

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 2016-CA-300

KB HOME, KB HOME FLORIDA LLC,
KB HOME FORT MYERS LLC, KB HOME
TAMPA LLC, KB HOME TREASURE
COAST LLC, KB HOME ORLANDO
LLC, KB HOME GOLD COAST LLC,
and KB HOME JACKSONVILLE LLC,

Defendants.

STIPULATED CONSENT DECREE AND FINAL JUDGMENT

This cause came before the undersigned Judge for entry of a Stipulated Consent Decree and Final Judgment (the “Stipulated Judgment”) between the Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida (the “OAG”), and the Defendants, KB HOME, KB HOME Florida LLC, KB HOME Fort Myers LLC, KB HOME Tampa LLC, KB HOME Treasure Coast LLC, KB HOME Orlando LLC, KB HOME Gold Coast LLC, and KB HOME Jacksonville LLC (collectively, “KB HOME” or “Defendants”), concerning Defendants’ sales practices and handling of warranty claims. Specifically, the OAG alleged that Defendants’ sales practices and handling of warranty claims violated the Florida Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, Florida Statutes (2014) (“FDUTPA”). Defendants do not admit these allegations and deny that their activities violated state law. Nonetheless, to avoid the

uncertainty and expense of protracted litigation, Defendants agree to enter into this Stipulated Judgment.

It is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. PARTIES

1. Defendants KB HOME Florida LLC, KB HOME Fort Myers LLC, KB HOME Tampa LLC, KB HOME Treasure Coast LLC, KB HOME Orlando LLC, KB HOME Gold Coast LLC, and KB HOME Jacksonville LLC are Delaware limited liability companies with their principal places of business in Florida. While Defendant KB HOME, a Delaware corporation, is not authorized to do business in Florida, KB HOME consents to and agrees to be bound by this Stipulated Judgment to the extent it does not require KB HOME to transact business in Florida. To the extent this Stipulated Judgment imposes obligations on “KB HOME” that require the transaction of business in Florida, KB HOME guarantees the performance of such obligations by the other Defendants.

2. The OAG is the enforcing authority of FDUTPA, and is authorized to bring this action for alleged violations of FDUTPA.

II. JURISDICTION

3. This Court has jurisdiction over Defendants and the subject matter of this action.

III. DEFINITIONS

4. As used in this Stipulated Judgment:

“Continuously occupied” means that a home sold by KB HOME was never vacant for more than 270 continuous days after the date of sale. Without limitation, a home shall be presumed vacant if the power was disconnected for a period of 270 continuous days or greater.

“Settlement Repair Claim” means any claim for repair or inspection made by a homeowner pursuant to or covered by paragraphs 12 and 13 of this Stipulated Judgment.

“**Stucco Delamination**” means an apparent visual separation of any layer of the stucco surface of the exterior of a home including without limitation buckling, bubbling, peeling, or collapse of the stucco.

“**Term**” means the period beginning on the date of this Stipulated Judgment and ending on December 31, 2018. This Stipulated Judgment shall expire at the end of the Term.

“**Warranty Claim**” means a homeowner’s request for any repair to the exterior stucco wall cladding system or a request for repairs otherwise necessary to eliminate alleged water intrusion or imminent water intrusion made pursuant to KB HOME’s written warranties.

IV. MONETARY RELIEF

5. KB HOME has already provided or has agreed to provide more than \$94.5 million in relief for Florida homeowners as described below.

a. **Repair Costs**: Before and during the course of the OAG’s investigation, KB HOME has spent more than \$71 million to repair 1,688 homes in Florida, including all units in the Waterford, Willowbrook, and Palm River communities. KB HOME will make additional repairs under this Stipulated Judgment as described below.

b. **Costs for Upgraded Materials, Improved Construction Techniques, and Additional Training**: Based on KB HOME’s sales projections, KB HOME will spend \$17 million over the next five (5) years as a result of its use of upgraded building materials, improved construction techniques, and additional training to its employees and trade contractors in Florida concerning the appropriate means and methods for the proper installation of stucco. KB HOME shall report this figure in writing to the OAG annually for the duration of the Term.

c. **Monetary Payment**: As soon as practicable, but in no event longer than thirty (30) days after entry of this Stipulated Judgment, KB HOME shall pay to the OAG the amount of

Six Million Five Hundred Thousand Dollars (\$6,500,000.00), not as a civil penalty but for restitution of consumers affected by KB HOME's conduct, costs of administration of the settlement, attorney's fees and costs incurred in the investigation of KB HOME, future monitoring expenses, and any other purpose permitted by Florida law in the sole discretion of the OAG.

V. CONDUCT RELIEF

6. KB HOME shall use properly licensed contractors as required under state law for repairs and new construction.

7. KB HOME's construction in Florida shall comply with the Florida building codes as those codes are interpreted in the ordinary course by the authorities having jurisdiction.

8. KB HOME's construction in Florida shall comply with KB HOME's Stucco Manual for New Construction dated May 6, 2013, and KB HOME will require trade contractors in Florida to follow KB HOME's Stucco Manual for New Construction.

9. KB HOME shall use a third-party vendor with expertise in stucco installation to provide additional training to KB HOME's construction and customer service employees and trade contractors in Florida concerning appropriate means and methods for the proper installation of stucco.

10. For a period of three (3) years from the date of this Stipulated Judgment, KB HOME shall provide for its current and future new construction to be inspected by a third-party inspector approved by KB HOME's insurer(s). KB HOME will be responsible for paying the third-party inspector.

11. KB HOME agrees not to retain mineral rights in the sale of residential properties in Florida.

VI. SETTLEMENT REPAIRS

12. KB HOME's agreement to perform the following work shall resolve, for purposes of this Stipulated Judgment, all pending consumer complaints to the OAG as follows:

a. If the home is 0-24 months¹ old as of April 17, 2015 and has an exterior stucco crack that is 1/16 inch or greater, KB HOME will fix all such cracks and paint (including the sealing of any other openings that may allow water intrusion) all four sides of the home with elastomeric paint.²

b. If the home is 25-120 months old as of April 17, 2015 and has an exterior stucco crack that is 1/8 inch or greater, KB HOME will fix all such cracks and paint (including the sealing of any other openings that may allow water intrusion) the side of the home that has the crack with elastomeric paint.

c. Stucco Delamination on any home, from 0-120 months old as of April 17, 2015, will be repaired by KB HOME.

d. If the substrate of any home repaired under this paragraph 12 is compromised, then KB HOME shall remove and replace the damaged or otherwise compromised substrate and inspect and repair surrounding areas as needed.

13. KB HOME's agreement to perform the following work shall resolve, for purposes of this Stipulated Judgment, future requests for repairs not already pending before the OAG from consumers, who own a home built by KB HOME, for a period of eighteen (18) months from the date of this Stipulated Judgment as follows:

¹ For purposes of this Stipulated Judgment, the age of the home will be determined using the closing date of KB HOME's first sale of the home to a homeowner.

² For purposes of this Stipulated Judgment, KB HOME will use the Sherwin Williams LOXON XP Waterproofing System A24-1400 Series.

a. If the home is 0-24 months old as of April 17, 2015 and has an exterior stucco crack that is 1/16 inch or greater, KB HOME will fix all such cracks and paint (including the sealing of any other openings that may allow water intrusion) all four sides of the home with elastomeric paint.

b. If the home is 25-60 months old as of April 17, 2015, and has an exterior stucco crack that is 1/8 inch or greater, KB HOME will fix all such cracks and paint (including the sealing of any other openings that may allow water intrusion) the repaired areas to the nearest logical corners/breaks with elastomeric paint.

c. If the home is 61-84 months old as of April 17, 2015, and has an exterior crack in the stucco that is 1/8 inch or greater, KB HOME will fix all such cracks and paint (including the sealing of any other openings that may allow water intrusion) the repaired areas to the nearest logical corners/breaks with elastomeric paint, provided the entire exterior of the home has been repainted prior to April 17, 2015.

d. If the home is 85-120 months old as of April 17, 2015 and has an exterior crack in the stucco that is 1/8 inch or greater, KB HOME will fix all such cracks and paint (including the sealing of any other openings that may allow water intrusion) the repaired areas to the nearest logical corners/breaks with elastomeric paint, provided the entire exterior of the home has been repainted prior to April 17, 2015, and the home has been Continuously Occupied. KB HOME shall bear the burden of proving that a home has not been Continuously Occupied.

e. Stucco delamination on any home, from 0-84 months old as of April 17, 2015, will be repaired. Stucco delamination on any home 85-120 months old as of April 17, 2015, will be repaired by KB HOME if the entire exterior of the home has been repainted prior

to April 17, 2015, and the home has been Continuously Occupied. KB HOME shall bear the burden of proving that a home has not been Continuously Occupied.

f. If the substrate of any home repaired under this paragraph 13 is compromised, then KB HOME shall remove and replace the damaged or otherwise compromised substrate and inspect and repair surrounding areas as needed.

g. For purposes of this Stipulated Judgment, KB Home is relieved of any obligations under this paragraph 13 to resolve Settlement Repair Claims made more than eighteen (18) months after this Stipulated Judgment is entered by the Court.

VII. CLAIMS PROCEDURES

A. Settlement Repair Claims Process

14. Upon entry of this Stipulated Judgment, a homeowner may make a Settlement Repair Claim under paragraphs 12 and 13 of this Stipulated Judgment by submitting a request to KB HOME via telephone or e-mail for evaluation or repair of the home. KB HOME's contact information is attached hereto as Exhibit "A." KB HOME shall initiate the resolution of complaints by homeowners under paragraph 12 of this Stipulated Judgment without the necessity of the homeowner making a Settlement Repair Claim.

15. KB HOME shall make and maintain a record of all Settlement Repair Claims for the duration of this Stipulated Judgment.

16. KB HOME shall promptly offer to resolve all Settlement Repair Claims in accordance with this Stipulated Judgment. If KB HOME denies a Settlement Repair Claim, KB HOME will notify the homeowner of the denial, and give the homeowner a written reason for the Settlement Repair Claim denial within fifteen (15) days of the date of the denial.

17. If the homeowner disagrees with KB HOME's denial of the Settlement Repair Claim, then KB HOME shall, within fifteen (15) days of the date of the denial, submit the disagreement (the "Dispute") to an independent third-party (the "Claims Referee") or provide the homeowner with the Claims Referee's contact information so that the homeowner may submit the Dispute to the Claims Referee. KB HOME shall bear the sole responsibility for paying the Claims Referee. KB HOME's Claims Referee shall be subject to reasonable review and request for modification pursuant to paragraph 42 below.

18. The Claims Referee shall decide any Dispute in good faith in accordance with the criteria set forth in paragraphs 12 and 13 of this Stipulated Judgment. The decisions of the Claims Referee shall be final.

19. Any Settlement Repair Claim made within eighteen (18) months of the date that this Stipulated Judgment is entered by the Court shall be considered timely.

20. For eighteen (18) months from the date of this Stipulated Judgment, KB HOME shall provide quarterly reports to the OAG of any Settlement Repair Claim denials with detailed reasons for the denials.

B. Warranty Claims Process

21. KB HOME shall use good faith in interpreting and applying the terms of its existing warranties to homeowner warranty claims on homes sold to consumers prior to January 1, 2016.

22. With respect to purchase and sale agreements entered into with consumers during the period of two (2) years commencing January 1, 2016, KB HOME will issue customers a new written warranty that will provide consumers the opportunity to submit warranty claim disputes for resolution to an independent third-party properly licensed in Florida as a Home Warranty

Association. KB HOME shall bear the sole responsibility for paying the expenses of the independent third-party. The decision of the independent third-party shall be binding on KB HOME.

23. When KB HOME is going to repair a home pursuant to a homeowner's warranty claim, KB HOME shall provide to the homeowner a detailed written statement describing the repairs to be made and providing an estimated schedule for the repairs.

24. If a homeowner warranty claim is finally denied, KB HOME or its designee will notify the homeowner of its decision and give the homeowner a written reason for the warranty claim denial.

25. KB HOME shall provide a quarterly report to the OAG of any Warranty Claim denials with detailed reasons for the denials.

26. With respect to purchase and sale agreements entered into with consumers commencing January 1, 2016, KB HOME's new written warranty will not, in the State of Florida, disclaim any implied warranties or include arbitration in its warranty.

27. KB HOME shall provide additional training to its construction and customer service employees in applying the warranty performance standards to Florida Warranty Claims.

VIII. COOPERATION

28. This Stipulated Judgment is the result of a cooperative effort between the OAG and KB HOME to review and improve certain practices concerning the design, construction, sales and warranty services related to homes in Florida. Throughout this investigation, KB HOME has cooperated and continues to cooperate with the OAG, has reviewed its practices relevant to the conduct and issues discussed herein, and has adopted and will continue to monitor

compliance efforts to address the OAG's concerns related to the construction, marketing, and sale of new homes and the warranty claims process.

29. KB HOME shall continue to cooperate with the OAG in the fulfillment of KB HOME's obligations under this Stipulated Judgment. For the sole purpose of determining or securing compliance with this Stipulated Judgment, the OAG shall be permitted, upon reasonable notice and during normal business hours: a) to access all non-privileged documents in the possession or control of KB HOME relating to any matters contained in this Stipulated Judgment and b) to conduct interviews of officers, managers, or employees of KB HOME regarding any matters contained in this Stipulated Judgment.

30. During the Term, if the OAG believes that there has been a violation of this Stipulated Judgment, then KB HOME shall be notified in writing thereof. The OAG shall thereafter permit KB HOME a reasonable opportunity to cure any alleged violation without instituting legal action. If the alleged violation is not substantially cured by KB HOME within sixty (60) days of the notification, the OAG may thereafter seek to undertake any remedial action deemed appropriate. This time period may be extended in circumstances where the 60-day period does not allow sufficient time to cure the alleged violation.

IX. RESOLUTION OF INVESTIGATION

31. Upon execution of this Stipulated Judgment, the OAG shall terminate each and every existing civil investigation, inquiry, claim and/or proceeding (whether formal or informal) as to KB HOME, its predecessors, divisions, business units, subsidiaries, and the current and former directors, officers, or employees of any of them (collectively, the "KB HOME Releasees") arising out of KB HOME's acts, practices, or courses of conduct giving rise to actual or alleged violations of FDUTPA relating to KB HOME's sales practices and handling of

warranty claims. The OAG shall not initiate any new or reinstate any terminated civil investigation, inquiry, claim, and/or proceeding (whether formal or informal) as to any KB HOME Releasee where the civil investigation, inquiry, claim, and/or proceeding is based upon KB HOME's actual or alleged violations of FDUTPA relating to KB HOME's sales practices and handling of warranty claims up to the date of this Stipulated Judgment. This release does not eliminate, invalidate, resolve, compromise, or discharge KB HOME's warranty or other obligations, if any, to homeowners. This release does not eliminate, invalidate, resolve, compromise, or discharge KB HOME from any liabilities it may have to homeowners. Further, this release does not eliminate, invalidate, resolve, compromise, or discharge KB HOME's obligations under this Stipulated Judgment.

32. Nothing in the paragraphs above shall be deemed to release any individual or entity other than KB HOME and the KB HOME Releasees.

33. Nothing in the paragraphs above shall be deemed to preclude the OAG's review of KB HOME's acts, practices, or courses of conduct that occur after the execution date of this Stipulated Judgment.

34. This Stipulated Judgment does not provide nor shall it be interpreted to provide any legal rights or remedies of any nature to any third party.

X. OTHER PROVISIONS

35. The OAG in its sole discretion will determine the criteria for homeowners to receive restitution. Consumers accepting restitution payments from the OAG for more than a total of \$500 or repairs pursuant to paragraphs 12 and 13 will be required to sign a general waiver and release of claims in favor of the KB HOME Releasees. For restitution claims

totalling \$500 or less, no release will be required. A copy of the general waiver and release of claims is attached hereto as Exhibit "B."

36. The terms of this Stipulated Judgment are binding on Defendants and their directors, officers, managers, employees, successors, and assigns.

37. This Stipulated Judgment shall expire on the last day of the Term at which time KB HOME shall be relieved of its obligations hereunder.

38. If KB HOME enters into a settlement agreement with a homeowners association acting on behalf of the residents of an attached multi-family community in Florida constructed by KB Home that has at least 75 residences (the "Other Community") and which has substantially the same construction defect and other issues as Willowbrook, this provision will apply. The total cost of repairs and cash compensation actually received by the residents in the Other Community from KB HOME in the settlement, net of all costs such as attorneys' fees, divided by the number of residences in the community, will be referred to for these purposes as the "Other Community Average Cost". If the Other Community Average Cost exceeds the total amount of money KB HOME has spent or incurred on repairs in the Willowbrook community, divided by the number of residences in that community (the "Willowbrook Average Cost"), including spending on design, costs of investigation and inspections, construction, relocation, and reimbursement (including reimbursement paid pursuant to this Stipulated Judgment), KB will pay to the OAG the "Difference," as defined below for use in the OAG's discretion consistent with this Stipulated Judgment. The Difference is a sum in dollars calculated by multiplying the number of residences in the Other Community by the amount by which the Willowbrook Average Cost is exceeded by the Other Community Average Cost.

39. All notices required by this Stipulated Judgment shall be sent by Certified or Registered Mail, return receipt requested, postage prepaid or by hand delivery to:

If to the OAG: R. Scott Palmer
Special Counsel
Gregory S. Slemp
Assistant Attorney General
Office of the Attorney General PL-01
The Capitol
Tallahassee, Florida 32399-1050

If to KB HOME: General Counsel
10990 Wilshire Blvd.
7th Floor, Los Angeles, California 90024

Vince DePorre
Regional President
KB HOME
10475 Fortune Parkway, Suite 100
Jacksonville, Florida 32256

Travis W. Cope
Vice President and Regional Counsel
4800 Fredericksburg Road
San Antonio, Texas 78229

Luis Prats and Lannie D. Hough Jr.
Carlton Fields Jordan Burt P.A.
4221 W. Boy Scout Boulevard, Suite 1000
Tampa, Florida 33607-5780

40. This Stipulated Judgment shall be governed by and interpreted according to the laws of Florida, excluding its conflict of laws provisions.

41. KB HOME consents to this Stipulated Judgment without admitting any issue, allegation, or claim based upon the acts, practices, or courses of conduct that are the subject of the investigation.

42. If either the OAG or KB HOME believes that modification of this Stipulated Judgment would be in its best interests, that party shall give notice to the other party, and the parties shall thereafter attempt to agree on a modification.

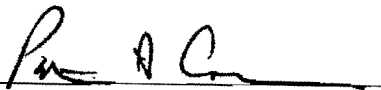
43. Any violations of this Stipulated Judgment may subject KB HOME to sanctions as provided by law. This Court retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Stipulated Judgment, or granting such other relief as this Court deems just and proper.

Dated this 24th day of November, 2015

STIPULATED AND AGREED TO BY:

ON BEHALF OF PLAINTIFF:

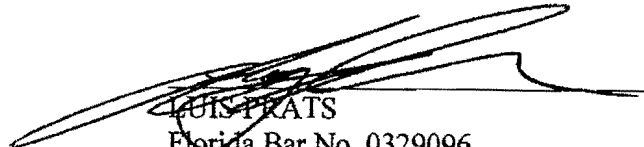
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ON BEHALF OF DEFENDANTS:

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KB HOME

By: 
BRIAN J. WORAM
Its: Executive Vice President

KB HOME FLORIDA LLC,

By: 
VINCENT P. DePORRE
Its: President

**KB HOME FLORIDA LLC,
KB HOME FORT MYERS LLC,
KB HOME TAMPA LLC,
KB HOME TREASURE COAST LLC,
KB HOME ORLANDO LLC,
KB HOME GOLD COAST LLC,
and KB HOME JACKSONVILLE LLC,**

By: 
VINCENT P. DePORRE
Its: Executive Vice President

ORDERED and ADJUDGED in Leon County, Florida this day of 10th Feb, 2016



Circuit Court Judge

2016 CA 300

Copies To:

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Suite 1000
Tampa, Florida 33607-5780
Attorneys for Defendants

EXHIBIT A
KB HOME CONTACT INFORMATION



Florida Divisions

Customer Service Emails & Phone Numbers

Division	Phone Number	Email Address
Jacksonville	904-596-6690	kbjaxcustserv@kbhome.com
Orlando	1-800-305-2246	OrlandoCustomerService@kbhome.com
Tampa	813-387-9600	TampaClaims@kbhome.com

EXHIBIT B
GENERAL WAIVER AND RELEASE OF CLAIMS

_____, individually and as a member of the _____ Association, to the fullest extent provided or allowed under Rule 1.221 Florida Rules of Civil Procedure and Chapter 718, Florida Statutes, releases KB HOME, its parent entities, subsidiaries, predecessors in interest, successors, assigns, officers, shareholders, members, employees, agents, consultants, insurers, sureties and attorneys in fact or at law, from any and all statutory warranties, common law warranties, actions, causes of actions, suits, proceedings, debts, dues, contracts, judgments, damages, claims, liability and demands, in law or in equity, arising out of or relating to: (i) the design, construction, repair, inspection, use, operation, maintenance, occupancy, or existence of the property; or (ii) any defect or deficiency affecting the property; or (iii) any damage to the property; or (iv) any loss or impairment of use of the property or any loss of rent or income; or (v) any diminution of value of the property; or (vi) any bond or insurance policy, which relates in any way to the property; or (vii) any conditions, circumstances, conduct, damages, loss, misrepresentations, fraud, concealment, deceit, acts, or omissions which were or could have been alleged; or (viii) any representation, communication, failure to communicate, disclosure, failure to disclose, act, omission, or conduct on the part of KB related to the property. This release does not affect statutory warranties, common law warranties, actions, causes of actions, suits, proceedings, debts, dues, contracts, judgments, damages, claims, liability and demands, in law or in equity, arising after the date of the release or resulting from latent defects in the property as of the date of this release.

It is expressly agreed and understood that this release is not intended to, nor does it, bar any additional claims made in accordance with paragraphs 12 and 13 or payments for restitution pursuant to that certain Stipulated Consent Decree and Final Judgment entered on [date], in the matter of [style] until [18 months from the date of Stipulated Judgment].