

1 I, Waheeda Khan, declare:

2 1. I have personal knowledge as to the facts stated in this declaration. If called as a  
3 witness, I could and would competently testify to the truth of the facts stated in this declaration. I  
4 make this declaration in opposition to the motion to compel arbitration, in opposition to the  
5 motions to dismiss, and in opposition to the motion to strike.  
6

7 2. On or about December 11, 2005, I entered into a home purchase agreement to purchase  
8 a new home from Western Pacific Housing, Inc., a Delaware Corporation, dba D.R. Horton,  
9 America's Builder ("Horton"), located in Horton's "Valverde Villages" community at 10935  
10 Cliffside Drive, in Stockton, California. The sales assistants who assisted me with this purchase  
11 were John Costello and Julie Branecki.

12 3. In or about December of 2005 I paid a \$7,500 deposit towards the purchase price of the  
13 home. I also paid an upgrade deposit of \$4,739. I was offered a \$5,000 discount off of the  
14 closing costs. Ms. Julie Branecki, at that time, informed me that I would only be eligible for this  
15 "discount," if I obtained my home loan from Horton Mortgage. As required by ¶7.2 of my  
16 Purchase Agreement with Horton, I was required to and did apply for a home loan with DHI  
17 Mortgage, which reads in relevant part as follows:  
18

19 (a) Loan Application. Within 5 days after Buyer's Offer, Buyer shall submit  
20 a completed application for the New Loan to DHI Mortgage ("**Seller's Approved**  
21 **Lender**"), and a lender selected by Buyer, if any.

22 4. In or about March or April of 2006, Ms. Anna Pena from Horton Mortgage,  
23 informed me that I had been approved to obtain a loan from Horton Mortgage. When Ms. Pena  
24 presented me with the terms and conditions of the loan, I was so shocked by the high broker fees,  
25 and exorbitant charges that I decided to look for a loan from another lender.  
26  
27  
28

1           5. With my high credit rating I was sure that I could obtain funding for my home  
2 purchase with another lender. Indeed, I was able to obtain a loan from Washington Mutual.  
3 Payments under the terms of this loan would have been approximately \$1300 per month.

4           6. When I attempted to fund my home purchase with the loan from Washington Mutual, I  
5 was informed by Ms. Julie Branecki from Horton that I would be forfeiting both the \$7,500 I paid  
6 as a deposit and the \$4,739 I paid as an upgrade deposit, and that the sale of the home would be  
7 cancelled if I financed the home purchase with any provider other than Horton Mortgage, as set  
8 forth in ¶7.5 of the Purchase Agreement.

9  
10           7. At the time I entered into the home purchase, I had no reason to foresee that I would  
11 not be permitted to use a lender of my choice. When I signed the purchase agreement, neither  
12 Ms. Julie Branecki nor Mr. John Costello explained to me that, upon being presented with  
13 approval to receive a loan from Horton Mortgage, I would be forever barred from seeking a loan  
14 with more favorable terms and conditions.

15  
16           8. My understanding of ¶ 7.5 of my Purchase Agreement, when read with ¶7.2 and  
17 Addendum No. 1 thereto, was that ¶7.5 did not apply to a DHI Mortgage loan, as the DHI  
18 application did not “compel” me to accept the DHI Loan. This understanding is also supported  
19 by the clear language in the Affiliated Business Arrangement Disclosure document, contained in  
20 my Purchase Agreement, which discusses Horton’s affiliation with DHI Mortgage and states:

21  
22           You are **NOT** required to use this company as a condition of your purchase of the  
23 Property from **Seller**. There are frequently other settlement service providers  
24 available with similar services. You are free to shop around to determine that you  
are receiving the best services and the best rate for these services.  
(Emphasis in original)

25           9. This freedom to shop was further reiterated in the Notice of Affiliated Business  
26 Arrangement Addendum, also contained in my Purchase Agreement, which also describes the  
27 relationship between Horton and Horton Mortgage as follows:  
28

1 I, Susie Khuu, declare:

2 1. I have personal knowledge as to the facts stated in this declaration. If called as a  
3 witness, I could and would competently testify to the truth of the facts stated in this declaration. I  
4 make this declaration in opposition to the motion to compel arbitration, in opposition to the  
5 motions to dismiss, and in opposition to the motion to strike.  
6

7 2. On or about July 26, 2007, I entered into a home purchase agreement to purchase a  
8 new condominium from Western Pacific Housing, Inc., a Delaware Corporation, dba D.R.  
9 Horton, America's Builder ("Horton"), located in Horton's "Valverde Villages" community at  
10 3857 30<sup>th</sup> Street, Unit 207, in San Diego, California.

11 3. At this time, I paid an \$8,000 deposit towards the purchase price of the home. I was  
12 also told, at that time, by Ms. Patricia Sugiyam, a Horton sales representatives that I would only  
13 have to pay \$3,000 in closing costs. As required by ¶7.2 of my Purchase Agreement with Horton,  
14 I was required to and did apply for a home loan with DHI Mortgage, which reads in relevant part  
15 as follows:  
16

17 (a) Loan Application. Within 5 days after Buyer's Offer, Buyer shall submit  
18 a completed application for the New Loan to DHI Mortgage, LTD., LP ("**Seller's**  
19 **Approved Lender**"), and a lender selected by Buyer ("Buyer's Lender"), if any.

20 4. On or about September of 2007, Ms. Cynthia L. Brockway from Horton Mortgage,  
21 informed me that I had been approved to obtain a loan from Horton Mortgage. When Ms.  
22 Brockway presented me with the terms and conditions of the loan, I was so shocked by the  
23 closing costs of \$7,000, which were more than double what I was quoted from Ms. Sugiyam, that  
24 I considered looking for a loan from another lender.  
25

26 5. At that time, Ms. Sugiyam informed me that if I attempted to change lenders, fees  
27 incurred by Horton Mortgage in approving me for the Horton Mortgage loan would be assessed  
28

1 against me. Ms. Sugiyam further informed me that my closing date would be delayed, which  
2 would cause further fees to be assessed against me and cause my deposit to be forfeited.

3 6. At the time I entered into the home purchase agreement, I had no reason to foresee that  
4 I would not be permitted to use a lender of my choice. When I signed the Purchase Agreement,  
5 Ms. Sugiyam did not explain to me that, upon being presented with approval to receive a loan  
6 from Horton Mortgage, I would be threatened with additional fees, delay of closing, and  
7 forfeiture of my deposit, if I sought out a loan with more favorable terms and conditions.  
8

9 7. My understanding of ¶ 7.5 of my Purchase Agreement, when read with ¶7.2 and the  
10 Notice of Affiliated Business Arrangement Addendum thereto, was that ¶7.5 did not apply to a  
11 DHI Mortgage loan, as the DHI application did not “compel” me to accept the DHI Loan. This  
12 understanding is also supported by the clear language in the Notice of Affiliated Business  
13 Arrangement Addendum, contained in my Purchase Agreement, which discusses Horton’s  
14 affiliation with DHI Mortgage and states:  
15

16 You are **NOT** required to use this company as a condition of your purchase of the  
17 Property from **Seller**. THERE ARE FREQUENTLY OTHER SETTLEMENT  
18 SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU  
19 ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE  
20 RECEIVING THE BEST SERVICES AND THE BEST RATES FOR THESE  
21 SERVICES.  
(Emphasis in original)

22 8. My understanding was that this statement meant that I was free to shop and compare  
23 services. Ms. Sugiyam, however, threatened me with additional fees, delay of closing, and  
24 forfeiture of my deposit, if I sought out a loan with more favorable terms and conditions. As a  
25 result, I felt immediately foreclosed from shopping. The possibility of determining if I am  
26 receiving the best rate and lowest fees is nonexistent if I cannot compare the actual rate and fees  
27 of the DHI loan to other rates and fees. This statement is inconsistent with the above mentioned  
28

1 I, Jorge Lopez, declare:

2 1. I have personal knowledge as to the facts stated in this declaration. If called as a  
3 witness, I could and would competently testify to the truth of the facts stated in this declaration. I  
4 make this declaration in opposition to the motion to compel arbitration and in opposition to the  
5 motions to dismiss, and in opposition to the motion to strike.  
6

7 2. On or about May 28, 2006, I entered into a home purchase agreement to purchase a  
8 new home from Western Pacific Housing, Inc., a Delaware Corporation, dba D.R. Horton,  
9 America's Builder ("Horton"), located in Horton's "Valverde Villages" community at 2614  
10 Breaker Way, in Stockton, California .

11 3. In or about May of 2006 I paid a \$13,500 deposit towards the purchase price of the  
12 home. I was also offered a \$10,000 discount off of the closing costs by Ms. Julie Branecki, the  
13 sales assistant from Horton. Ms. Branecki, at that time, informed me that I would only be eligible  
14 for this "discount," if I obtained my home loan from Horton Mortgage. As required by ¶7.2 of  
15 the Purchase Agreement with Horton, I was required to and did apply for a home loan with DHI,  
16 which reads in relevant part as follows:  
17

18 (a) Loan Application. Within 5 days after Buyer's Offer, Buyer shall submit  
19 a completed application for the New Loan to DHI Mortgage ("**Seller's Approved**  
20 **Lender**"), and a lender selected by Buyer, if any.

21 4. In or about July of 2006, Ms. Candace Rivera from Horton Mortgage informed me that  
22 I was approved to receive a loan from Horton Mortgage. She also informed me of the terms and  
23 conditions of the loan, which included an interest rate of 6.25% that is fixed for five (5) years, but  
24 adjustable thereafter.

25 5. When I told Ms. Rivera that I would like to obtain my own financing for the home  
26 purchase, rather than accept the loan from Horton Mortgage, Ms. Rivera informed me that the  
27 \$13,500 I paid as a deposit I paid as an upgrade deposit, along with other credits already paid,  
28

1 would be forfeited and the sale of the home would be cancelled if I financed the home purchase  
2 with any provider other than Horton Mortgage, as set forth in ¶7.5 of the Purchase Agreement.

3 6. My understanding of ¶7.5 of my Purchase Agreement, when read with ¶7.2 and  
4 Addendum No. 1 thereto, was that ¶7.5 did not apply to a DHI Mortgage loan, as the DHI  
5 application did not “compel” me to accept the DHI Loan. This understanding is also supported  
6 by the clear language in the Affiliated Business Arrangement Disclosure document, contained in  
7 my purchase agreement, which discusses DR Horton’s affiliation with DHI Mortgage and states:  
8

9 You are **NOT** required to use these companies as a condition of your purchase of  
10 the Property from **Seller** or as a condition of your application for, or settlement of,  
11 a mortgage loan on the Property in connection with your purchase. **THERE ARE**  
12 **FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS**  
13 **AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP**  
14 **AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST**  
15 **SERVICES AND THE BEST RATE FOR THESE SERVICES**  
16 (Emphasis in original)

17 7. My understanding is that this statement meant that I was free to shop and compare  
18 services. This freedom to shop was further reiterated in the Notice of Affiliated Business  
19 Arrangement Addendum, also contained in my Purchase Agreement, which also describes the  
20 relationship between Horton and Horton Mortgage as follows:

21 You are **NOT** required to use these companies as a condition of your purchase of  
22 the Property from Seller. **THERE ARE FREQUENTLY OTHER SETTLEMENT**  
23 **SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU**  
24 **ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE**  
25 **RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE**  
26 **SERVICES.**

27 The Affiliated Business Arrangement Addendum contained in my Purchase Agreement  
28 also states:

If there is a conflict between the Purchase Agreement and the terms and provisions of this Addendum, the terms and provisions of this Addendum shall control.

1 I, Rebecca Lorenzo, declare:

2 1. I have personal knowledge as to the facts stated in this declaration. If called as a  
3 witness, I could and would competently testify to the truth of the facts stated in this declaration. I  
4 make this declaration in opposition to the motion to compel arbitration, in opposition to the  
5 motions to dismiss, and in opposition to the motion to strike.  
6

7 2. On or about January 25, 2006, I entered into a home purchase agreement to purchase a  
8 new home from Western Pacific Housing, Inc., a Delaware Corporation, dba D.R. Horton,  
9 America's Builder ("Horton"), located in Horton's "Valverde Villages" community at 2345 New  
10 Brighton Lane, in Stockton, California.

11 3. I was purchasing my home from Horton as a first time home buyer. After I paid a  
12 \$7,500 deposit towards the purchase price of the home, I was offered a \$5,000 discount off of the  
13 closing costs. Julie Branecki informed me that I would only be eligible for this "discount," if I  
14 obtained my home loan from Horton Mortgage. As required by ¶7.2 of my Purchase Agreement  
15 with Horton, I was required to and did apply for a home loan with DHI Mortgage, which reads in  
16 relevant part as follows:  
17

18 (a) Loan Application. Within 5 days after Buyer's Offer, Buyer shall submit  
19 a completed application for the New Loan to DHI Mortgage, LTD., LP ("**Seller's**  
20 **Approved Lender**"), and a lender selected by Buyer ("Buyer's Lender"), if any.

21 4. My understanding of ¶ 7.5 of my Purchase Agreement, when read with ¶7.2 and the  
22 Notice of Affiliated Business Arrangement Addendum thereto, was that ¶7.5 did not apply to a  
23 DHI Mortgage loan, as the DHI application did not "compel" me to accept the DHI Loan. This  
24 understanding is also supported by the clear language in the Affiliated Business Arrangement  
25 Disclosure, contained in my Purchase Agreement, which discusses Horton's affiliation with DHI  
26 Mortgage and states:  
27  
28

1 You are **NOT** required to use this company as a condition of your purchase of the  
2 Property from **Seller**. There are frequently other settlement service providers  
3 available with similar services. You are free to shop around to determine that you  
4 are receiving the best services and the best rate for these services.  
(Emphasis in original)

5 6. My understanding was that this statement meant that I was free to shop and compare  
6 services. Ms. Branekki, nevertheless, had informed me that if I attempted to use any lender other  
7 than Horton Mortgage, my deposit of \$7,500 would be forfeited and the sale of the home would  
8 be canceled. I accepted her at her word.

9 7. The possibility of then determining if I was receiving the best rate and lowest fees  
10 became nonexistent. Without the ability to compare the actual rate and fees of the DHI loan to  
11 other rates and fees, I did not feel that I was truly "free to shop around."

12 8. As a result of the offered "discount" and the direct threat of losing both the \$7,500  
13 deposit and home purchase if I did not purchase the home, I therefore did not consider financing  
14 my home loan with any mortgage provider other than Horton Mortgage.

15 9. The loan I felt coerced into obtaining from Horton Mortgage consisted of two (2)  
16 loans. The first loan funded eighty percent (80%) of the home purchase with an interest rate that  
17 was fixed at 1.5% for one (1) year and adjustable thereafter. The second loan funded twenty  
18 (20%) of the home purchase with an interest rate that adjusts between 9.75-10.5%.

19 20 10. The fees, interest rate, and closing costs of the mortgage loan I received from Horton  
21 Mortgage are substantially higher than the fees, interest rate, and closing costs that I expected to  
22 receive from Horton Mortgage, based on the representations made to me by employees of  
23 Defendants.

24 25 11. As a result of the higher fees, interest rate, and charges imposed on me by Horton  
26 Mortgage, I have been financially devastated. I cannot afford the loan payments and, as a result, I  
27 am constantly in fear of losing my home.  
28

1 I, James Wilson, declare:

2 1. I have personal knowledge as to the facts stated in this declaration. If called as a  
3 witness, I could and would competently testify to the truth of the facts stated in this declaration. I  
4 make this declaration in opposition to the motion to compel arbitration, in opposition to the  
5 motions to dismiss, and in opposition to the motion to strike.  
6

7 2. On or about September 29, 2007, I entered into a home purchase agreement to  
8 purchase a new condominium from Western Pacific Housing, Inc., a Delaware Corporation, dba  
9 D.R. Horton, America's Builder ("Horton"), located in Horton's "La Boheme" community at  
10 3950 Ohio Street, Unit 235, in San Diego, California.

11 3. On or about September 29, 2007, I attended an auction held by Horton where only  
12 registered bidders with \$5,000 in cash or a cashier's check would be permitted to attend the sale  
13 of new units of the condominiums sold by Horton. I paid the \$5,000 bid and was offered the  
14 opportunity to purchase a condominium from Horton.  
15

16 4. At this time, I entered into a Purchase Agreement with Horton and paid an additional  
17 \$15,000 as a deposit towards the purchase price of the condominium. I was assured that any  
18 closing costs charged by Horton would not exceed \$4,000 and my monthly payment would be  
19 \$2,500 or less. I was also told by the sales staff that the interest rate I would receive on a loan  
20 from Horton Mortgage would not exceed 6%. Mr. Brad Trembly, who worked for Horton, also  
21 informed me that if I used Horton Mortgage and I did not use a real estate agent, I would receive  
22 a discount off the purchase price equivalent to 2% of the total purchase price.  
23

24 5. As required by ¶7.2 of my Purchase Agreement with Horton, I was required to and did  
25 apply for a home loan with DHI Mortgage, which reads in relevant part as follows:

26 (a) **Loan Application.** Within 5 days after Buyer's Offer, Buyer shall submit  
27 a completed application for the New Loan to DHI Mortgage ("**Seller's Approved**  
28 **Lender**"), and a lender selected by Buyer, if any.

1           6. Mr. Trembly thereafter visited me in my home on at least three (3) separate occasions.  
2 I informed Mr. Trembly, during these visits, that I was interested in obtaining a home loan from  
3 Bank of America because I had always experienced a good business relationship with Bank of  
4 America. Mr. Trembly insisted that Horton Mortgage was competitive with any mortgage  
5 company and that Horton Mortgage would offer me a discount off of the purchase price  
6 equivalent to 2% of the total purchase price if I did not use my own real estate agent and used  
7 Horton Mortgage. Mr. Trembly repeated these same representations in telephone calls and  
8 messages.  
9

10           7. Although several sales representatives from Horton and Horton Mortgage, including  
11 Mr. Trembly, had previously represented that my closing costs would not exceed \$4,000, Mr.  
12 Trembly later informed me during one of his visits that the closing costs would amount to  
13 approximately \$12,000. In order to avoid paying these high closing costs, I continued to attempt  
14 to obtain financing for my home purchase through Bank of America.  
15

16           8. At Bank of America, I was offered a fixed interest rate of 5.875% and no closing costs.  
17 Despite the best efforts of my representative at Bank of America and myself, Horton would not  
18 cooperate with either my representative at Bank of America or with myself. These efforts were  
19 made within thirty (30) days of entering into the Purchase Agreement and before the lender  
20 commitment date specified in my Purchase Agreement. As a result, I was under a severe time  
21 constraint to either obtain alternative financing, commit to DHI Mortgage, or else cancel the  
22 purchase.  
23

24           9. Although I had obtained a commitment from Bank of America, Horton refused to  
25 cooperate with Bank of America to finalize the commitment. As a result, I was, therefore, unable  
26 to obtain a formal commitment from Bank of America within the time frame specified by Horton.  
27  
28

1           10. After Horton Mortgage failed to cooperate with Bank of America, I had no choice but  
2 to accept the loan from Horton Mortgage in order to close the purchase. I felt that Horton's  
3 insistence on placing me with this loan was in conflict with the clear terms of the Affiliated  
4 Business Arrangement Addendum document, contained in my Purchase Agreement, which  
5 discusses DR Horton's affiliation with DHI Mortgage and states:

7           You are **NOT** required to use these companies as a condition of your purchase of  
8 the Property from Seller. THERE ARE FREQUENTLY OTHER SETTLEMENT  
9 SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU  
10 ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE  
11 RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE  
12 SERVICES.

13           11. My understanding is that this statement meant that I was free to shop and compare  
14 services. Mr. Trembly, however, told me when I wanted to continue to use Bank of America, that  
15 I was foreclosed from shopping after thirty (30) days of entering into my Purchase Agreement.  
16 This statement is completely inconsistent with the above mentioned language in the Purchase  
17 Agreement. This inconsistency is fostered by the fact that the Affiliated Business Arrangement  
18 Addendum contained in my Purchase Agreement further stated:

19           If there is a conflict between the Purchase Agreement and the terms and  
20 provisions of this Addendum, the terms and provisions of this Addendum shall  
21 control.

22           12. At closing, Horton Mortgage failed to provide me with the promised 2% discount for  
23 financing the home purchase with Horton Mortgage and for not using my own real estate agent.  
24 When I asked why I was not receiving the promised 2% discount off of the purchase price, Mr.  
25 Trembly replied, "I am just a messenger." When I insisted that I should at least receive the  
26 discount for using Horton Mortgage, Mr. Trembly ask me, "Do you want to get this over with or  
27 not?"

28           13. The fees, interest rate, and closing costs of the mortgage loan I actually received from  
Horton Mortgage are substantially higher than the fees, interest rate, and closing costs that I

1 expected to receive, based on the representations made to me by Brad Trembly. When I provided  
2 my \$20,000 down payment, I was assured that my closing costs would not exceed \$4,000 and my  
3 monthly payment would not exceed \$2,500. After Defendants refused to fund my loan with Bank  
4 of America, however, Horton raised the closing costs to \$14,000 and the monthly payments to  
5 \$3,100 per month. As a result, the deal that they gave me was quite different from the deal I had  
6 agreed to when I put down my payment of \$20,000.00. When I tried to refuse this deal, Horton  
7 threatened to withhold my \$20,000 deposit because thirty (“30”) days had elapsed since I entered  
8 into the purchase agreement. At that time, had Horton or Horton Mortgage actually disclosed to  
9 me that the loan would cost me over \$4,000 in fees, with an interest rate of 7%, and with closing  
10 costs of over \$14,000, I would never have entered into the purchase agreement.  
11

12  
13 14. The Purchase Agreement for the unit was represented to me to be a standard form  
14 document, and I was never given any reason to believe that the terms of the arbitration agreement  
15 were negotiable. The agreement was presented on a take-it or leave-it basis, and there was no  
16 opportunity to negotiate any of the boilerplate terms of the agreement. I did not understand that  
17 as a result of the agreement that my rights against D.R. Horton, Inc., Horton or DHI Mortgage  
18 Company, LTD., L.P. (“Horton Mortgage”) (collectively referred to herein as “Defendants”) to  
19 enforce statutory remedies and/or California law as a result of their sales conduct were being  
20 forfeited through the agreement.  
21

22 15. In signing the agreement I was not told, nor did I understand that by signing the  
23 agreement with the arbitration provision I would be waiving rights to receive attorney’s fees as a  
24 prevailing party, which are guaranteed by Federal and/or California law. I also did not  
25 understand that I would be waiving statutory remedies or other rights provided by California law.  
26 I was not informed nor did I understand that I would be forced to pay for the costs of providing, at  
27 my sole expense, JAMS and all non-appealing parties with a certified copy of the hearing  
28

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
MAR 26 2007  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

THOMAS DODSON AND  
OLGA DODSON

*Plaintiffs,*

v.

DHI MORTGAGE COMPANY, LTD.

*Defendant.*

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A07CA230 SS  
CIVIL ACTION NO. \_\_\_\_\_  
JURY

**PLAINTIFFS' ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiffs Thomas Dodson and Olga Dodson ("Plaintiffs") file this Original Complaint against DHI Mortgage Company, Ltd. ("Defendant") and respectfully show the Court as follows:

**A.  
PARTIES**

1. Plaintiffs are individual citizens of the Commonwealth of Virginia. Plaintiffs are married and reside together as husband and wife in Manassas, Prince William County, Virginia.

2. Defendant is a company organized and existing under the laws of the State of Texas and maintains its principal place of business at 12357 Riata Trace Parkway, Austin, Texas 78727. Defendant may be served with process by serving its registered agent, C.T. Corporation, at 350 North St. Paul Street, Dallas, Texas 75201.

**B.  
JURISDICTION AND VENUE**

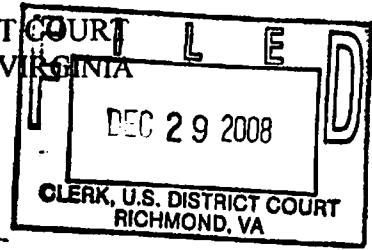
3. The Court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. § 1332.

money in their accounts. However this explanation was never provided to Plaintiffs by Defendant, and despite Mr. Yow's use of the term COFI loan, Plaintiffs were orally informed by Mr. Yow that their interest rate would begin at one (1) percent the first year and then increase by one (1) percent each year for five (5) years until capped at five (5) percent per year for the remainder of the life of the mortgage. In sum, Mr. Yow orally described a loan which was not a COFI loan at all.

14. Not only did Mr. Yow describe something other than a COFI loan to the Plaintiffs, the two (2) separate TILDS prepared by Mr. Yow reflected an entirely different loan arrangement than the loan terms which were described orally by Mr. Yow. On February 25, 2005, Mr. Yow prepared a TILDS ("February 2005 TILDS") indicating Plaintiffs' loan was an "ARM" initially set at 4.430 annual percentage rate. Mr. Yow never explained to Plaintiffs that "ARM" was an acronym for an adjustable rate mortgage, nor did he ever explain what an adjustable rate mortgage was to Plaintiffs. The February 2005 TILDS Mr. Yow prepared had a box to indicate whether or not the loan being disclosed contained a variable rate feature. Mr. Yow did not check the variable rate feature box on the February 2005 TILDS, thereby providing a written disclosure which was not only entirely contradictory within the TILDS itself, but one which also contradicted his own oral representations to Plaintiffs as to whether they were purchasing an interest rate that fluctuated or not. The February 2005 TILDS also indicated that this was a "final" document and that there was neither a prepayment penalty nor any entitlement to a refund of part of the finance charge. The total finance charge under this February 2005 TILDS was stated as \$577,527.72.

15. On May 12, 2006, Mr. Yow provided a different TILDS ("May 2006 TILDS") to Plaintiffs for the same loan number which stated that Plaintiffs' adjustable rate mortgage came with a 7.047 annual percentage rate—an amount significantly higher than Plaintiffs were advised, either

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION



VILMA E. MORENO  
f/k/a Vilma Diaz

Plaintiff,

v.

DHI MORTGAGE COMPANY GP, INC.

and

D. R. HORTON, INC.

Defendants

CIVIL ACTION No.  
COMPLAINT AND  
REQUEST FOR JURY TRIAL

3:08cv845

**COMPLAINT**

COME NOW, Plaintiff, by counsel, and as her Complaint against Defendants, DHI MORTGAGE COMPANY GP, INC (hereinafter DHI) and D. R. HORTON, INC. (hereinafter, D.R. Horton), respectfully allege the following:

**PARTIES**

1. Plaintiff is a resident of the Commonwealth of Virginia.
2. Defendant DHI was, at all times relevant hereto, a corporation licensed and authorized to do business in the Commonwealth of Virginia, in the business of financing residential mortgage loans.
3. Defendant D.R. Horton was, at all times relevant hereto, a Delaware corporation, in the business of constructing and selling homes.

**JURISDICTION AND VENUE**

49. In the alternative of willful violations, the Defendant DHI's violations were negligent.
50. As a result of the above alleged FCRA violations, Plaintiff has suffered substantial actual damages.
51. As a result of these FCRA violations, Defendant DHI is liable to Plaintiff for statutory damages, or actual damages if the amount of actual damages is greater than the statutory amount for each of the violations; Defendant DHI is also liable for punitive damages, and for attorneys fees and costs.

**COUNT III -FRAUD**

52. The allegations of paragraphs 1 through and including 51 of the Complaint are realleged and incorporated herein by reference.
53. Defendants DHI and D.R. Horton misrepresented that DHI would finance the purchase of the Townhouse.
54. Defendants DHI and D.R. Horton misrepresented that DHI would finance the purchase of the Townhouse in order to get Plaintiff to agree to purchase the townhouse in lieu of the Rainswood Lane property.
55. Defendants DHI and D.R. Horton misrepresented that DHI would finance the purchase of the Townhouse in order that Defendant D.R. Horton would not be in default of the purchase contract and thus be unable to make a claim for forfeiture of Plaintiff's deposit as liquidated damages under the contract.
56. Defendants DHI and D.R. Horton misrepresented that DHI would finance the purchase of the Townhouse, knowing that DHI would not in fact finance the

purchase of the Townhouse, so that Defendant D.R. Horton could attempt to claim a breach by Plaintiff and forfeit her deposit as alleged liquidated damages under the contract.

57. In agreeing to exchange the contract for the Rainswood Lane property for a contract for the Townhouse, Plaintiff relied on Defendants representations referenced above.
58. Defendants representations that DHI would finance Plaintiff for the Townhouse was a material consideration in Plaintiff's entry into that contract.
59. As a result of Defendant's false representations, Plaintiff was damaged.
60. Defendants' actions were taken in willful, wanton and reckless disregard for Plaintiff's rights.

**COUNT IV -VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT**

61. The allegations of paragraphs 1 through and including 60 of the Complaint are realleged and incorporated herein by reference.
62. The purchases described above are "consumer transactions" as that term is used in the Virginia Consumer Protection Act.
63. Defendant D.R. Horton is a "supplier" as that term is used in the Virginia Consumer Protection Act.
64. Defendant D.R. Horton claimed that it was forfeiting Plaintiff's deposit based on an alleged liquidated damage provision in the contract.
65. The alleged liquidated damage provision of the contract is void and unenforceable as a penalty, rather than liquidated damages.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

GARY G. STAUFFER and	:	No. CI-08-
LINDA S. STAUFFER,	:	
Plaintiffs	:	
	:	
v.	:	Civil Action
	:	
D. R. HORTON, INC. -	:	
NEW JERSEY,	:	Jury Trial Demanded
Defendant	:	

COMPLAINT

AND NOW come the Plaintiffs, Gary G. Stauffer and Linda S. Stauffer, by and through their attorneys, Malone & Neubaum, Leo Wallace, and file this their Complaint of which the following is a statement.

1. Plaintiffs, Gary G. Stauffer and Linda S. Stauffer, husband and wife, are adult individuals residing at 1835 Buchers Mill Road, Lancaster, Pennsylvania 17601.

2. Defendant, D. R. Horton, Inc.- New Jersey, is a Delaware corporation whose registered agent is the Corporation Trust Company with an address of 1209 Orange Street, Wilmington, Delaware 19801.

3. On or about August 31, 2005 the Plaintiffs and the Defendant executed a certain written agreement for the construction of a new home. A true and correct copy of the agreement is attached hereto marked as Exhibit A and is incorporated by reference herein.

4. On or about March 15, 2006 the Plaintiffs paid the full purchase price and took possession of their home located at 1835 Buchers Mill Road, Lancaster, Pennsylvania 17601.

5. After taking possession of their home, Plaintiffs began to notice what they believed were construction defects.

6. On November 10, 2006 the Plaintiffs had their home inspected by an independent inspection agency, Code Administrators, Inc.

7. On or about February 10, 2007 the Commonwealth of Pennsylvania, Department of Labor and Industry, performed an inspection of the Plaintiffs' home.

8. The aforementioned inspections confirmed the Plaintiffs' belief that there were in fact defects in the construction of their home.

9. The home and other improvements were constructed by the Defendants and/or their subcontractors over whom Defendants exercised supervision, direction and control.

10. The independent inspection and the inspection by the Department of Labor and Industry identified numerous construction defects, including *inter alia* the following:

- a. The required plumbing, mechanical, electrical system and wallboard inspections were not conducted prior to the issuance of an occupancy permit;
- b. Exterior penetrations have not been properly sealed and are not weathertight;
- c. Staircase to the second floor is built with a different riser from the first and last riser;

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

James M. Ivey,

Plaintiff,

vs.

D.R. Horton, Inc.,

Defendant.

**COMPLAINT**  
**(Jury Trial Demanded)**

3 : 08 - 598 - CMC

The plaintiff, by and through his undersigned counsel, hereby files this Complaint against D.R. Horton, Inc. ("Horton") alleging fraudulent conduct and public policy discharge causes of action in violation of his rights and proximately causing him damages as further set out herein.

1. The plaintiff is a citizen of the United States residing in Leesville, South Carolina and submits himself to the jurisdiction of this Court.

2. The defendant, D.R. Horton ("Horton"), is a Delaware corporation or a foreign corporation chartered with its principal place of business in Ft. Worth, Texas where it maintains a nationwide residential construction operation including large construction operations within the state of South Carolina, particularly in Richland and Lexington Counties.

3. This action arises under Section 28 U.S.C. Section 1337 and invokes the diversity jurisdiction of this Court.

4. Venue lies within the Columbia Division pursuant to 28 U.S.C. Section 1391 because the unlawful actions and practices alleged herein were committed within the District of South Carolina where the defendant does business and maintains agents, servants and employees.

5. The defendant Horton is a nationwide corporation and develops real estate and

markets upscale residential and multi-family homes throughout many areas of the State of South Carolina where it acts through its managers, officers and employees. The claims of the plaintiff focus upon the end years of his employment with Horton when he was assigned to the Columbia, South Carolina office in charge of area construction issues and later placed in charge of development and infrastructure until his wrongful and fraudulent termination in October of 2007.

6. In February of 2005, the plaintiff was moved from Charleston, South Carolina to Columbia after several years of employment with Horton in several different locations. In the late spring of 2005, he was placed in charge of area construction which included numerous Horton projects in Richland and Lexington Counties.

7. At the time he was placed in such position, Horton had no corporate or individual builders license as required by the State of South Carolina to carry on its real estate operations. The plaintiff had held such licenses previously in other locations and as a part of his newly relocated position, Horton arranged for and paid the necessary fees for the plaintiff to take the examination and be licensed as a builder in order to utilize such license to conduct its corporate activities in the building area.

8. The plaintiff agreed to allow Horton to utilize his license only upon the express assurance that he would be responsible only for the period of time that he was in charge of residential construction and had oversight of the inspection and correction process required by South Carolina law. In his construction position, he could assure compliance for both himself and for Horton. He in fact assured such compliance at all times that he was in charge of construction.

9. Horton's agents and servants, specifically the division president, Jay Henderson, as

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---

THOMAS G. HUGGINS	:	
968 Cornwallis Drive	:	
West Chester, PA 19380	:	
Plaintiff	:	CIVIL ACTION NO. 08-
	:	
v.	:	
	:	
D.R. HORTON, INC.	:	
301 Commerce Street	:	
Suite 500	:	
Fort Worth, TX 76102	:	
Defendant	:	

---

COMPLAINT

1. This action sets forth claims for wrongful discharge, violation of the Pennsylvania Wage Payment and Collection Law, 42 P.S. § 260.1, *et seq.*, and common law breach of contract, with jurisdiction founded on the parties' diversity of citizenship.

JURISDICTION AND VENUE

2. The parties being citizens of different states and the amount in controversy, exclusive of interest and costs, being in excess of \$75,000, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(a)(2) and (3), in that a substantial part of the events or omissions giving rise to the claims set forth in this Complaint occurred in this judicial district and defendant Horton is subject to personal jurisdiction in this judicial district.

PARTIES

4. Plaintiff, Thomas G. Huggins, (hereinafter called "Plaintiff" or "Huggins") is an individual residing at 968 Cornwallis Drive, West Chester,

Chester County, Pennsylvania, 19380.

5. Defendant, D.R. Horton, Inc. (hereinafter referred to as "Defendant" or "Horton") is a corporation registered to do business within the Commonwealth of Pennsylvania, with its principal place of business located at 301 Commerce Street, Suite 500, Fort Worth, Texas, 76102.

**BACKGROUND OF THE VIOLATIONS**

6. On or about February 25, 2005, Horton, which is in the business of new home construction, made an employment offer to Huggins for the position of Project Manager, at an annual salary of \$90,000, a year-end discretionary bonus, and benefits. Additionally, Horton promised Huggins that he would participate in a separate bonus program (the "houeline bonus"), under which he would be entitled to a bonus of up to \$200 per closed home based on certain criteria identified in the offer of employment letter ("offer letter") that Horton provided, a copy of which is attached as Exhibit A. Huggins accepted this offer of employment and began to work for Horton on or about March 11, 2005.

7. From and after the commencement of his employment with Horton, Huggins worked diligently on its behalf and contributed to the closing of many houses in his capacity as Project Manager of Horton's Village Grande at Miller's Run development located in Lancaster County, Pennsylvania.

8. Beginning in December 2005, Huggins made written inquiry to his immediate supervisor, Zachrey Colburn, concerning payment of the houeline bonus due to him. At all times from then and thereafter, Colburn indicated that the houeline bonus was payable to Huggins and that Colburn would investigate the reasons for delay in payment. Such interaction between Huggins and Colburn continued through the summer of 2006.

9. By September 6, 2006, Horton's delay in paying and failure to pay Huggins and other employees the houeline bonus compensation to which he and they were entitled and were requesting had reached the point where Huggins and a co-worker, Lou Mastrella, communicated by letter addressed to Horton's

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO.

07004661

08

ANGELENA KANDAH,

Plaintiff,

vs.

D.R. HORTON, INC.,  
a foreign corporation,

Defendant.

A TRUE COPY  
HOWARD C. FORMAN  
CLERK OF CIRCUIT COURT

MAR 01 2007

COMPLAINT

Plaintiff, ANGELENA KANDAH, by and through her undersigned counsel, sues the Defendant, D.R. HORTON, INC. and alleges as follows:

Allegations Common to All Counts

1. Plaintiff is an individual, over the age of twenty one, a resident of Florida, and is otherwise sui juris.
2. At all times material hereto, Defendant D.R. Horton, Inc. was and is a foreign corporation licensed and doing business in Broward County, Florida.
3. Venue is proper in this Court in that significant and material transactions and occurrences giving rise to the causes of action set forth herein arose and transpired in Broward County, Florida.
4. This is an action for money damages in excess of \$15,000.00.
5. All conditions precedent to the maintenance of the causes of action set forth herein have occurred, been waived or excused.

6. Plaintiff has retained The Law Offices of David Eltringham, P.L. to represent her in this cause and she has agreed and become obligated to pay it a reasonable fee for its services.

### General Factual Allegations

7. In or about 2002, Plaintiff was hired by Defendant, a nationally prominent builder/developer, to work as a sales assistant in its Deerfield Beach office location.

8. As a sales assistant, Plaintiff entered into a 5 month sales training program where she was paid a salary and nominal commission on the sale of any new homes made by her.

9. At her successful completion of that training program, Plaintiff was promoted to the position of full time sales associate at which time Defendant orally advised her that going forward she was to be paid on a commission only basis and further advised her that her commissions would always remain fixed at the agreed upon rate and become fully due and owing to her in the pay period immediately following the close of the sale of any new homes sold by her.

10. Based on the foregoing representations, Plaintiff accepted her promotion and worked as Defendant's sales associate for the next 3 ½ years.

11. On or about January 9, 2007, Defendant terminated Plaintiff's employment and subsequently advised her that any commissions due and owing to her on future closings of homes sold by Plaintiff would be paid out to her on a reduced sliding scale basis pursuant to a written employment agreement Plaintiff had allegedly previously entered into with Defendant.

**8:06-cv-00867-AG-AN** Keith Rielly v. D R Horton  
 Andrew J. Guilford, presiding  
 Arthur Nakazato, referral  
**Date filed:** 09/14/2006 **Date of last filing:** 02/21/2008

### Case Summary

**Office:** Southern Division - Santa Ana

**Jury Demand:** Plaintiff

**Nature of Suit:** 710

**Jurisdiction:** Federal Question

**County:** Orange

**Origin:** 1

**Lead Case:**

**Related Case:**

**Filed:** 09/14/2006

**Demand:** \$1500000

**Cause:** 28:1331 Fed. Question: Fair Labor Standards

**Disposition:**

**Terminated:**

**Reopened:**

None

None

**Other Court Case:**

None

**Def Custody Status:**

**Flags:** (ANx), DISCOVERY

<b>Plaintiff:</b> Keith Rielly	<b>represented by</b>	Mark Joseph Butler	<b>Phone:</b> 949-222-9181
			<b>Email:</b> mark.butler@mazdabutler.com
<b>Plaintiff:</b> Keith Rielly	<b>represented by</b>	Mark N Mazda	<b>Phone:</b> 949-222-9182
			<b>Email:</b> mark.mazda@mazdabutler.com
<b>Defendant:</b> D R Horton	<b>represented by</b>	David Augustus Garcia	<b>Phone:</b> 213-239-9800
			<b>Email:</b> david.garcia@ogletreedeakins.com
<b>Defendant:</b> D R Horton	<b>represented by</b>	Howard L Magee	<b>Phone:</b> 213-239-9800
			<b>Email:</b> howard.magee@ogletreedeakins.com
<b>Defendant:</b> D R Horton	<b>represented by</b>	Jack S Sholkoff	<b>Phone:</b> 213-239-9800
			<b>Email:</b> jack.sholkoff@ogletreedeakins.com
<b>Defendant:</b> D R Horton	<b>represented by</b>	Leslie E Wallis	<b>Phone:</b> 213-239-9800
			<b>Email:</b> leslie.wallis@odnss.com

PACER Service Center			
Transaction Receipt			
03/08/2008 09:06:50			
<b>PACER Login:</b>	pm2756	<b>Client Code:</b>	
<b>Description:</b>	Case Summary	<b>Search Criteria:</b>	8:06-cv-00867-AG-AN
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

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DISTRICT OF ARIZONA  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Julie E. Collins; Robert B. Ryan, ) No. CV-99-330-PHX-ROS  
Plaintiffs, ) **ORDER**  
vs. )  
D.R. Horton, Inc., )  
Defendant. )

Pending before the Court is Plaintiffs' Motion for Partial Reconsideration of the Court's March 29, 2002 Order granting Defendant's Motion to Dismiss/Compel Arbitration. For the reasons stated below, the Court denies the Motion.

**Background**

On February 29, 1999, Plaintiffs, former employees of Defendant, filed a Complaint against Defendant alleging breach of contract, promissory estoppel, and fraud arising out of an employment agreement ("Agreement"). According to Plaintiffs, Defendant forced them to resign their positions and failed to pay them various sums allegedly owed under the terms of the Agreement. Although the Agreement includes a compulsory arbitration provision, on March 15, 1999, Defendant filed a timely response to Plaintiffs' claims. The parties then filed a Joint Proposed Case Management Plan, which provides, among other things, that "[a]ny Motion by Defendant directed at obtaining an Order to compel arbitration of

228



service provider. By requiring home buyers to finance their purchase through Horton Mortgage, under the direct threat of having to otherwise pay more money for their new home, Defendants have failed to comply with the statutory prerequisites for exemption as an affiliated business arrangement and, consequently, have violated RESPA's prohibition against kickbacks and unearned fees.

2. Defendants have engaged in a uniform, systematic pattern and practice of requiring the use of Horton Mortgage for the financing of home purchases from Horton, in violation of Section 8 of RESPA.

## **II. THE PARTIES**

3. Plaintiff John R. Yeatman is an adult individual who resides at 37 Westbourne Way, Pooler, Georgia 31322.

4. Plaintiff Eleanor E. Yeatman is an adult individual who resides at 37 Westbourne Way, Pooler, Georgia 31322.

5. Defendant, Horton, Inc., is, upon information and belief, a corporation with its headquarters at D. R. Horton Tower, 301 Commerce Street, Suite 500, Fort Worth, Texas, 76102.

6. Defendant, Horton Mortgage Co., is, upon information and belief, a wholly-owned subsidiary of Horton, Inc. with an office at 29 Plantation Park Drive, Suite 102, Blufton, South Carolina 29910

## **III. JURISDICTION AND VENUE**

7. Plaintiffs seek relief under RESPA and, therefore, federal question jurisdiction is appropriate pursuant to 28 U.S.C. § 1331.

**FILE COPY**



*Missud*

1 **PATRICE A. MISSUD** (Ca. SBN 219614)  
91 San Juan Ave.  
2 San Francisco, CA, 94112  
415-584-7251 ph/fax  
3 missudpat@yahoo.com

4 PLAINTIFF in pro per, and  
Attorney for Julie D. Missud

**ORIGINAL  
FILED**

MAY 17 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

**JL**

8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
9 OF CALIFORNIA, SAN FRANCISCO DIVISION  
UNLIMITED CIVIL JURISDICTION

10 PATRICE A. MISSUD,  
11 JULIE D. MISSUD

12 Plaintiffs

Case No.

**07 - 2625**

**COMPLAINT FOR: FRAUDULENT  
INDUCEMENT, FRAUDULENT  
CONCEALMENT, INTENTIONAL  
MISREPRESENTATION, BREACH OF  
FIDUCIARY DUTY, BREACH OF CONTRACT,  
PERSONAL INJURY, VIOLATION OF USC  
TITLE 18 SECTION 1513, DECLARATORY  
RELIEF AND RESTITUTION.  
-DEMAND FOR JURY TRIAL-**

18 vs.

**UNLIMITED**

21 D. R. HORTON, INC.;  
22 DHI MORTGAGE COMPANY, LTD, LP.;  
23 DONALD HORTON; DONALD TOMNITZ;  
MICHAEL MASON; DANIEL CALLIHAN;  
24 ANNIE SCHANKIN; JAMES FRASURE;  
DOES 1-200

25 Defendants

26  
27 PLAINTIFFS, PATRICE A. MISSUD AND JULIE D. MISSUD, ALLEGE an action based on  
28 FRAUDULENT INDUCEMENT, FRAUDULENT CONCEALMENT, INTENTIONAL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Patsy Hancock, Bill Dalo, Val Naona, Lana )  
Brunton-Naona, RSD Properties, Diane )  
Bennett, Drew Russ, Kenneth Nadar, Thomas )  
J. Madeline, Jr. and Elizabeth K. Madeline, )  
Frank E. Knapp, Jr., Dorian Terence Williams, )  
Mark Macvay, MD, Mary Marlene Goodman, )  
Corrine R. Frazier & Edwin B. Frazier, III, )  
Sharon Farbstein & Gordon Farbstein, )  
Nicholas & Christine Taylor, William Young, )  
Jr., Luke Bilger, Heather Martinez, Ruth M. )  
Jacobs, Dennis A. & Sharon L. Scothorn, )  
Barry A. Carpe, Douglas A. & Melissa M. )  
Dupuis, Cathy Harris Lee, Charles Burleson )  
Crockett, William Stuart Crockett, Robert & )  
Janet Wright, Paquita Segarra-Jarzebi, Mary )  
Bridges and William Sions, Bransky Family )  
Trust, Daniel McCready, Barbara Conway, )  
William & Nancy Hepburn, Leonard )  
Minervial, Kimberly Pollard, University Park )  
Partners, LLC, Alan & Marcia Pagliano, )  
Grimald & Grimald LLC, Lionnel Patane, )  
Paul Faith, Brenda Dolan, Beverly Petersen, )  
Jean Bullen, Ashlee & Duane Shotwell, Omav )  
Nieves, C. Lee Barber, Chris McDonald, )  
William Nash, Danny & Janice Allen, Cindy )  
Garfield, Kimberly Hildreth, Jenna Koch, )  
Leslie Cooper, Russell Barker, Anna Lewis, )  
Jason Eastman, Kimberly Simpson, Bruce M. )  
Skipper, Laura Overland, James Whittaker, )  
Kathryn Bennett, Christopher Okupski, )  
Christopher Breeland, John & Kathleen )  
Appelbans, Deb & Joey Stremel, Darrell )  
Watson, )  
Plaintiffs, )

vs. )

D.R. Horton, Inc., )  
Defendant. )

C/A No.: 9:08-3617-SB

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that the Defendant D.R. Horton, Inc. ("Defendant") by and through its counsel, hereby notifies this Court pursuant to 28 U.S.C. §§ 1441 and 1446, of removal to this Court of this action currently pending in the Court of Common Pleas, County of Beaufort, State of South Carolina (the "State Court"). In support of its petition, Defendant states as follows:

1. Plaintiffs above named filed a Complaint against Defendant in the Court of Common Pleas, County of Beaufort, State of South Carolina and served Defendant with the same on or about October 3, 2008. Accordingly, this Notice of Removal is timely filed within the thirty (30) day period required by 28 U.S.C. § 1446(b).

2. The original Complaint (attached as Exhibit 1) named, in addition to Defendant, Property Administrators, Inc., as a defendant. However, the Plaintiffs filed an Amended Complaint (attached as Exhibit 2) on October 21, 2008 which omits that party and names only D.R. Horton, Inc. Accordingly, D.R. Horton, Inc. is the only defendant in this action.

3. Plaintiffs attempt to allege causes of actions against Defendant for breach of fiduciary duty, breach of contract/breach of implied contract, unfair trade practices, negligence/gross negligence, and accounting. Upon information and belief, Plaintiffs seek actual damages, punitive damages and treble damages, placing an amount in controversy in excess of \$75,000.00.

4. Defendant, D.R. Horton, Inc. is a foreign corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Texas.

5. The Amended Complaint alleges that Plaintiffs are all residents of or own property in Beaufort County, South Carolina. Defendant has consulted with Plaintiffs' counsel to inquire as to whether any of the Plaintiffs are non-diverse to Defendant, and no information

FILED: October 15, 2003

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ROGER M. POLLOCK  
and RMP PROPERTIES, INC.,  
nka KMP Properties, Inc.,  
an Oregon corporation,

Appellants,

v.

D. R. HORTON, INC. - PORTLAND,  
a Delaware corporation,  
and D. R. HORTON, INC.,  
a Delaware corporation,

Respondents.

9903-02825; A110606

Appeal from Circuit Court, Multnomah County.

William C. Snouffer, Judge.

Argued and submitted October 2, 2001.

Gary M. Berne argued the cause for appellants. With him on the briefs were David F. Rees, and Stoll Stoll Berne Lokting & Shlachter, P. C.

Peter H. Glade argued the cause for respondents. With him on the brief were Paul Bierly and Markowitz, Herbold, Glade & Mehlhaf, P. C.

Before Wollheim, Presiding Judge, and Deits, Chief Judge, and Linder, Judge.\*

DEITS, C. J.

Reversed and remanded.

\*Linder, J., *vice* Warren, S. J.

DEITS, C. J.

Plaintiffs appeal a judgment entered after the trial court's grant of summary judgment to defendants on plaintiffs' claims for breach of contract and on defendants' counterclaims for breach of fiduciary duty, restitution, and breach of contract. We reverse.

Because the trial court granted defendants' motions for summary judgment, we state the facts in the record most favorably to plaintiffs, including drawing all reasonable inferences in their favor. ORCP 47