

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 Plaintiffs MATTHEW NIELSEN, NICOLE NIELSEN, and all others  
15 similarly situated,

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

18 MATTHEW NIELSEN, NICOLE NIELSEN,  
19 as individuals and on behalf of all  
others similarly situated,

20 Plaintiffs,

21 v.

22 SHEA HOMES, INC.; J.F. SHEA CO.,  
23 INC.; and DOES 1 through 10  
inclusive.

24 Defendants.

Case No.: ED CV 09-1673 VAP (DTBx)  
Judge: Hon. Virginia A. Phillips

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

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

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

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1 Plaintiffs Matthew Nielson and Nicole Nielson, as individuals and on behalf  
2 of all others similarly situated (“Plaintiffs”), submit this Memorandum of Points  
3 and Authorities in Opposition to Defendants’ Motion to Strike Portions of  
4 Plaintiff’s Second Amended Complaint (“SAC”).

5 As further designated below, Plaintiffs in this action incorporate herein by  
6 reference certain sections, including arguments and authority, from the  
7 Memorandum of Points & Authorities in Opposition to Defendants’ Motion to  
8 Strike Portions of Plaintiffs’ Second Amended Complaint (“Opposition to Motion  
9 to Strike”) filed concurrently by the plaintiffs in *Stephens v. Lennar Corp.*, No. ED  
10 CV 09-1668 VAP (DTBx), also pending before this Court. Plaintiffs also  
11 incorporate herein by reference one section, including arguments and authority,  
12 from the Opposition to Motion to Strike filed concurrently in *Maya v. Centex*  
13 *Corporation*, No. ED CV 09-1671 VAP (DTBx), also pending before this Court.<sup>1</sup>

14 **I. INTRODUCTION<sup>2</sup>**

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

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

25 <sup>2</sup> Shea notes that Plaintiffs have not named Shea Homes Limited Partnership as a  
26 defendant in this action. Shea Br. at 1 n.1. Shea advances no argument relative to  
27 its Motion to Strike based on this assertion. Plaintiffs incorporate by herein by  
28 reference their response to this point as made in their opposition to Shea’s motion  
to dismiss at p. 1, n.2. Plaintiffs reserve the right to respond to any argument Shea  
might make on this point, and reserve their right to seek leave to amend the  
complaint if necessary.

1 **II. LEGAL STANDARD**

2 Plaintiffs incorporate herein by reference the Legal Standard section of the  
3 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.  
4 ED CV 09-01668 VAP (DTBx), also pending before this Court.

5 **III. ARGUMENT**

6 **A. DEFENDANTS' MOTION TO STRIKE OR "NARROW" PRAYERS FOR**  
7 **RELIEF SHOULD BE DENIED**

8 Plaintiffs incorporate herein by reference Argument Section III.A. of the  
9 Opposition to Motion to Strike filed concurrently in *Stephens v. Lennar Corp.*, No.  
10 ED CV 09-01668 VAP (DTBx), also pending before this Court. Plaintiffs also  
11 incorporate herein by reference Argument Section III.A. of the Opposition to  
12 Motion to Strike filed concurrently in *Maya v. Centex Corporation*, No. ED CV 09-  
13 1671 VAP (DTBx), also pending before this Court. The *Maya* opposition contains  
14 the lead opposition to the motion by several defendants to strike Plaintiffs' prayer  
15 for punitive damages.

16 **B. DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' DIMINISHED-VALUE**  
17 **AND DIMINISHED-DESIRABILITY ALLEGATIONS SHOULD BE DENIED**

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

21 **C. DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' CLASS ALLEGATIONS**  
22 **SHOULD BE DENIED**

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

26 Shea's additional argument that class allegations must be limited to the  
27 specific subdivisions in which the representative plaintiffs purchased homes no  
28 more serves as a basis for this Court to grant the requested relief on the present

1 record than does the California-only argument. Like Lennar, Shea argues that  
2 “[a]nything broader compels the Court to confront individualized issues resulting  
3 from the fact that class members in different subdivisions interacted with different  
4 sales people (who presumably made different oral representations), were exposed to  
5 different advertisements, and potentially signed contracts with varying provisions.”  
6 (Shea Br. at 11.) Also like Lennar, Shea invents these facts out of whole cloth. The  
7 SAC makes *no allegations whatsoever* about interactions with sales people and *no*  
8 *allegations* about oral representations. (See *Nielson SAC*, ¶¶ 57-83.) And even if  
9 there do exist materially different marketing materials (which is neither a fact nor a  
10 reasonable inference which may be drawn from the complaint), Plaintiffs allege that  
11 Shea made misrepresentations in standard form disclosures and purchase  
12 agreements. (See *id.*, ¶¶ 59-68.) As well, Shea ignores entirely the predominance  
13 of Defendants’ omissions, which are common to all class members. (See *id.*, ¶¶ 70,  
14 100-102.)

15 The same is true of the Shea Covenants, Conditions, and Restrictions  
16 (“CC&R”) and the Department of Real Estate of the State of California Final  
17 Subdivision Public Report (“DRE Final Report”). Shea essentially asks this Court  
18 to find, on the present record, that the representations it made in disclosures for  
19 other subdivisions or used in other states vary in a material way. Of course the  
20 Court cannot do so as a part of the present motion. But even if it could, Shea makes  
21 no similar argument about the representations made in its standard purchase  
22 agreement and no argument addressing its material omissions which, by definition,  
23 apply classwide without variance. The motion to narrow class allegations fails on  
24 the current record for the same reasons as set forth in Argument Section III.C. of  
25 the *Stephens v. Lennar* opposition.

26 Plaintiffs argue in the Lennar Opposition (see Lennar Opp. Section  
27 III.C.3.(b)(ii), incorporated herein) that it would be improper for the Court to  
28 determine at this juncture that class allegations should be limited. Essentially, even

1 if the Court could determine on the present record that California law would not  
2 apply to certain claims brought by certain class members, it is not possible to  
3 determine on the present record, as a matter of law, that California law (or the  
4 equivalent) cannot apply to *any* claims brought by non-resident class members.  
5 The Shea Defendants' motion to strike nationwide class allegations should be  
6 denied for another reason as well. Defendants in this action are headquartered in  
7 California. (*Nielson SAC* ¶¶ 8-9.) Plaintiffs allege that the parent entity, J.F. Shea,  
8 sets policy for, directs, and controls its subsidiaries, including directing them to  
9 implement the scheme of which Plaintiffs complain. (*See id.* at, e.g., ¶¶ 19-22, 24-  
10 29, 56.) Where claims are based on conduct emanating out of California, state and  
11 federal courts have found that such actions suffice to allow non-resident plaintiffs  
12 to invoke the protections of California law, including the UCL and FAL. *See, e.g.,*  
13 *Diamond Multimedia Sys., Inc. v. Superior Court*, 19 Cal. 4th 1036, 1061, 80 Cal.  
14 Rptr. 2d 828 (1999) (applying California securities law to out-of-state plaintiffs  
15 where the misrepresentation emanated from California); *Norwest Mortgage, Inc. v.*  
16 *Superior Court*, 72 Cal. App. 4th 214, 85 Cal. Rptr. 2d 18 (1999); *Clothesrigger,*  
17 *Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 613, 236 Cal. Rptr. 605 (1987) (holding  
18 that certification of non-resident class was appropriate because the claims of unfair  
19 business practices related to misrepresentations in literature prepared in California);  
20 *State of Florida v. Tenet Healthcare Corp.*, 420 F. Supp. 2d 1288, 1311 (S.D. Fla.  
21 2005) (holding non-resident plaintiffs may assert claims under UCL because they  
22 allege the defendants "devised, implemented, and directed" their scheme at the  
23 corporate headquarters in California and further "received the ill-gotten gains" in  
24 California).

25 Plaintiffs do not concede that as a matter of law at the pleadings stage no  
26 nationwide class can be certified on any claims or any issues in any of these eight  
27 cases. What is even more clear, though, is that Defendants who are headquartered  
28 in and operating out of California, or whose conduct emanates from California,

1 have even less basis to challenge the extra-territorial application of California law,  
2 particularly in a Rule 12(f) application to strike national class allegations at the  
3 pleading stage. While no defendants can establish on the current record that all  
4 questions of law are “clear and undisputed” and that “under no set of  
5 circumstances” could a nationwide class be certified, the California-based  
6 Defendants, in particular, cannot succeed in striking nationwide class allegations.  
7 Defendants’ motion should be denied.

8 **D. PLAINTIFFS SHOULD BE GRANTED LEAVE TO AMEND IF NECESSARY**

9 Plaintiffs incorporate herein by reference Argument Section III.E. 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 **IV. CONCLUSION**

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

15 Dated: January 9, 2012

16 SIMMONS BROWDER GIANARIS ANGELIDES &  
17 BARNERD LLC

18 By: /s/ Derek Y. Brandt  
19 Derek Y. Brandt (*pro hac vice*)  
20 Attorneys for Plaintiffs