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9 THE RYLAND GROUP, INC. and RYLAND
HOMES OF CALIFORNIA, INC.

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

13
14 GASPARE C. ONETO, PAUL M.
NAKABAYASHI, SANDRA L.
15 NAKABAYASHI, JOHN BUTLER,
LINDA BUTLER, as individuals and
16 on behalf of all other similarly situated,

17 Plaintiff,

18 v.

19 THE RYLAND GROUP, INC.;
RYLAND HOMES OF CALIFORNIA,
20 INC.; RYLAND MORTGAGE
COMPANY; and DOES 1 through 10,
21 inclusive,

22 Defendants.

CASE NO. ED CV 09-1670 VAP
(DTBx)

**DEFENDANTS THE RYLAND
GROUP, INC. AND RYLAND
HOMES OF CALIFORNIA, INC.’S
NOTICE OF MOTION AND
MOTION TO STRIKE PORTIONS
OF SECOND AMENDED
COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES**

*[Filed concurrently with Motion to
Dismiss; Request for Judicial Notice]*

Hearing

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

Complaint Filed: September 3, 2009
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Trial: None

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1 PLEASE TAKE NOTICE that on January 30, 2012, at 2:00 p.m., or as soon
2 thereafter as the matter may be heard, in Courtroom 2 of the above-entitled Court,
3 located at 3470 Twelfth Street, Riverside California 92501-3000, The Ryland
4 Group, Inc. and Ryland Homes Of California, Inc. (collectively, the “Ryland
5 Companies”) will and hereby do move this Court, pursuant to Federal Rules of
6 Civil Procedure 12(f) and 23, to strike portions of the Second Amended Complaint
7 (“SAC”) of Plaintiffs Gaspare Oneto, Paul M. Nakabayashi, Sandra L.
8 Nakabayashi, John Butler, and Linda Butler (collectively, “Plaintiffs”).

9 The Ryland Companies move to strike the following allegations:

- 10 (1) Paragraphs 95 through 105 relating to “Class Action Allegations” in
11 their entirety;
- 12 (2) Paragraphs 3, 4, 47-55, 66, 75, 92, 94, 100(f)-(h), 119, 127, 135, 143,
13 148, and 151-154 relating to Plaintiffs’ alleged diminished value and
14 diminished desirability injuries;
- 15 (3) References to “class members” contained in Paragraphs 84, 85, 89, 92,
16 99 100, 102-104, 110, 113, 115, 133, 138-141, 144, 145, 149-154;
- 17 (4) References to “members of the Class” contained in Paragraph 5, 48,
18 99, 101-103, 105, 107, 116, 151;
- 19 (5) References to “and the Class members” contained in Paragraphs 110,
20 133, 138-141, 144, 145, 154;
- 21 (6) References to “and the Class” contained in Paragraphs 98, 117, 121,
22 130, 136, 146, 154 and the Prayer for Relief, Paragraphs C, D, E, and G;
- 23 (7) The allegations regarding the compensation of the Ryland Group’s
24 CEO, as they are immaterial and impertinent. Paragraph 56 should be
25 stricken in its entirety;
- 26 (8) Prayer for Relief, Paragraph A: “certifying the nationwide Class and
27 appointing Plaintiffs and their counsel to represent the Class;”
- 28 (9) Prayer for Relief, Paragraph B: “In the alternative, if the Nationwide

1 Class is not certified, certifying a California Class, and appointing
2 Plaintiffs and their counsel to represent the Class;”

3 (10) Prayer for Relief, Paragraph C: “and/or disgorgement of profits;”

4 (11) Prayer for Relief, Paragraph D(2): “The option to rescind the
5 contract;”

6 (12) Prayer for Relief, Paragraph E: “and the Class;” and

7 (13) Prayer for Relief, Paragraph F.3’s request for injunctive relief in its
8 entirety.

9 The Ryland Companies bring this Motion on the following grounds:

10 (1) Plaintiffs’ class claims fail because Plaintiffs cannot maintain a viable
11 class action;

12 (2) In the alternative, Plaintiffs’ nationwide class claims fail because,
13 among other things, they violate Due Process and the Full Faith and
14 Credit Clauses of the United States Constitution. California’s Unfair
15 Competition Law and False Advertising Law do not apply to parties or
16 conduct outside California;

17 (3) In addition, Plaintiffs lack standing to pursue their decreased value and
18 desirability claims because they have not demonstrated causation between
19 the alleged harm and any conduct by the Ryland Companies;

20 (4) Plaintiffs’ allegations about Ryland Companies’ executive salaries are
21 scandalous, irrelevant, and improper;

22 (5) No basis exists as a matter of law for Plaintiffs’ prayer seeking to
23 enjoin the Ryland Companies from providing mortgage services that the
24 SAC nowhere alleges the Ryland Companies provide, or that any such
25 services are unlawful;

26 (6) No basis exists as a matter of law for Plaintiffs’ prayer seeking a
27 disgorgement of profits and rescission; and

28 (7) No basis exists as a matter of law for Plaintiffs’ prayer seeking

1 punitive damages on a class-wide basis.

2 The Ryland Companies’ Motion is based upon this Notice of Motion, the
3 Memorandum of Points and Authorities, and the Motion to Dismiss and Request for
4 Judicial Notice filed concurrently herewith, all pleadings and papers on file with the
5 Court in this action and in the related Homebuilder Cases, and upon such oral and
6 written evidence as may be presented at the hearing of this Motion.

7 This Motion is made following the conference of counsel pursuant to Central
8 District Local Rule 7-3, which occurred on December 15, 2011, however, the
9 parties were unable to resolve any substantive issues.

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Dated: December 22, 2011

DLA PIPER LLP (US)

By: /s/ Nancy Nguyen Sims

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MEMORANDUM OF POINTS AND AUTHORITIES

The Ryland Group, Inc. (“Ryland Group”) and Ryland Homes of California, Inc. (“Ryland Homes”) respectfully submit the following Memorandum of Points and Authorities in support of their Motion to Strike the Second Amended Complaint (“Motion”) of Plaintiffs Gaspare Oneto (“Oneto”), Paul and Sandra Nakabayashi (the “Nakabayashis”), and John and Linda Butler (the “Butlers”). The two Ryland defendants are collectively referred to herein as the “Ryland Companies,” and Oneto, the Nakabayashis, and the Butlers are collectively referred to herein as “Plaintiffs.”

I. INTRODUCTION

In this action, Plaintiffs are homebuyers who assert that the Ryland Companies engaged in a fraudulent scheme to sell homes to “unqualified” and “high-risk-foreclosure” buyers. According to Plaintiffs, these “unqualified” buyers later defaulted on their mortgages, which resulted in foreclosures and short sales that in turn depressed the housing market and the value of Plaintiffs’ homes. In addition to their individual claims, Plaintiffs seek to represent a nationwide class of all homebuyers who purchased homes from Ryland Homes during a particular time period and borrowed or financed less than 90% of the purchase price of the house. For the reasons discussed in the companion Motion to Dismiss, the Court should dismiss all of Plaintiffs’ claims in their entirety. Short of that result, the Court should grant this Motion and strike the immaterial and impertinent allegations from Plaintiffs’ Second Amended Complaint (“SAC”) for the following reasons:

a) Plaintiffs’ attempt to bring this case as a class action is fatally defective. The SAC’s common law tort and contract claims are based on fraud and concealment theories. Fraud-based claims like these rarely are certified as class actions because individual issues concerning reliance predominate. To adjudicate these claims as a class action, the Court would have to engage in an individualized

1 analysis of each putative class member's particular facts and circumstances to
2 determine what alleged representations were made by the Ryland Companies to
3 each home buyer during the sales process, whether each plaintiff heard, saw, or
4 otherwise received each alleged representation, whether his or her reliance was
5 reasonable under the circumstances of each transaction, and whether the buyer
6 purchased his or her home for reasons not related to the Ryland Companies'
7 allegedly unlawful conduct (for example, due to the home's design, location, or
8 amenities). As Plaintiffs estimate the putative class to be composed of thousands of
9 home buyers, possibly up to 47,000 buyers, who purchased homes in scores of
10 different communities in at least thirteen states, these individualized inquiries
11 would predominate over any common issues. This myriad of individualized issues
12 as applied for various geographic locations would also raise significant
13 manageability issues, rendering class treatment inferior and inappropriate.

14 Plaintiffs' statutory claims are likewise defective. Despite the fact that actual
15 reliance is not an element of a claim under California's unfair competition laws,
16 each absent class member would have to demonstrate reliance in order to establish
17 standing under Article III of the Constitution to sue. As recently held by this Court,
18 that individualized inquiry makes UCL claims based on purported fraud unsuitable
19 for class treatment. *O'Shea v. Epson Am., Inc.*, No. 09-8063, 2011 WL 4352458
20 (C.D. Cal. Sept. 19, 2011). Also, applying California law to the claims of a
21 nationwide class could violate Due Process and the Full Faith and Credit Clauses of
22 the Constitution. Moreover, California's Unfair Competition and False Advertising
23 Laws do not apply to parties or conduct outside California. As a result, no
24 nationwide class could ever be certified on these claims.

25 b) In the alternative, if Plaintiffs' class allegations are not stricken in their
26 entirety, the Court should, at a minimum, narrow the proposed class to California
27 residents. Plaintiffs seek to represent a class of homebuyers from thirteen states. It
28 would be entirely unmanageable, however, to adjudicate Plaintiffs' various claims

1 under the thirteen different legal systems. Maintaining this case as a nationwide
2 class action involving non-California class members would present complex
3 problems that will transform this case into a litigation behemoth that will be
4 extremely difficult to manage and control, and will require numerous, individual
5 mini-trials based on significant differences in the substantive law applicable to the
6 claims. Plaintiffs cannot seek to cure these problems by adjudicating all of the
7 absent class members' claims under California law. The Constitution's Due
8 Process Clause provides that claims from out-of-state plaintiffs cannot be
9 adjudicated under the forum state's laws where, as here, the laws of the forum state
10 and other states materially differ, and absent class members lack significant
11 contacts with the forum state.

12 Further, Plaintiffs lack standing to maintain any claim based on a diminished-
13 value or diminished-desirability injury. For the various reasons set forth in the
14 Ryland Companies' Motion to Dismiss, the Court should strike all allegations in the
15 SAC regarding Plaintiffs' purported diminished-value or diminished-desirability
16 injury. Therefore, all allegations regarding that supposed injury are irrelevant.

17 c) Paragraph 56 of the SAC also should be stricken because it is a wholly
18 improper attempt to prejudice the Ryland Companies. In Paragraph 56, Plaintiffs
19 denounce the allegedly "unconscionable compensation" paid to the Ryland Group's
20 CEO between 2004 and 2006. These allegations are immaterial, having nothing
21 whatsoever to do with this case or with Plaintiffs' claims, and are designed to be
22 purely inflammatory.

23 d) Plaintiffs additionally seek an order enjoining the Ryland Companies
24 from providing mortgage services for any home they sell. Plaintiffs do not and
25 cannot allege, however, that it is per se unlawful for a mortgage company to finance
26 a home sold by related entities. Plaintiffs seek an order that would prohibit entirely
27 lawful conduct not related to the allegations in this case, which is vastly overbroad.
28 Moreover, neither of the Ryland Companies named as a defendant in the SAC is a

1 mortgage lender and Plaintiffs do not allege that either defendant engages in any
2 lending activity. Accordingly, Plaintiffs' requested relief is unnecessary and
3 inapplicable.

4 Finally, the Court should strike a number of additional allegations in
5 Plaintiffs' prayer for relief because there is no legal basis for them. Plaintiffs
6 request the option to rescind their purchase contracts. Rescission cannot be sought
7 on a class-wide basis, however. Accordingly, unless the class allegations are
8 stricken, the prayer for rescission must be stricken from the SAC. Also, Plaintiffs
9 seek disgorgement of profits, which is not an available remedy under California's
10 Unfair Competition Law. Likewise, punitive damages cannot be sought on a class-
11 wide basis and the prayer for punitive damages on behalf of the putative class
12 should be stricken.

13 **II. STATEMENT OF FACTS AS ALLEGED IN THE SAC**

14 Plaintiffs bought new houses in Riverside and San Bernardino County,
15 California from Defendant Ryland Homes between 2005 and 2006. SAC ¶¶ 58, 67,
16 and 76. Their SAC alleges five claims: (1) violation of California Business &
17 Professions Code section 17200 (Unfair Competition Law – "UCL"); (2) violation
18 of Business & Professions Code section 17500 (False Advertising Law – "FAL");
19 (3) fraud; (4) negligent misrepresentation; and (5) breach of the implied covenant of
20 good faith and fair dealing.

21 Plaintiffs purport to represent the following nationwide class:

22 All Ryland Homes customers who purchased a new
23 Ryland Homes house from January 1, 2004, through
24 December 31, 2006, and borrowed or financed less than
90% of the purchase price of the house.

25 FAC ¶ 95. In the alternative, Plaintiffs seek to represent a California-only version
26 of the above-proposed class. *Id.* ¶ 97.

1 **III. LEGAL STANDARD APPLICABLE TO THIS MOTION**

2 Under Federal Rule of Civil Procedure (“FRCP”) 12(f), a party may move to
 3 strike “any redundant, immaterial, or impertinent and scandalous matter.” Fed. R.
 4 Civ. P. 12(f). A motion to strike may be granted where “it is clear that the matter to
 5 be stricken could have no possible bearing on the subject matter of the litigation.”
 6 *LeDuc v. Kentucky Central Life Ins. Co.*, 814 F. Supp. 820, 830 (N.D. Cal. 1992);
 7 *see also* Fed. R. Civ. Proc. 12(f). It may be used as a mechanism “to avoid the
 8 expenditure of time and money that must arise from spurious issues by dispensing
 9 with those prior to trial.”¹ *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1478 (C.D.
 10 Cal. 1996).

11 A court may strike class allegations at the pleading stage where the complaint
 12 demonstrates that no class claims can be maintained. *Sanders v. Apple, Inc.*, No.
 13 C08-1713JF(PVT), 2009 WL 150950 (N.D. Cal. Jan. 21, 2009); *see also Stearns v.*
 14 *Select Comfort Retail Corp.*, No. 08-2746, 2008 WL 4542967 at *8 (N.D. Cal.,
 15 Oct. 1, 2008). Where it is clear that a class cannot be certified, courts favor
 16 “disposing of the [class] issue at an early stage of the litigation.” *In re Graphics*
 17 *Processing Units Anti-Trust Litigation*, 527 F. Supp. 2d 1011, 1028 (N.D. Cal.
 18 2007). Furthermore, a court may strike a prayer for relief where the damages
 19 sought are not recoverable as a matter of law. *See, e.g., Wilkerson v. Butler*, 229
 20 F.R.D. 166, 172 (E.D. Cal. 2005) (holding that “[a] motion to strike is appropriate
 21 to address requested relief, such as punitive damages, which is not recoverable as a
 22 matter of law”).

23 **IV. PLAINTIFFS CANNOT MAINTAIN A VIABLE CLASS ACTION**

24 The Ryland Companies hereby incorporate each and every argument and
 25 authority set forth on this issue in the Motion to Strike filed by the Lennar
 26

27 ¹ The Ryland Companies hereby incorporate by reference all arguments set forth by
 28 the other defendants in the other Homebuilders Cases to the extent they are
 applicable here.

1 Defendants in *Stephens v. Lennar*, Case No. ED CV 09-1668, including at Section
2 IV.A.

3 **V. THE COURT ALTERNATIVELY SHOULD STRIKE PLAINTIFFS’**
4 **NATIONWIDE CLASS ALLEGATIONS**

5 The Ryland Companies hereby incorporate each and every argument and
6 authority set forth on this issue in the Motion to Strike filed by the Lennar
7 Defendants in *Stephens v. Lennar*, Case No. ED CV 09-1668, including at Section
8 IV.B.

9 **VI. PLAINTIFFS’ DECREASED VALUE OR DESIRABILITY-BASED**
10 **CLASS CLAIMS FAIL BECAUSE PUTATIVE CLASS MEMBERS**
11 **LACK STANDING**

12 The Ryland Companies hereby incorporate each and every argument and
13 authority set forth on this issue in the Motion to Strike filed by the Lennar
14 Defendants in *Stephens v. Lennar*, Case No. ED CV 09-1668, including at Section
15 IV.C.

16 **VII. PLAINTIFFS’ SCANDALOUS ALLEGATIONS REGARDING**
17 **SALARIES SHOULD BE STRICKEN**

18 Under FRCP 12, a court may strike “scandalous” matters from a complaint.
19 *Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 665 (7th Cir. 1992) (striking
20 scandalous allegations that lacked factual basis). Scandalous allegations include
21 those that, among other things: (1) “reflect cruelly upon the defendant’s moral
22 character,” (2) “detract from the dignity of the court,” or (3) are irrelevant and go
23 into “unnecessary detail.” *Skadegaard v. Farrell*, 578 F. Supp. 1209, 1221 (D. N.J.
24 1984) (internal quotations omitted), *overruled on other grounds by Aitchison v.*
Raffiani, 708 F.2d 96 (3d Cir. 1983).

25 Here, Plaintiffs’ SAC contains the following allegation concerning the salary
26 of The Ryland Group’s Chief Executive Officer:

27 While the scheme has had devastating effects on
28 Plaintiffs, the Defendants, their shareholders and the
executives and management of each Defendant

1 individually benefitted from these practices. Primarily
 2 relying on bonuses, the chief executive officer of The
 3 Ryland Group, Inc., Chad Dreier, received over \$86.11
 4 million (or an average of \$28.7 million a year) in
 5 compensation over the three year class period of 2004-
 2008. On information and belief, the prospect of this
 excessive and unconscionable compensation led to and
 contributed to, inter alia, decisions by such executives
 which resulted in the actions complained of herein.

6 SAC ¶ 56.

7 Plaintiffs' inflammatory allegations are entirely irrelevant to this lawsuit and
 8 are nothing more than an attempt to slander and prejudice the Ryland Companies.
 9 Plaintiffs have no factual basis for their speculative "claim" that Ryland Group
 10 executives somehow committed fraud and other wrongdoing in order to increase
 11 their compensation. Given the seriousness of the allegations and the fact that they
 12 serve no relevant, legitimate, and necessary purpose in the SAC, they should be
 13 stricken.

14 **VIII. PORTIONS OF PLAINTIFFS' PRAYER SHOULD BE STRICKEN**

15 Under FRCP 12(f), the Court may strike "a prayer for relief which is not
 16 available as a matter of law." *Shein v. Canon, U.S.A.*, No. 08-7323, 2009 WL
 17 3109721, at *3 (C.D. Cal. Sept. 22, 2009). Even if Plaintiffs somehow prevailed on
 18 the claims in the SAC, they are precluded, as a matter of law, from enjoining the
 19 Ryland Companies from providing mortgage services, and from obtaining
 20 disgorgement of profits, rescission of their purchase contracts, and punitive
 21 damages on a class-wide basis. Accordingly, these prayers for relief should be
 22 stricken from the SAC.

23 **A. Plaintiffs' Request to Enjoin the Ryland Companies From** 24 **Providing Mortgage Servicing Must Be Stricken**

25 In Section F.3 of their Prayer for Relief, Plaintiffs seek an order enjoining the
 26 Ryland Companies "from engaging in providing mortgage services for homes sold
 27 by Defendants." This request is improper because Plaintiffs do not name any
 28 mortgage defendants in any of the Homebuilder Cases. Ryland Mortgage Company

1 is no longer a named defendant. Moreover, the named Ryland Companies do not
2 provide mortgage services, nor are there any factual allegations that they provide
3 such services. The Ryland Companies cannot be enjoined from providing mortgage
4 services they do not provide, nor can they be enjoined from doing so in the future
5 without some allegation that the threat of future injury exists. *See City of Los*
6 *Angeles v. Lyons*, 461 U.S. 95, 109 (1983) (holding that plaintiff’s standing to seek
7 injunctive relief “depended on whether he was likely to suffer future injury” from
8 the challenged practices).

9 Further, Plaintiffs’ request is overbroad on its face and legally unsustainable.
10 Because Plaintiffs’ request cannot be lawfully granted, it is immaterial and should
11 be stricken. Federal Rule of Civil Procedure 65(d) and established case law require
12 that injunctions be narrowly tailored to remedy the specific harms shown or alleged
13 by plaintiffs. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009);
14 *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 728 (9th Cir. 1983). It is vital that injunctive
15 relief “not impose unnecessary burdens on lawful activity.” *Brooks v. Giuliani*, 84
16 F.3d 1454, 1467 (2d Cir. 1996) (citation and quotation omitted). For that reason,
17 “[a] court must limit the conduct it enjoins to that which is found to have been
18 ‘pursued [or] persuasively to be related to the proven unlawful conduct.’” *Nelson v.*
19 *Int’l Bhd. of Elec. Workers, Local Union No. 46*, 899 F.2d 1557, 1564 (9th Cir.
20 1990) (quoting *NLRB v. Express Pub. Co.*, 312 U.S. 426, 433 (1941)). If a court
21 enjoins lawful behavior, the order “must be carefully limited in time and scope to
22 avoid an unreasonably punitive or nonremedial effect.” *United States v. Holtzman*,
23 762 F.2d 720, 726 (9th Cir. 1985).

24 The mortgage industry is highly regulated. Plaintiffs nevertheless do not
25 allege that Ryland Group’s mortgage subsidiaries violated the law by providing
26 mortgage services for homes sold by Ryland Homes. Indeed, it is perfectly lawful
27 for one corporate subsidiary to finance the mortgage on a house built by another
28 corporate subsidiary. If the Court somehow prohibited the Ryland Companies’

1 related entities from financing home sales, that injunction would indisputably ban
 2 lawful conduct with no nexus to the allegations in the SAC. Plaintiffs' requested
 3 injunction is vastly overbroad and without any limit in time or scope. It would
 4 thrust the Court into the role of a mortgage-industry regulator, despite the complex
 5 and thoughtfully-designed network of rules that now govern the mortgage industry.
 6 For these reasons, Plaintiffs' requested injunction would be improper.

7 **B. Plaintiffs' Allegation Seeking Disgorgement of Profits**

8 Section C of Plaintiffs' Prayer improperly seeks a "disgorgement of profits,"
 9 which is not a permissible remedy for violation of the UCL.² In *Korea Supply Co.*
 10 *v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1147 (2003), the California Supreme
 11 Court found that the Legislature did not intend to authorize the disgorgement of
 12 profits as a remedy for a UCL violation. Specifically, the Court held that "[w]hile
 13 express authority to order restitution was added to the UCL, courts were not given
 14 similar authorization to order nonrestitutionary disgorgement." *Id.* Disgorgement
 15 of profits is nonrestitutionary disgorgement that focuses on a defendant's gain from
 16 the allegedly unfair practice. Nonrestitutionary disgorgement in any form "is not
 17 available in statutory unfair competition cases, even those brought as class actions."
 18 *Feitelberg v. Credit Suisse First Boston LLC*, 134 Cal. App. 4th 997, 1007, 1012,
 19 1013 (2005); *see also Korea Supply Co.*, 29 Cal. 4th at 1150-51 ("The
 20 nonrestitutionary disgorgement remedy sought by plaintiff closely resembles a
 21 claim for damages, something that is not permitted under the UCL."); *Madrid v.*
 22 *Perot Sys. Corp.*, 130 Cal. App. 4th 440, 460 (2005) ("[N]onrestitutionary
 23 disgorgement is not an available remedy in a UCL class action.") (alterations in
 24 original); *Alch v. Sup. Ct.*, 122 Cal. App. 4th 339, 408 (2004).

25 Given that "[t]he restitutionary remedies of section 17203 and 17535 [the
 26 unfair competition and false advertising remedial sections, respectively]. . . are
 27 identical and are construed in the same manner," nonrestitutionary disgorgement is

28 ² Nor is it a proper remedy for any other claim alleged by Plaintiffs.

1 similarly unavailable in false advertising actions. *Colgan v. Leatherman Tool Group,*
 2 *Inc.*, 135 Cal. App. 4th 663, 694 (2006) (internal quotations and citations omitted).
 3 Plaintiffs' request for nonrestitutionary disgorgement for their false advertising and
 4 unfair competition claims, then, is improper and should be stricken as immaterial
 5 and/or impertinent.

6 **C. Plaintiffs' Request for Rescission**

7 Plaintiffs seek, both individually and on behalf of the Class, "[t]he option to
 8 rescind the contract." SAC, Prayer, ¶ D(2). The Court should strike all allegations
 9 in the SAC seeking rescission individually and on behalf of the class because they
 10 are improper as a matter of law.

11 "Courts are in uniform agreement that rescission may not be sought on a
 12 class-wide basis." *Amparan v. Plaza Homes Mortg., Inc.*, No. C07-4498JF(RS),
 13 2008 WL 5245497, at *15 (N.D. Cal. Dec. 17, 2008). In *Andrews v. Chevy Chase*
 14 *Bank*, 545 F.3d 570, 572 (7th Cir. 2008), plaintiffs sought rescission on a class
 15 basis for violations of the Truth In Lending Act ("TILA"). The Seventh Circuit
 16 Court of Appeal held as a matter of law that a class action could not be maintained
 17 for rescission under TILA. *Id.* at 578. The Court recognized that "[r]escission is a
 18 highly individualized remedy as a general matter" and acknowledged that "[t]he
 19 variations in the transactional 'unwinding' process that may arise from one
 20 rescission to the next make it an extremely poor fit for the class-action mechanism."
 21 *Id.* at 574. Emphasizing the problematic and unmanageable nature of a class-wide
 22 rescission claim, the Seventh Circuit stated:

23 A court's certification of a class of persons entitled to
 24 seek rescission would be just the beginning. Each class
 25 member individually would have the option of exercising
 26 his or her right to rescind, and not all class members will
 27 want to do so because it requires returning the loan
 28 principal in exchange for the release of the lien and any
 interest or other payments. Individual controversies
 would erupt and likely continue because the equitable
 nature of rescission generally entitles the affected creditor
 to judicial consideration of the individual circumstances
 of the particular transaction.

1 *Id.* (internal quotations and citations omitted.) In sum, rescission is “procedurally
2 and substantively incompatible with the class-action device.” *Id.*; *see also*
3 *McKenna v. First Horizon Home Loan Corp.*, 475 F.3d 418 (1st Cir. 2007)
4 (denying class certification on rescission claim). “Using a class action to resolve a
5 multitude of individual, varied rescission claims is neither ‘economical’ nor
6 ‘efficient’ in any sense of those terms.” *Andrews*, 545 F.3d at 577; *see also*
7 *Schramm v. JPMorgan Chase Bank, N.A.*, No. 09-9442, 2011 WL 5034663, at *12
8 (CD. Cal. Oct. 19, 2011) (finding a class action, which “requires inquiries into each
9 individual borrower’s situation because it generally includes the return of all
10 interest, fees, finance charges, and commissions paid in connection with the loan”
11 inappropriate for rescission claim).

12 The same rationale applies here. It would be extraordinarily complicated to
13 rescind Plaintiffs’ and the putative class’ purchase and sale contracts as a result of
14 the individualized nature of each transaction. Certainly, many class members may
15 opt against rescission because it would mean leaving and relinquishing their homes.
16 Individualized attention would need to be paid to those putative class members who
17 choose rescission because their transactions are not identical to other class
18 members. Each transaction can vary by, among other factors, the purchase price,
19 lender, type of financing, geographic location, and housing community. The Court
20 also would need to consider the benefit that Plaintiffs and the putative class
21 members obtained for the time they spent in the home and any corresponding
22 consideration that the Ryland Companies should receive on an individual basis.
23 For these reasons, the Court should strike Plaintiffs’ allegations seeking rescission.

24 **D. Plaintiffs’ Request for Class-Wide Punitive Damages**

25 Plaintiffs also improperly seek punitive damages on a class-wide basis.
26 SAC, Prayer, ¶ E. Punitive damages awards must be linked to the harm suffered by
27 each individual plaintiff. *Philip Morris USA v. Williams*, 549 U.S. 346, 354 (2007);
28 *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 50 (1996). In fact, the

1 Supreme Court in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1744
2 (2011), defined punitive damages as one “form of individual relief.” In the recent
3 decision of *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), the Supreme
4 Court confirmed that plaintiffs may not seek any type of individualized monetary
5 relief on a class basis pursuant to FRCP 23(b)(2). Courts also have expressly held
6 that attempts to certify punitive damages claims brought under FRCP 23(b)(3) that
7 require individualized proof and determinations, like those here, similarly fail. *See,*
8 *e.g., Allison v. CITGO Petroleum Corp.*, 151 F.3d 402, 418-420 (5th Cir. 1998)
9 (explaining that punitive damages do not qualify for class treatment under FRCP
10 23(b)(3), especially where, as here, plaintiffs do not allege that “broad policies and
11 practices” affected every putative class member in the same way, because they
12 cannot satisfy predominance); *In re Baycol Products Litig.*, 218 F.R.D. 197, 215-
13 216 (D. Minn. 2003) (holding that plaintiffs failed to demonstrate that a punitive
14 damages class could be certified, in part, because of due process concerns and the
15 differences among the various states’ laws).

16 By these rulings, courts have held that punitive damages awards must be tied
17 to the *individual* harm suffered by each plaintiff, which renders this form of relief
18 inappropriate for class treatment. Moreover, monetary claims cannot be certified
19 pursuant to FRCP 23(b)(2), where the class must primarily seek declaratory and
20 injunctive relief. *See Wal-Mart*, 131 S. Ct. at 2557 (explaining that “one possible
21 reading” of FRCP 23(b)(2) is that it “does not authorize the class certification of
22 monetary claims at all”). Because punitive damages are inherently individualized
23 and improper for class treatment under FRCP 23(b), the Court should strike
24 Plaintiffs’ punitive damages allegations.

25 IX. CONCLUSION

26 For the reasons set forth above, the Ryland Companies respectfully request
27 that the Court grant this Motion in its entirety. Plaintiffs were afforded two
28 opportunities to amend to cure defects in the prior complaints. Given the

1 continuing presence of defects in the SAC, it is clear that any future amendments
2 would be futile. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991)
3 (holding that leave to amend may be denied where amendment would be futile or
4 subject to dismissal).

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