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14 Attorneys for Plaintiffs, SYLVESTER MAYA, OFER MASACHI, and all others
15 similarly situated,

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

18 SYLVESTER MAYA, OFER
19 MASACHI, as individuals and on
20 behalf of all others similarly situated,

21 Plaintiffs,

22 v.

23 CENTEX CORPORATION; CENTEX
24 HOMES CORPORATION; CENTEX
25 HOMES, A NEVADA GENERAL
26 PARTNERSHIP; CTX MORTGAGE
27 COMPANY; and DOES 1 through 10,
28 inclusive,

Defendants.

) Case No.: ED CV 09-1671 VAP (OPx)
) Judge: Hon. Virginia A. Phillips
) Original Complaint Filed: September 3, 2009

**CLASS ACTION:
FIRST AMENDED COMPLAINT**

- 1. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17200, ET SEQ.]
- 2. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17500, ET SEQ.]
- 3. FRAUD
- 4. NEGLIGENT MISREPRESENTATION
- 5. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

1 Plaintiffs Sylvester Maya and Ofer Masachi (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated (*i.e.*, the members of the Plaintiff Class described and
3 defined herein) allege as follows:

4 **I**

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction of this action under the Class Action
7 Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005). The amount in controversy
8 exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and there is
9 minimal diversity because certain members of the class are citizens of a different state
10 than any defendant as required by 28 U.S.C. § 1332(d)(2).

11 2. Venue as to Defendants is proper in this judicial district because Defendants
12 Centex Corporation; Centex Homes Corporation (hereinafter “Centex Homes”); Centex
13 Homes, a Nevada General Partnership (hereinafter “Centex Homes, NGP”); and CTX
14 Mortgage Company (hereinafter “CTX Mortgage”) all do substantial business in this
15 judicial district and some of the acts complained of occurred in this judicial district (the
16 collective Defendants will be referred to as “Defendants” or “Centex”).

17 **II**

18 **PARTIES**

19 3. Plaintiff Sylvester Maya is a resident of the county of San Bernardino, State
20 of California. He entered into a contractual relationship with Defendants in the county of
21 San Bernardino, State of California, and his home that is the subject of the purchase and
22 sale in this action is located in the county of San Bernardino, State of California.

23 4. Plaintiff Ofer Masachi is a resident of the county of San Bernardino, State of
24 California. He entered into a contractual relationship with Defendants in the county of
25 San Bernardino, State of California, and his home that is the subject of the purchase and
26 sale in this action is located in the county of San Bernardino, State of California.

27 5. Defendant Centex Corporation is the parent of all Centex Homes entities.
28 Centex Corporation is a home building and lending company with homeowner customers

1 in California as well as a number of other states. Centex Corporation is incorporated in
2 the state of Nevada and headquartered in the city of Dallas, State of Texas.

3 6. Defendant Centex Homes Corporation is the home building subsidiary of
4 Centex Corporation, and conducts substantial business in the state of California as well as
5 in other states. Centex Homes Corporation is incorporated in the state of Nevada and
6 headquartered in the city of Dallas, State of Texas..

7 7. Defendant Centex Homes, a Nevada General Partnership, is the home
8 building subsidiary of Centex Corporation in the western United States, and conducts
9 substantial business in the state of California as well as in other states. Centex Homes is
10 headquartered in the city of Dallas, State of Texas.

11 8. Defendant CTX Mortgage Company, is the mortgage and lending subsidiary
12 of Centex Corporation and conducts substantial business in the State of California as well
13 as in other states. CTX Mortgage Company is incorporated in the state of Nevada and
14 headquartered in the city of Dallas, State of Texas.

15 9. Based upon information and belief, Plaintiffs allege that at all times
16 mentioned herein, each and every Defendant was acting as an agent and/or employee of
17 each of the other Defendants, and at all times mentioned was acting within the course and
18 scope of said agency and/or employment with the full knowledge, permission, and
19 consent of each of the other Defendants. In addition, each of the acts and/or omissions of
20 each Defendant alleged herein were made known to, and ratified by, each of the other
21 Defendants.

22 10. Based on information and belief, each and every Defendant conspired
23 together to implement the unlawful practices described herein, and each Defendant did
24 thereafter take specific actions as alleged herein in furtherance of that conspiracy, thereby
25 causing the alleged damages to Plaintiffs and all others similarly situated.

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1 **III**

2 **GENERAL FACTUAL ALLEGATIONS**

3 11. The following general factual allegations are based upon information and
4 belief unless otherwise specified.

5 **A. Structure of Defendants' Business**

6 12. Defendants are in the business of developing, constructing, and selling new
7 houses. Centex Corporation, (hereinafter also referred to as "Parent Corporation") is a
8 publicly traded company and, through its subsidiaries, is one of the largest residential
9 homebuilders in the United States. In 2008, it was ranked as the 3rd largest homebuilder
10 by HousingZone.com based on revenue. Defendants have a very significant presence in
11 California and have sold thousands of homes in California.

12 13. Traditionally, builders such as Defendants would obtain raw land and build
13 houses on that property. Thereafter, separate and distinct companies would market and
14 sell the houses, provide lending to new buyers, obtain the appraisals of property, obtain
15 the insurance for the property, and obtain title services for the property.

16 14. Over time however, national builders such as Defendants conspired to
17 increase sales of their houses by offering the aforementioned auxiliary services (lending,
18 appraisals, insurance, title, etc.) through their own companies. Sometime prior to 2004,
19 Defendants expanded their home construction business to both market the houses to
20 prospective buyers and provide to the buyers the services necessary for purchase,
21 including real estate agent services, financing, and appraisals.

22 15. The organizational structure of the Parent Corporation was seamless. In
23 order to make sales, the Parent formed subsidiaries to develop, construct and sell the
24 houses. The Parent Corporation also set up a subsidiary mortgage company to facilitate
25 sales by acting as a temporary financing company for new buyers, thereby keeping all
26 major aspects of the sale within its control.

27 16. While the Defendant Parent Corporation set up a number of "subsidiary"
28 businesses, including Centex Homes Corporation, Centex Homes, a Nevada General

1 Partnership., and other LLC's and corporations to develop, construct, and sell houses; and
2 CTX Mortgage Company to finance new house sales, these businesses are separate
3 entities in name only. The Parent Corporation, and its directors, executives, and
4 management control and direct the subsidiary businesses so that these businesses have
5 few of the characteristics of a separate company, and instead have virtually all the
6 characteristics of a division that simply facilitates the implementation of the
7 homebuilding business of the Parent Corporation.

8 17. Based on information and belief, the Parent Corporation, through its
9 directors, executives, and management, sets and directs policy for the subsidiary
10 businesses which develop, construct and sell homes and plays an active role in each of
11 the subsidiaries. With respect to Centex Homes Corporation, Centex Homes, a Nevada
12 General Partnership, and the number of corporations and LLC's established to sell
13 houses, each of such businesses is directed and controlled by the Parent Corporation as
14 follows:

- 15 a. The Parent Corporation pays and directs employees and consultants who
16 find the new development sites where the subsidiary company will work
17 and do business;
- 18 b. The Parent Corporation creates the budgets, sales quotas, and business
19 plans for the new development sites where the subsidiary company will
20 work and do business;
- 21 c. The Parent Corporation provides the funding and employees to set up the
22 subsidiary to work on the new development site;
- 23 d. The Parent Corporation selects, directs, and controls the executive(s) that
24 manages the subsidiary that works on the development site;
- 25 e. The Parent Corporation establishes the compensation of the management
26 of the subsidiaries;
- 27 f. The Parent Corporation creates, monitors, and enforces sales quota and
28 business strategies for the subsidiaries' work on a development site;

- g. The Parent Corporation secures outside funding for the subsidiaries, with both parent corporation and subsidiaries having access to the financing, and jointly responsible for repayment of the financing;
- h. The Parent Corporation shares both physical and human resources between itself and subsidiaries as well as between different subsidiaries;
- i. The Parent Corporation directs and controls the marketing of its subsidiaries, including branding colors, logos, slogans, names, and web site marketing;
- j. The Parent Corporation fully controls profit from the subsidiaries and reports to shareholders, government entities, and the public the profit and loss earned by the subsidiaries as the Parent Corporation's profit and loss;
- k. Each subsidiaries revenue is almost exclusively from work performed for the Parent Corporation;
- l. The subsidiary building company performs the work of the Parent Corporation that is necessary to sell homes; and
- m. The subsidiary building company does not have a board of directors or management that is independent of the Parent Corporation.

18. Based on information and belief, the Parent Corporation, through its directors, executives and management, also sets and directs policy for the subsidiary businesses that provide temporary financing of the homes constructed and sold by the Parent Corporation and its subsidiaries. Subsidiary corporation Defendant CTX Mortgage Company is directed and controlled by the Parent Corporation as follows:

- a. The Parent Corporation sets policy for CTX Mortgage.
- b. The Parent Corporation obtains funding for CTX Mortgage;
- c. The Parent Corporation selects, directs, and controls the executive(s) who manage CTX Mortgage;

- d. The Parent Corporation establishes the compensation of the management of CTX Mortgage;
- e. The Parent Corporation shares both physical and human resources between itself and subsidiaries as well as between different subsidiaries;
- f. The Parent Corporation directs and controls the marketing of CTX Mortgage, including branding colors, logos, slogans, names, and web site marketing;
- g. CTX Mortgage shares the web site with the Parent Corporation;
- h. The Parent Corporation controls profit from CTX Mortgage and reports to shareholders, government entities, and the public the profit and loss earned by CTX Mortgage as the Parent Corporation's profit and loss;
- i. Each subsidiaries revenue is almost exclusively from work performed for the Parent Corporation;
- j. CTX Mortgage performs the work of the Parent Corporation that facilitates selling homes by provides financing services; and
- k. CTX Mortgage does not have an independent board of directors or management that is independent of the Parent Corporation.

19. Because of the business structure of the Parent Corporation and its subsidiaries, the Parent Corporation is legally responsible for not only its actions, but those of its subsidiaries. In addition, the subsidiaries are responsible for not only their acts, but of those of the other subsidiaries. To the extent the action of the Parent Corporation or subsidiary is found to be illegal as alleged in the complaint, the Parent Corporation and each subsidiary is jointly and severally liable for the conduct.

B. Use of the Business Structure to Implement a Scheme to Increase Profits and Executive Compensation

20. Beginning prior to 2004, Defendant Parent Corporation directed its subsidiaries to implement a scheme to increase the number of houses sold and to increase the amount of profit per sale.

1 21. The scheme was to convince government entities, then the community, and
2 finally buyers that Defendants were building a traditional neighborhood with stable
3 owners who occupied their homes and who were vested in the community and
4 neighborhood. Implicit in that marketing scheme was that Defendants were making a
5 good-faith effort to sell homes to buyers that they expected could afford to buy the
6 houses and would be stable neighbors.

7 22. However, in contrast to the way that Defendants were presenting their
8 developments to the government, community, and buyers, they set out to market to and
9 then finance unqualified buyers who posed an abnormally high risk of foreclosure in
10 order to increase both the number of sales and the price of houses in the same
11 neighborhoods in which Defendants were selling houses to traditionally qualified and
12 low-foreclosure-risk buyers. They also increased demand by selling to investors.
13 Defendant correctly anticipated that this would create “a buying frenzy” that artificially
14 increased demand and house prices, resulting in increased profits to Defendants.

15 23. Defendants accomplished this through sales quotas, benchmarks, high
16 pressure sales tactics, and then through tactics that would make it likely that buyers
17 would use Centex’s own mortgage company. In fact, CTX Mortgage originated loans for
18 about 65% of sales. After convincing buyers to use their mortgage company, Defendants
19 encouraged and assisted buyers in obtaining mortgages for which they were not qualified.
20 Defendants did this explicitly to sell more houses than they would have been able to sell
21 if only traditionally qualified buyers were buying their houses and to increase the profit
22 per house through the creation of an artificial housing demand.

23 24. Defendants were not willing to absorb the foreclosures that would result
24 from their providing financing to unqualified buyers. So as part of this scheme,
25 Defendants guaranteed the profit, without accepting the inevitable losses, by immediately
26 selling the loans they had underwritten to third-party banks and other financial entities.
27 These financing businesses then would often resell the loan, further isolating Defendants
28 from the likelihood of loss from the risky loans.

1 25. In an attempt to disguise that these loans were for unqualified and high
2 foreclosure risk borrowers, Defendants assisted and encouraged unqualified buyers to
3 appear as qualified buyers by:

- 4 a. allowing and encouraging buyers to provide inflated stated and
5 unverified income;
- 6 b. underwriting sub-prime loans for buyers with bad credit history;
- 7 c. not requiring any substantial down payment;
- 8 d. underwriting or securing piggyback loans for second mortgages so that
9 the buyers did not make any real down payment;
- 10 e. financing buyers in adjustable loans (interest only or below in many
11 cases) and qualifying these buyers on the artificially low initial payments;
- 12 f. providing cash “incentives” to buyers at the close of escrow if the buyers
13 used Defendants’ mortgage company to finance the house, thereby
14 eliminating the requirement that buyers pay closing costs; and
- 15 g. obtaining inflated appraisals.

16 26. By financing these unqualified buyers, Defendants knew, or should have
17 known, that they were filling neighborhoods with high-foreclosure-risk buyers
18 surrounding the traditionally qualified and low-foreclosure-risk buyers. Defendants
19 knew, or should have known, that a number of these unqualified buyers were counting on
20 house appreciation to transform them in the future from unqualified to qualified buyers.
21 As a result, these were high-foreclosure-risk buyers. Defendants also knew, or should
22 have known, that buyers requiring subprime loans due to bad credit history were high-
23 foreclosure-risk buyers. Defendants further knew, or should have known, that buyers
24 who were not financially vested in the house, because they did not have to make a
25 substantial down payment or pay closing costs, are much more likely to “walk away”
26 from the house with any downturn in housing prices, which made these buyers high-
27 foreclosure-risk buyers.

1 27. Defendants also sold houses to another group of buyers that constituted a
2 high foreclosure risk. While representing that they were developing a stable
3 neighborhood with owner-occupied houses and claiming to have procedures in place to
4 prevent “investors” from buying the houses, Defendants were selling houses to buyers
5 that it knew, or should have known, were investors who had no intention of occupying
6 the houses. These investors would then rent out the property thereby providing a
7 neighborhood that was not stable, contrary to what was represented in the marketing and
8 sales materials. Even more importantly, because the house was an investment and not a
9 home, these buyers were more likely to “walk away” from the house with any downturn
10 in housing prices, which made them high-foreclosure-risk buyers.

11 28. Defendants also knew, or should have known, that a neighborhood
12 containing a number of high-foreclosure-risk buyers was a materially important fact to
13 buyers of their houses. Foreclosures and short sales (a lender-agreed sale below the
14 principal of the loan) are devastating to both the value and desirability of a neighborhood.
15 Foreclosures resulting in bank sales and short sales are usually well below market value.
16 These foreclosure sales and short sales then become the new comparative sales values for
17 the neighborhood, which result in a vastly lower market rate. This, in turn, triggers yet
18 another round of foreclosures and short sales, resulting in a further decline in market
19 value. Soon this cycle results in price free-fall for the houses in the neighborhood,
20 materially affecting the value of those homes not subject to foreclosures or short sales.

21 29. A significant number of foreclosures and short sales also have a significant
22 effect on the desirability of a neighborhood. It results in abandoned houses; multiple
23 families living in one home; transient neighbors with no long-term ties to the
24 neighborhood; unfinished and unkempt yards; and, in some cases, increased crime.

25 30. Despite the knowledge that the neighborhood included, and would include in
26 the future, unqualified and high-foreclosure-risk home buyers, Defendants marketed and
27 expressly and/or implicitly represented that the homes they were selling were good
28 investments worth equal to or greater than the sales price; that the homes were not being

1 sold to investors; that the homes were being built as part of stable and desirable
2 neighborhoods.

3 31. Defendants also concealed and intentionally failed to disclose to prospective
4 buyers the fact that numerous houses in the neighborhoods were being purchased by
5 unqualified and high-foreclosure-risk buyers, despite Defendants' knowledge that this
6 could, and likely would over time, have a material negative effect on the value and
7 desirability of the house and neighborhood.

8 **C. Result of Scheme to Increase Profits and Increase Executive Compensation**

9 32. For several years this house of cards business scheme appeared not to have
10 victims. Defendants generated billions of dollars in sales and profit while the prices of
11 houses continued to rise in substantial part from the artificially inflated demand created
12 by unqualified and high-foreclosure-risk buyers.

13 33. As was inevitable, however, over time these unqualified and high-
14 foreclosure-risk buyers began to default on their loans leading to foreclosures and short
15 sales. These foreclosures and short sales of properties were significantly below market
16 value and depressed the value of the houses of the qualified and low-foreclosure-risk
17 buyers. A snowball effect of foreclosures and short sales then followed, each further
18 depressing the market value of the neighborhoods. This led to a catastrophic loss of
19 value to the homeowners, wiping out the life savings of homeowners who did everything
20 right.

21 34. As a result of Defendants' unlawful scheme, Plaintiffs and those similarly
22 situated were misled into purchasing homes they would not have purchased if there had
23 been proper disclosure. Both the practice itself of financing unqualified buyers, and the
24 failure to disclose that practice, resulted in Plaintiffs paying inflated purchase prices for
25 their houses. Through economic expert analysis and testimony, the damages to Plaintiffs
26 and those similarly situated as a result of Defendants' scheme are capable of being
27 ascertained, and will be ascertained and calculated separate and apart from devaluation
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1 resulting from other economic factors such as unemployment trends and general market
2 fluctuations.

3 35. While the scheme has had devastating effects on Plaintiffs, the Defendants,
4 their shareholders and the executives and management of each Defendant individually
5 benefitted from these practices. Based on information and belief, the prospect of
6 excessive and unconscionable compensation led to and contributed to, inter alia,
7 decisions by such executives which resulted in the actions complained of herein.

8 36. All Defendants are collectively liable for civil conspiracy for each of the
9 unlawful practices and claims alleged, including, but not limited to the following:

- 10 a. Defendant Centex Corporation, created the scheme and directed each of
11 its subsidiaries to carry out the scheme in furtherance of its goal of
12 increasing profit for the Parent Corporation;
- 13 b. Centex Corporation, directed the practice that led Defendant CTX
14 Mortgage to engage in unlawful and reckless lending practices;
- 15 c. Centex Corporation, directed the practices of Defendant Centex Homes
16 and Centex Homes, NGP, relating to sales quotas, benchmarks, sales
17 practices, and disclosures that resulted in the unlawful concealment from
18 buyers of the presence of high-foreclosure-risk homeowners in the
19 neighborhood;
- 20 d. Centex Corporation, received the profit from increased sales and higher
21 prices per house from those concealed actions that artificially created a
22 “buying frenzy” from unqualified buyers and investors, misleading
23 traditionally qualified homebuyers into purchasing houses at inflated
24 prices, and causing the subsequent massive foreclosures which resulted in
25 tremendous devaluation of the houses, thereby damaging Plaintiffs and
26 those similarly situated; and
- 27 e. At all times, each Defendant was aware of the practices in furtherance of
28 the scheme of each of the other Defendants.

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IV

PLAINTIFFS' FACTUAL ALLEGATIONS

37. In or about November 2005, Plaintiff Sylvester Maya bought a new house located in the county of San Bernardino, California from Defendant Centex Homes, a Nevada General Partnership. Plaintiff put a down payment of about 20% on the house. He was provided marketing materials that depicted the community as a stable, family based neighborhood. Those marketing materials did not adequately disclose the different Centex subsidiaries. He was not advised, and did not know, that other buyers in the community were sold homes using subprime loans and were not qualified buyers. He was also not advised, and did not know, that Defendants were selling homes in his neighborhood to investors. Since the purchase of his house, there have been a number of rentals, short-sales, and foreclosures in his neighborhood.

38. In or about November 2005, Plaintiff Ofer Masachi bought a new house located in the county of San Bernardino, California from Defendant Centex Homes. Plaintiff put a down payment of about 25% on the house. He financed the house through CTX Mortgage. He was provided marketing materials that depicted the community as a stable, family based neighborhood. Those marketing materials did not adequately disclose the different Centex subsidiaries. He was not advised, and did not know, that other buyers in the community were sold homes using subprime loans and were not qualified buyers. He was also not advised, and did not know, that Defendants were selling homes in his neighborhood to investors. Since the purchase of his house, there have been a number of rentals, short-sales, and foreclosures in his neighborhood.

39. Based on information and belief, Plaintiffs and all class members:
- a. were provided brochures, business cards, and access to a web site that identified the seller as Centex without adequately distinguishing between the Defendant home building companies and subsidiaries;

- 1 b. were offered financial incentives by Centex to use CTX Mortgage to
2 finance the purchase of their houses , resulting in the majority of
3 purchasers financing through CTX Mortgage.
- 4 c. that did not use CTX Mortgage to finance their house, were required to,
5 and did in fact, provide financial information to Centex that allowed it to
6 have sufficient information to determine whether the buyer was a sub-
7 prime buyer or investor;
- 8 d. who financed their houses through Centex were provided an appraiser
9 selected by Defendants. The appraiser selected by CTX Mortgage was
10 dependent on CTX Mortgage for a large percentage of its business and,
11 therefore, was pressured to provide appraisals that met or exceeded the
12 sales prices Centex was able to obtain for its houses. The appraisals of
13 Plaintiffs' houses were inflated.

14 40. Plaintiffs further allege based on information and belief paragraphs 41-50.

15 41. Defendants represented to Plaintiffs and all class members that it was
16 Centex' policy not to sell homes to investors. Centex represented that it discourages
17 speculation and to provide a stabilized community, Centex intended to sell homes only to
18 people who will occupy them.

19 42. Defendants represented to Plaintiffs and all class members that Centex
20 communities were good investments and the value of the house was at least as high as the
21 sales price.

22 43. Defendants represented to Plaintiffs and all class members that Centex
23 developments were stable, family neighborhoods occupied by owners of the homes.

24 44. By using its own mortgage company, Defendants were able to sell the
25 majority of their houses largely isolated from any neutral real estate business.

26 45. The process for the purchase of Plaintiffs' houses was typical of how
27 Defendants processed most of their sales.

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1 46. At the time Defendants sold the houses to Plaintiffs, Defendants had sold
2 houses, and planned to and did sell houses in the future, to unqualified and high-
3 foreclosure-risk buyers, as well as professional investors that were not owner-occupiers
4 of the houses.

5 47. While Defendants provided Plaintiffs and all class members certain
6 disclosures before or at the time of sale, they did not provide Plaintiffs and all class
7 members with any disclosure that Defendants had sold houses, and would sell houses in
8 the future, to unqualified and high-foreclosure-risk buyers. Defendants also did not
9 disclose that they had sold houses, and planned to sell houses in the future, to investors
10 who would not occupy the houses.

11 48. Plaintiffs were unaware at the time of purchase of the houses that
12 Defendants had sold houses, and planned to sell houses in the future, in their
13 neighborhoods to unqualified and high-foreclosure-risk buyers, as well as professional
14 investors that were not owner-occupiers of the houses. Plaintiffs did not become aware
15 of such actions until well within two years prior to filing of the subject complaint, and
16 there was no reasonable way Plaintiffs would have learned the information earlier than
17 that.

18 49. Such disclosures were material to Plaintiffs and all class members in that
19 they related both to the value of their houses and the desirability of the properties. If
20 Defendants had made such disclosures, Plaintiffs would not have purchased the houses
21 from Defendants and/or would not have paid an inflated price for the house.

22 50. As a result of the conduct of Defendants, Plaintiffs paid inflated prices for
23 their houses. The Centex neighborhoods where Plaintiffs live have had a number of
24 foreclosures and short sales that have resulted in a substantial loss of value to the
25 surrounding homes; a loss much greater than if their houses had been located in a
26 neighborhood where Defendants' scheme of selling to unqualified and high-foreclosure-
27 risk buyers did not occur. The desirability of Plaintiffs' properties and the Centex
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1 neighborhoods has been drastically altered and reduced as a direct result of the
2 foreclosures, short sales, and investor-owned properties.

3 V

4 **CLASS ACTION ALLEGATIONS**

5 51. Plaintiffs initially propose a nationwide class. The “Class” is defined as
6 follows:

7 All Centex Homes customers who purchased a new Centex Homes house
8 from January 1, 2004, through December 31, 2006, and put 20% or more
9 down toward the purchase of the house.

10 Excluded from the above class are any entities in which Defendants have a controlling
11 interest, officers or directors of Defendants, and any customers who have brought
12 individual lawsuits arising from the same allegations against Defendants.

13 52. If the Court determines that a nationwide class is not warranted, Plaintiffs
14 request, in the alternative, certification of a California class of new Centex Homes
15 customers whose homes are located in California.

16 53. This action is brought as a class action and may properly be so maintained
17 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
18 Plaintiffs reserve the right to modify the class definitions and the class period based on
19 the results of discovery.

20 54. **Numerosity of the Class** – The members of the Class are so numerous that
21 their individual joinder is impracticable. Plaintiffs are informed and believe that there are
22 thousands of customers in the class. Because the class members may be identified
23 through business records regularly maintained by Defendants and their employees and
24 agents, and through the media, the number and identities of class members can be
25 ascertained. Members of the Class can be notified of the pending action by e-mail, mail,
26 and supplemented by published notice, if necessary.

27 55. **Existence and Predominance of Common Questions of Fact and Law** –
28 There are questions of law and fact common to the Class. These questions predominate

1 over any questions affecting only individual class members. These common legal and
2 factual issues include, but are not limited to:

- 3 a. whether Defendants engaged in the alleged scheme as set forth
4 throughout this First Amended Complaint;
- 5 b. whether Defendants' policy and practice - which was in place prior to
6 and throughout the class period - of selling homes to high foreclosure risk
7 buyers is material to the value and quality of life for buyers of houses in
8 that neighborhood;
- 9 c. whether a neighborhood having, or expected to have, a high number of
10 unqualified and high-foreclosure-risk owners of houses is material to the
11 value and quality of life for buyers of houses in that neighborhood;
- 12 d. whether Defendants concealed and failed to disclose to the Class
13 members that the neighborhoods where they were buying their houses
14 had, or were expected to have, a high number of unqualified and high-
15 foreclosure-risk owners that could materially and negatively affect the
16 value of the house and quality of life for buyers of the houses;
- 17 e. whether the alleged scheme resulted in inflated prices of the houses
18 purchased by Plaintiffs;
- 19 f. whether the alleged scheme resulted in foreclosures and short sales in the
20 Class members' neighborhoods;
- 21 g. whether such foreclosures and short sales resulted in a material decrease
22 in the value of the houses purchased by the Class members;
- 23 h. whether such foreclosures and short sales resulted in loss of quality of
24 life for the owners in the neighborhood;
- 25 i. whether Defendants made uniform misrepresentations to the class
26 members relating to value, existence of investors and desirability of the
27 neighborhood; and
28

1 j. whether Defendants' conduct as described above constitutes violations of
2 the causes of action set forth below.

3 56. **Typicality** – The claims of the representative Plaintiffs are typical of the
4 claims of the members of the Class. Plaintiffs, like all other members of the Class, have
5 sustained damages arising from Defendants' violations of the laws, as alleged herein.
6 The representative Plaintiffs and the members of the Class were and are similarly or
7 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive
8 pattern of misconduct engaged in by Defendants.

9 57. **Adequacy** – The representative Plaintiffs will fairly and adequately
10 represent and protect the interests of the Class members and has retained counsel who are
11 experienced and competent trial lawyers in complex and class action litigation. There are
12 no material conflicts between the claims of the representative Plaintiffs and the members
13 of the Class that would make class certification inappropriate. Counsel for the Class will
14 vigorously assert the claims of all Class members.

15 58. **Predominance and Superiority** – This suit may be maintained as a class
16 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact
17 common to the Class predominate over the questions affecting only individual members
18 of the Class and a class action is superior to other available means for the fair and
19 efficient adjudication of this dispute. The damages suffered by individual class members,
20 while substantial, are small compared to the burden and expense of individual
21 prosecution of the complex and very expensive litigation needed to address Defendants'
22 conduct. Even if class members themselves could afford such individual litigation, the
23 court system would be overwhelmed by the individual lawsuits. In addition,
24 individualized litigation increases the delay and expense to all parties and to the court
25 system resulting from the complex legal and factual issues of this case. Individualized
26 litigation also presents a potential for inconsistent or contradictory judgments. By
27 contrast, the class action device presents far fewer management difficulties; allows the
28 hearing of claims which might otherwise go unaddressed because of the relative expense

1 of bringing individual lawsuits; and provides the benefits of single adjudication,
2 economies of scale, and comprehensive supervision by a single court.

3 59. The Class Plaintiffs contemplate the eventual issuance of notice to the
4 proposed Class members setting forth the subject and nature of the instant action. Upon
5 information and belief, Defendants' own business records and electronic media can be
6 utilized for the contemplated notices. To the extent that any further notices may be
7 required, the Class Plaintiffs would contemplate the use of additional media and/or
8 mailings.

9 60. In addition to meeting the statutory prerequisites to a Class Action, this
10 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
11 Rules of Civil Procedure, in that:

- 12 a. Without class certification and determination of declaratory,
13 injunctive, statutory, and other legal questions within the class format,
14 prosecution of separate actions by individual members of the Class
15 will create the risk of:
 - 16 i. Inconsistent or varying adjudications with respect to individual
17 members of the Class which would establish incompatible
18 standards of conduct for the parties opposing the Class; or
 - 19 ii. Adjudication with respect to individual members of the Class
20 which would as a practical matter be dispositive of the interests
21 of the other members not parties to the adjudication or
22 substantially impair or impede their ability to protect their
23 interests;
- 24 b. The parties expected to oppose the Class have acted or refused to act
25 on grounds generally applicable to each member of the Class, thereby
26 making appropriate final injunctive or corresponding declaratory
27 relief with respect to the Class as a whole; or
- 28 c. Common questions of law and fact exist as to the members of the

1 Class and predominate over any questions affecting only individual
2 members, and a Class Action is superior to other available methods of
3 the fair and efficient adjudication of the controversy, including
4 consideration of:

- 5 i. The interests of the members of the Class in individually
6 controlling the prosecution or defense of separate actions;
- 7 ii. The extent and nature of any litigation concerning the
8 controversy already commenced by or against members of the
9 Class;
- 10 iii. The desirability or undesirability of concentrating the litigation
11 of the claims in the particular forum;
- 12 iv. The difficulties likely to be encountered in the management of a
13 Class Action.

14 **FIRST CAUSE OF ACTION**

15 **Violation of Cal. Bus. & Prof. Code § 17200 *et seq.* – Unlawful, Fraudulent, and**
16 **Unfair Business Act and Practices**
17 **(Against all Defendants)**

18 61. Plaintiffs incorporate by reference and re-allege all paragraphs previously
19 alleged herein.

20 62. Defendants' acts and practices as described herein constitute unlawful,
21 fraudulent, and unfair business acts and practices, in that (1) Defendants' practices, as
22 described herein, violate each of the statutes set forth within this Complaint, and/or
23 (2) the justification for Defendants' conduct is outweighed by the gravity of the
24 consequences to Plaintiffs and members of the Class, and/or (3) Defendants' conduct is
25 immoral, unethical, oppressive, unscrupulous, unconscionable, or substantially injurious
26 to Plaintiffs and members of the Class, and/or (4) the uniform conduct of Defendants has
27 a tendency to deceive Plaintiffs and the members of the Class.
28

1 63. Defendants were sellers of the houses. Defendants were also the real estate
2 brokers and salespersons of the houses and, as such, the agents of one another. An owner
3 of a property and its agents are legally obligated to disclose to the buyer of a house all
4 facts materially affecting the value or desirability of the property. Cal. Civ. Code §§
5 1102.1 and 2079. Based on information and belief, most states where Defendants sold
6 houses had similar disclosure requirements.

7 64. The disclosures must be made in good faith and waiver is against public
8 policy.

9 65. The existence or expected existence of a number of unqualified and high-
10 foreclosure-risk homeowners in the neighborhood was a material fact affecting the value
11 and desirability of the houses that Plaintiffs and the Class members were sold by
12 Defendants.

13 66. Based on information and belief, Defendants had actual and constructive
14 knowledge of the financial condition and financing tools utilized by the buyers of its
15 houses. Defendants had this knowledge primarily through utilization of its mortgage
16 subsidiary, CTX Mortgage, to finance a high percentage of the buyers. Even for buyers
17 that utilized other financial institutions, before Defendants would enter into a purchase
18 agreement, Defendants required these buyers to provide “qualifying” financial
19 information that provided Defendants with knowledge that these buyers were likely
20 subprime buyers and/or investors.

21 67. Defendants not only knew about the existence of unqualified and high-
22 foreclosure-risk homeowners in the neighborhood, but had in fact facilitated and assisted
23 those buyers in obtaining financing through the mortgage arm of their business. In
24 processing the mortgages of unqualified and high-foreclosure-risk borrowers, Defendant
25 CTX Mortgage processed loans for buyers that falsified and inflated unverified income,
26 offending the legislative intent regarding income verification, as set forth in 66 Fed. Reg.
27 65604-01 (2001).

28

1 68. Defendants failed to disclose and did conceal this fact from Plaintiffs and
2 Class members. These facts were material. Plaintiffs and Class members either would
3 have not paid the inflated price or would not have purchased the homes at all from
4 Defendants if there had been proper disclosures regarding the existence of unqualified
5 and high-foreclosure-risk homeowners in the neighborhoods. A reasonable consumer
6 during the class period would have expected that these new development neighborhoods
7 would not have a substantial presence of high-foreclosure risk buyers. As a direct and
8 legal result of Defendants' conduct, Plaintiffs and Class members have been damaged.

9 69. Therefore, Defendants' conduct is: 1) unlawful because it violates California
10 Civil Code §§ 2079 and 1710; 2) fraudulent because Defendants concealed material facts
11 which they had a duty to disclose; and 3) unfair because it offends legislative policy and
12 the good faith requirement regarding disclosures, as set forth in California Civil Code
13 §§ 1102.1 and 1102.7, and offends the legislative intent regarding income verification as
14 set forth in 66 F.R. 65604-01 .

15 70. In addition to the above, the conduct as alleged throughout the First
16 Amended Complaint constitutes misrepresentation, deceit, fraud, unconscionability, and
17 breach of the implied covenant of good faith and fair dealing, that not only result in
18 liability as individual causes of action, but also provide the basis for a finding of liability
19 under California Business and Professions Code § 17200, *et seq.*

20 71. Plaintiffs and the Class members, and each of them, have been damaged by
21 said practices.

22 72. The conduct of Defendants as described herein violates California Business
23 and Professions Code § 17200, *et seq.*, and other similar state unfair competition and
24 unlawful business practices statutes.

25 73. Pursuant to California Business and Professions Code §§ 17200 and 17203,
26 Plaintiffs, on behalf of themselves and all others similarly situated, seek relief as prayed
27 for below.

28

1 **SECOND CAUSE OF ACTION**

2 **Violation of Cal. Bus. & Prof. Code § 17500 *et seq.* – False Advertising**

3 **(Against all Defendants)**

4 74. Plaintiffs incorporate by reference and re-allege all paragraphs previously
5 alleged herein.

6 75. As alleged herein, Defendants provided to the Plaintiffs and the class
7 members false and misleading standardized representations and advertisements regarding
8 the value of the house sold; the sales practice of selling to investors; and the desirability
9 of the neighborhood where the house was sold.

10 76. These representations and advertisements were material to Plaintiffs.

11 77. As a result, Plaintiffs and the Class members justifiably relied on such
12 representations and advertisements and were damaged as a result.

13 78. Plaintiffs, on behalf of themselves and the Class, seek relief as prayed for
14 below.

15 **THIRD CAUSE OF ACTION**

16 **Fraud**

17 **(Against all Defendants)**

18 79. Plaintiffs incorporate by reference and re-allege all paragraphs previously
19 alleged herein.

20 80. The misrepresentations, nondisclosure, and/or concealment of material facts
21 made by Defendants to Plaintiffs and the members of the Class, as set forth above, were
22 known by Defendants to be false and material and were intended by Defendants to
23 mislead Plaintiffs and the members of the Class.

24 81. Defendants had a duty to disclose these material facts, pursuant to California
25 Civil Code §§ 2079(a) and 1102.1.

26 82. Plaintiffs and the Class members were actually misled and deceived and
27 were induced by Defendants to purchase homes.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
3 relief as follows:

4 A. For an order certifying the nationwide Class and appointing Plaintiffs and
5 their counsel to represent the Class;

6 B. Alternatively, if the Court does not grant certification of the nationwide
7 Class, Plaintiffs pray for an order certifying a California Class, and appointing Plaintiffs
8 and their counsel to represent the Class;

9 C. For an order awarding Plaintiffs and the Class restitution and/or
10 disgorgement of profits and other equitable relief as the Court deems proper;

11 D. For an order awarding Plaintiffs and the Class compensatory damages under
12 the appropriate causes of action, that may include one or more of the following:

- 13 1. The difference in value between what the Plaintiffs paid and what he/she
14 received, measured at the time of sale, pursuant to California Civil Code
15 § 3343;
- 16 2. The option to rescind the contract;
- 17 3. Ongoing diminished value of property; and
- 18 4. loss of enjoyment of the property

19 E. For an order awarding Plaintiffs and the Class punitive damages as to the
20 appropriate cause of action;

21 F. For an order enjoining Defendants:

- 22 1. under California Business and Professions Code § 17203 from
23 continuing to engage in business acts and practices, or any of them,
24 which are unlawful, unfair, or fraudulent, as alleged herein;
- 25 2. under California Business and Professions Code § 17535 from
26 continuing to engage in the dissemination of advertisements which are
27 untrue or misleading, alleged herein; and
28


1 3. from providing mortgage services or financing to buyers purchasing
2 homes from Defendants.

3 G. For an order awarding Plaintiffs and the Class pre-judgment and post-
4 judgment interest, as well as reasonable attorneys' and expert-witness fees and other
5 costs, pursuant to California Code of Civil Procedure § 1021.5, and other statutes as may
6 be applicable; and

7 H. For an order awarding such other and further relief as this Court may deem
8 just and proper.

9 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP

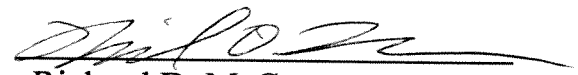
10
11 BY: 
12 Richard D. McCune
13 Attorney for Plaintiffs

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

16
17 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP

18
19
20 BY: 
21 Richard D. McCune
22 Attorney for Plaintiffs
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26
27
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