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NY _____

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 MCCUNE WRIGHT LLP
5 2068 Orange Tree Lane, Suite 216
Redlands, California 92374
6 Phone: (909) 557-1250 / Fax: (909) 557-1275

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

Derek Y. Brandt (*Pro Hac Vice* Pending)
dbrandt@simmonsfirm.com
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC
707 Berkshire Boulevard
East Alton, Illinois 62024
Phone: (618) 259-2222
Fax: (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, EASTERN DIVISION

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

21 Plaintiffs,

22 v.

23 SHEA HOMES, INC.; J. F. SHEA
CO., INC.; SHEA MORTGAGE
24 INC.; et al.,

25 Defendants.

) Case No.: ED CV 09-1673 VAP (DTBx)
) Judge: Hon. Virginia A. Phillips
) Original Complaint Filed: September 3, 2009

26 **CLASS ACTION:**
27 **FIRST AMENDED COMPLAINT**

- 28 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 Matthew Nielsen and Nicole Nielsen (“Plaintiffs”), on behalf of
2 themselves and all others similarly situated (*i.e.*, the members of the Plaintiff Class
3 described and defined herein) allege as follows:

4 **I**

5 **JURISDICTION AND VENUE**

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

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

17 **II**

18 **PARTIES**

19 3. Plaintiffs Matthew Nielsen and Nicole Nielsen are residents of the county of
20 Riverside, State of California. They entered into a contractual relationship with
21 Defendants in the county of Riverside, State of California, their home that is the subject
22 of the purchase and sale in this action is located in the county of Riverside, State of
23 California.

24 4. Defendant J. F. Shea Co., Inc., is the parent of all Shea Homes entities. J. F.
25 Shea Co., Inc., is a home building and lending company with homeowner customers in
26 California as well as a number of other states. J. F. Shea Co., Inc., is incorporated in the
27 state of Nevada and headquartered in the city of Walnut, State of California.
28

1 Arizona, California, Colorado, Florida, North Carolina and Washington. Based on
2 information and belief, it has sold thousands of homes in California.

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

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

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

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

26 15. Based on information and belief, the Parent Corporation, through its
27 directors, executives, and management, sets and directs policy for the subsidiary
28 businesses which develop, construct and sell homes and plays an active role in each of

1 the subsidiaries. With respect to Shea Homes, Inc., and the number of corporations and
2 LLC's established to sell houses, each of such businesses is directed and controlled by
3 the Parent Corporation as follows:

- 4 a. The Parent Corporation pays and directs employees and consultants who
5 find the new development sites where the subsidiary company will work
6 and do business;
- 7 b. The Parent Corporation creates the budgets, sales quotas, and business
8 plans for the new development sites where the subsidiary company will
9 work and do business;
- 10 c. The Parent Corporation provides the funding and employees to set up the
11 subsidiary to work on the new development site;
- 12 d. The Parent Corporation selects, directs, and controls the executive(s) that
13 manages the subsidiary that works on the development site;
- 14 e. The Parent Corporation establishes the compensation of the management
15 of the subsidiaries;
- 16 f. The Parent Corporation creates, monitors, and enforces sales quota and
17 business strategies for the subsidiaries' work on a development site;
- 18 g. The Parent Corporation secures outside funding for the subsidiaries, with
19 both parent corporation and subsidiaries having access to the financing,
20 and jointly responsible for repayment of the financing;
- 21 h. The Parent Corporation shares both physical and human resources
22 between itself and subsidiaries as well as between different subsidiaries;
- 23 i. The Parent Corporation directs and controls the marketing of its
24 subsidiaries, including branding colors, logos, slogans, names, and web
25 site marketing;
- 26 j. The Parent Corporation fully controls profit from the subsidiaries;
- 27 k. Each subsidiary performs most if not all of its work for the Parent
28 Corporation;

- 1 l. The subsidiary building company performs the work of the Parent
2 Corporation that is necessary to sell homes; and
3 m. The subsidiary building company does not have a board of directors or
4 management that is independent of the Parent Corporation.

5 16. Based on information and belief, the Parent Corporation, through its
6 directors, executives and management, also sets and directs policy for the subsidiary
7 businesses that provide temporary financing of the homes constructed and sold by the
8 Parent Corporation and its subsidiaries. Subsidiary corporation Defendant Shea
9 Mortgage Inc. is directed and controlled by the Parent Corporation as follows:

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

1 17. Because of the business structure of the Parent Corporation and its
2 subsidiaries, the Parent Corporation is legally responsible for not only its actions, but
3 those of its subsidiaries. In addition, the subsidiaries are responsible for not only their
4 acts, but of those of the other subsidiaries. To the extent the action of the Parent
5 Corporation or subsidiary is found to be illegal as alleged in the complaint, the Parent
6 Corporation and each subsidiary is jointly and severally liable for the conduct.

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

9 18. Beginning prior to 2004, Defendant Parent Corporation directed its
10 subsidiaries to implement a scheme to increase the number of houses sold and to increase
11 the amount of profit per sale.

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

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

26 21. Defendants accomplished this through sales quotas, high pressure sales
27 tactics, and then through tactics that would make it likely that buyers would use Shea’s
28 own mortgage company. Based on information and belief, Shea Mortgage provided the

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

13 23. In an attempt to disguise that these loans were for unqualified and high
14 foreclosure risk borrowers, Defendants assisted and encouraged unqualified buyers to
15 appear as qualified buyers by:

- 16 a. allowing and encouraging buyers to provide inflated stated and
17 unverified income;
 - 18 b. underwriting sub-prime loans for buyers with bad credit history;
 - 19 c. not requiring any substantial down payment;
 - 20 d. underwriting or securing piggyback loans for second mortgages so that
21 the buyers did not make any real down payment;
 - 22 e. financing buyers in adjustable loans (interest only or below in many
23 cases) and qualifying these buyers on the artificially low initial payments;
 - 24 f. providing cash “incentives” to buyers at the close of escrow if the buyers
25 used Defendants’ mortgage company to finance the house, thereby
26 eliminating the requirement that buyers pay closing costs; and
27 g. obtaining inflated appraisals.
- 28

1 24. By financing these unqualified buyers, Defendants knew, or should have
2 known, that they were filling neighborhoods with high-foreclosure-risk buyers
3 surrounding the traditionally qualified and low-foreclosure-risk buyers. Defendants
4 knew, or should have known, that a number of these unqualified buyers were counting on
5 house appreciation to transform them in the future from unqualified to qualified buyers.
6 As a result, these were high-foreclosure-risk buyers. Defendants also knew, or should
7 have known, that buyers requiring subprime loans due to bad credit history were high-
8 foreclosure-risk buyers. Defendants further knew, or should have known, that buyers
9 who were not financially vested in the house, because they did not have to make a
10 substantial down payment or pay closing costs, are much more likely to “walk away”
11 from the house with any downturn in housing prices, which made these buyers high-
12 foreclosure-risk buyers.

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

23 26. Defendants also knew, or should have known, that a neighborhood
24 containing a number of high-foreclosure-risk buyers was a materially important fact to
25 buyers of their houses. Foreclosures and short sales (a lender-agreed sale below the
26 principal of the loan) are devastating to both the value and desirability of a neighborhood.
27 Foreclosures resulting in bank sales and short sales are usually well below market value.
28 These foreclosure sales and short sales then become the new comparative sales values for

1 the neighborhood, which result in a vastly lower market rate. This, in turn, triggers yet
2 another round of foreclosures and short sales, resulting in a further decline in market
3 value. Soon this cycle results in price free-fall for the houses in the neighborhood,
4 materially affecting the value of those homes not subject to foreclosures or short sales.

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

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

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

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

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

25 31. As was inevitable, however, over time these unqualified and high-
26 foreclosure-risk buyers began to default on their loans leading to foreclosures and short
27 sales. These foreclosures and short sales of properties were significantly below market
28 value and depressed the value of the houses of the qualified and low-foreclosure-risk

1 buyers. A snowball effect of foreclosures and short sales then followed, each further
2 depressing the market value of the neighborhoods. This led to a catastrophic loss of
3 value to the homeowners, wiping out the life savings of homeowners who did everything
4 right.

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

14 33. While the scheme has had devastating effects on Plaintiffs, the Defendants,
15 their shareholders and the executives and management of each Defendant individually
16 benefitted from these practices. Based on information and belief, the prospect of
17 excessive and unconscionable compensation led to and contributed to, inter alia,
18 decisions by such executives which resulted in the actions complained of herein.

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

- 21 a. Defendant J. F. Shea Co., Inc., created the scheme and directed each of
22 its subsidiaries to carry out the scheme in furtherance of its goal of
23 increasing profit for the Parent Corporation;
- 24 b. J. F. Shea Co., Inc., directed the practice that led Defendant Shea
25 Mortgage to engage in unlawful and reckless lending practices;
- 26 c. J. F. Shea Co., Inc., directed the practices of Defendant Shea Homes, Inc.
27 relating to sales quotas, sales practices, and disclosures that resulted in
28

1 the unlawful concealment from buyers of the presence of high-
2 foreclosure-risk homeowners in the neighborhood;

- 3 d. J. F. Shea Co., Inc., directed the practices of each subsidiary that it used
4 to direct contract with buyers relating to sales quotas, sales practices, and
5 disclosures that resulted in the unlawful concealment from buyers of the
6 presence of high-foreclosure-risk homeowners in the neighborhood;
- 7 e. J. F. Shea Co., Inc., received the profit from increased sales and higher
8 prices per house from those concealed actions that artificially created a
9 “buying frenzy” from unqualified buyers and investors, misleading
10 traditionally qualified homebuyers into purchasing houses at inflated
11 prices, and causing the subsequent massive foreclosures which resulted in
12 tremendous devaluation of the houses, thereby damaging Plaintiffs and
13 those similarly situated; and
- 14 f. At all times, each Defendant was aware of the practices in furtherance of
15 the scheme of each of the other Defendants.

16 IV

17 PLAINTIFFS’ FACTUAL ALLEGATIONS

18 35. In or about April 2006, Plaintiffs Matthew Nielsen and Nicole Nielsen
19 bought a new house located in the county of Riverside, California from Shea Homes, Inc.
20 through its subsidiary Shea Home Limited Partnership, A California Limited Partnership.
21 Plaintiffs put a down payment of about 30% on the house. They financed the house
22 through Shea Mortgage. They were provided marketing materials that depicted the
23 community as a stable, family based neighborhood. Those marketing materials did not
24 adequately disclose the different Shea Homes subsidiaries. They were not advised, and
25 did not know, that other buyers in the community were sold homes using subprime loans
26 and were not qualified buyers. They were also not advised, and did not know, that
27 Defendants were selling homes in their neighborhood to investors. Since the purchase of
28

1 his house, there have been a number of rentals, short-sales, and foreclosures in their
2 neighborhood.

3 36. Based on information and belief, Plaintiffs and all class members:

- 4 a. were provided brochures, business cards, and access to a web site that
5 identified the seller as Shea without distinguishing between the
6 Defendant home building companies and subsidiaries;
- 7 b. were offered financial incentives by Shea Homes to use Shea Mortgage
8 to finance the purchase of their houses, resulting in the majority of
9 purchasers financing through Shea Mortgage;
- 10 c. that did not use Shea Mortgage to finance their house, were required to,
11 and did in fact, provide financial information to Shea that allowed it to
12 have sufficient information to determine whether the buyer was a sub-
13 prime buyer or investor;
- 14 d. who financed their houses through Shea, were provided an appraiser
15 selected by Defendants. The appraiser selected by Shea Mortgage was
16 dependent on Shea Mortgage for a large percentage of its business and,
17 therefore, was pressured to provide appraisals that met or exceeded the
18 sales prices Shea was able to obtain for its houses. The appraisals of
19 Plaintiffs' houses were inflated.

20 37. Plaintiffs further allege based on information and belief paragraphs 38-47.

21 38. Defendants represented to Plaintiffs and all class members that it was Shea's
22 practice does not sell homes to investors. Shea represented that it discourages
23 speculation and to provide a stabilized community, Shea intends to sell homes only to
24 people who will occupy them.

25 39. Defendants represented to Plaintiffs and all class members that Shea
26 communities were good investments and the houses were worth at least the amount of the
27 purchase price.

28

1 40. Defendants represented to Plaintiffs and all class members that Shea
2 developments were stable, family neighborhoods occupied by owners of the homes.

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

5 42. The process for the purchase of Plaintiffs' houses was typical of how
6 Defendants processed most of their sales.

7 43. At the time Defendants sold the houses to Plaintiffs, Defendants had sold
8 houses, and planned to and did sell houses in the future, to unqualified and high-
9 foreclosure-risk buyers, as well as professional investors that were not owner-occupiers
10 of the houses.

11 44. While Defendants provided Plaintiffs and all class members certain
12 disclosures before or at the time of sale, they did not provide Plaintiffs and all class
13 members with any disclosure that Defendants had sold houses, and would sell houses in
14 the future, to unqualified and high-foreclosure-risk buyers. Defendants also did not
15 disclose that they had sold houses, and planned to sell houses in the future, to investors
16 who would not occupy the houses.

17 45. Plaintiffs were unaware at the time of purchase of the houses that
18 Defendants had sold houses, and planned to sell houses in the future, in their
19 neighborhoods to unqualified and high-foreclosure-risk buyers, as well as professional
20 investors that were not owner-occupiers of the houses. Plaintiffs did not become aware
21 of such actions until well within two years prior to filing of the subject complaint, and
22 there was no reasonable way Plaintiffs would have learned the information earlier than
23 that time frame.

24 46. Such disclosures were material to Plaintiffs and all class members in that
25 they related both to the value of their houses and the desirability of the properties. If
26 Defendants had made such disclosures, Plaintiffs would not have purchased the houses
27 from Defendants and/or would not have paid an inflated price for the house.
28

1 through business records regularly maintained by Defendants and their employees and
2 agents, and through the media, the number and identities of class members can be
3 ascertained. Members of the Class can be notified of the pending action by e-mail, mail,
4 and supplemented by published notice, if necessary.

5 52. **Existence and Predominance of Common Questions of Fact and Law –**

6 There are questions of law and fact common to the Class. These questions predominate
7 over any questions affecting only individual class members. These common legal and
8 factual issues include, but are not limited to:

- 9 a. whether Defendants engaged in the alleged scheme as set forth
10 throughout this First Amended Complaint;
- 11 b. whether Defendants’ policy and practice - which was in place prior to
12 and throughout the class period - of selling homes to high foreclosure risk
13 buyers is material to the value and quality of life for buyers of houses in
14 that neighborhood;
- 15 c. whether a neighborhood having, or expected to have, a high number of
16 unqualified and high-foreclosure-risk owners of houses is material to the
17 value and quality of life for buyers of houses in that neighborhood;
- 18 d. whether Defendants concealed and failed to disclose to the Class
19 members that the neighborhoods where they were buying their houses
20 had, or were expected to have, a high number of unqualified and high-
21 foreclosure-risk owners that could materially and negatively affect the
22 value of the house and quality of life for buyers of the houses;
- 23 e. whether the alleged scheme resulted in inflated prices of the houses
24 purchased by Plaintiffs;
- 25 f. whether the alleged scheme resulted in foreclosures and short sales in the
26 Class members’ neighborhoods;
- 27 g. whether such foreclosures and short sales resulted in a material decrease
28 in the value of the houses purchased by the Class members;

- 1 h. whether such foreclosures and short sales resulted in loss of quality of
2 life for the owners in the neighborhood;
- 3 i. whether Defendants made uniform misrepresentations to the class
4 members relating to value, existence of investors and desirability of the
5 neighborhood; and
- 6 j. whether Defendants' conduct as described above constitutes violations of
7 the causes of action set forth below.

8 53. **Typicality** – The claims of the representative Plaintiffs are typical of the
9 claims of the members of the Class. Plaintiffs, like all other members of the Class, have
10 sustained damages arising from Defendants' violations of the laws, as alleged herein.
11 The representative Plaintiffs and the members of the Class were and are similarly or
12 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive
13 pattern of misconduct engaged in by Defendants.

14 54. **Adequacy** – The representative Plaintiffs will fairly and adequately
15 represent and protect the interests of the Class members and has retained counsel who are
16 experienced and competent trial lawyers in complex and class action litigation. There are
17 no material conflicts between the claims of the representative Plaintiffs and the members
18 of the Class that would make class certification inappropriate. Counsel for the Class will
19 vigorously assert the claims of all Class members.

20 55. **Predominance and Superiority** – This suit may be maintained as a class
21 action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact
22 common to the Class predominate over the questions affecting only individual members
23 of the Class and a class action is superior to other available means for the fair and
24 efficient adjudication of this dispute. The damages suffered by individual class members,
25 while substantial, are small compared to the burden and expense of individual
26 prosecution of the complex and very expensive litigation needed to address Defendants'
27 conduct. Even if class members themselves could afford such individual litigation, the
28 court system would be overwhelmed by the individual lawsuits. In addition,

1 individualized litigation increases the delay and expense to all parties and to the court
2 system resulting from the complex legal and factual issues of this case. Individualized
3 litigation also presents a potential for inconsistent or contradictory judgments. By
4 contrast, the class action device presents far fewer management difficulties; allows the
5 hearing of claims which might otherwise go unaddressed because of the relative expense
6 of bringing individual lawsuits; and provides the benefits of single adjudication,
7 economies of scale, and comprehensive supervision by a single court.

8 56. The Class Plaintiffs contemplate the eventual issuance of notice to the
9 proposed Class members setting forth the subject and nature of the instant action. Upon
10 information and belief, Defendants' own business records and electronic media can be
11 utilized for the contemplated notices. To the extent that any further notices may be
12 required, the Class Plaintiffs would contemplate the use of additional media and/or
13 mailings.

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

- 17 a. Without class certification and determination of declaratory,
18 injunctive, statutory, and other legal questions within the class format,
19 prosecution of separate actions by individual members of the Class
20 will create the risk of:
- 21 i. Inconsistent or varying adjudications with respect to individual
22 members of the Class which would establish incompatible
23 standards of conduct for the parties opposing the Class; or
- 24 ii. Adjudication with respect to individual members of the Class
25 which would as a practical matter be dispositive of the interests
26 of the other members not parties to the adjudication or
27 substantially impair or impede their ability to protect their
28 interests;

1 consequences to Plaintiffs and members of the Class, and/or (3) Defendants' conduct is
2 immoral, unethical, oppressive, unscrupulous, unconscionable, or substantially injurious
3 to Plaintiffs and members of the Class, and/or (4) the uniform conduct of Defendants has
4 a tendency to deceive Plaintiffs and the members of the Class.

5 60. Defendants were sellers of the houses. Defendants were also the real estate
6 brokers and salespersons of the houses and, as such, the agents of one another. An owner
7 of a property and its agents are legally obligated to disclose to the buyer of a house all
8 facts materially affecting the value or desirability of the property. Cal. Civ. Code §§
9 1102.1 and 2079. Based on information and belief, most states where Defendants sold
10 houses had similar disclosure requirements.

11 61. The disclosures must be made in good faith and waiver is against public
12 policy.

13 62. The existence or expected existence of a number of unqualified and high-
14 foreclosure-risk homeowners in the neighborhood was a material fact affecting the value
15 and desirability of the houses that Plaintiffs and the Class members were sold by
16 Defendants.

17 63. Based on information and belief, Defendants had actual and constructive
18 knowledge of the financial condition and financing tools utilized by the buyers of its
19 houses. Defendants had this knowledge primarily through utilization of Shea Mortgage
20 to finance a high percentage of the buyers. Even for buyers that utilized other financial
21 institutions, before Defendants would enter into a purchase agreement, Defendants
22 required these buyers to provide "qualifying" financial information that provided
23 Defendants with knowledge that these buyers were likely subprime buyers and/or
24 investors.

25 64. Defendants not only knew about the existence of unqualified and high-
26 foreclosure-risk homeowners in the neighborhood, but had in fact facilitated and assisted
27 those buyers in obtaining financing through the mortgage arm of their business. In
28 processing the mortgages of unqualified and high-foreclosure-risk borrowers, Defendant

1 Shea Mortgage processed loans for buyers that falsified and inflated unverified income,
2 offending the legislative intent regarding income verification, as set forth in 66 Fed. Reg.
3 65604-01 (2001).

4 65. Defendants failed to disclose and did conceal this fact from Plaintiffs and
5 Class members. These facts were material. Plaintiffs and Class members either would
6 have not paid the inflated price or would not have purchased the homes at all from
7 Defendants if there had been proper disclosures regarding the existence of unqualified
8 and high-foreclosure-risk homeowners in the neighborhoods. A reasonable consumer
9 during the class period would have expected that these new development neighborhoods
10 would not have a substantial presence of high-foreclosure risk buyers. As a direct and
11 legal result of Defendants' conduct, Plaintiffs and Class members have been damaged.

12 66. Therefore, Defendants' conduct is: 1) unlawful because it violates California
13 Civil Code §§ 2079 and 1710; 2) fraudulent because Defendants concealed material facts
14 which they had a duty to disclose; and 3) unfair because it offends legislative policy and
15 the good faith requirement regarding disclosures, as set forth in California Civil Code
16 §§ 1102.1 and 1102.7, and offends the legislative intent regarding income verification as
17 set forth in 66 F.R. 65604-01 .

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

23 68. Plaintiffs and the Class members, and each of them, have been damaged by
24 said practices.

25 69. The conduct of Defendants as described herein violates California Business
26 and Professions Code § 17200, *et seq.*, and other similar state unfair competition and
27 unlawful business practices statutes.
28

1 agreements which purport to govern Plaintiffs' and the Class members' home purchases,
2 and as a result thereof, Plaintiffs and the Class members have been damaged and are
3 entitled to damages as prayed.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
6 relief as follows:

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

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

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

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

- 16 1. The difference in value between what the Plaintiffs paid and what he/she
17 received, measured at the time of sale, pursuant to California Civil Code
18 § 3343;
- 19 2. The option to rescind the contract;
- 20 3. Ongoing diminished value of property; and
- 21 4. loss of enjoyment of the property

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

24 F. For an order enjoining Defendants:

- 25 1. under California Business and Professions Code § 17203 from
26 continuing to engage in business acts and practices, or any of them,
27 which are unlawful, unfair, or fraudulent, as alleged herein;

28

