replacement is necessary, by  
8 ranking contractors almost exclusively based on the average cost the contractors charge Fidelity, and  
9 by taking actions to deprive Plaintiffs and the Class of the benefits of their contracts.

10          97.     For example, Fidelity breached its duty of good faith and fair dealing and wrongfully  
11 denied Plaintiff Kaplan the benefit of the bargain under his home warranty plan, as follows:

12           (a)     With regard to Mr. Kaplan's claim concerning a leaky toilet, the first plumber  
13 sent by Fidelity refused to work on the toilet and denied the claim on the purported basis of a  
14 construction defect. That plumber then left, leaving Mr. Kaplan's toilet disassembled.  
15 Subsequently, Mr. Kaplan had a representative of the builder inspect the bathroom, who  
16 determined that there was no defect. Presented with this evidence, Fidelity sent a second  
17 plumber who fixed the toilet. Fidelity's initial refusal to cover the claim was improper.  
18 Fidelity, as a result of either hiring someone who was not qualified to make the determination  
19 about the construction defect or incentivizing the contractors to deny claims, denied the  
20 initial claim, even though the claim should have been covered. Fidelity's failure to timely  
21 repair and/or replace a covered item constituted a denial of benefits due under the contract.

22           (b)     With regard to Mr. Kaplan's claim concerning his kitchen-sink faucet, Fidelity  
23 sent out a contractor who refused to do the work required unless Mr. Kaplan paid him  
24 additional money, which caused Mr. Kaplan to do the repair himself in order to avoid the  
25 bogus and improper charges. Fidelity's handling of the claim was improper because Fidelity  
26 sent a contractor who wouldn't perform the work that Mr. Kaplan was entitled to have done  
27 under the terms of the contract unless Mr. Kaplan agreed to pay the contractor additional  
28 money. Moreover, the contractor attempted to charge Mr. Kaplan exorbitant rates for

1 additional work that the contractor represented to Mr. Kaplan needed to be done in order to  
2 perform the repair, even though the repair required only replacement of one angle stop,  
3 which was covered under the contract.

4 (c) With regard to Mr. Kaplan's claim concerning his washing machine pan,  
5 Fidelity denied the claim on the basis that the washing machine was purportedly improperly  
6 installed. This denial was improper because the washing machine was not improperly  
7 installed and because, in any event, the installation of the washing machine had nothing to do  
8 with whether the broken washing machine pan, which was covered under the terms of the  
9 contract, should have been repaired or replaced.

10 98. Likewise, Fidelity breached its duty of good faith and fair dealing and wrongfully  
11 denied Plaintiff Baker the benefit of the bargain under his home warranty plan, as follows:

12 (a) With regard to Mr. Baker's claim concerning his shower, the contractor sent  
13 by Fidelity told Mr. Baker that the claim was not covered because the part of the valve that  
14 was not working was out of code. However, the part was not out of code. The claim should  
15 have been covered under the "Covered Items" provision of the contract applicable to  
16 "Plumbing Systems and Stoppages," which provides coverage for "[r]epair of leaks and  
17 breaks in water, waste, vent, or gas lines within the perimeter of the main foundation of the  
18 home or garage — shower/tub valves (replaced with chrome builder's standard)."

19 (b) With regard to Mr. Baker's claim concerning his oven, it took two or more  
20 contractors four or more visits over a period of six months to fix the oven. At one point, one  
21 of the contractors concluded that the oven needed a new circuit board, but the contractor  
22 indicated that he was going to try to fix the oven by exploring other options first before  
23 ordering a new circuit board. This conduct demonstrates that Fidelity's contractors were  
24 trying to save money and cut costs and to repair rather than replace, even where it was clear  
25 that a replacement was necessary. It also demonstrates that Fidelity delays necessary  
26 replacements in the hopes that the insured will pay out of their own pocket to have the  
27 problem fixed. Fidelity's unreasonable and wrongful substantial delay in having the covered  
28 item repaired constituted a failure to provide benefits due under the home warranty plan.

1 (c) With regard to Mr. Baker's claim concerning his toilet, Fidelity sent a  
2 contractor who disassembled the toilet, took some parts from the toilet that needed to be  
3 replaced, and then left without fixing the toilet. Afterward, it took approximately two-and-a-  
4 half months for the toilet to be finally fixed, during which time the toilet was not operational.  
5 Fidelity's conduct in handling this claim again demonstrates that Fidelity delays legitimate  
6 replacements in the hope that the problem will go away.

7 (d) With regard to Mr. Baker's claim concerning his garage doors, Fidelity denied  
8 the claim on the basis that the problem was with the garage door cables, which were  
9 allegedly not covered by Mr. Baker's plan. The problem, however, was with the roller, and  
10 not the cables. Mr. Baker subsequently had the garage doors fixed by a third-party  
11 contractor, who fixed the problem by replacing the roller at Mr. Baker's expense.

12 (e) With regard to Mr. Baker's claim concerning the broken pool sweep, Fidelity  
13 denied the claim on the ground that it was not covered under Mr. Baker's policy. This denial  
14 was improper because a pool sweep is expressly covered under Mr. Baker's policy.  
15 Specifically, the section of the home warranty plan entitled "Swimming Pool and/or Spa  
16 Equipment" lists the following as covered items: "[a]ll above ground and accessible parts  
17 and components of the filtration, plumbing and heating system (including the pool sweep  
18 pump, pump motor, blower motor and timer)."

19 (f) With regard to Mr. Baker's claim concerning his dishwasher, it took  
20 Defendant eleven days to finally send a contractor over to Mr. Baker's house to fix the  
21 problem. Once again, this conduct demonstrates that Fidelity delays legitimate repairs and  
22 replacements in the hope that the problem will go away.

23 99. Defendants' conduct also resulted in class members being deprived of both express  
24 and implied benefits due to them under the home warranty contracts. Class members submitted  
25 covered claims and were owed express benefits in the form of repair, replacement and/or money.  
26 Class members were also owed implied benefits as described herein, including a fair and impartial  
27 investigation by a trained claims adjuster and prompt delivery of benefits owed under the policies.  
28

1 Defendants breached the covenant of good faith and fair dealing by failing to provide the benefits  
2 owed to Class members under the contracts.

3 100. As a result of Defendants' breach of the implied covenant of good faith and fair  
4 dealing, Plaintiffs and members of the Class have been damaged.

5 101. Defendants are accordingly liable to Plaintiffs and members of the Class for breach of  
6 the implied covenant of good faith and fair dealing. Plaintiffs seek restitution, an injunction ordering  
7 Defendants to comply with the obligations of the contracts entered into by the Class and Defendants,  
8 and an injunction ordering Defendants to avoid taking any action that would interfere with the ability  
9 of Plaintiffs and the Class to receive the benefits of the home warranty contracts.

10 **THIRD CLAIM FOR RELIEF**

11 **(Tortious Breach Of The Implied Covenant Of Good Faith And Fair Dealing)**

12 **(On Behalf Of Plaintiffs And The Class)**

13 102. Plaintiffs reallege and incorporate by reference each and every allegation above as if  
14 fully set forth herein.

15 103. The home protection contracts entered into by Plaintiffs and the Class, on the one  
16 hand, and Fidelity, on the other hand, were insurance contracts.

17 104. A covenant of good faith and fair dealing is implied in every insurance contract. The  
18 implied promise requires each contracting party to refrain from doing anything to injure the right of  
19 the other to receive the agreement's benefits. To fulfill its implied obligation, an insurer must give at  
20 least as much consideration to the interests of the insured as it gives to its own interests. When the  
21 insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to  
22 liability in tort.

23 105. An insurer cannot reasonably and in good faith deny payments to its insured without  
24 fully investigating the grounds for its denial.

25 106. The California Supreme Court has emphasized that, in order to protect the interests of  
26 its insured, it is "essential that an insurer fully inquire into possible bases that might support the  
27 insured's claim."  
28



1           107. The insurer's duty to give as much consideration to the insured's interests as it does  
2 to its own obligates it to investigate a claim thoroughly. An insurer must fully inquire into the  
3 bases for the claim; indeed, it cannot reasonably and in good faith deny [benefits] to its insured  
4 without thoroughly investigating the foundation for its denial.

5           108. Defendant breached its duty of good faith and fair dealing and wrongfully denied  
6 Plaintiffs and the Class the benefit of the bargain under the home warranty plans. Defendant  
7 tortiously breached the implied covenant of good faith and fair dealing in its contracts with Plaintiffs  
8 and the Class because Fidelity (1) performed no investigation whatsoever of the claims of Plaintiffs  
9 and the Class; (2) failed to pay its contractors/repairmen a sufficient amount to allow them to  
10 properly repair and/or replace covered systems, and also provided its third party  
11 contractors/repairmen strong economic incentives to refuse to properly repair and/or replace covered  
12 systems; and (3) failed to provide benefits due to Plaintiffs and the Class under the home warranty  
13 plans.

14           109. For example, Fidelity breached its duty of good faith and fair dealing and wrongfully  
15 denied Plaintiff Kaplan the benefit of the bargain under his home warranty plan, as follows:

16           (a) With regard to Mr. Kaplan's claim concerning a leaky toilet, the first plumber  
17 sent by Fidelity refused to work on the toilet and denied the claim on the purported basis of a  
18 construction defect. That plumber then left, leaving Mr. Kaplan's toilet disassembled.  
19 Subsequently, Mr. Kaplan had a representative of the builder inspect the bathroom, who  
20 determined that there was no defect. Presented with this evidence, Fidelity sent a second  
21 plumber who fixed the toilet. Fidelity's initial refusal to cover the claim was improper.  
22 Fidelity, as a result of either hiring someone who was not qualified to make the determination  
23 about the construction defect or incentivizing the contractors to deny claims, denied the  
24 initial claim, even though the claim should have been covered. Fidelity's failure to timely  
25 repair and/or replace a covered item constituted a denial of benefits due under the contract.

26           (b) With regard to Mr. Kaplan's claim concerning his kitchen-sink faucet, Fidelity  
27 sent out a contractor who refused to do the work required unless Mr. Kaplan paid him  
28 additional money, which caused Mr. Kaplan to do the repair himself in order to avoid the

1 bogus and improper charges. Fidelity's handling of the claim was improper because Fidelity  
2 sent a contractor who wouldn't perform the work that Mr. Kaplan was entitled to have done  
3 under the terms of the contract unless Mr. Kaplan agreed to pay the contractor additional  
4 money. Moreover, the contractor attempted to charge Mr. Kaplan exorbitant rates for  
5 additional work that the contractor represented to Mr. Kaplan needed to be done in order to  
6 perform the repair, even though the repair required only replacement of one angle stop,  
7 which was covered under the contract.

8 (c) With regard to Mr. Kaplan's claim concerning his washing machine pan,  
9 Fidelity denied the claim on the basis that the washing machine was purportedly improperly  
10 installed. This denial was improper because the washing machine was not improperly  
11 installed and because, in any event, the installation of the washing machine had nothing to do  
12 with whether the broken washing machine pan, which was covered under the terms of the  
13 contract, should have been repaired or replaced.

14 110. Likewise, Fidelity breached its duty of good faith and fair dealing and wrongfully  
15 denied Plaintiff Baker the benefit of the bargain under his home warranty plan, as follows:

16 (a) With regard to Mr. Baker's claim concerning his shower, the contractor sent  
17 by Fidelity told Mr. Baker that the claim was not covered because the part of the valve that  
18 was not working was out of code. However, the part was not out of code. The claim should  
19 have been covered under the "Covered Items" provision of the contract applicable to  
20 "Plumbing Systems and Stoppages," which provides coverage for "[r]epair of leaks and  
21 breaks in water, waste, vent, or gas lines within the perimeter of the main foundation of the  
22 home or garage — shower/tub valves (replaced with chrome builder's standard)."

23 (b) With regard to Mr. Baker's claim concerning his oven, it took two or more  
24 contractors four or more visits over a period of six months to fix the oven. At one point, one  
25 of the contractors concluded that the oven needed a new circuit board, but the contractor  
26 indicated that he was going to try to fix the oven by exploring other options first before  
27 ordering a new circuit board. This conduct demonstrates that Fidelity's contractors were  
28 trying to save money and cut costs and to repair rather than replace, even where it was clear

1 that a replacement was necessary. It also demonstrates that Fidelity delays necessary  
2 replacements in the hopes that the insured will pay out of their own pocket to have the  
3 problem fixed. Fidelity's unreasonable and wrongful substantial delay in having the covered  
4 item repaired constituted a failure to provide benefits due under the home warranty plan.

5 (c) With regard to Mr. Baker's claim concerning his toilet, Fidelity sent a  
6 contractor who disassembled the toilet, took some parts from the toilet that needed to be  
7 replaced, and then left without fixing the toilet. Afterward, it took approximately two-and-a-  
8 half months for the toilet to be finally fixed, during which time the toilet was not operational.  
9 Fidelity's conduct in handling this claim again demonstrates that Fidelity delays legitimate  
10 replacements in the hope that the problem will go away.

11 (d) With regard to Mr. Baker's claim concerning his garage doors, Fidelity denied  
12 the claim on the basis that the problem was with the garage door cables, which were  
13 allegedly not covered by Mr. Baker's plan. The problem, however, was with the roller, and  
14 not the cables. Mr. Baker subsequently had the garage doors fixed by a third-party  
15 contractor, who fixed the problem by replacing the roller at Mr. Baker's expense.

16 (e) With regard to Mr. Baker's claim concerning the broken pool sweep, Fidelity  
17 denied the claim on the ground that it was not covered under Mr. Baker's policy. This denial  
18 was improper because a pool sweep is expressly covered under Mr. Baker's policy.  
19 Specifically, the section of the home warranty plan entitled "Swimming Pool and/or Spa  
20 Equipment" lists the following as covered items: "[a]ll above ground and accessible parts  
21 and components of the filtration, plumbing and heating system (including the pool sweep  
22 pump, pump motor, blower motor and timer)."

23 (f) With regard to Mr. Baker's claim concerning his dishwasher, it took  
24 Defendant eleven days to finally send a contractor over to Mr. Baker's house to fix the  
25 problem. Once again, this conduct demonstrates that Fidelity delays legitimate repairs and  
26 replacements in the hope that the problem will go away.

27 111. Defendants' conduct also resulted in class members being deprived of both express  
28 and implied benefits due to them under the home warranty contracts. Class members submitted

1 covered claims and were owed express benefits in the form of repair, replacement and/or money.  
2 Class members were also owed implied benefits as described herein, including a fair and impartial  
3 investigation by a trained claims adjuster and prompt delivery of benefits owed under the policies.  
4 Defendants breached the covenant of good faith and fair dealing by failing to provide the benefits  
5 owed to Class members under the contracts.

6 **A. Failure To Perform Any Investigation Or, If Any Investigation Is Performed, To**  
7 **Properly Train Its Claims Adjusters**

8 112. Fidelity does not employ a single employee for the purpose of investigating its  
9 customers' claims. Instead, Fidelity simply sends independent contractors who are plumbers, pool  
10 and spa laborers, electricians, and HVAC repairmen to respond to claims made by Fidelity's  
11 customers. According to Fidelity, however, those laborers are not claims adjusters and receive no  
12 training whatsoever from Fidelity regarding claims adjusting or the investigation of claims.

13 113. Moreover, while Fidelity has asserted contradictory and conflicting positions in its  
14 dealings with its insureds and in this case as to whether its third party contractors "investigate"  
15 claims made by Fidelity's insureds, Plaintiffs understand Fidelity's "official" position to be that its  
16 third party repairmen *do not* perform any claims adjusting or claims investigative work whatsoever.  
17 According to Fidelity, the repairmen simply repair or replace (or do not repair or replace) covered  
18 systems based on what a Fidelity employee tells them to do over the phone. The Fidelity employee,  
19 again, has not seen the insured's home and has received absolutely no report or recommendation  
20 from any person regarding the claim (since, again, the repairmen perform absolutely no claims  
21 investigative work, according to Fidelity). Thus, if Fidelity is held to its official position, then  
22 Fidelity does absolutely nothing to investigate its insureds' claims. Further, Fidelity does absolutely  
23 nothing to inquire into the possible bases that might support its insureds' claims.

24 114. Every Fidelity home protection contract contains an express contractual provision  
25 stating that: "FNHW will determine whether a covered item will be repaired or replaced." Fidelity  
26 systematically and uniformly makes that determination without performing any investigation into the  
27 claim.  
28

1           115. If, on the other hand, Fidelity changes its position and asserts that its independent  
2 third party repairmen do investigate claims, then Fidelity still systematically breaches the implied  
3 covenant of good faith and fair dealing every single time a claim is made by one of its insureds.  
4 Fidelity breaches the implied covenant because: (1) Fidelity never sends one of its own employees  
5 to its insureds' homes to investigate any claim; it always sends an independent contractor/repairmen;  
6 (2) Fidelity provides absolutely no training to its third party contractors/repairmen in fair claims  
7 handling practices; and (3) Fidelity is obligated to properly train every person who performs any  
8 activity whatsoever relating to the investigation and/or adjusting of insurance claims.

9           116. To the extent Fidelity's contractors investigate and/or adjust claims, Fidelity fails to  
10 communicate written standards regarding the prompt investigation and handling of claims to its  
11 contractors in violation of Cal. Code Reg. § 2695.6 and Ins. Code §7 90.03(h). As a matter of law,  
12 home warranty companies, including Fidelity, are subject to certain provisions of the California  
13 Insurance Code, which constitute contractual terms that Fidelity is obligated to uphold. *See* Cal. Ins.  
14 Code § 12742. The code provisions applicable to home warranty companies are specified in  
15 Insurance Code § 12743. Among the provisions explicitly applicable to home warranty companies  
16 are Insurance Code § 790.03 and the regulations interpreting the statute. *See* Cal. Code of  
17 Regulations § 2695.1(d): "These regulations apply to home protection contracts and home  
18 protection companies defined in California Insurance Code Section 12740."

19           117. California law specifically requires Fidelity to train and certify all its "claims agents."  
20 *See* Cal. Code of Reg. § 2695.6 ("Every insurer shall adopt and communicate to all its claims agents  
21 written standards for the prompt investigation and processing of claims."). Thus, if Fidelity utilizes  
22 third party contractors to investigate the claims of its insureds, then such contractors are indisputably  
23 "claims agents" since they are authorized by Fidelity to investigate claims. *See* Cal. Code of Reg.  
24 § 2695.2(d).<sup>2</sup> They are also "insurance adjusters," as defined by Ins. Code § 14021.<sup>3</sup>

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25           <sup>2</sup> "Claims Agent" means any person employed or authorized by an insurer, to conduct an  
26 investigation of a claim on behalf of an insurer or a person who is licensed by the Commissioner to  
27 conduct investigations on behalf of an insurer."

28           <sup>3</sup> "An insurance adjuster within the meaning of this chapter is a person other than a private  
investigator as defined in Section 7521 of the Business and Professions Code who, for any  
consideration whatsoever, engages in business or accepts employment to furnish, or agrees to make,

1 118. Fidelity's third party contractors receive absolutely no claims handling training. And  
2 the third party contractors utilized by Fidelity could clearly be construed to be conducting  
3 "investigations" of claims, as the term "investigation" is defined very broadly under the Insurance  
4 Code to include:

5 All activities of an insurer or its claims agent related to the determination  
6 of coverage, liabilities, or nature and extent of loss or damage for which  
7 benefits are afforded by an insurance policy, obligations or duties under a  
bond, and other obligations or duties arising from an insurance policy or  
bond.

8 *See* Cal. Code of Reg. §2695.2(k).

9 119. Thus, if Fidelity uses its third party contractors to investigate and/or adjust its  
10 insureds' claims, it breaches its implied covenant of good faith and fair dealing since it provides no  
11 training to such persons. On the other hand, if Fidelity does not use such contractors to perform any  
12 work regarding the investigation and/or adjusting of claims, then it also breaches the implied  
13 covenant since Fidelity does not send any of its own employees to its insureds' homes to investigate  
14 claims.

15 **B. Fidelity Uses Third Party Repairmen to Interfere With The Ability Of Its**  
16 **Insureds To Receive The Benefits Of The Home Protection Contracts**

17 120. Fidelity does everything it can to deny homeowners the benefits promised by its  
18 home warranty plans, and Fidelity's conduct resulted in the denial of benefits due under the home  
19 warranty plans to Plaintiffs and the Class. The following are just a few of the tactics Fidelity uses to  
20 achieve this end:

21 **C. Fidelity Uses Unlicensed, Unqualified and Poorly-Paid Third-Party Contractors**

22 121. Fidelity does not employ its own contractors to fix homeowners' claims. Instead, it  
23 hires third-party contractors under independent contractor service agreements. Fidelity selects its  
24 contractors purely on price and does nothing to ensure they are qualified. In some instances, the  
25 contractors do not even have the requisite licenses. Fidelity also selects contractors who work  
26 primarily for other home warranty companies because these contractors already know how the home  
27 or makes any investigation for the purpose of obtaining, information in the course of adjusting or  
28 otherwise participating in the disposal of, any claim under or in connection with a policy of  
insurance on behalf of an insurer or engages in soliciting insurance adjustment business . . . ."

1 warranty game works and are dependent on home warranty companies for their livelihood. As a  
2 result, Fidelity negotiates contractor rates well below the retail-market rate which is too low to allow  
3 the contractor to properly repair or replace covered items.

4 **D. Fidelity Wrongfully Denies Claims as “Pre-Existing” Even Though It Performs**  
5 **No Inspection of an Insured’s Home Prior to Selling the Policy, and Thus Has**  
6 **No Basis Whatsoever to Deny Claims as “Pre-Existing”**

7 122. Fidelity routinely denies claims on the basis that the problem “pre-existed” the date of  
8 the policy. Denials based on a pre-existing condition are especially improper given that Fidelity  
9 agrees to cover the homeowner’s systems and appliances without bothering to investigate whether  
10 the systems and appliances are actually in good-working order. Indeed, if a homeowner makes a  
11 claim within the first 30 days of the policy, Fidelity presumes that the problem is a pre-existing  
12 condition. Of course, Fidelity has no way of knowing whether that problem actually existed at the  
13 time it issued the policy. Nonetheless, Fidelity issues the policy and accepts the policy premium  
14 anyway. Fidelity does not refund the homeowner the policy premium if it denies the claim because  
15 of a supposed pre-existing condition. Fidelity also does not refund the \$55 trade-call fee that the  
16 homeowner has to pay in order to find out that his or her claim is not covered.

17 123. Moreover, as noted above, Fidelity does not employ a single individual to investigate  
18 its insureds’ claims. When one of its insureds files a claim under one of Fidelity’s standardized  
19 home protection contracts, Fidelity dispatches a plumber, pool repairman, HVAC contractor, or  
20 electrician to the insured’s home. According to Fidelity, these repairmen perform absolutely no  
21 claims investigative or claims adjusting work. The repairmen receive no training from Fidelity and  
22 are not licensed claims adjusters. Moreover, Fidelity never sends any of its own employees to the  
23 insured’s home and never makes any investigation whatsoever into the claim.

24 124. The sum total of what Fidelity does before it denies a claim as “pre-existing” is to  
25 have one of its employees talk to the repairman and then decide whether or not the claim is covered  
26 under the Fidelity home protection contract. But, there is no way that Fidelity can determine  
27 whether a condition “pre-existed” the date the policy was issued without conducting a thorough and  
28 fair investigation of the claim. If its third party contractors do not “investigate” or “adjust” claims,

1 then Fidelity by definition does not perform a thorough or fair investigation before it denies claims  
2 based on a “pre-existing” condition.

3 125. Indeed, Plaintiffs are informed and believe that Fidelity carefully selects and trains its  
4 third-party contractors to deny legitimate claims, refuses to authorize replacement of appliances, and  
5 increases the number of necessary service calls so as to increase the costs to the Class and decrease  
6 the costs to Defendant. Further, Fidelity has failed to adopt and implement reasonable standards for  
7 the prompt investigation and processing of claims arising under the home warranty plans sold by  
8 Fidelity to Plaintiffs and the Class as is required California Insurance Code § 790.03(h)(3).

9 **E. Fidelity Incentivizes Its Contractors to Refuse to Work on Expensive Jobs and**  
10 **Perform Substandard Repairs**

11 126. Fidelity ranks its contractors based almost exclusively on their average cost per  
12 invoice. The contractors who charge Fidelity the least amount get the most amount of work. The  
13 contractors who charge more than the target average get the least amount of work. Fidelity’s  
14 contractors therefore have a financial incentive to keep their average cost per invoice as low as  
15 possible. As such, Fidelity establishes financial incentives that cause its contractors to use at least  
16 three improper methods to keep their average costs down:

17 (a) *Fidelity incentivizes, encourages, and allows its contractors to aggressively*  
18 *look for pre-textual reasons that Fidelity can use to deny claims:* When Fidelity denies a  
19 claim, the contractor still gets to keep the \$55 trade-call fee and then submits a \$0 invoice to  
20 Fidelity. Enough denials significantly lower the contractor’s average cost per invoice.  
21 Lower average invoices result in Fidelity awarding more work to such contractors. In other  
22 words, Fidelity provides the contractors with a financial incentive to find ways for Fidelity to  
23 deny claims.

24 (b) *Fidelity incentivizes the contractors to refuse to perform expensive repairs:* If  
25 a contractor has to perform an expensive repair, his or her average cost per invoice will  
26 skyrocket. To avoid this undesirable result, Fidelity’s contractors routinely claim they are  
27 unable to do the job for whatever reason. The end result is that the homeowner has to wait  
28 while Fidelity obtains a second opinion and finds someone who is willing to do the job. In



1 some cases — say a broken air conditioner in Las Vegas during July — the homeowner  
2 cannot wait very long and will often give up and pay someone out of their own pocket to  
3 perform the job at retail rates. Of course, the whole point of purchasing a Fidelity home  
4 warranty is supposedly so that the homeowner can obtain “relief from the hassle and expense  
5 of household system and appliance breakdowns.”

6 (c) *Fidelity incentivizes the contractors to perform band-aid repairs rather than*  
7 *perform necessary replacements.* While Fidelity’s standardized and uniform home protection  
8 contracts all promise that Fidelity will replace a covered system if it cannot be repaired,  
9 Fidelity never has any intention of replacing expensive covered systems. It uses its  
10 contractors to ensure that it will not have to do so. Having to *replace* a home system or  
11 appliance is the fastest way to increase a contractor’s average cost per invoice. Thus, when a  
12 system or appliance needs to be replaced, the contractor will normally try to repair it instead,  
13 even if that repair might only last a few months or just weeks. When the repair inevitably  
14 fails, the homeowner has to take another day off of work while the contractor tries to repair it  
15 again. In some cases, the homeowner even has to pay the \$55 trade-call fee again. In some  
16 cases, it might take eight or nine repairs before Fidelity agrees to replace the system or  
17 appliance. In many cases, the homeowner simply gets fed up and pays someone out of their  
18 own pocket to do the replacement.

19 **F. Fidelity Keeps No Records of How Much Its Contractors Charge Its Customers,**  
20 **and Allows the Contractors to Gouge Customers on Allegedly Non-Covered**  
21 **Claims**

22 127. Fidelity forces its contractors to accept incredibly low rates for their services.  
23 Fidelity tells the contractors they can make up the difference by essentially gouging customers for  
24 non-covered work. Take, for example, the replacement of a water heater. At the rates Fidelity pays,  
25 the contractor loses money on the job. Of course the homeowner also wants the contractor to  
26 remove and dispose of the old water heater. Removal of the unit is normally not covered under the  
27 policy. Thus, Fidelity tells the contractor he can charge the homeowner whatever he or she wants  
28 for removal/disposal fees. The homeowner usually pays what the contractor what he or she is asking

1 even if it is significantly more than what a non-home-warranty contractor would charge for doing the  
2 same thing.

3 128. Tellingly, Fidelity keeps meticulous track of how much its contractors charge it, but  
4 keeps absolutely no records of how much its contractors charge its insureds. The reason is simple:  
5 because it encourages its contractors to make their “real” money from Fidelity’s own customers, not  
6 from Fidelity, Defendant does not want any paper trail as to how badly its contractors are gouging its  
7 own customers.

8 129. This is also a blatant conflict of interest. Contractors who charge Fidelity the least get  
9 the most work from Fidelity. Thus, Fidelity provides strong financial incentives for its contractors to  
10 refuse to provide proper repairs and/or replacements of covered systems. Fidelity’s economic  
11 interests are served, but not those of the insured. Fidelity, as an insurer, owes a fiduciary or  
12 quasi-fiduciary duty to its insureds, but it acts as a faithless fiduciary.

13 130. It is even more profitable for the contractor when Fidelity refuses to cover the item.  
14 Take the water heater example again. If Fidelity denies the claim, the homeowner will usually prefer  
15 to pay the contractor its “retail rate” rather than continue to take cold showers. Of course, the  
16 homeowner could have accomplished this same result without having to pay Fidelity the policy  
17 premium in the first place.

18 **G. Fidelity Delays Things in the Hope the Problem Will Go Away**

19 131. One of Fidelity’s favorite tactics is to delay things for so long that the homeowner  
20 eventually gives up and pays out of his/her own pocket to have a reputable contractor fix the  
21 problem. Fidelity accomplishes this in a number of ways.

22 132. One way is for Fidelity to delay dispatching a contractor to the consumer’s house.  
23 Again, take the broken air conditioner in Las Vegas in July example. It may take a couple of weeks  
24 before Fidelity can find someone to do the job. The homeowner, not wanting to live in 110 degree  
25 heat for that long, will find someone in the Yellow Pages who can perform the job right away. Of  
26 course, Fidelity won’t reimburse the homeowner for the cost because a broken air conditioner, even  
27 in Las Vegas in July, is not an “emergency” situation within the meaning of the policy.  
28



1           139. During the Class Period, the following material facts, among others, were within  
2 Fidelity's knowledge:

3           (a) Fidelity discourages and penalizes its contractors from recommending  
4 replacements (rather than repairs) of items covered under the home warranty contracts. One  
5 of Fidelity's trademark phrases, which is also a term of every home warranty contract, is that  
6 "If we can't repair it, we'll replace it." Fidelity promises "*Full replacement of covered items*  
7 - if we can't fix it, we'll replace it." (emphasis added). However, Fidelity fails to disclose  
8 the material fact that it tells its contractors to repair rather than replace items even where a  
9 replacement is necessary and even under situations where repairing rather than replacing an  
10 item would pose a threat to the safety of Fidelity's customer. Fidelity regularly sends faxes  
11 to its contractors telling them to "keep your replacement percentage down" and telling them  
12 to keep their replacement percentage to an arbitrary, very low percentage. Fidelity does the  
13 same thing orally by having its heads of contractor relations call the contractors and tell them  
14 the same thing. For example, in California, Gino Rolley is Fidelity's Head of Contractor  
15 Relations for Northern California. Rolley regularly calls Fidelity's contractors and tells them  
16 to reduce the number of replacements (versus repairs) they perform and to keep their  
17 replacement percentage below an arbitrary and extremely low threshold. The arbitrary and  
18 low replacement percentage has nothing whatsoever to do with how often items covered by  
19 Fidelity's home warranty contracts actually need replacement, but instead is arbitrarily  
20 chosen by Fidelity and with the sole purpose of keeping costs to Fidelity to an absolute  
21 minimum, without any regard whatsoever to the best interests of Fidelity's customers. Thus,  
22 Fidelity tells its contractors to refuse to perform replacements even when something cannot  
23 really be repaired. This directly contradicts Fidelity's promise to its customers that "If we  
24 can't repair it, we'll replace it." Contractors whose replacement percentage is higher than  
25 what Fidelity wants are penalized immediately by receiving either no work from Fidelity or  
26 no significant volume of work from Fidelity.

27           (b) In addition to discouraging and penalizing its contractors for recommending  
28 replacements rather than repairs, for the rare expensive replacements that Fidelity does

1 authorize (*i.e.*, the replacement of a heater or air conditioner), the consumer will end up  
2 paying out of their pocket, above and beyond what they have already paid for the premium  
3 and service call fees, significant additional sums of money, and frequently at least as much as  
4 what Fidelity pays its contractor, even though Fidelity authorized the replacement and  
5 asserted that the claim was “covered” under the home warranty contract.

6 (c) Fidelity pays its contractors significantly below retail rates, and significantly  
7 below the rates at which competent contractors would agree to work if the amount received  
8 from Fidelity constituted the only amount the contractor would receive for his or her work.

9 (d) While it does not pay its contractors retail rates, Fidelity allows (and indeed  
10 encourages) its contractors to charge full retail rates to Fidelity’s customers. Instead of  
11 looking out for the best interests of its customers and requiring its contractors to charge  
12 Fidelity’s customers fair rates for labor and materials, Fidelity leaves its contractors free to  
13 charge whatever they want to the holders of Fidelity’s home warranty plans. Not only does  
14 Fidelity adopt an outrageous and duplicitous “Hear No Evil, See No Evil, Speak No Evil”  
15 mantra with respect to the retail rates its contractors can charge Fidelity’s customers, but  
16 Fidelity leaves its contractors completely free to gouge its customers for bogus “non-covered”  
17 items and bogus “upgrades.” Fidelity knows that the “extra” items its contractors routinely  
18 charge its customers are not legitimate and, even if warranted, are many multiples of the  
19 price that any reputable contractor out of the yellow pages would normally charge for any  
20 extras.

21 (e) Fidelity not only does not police its own contractors with respect to charges its  
22 contractors impose on Fidelity’s customers above and beyond the coverage Fidelity agrees to  
23 provide (if any) under the home warranty plans, but Fidelity makes sure there will be no  
24 paper trail of its disloyal conduct by emphatically insisting that its contractors do not provide  
25 any information whatsoever in the invoices submitted to Fidelity about how much the  
26 contractors charge Fidelity’s customers for allegedly “non-covered” work and “extras.”

27 (f) Fidelity encourages its contractors to earn their money mostly from Fidelity’s  
28 customers, not from Fidelity. For example, during the Class Period, Fidelity paid its

1 contractors an average net fee per claim as low as \$130. Fidelity never disclosed this  
2 startling low figure to its customers, and instead allowed its customers to believe that it  
3 would fully cover any necessary repair or replacement of covered systems.

4 (g) Fidelity meticulously and methodically tracks how much it is charged by its  
5 contractors, but intentionally does not keep track of how much Fidelity's contractors charge  
6 Fidelity's customers for items allegedly not covered by the home warranty plan. Fidelity's  
7 intentional, conscious effort to avoid any paper trail of how much its contractors gouge its  
8 customers is reflected in the training materials it sends its contractors when they enroll with  
9 Fidelity.

10 (h) Fidelity encourages a "race to the bottom" with respect to its contractors.  
11 Contractors are ranked almost exclusively based on lowest cost charged to Fidelity.  
12 Contractors are free, however, to charge the homeowner whatever they want. Each month,  
13 Fidelity compiles a list of the "average cost" per call for each of its contractors. Fidelity's  
14 head of contractor relations in each geographic area (for example, Gino Rolley in Northern  
15 California) disseminate the total average cost per call for each trade to Fidelity's contractors  
16 in such trade. Fidelity's head of contractor relations tells the contractors that if they want to  
17 continue to receive work from Fidelity, they need to keep their average cost per call at or  
18 below this figure, and that contractors will not receive any work or any significant volume of  
19 work from Fidelity if they charge Fidelity more than this figure. Thus, even if a contractor  
20 had negotiated a flat rate with Fidelity, if the monthly "average cost" per call figure  
21 disseminated to the contractor by the head of contractor relations at Fidelity was lower than  
22 the contractor's flat rate, the contractor would have to charge Fidelity less than his or her  
23 negotiated flat rate in order to continue to receive any significant volume of calls from  
24 Fidelity. This nefarious, carefully orchestrated policing system is in place before a consumer  
25 ever obtains a home warranty plan from Fidelity, and before a contractor signs up to work for  
26 Fidelity.

27 140. During the Class Period, Fidelity concealed such material facts from Plaintiffs and the  
28 Class.

1 141. Plaintiffs and the Class were unaware of these concealed facts, and had no means of  
2 ascertaining such concealed facts.

3 142. As a result of Defendant's concealment of these material facts, Plaintiffs and the  
4 Class have been injured.

5 **FIFTH CLAIM FOR RELIEF**

6 **(Promissory Fraud - Violation of Civil Code section 1710(4))**

7 **(On Behalf of Plaintiffs and the Class)**

8 143. Plaintiffs repeat and reallege the allegations contained above, except those in the  
9 Claims for Relief, as if fully stated herein.

10 144. The home warranty plans sold by Defendant during the Class Period contained a  
11 contractual obligation on the part of Fidelity to repair or replace covered systems that failed due to  
12 normal wear and tear. The contractual term stated:

13 "FNHW [Fidelity] will repair or replace covered systems and appliances  
14 which mechanically malfunction due to insufficient maintenance, rust,  
corrosion or sediment, unless otherwise noted in the contract."

15 145. Moreover, one of Fidelity's trademark phrases is that "If we can't repair it, we'll  
16 replace it." Fidelity promises "*Full replacement of covered items* - if we can't fix it, we'll replace it"  
17 (emphasis added). Fidelity promises to repair or replace covered systems in exchange for the  
18 customer paying "one low service call fee." Currently, the Service Call Fee is \$55 and during the  
19 Class Period it has ranged from \$40 to \$55.

20 146. Fidelity never had any intention of complying with its promise under the home  
21 warranty plans to replace items covered under the home warranty plan if they could not be repaired,  
22 nor to do so under circumstances where the customer would only have to pay the Service Call Fee.  
23 As Fidelity candidly admitted:

24 "*Given the average price for a policy, how reasonable would it be to*  
25 *believe the company would replace anything in the house that might*  
26 *break?"*

1           147. Thus, during the Class Period, Fidelity engaged in, and continues to engage in,  
2 promissory fraud. It promises that it will replace covered systems if they cannot be repaired, but has  
3 no intention of doing so at the time it enters into the home warranty contracts with Class Members.

4           148. The promises were made by Defendant with the intent to induce Plaintiffs and  
5 members of the Class to purchase and/or receive Defendant's home warranty contracts.

6           149. The aforementioned promises and misrepresentations were contained in every home  
7 warranty plan issued by Fidelity during the Class Period.

8           150. At the time this promises were made, Plaintiffs and the members of the Class were  
9 ignorant of Defendant's true intention not to perform and could not, in the exercise of reasonable  
10 diligence, have discovered Defendant's secret intention. In reliance on Defendant's promise,  
11 Plaintiffs and each member of the Class purchased and/or agreed to receive home warranty contracts  
12 issued by Defendant. Had Plaintiffs or the members of the Class known Defendant's actual  
13 intention, they would not have taken such actions.

14           151. At the time Defendant made the promises, it had no intention of performing the  
15 promises, as evidenced by the following conduct:

16           (a) Fidelity pays its contractors so far below market rate that they cannot perform  
17 adequate or necessary replacements on expensive items and still make a profit;

18           (b) Fidelity instructs its contractors to repair rather than replace items even when  
19 a replacement is necessary;

20           (c) Fidelity establishes arbitrary and extremely low "replacement percentage  
21 ratios" and then tells contractors to stay below this figure if they want to keep getting work  
22 from Fidelity; such ratios have nothing to do with how often an appliance or covered system  
23 can be expected to fail and instead are chosen by Fidelity with only one aim – maximizing  
24 Fidelity's profit.

25           (d) Fidelity encourages a "race to the bottom" with respect to its contractors.  
26 Contractors are ranked almost exclusively based on the lowest average cost charged to  
27 Fidelity. Contractors are free, however, to charge the homeowner whatever they want. Each  
28 month, Fidelity compiles a list of the "average cost" per call for each of its contractors.



1 Fidelity's head of contractor relations in each geographic area (for example, Gino Rolley in  
2 Northern California) disseminate the total average cost per call for each trade to Fidelity's  
3 contractors in such trade. Fidelity's head of contractor relations tells the contractors that if  
4 they want to continue to receive work from Fidelity, they need to keep their average cost per  
5 call at or below this figure, and that contractors will not receive any work or any significant  
6 volume of work from Fidelity if they charge Fidelity more than this figure. Thus, even if a  
7 contractor had negotiated a flat rate with Fidelity, if the monthly "average cost" per call  
8 figure disseminated to the contractor by the head of contractor relations at Fidelity was lower  
9 than the contractor's flat rate, the contractor would have to charge Fidelity less than his or  
10 her negotiated flat rate in order to continue to receive any significant volume of calls from  
11 Fidelity. This nefarious, carefully orchestrated policing system is in place before a consumer  
12 ever obtains a home warranty plan from Fidelity, and before a contractor signs up to work for  
13 Fidelity;

14 (e) Fidelity financially incentivizes contractors to recommend denial of legitimate  
15 claims, refuse to work on expensive claims, and or/perform substandard repairs;

16 (f) Fidelity creates economic incentives for contractors to shift the majority of  
17 costs onto the consumer;

18 (g) Fidelity hires unqualified contractors. The application to become a Fidelity  
19 contractor (or "preferred service vendor" as they are sometimes called) does not contain any  
20 requirement whatsoever that the contractor demonstrate competency or satisfactory customer  
21 service or a good rating with the Better Business Bureau. Instead, the sole requirements are  
22 that the contractor must have a license, carry \$1 million in general liability insurance, and  
23 have worker's compensation insurance or a waiver thereof; and

24 (h) Fidelity routinely stalls or delays authorizing replacements or purchasing the  
25 necessary appliance or parts for the replacement.

26 152. As a proximate result of Defendant's fraudulent conduct, the named Plaintiffs have  
27 been damaged.

1 153. Defendant's conduct was done with the intention of depriving Plaintiffs and members  
2 of the Class of property or legal rights or otherwise causing injury. Defendant's conduct was  
3 malicious so as to justify an award of exemplary and punitive damages.

4 **SIXTH CLAIM FOR RELIEF**

5 **(Violation of Cal. Bus. & Prof. Code section 17200)**

6 **(On Behalf of Plaintiffs and the Class)**

7 154. Plaintiffs repeat and reallege the allegations contained above, except those in the  
8 Claims for Relief, as if fully stated herein.

9 155. The Unfair Trade Practices Act defines unfair competition to include any "unfair,"  
10 "unlawful," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200. Unfair  
11 competition also includes "unfair, deceptive, untrue or misleading advertising." *Id.* The Act also  
12 provides for injunctive relief and restitution for violations. *Id.* § 17203.

13 156. This cause of action is brought on behalf of Plaintiffs, members of the Class, and  
14 members of the general public pursuant to California Business & Professions Code sections 17200  
15 *et seq.* Under Business & Professions Code § 17200 *et seq.*, Plaintiffs are entitled to enjoin  
16 Defendants' wrongful practices and to obtain restitution for the monies paid to Defendants by reason  
17 of Defendants' unlawful, unfair, and/or deceptive acts and practices.

18 157. As a direct and proximate result of the acts and practices alleged above, members of  
19 the Class and the general public who purchased home warranty plans from Defendants have been  
20 injured. This Court is empowered to, and should, order restitution to all persons from whom  
21 Defendants unfairly and/or unlawfully took money.

22 158. Defendants' unlawful, unfair, and fraudulent business acts and practices, as described  
23 above, present a continuing threat to members of the Class and of the general public, in that  
24 Defendants are continuing, and will continue, unless enjoined, to commit violations of Business &  
25 Professions Code § 17200. This Court is empowered to, and should, grant preliminary and  
26 permanent injunctive relief against such acts and practices.

27 159. As alleged herein, Defendants' conduct constitutes a breach of contract. Defendants  
28 breached the contracts by not complying with the written terms of the contract.

1           160. As alleged herein, Defendants' conduct also constitutes a violation of the implied  
2 covenant of good faith and fair dealing, which is an essential element of the contracts entered into  
3 between Plaintiffs and Defendants. The implied covenant of good faith and fair dealing obligated  
4 Defendants to refrain from doing anything to injure the right of Plaintiffs and the Class to receive the  
5 benefits under the contracts. Defendants violated this implied covenant through their conduct, as  
6 alleged *supra*.

7           161. As alleged herein, Defendants' conduct also violated Cal. Bus. & Prof. Code § 17500.

8           162. As alleged herein, Defendants' conduct also violated Cal. Civil Code § 1710(4).

9           163. As alleged herein, Defendants' conduct also violated Cal. Ins. Code § 332.

10           164. As alleged herein, Defendants' conduct also constituted fraud by concealment (Cal.  
11 Civil Code § 1710(3)).

12           165. As alleged herein, Defendants' conduct also violated California's Unfair Insurance  
13 Practices Act ("UIPA"), including Cal. Ins. Code §§ 790.03 and 790.034. Specifically:

14           (a) As alleged above, Defendants failed to adopt and implement reasonable  
15 standards for the prompt investigation and processing of claims arising under the home  
16 warranty plans sold by Defendants to Plaintiffs and the Class, thus violating Cal. Ins. Code  
17 § 790.03(h)(3). Defendants' failure to adopt and implement reasonable standards for the  
18 prompt investigation and processing of claims under the home warranty plans they sold was  
19 knowingly committed and performed with such frequency as to constitute a general business  
20 practice.

21           (b) Defendants' conduct as alleged in this complaint further violates Cal. Ins.  
22 Code § 790.03 because Defendants failed to "conduct and diligently pursue a thorough, fair  
23 and objective investigation," as required by 10 C.C.R. § 2695.7(d). Among other things, as  
24 alleged above, Defendants trained and incentivized third-party contractors to deny legitimate  
25 claims. In addition, because Defendants did not pursue any investigation on their own, but  
26 instead improperly delegated investigation of all claims submitted by Plaintiffs and the Class  
27 to third-party contractors, Defendants failed to conduct and diligently pursue a thorough, fair,  
28 and objective investigation with regard to every submitted claim.

1 (c) Defendants' conduct as alleged herein also violated Cal. Ins. Code § 790.03(b)  
2 because Defendants made statements containing "assertion[s], representation[s], or  
3 statement[s] with respect to the business of insurance or with respect to any person in the  
4 conduct of his or her insurance business, which [were] untrue, deceptive, or misleading," and  
5 which Defendants knew, or by the exercise of reasonable care should have known, to be  
6 untrue, deceptive, or misleading.

7 (d) Defendants' conduct as alleged herein also violated Cal. Ins. Code §  
8 790.03(h)(1) because Defendant misrepresented to Plaintiffs and the Class pertinent facts or  
9 insurance policy provisions relating to the coverages at issue. Defendants' misrepresentation  
10 of the coverages provisions was knowingly committed and performed with such frequency as  
11 to constitute a general business practice.

12 (e) Defendants' conduct as alleged herein also violated Cal. Ins. Code §  
13 790.03(h)(2) because Defendants failed to acknowledge and act reasonably promptly upon  
14 communications with respect to claims arising under the home warranty policies.  
15 Defendants' failure to acknowledge and act promptly was knowingly committed and  
16 performed with such frequency as to constitute a general business practice.

17 (f) Defendants' conduct as alleged herein also violated Cal. Ins. Code §  
18 790.03(h)(4) because Defendants failed to affirm or deny coverage of claims within a  
19 reasonable time after proof of loss requirements have been completed and submitted by the  
20 insured. Defendants' failure to affirm or deny coverage of claims was knowingly committed  
21 and performed with such frequency as to constitute a general business practice.

22 (g) Defendants' conduct as alleged herein also violated Cal. Ins. Code §  
23 790.03(h)(5) because Defendants have not attempted in good faith to effectuate prompt, fair,  
24 and equitable settlements of claims in which liability has become reasonably clear. The  
25 failure to attempt in good faith to effectuate settlements of claims was knowingly committed  
26 and performed with such frequency as to constitute a general business practice.

27 (h) Defendants' conduct as alleged herein also violated Cal. Ins. Code §  
28 790.03(h)(6) by compelling insureds to institute litigation to recover amounts due under their

1 home warranty policies by offering substantially less than the amounts ultimately recovered  
2 in actions brought by the insureds, when the insureds have made claims for amounts  
3 reasonably similar to the amounts ultimately recovered. This conduct was knowingly  
4 committed and performed with such frequency as to constitute a general business practice.

5 (i) Defendants' conduct as alleged herein also violated Cal. Ins. Code §  
6 790.03(h)(13) by failing to provide promptly a reasonable explanation of the basis relied on  
7 in the home warranty policy, in relation to the facts or applicable law, for the denial of a  
8 claim or for the offer of a compromise settlement. Defendants' failure to provide promptly a  
9 reasonable explanation was knowingly committed and performed with such frequency as to  
10 constitute a general business practice.

11 166. As alleged herein, Defendants' conduct also constituted an "unfair" business practice  
12 under Bus. & Prof. Code Section 17200.

13 167. As alleged herein, Defendants' conduct also constituted a "fraudulent" business  
14 practice under Bus. & Prof. Code Section 17200 since Defendant's conduct was "likely to deceive"  
15 Plaintiffs and the Class.

16 168. As alleged herein, Defendants' conduct also constituted an "unlawful" business  
17 practice under Bus. & Prof. Code Section 17200.

18 169. As a result of Defendant's violations of these laws, the named Plaintiffs were injured  
19 and lost money or property as a result of Defendant's violations of Bus. & Prof. Code Section 17200.

20 **SEVENTH CLAIM FOR RELIEF**

21 **(False Advertising – Bus. & Prof. Code section 17500)**

22 **(On Behalf of Plaintiffs and the Class)**

23 170. Plaintiffs repeat and reallege the allegations contained above, except those contained  
24 in the Claims for Relief, as if fully stated herein.

25 171. During the Class Period, Defendant, acting directly or indirectly with intent to induce  
26 Plaintiffs, the Class, and the members of the public to purchase and/or renew its home protection  
27 contracts, in violation of Cal. Bus. & Prof. Code Section 17500, made or disseminated or caused to  
28 be made or disseminated the untrue or misleading statements alleged in the Complaint.



- 1           5.     An award for Plaintiffs and the Class for the costs of this suit (including expert fees),  
2                     and reasonable attorneys' fees, as provided by law;  
3           6.     Restitution to Class Members; and  
4           7.     An award for such other and further relief as the nature of this case may require or as  
5                     this Court deems just, equitable, and proper.

6     DATED: November 13, 2015

7                     **COTCHETT, PITRE & MCCARTHY, LLP**

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*Attorneys for Plaintiffs*  
                  *Dan Kaplan and James Baker*

1 **JURY DEMAND**

2 Plaintiffs demand a jury trial of all triable issues.

3 DATED: November 13, 2015

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22 *Attorneys for Plaintiffs*  
23 *Dan Kaplan and James Baker*  
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**PROOF OF SERVICE**

I am employed in the County of San Mateo. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, San Francisco Airport Office Center, 840 Malcolm Road, Burlingame, California, 94010. On this day, I served the following document(s) in the manner described below:

**1. SIXTH AMENDED CLASS ACTION COMPLAINT**

**VIA MAIL:** I am readily familiar with this firm's practice for causing documents to be served by first class mail. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via first class mail to the addressee(s) specified below.

**[SEE ATTACHED SERVICE LIST]**

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on November 13, 2015.



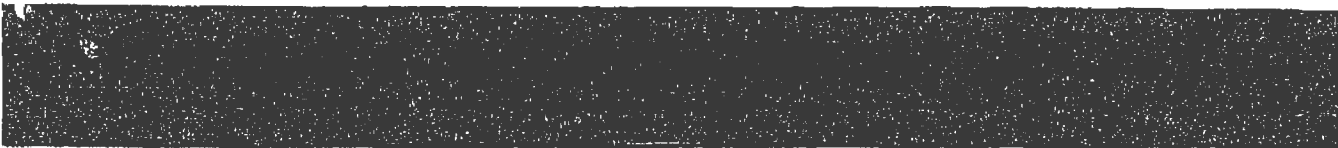
ADRIANA HERNANDEZ

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**SERVICE LIST**

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# EXHIBIT A



PROPERTY ADDRESS:  
11338 W San Raphael Driveway, San Diego, CA 92130

CONTRACT NUMBER:  
D55103

TERM:  
03/23/2007 To 03/22/2008

Daniel & Lyn Kaplan  
11338 W San Raphael Driveway  
San Diego CA 92130-8614

CONTRACT PLAN:  
Single-Family Standard Plan with Comp Option

OPTIONAL COVERAGES:  
CompOpt

**TERMS OF COVERAGE**

1. If a covered system and/or appliance fails during the contract term, the contract holder must contact our toll-free Customer Service Department at 1-800-308-1420. Calls are received 24 hours a day - 7 days a week. Should the contract holder contract directly with others, or do the work themselves, FNHW will not be responsible for reimbursement of that cost. Upon receiving a request for service, FNHW will contact a qualified contractor within 3 hours during normal business hours, and 48 hours on weekends and holidays. The contractor will then call the contract holder directly to schedule a mutually convenient appointment during normal business hours. FNHW will determine what repairs constitute an emergency and will make reasonable efforts to expedite emergency service. If contract holder should request FNHW to perform non-emergency service outside normal business hours, the contract holder will be responsible for payment of additional fees, including overtime.
2. Should FNHW grant the contract holder authorization to contact an independent contractor directly to perform a covered service, FNHW will provide reimbursement based on the following conditions:
  - a. Contract holder selects a contractor that is qualified and insured.
  - b. Contractor provides fair and reasonable rates on parts and labor.
  - c. Contract holder must contact FNHW to confirm that service work is covered under the warranty contract by calling FNHW at 1-800-208-3151 once contractor arrives at the property, and prior to contractor performing any repairs for which contract holder may seek reimbursement.
3. **SERVICE CALL FEE:** There is a \$50.00 service fee for each trade call, paid to the contractor at the time of service (i.e., if you need a plumber and an appliance technician, each will require a separate service fee). Failure to pay the service fee will result in suspension of coverage until such time as the proper fee is paid. Upon receipt of that payment, coverage will be reinstated for the remainder of the contract term. Service requests must be received prior to the expiration of the contract term.
4. **Service work** is guaranteed (without an additional service fee) for 30 days on labor and 90 days on parts. The 30/90 day guarantee only applies to malfunctions that are reported to FNHW during the term of this contract. Pest control service work is guaranteed for 30 days from the original date of service.
5. **Buyer's Coverage** starts at the close of escrow and continues for one year provided the contract premium is paid at the close of escrow. When contract premium has not been received by FNHW, service will be dispatched once premium payment can be verified by the closing agency and/or another source of premium payment is made (i.e., credit card).
6. **Coverage for new construction home buyers:** Plan coverage and any optional coverage begins on the first anniversary of the close of escrow and continues for 4 years from that date, provided the plan fee is received by FNHW within 10 working days from the close of escrow. All systems and appliances to be covered must be in good working condition at the time coverage begins on the first anniversary after the close of escrow. Anytime during the first year of coverage, the contract holder may call FNHW for assistance in the event of a problem with the systems or appliances generally described in this plan. FNHW will assist the contract holder in contacting the manufacturer or contact the manufacturer on the contract holder's behalf to determine the remedies available to the contract holder under the manufacturer's warranty for the system or appliance associated with the contract holder's claim.
7. This contract covers single-family dwellings under 5,000 square feet, unless amended by FNHW prior to the close of escrow (i.e., homes in excess of 5,000 square feet, guest houses or the like, and other detached structures). Coverage begins when appropriate fees are paid. Covered dwellings cannot be used for commercial purposes (i.e., day care centers, nursing care homes, fraternity/sorority houses, etc.).
8. **This contract covers only those parts, systems and/or appliances specifically mentioned as covered and excludes all others.** Covered systems and/or appliances must be located within the main foundation of the home or garage except for exterior well pump, air conditioner, pressure regulator, waste/stop valves, and swimming pool/spa equipment. All coverage is subject to limitations and conditions mentioned in this contract.
9. **Optional Seller's Coverage** begins upon issuance of a confirmation number by FNHW and continues for 180 days, close of escrow, or termination of listing (whichever comes first). Seller's Coverage only covers the Standard Plan Items. Optional and Comprehensive Items are not available for the seller.
10. Covered systems and/or appliances must be in good working order at the start of coverage. Unknown pre-existing conditions will be covered if, at the time coverage began, the defect or malfunction would not have been known to the buyer, seller, agent, or home inspector by a visual inspection and/or by operating the system or appliance. Known defects found at the time of a home inspection report are excluded from coverage until proof of repair is received by FNHW.

\* Seasonal Energy Efficiency Ratio

EXHIBIT 78
WIT: Kaplan
DATE: 1/21/10
Deborah M. DeSilva, CSR 7307



# Fidelity National Home Warranty (Fidelity) Contract Coverage

Fidelity  
NATIONAL

## Standard Buyer's Coverage

### PLUMBING SYSTEM & STOPPAGES

**Covered Items:** Repair of leaks and breaks in water, waste, vent, or gas lines within the perimeter of the main foundation of the home or garage - shower/tub valves (replaced with chrome builder's standard) - angle stops - gate valves - waste and stop valves - toilet tanks, bowls, and working mechanisms (replacement toilets will be white builder's standard) - wax ring seals - permanently installed sump pumps - built-in whirlpool bathtub motor pump assemblies - mainline stoppages which can be cleared with standard sewer cable (1/2") through an existing, accessible, ground level mainline cleanout without excavation - pressure regulators - pop-up assemblies.

**Not Covered:** Stoppages and/or collapse of water, drain, or gas lines caused by roots - showerheads - shower arms - fixtures - faucets - bathtubs - sinks - shower enclosures and base pans - caulking and grouting - hose bibs - sewage ejector pumps - toilet seats and lids - septic tanks - water softeners - supply restrictions due to rust or chemical deposits - saunas - steam rooms - bidets - whirlpool bathtub jet plumbing - indoor/outdoor sprinkler systems - booster pumps - conditions of electrolysis.

**Limits:** With respect to concrete-encased or inaccessible plumbing lines, access, diagnosis, and repair is limited to \$1,000.00 aggregate per contract. FNHW will provide access through unobstructed walls, ceilings, floors, concrete slabs and the like, and will return all openings made for access to a rough finish only, subject to the \$1,000.00 limit indicated. FNHW is not responsible for trim, texture, paint, wallpaper, tile, carpet, or the like.

### WATER HEATER (Gas or electric)

**Covered Items:** All parts and components that affect operation (including recirculating pumps).

**Not Covered:** Solar units and/or components - holding tanks - sounds caused by sediment - flues and vents.

### HEATING SYSTEM (Main source of heat to home)

**Covered Items:** All parts and components that affect the operation of the heating unit including the heat pump. If FNHW determines that the replacement of a heat pump-split system type of heating unit is required, FNHW will replace with a unit that meets 13 SEER requirements, including replacing any covered components that are necessary to maintain compatibility with the replacement unit, including the air handler, evaporative coil, transition, plenum, indoor electrical, duct connection, accessible refrigerant and condensate drain lines, and thermostatic expansion valve.

**Not Covered:** Solar heating systems - geothermal systems - glycol systems - portable and free-standing units - humidifiers and electronic air cleaners - fuel and water storage tanks - registers and grills - filters - heat lamps - fireplaces - wood or pellet stoves (even if only source of heating) - chimneys - flues - vents - fireplace inserts and key valves - cable heat (in ceiling) - clocks - timers - outside or underground piping and components for geothermal and/or water source heat pumps - well pump and well pump components for geothermal and/or water source heat pumps - inaccessible refrigerant and condensate drain lines.

**Limits:** FNHW will pay no more than \$1,500.00 aggregate per contract term for access, diagnosis, and repair or replacement of hot water or steam circulating heating system(s).

**Seller's Coverage:** During the Seller's Coverage period, FNHW will pay no more than \$500.00 for diagnosis and repair or replacement of the furnace due to the failure of the heat exchanger or combustion chamber.

### DUCTWORK

**Covered Items:** Ducts from heating and/or cooling unit to connection at register or grill.

**Not Covered:** Registers - grills - dampers - insulation - improperly sized ductwork - collapsed or crushed ductwork - ductwork where asbestos is present - ductwork damaged by moisture - costs for inspections, diagnostic testing, ventilation and permits as required by any federal, state, or local law, regulation or ordinance, including CA Title 24 requirements.

**Limits:** FNHW will pay no more than \$1,000.00 aggregate per contract term for repair or replacement of ductwork.

### ELECTRICAL SYSTEM

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Fixtures - alarms - intercoms - inadequate wiring capacity - power failure or surge - low voltage wiring - direct current (D.C.) wiring or components.

### TELEPHONE WIRING

**Covered Items:** Telephone wiring used primarily for residential telephone service located within the walls of the main dwelling.

**Not Covered:** Telephone jacks - plugs - lights - transformers and other power units - cover plates - telephone units - answering devices - burglar alarm and circuits - telephone fuses - wiring which is the property of a telephone company.

### CENTRAL VACUUM SYSTEM

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Removable hoses - accessories - clogged pipes.

**Limits:** FNHW is not responsible for the cost of gaining access to, or closing access from the floor or walls either to locate the cause of malfunction or to affect repair or replacement.

### GARAGE DOOR OPENER

**Covered Items:** Wiring - motor - switches - receiver unit - track drive assembly.

**Not Covered:** Garage doors - hinges - springs - rollers - guides - remote transmitters.

### CEILING, WHOLE HOUSE, EXHAUST & ATTIC FANS (Built-in)

**Covered Items:** All parts and components that affect operation (replaced with builder's standard).

### DOORBELL & SMOKE DETECTORS

**Covered Items:** All parts and components that affect operation.

### PEST CONTROL

**Covered Items:** Roaches - ants (except fire, Pharaoh, and Carpenter varieties) - Silverfish - Black Widow spiders - earwigs - Brown Recluse spiders - millipedes - mice - crickets - ground beetles - centipedes - pillbugs - sowbugs - Clover Mites.

**Not Covered:** Termites - fungus - wood-boring beetles - rats - any pests not specifically listed above as covered.

### DISHWASHER (Built-in or freestanding)

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Racks - rollers - baskets.

### RANGE, OVEN, COOKTOP (Gas or electric, built-in or freestanding)

**Covered Items:** All parts and components that affect operation. (Sensi-heat burners replaced with standard burners.)

**Not Covered:** Meat probe assemblies - light sockets - indoor barbecue - clocks (unless it affects the operation of the unit) - rotisseries - racks - handles - knobs - dials - interior lining.

### MICROWAVE OVEN (Built-in)

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Portable or countertop units - meat probe assemblies - rotisseries - interior lining - door glass - clocks - shelves.

### GARBAGE DISPOSAL & INSTANT HOT WATER DISPENSER

**Covered Items:** All parts and components that affect operation.

### TRASH COMPACTOR (Built-in or portable)

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Removable buckets - lock and key assemblies.

### FOOD CENTER (Built-in)

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Removable accessories.

Optional-Buyer's Coverage

The contract holder may purchase any of the optional covered items up to 30 days after the close of escrow, providing systems and/or appliances are in good working order. Coverage shall commence upon receipt of premium and will expire one year after the close of escrow. Optional Buyer's Coverage is subject to the same Terms of Coverage and Limits of Liability of this contract.

**AIR CONDITIONING/EVAPORATIVE COOLER OPTION** (Electric; includes built-in wall units)

**Covered Items:** All parts and components that affect the operation of the system - refrigerant recovery. If FNHW determines that replacing an air conditioning system is required, FNHW will replace with a unit that meets 13 SEER requirements, including replacing any covered components that are necessary to maintain compatibility with the replacement unit, including the indoor furnace or air handler, evaporative coil, transition, plenum, indoor electrical, duct connection, accessible refrigerant and condensate drain lines and thermostatic expansion valve.

**Not Covered:** Humidifiers and electronic air cleaners - inaccessible refrigerant and condensate drain lines - filters - registers and grills - window units - condenser housing - gas or propane air conditioners - general maintenance and cleaning.

**Limits:** The air conditioning unit/evaporative cooler cannot exceed a 5-ton capacity.

**SWIMMING POOL AND/OR SPA EQUIPMENT OPTION**

**Covered Items:** All above ground and accessible parts and components of the filtration, pumping and heating system (including the pool sweep pump, pump motor, blower motor and timer)

**Not Covered:** Lights - solar related equipment - underground water, gas, and electrical lines - skimmers - chlorinator or ozinator - fountains - structural and/or cosmetic defects - damage due to lack of general maintenance or improper chemical balance - cost of access to make repairs or replacements - inaccessible portion of the spa jets - pop-up heads - turbo or motorized valves - electronic/computerized controls and/or control panels - pool sweeps and related cleaning equipment.

**Limits:** Both pool and spa are covered when utilizing common equipment. If they do not utilize common equipment, then an additional premium is required for the second set of equipment (i.e., pool and portable hot tub or spa)

**WASHER & DRYER PACKAGE OPTION**

**Covered Items:** All parts and components that affect the operation of washer and/or dryer.

**Not Covered:** Knobs - dials - touch pads - plastic mini-tubs - lint screens - venting - dispensers - damage to clothing

**KITCHEN OR WET BAR REFRIGERATOR OPTION**

**Covered Items:** All parts and components that affect the operation of the unit.

**Not Covered:** Ice makers - ice crushers - beverage dispensers and related equipment - internal thermal shells - racks - shelves - food spoilage - freezers that are not an integral part of the refrigerator.

**Limits:** Kitchen refrigerator must be located within kitchen area. An additional premium is required for built-in refrigerator (Sub-Zero type).

**BUILT-IN REFRIGERATOR OPTION**

**Note:** Built-in Refrigerator option extends coverage to both compressors on a built-in (Sub-Zero type) refrigerator.

**Covered Items:** All parts and components that affect the operation of the unit

**Not Covered:** Ice makers - ice crushers - beverage dispensers and related equipment - internal thermal shells - racks - shelves - food spoilage

**Limits:** Built-in refrigerator must be located within kitchen area.

**WELL PUMP OPTION** (Must be only source of domestic water)

**Covered Items:** All parts and components that affect the operation of the unit

**Not Covered:** Holding or storage tanks - pressure tanks - booster pumps - access to remove and/or repair well pump system - all piping and electrical lines - well casing - re-drilling wells - damage due to low water table.

**SEPTIC TANK PUMPING OPTION**

**Covered Items:** The clearing of mainline stoppages that can be cleared through an existing cleanout access without excavation.

**Not Covered:** Collapsed or broken waste lines outside the foundation - stoppages or roots that prevent the effective use of an externally applied sewer cable - the cost of finding or gaining access to the septic tank - the cost of sewer hook-ups - disposal of waste - chemical treatment of the septic tank and/or waste lines - tanks - leach lines - cesspools - mechanical pumps or ejectors.

**Limits:** If the stoppage is due to a full septic tank, FNHW will pump the septic tank once during the contract coverage period. Coverage is only in effect with the provision that a septic certification was completed within 90 days prior to the close of escrow. A copy of the certification will need to be supplied to FNHW prior to service dispatch. (Non-renewable coverage; not available on Direct to Consumer contracts.)

**SEWAGE EJECTOR PUMP OPTION**

**Covered Items:** All parts and components that affect operation.

**Not Covered:** Basins and any costs associated with locating or gaining access to, or closing access from the sewage ejector pump.

**Limits:** FNHW will pay no more than \$500.00 maximum for repair and/or replacement of the sewage ejector pump. Coverage is limited to one sewage ejector pump per contract

**LIMITED ROOF LEAK REPAIR OPTION**

**Covered Items:** Repair of leaks caused by resin to shake, shingle, composition, tile, tar and gravel, or metal roofs located over the occupied living area.

**Not Covered:** Cracked or missing tiles, shakes or shingles, foam roof, or any other material not specifically mentioned as covered. Structural leaks or leaks at, adjacent to, or caused by, appendages of any kind including gutters, downspouts, flashing, patio covers, skylights, decks, solar equipment, vents, heating or cooling equipment, antennas, balconies or chimneys, built-up roofs. Failure to perform normal or preventative maintenance will not be covered.

**Limits:** FNHW will pay no more than \$1,000.00 per contract for the repair of specific leaks that are a result of rain and/or normal wear and tear provided the roof was in good, watertight condition at start of contract. If replacement of the existing roof is necessary, in whole or in part, FNHW's liability is limited to cash in lieu of the estimated cost of repair of the leaking area only, as if the repair of that area were possible. Leaks existing prior to the close of escrow will not be covered. (Non-renewable coverage; not available on Direct to Consumer contracts)

Comprehensive Option

**Covered Items:** Plumbing faucets (replaced with chrome builder's standard), showerheads, shower arms, hose bibs. Replacement toilets will be of like quality. Garage door opener, hinges, springs, remote transmitters. Water heater sounds caused by sediment. Heating system registers and grills, filters, heat lamps. Replacement of ceiling fans will be of like quality. Dishwasher racks, rollers, baskets. Range and/or oven and/or cooktop clocks, rattisseries, racks, handles, knobs, dials, interior lining. Microwave oven interior lining, door glass, clocks, shelves - trash compactor removable buckets, lock and key assemblies. FNHW will pay up to \$250.00 aggregate (combined limit for the term of the contract) to correct code violations and/or code upgrades in relation to a covered heating, electrical, plumbing, or water heater trade service call if necessary to affect repair or replacement.

With purchase of the Air Conditioner/Evaporative Cooler option and/or Built-in, Kitchen and/or Wet Bar Refrigerator option, coverage is extended to include the following items:

AIR CONDITIONING/EVAPORATIVE COOLER OPTION: Filters - registers and grills - window units - condenser housing.

BUILT-IN, KITCHEN AND/OR WET BAR REFRIGERATOR OPTION: Ice maker, provided parts are available. In cases where parts are not available, FNHW's obligation is limited to cash in lieu of repair based on the cost of replacement parts.

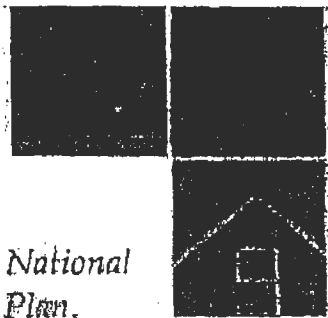
Comprehensive Plus Plan

When purchased, the Comprehensive Plus Plan includes the following coverages:

- Standard Plan
- Comprehensive Option
- Air Conditioning/Evaporative Cooler Option

**LIMITS OF LIABILITY**

1. FNHW's liability is limited to failures due to normal wear and tear during the term of the contract.
2. FNHW has the right to a second opinion. The contract holder may order their own second opinion, but shall be responsible for that cost.
3. FNHW will determine whether a covered item will be repaired or replaced. Except as otherwise noted in this contract, replacements will be of similar features, capacity, and efficiency as the item being replaced. FNHW is not responsible for matching brand, color and/or dimensions. When parts are necessary for completion of service, FNHW will not be responsible for delays that may occur in obtaining those parts. FNHW reserves the right to repair systems and appliances with non-original manufacturer's parts, including rebuilt or refurbished parts. Repairs and/or replacements that are subject to a manufacturer's warranty are excluded from this contract. FNHW is not responsible or liable for the disposal cost(s) of appliances, systems, equipment, and/or components of equipment including refrigerant, contaminants, and/or other hazardous or toxic materials.
4. When federal, state or local regulations, building and/or similar code criteria require improvements and/or additional costs to service a covered system and/or appliance, including permits, the costs to meet the proper code criteria shall be the sole responsibility of the contract holder, except where otherwise noted in this contract. FNHW will be responsible for repairs and/or replacement of covered systems and/or appliances after the proper code criteria are met, except where otherwise noted in this contract. When upgrading covered systems, parts or components to maintain compatibility with equipment manufactured to be 13 SEER\* compliant, FNHW is not responsible or liable for the cost of construction, carpentry, or other structural modifications made necessary by installing different equipment. FNHW is not responsible to perform service involving hazardous or toxic materials and/or conditions of asbestos.
5. FNHW is not responsible for repairs or replacement due to misuse or abuse, lack of general maintenance or cleaning, disassembled and/or missing parts, or damage due to: fire, flood, smoke, lightning, freeze, earthquake, theft, storms, accidents, riots, war, vandalism, animals or pests, power failure, surge and/or overload, soil movement, structural changes, design deficiency, manufacturer's recall, inadequate capacity, land subsidence, slope failure, cosmetic defects, improper previous repair or installation of appliances, systems, or components. The contract holder is responsible for providing maintenance and cleaning of covered items as specified by the manufacturer to ensure continued coverage on such items (i.e., heating and air conditioning systems require periodic cleaning and/or replacement filters). Water heaters require periodic flushing.
6. FNHW is not responsible for consequential or secondary damages resulting from the failure of a covered system and/or appliance and/or failure to provide timely service due to conditions beyond FNHW's control, including but not limited to delays in securing parts, equipment, and/or labor difficulties.
7. FNHW is not responsible for providing access to repair or replace a covered system or appliance unless otherwise noted in this contract. When access is provided under this contract, restoration to walls, closets, floors, ceilings, or the like, will be to a rough finish only. FNHW is not responsible for the cost of modifications necessary to repair or replace a covered system or appliance, including but not limited to pipe runs, flues, ductwork, structures, electrical, or other modifications. FNHW does not cover commercial systems, appliances, or equipment modified for domestic use.
8. FNHW is not responsible for electronic, computerized, or remote energy management systems including, but not limited to, zone controlled systems, lighting, energy, security, pool/spa, entertainment/media/audio, or appliances. Solar systems and components are not covered.
9. Common systems and appliances are not covered except for a duplex, triplex, or fourplex, and unless every unit is covered by FNHW. If this contract is for a dwelling of 5 units or more, only the items contained within each individual unit are covered. Common systems and/or appliances are excluded.
10. This contract is non-cancelable, except for: (a) non-payment of contract fees; (b) fraud or misrepresentation of facts material to the issuance of this contract, or (c) when contract is for Seller's Coverage and close of escrow does not occur. If this contract is canceled, the provider of funds shall be entitled to a pro-rated refund of the paid contract fee for the unexpired term, less an administrative fee and less any service costs incurred by FNHW. Upon renewal, this contract is non-cancelable except for non-payment of contract fees, fraud, or misrepresentation of facts.
11. FNHW has the right to offer cash in lieu of repair or replacement of a covered system and/or appliance in the amount of FNHW's actual cost to repair or replace such a system or appliance.
12. If the covered property re-sells prior to the expiration of the contract, call 1-800-862-6837 to transfer coverage to the new owner for the remainder of the current contract term. This contract may be continually renewed at the sole discretion of FNHW, subject to applicable rates and terms.
13. Coverage on lease options is available for the lessee only. Contract fees are due and payable to FNHW upon execution of the lease. Coverage continues for 12 months from the lease date.
14. FNHW is not responsible under any circumstances for the diagnosis, repair, removal, or remediation of mold, mildew, rot, or fungus and/or damages resulting from the above mentioned, even when caused by, or related to the malfunction, repair, or replacement of a covered system or appliance.

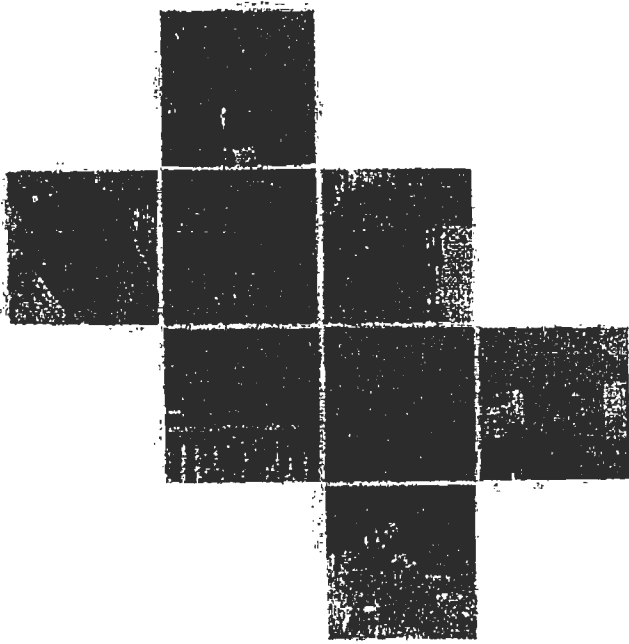


**FIDELITY  
NATIONAL  
HOME WARRANTY**

*Protect yourself  
with the Fidelity National  
Home Warranty Plan.*

*Relax.*

Typical Repair or Replacement	With FNHW	Without FNHW
Gas/Electrical Heating System	\$40	\$200-\$3000
Plumbing System	\$40	\$130-\$5000
Toilet	\$40	\$250-\$1000
Electrical System	\$40	\$250-\$2500
Water Heater	\$40	\$500-\$1500
Dishwasher	\$40	\$150-\$1000
Oven/Range	\$40	\$200-\$1500
Garbage Disposal	\$40	\$200-\$500
Microwave Oven	\$40	\$200-\$750
Trash Compactor	\$40	\$200-\$750
Garage Door Opener	\$40	\$150-\$750
Central Vacuum	\$40	\$500-\$1500
Exhaust and Ceiling Fans	\$40	\$100-\$500
Whirlpool Bath Unit	\$40	\$200-\$1000
Typical Repair or Replacement for Optional Coverage	With FNHW	Without FNHW
Air Conditioning Unit	\$40	\$350-\$3500
Pool/Spa	\$40	\$200-\$3000
Clothes Washer & Dryer	\$40	\$250-\$1000
Kitchen Refrigerator	\$40	\$500-\$2000



**FIDELITY  
NATIONAL  
HOME WARRANTY**

*We've got  
you covered.*

1-800-TOCOVER (1-800-862-6837)  
1-800-308-1400 Fax  
www.homewarranty.com

Form FNHW-00034

**Home Warranty Plan**

EXHIBIT 79  
 WIT: Kaplan  
 DATE: 1/21/10  
 Deborah M. DaSilva, CSR 7307



# EXHIBIT B



Fidelity National Home Warranty (FNHW)  
 P.O. Box 67000, San Francisco, California 94160-0905  
 License Number: 9160

PROPERTY ADDRESS:  
 1131 Coyotes Way, San Marcos, CA 92078

CONTRACT NUMBER:  
 A27808

TERM:  
 10/28/2007 To 10/28/2008

CONTRACT PLAN:  
 Single-Family Standard Renewal Plan with Comp Option

OPTIONAL COVERAGES:  
 CompOpt, Pool/Spa

James & Lynn Baker  
 1131 Coyotes Way  
 San Marcos CA 92078-1349

**TERMS OF COVERAGE**

- If a covered system and/or appliance fails during the contract term, the contract holder must contact our toll-free Customer Service Department at 1-800-308-1420. Calls are received 24 hours a day - 7 days a week. Should the contract holder contract directly with others, or do the work themselves, FNHW will not be responsible for reimbursement of that cost. Upon receiving a request for service, FNHW will contact a qualified contractor within 3 hours during normal business hours, and 48 hours on weekends and holidays. The contractor will then call the contract holder directly to schedule a mutually convenient appointment during normal business hours. FNHW will determine what repairs constitute an emergency and will make reasonable efforts to expedite emergency service. If contract holder should request FNHW to perform non-emergency service outside normal business hours, the contract holder will be responsible for payment of additional fees, including overtime.
- Should FNHW grant the contract holder authorization to contact an independent contractor directly to perform a covered service, FNHW will provide reimbursement based on the following conditions:
  - Contract holder selects a contractor that is qualified and insured.
  - Contractor provides fair and reasonable rates on parts and labor.
  - Contract holder must contact FNHW to confirm that service work is covered under the warranty contract by calling FNHW at 1-800-705-3351 once contractor arrives at the property, and prior to contractor performing any repairs for which contract holder may seek reimbursement.
- SERVICE CALL FEE:** There is a \$50.00 service fee for each trade call, paid to the contractor at the time of service (i.e., if you need a plumber and an appliance technician, each will require a separate service fee). Failure to pay the service fee will result in suspension of coverage until such time as the proper fee is paid. Upon receipt of that payment, coverage will be reinstated for the remainder of the contract term. Service requests must be received prior to the expiration of the contract term.
- Service work is guaranteed (without an additional service fee) for 30 days on labor and 90 days on parts. The 90/90 day guarantee only applies to malfunctions that are reported to FNHW during the term of this contract. Post contract service work is guaranteed for 30 days from the original date of service.
- Buyer's Coverage starts at the close of escrow and continues for one year provided the contract premium is paid at the close of escrow when contract premium has not been received by FNHW, service will be dispatched once premium payment can be verified by the closing agency and/or another source of premium payment is made (i.e., credit card).
- Coverage for new construction home buyers: This coverage and any optional coverage begins on the first anniversary of the close of escrow and continues for 4 years from that date, provided the plan fee is received by FNHW within 10 working days from the close of escrow. All systems and appliances to be covered must be in good working condition at the time coverage begins on the first anniversary after the close of escrow. Anytime during the first year of coverage, the contract holder may call FNHW for assistance in the event of a problem with the systems or appliances generally described in this plan. FNHW will assist the contract holder in contacting the manufacturer or contact the manufacturer on the contract holder's behalf to determine the remedies available to the contract holder under the manufacturer's warranty for the system or appliance associated with the contract holder's claim.
- This contract covers single-family dwellings under 5,000 square feet, unless amended by FNHW prior to the close of escrow (i.e., homes in excess of 5,000 square feet, guest houses or the like, and other detached structures). Coverage begins when appropriate fees are paid. Covered dwellings cannot be used for commercial purposes (i.e., day care centers, nursing care homes, fraternity/sorority houses, etc.).
- This contract covers only those parts, systems and/or appliances specifically mentioned as covered and excludes all others. Covered systems and/or appliances must be located within the main foundation of the home or garage except for water well pump, air conditioner, pressure regulator, waste/slop valves, and swimming pool/spa equipment. All coverage is subject to limitations and conditions mentioned in this contract.
- Optional Seller's Coverage begins upon issuance of a confirmation number by FNHW and continues for 180 days, close of escrow, or termination of listing (whichever comes first). Seller's Coverage only covers the Standard Plan items. Optional and Comprehensive items are not available for the seller.
- Covered systems and/or appliances must be in good working order at the start of coverage. Unknown pre-existing conditions will be covered if, at the time coverage began, the defect or malfunction would not have been known to the buyer, seller, agent, or home inspector by a visual inspection and/or by operating the system or appliance. Known defects found at the time of a home inspection report are excluded from coverage until proof of repair is received by FNHW.

\* Seasonal Energy Efficiency Ratio

EXHIBIT 83  
 WIT: Baker  
 DATE: 1/22/10  
 Deborah M. DeSilva, CSR 7307

For Service Call 1-800-308-1420

83.1

Optional Buyer's Coverage

The contract holder may purchase any of the optional covered items up to 30 days after the date of escrow, provided systems and/or appliances are in good working order. Coverage shall commence upon receipt of premium and will expire one year after the date of escrow. Optional Buyer's Coverage is subject to the same Terms of Coverage and Limits of Liability of this contract.

AIR CONDITIONING/EVAPORATIVE COOLER OPTION (Electricity includes built-in wall units)

Covered Items: All parts and components that affect the operation of the system - refrigerant recovery. If FNHW determines that replacing an air conditioning system is required, FNHW will replace with a unit that meets 13 SEER requirements, including replacing any covered components that are necessary to maintain compatibility with the replacement unit including the indoor furnace or air handler, evaporative coil, pan/line, plenum, indoor electrical duct connection, accessible refrigerant and condensate drain lines and thermostat expansion valve.

Not Covered: Humidifier and electronic air cleaners - inaccessible refrigerant and condensate drain lines - filters - registers and grills - window units - condenser housing - gas or propane air conditioning - general maintenance and cleaning.

Limits: The air conditioning unit/evaporative cooler cannot exceed a 5-ton capacity.

SWIMMING POOL AND/OR SPA EQUIPMENT OPTION

Covered Items: All above ground and accessible parts and components of the filtration, pumping and heating system (including the pool sweep pump, pump motor, blower motor and filter).

Not Covered: Lights - solar related equipment - underground water gas, and electrical lines - ladders - chimneys or a heater - furnaces - structural and/or cosmetic defects - damage due to lack of general maintenance or improper chemical balance - cost of access to make repairs or replacements - inaccessible portion of the spa jets - pop-up heads - tubs or material valves - electronic/computerized controls and/or control panels - pool sweep and related cleaning equipment.

Limits: Both pool and spa are covered when utilizing common equipment. If they do not utilize common equipment, then an additional premium is required for the second set of equipment (i.e., pool and portable hot tub or spa).

WASHER & DRYER PACKAGE OPTION

Covered Items: All parts and components that affect the operation of washer and/or dryer.

Not Covered: Knobs - dials - touch pads - plastic tubs - lint screens - venting - dispenser - damage to clothing.

KITCHEN OR WET BAR REFRIGERATOR OPTION

Covered Items: All parts and components that affect the operation of the unit.

Not Covered: Ice makers - ice crusher - beverage dispensers and related equipment - internal thermal shells - racks - shelves - food spoilage - freezers that are not an integral part of the refrigerator.

Limits: Kitchen refrigerator must be located within kitchen area. An additional premium is required for built-in refrigerator (Sub-Zero type).

BUILT-IN REFRIGERATOR OPTION

Not Covered: Built-in refrigerator option extends coverage to both compressors on a built-in (Sub-Zero type) refrigerator.

Covered Items: All parts and components that affect the operation of the unit.

Not Covered: Ice makers - ice crusher - beverage dispensers and related equipment - internal thermal shells - racks - shelves - food spoilage.

Limits: Built-in refrigerator must be located within kitchen area.

WELL PUMP OPTION (Must be only source of domestic water)

Covered Items: All parts and components that affect the operation of the unit.

Not Covered: Plumbing or storage tanks - pressure tanks - booster pumps - access to remove and/or repair well pump system - all piping and electrical lines - well casing - re-drilling well - damage due to low water table.

SEPTIC TANK PUMPING OPTION

Covered Items: The clearing of mainline stoppages that can be cleared through an existing cleanout access without excavation.

Not Covered: Collapsed or broken waste lines outside the foundation - stoppages or roots that prevent the effective use of an externally applied sewer cable - the cost of finding or gaining access to the septic tank - the cost of sewer hook-ups - disposal of waste - chemical treatment of the septic tank and/or waste lines - tanks - tanks - cesspools - mechanical pumps or ejectors.

Limits: If the stoppage is due to a full septic tank, FNHW will pump the septic tank once during the contract coverage period. Coverage is only in effect with the provision that a septic certification was completed within 90 days prior to the date of escrow. A copy of the certification will need to be supplied to FNHW prior to service dispatch. (Non-renewable coverage; not available on Direct to Consumer contracts.)

SEWAGE EJECTOR PUMP OPTION

Covered Items: All parts and components that affect operation.

Not Covered: Bains and any coils associated with locating or gaining access to, or closing access from the sewage ejector pump.

Limits: FNHW will pay no more than \$500.00 maximum for repair and/or replacement of the sewage ejector pump. Coverage is limited to one sewage ejector pump per contract.

LIMITED ROOF LEAK REPAIR OPTION

Covered Items: Repair of leaks caused by rain in shingles, shingle, composition, tile, tar and gravel, or metal roofs located over the occupied living area.

Not Covered: Cracked or missing tiles, shakes or shingles, foam mats, or any other material not specifically mentioned or covered. Structural leaks or leaks at, adjacent to, or caused by, appendages of any kind including gutters, downspouts, flashing, patio covers, skylights, decks, solar equipment, vents, heating or cooling equipment, antennas, balconies or chimneys, built-up roofs. Failure to perform normal or preventive maintenance will not be covered.

Limits: FNHW will pay no more than \$1,000.00 per annual for the repair of specific leaks that are a result of rain and/or normal wear and tear provided the roof was in good, water-tight condition at start of contract. If replacement of the existing roof is necessary, in whole or in part, FNHW's liability is limited to cash in lieu of the estimated cost of repair of the existing area only, as if the repair of that area were possible. Leak existing prior to the date of escrow will not be covered. (Non-renewable coverage; not available on Direct to Consumer contracts.)

Comprehensive Option

Covered Items: Plumbing fixtures (replaced with chrome builder's standard), showerheads, shower arms, hose bibs. Replacement valves will be of like quality. Garage door opener, hinges, springs, antenna transmitters. Water heater sounds caused by sediment. Heating system registers and grills, filters, heat lamps. Replacement of ceiling fans will be of like quality. Dishwasher racks, rollers, baskets. Range and/or oven and/or cooktop clocks, radio/clocks, radios, dials, interior lining. Microwave oven interior lining, door glass, clocks, shelves - wash compactor removable buckets, lock and key assemblies. FNHW will pay up to \$250.00 aggregate (combined limit for the term of the contract) to correct code violations and/or code upgrades in relation to a covered heating, electrical, plumbing, or water heater trade service call if necessary to affect repair or replacement.

With purchase of the Air Conditioner/Evaporative Cooler option and/or Built-in, Kitchen and/or Wet Bar Refrigerator option, coverage is extended to include the following items:

AIR CONDITIONING/EVAPORATIVE COOLER OPTION: Filters - registers and grills - window units - condenser housing.

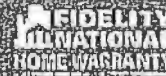
BUILT-IN, KITCHEN AND/OR WET BAR REFRIGERATOR OPTION: Ice maker, provided parts are available. In cases where parts are not available, FNHW's obligation is limited to cash in lieu of repair based on the cost of replacement part.

Comprehensive Plus Plan

When purchased, this Comprehensive Plus Plan includes the following coverage:

- Standard Plan
- Comprehensive Option
- Air Conditioning/Evaporative Cooler Option

# Fidelity National Home Warranty (FNHW) Contract Coverages



## Standard Buyer's Coverage

### PLUMBING SYSTEM & STOPPAGES

Covered Items: Repair of leaks and breaks in water, waste, vent, or gas lines within the perimeter of the main foundation of the home or garage - shower/tub valves (replaced with chrome builder's standard) - angle stop - gate valves - waste and stop valves - toilet tanks, bowls, and working mechanisms (replacement toilet will be within builder's standard) - wax ring seals - permanently installed sump pumps - built-in whirlpool bathtub main pump assemblies - mainline stoppages which can be cleared with standard sewer cable (125') through an existing, accessible, ground level mainline cleanout without excavation - pressure regulators - pop-up assemblies.  
Not Covered: Stoppages and/or collapse of water, drain, or gas lines caused by roots - showerheads - shower arms - fixtures - faucets - bolts/nuts - sink - shower enclosures and base pans - caulking and grouting - hose bibs - sanitary ejector pumps - toilet seats and lids - toilet tanks and lids - toilet tanks - water softeners - supply restrictions due to rust or chemical deposits - issues - bath rooms - bidets - whirlpool bathtub jet plumbing - indoor/outdoor sprinkler systems - boiler pumps - conditions of electrolysis.  
Limits: With respect to concrete-encased or inaccessible plumbing lines, access, diagnosis, and repair is limited to \$1,000.00 aggregate per contract. FNHW will provide access through unobstructed walls, ceilings, floors, concrete slabs and the like, and will return all openings made for access to a rough finish only, subject to the \$1,000.00 limit indicated. FNHW is not responsible for trim, texture, paint, wallpaper, tile, carpet, or the like.

### WATER HEATER (Gas or electric)

Covered Items: All parts and components that affect operation (including recirculating pumps).  
Not Covered: Solar units and/or components - holding tanks - sounds caused by sediment - flood and vent.

### HEATING SYSTEM (Main source of heat to home)

Covered Items: All parts and components that affect the operation of the heating unit including the heat pump. If FNHW determines that the replacement of a heat pump-split system type of heating unit is required, FNHW will replace with a unit that meets all SEER requirements, including replacing any covered components that are necessary to maintain compatibility with the replacement unit, including the air handler, evaporative coil, transition, plenum, indoor electrical, duct connection, accessible refrigerant, and condensate drain lines, and thermostatic expansion valve.  
Not Covered: Solar heating systems - geothermal systems - glycol systems - portable and free-standing units - humidifiers and electronic air cleaners - hot and water storage tanks - registers and grills - filters - heat lamps - thermostats - wood or pellet stoves (even if only source of heating) - chimneys - flues - vents - fireplace inserts and key valves - cable heat (in ceiling) - clocks - timers - outside or underground piping and components for geothermal and/or water source heat pumps - well pump and well pump components for geothermal and/or water source heat pumps - inaccessible refrigerant and condensate drain lines.  
Limits: FNHW will pay no more than \$1,000.00 aggregate per contract term for access, diagnosis, and repair or replacement of hot water or steam circulating heating systems.  
Seller's Coverage: During the Seller's Coverage period, FNHW will pay no more than \$500.00 for diagnosis and repair or replacement of the furnace due to the failure of the heat exchanger or combustion chamber.

### DUCTWORK

Covered Items: Ducts from heating and/or cooling unit to connection at register or grill.  
Not Covered: Registers - grills - dampers - insulation - improperly sized ductwork - collapsed or crushed ductwork - ductwork where asbestos is present - ductwork damaged by moisture - costs for inspections, diagnostic testing, verification and permits as required by any federal, state, or local law, regulation or ordinance, including CA Title 24 requirements.  
Limits: FNHW will pay no more than \$1,000.00 aggregate per contract term for repair or replacement of ductwork.

### ELECTRICAL SYSTEM

Covered Items: All parts and components that affect operation.  
Not Covered: Fixtures - alarms - intercoms - inadequate wiring capacity - power sabbos or surge - low voltage wiring - direct current (D.C.) wiring or components.

### TELEPHONE WIRING

Covered Items: Telephone wiring used primarily for residential telephone service located within the walls of the main dwelling.  
Not Covered: Telephone jacks - plugs - light - transformers and other power units - cover plates - telephone units - answering devices - burglar alarm and circuits - tele-phone fuses - wiring which is the property of a telephone company.

### CENTRAL VACUUM SYSTEM

Covered Items: All parts and components that affect operation.  
Not Covered: Removable hoses - accessories - clogged pipes.  
Limits: FNHW is not responsible for the cost of gaining access to, or closing access from the floor or wall either to locate the cause of malfunction or to effect repair or replacement.

### GARAGE DOOR OPENER

Covered Items: Wiring - motor - switches - receiver unit - track drive assembly.  
Not Covered: Garage doors - hinges - springs - rollers - guides - remote transmitters.

### CEILING, WHOLE HOUSE EXHAUST & ATTIC FANS (Built-in)

Covered Items: All parts and components that affect operation (replaced with builder's standard).

### DOORBELL & SMOKE DETECTORS

Covered Items: All parts and components that affect operation.

### PEST CONTROL

Covered Items: Roaches - ants (except fire, pharaoh, and carpenter varieties) - silverfish - black widow spiders - scorpions - Brown Recluse spiders - millipede - mice - crickets - ground beetles - centipedes - pillbugs - sowbugs - Clover Mites.  
Not Covered: Termites - fungus - wood-boring beetles - rats - any pests not specifically listed above as covered.

### DISHWASHER (Built-in or freestanding)

Covered Items: All parts and components that affect operation.  
Not Covered: Racks - rollers - baskets.

### RANGE, OVEN, COOKTOP (Gas or electric; built-in or freestanding)

Covered Items: All parts and components that affect operation. (Semi-heat burners replaced with standard burners).  
Not Covered: Heat probe assemblies - light sockets - indoor barbecues - clocks (unless it affects the operation of the unit) - razors - racks - knives - knobs - dials - interior lining.

### MICROWAVE OVEN (Built-in)

Covered Items: All parts and components that affect operation.  
Not Covered: Portable or countertop units - heat probe assemblies - razors - interior lining - door glass - dials - shelves.

### GARBAGE DISPOSAL & INSTANT HOT WATER DISPENSER

Covered Items: All parts and components that affect operation.

### WASH COMPACTOR (Built-in or portable)

Covered Items: All parts and components that affect operation.

### FOOD CENTER (Built-in)

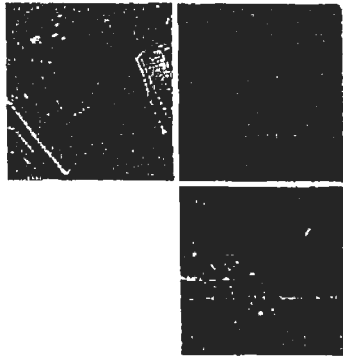
Covered Items: All parts and components that affect operation.  
Not Covered: Removable accessories.

# Fidelity National Home Warranty (FNHW) Contract Coverages



## LIMITS OF LIABILITY

1. FNHW's liability is limited to failures due to normal wear and tear during the term of the contract.
2. FNHW has the right to a second opinion. The contract holder may order their own second opinion, but shall be responsible for that cost.
3. FNHW will determine whether a covered item will be repaired or replaced. Except as otherwise noted in this contract, replacement will be of similar features, capacity, and efficiency as the item being replaced. FNHW is not responsible for matching brand, color and/or dimensions. When parts are necessary for completion of service, FNHW will not be responsible for delays that may occur in obtaining those parts. FNHW reserves the right to repair systems and appliances with non-original manufacturer's parts, including rebuilt or refurbished parts. Repairs and/or replacements that are subject to a manufacturer's warranty are excluded from this contract. FNHW is not responsible or liable for the disposal cost(s) of appliances, systems, equipment, and/or components of equipment including refrigerant, condensate, and/or other hazardous or toxic materials.
4. When federal, state or local regulations, building and/or similar code criteria require improvements and/or additional costs to service a covered system and/or appliance, including permits, the costs to meet the proper code criteria shall be the sole responsibility of the contract holder, except where otherwise noted in this contract. FNHW will be responsible for repairs and/or replacement of covered systems and/or appliances after the proper code criteria are met, except where otherwise noted in this contract. When upgrading covered systems, parts or components to maintain compatibility with equipment manufactured to be UL/ETL compliant, FNHW is not responsible or liable for the cost of construction, carpentry, or other structural modifications made necessary by installing different equipment. FNHW is not responsible to perform service involving hazardous or toxic materials and/or conditions of asbestos.
5. FNHW is not responsible for repairs or replacement due to misuse or abuse, lack of general maintenance or cleaning, disassembled and/or missing parts, or damage due to fire, flood, smoke, lightning, freeze, earthquake, theft, storm, accidents, riots, war, vandalism, animals or pests, power failure, surge and/or overload, soil movement, structural changes, design deficiency, manufacturer's recall, inadequate capacity, land subsidence, slope failure, cosmetic defects, improper previous repair or installation of appliances, systems, or components. The contract holder is responsible for providing maintenance and cleaning of covered items as specified by the manufacturer to ensure continued coverage on such items (i.e., heating and air conditioning systems require periodic cleaning and/or replacement filters). Water filters require periodic flushing.
6. FNHW is not responsible for consequential or secondary damages resulting from the failure of a covered system and/or appliance and/or failure to provide timely service due to conditions beyond FNHW's control, including but not limited to delays in receiving parts, equipment, and/or labor difficulties.
7. FNHW is not responsible for providing access to repair or replace a covered system or appliance unless otherwise noted in this contract. When access is provided under this contract, restoration to walls, closets, floors, ceilings, or the like, will be to a rough finish only. FNHW is not responsible for the cost of modifications necessary to repair or replace a covered system or appliance, including but not limited to pipe runs, flues, ductwork, structures, electrical, or other modifications. FNHW does not cover commercial systems, appliances, or equipment modified for domestic use.
8. FNHW is not responsible for electronic, computerized, or remote energy management systems including, but not limited to, zone controlled systems, lighting, energy, security, pool/spa, entertainment/media/audio, or appliances. Solar systems and components are not covered.
9. Common systems and appliances are not covered except for a duplex, triplex, or fourplex, and unless every unit is covered by FNHW. If this contract is for a dwelling of 3 units or more, only the units contained within each individual unit are covered. Common systems and/or appliances are excluded.
10. This contract is non-cancelable, except for: (a) non-payment of contract fees; (b) fraud or misrepresentation of facts material to the issuance of this contract; or (c) if the contract fee for Seller's Coverage and close of escrow does not occur. If this contract is canceled, the provider of funds shall be entitled to a pro-rated refund of the full contract fee for the uncanceled term, less an administrative fee and less any service costs incurred by FNHW. Upon renewal, this contract is non-cancelable except for non-payment of contract fees, fraud, or misrepresentation of facts.
11. FNHW has the right to offer cash in lieu of repair or replacement of a covered system and/or appliance in the amount of FNHW's actual cost to repair or replace such a system or appliance.
12. If the covered property re-sells prior to the expiration of the contract, call 1-800-867-6837 to transfer coverage to the new owner for the remainder of the current contract term. This contract may be continuously renewed at the sole discretion of FNHW, subject to applicable rates and terms.
13. Coverage on lease options is available for the lessee only. Contract fees are due and payable to FNHW upon execution of the lease. Coverage continues for 12 months from the lease date.
14. FNHW is not responsible under any circumstances for the diagnosis, repair, removal, or remediation of mold, mildew, rot, or fungus and/or damages resulting from the above mentioned, even when caused by, or related to the malfunction, repair, or replacement of a covered system or appliance.



### Quality Coverage

If we can't fix it, we'll replace it! Unlike some "repair only" contracts, your FNHW plan covers repairs and/or replacement of covered systems and appliances when needed. Service work is guaranteed—without an additional service fee—30 days on labor and 90 days on parts.

### Quality Customer Service

If a covered item fails, call our toll-free Customer Service Department at 1-800-308-1420. Calls are received 24 hours a day—7 days a week. We'll do our best to solve your problem before sending a qualified technician to your home.

If service is needed, we'll do all the calling for you.

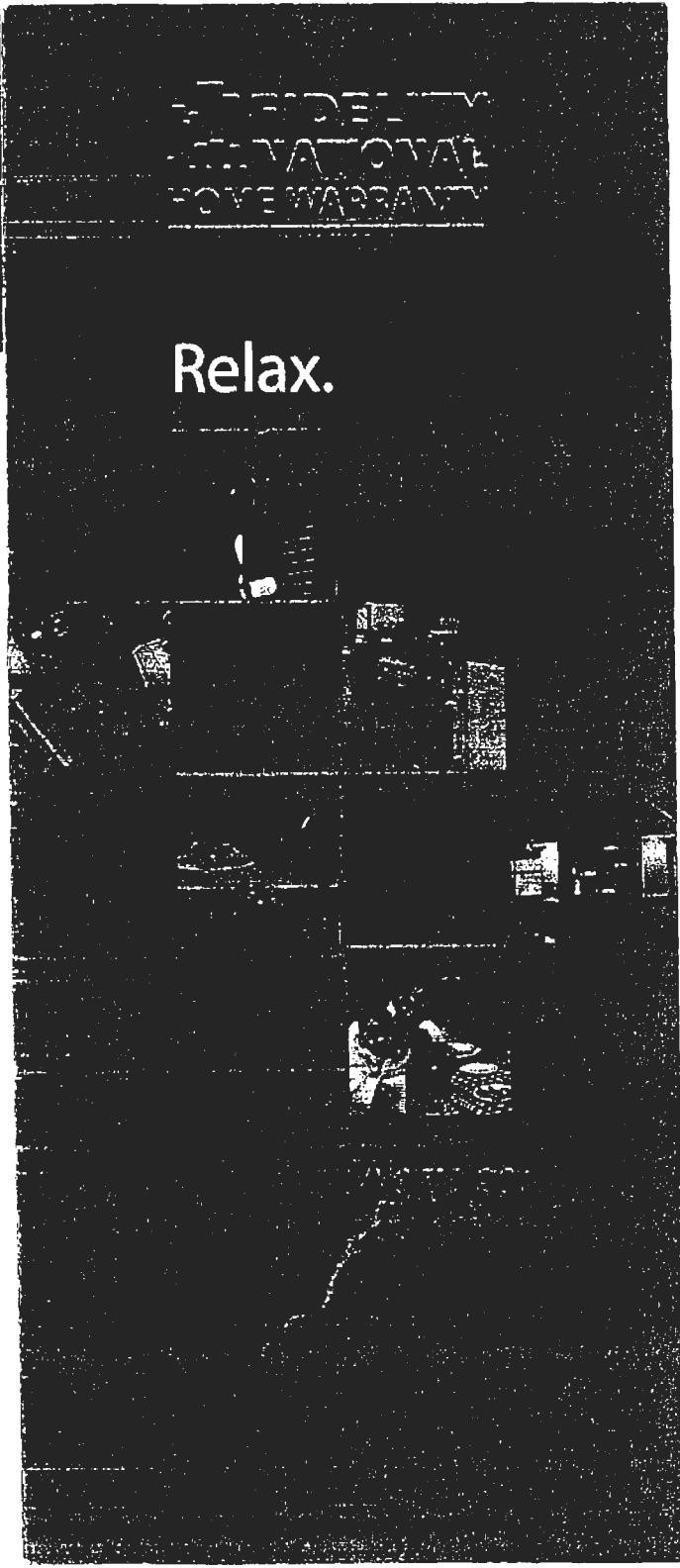
We'll contact a qualified technician within 3 hours during normal business hours, and 48 hours on weekends and holidays. Soon after, a certified technician will call you to make convenient arrangements to arrive at your home and make the needed covered repairs. No hassle, no worry.

### Quality Repairs

Why search the yellow pages trying to find a qualified repair technician when we are standing by ready to provide you with the best? All of our technicians are licensed and insured, ready to repair or replace your covered system or appliance as needed. All for one low service trade call fee of \$40.



For service call 1-800-308-1420.  
Or visit us online at [homewarranty.com](http://homewarranty.com)



*Dear Homeowner,*

*By now you should have received your Home Warranty contract.*

*If you have not received your contract, or have any questions regarding your coverage, please call us at 1-800-TOCOVER (1-800-862-6837) or visit us online at [homewarranty.com](http://homewarranty.com).*

**What does your home warranty cover?**

*The best answer to this can be found by reviewing your specific contract or a sample contract, available at [homewarranty.com](http://homewarranty.com).*

*Standard coverage includes: Plumbing, Heating, Electrical System, Dishwasher, Range/Oven/ Cook top, Built-In Microwave Oven, Garbage Disposal, Trash Compactor, Central Vacuum Cleaner, Garage Door Opener, Ceiling and Exhaust Fans, Instant Hot Water Dispensers, Doorbells, Smoke Detectors, Telephone Wiring.*

**What's not covered?**

*The contract covers only those parts, systems and appliances specifically mentioned as covered and excludes all others.*

*Your homeowner's insurance policy may cover certain items that are not covered under the home warranty, such as water damage to your floors.*

**What is the \$40 Service Call fee and how do I pay it?**

*The service fee is your co-pay, or deductible for each service trade call. Your Sales Support Representative can take the service fee by VISA or MasterCard over the telephone for your convenience.*

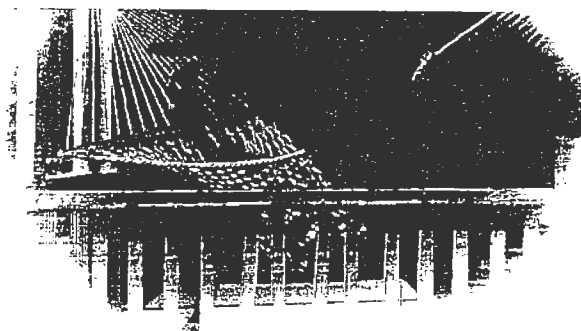
**Thank you for your business.**

*I greatly appreciate the trust and confidence you've placed in Fidelity National Home Warranty.*

*Sincerely,*



84.3



*With Fidelity National Home Warranty, you can relax...You're covered!*

**Before placing a Service Request**

**Please review the terms of contract coverage prior to requesting service.** If your contract is not readily available, go to [homewarranty.com](http://homewarranty.com) and click on Sample Contract for your state.

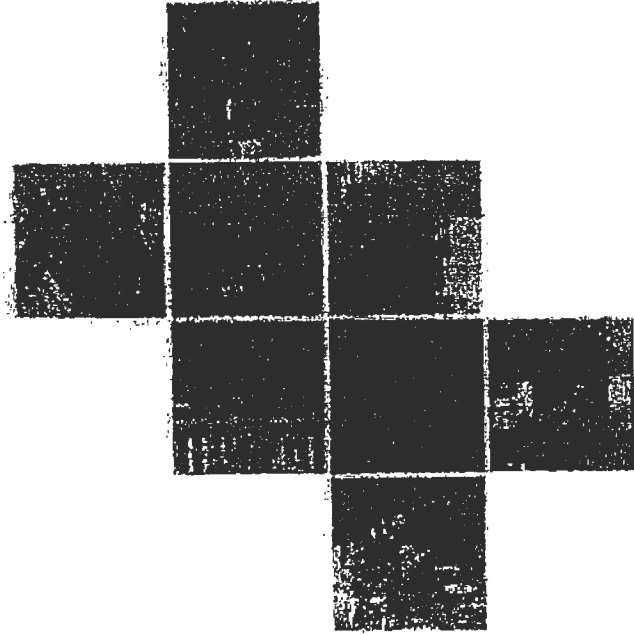
**Please contact our office prior to any service work being done.** We will not reimburse you for service work performed by your own contractor without FNHW's prior authorization.



*Protect yourself  
with the Fidelity National  
Home Warranty Plan.*

**FIDELITY  
NATIONAL  
HOME WARRANTY**

**Relax.**



Typical Repair or Replacement	With F&NW	Without F&NW
Gas/Electrical Heating System	\$40	\$200-\$3000
Plumbing System	\$40	\$150-\$5000
Toilet	\$40	\$250-\$1000
Electrical System	\$40	\$250-\$2500
Water Heater	\$40	\$500-\$1500
Dishwasher	\$40	\$150-\$1000
Oven/Range	\$40	\$200-\$1500
Garbage Disposal	\$40	\$200-\$500
Microwave Oven	\$40	\$200-\$750
Trash Compactor	\$40	\$200-\$750
Garage Door Opener	\$40	\$150-\$750
Central Vacuum	\$40	\$500-\$1500
Exhaust and Ceiling Fans	\$40	\$100-\$500
Whirlpool Bath Unit	\$40	\$200-\$1000
Typical Repair or Replacement for Optional Coverage	With F&NW	Without F&NW
Air Conditioning Unit	\$40	\$350-\$3500
Pool/Spa	\$40	\$200-\$3000
Clothes Washer & Dryer	\$40	\$250-\$1000
Kitchen Refrigerator	\$40	\$500-\$2000

*We've got  
you covered.*

**FIDELITY  
NATIONAL  
HOME WARRANTY**

1-800-TOCOVER (1-800-662-6837)

1-800-308-1460 Fax

www.homewarranty.com

Form FW-000954

**Home Warranty Plan**

EXHIBIT 85  
 WIT: Baker  
 DATE: 1/22/10  
 Deborah M. DeSilva, CSR 7307