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CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

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

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

18 JAMES F. DODARO, as an individual
and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 v.

22 STANDARD PACIFIC CORP., d/b/a
"STANDARD PACIFIC HOMES";
23 STANDARD PACIFIC MORTGAGE,
INC.; and DOES 1 through 10,
24 inclusive,

25 Defendants.
26
27
28

Case No.: ED CV 09-1666 VAP (OPx)
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 Plaintiff James F. Dodaro (“Plaintiff”), on behalf of himself and all others similarly
2 situated (*i.e.*, the members of the Plaintiff Class described and defined herein) alleges as
3 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 Standard Pacific Corp., d/b/a/ “Standard Pacific Homes,” and Standard Pacific Mortgage,
13 Inc. (previously also operating as Family Lending Services, Inc.) (hereinafter “Standard
14 Pacific Homes”) are all headquartered in the county of Orange and all do substantial
15 business in this judicial district and some of the acts complained of occurred in this
16 judicial district (the collective Defendants will be referred to as “Defendants” or
17 “Standard Pacific”).

18 **II**
19 **PARTIES**

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

24 4. Defendant Standard Pacific Corp. is the parent of all Standard Pacific
25 Homes entities. Standard Pacific Corp. is a home building and lending company with
26 homeowner customers in California as well as a number of other states. Standard Pacific
27 Corp. is incorporated in the state of Delaware and headquartered in the city of Irvine,
28 State of California.

1 they had closed a total of 31,548 houses throughout Arizona, California, Colorado,
2 Florida, Illinois, North Carolina, and South Carolina. Defendants have a very significant
3 presence in California, having sold 9,176 houses in California between 2004 and 2006.

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

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

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

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

27 15. Based on information and belief, the Parent Corporation, through its
28 directors, executives, and management, sets and directs policy for the subsidiary

1 businesses which develop, construct and sell homes and plays an active role in each of
2 the subsidiaries. With respect to Standard Pacific local homebuilding subsidiaries, and
3 the number of corporations and LLC's established to sell houses, each of such businesses
4 is directed and controlled by the Parent Corporation as follows:

- 5 a. The Parent Corporation pays and directs employees and consultants who
6 find the new development sites where the subsidiary company will work
7 and do business;
- 8 b. The Parent Corporation creates the budgets, sales quotas, and business
9 plans for the new development sites where the subsidiary company will
10 work and do business;
- 11 c. The Parent Corporation provides the funding and employees to set up the
12 subsidiary to work on the new development site;
- 13 d. The Parent Corporation selects, directs, and controls the executive(s) that
14 manages the subsidiary that works on the development site;
- 15 e. The Parent Corporation establishes the compensation of the management
16 of the subsidiaries;
- 17 f. The Parent Corporation creates, monitors, and enforces sales quota and
18 business strategies for the subsidiaries' work on a development site;
- 19 g. The Parent Corporation secures outside funding for the subsidiaries, with
20 both parent corporation and subsidiaries having access to the financing
21 and jointly responsible for repayment of the financing;
- 22 h. The Parent Corporation shares both physical and human resources
23 between itself and subsidiaries as well as between different subsidiaries;
- 24 i. The Parent Corporation directs and controls the marketing of its
25 subsidiaries, including branding colors, logos, slogans, names, and web
26 site marketing;
- 27 j. The Parent Corporation fully controls profit from the subsidiaries and
28 reports to shareholders, government entities, and the public the profit and

1 loss earned by the subsidiaries as the Parent Corporation's profit and
2 loss;

3 k. Each subsidiaries revenue is almost exclusively from work performed for
4 the Parent Corporation;

5 l. The subsidiary building company performs the work of the Parent
6 Corporation that is necessary to sell homes; and

7 m. The subsidiary building company does not have a board of directors or
8 management that is independent of the Parent Corporation.

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

14 a. The Parent Corporation sets policy for Standard Pacific Mortgage.

15 b. The Parent Corporation obtains funding for Standard Pacific Mortgage;

16 c. The Parent Corporation selects, directs, and controls the executive(s) who
17 manages Standard Pacific Mortgage;

18 d. The Parent Corporation establishes the compensation of the management
19 of Standard Pacific Mortgage;

20 e. The Parent Corporation shares both physical and human resources
21 between itself and subsidiaries as well as between different subsidiaries;

22 f. The Parent Corporation directs and controls the marketing of Standard
23 Pacific Mortgage, including branding colors, logos, slogans, names, and
24 web site marketing;

25 g. Standard Pacific Mortgage shares the web site with the Parent
26 Corporation;

27 h. The Parent Corporation controls profit from Standard Pacific Mortgage
28 and reports to shareholders, government entities, and the public the profit

1 and loss earned by Standard Pacific Mortgage as the Parent Corporation's
2 profit and loss;

- 3 i. Each subsidiaries revenue is almost exclusively from work performed for
4 the Parent Corporation;
- 5 j. Standard Pacific Mortgage performs the work of the Parent Corporation
6 that facilitates selling homes by providing financing for the majority of
7 the sales; and
- 8 k. The subsidiary financing company does not have a board of directors or
9 management that is independent of the Parent Corporation.

10 17. Because of the business structure of the Parent Corporation and its
11 subsidiaries, the Parent Corporation is legally responsible for not only its actions, but
12 those of its subsidiaries. In addition, the subsidiaries are responsible for not only their
13 acts, but of those of the other subsidiaries. To the extent the action of the Parent
14 Corporation or subsidiary is found to be illegal as alleged in the complaint, the Parent
15 Corporation and each subsidiary is jointly and severally liable for the conduct.

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

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

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

27 20. However, in contrast to the way that Defendants were presenting their
28 developments to the government, community, and buyers, they set out to market to and

1 then finance unqualified buyers who posed an abnormally high risk of foreclosure in
2 order to increase both the number of sales and the price of houses in the same
3 neighborhoods in which Defendants were selling houses to traditionally qualified and
4 low-foreclosure-risk buyers. They also increased demand by selling to investors.
5 Defendant correctly anticipated that this would create “a buying frenzy” that artificially
6 increased demand and house prices, resulting in increased profits to Defendants.

7 21. Defendants accomplished this through sales quotas, high pressure sales
8 tactics, and then through tactics that would make it likely that buyers would use Standard
9 Pacific’s own mortgage company. In fact, Standard Pacific Mortgage originated loans
10 for a high percentage of sales. After convincing buyers to use their mortgage company,
11 Defendants encouraged and assisted buyers in obtaining mortgages for which they were
12 not qualified. Defendants did this explicitly to sell more houses than they would have
13 been able to sell if only traditionally qualified buyers were buying their houses and to
14 increase the profit per house through the creation of an artificial housing demand.

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

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

- 24 a. allowing and encouraging buyers to provide inflated stated and
25 unverified income;
- 26 b. underwriting sub-prime loans for buyers with bad credit history;
- 27 c. not requiring any substantial down payment;

- d. underwriting or securing piggyback loans for second mortgages so that the buyers did not make any real down payment;
- e. financing buyers in adjustable loans (interest only or below in many cases) and qualifying these buyers on the artificially low initial payments;
- f. providing cash “incentives” to buyers at the close of escrow if the buyers used Defendants’ mortgage company to finance the house, thereby eliminating the requirement that buyers pay closing costs; and
- g. obtaining inflated appraisals.

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

25. Defendants also sold houses to another group of buyers that constituted a high foreclosure risk. While representing that they were developing a stable neighborhood with owner-occupied houses and claiming to have procedures in place to prevent “investors” from buying the houses, Defendants were selling houses to buyers that it knew, or should have known, were investors who had no intention of occupying the houses. These investors would then rent out the property thereby providing a neighborhood that was not stable, contrary to what was represented in the marketing and sales materials. Even more importantly, because the house was an investment and not a

1 home, these buyers were more likely to “walk away” from the house with any downturn
2 in housing prices, which made them high-foreclosure-risk buyers.

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

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

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

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

28

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

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

6 31. As was inevitable, however, over time these unqualified and high-
7 foreclosure-risk buyers began to default on their loans leading to foreclosures and short
8 sales. These foreclosures and short sales of properties were significantly below market
9 value and depressed the value of the houses of the qualified and low-foreclosure-risk
10 buyers. A snowball effect of foreclosures and short sales then followed, each further
11 depressing the market value of the neighborhoods. This led to a catastrophic loss of
12 value to the homeowners, wiping out the life savings of homeowners who did everything
13 right. It also led to the loss of people's homes to foreclosures; collapse of a number of
14 community banks; massive unemployment in the local construction field; and devastating
15 loss of tax revenues for local counties leading to loss of services and layoffs.

16 32. As a result of Defendants' unlawful scheme, Plaintiffs and those similarly
17 situated were misled into purchasing homes they would not have purchased if there had
18 been proper disclosure. Both the practice itself of financing unqualified buyers, and the
19 failure to disclose that practice, resulted in Plaintiffs paying inflated purchase prices for
20 their houses. Through economic expert analysis and testimony, the damages to Plaintiffs
21 and those similarly situated as a result of Defendants' scheme is capable of being
22 ascertained, and will be ascertained and calculated separate and apart from devaluation
23 resulting from other economic factors such as unemployment trends and general market
24 fluctuations.

25 33. While the scheme has had devastating effects on Plaintiffs, the Defendants,
26 their shareholders and the executives and management of each Defendant individually
27 benefitted from these practices. Primarily relying on bonuses, the chief operating officer
28 of Standard Pacific Corp., Scott Stowell, received \$13.78 million in compensation over

1 the three year class period of 2004-2006, and his stock in the company tripled from
2 January, 2003 through June, 2005. Based on information and belief, the prospect of
3 increased compensation and stock value led to and contributed to, inter alia, decisions by
4 such executives which resulted in the actions complained of herein.

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

- 7 a. Defendant Standard Pacific Corp., created the scheme and directed each
8 of its subsidiaries to carry out the scheme in furtherance of its goal of
9 increasing profit for the Parent Corporation;
- 10 b. Standard Pacific Corp., directed the practice that led Defendant Standard
11 Pacific Mortgage to engage in unlawful and reckless lending practices;
- 12 c. Standard Pacific Corp., directed the practices of Defendant Standard
13 Pacific local homebuilding subsidiaries relating to sales quotas, sales
14 practices, and disclosures that resulted in the unlawful concealment from
15 buyers of the presence of high-foreclosure-risk homeowners in the
16 neighborhood;
- 17 d. Standard Pacific Corp., received the profit from increased sales and
18 higher prices per house from those concealed actions that artificially
19 created a “buying frenzy” from unqualified buyers and investors,
20 misleading traditionally qualified homebuyers into purchasing houses at
21 inflated prices, and causing the subsequent massive foreclosures which
22 resulted in tremendous devaluation of the houses, thereby damaging
23 Plaintiffs and those similarly situated; and
- 24 e. At all times, each Defendant was aware of the practices in furtherance of
25 the scheme of each of the other Defendants.

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IV

PLAINTIFFS' FACTUAL ALLEGATIONS

35. In or about November 2005, Plaintiff James F. Dodaro bought a new house located in the county of Riverside, California from Standard Pacific Homes. Plaintiff put a down payment of about 60% on the house. He financed the purchase through the Standard Pacific mortgage company Family Lending Services, Inc. (now Standard Pacific Mortgage). He was told by Defendants that the house would be a good investment and was told that if he did not purchase a house in early phases, then house prices would go up. He was provided marketing materials that depicted the community as a stable, family based neighborhood. Those marketing materials did not adequately disclose the different Standard Pacific subsidiaries. He was not advised, and did not know, that other buyers in the community were sold homes using subprime loans and were not qualified buyers. He was also not advised, and did not know, that Defendants were selling homes in his neighborhood to investors. Since the purchase of his house, there have been a number of rentals, short-sales, and foreclosures in his neighborhood.

36. Based on information and belief, Plaintiffs and all class members:
- a. were provided brochures, business cards, and access to a web site that identified the seller as Standard Pacific without adequately distinguishing between the Defendant home building companies and subsidiaries;
 - b. were offered financial incentives by Standard Pacific mortgage subsidiaries to finance the purchase of their houses, resulting in the majority of purchasers financing through Standard Pacific;
 - c. that did not use Standard Pacific mortgage subsidiaries to finance their house, were required to, and did in fact, provide financial information to Standard Pacific that allowed it to have sufficient information to determine whether the buyer was a sub-prime buyer or investor;.
 - d. who financed their houses through Standard Pacific mortgage subsidiaries were provided an appraiser selected by Defendants. The

1 appraiser selected by Standard Pacific was dependent on it for a large
2 percentage of its business and, therefore, was pressured to provide
3 appraisals that met or exceeded the sales prices. The appraisals of
4 Plaintiffs' houses were inflated.

5 37. Plaintiff further alleges based on information and belief paragraphs 38-47.

6 38. Defendants represented to Plaintiff and all class members that Standard
7 Pacific does not sell homes to investors. Standard Pacific represented that it discourages
8 speculation and to provide a stabilized community, Standard Pacific intends to sell homes
9 only to people who will occupy them.

10 39. Defendants represented to Plaintiff and all class members that Standard
11 Pacific communities were good investments.

12 40. Defendants represented to Plaintiff and all class members that Standard
13 Pacific developments were stable, family neighborhoods occupied by owners of the
14 homes.

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

17 42. The process for the purchase of Plaintiff's houses was typical of how
18 Defendants processed most of their sales.

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

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

1 49. If the Court determines that a nationwide class is not warranted, Plaintiff
2 requests, in the alternative, certification of a California class of new Standard Pacific
3 Homes customers whose homes are located in California.

4 50. This action is brought as a class action and may properly be so maintained
5 pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b).
6 Plaintiff reserves the right to modify the class definitions and the class period based on
7 the results of discovery.

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

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

- 19 a. whether Defendants engaged in the alleged scheme as set forth
20 throughout this First Amended Complaint;
- 21 b. whether Defendants’ policy and practice - which was in place prior to
22 and throughout the class period - of selling homes to high foreclosure risk
23 buyers is material to the value and quality of life for buyers of houses in
24 that neighborhood;
- 25 c. whether a neighborhood having, or expected to have, a high number of
26 unqualified and high-foreclosure-risk owners of houses is material to the
27 value and quality of life for buyers of houses in that neighborhood;
- 28

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

19 53. **Typicality** – The claims of the representative Plaintiff are typical of the
20 claims of the members of the Class. Plaintiff, like all other members of the Class, has
21 sustained damages arising from Defendants' violations of the laws, as alleged herein.
22 The representative Plaintiff and the members of the Class were and are similarly or
23 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive
24 pattern of misconduct engaged in by Defendants.

25 54. **Adequacy** – The representative Plaintiff will fairly and adequately represent
26 and protect the interests of the Class members and has retained counsel who are
27 experienced and competent trial lawyers in complex and class action litigation. There are
28 no material conflicts between the claims of the representative Plaintiff and the members

1 of the Class that would make class certification inappropriate. Counsel for the Class will
2 vigorously assert the claims of all Class members.

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

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

25 **57.** In addition to meeting the statutory prerequisites to a Class Action, this
26 action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal
27 Rules of Civil Procedure, in that:
28

- 1 a. Without class certification and determination of declaratory,
2 injunctive, statutory, and other legal questions within the class format,
3 prosecution of separate actions by individual members of the Class
4 will create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the Class which would establish incompatible
7 standards of conduct for the parties opposing the Class; or
8 ii. Adjudication with respect to individual members of the Class
9 which would as a practical matter be dispositive of the interests
10 of the other members not parties to the adjudication or
11 substantially impair or impede their ability to protect their
12 interests;
- 13 b. The parties expected to oppose the Class have acted or refused to act
14 on grounds generally applicable to each member of the Class, thereby
15 making appropriate final injunctive or corresponding declaratory
16 relief with respect to the Class as a whole; or
- 17 c. Common questions of law and fact exist as to the members of the
18 Class and predominate over any questions affecting only individual
19 members, and a Class Action is superior to other available methods of
20 the fair and efficient adjudication of the controversy, including
21 consideration of:
- 22 i. The interests of the members of the Class in individually
23 controlling the prosecution or defense of separate actions;
24 ii. The extent and nature of any litigation concerning the
25 controversy already commenced by or against members of the
26 Class;
27 iii. The desirability or undesirability of concentrating the litigation
28 of the claims in the particular forum;

1 iv. The difficulties likely to be encountered in the management of a
2 Class Action.

3 **FIRST CAUSE OF ACTION**

4 **Violation of Cal. Bus. & Prof. Code § 17200 *et seq.* – Unlawful, Fraudulent, and**
5 **Unfair Business Act and Practices**
6 **(Against all Defendants)**

7 58. Plaintiff incorporates by reference and re-alleges all paragraphs previously
8 alleged herein.

9 59. Defendants’ acts and practices as described herein constitute unlawful,
10 fraudulent, and unfair business acts and practices, in that (1) Defendants’ practices, as
11 described herein, violate each of the statutes set forth within this Complaint, and/or
12 (2) the justification for Defendants’ conduct is outweighed by the gravity of the
13 consequences to Plaintiffs and members of the Class, and/or (3) Defendants’ conduct is
14 immoral, unethical, oppressive, unscrupulous, unconscionable, or substantially injurious
15 to Plaintiffs and members of the Class, and/or (4) the uniform conduct of Defendants has
16 a tendency to deceive Plaintiffs and the members of the Class.

17 60. Defendants were sellers of the houses. Defendants were also the real estate
18 brokers and salespersons of the houses and, as such, the agents of one another. An owner
19 of a property and its agents are legally obligated to disclose to the buyer of a house all
20 facts materially affecting the value or desirability of the property. Cal. Civ. Code §§
21 1102.1 and 2079. Based on information and belief, most states where Defendants sold
22 houses had similar disclosure requirements.

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

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

1 63. Based on information and belief, Defendants had actual and constructive
2 knowledge of the financial condition and financing tools utilized by the buyers of its
3 houses. Defendants had this knowledge primarily through utilization of Standard Pacific
4 Mortgage to finance a high percentage of the buyers. Even for buyers that utilized other
5 financial institutions, before Defendants would enter into a purchase agreement,
6 Defendants required these buyers to provide “qualifying” financial information that
7 provided Defendants with knowledge that these buyers were likely subprime buyers
8 and/or investors.

9 64. Defendants not only knew about the existence of unqualified and high-
10 foreclosure-risk homeowners in the neighborhood, but had in fact facilitated and assisted
11 those buyers in obtaining financing through the mortgage arm of their business. In
12 processing the mortgages of unqualified and high-foreclosure-risk borrowers, Defendant
13 mortgage subsidiaries processed loans for buyers that falsified and inflated unverified
14 income, offending the legislative intent regarding income verification, as set forth in 66
15 Fed. Reg. 65604-01 (2001).

16 65. Defendants failed to disclose and did conceal this fact from Plaintiff and
17 Class members. These facts were material. Plaintiff and Class members either would
18 have not paid the inflated price or would not have purchased the homes at all from
19 Defendants if there had been proper disclosures regarding the existence of unqualified
20 and high-foreclosure-risk homeowners in the neighborhoods. A reasonable consumer
21 during the class period would have expected that these new development neighborhoods
22 would not have a substantial presence of high-foreclosure risk buyers. As a direct and
23 legal result of Defendants’ conduct, Plaintiff and Class members have been damaged.

24 66. Therefore, Defendants’ conduct is: 1) unlawful because it violates California
25 Civil Code §§ 2079 and 1710; 2) fraudulent because Defendants concealed material facts
26 which they had a duty to disclose; and 3) unfair because it offends legislative policy and
27 the good faith requirement regarding disclosures, as set forth in California Civil Code
28

1 §§ 1102.1 and 1102.7, and offends the legislative intent regarding income verification as
2 set forth in 66 F.R. 65604-01

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

8 68. Plaintiff and the Class members, and each of them, have been damaged by
9 said practices.

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

13 70. Pursuant to California Business and Professions Code §§ 17200 and 17203,
14 Plaintiff, on behalf of themselves and all others similarly situated, seeks relief as prayed
15 for below.

16 **SECOND CAUSE OF ACTION**

17 **Violation of Cal. Bus. & Prof. Code § 17500 *et seq.* – False Advertising** 18 **(Against all Defendants)**

19 71. Plaintiff incorporates by reference and re-alleges all paragraphs previously
20 alleged herein.

21 72. As alleged herein, Defendants provided to the Plaintiffs and the class
22 members false and misleading standardized representations and advertisements regarding
23 the value of the house sold; the sales practice of selling to investors; and the desirability
24 of the neighborhood where the house was sold.

25 73. These representations and advertisements were material to Plaintiffs.

26 74. As a result, Plaintiff and the Class members justifiably relied on such
27 representations and advertisements and were damaged as a result.

28

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

7 E. For an order awarding Plaintiff and the Class punitive damages as to the
8 appropriate cause of action;

9 F. For an order enjoining Defendants:

- 10 1. under California Business and Professions Code § 17203 from
- 11 continuing to engage in business acts and practices, or any of them,
- 12 which are unlawful, unfair, or fraudulent, as alleged herein; and
- 13 2. under California Business and Professions Code § 17535 from
- 14 continuing to engage in the dissemination of advertisements which are
- 15 untrue or misleading, alleged herein; and
- 16 3. from providing mortgage services or financing buyers for houses sold by
- 17 Defendant.

18 G. For an order awarding Plaintiff and the Class pre-judgment and post-
19 judgment interest, as well as reasonable attorneys' and expert-witness fees and other
20 costs, pursuant to California Code of Civil Procedure § 1021.5, and other statutes as may
21 be applicable; and

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

24 DATED: December 21, 2009.

MCCUNEWRIGHT, LLP

25
26 BY: 

Richard D. McCune
Attorney for Plaintiff

