

1 Richard D. McCune (#132124)
rdm@mccunewright.com
2 David C. Wright (#177468)
dcw@mccunewright.com
3 Jae (Eddie) K. Kim (#236805)
jkk@mccunewright.com
4 MCCUNEWRIGHT LLP
5 2068 Orange Tree Lane, Suite 216
Redlands, California 92374
6 Ph: (909) 557-1250 / F: (909) 557-1275

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

Derek Y. Brandt (*Pro Hac Vice*)
dbrandt@simmonsfirm.com
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC
One Court Street
Alton, Illinois 62002
Ph: (618) 259-2222
F: (618) 259-2251

14 Attorneys for Plaintiff JAMES DODARO and all others similarly situated,

15
16 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

17
18 JAMES DODARO, individually and on
behalf of all other similarly situated,

19
20 Plaintiff,

21 v.

22 STANDARD PACIFIC CORP., d/b/a
"STANDARD PACIFIC HOMES" and
DOES 1 through 10, inclusive,

23 Defendants.
24
25
26
27
28

Case No.: ED CV 09-1666 VAP (DTBx)
Judge: Hon. Virginia A. Phillips

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S SECOND
AMENDED COMPLAINT**

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

Original Complaint Filed: 9/3/2009
Second Amended Complaint Filed:
12/2/2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES.....	II
I. INTRODUCTION	1
II. INTRODUCTION	1
III. LEGAL STANDARD.....	1
IV. ARGUMENT	2
A. DEFENDANTS’ MOTION TO STRIKE OR “NARROW” PRAYERS FOR RELIEF SHOULD BE DENIED	2
B. DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S DIMINISHED-VALUE AND DIMINISHED-DESIRABILITY ALLEGATIONS SHOULD BE DENIED	2
C. DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S CLASS ALLEGATIONS SHOULD BE DENIED	2
D. PLAINTIFF SHOULD BE GRANTED LEAVE TO AMEND IF NECESSARY	4
V. CONCLUSION.....	4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

Cases

Clothesrigger, Inc. v. GTE Corp.,
191 Cal. App. 3d 605, 236 Cal. Rptr. 605 (1987) 3

Diamond Multimedia Sys., Inc. v. Superior Court,
19 Cal. 4th 1036, 80 Cal. Rptr. 2d 828 (1999) 3

Norwest Mortgage, Inc. v. Superior Court,
72 Cal. App. 4th 214, 85 Cal. Rptr. 2d 18 (1999) 3

State of Florida v. Tenet Healthcare Corp.,
420 F. Supp. 2d 1288 (S.D. Fla. 2005) 3

1 **I. INTRODUCTION**

2 Plaintiff James Dodaro, as an individual and on behalf of all others similarly
3 situated (“Plaintiff”), submits this Memorandum of Points and Authorities in
4 Opposition to Defendants’ Motion to Strike Portions of Plaintiff’s Second
5 Amended Complaint (“SAC”).

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

12 **II. INTRODUCTION**

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

16 **III. LEGAL STANDARD**

17 Plaintiff incorporates herein by reference the Legal Standard section of the
18 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.
19 ED CV 09-01668 VAP (DTBx), also pending before this Court.

20 //

21 //

22 //

23 //

24 //

25 ¹ Where incorporated sections of the *Stephens v. Lennar* Opposition contains
26 references or citations to the Second Amended Complaints in that case, Plaintiff
27 incorporates herein by reference the corresponding and substantially similar
28 allegations of his own Second Amended Complaint, the “*Dodaro SAC*.” Should the
Court prefer precise citations to paragraphs in the *Dodaro SAC*, Plaintiff can
provide those citations.

1 **IV. ARGUMENT**

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

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

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

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

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

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

17 Plaintiff argues in the Lennar Opposition (*see* Lennar Opp. Section
18 III.C.3.(b)(ii), incorporated herein) that it would be improper for the Court to
19 determine at this juncture that class allegations should be limited. Essentially, even
20 if the Court could determine on the present record that California law would not
21 apply to certain claims brought by certain class members, it is not possible to
22 determine on the present record, as a matter of law, that California law (or the
23 equivalent) cannot apply to *any* claims brought by non-resident class members.
24 The Standard Pacific Defendants’ motion to strike nationwide class allegations
25 should be denied for another reason as well. Defendants in this action are
26 headquartered in California. (*Dodaro* SAC ¶¶ 6, 8.) Plaintiff alleges that the parent
27 entity, Standard Pacific Corp., sets policy for, directs, and controls its subsidiaries,
28 including directing them to implement the scheme of which Plaintiff complains.

1 (See *id.* at, e.g., ¶¶ 9, 16-20, 22-27, 55.) Where claims are based on conduct
2 emanating out of California, state and federal courts have found that such actions
3 suffice to allow non-resident plaintiffs to invoke the protections of California law,
4 including the UCL and FAL. See, e.g., *Diamond Multimedia Sys., Inc. v. Superior*
5 *Court*, 19 Cal. 4th 1036, 1061, 80 Cal. Rptr. 2d 828 (1999) (applying California
6 securities law to out-of-state plaintiffs where the misrepresentation emanated from
7 California); *Norwest Mortgage, Inc. v. Superior Court*, 72 Cal. App. 4th 214, 85
8 Cal. Rptr. 2d 18 (1999); *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605,
9 613, 236 Cal. Rptr. 605 (1987) (holding that certification of non-resident class was
10 appropriate because the claims of unfair business practices related to
11 misrepresentations in literature prepared in California); *State of Florida v. Tenet*
12 *Healthcare Corp.*, 420 F. Supp. 2d 1288, 1311 (S.D. Fla. 2005) (holding non-
13 resident plaintiffs may assert claims under UCL because they allege the defendants
14 “devised, implemented, and directed” their scheme at the corporate headquarters in
15 California and further “received the ill-gotten gains” in California).

16 Plaintiff does not concede that as a matter of law at the pleadings stage no
17 nationwide class can be certified on any claims or any issues in any of these eight
18 cases. What is even more clear, though, is that Defendants who are headquartered
19 in and operating out of California, or whose conduct emanates from California,
20 have even less basis to challenge the extra-territorial application of California law,
21 particularly in a Rule 12(f) application to strike national class allegations at the
22 pleading stage. While no defendants can establish on the current record that all
23 questions of law are “clear and undisputed” and that “under no set of
24 circumstances” could a nationwide class be certified, the California-based
25 Defendants, in particular, cannot succeed in striking nationwide class allegations.
26 Defendants’ motion should be denied.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. PLAINTIFF SHOULD BE GRANTED LEAVE TO AMEND IF NECESSARY

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

V. CONCLUSION

For the foregoing reasons, Defendants' motion to strike should be denied in its entirety.

Dated: January 9, 2012

SIMMONS BROWDER GIANARIS ANGELIDES &
BARNERD LLC

By: /s/ Derek Y. Brandt
Derek Y. Brandt (*pro hac vice*)
Attorneys for Plaintiff