

2009 DEC 21 PM 2:51
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

FILED

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 Phone: (909) 557-1250 / Fax: (909) 557-1275

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

Derek Y. Brandt (*Pro Hac Vice* Pending)
dbrandt@simmonsfirm.com
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC
707 Berkshire Boulevard
East Alton, Illinois 62024
Phone: (618) 259-2222
Fax: (618) 259-2251

14 Attorneys for Plaintiff, REMEDIOS MARTINEZ, and all others similarly situated,

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

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

20 Plaintiff,

21 v.

22 D. R. HORTON, INC.; DHI
23 MORTGAGE COMPANY GP, INC.,
and DOES 1 through 10 inclusive,

24 Defendants.

} Case No.: ED CV 09-1672 VAP (DTBx)
} 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 Plaintiff Remedios Martinez (“Plaintiff”), on behalf of herself and all others
2 similarly situated (*i.e.*, the members of the Plaintiff Class described and defined herein)
3 alleges 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 D. R. Horton, Inc., and DHI Mortgage Company GP, Inc. (hereinafter “DHI Mortgage”)
13 all do substantial business in this judicial district and some of the acts complained of
14 occurred in this judicial district (the collective Defendants will be referred to as
15 “Defendants” or “D.R. Horton”).

16 **II**

17 **PARTIES**

18 3. Plaintiff Remedios Martinez is a resident of the county of Riverside, State of
19 California. She entered into a contractual relationship with Defendants in the county of
20 Riverside, State of California, and her home that is the subject of the purchase and sale in
21 this action is located in the county of Riverside, State of California.

22 4. Defendant D. R. Horton, Inc., is the parent of all D. R. Horton entities. D.
23 R. Horton, Inc., is a home building and lending company with homeowner customers in
24 California as well as a number of other states. D. R. Horton, Inc., is incorporated in the
25 state of Delaware and headquartered in the city of Fort Worth, State of Texas.

26 5. Defendant DHI Mortgage Company GP, Inc., is the mortgage and lending
27 subsidiary of D. R. Horton, Inc., and conducts substantial business in the state of
28

1 California as well as in other states. DHI Mortgage Company GP, Inc., is incorporated in
2 the state of Delaware and headquartered in the city of Forth Worth, State of Texas.

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

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

14 III

15 GENERAL FACTUAL ALLEGATIONS

16 8. The following general factual allegations are based upon information and
17 belief unless otherwise specified.

18 A. Structure of Defendants' Business

19 9. Defendants are in the business of developing, constructing, and selling new
20 houses. D. R. Horton, Inc., (hereinafter also referred to as "Parent Corporation") is a
21 publicly traded company and, through its subsidiaries, is the largest residential
22 homebuilders in the United States. In 2008, it was ranked as the number one largest
23 homebuilder by HousingZone.com based on revenue. From 2004 to 2006, Defendants
24 reported that they had closed a total of 149,534 houses throughout Delaware, Georgia,
25 Illinois, Maryland, Minnesota, New Jersey, New York, North Carolina, Pennsylvania,
26 South Carolina, Virginia, Wisconsin, Alabama, Florida, Louisiana, Oklahoma, Texas,
27 Arizona, Colorado, New Mexico, Utah, California, Nevada, Hawaii, Idaho, Oregon, and
28

1 Washington. Defendants have a very significant presence in California, having sold
2 15,555 in California between 2005 and 2006.

3 10. Traditionally, builders such as Defendants would obtain raw land and build
4 houses on that property. Thereafter, separate and distinct companies would market and
5 sell the houses, provide lending to new buyers, obtain the appraisals of property, obtain
6 the insurance for the property, and obtain title services for the property.

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

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

18 13. While the Defendant Parent Corporation set up a number of “subsidiary”
19 businesses, including D. R. Horton local homebuilding subsidiaries, and other LLC’s and
20 corporations to develop, construct, and sell houses; and DHI Mortgage Company GP,
21 Inc., to finance new house sales, these businesses are separate entities in name only. The
22 Parent Corporation, and its directors, executives, and management control and direct the
23 subsidiary businesses so that these businesses have few of the characteristics of a separate
24 company, and instead have virtually all the characteristics of a division that simply
25 facilitates the implementation of the homebuilding business of the Parent Corporation.

26 14. Based on information and belief, the Parent Corporation, through its
27 directors, executives, and management, sets and directs policy for the subsidiary
28 businesses which develop, construct and sell homes and plays an active role in each of

1 the subsidiaries. With respect to D. R. Horton local homebuilding subsidiaries, and the
2 number of corporations and LLC's established to sell houses, each of such businesses is
3 directed and controlled by the Parent Corporation as follows:

- 4 a. The Parent Corporation provides oversight and thereby directs for each
5 subsidiary, capital allocation, approval and funding of all land and lot
6 purchases, financing, and accounting;
- 7 b. The Parent Corporation creates and enforces the budgets, sales quotas,
8 and business plans to be implemented by subsidiaries;
- 9 c. The Parent Corporation selects, directs, and controls the executive(s) that
10 manages the subsidiary that works on the development site;
- 11 d. The Parent Corporation establishes the compensation of the management
12 of the subsidiaries;
- 13 e. The Parent Corporation secures outside funding for the subsidiaries, with
14 both Parent Corporation and subsidiaries having access to the financing
15 and jointly responsible for repayment of the financing;
- 16 f. The Parent Corporation shares both physical and human resources
17 between itself and subsidiaries as well as between different subsidiaries;
- 18 g. The Parent Corporation directs and controls the marketing of its
19 subsidiaries, including branding colors, logos, slogans, names, and web
20 site marketing;
- 21 h. The Parent Corporation fully controls profit from the subsidiaries and
22 reports to shareholders, government entities, and the public the profit and
23 loss earned by the subsidiaries as the Parent Corporation's profit and
24 loss;
- 25 i. Each subsidiaries revenue is almost exclusively from work performed for
26 the Parent Corporation;
- 27 j. The subsidiary building company performs the work of the Parent
28 Corporation that is necessary to sell homes; and

1 k. The subsidiary building company does not have a board of directors or
2 management that is independent of the Parent Corporation.

3 15. Based on information and belief, the Parent Corporation, through its
4 directors, executives and management, also sets and directs policy for the subsidiary
5 businesses that provide temporary financing of the homes constructed and sold by the
6 Parent Corporation and its subsidiaries. Subsidiary corporation Defendant DHI Mortgage
7 Company GP, Inc., is directed and controlled by the Parent Corporation as follows:

- 8 a. The Parent Corporation sets policy for DHI Mortgage.
 - 9 b. The Parent Corporation obtains funding for DHI Mortgage;
 - 10 c. The Parent Corporation selects, directs, and controls the executive(s) who
11 manages DHI Mortgage;
 - 12 d. The Parent Corporation establishes the compensation of the management
13 of DHI Mortgage;
 - 14 e. The Parent Corporation shares both physical and human resources
15 between itself and subsidiaries as well as between different subsidiaries;
 - 16 f. The Parent Corporation directs and controls the marketing of DHI
17 Mortgage, including branding colors, logos, slogans, names, and web site
18 marketing;
 - 19 g. DHI Mortgage coordinates its web site with the Parent Corporation's web
20 site;
 - 21 h. The Parent Corporation controls profit from DHI Mortgage and reports to
22 shareholders, government entities, and the public the profit and loss
23 earned by DHI Mortgage as the Parent Corporation's profit and loss;
 - 24 i. The Parent Corporation dictates that DHI Mortgage performs work
25 primarily for D. R. Horton companies (94% of loans originated by DHI
26 Mortgage were for the Parent Corporation);
- 27
28

1 j. DHI Mortgage performs the work of the Parent Corporation that
2 facilitates selling homes by providing financing for the majority of the
3 sales; and

4 k. DHI Mortgage does not have a board of directors or management that is
5 independent of the Parent Corporation.

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

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

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

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

23 19. However, in contrast to the way that Defendants were presenting their
24 developments to the government, community, and buyers, they set out to market to and
25 then finance unqualified buyers who posed an abnormally high risk of foreclosure in
26 order to increase both the number of sales and the price of houses in the same
27 neighborhoods in which Defendants were selling houses to traditionally qualified and
28 low-foreclosure-risk buyers. They also increased demand by selling to investors.

1 Defendant correctly anticipated that this would create “a buying frenzy” that artificially
2 increased demand and house prices, resulting in increased profits to Defendants.

3 20. Defendants accomplished this through sales quotas, high pressure sales
4 tactics, and then through tactics that would make it likely that buyers would use D. R.
5 Horton’s own mortgage company. In fact, DHI Mortgage originated loans for 68% of
6 sales in 2006 and 63% of sales in 2005. After convincing buyers to use their mortgage
7 company, Defendants encouraged and assisted buyers in obtaining mortgages for which
8 they were not qualified. Defendants did this explicitly to sell more houses than they
9 would have been able to sell if only traditionally qualified buyers were buying their
10 houses and to increase the profit per house through the creation of an artificial housing
11 demand.

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

18 22. In an attempt to disguise that these loans were for unqualified and high
19 foreclosure risk borrowers, Defendants assisted and encouraged unqualified buyers to
20 appear as qualified buyers by:

- 21 a. allowing and encouraging buyers to provide inflated stated and
22 unverified income;
- 23 b. underwriting sub-prime loans for buyers with bad credit history;
- 24 c. not requiring any substantial down payment;
- 25 d. underwriting or securing piggyback loans for second mortgages so that
26 the buyers did not make any real down payment;
- 27 e. financing buyers in adjustable loans (interest only or below in many
28 cases) and qualifying these buyers on the artificially low initial payments;

- 1 f. providing cash “incentives” to buyers at the close of escrow if the buyers
2 used Defendants’ mortgage company to finance the house, thereby
3 eliminating the requirement that buyers pay closing costs; and
4 g. obtaining inflated appraisals.

5 23. By financing these unqualified buyers, Defendants knew, or should have
6 known, that they were filling neighborhoods with high-foreclosure-risk buyers
7 surrounding the traditionally qualified and low-foreclosure-risk buyers. Defendants
8 knew, or should have known, that a number of these unqualified buyers were counting on
9 house appreciation to transform them in the future from unqualified to qualified buyers.
10 As a result, these were high-foreclosure-risk buyers. Defendants also knew, or should
11 have known, that buyers requiring subprime loans due to bad credit history were high-
12 foreclosure-risk buyers. Defendants further knew, or should have known, that buyers
13 who were not financially vested in the house, because they did not have to make a
14 substantial down payment or pay closing costs, are much more likely to “walk away”
15 from the house with any downturn in housing prices, which made these buyers high-
16 foreclosure-risk buyers.

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

27 25. Defendants also knew, or should have known, that a neighborhood
28 containing a number of high-foreclosure-risk buyers was a materially important fact to

1 buyers of their houses. Foreclosures and short sales (a lender-agreed sale below the
2 principal of the loan) are devastating to both the value and desirability of a neighborhood.
3 Foreclosures resulting in bank sales and short sales are usually well below market value.
4 These foreclosure sales and short sales then become the new comparative sales values for
5 the neighborhood, which result in a vastly lower market rate. This, in turn, triggers yet
6 another round of foreclosures and short sales, resulting in a further decline in market
7 value. Soon this cycle results in price free-fall for the houses in the neighborhood,
8 materially affecting the value of those homes not subject to foreclosures or short sales.

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

13 27. Despite the knowledge that the neighborhood included, and would include in
14 the future, unqualified and high-foreclosure-risk home buyers, Defendants marketed and
15 expressly and/or implicitly represented that the homes they were selling were good
16 investments worth equal to or greater than the sales price; that the homes were not being
17 sold to investors; and that the homes were being built as part of stable and desirable
18 neighborhoods.

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

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

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

1 30. As was inevitable, however, over time these unqualified and high-
2 foreclosure-risk buyers began to default on their loans leading to foreclosures and short
3 sales. These foreclosures and short sales of properties were significantly below market
4 value and depressed the value of the houses of the qualified and low-foreclosure-risk
5 buyers. A snowball effect of foreclosures and short sales then followed, each further
6 depressing the market value of the neighborhoods. This led to a catastrophic loss of
7 value to the homeowners, wiping out the life savings of homeowners who did everything
8 right.

9 31. As a result of Defendants' unlawful scheme, Plaintiffs and those similarly
10 situated were misled into purchasing homes they would not have purchased if there had
11 been proper disclosure. Both the practice itself of financing unqualified buyers, and the
12 failure to disclose that practice, resulted in Plaintiffs paying inflated purchase prices for
13 their houses. Through economic expert analysis and testimony, the damages to Plaintiffs
14 and those similarly situated as a result of Defendants' scheme are capable of being
15 ascertained, and will be ascertained and calculated separate and apart from devaluation
16 resulting from other economic factors such as unemployment trends and general market
17 fluctuations.

18 32. While the scheme has had devastating effects on Plaintiffs, the Defendants,
19 their shareholders and the executives and management of each Defendant individually
20 benefitted from these practices. Primarily relying on bonuses, Donald Tomnitz, the chief
21 executive officer, and Donald Horton, Chairman of the Board, for D. R. Horton, Inc.,
22 each received more than \$34 million in compensation over the three year class period of
23 2004-2006. Furthermore, Donald Horton owns more than 9% of the stock in D. R.
24 Horton, which doubled in value during the period between January 1, 2003 and January
25 1, 2006. Based on information and belief, the prospect of this excessive and
26 unconscionable compensation led to and contributed to, inter alia, decisions by such
27 executives which resulted in the actions complained of herein.
28

1 disclose the different D.R. Horton entities. She was not advised, and did not know, that
2 other buyers in the community were sold homes using subprime loans and were not
3 qualified buyers. She was also not advised, and did not know, that Defendants were
4 selling homes in her neighborhood to investors. Since the purchase of her house, there
5 have been a number of rentals, short-sales, and foreclosures in her neighborhood.

6 35. Based on information and belief, Plaintiffs and all class members:

- 7 a. were provided brochures, business cards, and access to a web site that
8 identified the seller as D.R. Horton without distinguishing between the
9 Defendant home building companies and subsidiaries;
- 10 b. were offered financial incentives by D.R. Horton to use DHI Mortgage to
11 finance the purchase of their houses, resulting in the majority of
12 purchasers financing through DHI Mortgage;
- 13 c. that did not use DHI Mortgage to finance their house, were required to,
14 and did in fact, provide financial information to D.R. Horton that allowed
15 it to have sufficient information to determine whether the buyer was a
16 sub-prime buyer or investor;.
- 17 d. who financed their houses through DHI Mortgage were provided an
18 appraiser selected by Defendants. The appraiser selected by DHI
19 Mortgage was dependent on DHI Mortgage for a large percentage of its
20 business and, therefore, was pressured to provide appraisals that met or
21 exceeded the sales prices. The appraisals of Plaintiffs' houses were
22 inflated.

23 36. Plaintiffs further allege based on information and belief paragraphs 37-46.

24 37. Defendants represented to Plaintiff and all class members that D. R. Horton
25 discourages speculation and sells homes only to people who will occupy them.

26 38. Defendants represented to Plaintiff and all class members that D. R. Horton
27 communities were worth what was paid for the home.
28

1 39. Defendants represented to Plaintiff and all class members that D. R. Horton
2 developments were stable, family neighborhoods occupied by owners of the homes.

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

5 41. The process for the purchase of Plaintiff's houses was typical of how
6 Defendants processed most of their sales.

7 42. At the time Defendants sold the houses to Plaintiff, Defendants had sold
8 houses, and planned to and did sell houses in the future, to unqualified and high-
9 foreclosure-risk buyers, as well as professional investors that were not owner-occupiers
10 of the houses.

11 43. While Defendants provided Plaintiff and all class members certain
12 disclosures before or at the time of sale, they did not provide Plaintiff and all class
13 members with any disclosure that Defendants had sold houses, and would sell houses in
14 the future, to unqualified and high-foreclosure-risk buyers. Defendants also did not
15 disclose that they had sold houses, and planned to sell houses in the future, to investors
16 who would not occupy the houses.

17 44. Plaintiff was unaware at the time of purchase of the houses that Defendants
18 had sold houses, and planned to sell houses in the future, in her neighborhoods to
19 unqualified and high-foreclosure-risk buyers, as well as professional investors that were
20 not owner-occupiers of the houses. Plaintiff did not become aware of such actions until
21 well within two years prior to filing of the subject complaint, and there was no reasonable
22 way Plaintiff would have learned the information earlier than those dates.

23 45. Such disclosures were material to Plaintiff and all class members in that they
24 related both to the value of their houses and the desirability of the properties. If
25 Defendants had made such disclosures, Plaintiff would not have purchased the houses
26 from Defendants and/or would not have paid an inflated price for the house.

27 46. As a result of the conduct of Defendants, Plaintiff paid inflated prices for
28 their houses. The D. R. Horton neighborhoods where Plaintiff lives have had a number

1 of foreclosures and short sales that have resulted in a substantial loss of value to the
2 surrounding homes; a loss much greater than if their houses had been located in a
3 neighborhood where Defendants' scheme of selling to unqualified and high-foreclosure-
4 risk buyers did not occur. The desirability of Plaintiff's properties and the D. R. Horton
5 neighborhoods has been drastically altered and reduced as a direct result of the
6 foreclosures, short sales, and investor-owned properties.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V

CLASS ACTION ALLEGATIONS

47. Plaintiff initially proposes a nationwide class. The "Class" is defined as follows:

All D. R. Horton customers who purchased a new D. R. Horton house from January 1, 2004, through December 31, 2006, and put 20% or more down toward the purchase of the house.

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

48. If the Court determines that a nationwide class is not warranted, Plaintiff requests, in the alternative, certification of a California class of new D. R. Horton customers whose homes are located in California.

49. This action is brought as a class action and may properly be so maintained pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b). Plaintiff reserves the right to modify the class definitions and the class period based on the results of discovery.

50. **Numerosity of the Class** – The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes that there are thousands of customers in the class. Because the class members may be identified through business records regularly maintained by Defendants and their employees and agents, and through the media, the number and identities of class members can be

1 ascertained. Members of the Class can be notified of the pending action by e-mail, mail,
2 and supplemented by published notice, if necessary.

3 51. **Existence and Predominance of Common Questions of Fact and Law** –

4 There are questions of law and fact common to the Class. These questions predominate
5 over any questions affecting only individual class members. These common legal and
6 factual issues include, but are not limited to:

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

- 1 i. whether Defendants made uniform misrepresentations to the class
2 members relating to value, existence of investors and desirability of the
3 neighborhood; and
4 j. whether Defendants' conduct as described above constitutes violations of
5 the causes of action set forth below.

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

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

18 54. **Predominance and Superiority** – This suit may be maintained as a class
19 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact
20 common to the Class predominate over the questions affecting only individual members
21 of the Class and a class action is superior to other available means for the fair and
22 efficient adjudication of this dispute. The damages suffered by individual class members,
23 while substantial, are small compared to the burden and expense of individual
24 prosecution of the complex and very expensive litigation needed to address Defendants'
25 conduct. Even if class members themselves could afford such individual litigation, the
26 court system would be overwhelmed by the individual lawsuits. In addition,
27 individualized litigation increases the delay and expense to all parties and to the court
28 system resulting from the complex legal and factual issues of this case. Individualized

1 litigation also presents a potential for inconsistent or contradictory judgments. By
2 contrast, the class action device presents far fewer management difficulties; allows the
3 hearing of claims which might otherwise go unaddressed because of the relative expense
4 of bringing individual lawsuits; and provides the benefits of single adjudication,
5 economies of scale, and comprehensive supervision by a single court.

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

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

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

1 making appropriate final injunctive or corresponding declaratory
2 relief with respect to the Class as a whole; or

3 c. Common questions of law and fact exist as to the members of the
4 Class and predominate over any questions affecting only individual
5 members, and a Class Action is superior to other available methods of
6 the fair and efficient adjudication of the controversy, including
7 consideration of:

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

17 **FIRST CAUSE OF ACTION**

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

21 57. Plaintiff incorporates by reference and re-alleges all paragraphs previously
22 alleged herein.

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

1 to Plaintiffs and members of the Class, and/or (4) the uniform conduct of Defendants has
2 a tendency to deceive Plaintiffs and the members of the Class.

3 59. Defendants were sellers of the houses. Defendants were also the real estate
4 brokers and salespersons of the houses and, as such, the agents of one another. An owner
5 of a property and its agents are legally obligated to disclose to the buyer of a house all
6 facts materially affecting the value or desirability of the property. Cal. Civ. Code §§
7 1102.1 and 2079. Based on information and belief, most states where Defendants sold
8 houses had similar disclosure requirements.

9 60. The disclosures must be made in good faith and waiver is against public
10 policy.

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

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

23 63. Defendants not only knew about the existence of unqualified and high-
24 foreclosure-risk homeowners in the neighborhood, but had in fact facilitated and assisted
25 those buyers in obtaining financing through the mortgage arm of their business. In
26 processing the mortgages of unqualified and high-foreclosure-risk borrowers, Defendant
27 DHI Mortgage processed loans for buyers that falsified and inflated unverified income,
28

1 offending the legislative intent regarding income verification, as set forth in 66 Fed. Reg.
2 65604-01 (2001).

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

11 65. Therefore, Defendants' conduct is: 1) unlawful because it violates California
12 Civil Code §§ 2079 and 1710; 2) fraudulent because Defendants concealed material facts
13 which they had a duty to disclose; and 3) unfair because it offends legislative policy and
14 the good faith requirement regarding disclosures, as set forth in California Civil Code
15 §§ 1102.1 and 1102.7, and offends the legislative intent regarding income verification as
16 set forth in 66 F.R. 65604-01 .

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

22 67. Plaintiff and the Class members, and each of them, have been damaged by
23 said practices.

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

27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, prays for
3 relief as follows:

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

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

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

11 D. For an order awarding Plaintiff 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 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 Plaintiff 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

