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14 Attorneys for Plaintiffs, Gaspare C. Oneto, Paul M. Nakabayashi, Sandra L.
15 Nakabayashi, John Butler, Linda Butler, and all others similarly situated,

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

18 GASPARE C. ONETO, PAUL M.
19 NAKABAYASHI, SANDRA L.
20 NAKABAYASHI, JOHN BUTLER,
LINDA BUTLER, as individuals and
21 on behalf of all others similarly
situated,

22 Plaintiffs,

23 v.

24 THE RYLAND GROUP, INC.;
RYLAND HOMES OF
25 CALIFORNIA, INC.; RYLAND
MORTGAGE COMPANY; and
26 DOES 1 through 10, inclusive,

27 Defendants.
28

Case No.: ED CV 09-1670 VAP (DTBx)
Judge: Hon. Virginia A. Phillips
Original Complaint Filed: September 3, 2009

**CLASS ACTION:
FIRST AMENDED COMPLAINT**

1. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17200, ET SEQ.]
2. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE § 17500, ET SEQ.]
3. FRAUD
4. NEGLIGENT MISREPRESENTATION
5. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

1 Plaintiffs Gaspare C. Oneto, Paul M. Nakabayashi, Sandra L. Nakabayashi, John
2 Butler and Linda Butler (“Plaintiffs”), on behalf of themselves and all others similarly
3 situated (*i.e.*, the members of the Plaintiff Class described and defined herein) allege as
4 follows:

5 **I**

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction of this action under the Class Action
8 Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005). The amount in controversy
9 exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and there is
10 minimal diversity because certain members of the class are citizens of a different state
11 than any defendant as required by 28 U.S.C. § 1332(d)(2).

12 2. Venue as to Defendants is proper in this judicial district because Defendants
13 The Ryland Group, Inc. (hereinafter “The Ryland Group”); Ryland Mortgage Company
14 (hereinafter “Ryland Mortgage”); and Ryland Homes of California, Inc. (hereinafter
15 “Ryland Homes of California”) are all headquartered in the county of Los Angeles and all
16 do substantial business in this judicial district and some of the acts complained of
17 occurred in this judicial district (the collective Defendants will be referred to as
18 “Defendants” or “Ryland”).

19 **II**

20 **PARTIES**

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

25 4. Plaintiffs Paul M. Nakabayashi and Sandra L. Nakabayashi are residents of
26 the county of Riverside, State of California. They entered into a contractual relationship
27 with Defendants in the county of Riverside, State of California, and their home that is the
28

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

3 5. Plaintiffs John Butler and Linda Butler are residents of the county of San
4 Bernardino, State of California. They entered into a contractual relationship with
5 Defendants in the county of San Bernardino, State of California, and their home that is
6 the subject of the purchase and sale in this action is located in the county of San
7 Bernardino, State of California.

8 6. Defendant The Ryland Group, Inc., is the parent of all Ryland entities. The
9 Ryland Group, Inc., is a home building and lending company with homeowner customers
10 in California as well as a number of other states. The Ryland Group, Inc., is incorporated
11 in the state of Maryland and headquartered in the city of Calabasas, State of California.

12 7. Defendant Ryland Homes of California, Inc., d/b/a "Ryland Homes," is the
13 home building subsidiary of The Ryland Group, Inc., and conducts substantial business in
14 the state of California as well as in other states. Ryland Homes of California, Inc., is
15 incorporated in the state of Delaware and headquartered in the city of Calabasas, State of
16 California.

17 8. Defendant Ryland Mortgage Company, is the mortgage and lending
18 subsidiary of The Ryland Group, Inc., and conducts substantial business in the State of
19 California as well as in other states. Ryland Mortgage Company is incorporated in the
20 state of Ohio and headquartered in the city of Calabasas, State of California.

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

28

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

6 16. While the Defendant Parent Corporation set up a number of “subsidiary”
7 businesses, including Ryland Homes of California, Inc., and other LLC’s and
8 corporations to develop, construct, and sell houses; and Ryland Mortgage Company to
9 finance new house sales, these businesses are separate entities in name only. The Parent
10 Corporation, and its directors, executives, and management control and direct the
11 subsidiary businesses so that these businesses have few of the characteristics of a separate
12 company, and instead have virtually all the characteristics of a division that simply
13 facilitates the implementation of the homebuilding business of the Parent Corporation.

14 17. Based on information and belief, the Parent Corporation, through its
15 directors, executives, and management, sets and directs policy for the subsidiary
16 businesses which develop, construct and sell homes and plays an active role in each of
17 the subsidiaries. With respect to Ryland Homes of California, Inc., and the number of
18 corporations and LLC’s established to sell houses, each of such businesses is directed and
19 controlled by the Parent Corporation as follows:

- 20 a. The Parent Corporation pays and directs employees and consultants who
21 find the new development sites where the subsidiary company will work
22 and do business;
- 23 b. The Parent Corporation creates the budgets, sales quotas, and business
24 plans for the new development sites where the subsidiary company will
25 work and do business;
- 26 c. The Parent Corporation provides the funding and employees to set up the
27 subsidiary to work on the new development site;
- 28

- d. The Parent Corporation selects, directs, and controls the executive(s) that manages the subsidiary that works on the development site;
- e. The Parent Corporation establishes the compensation of the management of the subsidiaries;
- f. The Parent Corporation creates, monitors, and enforces sales quota and business strategies for the subsidiaries' work on a development site;
- g. The Parent Corporation secures outside funding for the subsidiaries, with both parent corporation and subsidiaries having access to the financing and jointly responsible for repayment of the financing;
- h. The Parent Corporation shares both physical and human resources between itself and subsidiaries as well as between different subsidiaries;
- i. The Parent Corporation directs and controls the marketing of its subsidiaries, including branding colors, logos, slogans, names, and web site marketing;
- j. The Parent Corporation fully controls profit from the subsidiaries and reports to shareholders, government entities, and the public the profit and loss earned by the subsidiaries as the Parent Corporation's profit and loss;
- k. Each subsidiaries revenue is almost exclusively from work performed for the Parent Corporation;
- l. The subsidiary building company performs the work of the Parent Corporation that is necessary to sell homes; and
- m. The subsidiary building company does not have a board of directors or management that is independent of the Parent Corporation.

18. Based on information and belief, the Parent Corporation, through its directors, executives and management, also sets and directs policy for the subsidiary businesses that provide temporary financing of the homes constructed and sold by the

1 Parent Corporation and its subsidiaries. Subsidiary corporation Defendant Ryland
2 Mortgage Company is directed and controlled by the Parent Corporation as follows:

- 3 a. The Parent Corporation sets policy for Ryland Mortgage.
- 4 b. The Parent Corporation obtains funding for Ryland Mortgage;
- 5 c. The Parent Corporation selects, directs, and controls the executive(s) who
6 manages Ryland Mortgage (99.7% of Ryland Mortgage's business is for
7 the Parent Corporation);
- 8 d. The Parent Corporation establishes the compensation of the management
9 of Ryland Mortgage;
- 10 e. The Parent Corporation shares both physical and human resources
11 between itself and subsidiaries as well as between different subsidiaries;
- 12 f. The Parent Corporation directs and controls the marketing of Ryland
13 Mortgage, including branding colors, logos, slogans, names, and web site
14 marketing;
- 15 g. Ryland Mortgage shares the web site with the Parent Corporation;
- 16 h. The Parent Corporation controls profit from Ryland Mortgage and
17 reports to shareholders, government entities, and the public the profit and
18 loss earned by Ryland Mortgage as the Parent Corporation's profit and
19 loss;
- 20 i. Each subsidiaries revenue is almost exclusively from work performed for
21 the Parent Corporation;
- 22 j. Ryland Mortgage performs the work of the Parent Corporation that
23 facilitates selling homes by provides financing services; and
- 24 k. Ryland Mortgage does not have a board of directors or management that
25 is independent of the Parent Corporation.

26 19. Because of the business structure of the Parent Corporation and its
27 subsidiaries, the Parent Corporation is legally responsible for not only its actions, but
28 those of its subsidiaries. In addition, the subsidiaries are responsible for not only their

1 acts, but of those of the other subsidiaries. To the extent the action of the Parent
2 Corporation or subsidiary is found to be illegal as alleged in the complaint, the Parent
3 Corporation and each subsidiary is jointly and severally liable for the conduct.

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

6 20. Beginning prior to 2004, Defendant Parent Corporation directed its
7 subsidiaries to implement a scheme to increase the number of houses sold and to increase
8 the amount of profit per sale.

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

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

23 23. Defendants accomplished this through sales quotas, high pressure sales
24 tactics, and then through tactics that would make it likely that buyers would use Ryland’s
25 own mortgage company. After convincing buyers to use their mortgage company,
26 Defendants encouraged and assisted buyers in obtaining mortgages for which they were
27 not qualified. Defendants did this explicitly to sell more houses than they would have
28

1 been able to sell if only traditionally qualified buyers were buying their houses and to
2 increase the profit per house through the creation of an artificial housing demand.

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

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

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

24 26. By financing these unqualified buyers, Defendants knew, or should have
25 known, that they were filling neighborhoods with high-foreclosure-risk buyers
26 surrounding the traditionally qualified and low-foreclosure-risk buyers. Defendants
27 knew, or should have known, that a number of these unqualified buyers were counting on
28 house appreciation to transform them in the future from unqualified to qualified buyers.

1 As a result, these were high-foreclosure-risk buyers. Defendants also knew, or should
2 have known, that buyers requiring subprime loans due to bad credit history were high-
3 foreclosure-risk buyers. Defendants further knew, or should have known, that buyers
4 who were not financially vested in the house, because they did not have to make a
5 substantial down payment or pay closing costs, are much more likely to “walk away”
6 from the house with any downturn in housing prices, which made these buyers high-
7 foreclosure-risk buyers.

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

18 28. Defendants also knew, or should have known, that a neighborhood
19 containing a number of high-foreclosure-risk buyers was a materially important fact to
20 buyers of their houses. Foreclosures and short sales (a lender-agreed sale below the
21 principal of the loan) are devastating to both the value and desirability of a neighborhood.
22 Foreclosures resulting in bank sales and short sales are usually well below market value.
23 These foreclosure sales and short sales then become the new comparative sales values for
24 the neighborhood, which result in a vastly lower market rate. This, in turn, triggers yet
25 another round of foreclosures and short sales, resulting in a further decline in market
26 value. Soon this cycle results in price free-fall for the houses in the neighborhood,
27 materially affecting the value of those homes not subject to foreclosures or short sales.
28

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

5 30. Despite the knowledge that the neighborhood included, and would include in
6 the future, unqualified and high-foreclosure-risk home buyers, Defendants marketed and
7 expressly and/or implicitly represented that the homes they were selling were good
8 investments worth equal to or greater than the sales price; that the homes were not being
9 sold to investors; that the homes were being built as part of stable and desirable
10 neighborhoods.

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

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

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

21 33. As was inevitable, however, over time these unqualified and high-
22 foreclosure-risk buyers began to default on their loans leading to foreclosures and short
23 sales. These foreclosures and short sales of properties were significantly below market
24 value and depressed the value of the houses of the qualified and low-foreclosure-risk
25 buyers. A snowball effect of foreclosures and short sales then followed, each further
26 depressing the market value of the neighborhoods. This led to a catastrophic loss of
27 value to the homeowners, wiping out the life savings of homeowners who did everything
28 right.

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

10 35. While the scheme has had devastating effects on Plaintiffs, the Defendants,
11 their shareholders and the executives and management of each Defendant individually
12 benefitted from these practices. Primarily relying on bonuses, the chief executive officer
13 of The Ryland Group, Inc., Chad Dreier, received over \$86.11 million (or an average of
14 \$28.7 million a year) in compensation over the three year class period of 2004-2006.
15 Based on information and belief, the prospect of this excessive and unconscionable
16 compensation led to and contributed to, inter alia, decisions by such executives which
17 resulted in the actions complained of herein.

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

- 20 a. Defendant The Ryland Group, Inc., created the scheme and directed each
21 of its subsidiaries to carry out the scheme in furtherance of its goal of
22 increasing profit for the Parent Corporation;
- 23 b. The Ryland Group, Inc., directed the practice that led Defendant Ryland
24 Mortgage to engage in unlawful and reckless lending practices;
- 25 c. The Ryland Group, Inc., directed the practices of Defendant Ryland
26 Homes of California relating to sales quotas, benchmarks, sales practices,
27 and disclosures that resulted in the unlawful concealment from buyers of
28 the presence of high-foreclosure-risk homeowners in the neighborhood;

- 1 d. The Ryland Group, Inc., received the profit from increased sales and
2 higher prices per house from those concealed actions that artificially
3 created a “buying frenzy” from unqualified buyers and investors,
4 misleading traditionally qualified homebuyers into purchasing houses at
5 inflated prices, and causing the subsequent massive foreclosures which
6 resulted in tremendous devaluation of the houses, thereby damaging
7 Plaintiffs and those similarly situated; and
8 e. At all times, each Defendant was aware of the practices in furtherance of
9 the scheme of each of the other Defendants.

10 **IV**

11 **PLAINTIFFS’ FACTUAL ALLEGATIONS**

12 37. In or about August 2005, Plaintiff Gaspare Oneto bought a new house
13 located in the county of Riverside, California from Ryland Homes of California. Plaintiff
14 put a down payment of about 50% on the house. He financed the house through Ryland
15 Mortgage. He was provided marketing materials that depicted the community as a stable,
16 family based neighborhood. Those marketing materials did not adequately disclose the
17 different Ryland subsidiaries. He was not advised, and did not know, that other buyers in
18 the community were sold homes using subprime loans and were not qualified buyers.
19 He was also not advised, and did not know, that Defendants were selling homes in his
20 neighborhood to investors. Since the purchase of his house, there have been a number of
21 rentals, short-sales, and foreclosures in his neighborhood.

22 38. In or about August 2006, Plaintiffs Paul M. Nakabayashi and Sandra L.
23 Nakabayashi bought a new house located in the county of Riverside, California from
24 Ryland Homes of California. Plaintiffs put a down payment of 35% on the house. They
25 financed the house from Ryland Mortgage. They were provided marketing materials that
26 depicted the community as a stable, family based neighborhood. Those marketing
27 materials did not adequately disclose the different Ryland subsidiaries. They were not
28 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 his neighborhood to investors. Since the
3 purchase of his house, there have been a number of rentals, short-sales, and foreclosures
4 in his neighborhood.

5 39. In or about March 2006, Plaintiffs John Butler and Linda Butler bought a
6 new house located in the county of San Bernardino, California from Ryland Homes of
7 California. Plaintiffs put a down payment of approximately 65% on the house. They
8 financed their home through Ryland Mortgage. They were provided marketing materials
9 that depicted the community as a stable, family based neighborhood. Those marketing
10 materials did not adequately disclose the different Ryland subsidiaries. They were not
11 advised, and did not know, that other buyers in the community were sold homes using
12 subprime loans and were not qualified buyers. They were also not advised, and did not
13 know, that Defendants were selling homes in his neighborhood to investors. Since the
14 purchase of his house, there have been a number of rentals, short-sales, and foreclosures
15 in his neighborhood.

16 40. Based on information and belief, Plaintiffs and all class members:

- 17 a. were provided brochures, business cards, and access to a web site that
18 identified the seller as Ryland without distinguishing between the
19 Defendant home building companies and subsidiaries;
- 20 b. were offered financial incentives by Ryland Homes of California to use
21 Ryland to finance the purchase of their houses, resulting in the majority
22 of purchasers financing through Ryland Mortgage;
- 23 c. that did not use Ryland Mortgage to finance their house, were required
24 to, and did in fact, provide financial information to Ryland that allowed it
25 to have sufficient information to determine whether the buyer was a sub-
26 prime buyer or investor;
- 27 d. who financed their houses through Ryland were provided an appraiser
28 selected by Defendants. The appraiser selected by Ryland Mortgage was

1 dependent on Ryland Mortgage for a large percentage of its business and,
2 therefore, was pressured to provide appraisals that met or exceeded the
3 sales prices Ryland was able to obtain for its houses. The appraisals of
4 Plaintiffs' houses were inflated.

5 41. Plaintiffs further allege based on information and belief paragraphs 42-51.

6 42. Defendants represented to Plaintiffs and all class members that it was its
7 policy not to sell homes to investors. Ryland represented that it discourages speculation
8 and to provide a stabilized community, Ryland intends to sell homes only to people who
9 will occupy them.

10 43. Defendants represented to Plaintiffs and all class members that Ryland
11 communities were good investments and/or worth the selling price of the house.

12 44. Defendants represented to Plaintiffs and all class members that Ryland
13 developments were stable, family neighborhoods occupied by owners of the homes.

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

16 46. The process for the purchase of Plaintiffs' houses was typical of how
17 Defendants processed most of their sales.

18 47. At the time Defendants sold the houses to Plaintiffs, Defendants had sold
19 houses, and planned to and did sell houses in the future, to unqualified and high-
20 foreclosure-risk buyers, as well as professional investors that were not owner-occupiers
21 of the houses.

22 48. While Defendants provided Plaintiffs and all class members certain
23 disclosures before or at the time of sale, they did not provide Plaintiffs and all class
24 members with any disclosure that Defendants had sold houses, and would sell houses in
25 the future, to unqualified and high-foreclosure-risk buyers. Defendants also did not
26 disclose that they had sold houses, and planned to sell houses in the future, to investors
27 who would not occupy the houses.

28

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

4 53. If the Court determines that a nationwide class is not warranted, Plaintiffs
5 request, in the alternative, certification of a California class of new Ryland Homes
6 customers whose homes are located in California.

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

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

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

- 22 a. whether Defendants engaged in the alleged scheme as set forth
23 throughout this First Amended Complaint;
- 24 b. whether Defendants' policy and practice - which was in place prior to
25 and throughout the class period - of selling homes to high foreclosure risk
26 buyers is material to the value and quality of life for buyers of houses in
27 that neighborhood;

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

22 57. **Typicality** – The claims of the representative Plaintiffs are typical of the
23 claims of the members of the Class. Plaintiffs, like all other members of the Class, have
24 sustained damages arising from Defendants' violations of the laws, as alleged herein.
25 The representative Plaintiffs and the members of the Class were and are similarly or
26 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive
27 pattern of misconduct engaged in by Defendants.
28

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

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

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

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

4 a. Without class certification and determination of declaratory,
5 injunctive, statutory, and other legal questions within the class format,
6 prosecution of separate actions by individual members of the Class
7 will create the risk of:

8 i. Inconsistent or varying adjudications with respect to individual
9 members of the Class which would establish incompatible
10 standards of conduct for the parties opposing the Class; or

11 ii. Adjudication with respect to individual members of the Class
12 which would as a practical matter be dispositive of the interests
13 of the other members not parties to the adjudication or
14 substantially impair or impede their ability to protect their
15 interests;

16 b. The parties expected to oppose the Class have acted or refused to act
17 on grounds generally applicable to each member of the Class, thereby
18 making appropriate final injunctive or corresponding declaratory
19 relief with respect to the Class as a whole; or

20 c. Common questions of law and fact exist as to the members of the
21 Class and predominate over any questions affecting only individual
22 members, and a Class Action is superior to other available methods of
23 the fair and efficient adjudication of the controversy, including
24 consideration of:

25 i. The interests of the members of the Class in individually
26 controlling the prosecution or defense of separate actions;
27
28

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

14 63. 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 64. 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 65. The disclosures must be made in good faith and waiver is against public
2 policy.

3 66. 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 67. 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 Ryland
10 Mortgage to finance a high percentage of the buyers. Even for buyers that utilized other
11 financial institutions, before Defendants would enter into a purchase agreement,
12 Defendants required these buyers to provide “qualifying” financial information that
13 provided Defendants with knowledge that these buyers were likely subprime buyers
14 and/or investors.

15 68. 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 Ryland Mortgage processed loans for buyers that falsified and inflated unverified income,
20 offending the legislative intent regarding income verification, as set forth in 66 Fed. Reg.
21 65604-01 (2001).

22 69. 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 70. 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 71. 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 72. Plaintiffs and the Class members, and each of them, have been damaged by
15 said practices.

16 73. 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 74. 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 75. Plaintiffs incorporate by reference and re-allege all paragraphs previously
26 alleged herein.

27 76. 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 77. These representations and advertisements were material to Plaintiffs.

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

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

8 9 **THIRD CAUSE OF ACTION**

10 **Fraud**

11 **(Against all Defendants)**

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 **(Against all Defendants)**

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

6 86. 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 87. 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 88. 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 89. Plaintiffs and the Class members did reasonably rely on those
20 representations.

21 90. Had Plaintiffs and the Class members known about these material facts, they
22 would not have purchased Defendants' homes or paid the inflated purchase price.

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

25 **FIFTH CAUSE OF ACTION**

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

27 **(Against all Defendants)**

28

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

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

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

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

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

16 F. For an order enjoining Defendants:

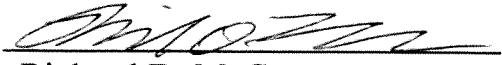
- 17 1. under California Business and Professions Code § 17203 from
18 continuing to engage in business acts and practices, or any of them,
19 which are unlawful, unfair, or fraudulent, as alleged herein;
- 20 2. under California Business and Professions Code § 17535 from
21 continuing to engage in the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

25 G. For an order awarding Plaintiffs and the Class pre-judgment and post-
26 judgment interest, as well as reasonable attorneys' and expert-witness fees and other
27 costs, pursuant to California Code of Civil Procedure § 1021.5, and other statutes as may
28 be applicable; and

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

3 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP


4
5 BY: 
6 Richard D. McCune
7 Attorney for Plaintiffs

8 **DEMAND FOR JURY TRIAL**

9
10 Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

11 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP

12
13 BY: 
14 Richard D. McCune
15 Attorney for Plaintiffs
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