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CENTRAL DIST. OF CALIF.
RIVERSIDE

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15 CANDICE McDONALD and all others similarly situated,

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

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

20 Plaintiffs,

21 v.

22 RICHMOND AMERICAN HOMES
23 CORPORATION; M.D.C.
HOLDINGS, INC. (d/b/a
24 "RICHMOND AMERICAN");
RICHMOND AMERICAN HOMES
25 OF MARYLAND, INC. (SUCCESSOR
CORP. TO RICHMOND AMERICAN
26 HOMES OF CALIFORNIA, INC.);
HOMEAMERICAN MORTGAGE
27 CORPORATION; and DOES 1 through
10, inclusive,

28 Defendants.

Case No.: ED CV 09-1669 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 Edilberto Lumalu, Brian Dietz, Brenda Dietz, Candice McDonald,
2 (“Plaintiffs”), on behalf of themselves and all others similarly situated (*i.e.*, the members
3 of the Plaintiff Class described and 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 M.D.C. Holdings, Inc. (d/b/a Richmond American) (hereinafter “M.D.C. Holdings”);
13 Richmond American Homes Corporation (“hereinafter Richmond American Homes”);
14 Richmond American Homes of Maryland, Inc., (Successor Corp. to Richmond American
15 Homes of California, Inc. and hereinafter “Richmond American Homes of California”)
16 and HomeAmerican Mortgage Corporation (hereinafter “HomeAmerican Mortgage”) all
17 do substantial business in this judicial district and some of the acts complained of
18 occurred in this judicial district (the collective Defendants will be referred to as
19 “Defendants” or “Richmond American”).

20 **II**

21 **PARTIES**

22 3. Plaintiff Edilberto Lumalu is a resident of the county of Riverside, State of
23 California. He entered into a contractual relationship with Defendants in the county of
24 Riverside, State of California, and his home that is the subject of the purchase and sale in
25 this action is located in the county of Riverside, State of California.

26 4. Plaintiffs Brian Dietz and Brenda Dietz are residents of the county of
27 Riverside, State of California. They entered into a contractual relationship with
28 Defendants in the county of Riverside, State of California, and their home that is the

1 subject of the purchase and sale in this action is located in the county of Riverside, State
2 of California.

3 5. Plaintiff Candice McDonald is a resident of the county of Riverside, State of
4 California. She entered into a contractual relationship with Defendants in the county of
5 Riverside, State of California, and her home that is the subject of the purchase and sale in
6 this action is located in the county of Riverside, State of California.

7 6. Defendant M.D.C. Holdings, Inc., is the parent of all Richmond American
8 entities. M.D.C. Holdings, Inc., is a home building and lending company with
9 homeowner customers in California as well as a number of other states. M.D.C.
10 Holdings, Inc., is incorporated in the state of Colorado and headquartered in the city of
11 Denver, State of Colorado.

12 7. Defendant Richmond American Homes Corporation is the home building
13 subsidiary of M.D.C. Holdings, Inc., and conducts substantial business in the state of
14 California as well as in other states. Richmond American Homes Corporation is
15 incorporated in the state of Colorado and headquartered in the city of Denver, State of
16 Colorado.

17 8. Defendant Richmond American Homes of Maryland, Inc. is the successor
18 corporation to Richmond American Homes of California, Inc., which at the time of the
19 acts complained herein, was a California home building subsidiary of M.D.C. Holdings,
20 Inc. It conducted substantial business in the state of California as well as in other states,
21 and was incorporated in the state of Colorado and headquartered in the city of Denver,
22 State of Colorado. Defendant Richmond American Homes of Maryland, Inc., is currently
23 incorporated in the state of Maryland and headquartered in the city of Denver, State of
24 Colorado.

25 9. Defendant HomeAmerican Mortgage Corporation is the mortgage and
26 lending subsidiary of M.D.C. Holdings, Inc., and conducts substantial business in the
27 State of California as well as in other states. HomeAmerican Mortgage Corporation is
28

1 incorporated in the state of Colorado and headquartered in the city of Denver, State of
2 Colorado.

3 10. 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 11. 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 12. The following general factual allegations are based upon information and
17 belief unless otherwise specified.

18 A. Structure of Defendants' Business

19 13. Defendants are in the business of developing, constructing, and selling new
20 houses. M.D.C. Holdings, Inc., (hereinafter also referred to as "Parent Corporation") is a
21 publicly traded company and, through its subsidiaries, is one of the largest residential
22 homebuilders in the United States. In 2008, it was ranked as the 12th largest homebuilder
23 by HousingZone.com based on revenue. From 2004 to 2006, Defendants reported that
24 they had closed a total of 42,310 houses, with the majority of those houses sold in the
25 western states of California, Arizona, Nevada, Colorado, and Utah. They also sold
26 homes during the relevant time periods in Florida, Virginia, Maryland, Delaware, Illinois,
27 and Texas. Defendants have a very significant presence in California, selling a reported
28 total of 6,326 houses in California between 2004 and 2006.

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

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

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

16 17. While the Defendant Parent Corporation set up a number of “subsidiary”
17 businesses, including Richmond American Homes Corporation; Richmond American
18 Homes of Maryland, Inc., as successor in interest to Richmond American Homes of
19 California, Inc., and other LLC’s and corporations to develop, construct, and sell houses;
20 and HomeAmerican Mortgage Corporation to finance new house sales, these businesses
21 are separate entities in name only. The Parent Corporation, and its directors, executives,
22 and management control and direct the subsidiary businesses so that these businesses
23 have few of the characteristics of a separate company, and instead have virtually all the
24 characteristics of a division that simply facilitates the implementation of the
25 homebuilding business of the Parent Corporation.

26 18. 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 Richmond American Homes Corporation; Richmond
2 American Homes of Maryland, Inc., as successor in interest to Richmond American
3 Homes of California, Inc.; and the number of corporations and LLC's established to sell
4 houses, each of such businesses is directed and controlled by the Parent Corporation as
5 follows:

- 6 a. The Parent Corporation pays and directs employees and consultants who
7 find the new development sites where the subsidiary company will work
8 and do business;
- 9 b. The Parent Corporation creates the budgets, sales quotas, and business
10 plans for the new development sites where the subsidiary company will
11 work and do business;
- 12 c. The Parent Corporation provides the funding and employees to set up the
13 subsidiary to work on the new development site;
- 14 d. The Parent Corporation selects, directs, and controls the executive(s) that
15 manages the subsidiary that works on the development site;
- 16 e. The Parent Corporation establishes the compensation of the management
17 of the subsidiaries;
- 18 f. The Parent Corporation creates, monitors, and enforces sales quota and
19 business strategies for the subsidiaries' work on a development site;
- 20 g. The Parent Corporation secures outside funding for the subsidiaries, with
21 both parent corporation and subsidiaries having access to the financing,
22 and jointly responsible for repayment of the financing;
- 23 h. The Parent Corporation shares both physical and human resources
24 between itself and subsidiaries as well as between different subsidiaries;
- 25 i. The Parent Corporation directs and controls the marketing of its
26 subsidiaries, including branding colors, logos, slogans, names, and web
27 site marketing;
- 28

- 1 j. The Parent Corporation fully controls profit from the subsidiaries and
2 reports to shareholders, government entities, and the public the profit and
3 loss earned by the subsidiaries as the Parent Corporation's profit and
4 loss;
- 5 k. Each subsidiaries revenue is almost exclusively from work performed for
6 the Parent Corporation;
- 7 l. The subsidiary building company performs the work of the Parent
8 Corporation that is necessary to sell homes; and
- 9 m. The subsidiary building company does not have a board of directors or
10 management that is independent of the Parent Corporation.

11 19. Based on information and belief, the Parent Corporation, through its
12 directors, executives and management, sets and directs policy for the subsidiary
13 businesses that provide temporary financing of the homes constructed and sold by the
14 Parent Corporation and its subsidiaries. Subsidiary corporation Defendant
15 HomeAmerican Mortgage Corporation is directed and controlled by the Parent
16 Corporation as follows:

- 17 a. The Parent Corporation sets policy for HomeAmerican Mortgage.
18 b. The Parent Corporation obtains funding for HomeAmerican Mortgage;
19 c. The Parent Corporation selects, directs, and controls the executive(s) who
20 manages HomeAmerican Mortgage;
21 d. The Parent Corporation establishes the compensation of the management
22 of HomeAmerican Mortgage;
23 e. The Parent Corporation shares both physical and human resources
24 between itself and subsidiaries as well as between different subsidiaries;
25 f. The Parent Corporation directs and controls the marketing of
26 HomeAmerican Mortgage, including branding colors, logos, slogans,
27 names, and web site marketing;
28

- 1 g. HomeAmerican Mortgage shares the web site with the Parent
2 Corporation;
- 3 h. The Parent Corporation controls profit from HomeAmerican Mortgage
4 and reports to shareholders, government entities, and the public the profit
5 and loss earned by HomeAmerican Mortgage as the Parent Corporation's
6 profit and loss;
- 7 i. Each subsidiaries revenue is almost exclusively from work performed for
8 the Parent Corporation;
- 9 j. Home American Mortgage performs the work of the Parent Corporation
10 that facilitates selling homes by providing financing for the majority of
11 the sales; and
- 12 k. HomeAmerican Mortgage does not have a board of directors or
13 management that is independent of the Parent Corporation.

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

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

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

25 22. The scheme was to convince government entities, then the community, and
26 finally buyers that Defendants were building a traditional neighborhood with stable
27 owners who occupied their homes and who were vested in the community and
28 neighborhood. Implicit in that marketing scheme was that Defendants were making a

1 good-faith effort to sell homes to buyers that they expected could afford to buy the
2 houses and would be stable neighbors.

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

11 24. Defendants accomplished this through sales quotas, high pressure sales
12 tactics, and then through tactics that would make it likely that buyers would use
13 Richmond American’s own mortgage company. After convincing buyers to use their
14 mortgage company, Defendants encouraged and assisted buyers in obtaining mortgages
15 for which they were not qualified. Defendants did this explicitly to sell more houses than
16 they would have been able to sell if only traditionally qualified buyers were buying their
17 houses and to increase the profit per house through the creation of an artificial housing
18 demand.

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

25 26. In an attempt to disguise that these loans were for unqualified and high
26 foreclosure risk borrowers, Defendants assisted and encouraged unqualified buyers to
27 appear as qualified buyers by:
28

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

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

25 28. Defendants also sold houses to another group of buyers that constituted a
26 high foreclosure risk. While representing that they were developing a stable
27 neighborhood with owner-occupied houses and claiming to have procedures in place to
28 prevent “investors” from buying the houses, Defendants were selling houses to buyers

1 that it knew, or should have known, were investors who had no intention of occupying
2 the houses. These investors would then rent out the property thereby providing a
3 neighborhood that was not stable, contrary to what was represented in the marketing and
4 sales materials. Even more importantly, because the house was an investment and not a
5 home, these buyers were more likely to “walk away” from the house with any downturn
6 in housing prices, which made them high-foreclosure-risk buyers.

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

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

21 31. Despite the knowledge that the neighborhood included, and would include in
22 the future, unqualified and high-foreclosure-risk home buyers, Defendants marketed and
23 expressly and/or implicitly represented that the homes they were selling were good
24 investments worth equal to or greater than the sales price; that the home were not being
25 sold to investors; that the homes were being built as part of stable and desirable
26 neighborhoods.

27 32. Defendants also concealed and intentionally failed to disclose to prospective
28 buyers the fact that numerous houses in the neighborhoods were being purchased by

1 unqualified and high-foreclosure-risk buyers, despite Defendants' knowledge that this
2 could, and likely would over time, have a material negative effect on the value and
3 desirability of the house and neighborhood.

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

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

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

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

25 36. While the scheme has had devastating effects on Plaintiffs, the Defendants,
26 their shareholders and the executives and management of each Defendant individually
27 benefitted from these practices. Primarily relying on bonuses, the two top executives of
28 Defendant M.D.C. Holdings, Inc., Chief Executive Officer Larry Mizel and Chief

1 Operating Officer David Mandarich, received a total of \$115 million in compensation
2 over the three year class period of 2004-2006. That compensation is reported to have
3 included country club dues and personal use of the company jet. Based on information
4 and belief, the prospect of this excessive and unconscionable compensation led to and
5 contributed to, inter alia, decisions by such executives which resulted in the actions
6 complained of herein.

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

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

38. In or about November 2005, Plaintiff Edilberto Lumalu bought a new house located in the county of Riverside, California, from Defendant Richmond American Homes of California. Plaintiff put a down payment of more than 20% on the house. Plaintiff submitted a loan application using verified income to Defendant HomeAmerican Mortgage prior to the sale. He was told by the Richmond American salesperson in the sales office that the area where he was buying was going to be the next Orange County and that the house would increase in value. Plaintiff was provided marketing materials that depicted the community as a stable, family-based neighborhood. Those marketing materials did not adequately disclose the different Richmond American 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. In or about December 2005, Plaintiffs Brian Dietz and Brenda Dietz bought a new house located in the county of Riverside, California, from Defendant Richmond American Homes. The house was part of the "Glenhurst" development. Plaintiffs put a down payment of approximately 45% on the house. Plaintiffs were told by the Richmond American salespersons in the sales office that buying this house was a good investment and by getting in at an early phase, the value of their home would increase as the prices of homes in their neighborhood went up. Plaintiffs were provided a price and model sheet for their community that stated that "Richmond American does not sell Glenhurst homes to investors." Plaintiffs were provided marketing materials that depicted the community as a stable, family-based neighborhood. Those marketing materials did not adequately disclose the different Richmond American subsidiaries. They were not advised, and did not know, that other buyers in the community were sold homes using

1 subprime loans and were not qualified buyers. They were also not advised, and did not
2 know, that Defendants were selling homes in her neighborhood to investors. Since the
3 purchase of their house, there have been a number of rentals, short-sales, and foreclosures
4 in their neighborhood.

5 40. In or about April 2006, Plaintiff Candice McDonald bought a new house
6 located in the county of Riverside, California, from Defendant Richmond American
7 Homes. Plaintiff put a down payment of approximately 40% on the house. Richmond
8 American paid \$20,000 toward the price of the house when she agreed to use Richmond
9 American's mortgage company, HomeAmerican Mortgage, to finance the house.
10 Plaintiff was provided an appraisal from the appraiser selected by HomeAmerican
11 Mortgage, showing that the market value of the house was equal to its purchase price.
12 Plaintiffs were provided marketing materials that depicted the community as a stable,
13 family-based neighborhood. Those marketing materials did not adequately disclose the
14 different Richmond American subsidiaries. She was not advised, and did not know, that
15 other buyers in the community were sold homes using subprime loans and were not
16 qualified buyers. She was also not advised, and did not know, that Defendants were
17 selling homes in her neighborhood to investors. Since the purchase of her house, there
18 have been a number of rentals, short-sales, and foreclosures in her neighborhood.

19 41. Based on information and belief, Plaintiffs and all class members:

- 20 a. were provided brochures, business cards, and access to a web site that
21 identified the seller as Richmond American without distinguishing
22 between the Defendant home building companies and subsidiaries;
- 23 b. were offered financial incentives by Richmond American to use
24 HomeAmerican to finance the purchase of their houses, resulting in the
25 majority of purchasers financing through HomeAmerican;
- 26 c. that did not use HomeAmerican Mortgage to finance their house, were
27 required to, and did in fact, provide financial information to Richmond
28

1 American that allowed it to have sufficient information to determine
2 whether the buyer was a sub-prime buyer or investor;.

3 d. who financed their houses through HomeAmerican were provided an
4 appraiser selected by Defendants. The appraiser selected by
5 HomeAmerican Mortgage was dependent on HomeAmerican Mortgage
6 for a large percentage of its business and, therefore, was pressured to
7 provide appraisals that met or exceeded the sales prices. The appraisals
8 of Plaintiffs' houses were inflated.

9 42. Plaintiffs further allege based on information and belief paragraphs 43-52.

10 43. Defendants represented to Plaintiffs and all class members that Richmond
11 American does not sell homes to investors.

12 44. Defendants represented to Plaintiffs and all class members that Richmond
13 American communities were good investments and buying a Richmond American house
14 was a smart move.

15 45. Defendants represented to Plaintiffs and all class members that Richmond
16 American developments were stable, family neighborhoods occupied by owners of the
17 homes.

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

20 47. The process for the purchase of Plaintiffs' houses was typical of how
21 Defendants processed most of their sales.

22 48. At the time Defendants sold the houses to Plaintiffs, Defendants had sold
23 houses, and planned to and did sell houses in the future, to unqualified and high-
24 foreclosure-risk buyers, as well as professional investors that were not owner-occupiers
25 of the houses.

26 49. While Defendants provided Plaintiffs and all class members certain
27 disclosures before or at the time of sale, they did not provide Plaintiffs and all class
28 members with any disclosure that Defendants had sold houses, and would sell houses in

1 the future, to unqualified and high-foreclosure-risk buyers. Defendants also did not
2 disclose that they had sold houses, and planned to sell houses in the future, to investors
3 who would not occupy the houses.

4 50. Plaintiffs were unaware at the time of purchase of the houses that
5 Defendants had sold houses, and planned to sell houses in the future, in their
6 neighborhoods to unqualified and high-foreclosure-risk buyers, as well as professional
7 investors that were not owner-occupiers of the houses. Plaintiffs did not become aware
8 of such actions until well within two years prior to filing of the subject complaint, and
9 there was no reasonable way Plaintiffs would have learned the information earlier than
10 that time frame.

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

15 52. As a result of the conduct of Defendants, Plaintiffs paid inflated prices for
16 their houses. The Richmond American neighborhoods where Plaintiffs live have had a
17 number of foreclosures and short sales that have resulted in a substantial loss of value to
18 the surrounding homes; a loss much greater than if their houses had been located in a
19 neighborhood where Defendants' scheme of selling to unqualified and high-foreclosure-
20 risk buyers did not occur. The desirability of Plaintiffs' properties and the Richmond
21 American neighborhoods has been drastically altered and reduced as a direct result of the
22 foreclosures, short sales, and investor-owned properties.

23 **V**

24 **CLASS ACTION ALLEGATIONS**

25 53. Plaintiffs initially propose a nationwide class. The "Class" is defined as
26 follows:
27
28

1 All Richmond American Homes customers who purchased a new Richmond
2 American Homes house from January 1, 2004, through December 31, 2006,
3 and put 20% or more down toward the purchase of the house.

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

7 54. If the Court determines that a nationwide class is not warranted, Plaintiffs
8 request, in the alternative, certification of a California class of new Richmond American
9 Homes customers whose homes are located in California.

10 55. This action is brought as a class action and may properly be so maintained
11 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
12 Plaintiffs reserve the right to modify the class definitions and the class period based on
13 the results of discovery.

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

21 57. **Existence and Predominance of Common Questions of Fact and Law** –
22 There are questions of law and fact common to the Class. These questions predominate
23 over any questions affecting only individual class members. These common legal and
24 factual issues include, but are not limited to:

- 25 a. whether Defendants engaged in the alleged scheme as set forth
26 throughout this First Amended Complaint;
27 b. whether Defendants' policy and practice - which was in place prior to
28 and throughout the class period - of selling homes to high foreclosure risk

1 buyers is material to the value and quality of life for buyers of houses in
2 that neighborhood;

- 3 c. whether a neighborhood having, or expected to have, a high number of
4 unqualified and high-foreclosure-risk owners of houses is material to the
5 value and quality of life for buyers of houses in that neighborhood;
- 6 d. whether Defendants concealed and failed to disclose to the Class
7 members that the neighborhoods where they were buying their houses
8 had, or were expected to have, a high number of unqualified and high-
9 foreclosure-risk owners that could materially and negatively affect the
10 value of the house and quality of life for buyers of the houses;
- 11 e. whether the alleged scheme resulted in inflated prices of the houses
12 purchased by Plaintiffs;
- 13 f. whether the alleged scheme resulted in foreclosures and short sales in the
14 Class members' neighborhoods;
- 15 g. whether such foreclosures and short sales resulted in a material decrease
16 in the value of the houses purchased by the Class members;
- 17 h. whether such foreclosures and short sales resulted in loss of quality of
18 life for the owners in the neighborhood;
- 19 i. whether Defendants made uniform misrepresentations to the class
20 members relating to value, existence of investors and desirability of the
21 neighborhood; and
- 22 j. whether Defendants' conduct as described above constitutes violations of
23 the causes of action set forth below.

24 58. **Typicality** – The claims of the representative Plaintiffs are typical of the
25 claims of the members of the Class. Plaintiffs, like all other members of the Class, have
26 sustained damages arising from Defendants' violations of the laws, as alleged herein.
27 The representative Plaintiffs and the members of the Class were and are similarly or
28

1 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive
2 pattern of misconduct engaged in by Defendants.

3 59. **Adequacy** – The representative Plaintiffs will fairly and adequately
4 represent and protect the interests of the Class members and has retained counsel who are
5 experienced and competent trial lawyers in complex and class action litigation. There are
6 no material conflicts between the claims of the representative Plaintiffs and the members
7 of the Class that would make class certification inappropriate. Counsel for the Class will
8 vigorously assert the claims of all Class members.

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

25 61. The Class Plaintiffs contemplate the eventual issuance of notice to the
26 proposed Class members setting forth the subject and nature of the instant action. Upon
27 information and belief, Defendants’ own business records and electronic media can be
28 utilized for the contemplated notices. To the extent that any further notices may be

1 required, the Class Plaintiffs would contemplate the use of additional media and/or
2 mailings.

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

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

- 1 ii. The extent and nature of any litigation concerning the
2 controversy already commenced by or against members of the
3 Class;
4 iii. The desirability or undesirability of concentrating the litigation
5 of the claims in the particular forum;
6 iv. The difficulties likely to be encountered in the management of a
7 Class Action.

8 **FIRST CAUSE OF ACTION**

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

12 63. Plaintiffs incorporate by reference and re-allege all paragraphs previously
13 alleged herein.

14 64. Defendants’ acts and practices as described herein constitute unlawful,
15 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
16 described herein, violate each of the statutes set forth within this Complaint, and/or
17 (2) the justification for Defendants’ conduct is outweighed by the gravity of the
18 consequences to Plaintiffs and members of the Class, and/or (3) Defendants’ conduct is
19 immoral, unethical, oppressive, unscrupulous, unconscionable, or substantially injurious
20 to Plaintiffs and members of the Class, and/or (4) the uniform conduct of Defendants has
21 a tendency to deceive Plaintiffs and the members of the Class.

22 65. Defendants were sellers of the houses. Defendants were also the real estate
23 brokers and salespersons of the houses and, as such, the agents of one another. An owner
24 of a property and its agents are legally obligated to disclose to the buyer of a house all
25 facts materially affecting the value or desirability of the property. Cal. Civ. Code §§
26 1102.1 and 2079. Based on information and belief, most states where Defendants sold
27 houses had similar disclosure requirements.

1 66. The disclosures must be made in good faith and waiver is against public
2 policy.

3 67. The existence or expected existence of a number of unqualified and high-
4 foreclosure-risk homeowners in the neighborhood was a material fact affecting the value
5 and desirability of the houses that Plaintiffs and the Class members were sold by
6 Defendants.

7 68. Based on information and belief, Defendants had actual and constructive
8 knowledge of the financial condition and financing tools utilized by the buyers of its
9 houses. Defendants had this knowledge primarily through utilization of the Richmond
10 American mortgage company and/or HomeAmerican to finance a high percentage of the
11 buyers. Even for buyers that utilized other financial institutions, before Defendants
12 would enter into a purchase agreement, Defendants required these buyers to provide
13 “qualifying” financial information that provided Defendants with knowledge that these
14 buyers were likely subprime buyers and/or investors.

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

22 70. Defendants failed to disclose and did conceal this fact from Plaintiffs and
23 Class members. These facts were material. Plaintiffs and Class members either would
24 have not paid the inflated price or would not have purchased the homes at all from
25 Defendants if there had been proper disclosures regarding the existence of unqualified
26 and high-foreclosure-risk homeowners in the neighborhoods. A reasonable consumer
27 during the class period would have expected that these new development neighborhoods
28

1 would not have a substantial presence of high-foreclosure risk buyers. As a direct and
2 legal result of Defendants' conduct, Plaintiffs and Class members have been damaged.

3 71. Therefore, Defendants' conduct is: 1) unlawful because it violates California
4 Civil Code §§ 2079 and 1710; 2) fraudulent because Defendants concealed material facts
5 which they had a duty to disclose; and 3) unfair because it offends legislative policy and
6 the good faith requirement regarding disclosures, as set forth in California Civil Code
7 §§ 1102.1 and 1102.7, and offends the legislative intent regarding income verification as
8 set forth in 66 F.R. 65604-01 .

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

14 73. Plaintiffs and the Class members, and each of them, have been damaged by
15 said practices.

16 74. The conduct of Defendants as described herein violates California Business
17 and Professions Code § 17200, *et seq.*, and other similar state unfair competition and
18 unlawful business practices statutes.

19 75. Pursuant to California Business and Professions Code §§ 17200 and 17203,
20 Plaintiffs, on behalf of themselves and all others similarly situated, seek relief as prayed
21 for below.

22 **SECOND CAUSE OF ACTION**

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

24 **(Against all Defendants)**

25 76. Plaintiffs incorporate by reference and re-allege all paragraphs previously
26 alleged herein.

27 77. As alleged herein, Defendants provided to the Plaintiffs and the class
28 members false and misleading standardized representations and advertisements regarding

1 the value of the house sold; the sales practice of selling to investors; and the desirability
2 of the neighborhood where the house was sold.

3 78. These representations and advertisements were material to Plaintiffs.

4 79. As a result, Plaintiffs and the Class members justifiably relied on such
5 representations and advertisements and were damaged as a result.

6 80. Plaintiffs, on behalf of themselves and the Class, seek relief as prayed for
7 below.

8 **THIRD CAUSE OF ACTION**

9 **Fraud**

10 **(Against all Defendants)**

11 81. Plaintiffs incorporate by reference and re-allege all paragraphs previously
12 alleged herein.

13 82. The misrepresentations, nondisclosure, and/or concealment of material facts
14 made by Defendants to Plaintiffs and the members of the Class, as set forth above, were
15 known by Defendants to be false and material and were intended by Defendants to
16 mislead Plaintiffs and the members of the Class.

17 83. Defendants had a duty to disclose these material facts, pursuant to California
18 Civil Code §§ 2079(a) and 1102.1.

19 84. Plaintiffs and the Class members were actually misled and deceived and
20 were induced by Defendants to purchase homes.

21 85. As a result of the conduct of Defendants, Plaintiffs and the Class members
22 have been damaged. In addition to rescission or compensatory damages, pursuant to
23 California Civil Code § 3343, Plaintiffs seek punitive or *exemplary* damages, pursuant to
24 California Civil Code § 3294, in that Defendants engaged in “an intentional
25 misrepresentation, deceit, or concealment of a material fact known to the defendant[s]
26 with the intention on the part of the defendant[s] of thereby depriving a person of
27 property or legal rights or otherwise causing injury.”

28 //

1 **FOURTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 **(Against all Defendants)**

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

6 87. Defendants had a legal duty to disclose to Plaintiffs and the Class members
7 at and before the times of sale all facts that would have materially affected the value of or
8 quality of life pertaining to living in the houses it sold to Plaintiffs and the Class
9 members. 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 quality of life that Defendants not only knew about, but had intentionally created.

12 88. Such knowledge was completely in the possession of Defendants and was
13 unknown to Plaintiffs and the Class members. The failure to disclose such material facts
14 was uniform in the sale of all of Defendants' homes.

15 89. Defendants uniformly represented to Plaintiffs and the Class members
16 through their written materials that the neighborhoods were stable and desirable.
17 Defendants knew, or in the exercise of reasonable diligence should have known, that
18 Plaintiffs and the Class members would rely upon such representations.

19 90. Plaintiffs and the Class members did reasonably rely on those
20 representations.

21 91. Had Plaintiffs and the Class members known about these material facts, they
22 would not have purchased Defendants' homes.

23 92. As a result of the conduct of Defendants, Plaintiffs and the Class Members
24 have been damaged.

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26 //

27 //

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1 **FIFTH CAUSE OF ACTION**

2 **Breach of Implied Covenant of Good Faith and Fair Dealing**

3 **(Against all Defendants)**

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

6 94. California law implies a covenant of good faith and fair dealing in all
7 contracts between parties.

8 95. Plaintiffs and Defendants entered into a purchase agreement in which
9 Defendants sold houses to Plaintiffs.

10 96. A party to a contract may not engage in conduct that frustrates the benefits
11 of the agreement for the other party. Here, Plaintiffs and the putative Class members
12 entered into the purchase contracts for the purpose of living in a desirable and stable
13 neighborhood community. Plaintiffs have fulfilled their obligations under the contract.

14 97. Defendants' actions in continuing to sell houses to subprime borrowers and
15 investors after the sale to Plaintiffs, directly frustrated the bargained for benefits of the
16 purchase contract, as they caused foreclosures and short-sales affecting market value,
17 abandoned houses, multiple families living in one home, transient neighbors with no
18 long-term ties to the neighborhood, unfinished and unkempt yards, and in some cases,
19 increased crime.

20 98. As a result of the Defendants' actions set forth hereinabove, Defendants
21 have violated the implied covenant of good faith and fair dealing contained in the
22 agreements which purport to govern Plaintiffs' and the Class members' home purchases,
23 and as a result thereof, Plaintiffs and the Class members have been damaged and are
24 entitled to damages as prayed.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
27 relief as follows:
28

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

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

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

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

- 10 1. The difference in value between what the Plaintiffs paid and what he/she
11 received, measured at the time of sale, pursuant to California Civil Code
12 § 3343;
- 13 2. The option to rescind the contract;
- 14 3. Ongoing diminished value of property; and
- 15 4. loss of enjoyment of the property

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

18 F. For an order enjoining Defendants:

- 19 1. under California Business and Professions Code § 17203 from
20 continuing to engage in business acts and practices, or any of them,
21 which are unlawful, unfair, or fraudulent, as alleged herein;
- 22 2. under California Business and Professions Code § 17535 from
23 continuing to engage in the dissemination of advertisements which are
24 untrue or misleading, alleged herein; and
- 25 3. from providing mortgage services or financing to buyers of houses sold
26 by Defendant.


27 G. For an order awarding Plaintiffs and the Class pre-judgment and post-
28 judgment interest, as well as reasonable attorneys' and expert-witness fees and other

1 costs, pursuant to California Code of Civil Procedure § 1021.5, and other statutes as may
2 be applicable; and

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

5 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP

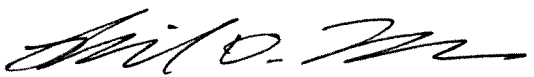
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7 BY: 
8 Richard D. McCune
9 Attorney for Plaintiffs

10 **DEMAND FOR JURY TRIAL**

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

12
13 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP

14
15 BY: 
16 Richard D. McCune
17 Attorney for Plaintiff
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