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14 Attorneys for Plaintiffs EDILBERTO LUMALU, BRIAN DIETZ, BRENDA DIETZ,  
15 CANDICE McDONALD and all others similarly situated,

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 EDILBERTO LUMALU, BRIAN DIETZ,  
19 BRENDA DIETZ, CANDICE McDONALD,  
as individuals and on behalf of all  
20 others similarly situated,

21 Plaintiffs,

22 v.

23 RICHMOND AMERICAN HOMES  
24 CORPORATION; M.D.C. HOLDINGS,  
INC. (D/B/A "RICHMOND AMERICAN");  
25 RICHMOND AMERICAN HOMES OF  
MARYLAND, INC. (SUCCESSOR . TO  
26 RICHMOND AMERICAN HOMES OF  
CALIFORNIA, INC.); and DOES 1  
27 through 10, inclusive,

28 Defendants.

Case No.: ED CV 09-1669 VAP (DTB)  
Judge: Hon. Virginia A. Phillips

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANTS' MOTION TO STRIKE IN  
WHOLE OR IN PART PLAINTIFFS'  
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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**TABLE OF CONTENTS**

	<i>Page</i>
I. INTRODUCTION .....	1
II. LEGAL STANDARD.....	1
III. ARGUMENT .....	2
A. DEFENDANTS’ MOTION TO STRIKE OR “NARROW” PRAYERS FOR RELIEF SHOULD BE DENIED .....	2
B. DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ DIMINISHED-VALUE AND DIMINISHED-DESIRABILITY ALLEGATIONS SHOULD BE DENIED ....	2
C. DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ CLASS ALLEGATIONS SHOULD BE DENIED .....	2
D. DEFENDANTS’ MOTION TO STRIKE EXECUTIVE COMPENSATION ALLEGATIONS SHOULD BE DENIED .....	2
E. PLAINTIFFS SHOULD BE GRANTED LEAVE TO AMEND IF NECESSARY ....	3
IV. CONCLUSION.....	3

1 Plaintiffs Edilberto Lumalu, Brian Dietz, Brenda Dietz, and Candice  
2 McDonald, as individuals and on behalf of all others similarly situated  
3 (“Plaintiffs”), submit this Memorandum of Points and Authorities in Opposition to  
4 Defendants’ Motion to Strike in Whole or in Part Plaintiffs’ Second Amended  
5 Complaint (“SAC”).

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

12 **I. INTRODUCTION**

13 Plaintiffs incorporate herein by reference the Introduction section of the  
14 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.  
15 ED CV 09-01668 VAP (DTBx), also pending before this Court.<sup>2</sup>

16 **II. LEGAL STANDARD**

17 Plaintiffs incorporate herein by reference the Legal Standard section 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.

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22 <sup>1</sup> Where incorporated sections of the *Stephens v. Lennar* Opposition contain  
23 references or citations to the Second Amended Complaint in that case, Plaintiffs  
24 incorporate by reference herein the corresponding and substantially similar  
allegations of their own Second Amended Complaint, the “*Lumalu SAC*.” Should  
the Court prefer precise citations to paragraphs in the *Lumalu SAC*, Plaintiff can  
provide those citations.

25 <sup>2</sup> In Section I of its brief, Richmond American incorporates by reference all  
26 arguments set forth by Lennar in its motion to strike. *See* Richmond Am. Br. at 1.  
27 The heading for Section I indicates (probably erroneously) that Richmond  
28 American incorporates the Lennar *Motion to Dismiss*. *See id.* (emphasis supplied).  
To the extent Richmond American incorporates the Lennar motion to dismiss,  
Plaintiffs accordingly incorporate herein their opposition to the Lennar motion to  
dismiss.

1 **III. ARGUMENT<sup>3</sup>**

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

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

7 **B. DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ DIMINISHED-VALUE**  
8 **AND DIMINISHED-DESIRABILITY ALLEGATIONS SHOULD BE DENIED**

9 Plaintiffs incorporate herein by reference Argument Section III.B. of the  
10 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.  
11 ED CV 09-01668 VAP (DTBx), also pending before this Court.

12 **C. DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ CLASS ALLEGATIONS**  
13 **SHOULD BE DENIED**

14 Plaintiffs incorporate herein by reference Argument Section III.C. of the  
15 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.  
16 ED CV 09-01668 VAP (DTBx), also pending before this Court.

17 **D. DEFENDANTS’ MOTION TO STRIKE EXECUTIVE COMPENSATION**  
18 **ALLEGATIONS SHOULD BE DENIED**

19 Plaintiffs incorporate herein by reference Argument Section III.D. 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.

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<sup>3</sup> The only substantively unique aspects of Richmond American’s motion to strike are the sections labeled “Factual Supplements to Lead Defense Brief” and “Unique Facts Pertaining to Defendants” at Richmond Am. Br. pp. 1-3. Both sections are placed under the heading “Argument,” but it is unclear, and Defendants do not explain, in what manner the “Unique Facts” section in particular bears on or contributes to any of the Rule 12(f) requests to strike matter from the SAC. In any event, Defendants do not carry their burden under Rule 12(f) for the reasons noted in the incorporated *Stephens* opposition.

