

1 Richard D. McCune (#132124)
rdm@mccunewright.com
2 David C. Wright (#177468)
dcw@mccunewright.com
3 Jae (Eddie) K. Kim (#236805)
jkk@mccunewright.com
4 MCCUNEWRIGHT LLP
5 2068 Orange Tree Lane, Suite 216
Redlands, California 92374
6 Ph: (909) 557-1250 / F: (909) 557-1275

7 Mitchell M. Breit (*Pro Hac Vice*)
mbreit@hanlyconroy.com
8 Andrea Bierstein (*Pro Hac Vice*)
abierstein@hanlyconroy.com
9 Jayne Conroy (*Pro Hac Vice*)
jconroy@hanlyconroy.com
10 HANLY CONROY BIERSTEIN
11 SHERIDAN FISHER & HAYES LLP
12 112 Madison Avenue
New York, New York 10016-7416
13 Ph: (212) 784-6400 / F: (212) 213-5949

Derek Y. Brandt (*Pro Hac Vice*)
dbrandt@simmonsfirm.com
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC
One Court Street
Alton, Illinois 62002
Ph: (618) 259-2222
F: (618) 259-2251

14 Attorneys for Plaintiff REMEDIOS MARTINEZ, and all others similarly situated,
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 REMEDIOS MARTINEZ, as an individual
18 and on behalf of all others similarly
situated,

19 Plaintiff,

20 v.

21 D.R. HORTON, INC.; and DOES 1
22 through 10 inclusive.

23 Defendants.

Case No.: ED CV 09-1672 VAP (DTBx)
Judge: Hon. Virginia A. Phillips

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Date: January 30, 2012
Time: 2:00 p.m.
Courtroom: 2

Original Complaint Filed: 9/3/2009
Second Amended Complaint Filed:
12/2/2011

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Murphy v. DirecTV,
No. 07-06465, 2011 WL 3328393 (C.D. Cal. Feb. 11, 2011)..... 3

Neilson v. Union Bank of California, N.A.,
290 F. Supp. 2d 1101 (C.D. Cal. Oct. 20, 2003) 3

1 Plaintiff Remedios Martinez, as an individual and on behalf of all others
2 similarly situated (“Plaintiff”), submits this Memorandum of Points and Authorities
3 in Opposition to Defendants’ Motion to Strike Portions of Plaintiff’s Second
4 Amended Complaint (“SAC”).

5 As further designated below, Plaintiff in this action incorporates herein by
6 reference certain sections, including arguments and authority, from the
7 Memorandum of Points & Authorities in Opposition to Defendants’ Motion to
8 Strike Portions of Plaintiffs’ Second Amended Complaint (“Opposition to Motion
9 to Strike”) filed concurrently by the plaintiffs in *Stephens v. Lennar Corp.*, No. ED
10 CV 09-1668 VAP (DTBx), also pending before this Court. Plaintiffs also
11 incorporate herein by reference one section, including arguments and authority,
12 from the Opposition to Motion to Strike filed concurrently in *Maya v. Centex*
13 *Corporation*, No. ED CV 09-1671 VAP (DTBx), also pending before this Court.¹

14 **I. INTRODUCTION**

15 Plaintiff incorporates herein by reference the Introduction section of the
16 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
17 ED CV 09-01668 VAP (DTBx), also pending before this Court.²

18 **II. LEGAL STANDARD**

19 Plaintiff incorporates herein by reference the Legal Standard section of the
20 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
21 ED CV 09-01668 VAP (DTBx), also pending before this Court.

22
23
24 ¹ Where incorporated sections of the *Stephens v. Lennar* or *Maya v. Centex*
25 Oppositions contain references or citations to the Second Amended Complaint in
26 those cases, Plaintiff incorporates by reference herein the corresponding and
substantially similar allegations of his own Second Amended Complaint, the
“Martinez SAC.” Should the Court prefer precise citations to paragraphs in the
Martinez SAC, Plaintiff can provide those citations.

27 ² D.R. Horton incorporates all portions of its motion to dismiss into its motion to
28 strike. *See Horton Br.* at 1. Accordingly, Plaintiff also incorporates herein by
reference the entirety of his opposition to Horton’s motion to dismiss.

1 **III. ARGUMENT**

2 **A. DEFENDANTS’ MOTION TO STRIKE OR “NARROW” PRAYERS FOR**
3 **RELIEF SHOULD BE DENIED**

4 Horton argues that Plaintiff’s request for injunctive relief (*Martinez SAC*
5 Prayer F.3) should be stricken and that, unless class allegations are stricken in their
6 entirety, other prayers for relief should be narrowed. (Horton Br. at 5-6.) Plaintiff
7 incorporates herein by reference Argument Section III.A. of the Opposition to
8 Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No. ED CV 09-
9 01668 VAP (DTBx), also pending before this Court. Plaintiff also incorporates
10 herein by reference Argument Section III.A. of the Opposition to Motion to Strike
11 filed concurrently in *Maya v. Centex Corporation*, No. ED CV 09-1671 VAP
12 (DTBx), also pending before this Court. The *Maya* opposition contains the lead
13 opposition to the motion by several defendants to strike Plaintiffs’ prayer for
14 punitive damages.

15 **B. DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S DIMINISHED-VALUE**
16 **AND DIMINISHED-DESIRABILITY ALLEGATIONS SHOULD BE DENIED**

17 Plaintiff incorporates herein by reference Argument Section III.B. of the
18 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
19 ED CV 09-01668 VAP (DTBx), also pending before this Court.

20 **C. DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S CLASS ALLEGATIONS**
21 **SHOULD BE DENIED**

22 Plaintiff incorporates herein by reference Argument Section III.C. of the
23 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
24 ED CV 09-01668 VAP (DTBx), also pending before this Court.

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1 **D. DEFENDANTS’ MOTION TO STRIKE EXECUTIVE COMPENSATION**
2 **ALLEGATIONS SHOULD BE DENIED**

3 Plaintiff incorporates herein by reference Argument Section III.D. of the
4 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
5 ED CV 09-01668 VAP (DTBx), also pending before this Court.

6 In support of its argument to strike Plaintiff’s allegations regarding executive
7 compensation, D.R. Horton cites *Neilson v. Union Bank of California, N.A.*, 290 F.
8 Supp. 2d 1101, 1153 (C.D. Cal. Oct. 20, 2003). *Neilson*, though, is distinguishable.
9 The ostensible “motive allegation” stricken from the complaint in *Neilson* was, in
10 fairness, not really about motive although it was particularly inflammatory. The
11 allegation posed a rhetorical question about why the defendant bank acted as it did
12 and responded “*The Banks’ motive: GREED.*” *Id.* (Emphasis in original).
13 Plaintiff’s allegations in this case, on the other hand, are hardly comparable.
14 *Martinez* SAC ¶ 53 sets out in a matter-of-fact manner an allegation of publicly-
15 available information relating to the motive behind the scheme carried out by
16 Defendants. Nor is this allegation “scandalous” under Rule 12(f) as it is in no way
17 “defamatory” and it does not “unnecessarily reflects on the moral character of an
18 individual or states anything in repulsive language that detracts from the dignity of
19 the court.” *See Murphy v. DirecTV*, No. 07-06465, 2011 WL 3328393, at *1 (C.D.
20 Cal. Feb. 11, 2011) (citations omitted).

21 **E. PLAINTIFF SHOULD BE GRANTED LEAVE TO AMEND IF NECESSARY**

22 Plaintiff incorporates by reference herein Argument Section III.E. of the
23 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
24 ED CV 09-01668 VAP (DTBx), also pending before this Court.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendants' motion to strike should be denied in
3 its entirety.

4 Dated: January 9, 2012

SIMMONS BROWDER GIANARIS ANGELIDES &
BARNERD LLC

7 By: /s/ Derek Y. Brandt
8 Derek Y. Brandt (*pro hac vice*)
9 Attorneys for Plaintiff

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