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8 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

133

9 STEVEN M. BETSINGER,

) CASE NO. *A503121*

) DEPT. NO. *XV*

10 Plaintiff,

11 vs.

12 D. R. HORTON, INC., a Nevada Corp., )  
13 JEFF WARD, DEBRA MARTINEZ, )  
14 RICK KNOBLOCH, DHI MORTGAGE )  
15 COMPANY, LTD., a Texas Limited )  
16 Partnership f/k/a CH MORTGAGE )  
17 COMPANY I, LTD., a Nevada Limited )  
18 Partnership, DANIEL CALLAHAN, )  
19 individually, and DOES I through V, )  
20 inclusive, )

21 Defendants.

COMPLAINT

22 Plaintiff, STEVEN M. BETSINGER, by and through his counsel of record, David J.  
23 Feldman, Esq. of the law firm of Feldman Graf, hereby complains of the Defendants, and each of  
24 them, and alleges as follows:

1. Plaintiff is a resident of the State of Minnesota, but was, at all relevant times herein  
a resident of Clark County, Nevada.

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2. Plaintiff is informed, believes and thereon alleges that Defendant, JEFF WARD, is and was, at all relevant times herein, a resident of Clark County, Nevada.

3. Plaintiff is informed, believes and thereon alleges that Defendant, DEBRA MARTINEZ, is and was, at all relevant times herein, a resident of Clark County, Nevada.

4. Plaintiff is informed, believes and thereon alleges that Defendant, DHIMORTGAGE COMPANY, LTD. A Texas Limited Partnership f/k/a CH MORTGAGE COMPANY I., LTD. is a Nevada Limited Partnership, authorized to conduct business in the State of Nevada.

5. Plaintiff is informed and believe and thereon alleges that Defendant, D. R. HORTON, INC., is a Nevada Corporation, authorized to conduct business in the State of Nevada.

6. Plaintiff is informed, believes and thereon alleges that Defendant, DANIEL CALLAHAN is and was, at all relevant times herein, a resident of Clark County Nevada.

7. Plaintiff is informed, believes and thereon alleges that Defendant, RICK KNOBLOCH, is and was, at all relevant time herein, a resident of Clark County Nevada.

8. That the true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES I through V are unknown to the Plaintiff, and therefore Plaintiff sues said Defendants under these fictitious names. Plaintiff asks leave of this Court to amend this Complaint at a later date to insert the true names

and capacities of DOES I through V, inclusive, when the same have been ascertained.

FIRST CAUSE OF ACTION

(Fraud as and against Defendants, D. R. Horton, Inc., Jeff Ward and Debra Martinez)

9. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 8, inclusive, of the Complaint as if fully set forth at this point and incorporates them herein by reference.

10. That Plaintiff met Defendants in January 2003 while pursuing the purchase of a home with DR Horton, Inc. Defendants Ward and Martinez independently and apart from their scope of duties as independent contractors or agents of their employer, made certain misrepresentations to Plaintiff as stated below.

11. That Defendants, and each of them, informed Plaintiff that if he executed a cancellation request form attached hereto and incorporated herein as Exhibit "1" for the purpose of canceling his purchase of a home with DR Horton, Inc., that Plaintiff would be refunded his earnest money deposit of \$4,900.00. This occurred on or about May 13, 2003.

12. In reliance on the above representations of Defendants, and each of them, Plaintiff executed the cancellation request attached hereto as Exhibit "1".

13. After Plaintiff's execution of the cancellation request (Exhibit "1"), Defendants subsequently prepared the bottom portion of the request and, contrary to their representations to Plaintiff, recommended that Plaintiff's \$4,900.00 earnest money deposit be retained as set forth in the cancellation request form attached hereto as Exhibit "2".

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14. Defendant Ward indicated to Plaintiff that he personally stood to gain a larger sales price by reselling the residence that was the subject of the transaction for more money to a third party buyer.

15. That in reliance on the above misrepresentations of Defendants, and each of them, Plaintiff rented a residence after the previously set day of closing escrow of this transaction, continued to employ a professional mover to move his furniture from his prior residence, and had to forego wages in the interim.

16. That Defendants, and each of them, knew or should have known that their misrepresentations to Plaintiff were false and that such statements would be relied upon by Plaintiff to his detriment.

17. That Plaintiff, as a consequence of the above misrepresentations, was damaged in an amount in excess of \$10,000.00.

18. That the conduct, actions, and misrepresentations of Defendants, and each of them, were designed to frustrate Plaintiff's financial position and to force him to pay sums in addition to those sums that were originally required to complete this transaction. Such conduct by Defendants was done wantonly and maliciously. As such, an award of punitive damages is warranted.

19. That Plaintiff has been caused to obtain the services of an attorney in order to prosecute this action and is entitled to reasonable attorney's fees therefor, together with costs of suit incurred herein.

SECOND CAUSE OF ACTION

(Violation of Nevada Statutes and FTC-Deceptive Trade Practices)

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20. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 19, inclusive, of the Complaint as if fully set forth at this point and incorporates them herein by reference.

21. Defendants, and each of them, committed a deceptive trade practice in violation of NRS 598.0915(1), making false and misleading statements of fact concerning the interest rate of the mortgage loan applied for when stating, in writing on or about May 8, 2003 (the day before closing) that the interest rate that was locked in was 4.625%. However, when in truth, the lender had always intended of charging a higher rate of 6.5% and did not disclose the higher rate until the day of closing of the subject property on May 9, 2003.

22. Plaintiff at all times communicated his residency status accurately to Defendants

23. Plaintiff relied on Defendants to tell the truth, to disclose facts material to the transaction, and to comply with all State and Federal laws. Had Defendants not committed said deceptive trade practices, Plaintiff would not have entered into the transaction.

24. As an approximate result of the above violations of the Nevada Deceptive Trade Practices Statute, Plaintiff has suffered actual damages.

25. Plaintiff is entitled to attorney's fees under NRS 18.010(2)(a) if he does not recover more than \$20,000.00.

THIRD CAUSE OF ACTION

(Fraud/Misrepresentation as to Defendants Daniel Callahan and Rick Knobloch)

26. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 25.

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inclusive, of the Complaint as if fully set forth at this point and incorporates them herein by reference.

27. Defendant Daniel Callahan communicated to Plaintiff that the annual percentage rate he would obtain for a 360 month conventional mortgage loan would be 4.625%. This communication was made to Plaintiff near the time of preparing his loan application.

28. In reliance of the above representation by Defendant Callahan, Plaintiff deposited \$4,900.00 in an escrow account with United Title Company of Nevada in furtherance of this transaction.

29. On May 9, 2003, the close of escrow date, Defendants, and each of them represented to Plaintiff that he would not be provided the previously disclosed lower rate of 4.625% but a higher rate of 6.5%.

30. Plaintiff relied on Defendant's representation of the lower 4.625% interest rate in electing to go forward with this transaction. This representation by Defendant was false concerning the lower interest rate.

31. Plaintiff relied on Defendant's misrepresentation concerning the lower interest rate to his detriment and was therefore damaged in an amount in excess of \$10,000.00.

32. The above conduct of Defendant was undertaken with malicious intent and designed to force the good faith consumer Plaintiff to enter into an interest rate that was nearly 2% higher than the initially disclosed interest rate on the date of closing, knowing that Plaintiff would be inclined to go forward with the transaction notwithstanding the significant interest rate increase. Accordingly, an award of

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punitive damages is warranted.

33. That Defendant Callahan prepared on May 9, 2003, a "Statement of Credit Denial, Termination or Change". This document reflects that Plaintiff was denied credit because he "changed occupancy and with the program requested it does allow for A minus offering which the automated system provided."

34. That the above-referenced credit denial statement was false, as (1) Plaintiff at no time "changed occupancy"; and (2) Plaintiff never requested a "program" contemplating A minus credit.

35. That Defendant Knobloch prepared a correspondence on July 31, 2003 stating in part, that Plaintiff's "ability to obtain financing approval was clearly obtained within forty-five (45) days, thereby deeming his earnest money non-refundable." However, a "Statement of Credit Denial, Termination or Change" was prepared by Defendant Callahan, which stated that "changed occupancy and with the program requested it does allow for A minus offering which the automated system provided." Consequently, Defendant Knobloch's written statement to Plaintiff was false.

36. That Plaintiff relied on the above Defendants' false statements to his detriment. That Plaintiff reasonably relied on these false statements of Defendants, and suffered damages as a consequence.

37. That Plaintiff has been caused to obtain the services of an attorney in order to prosecute this action and is entitled to reasonable attorney's fees therefor, together with costs of suit incurred herein.

FOURTH CAUSE OF ACTION

(Civil Conspiracy)

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38. Plaintiff repeats and realleges paragraphs 1 through 37 as if fully set forth herein.

39. That Defendant DHI MORTGAGE COMPANY, LTD. f/k/a CH Mortgage Company I, Ltd., is an affiliate of Defendant DR Horton, Inc.

40. That Defendant, D. R. Horton, Inc. and its agents, Jeff Ward and Debra Martinez worked in concert with Defendant DHI MORTGAGE COMPANY, LTD. f/k/a CH Mortgage Company I, Ltd., and Daniel Callahan in a scheme designed deprive Plaintiff from the benefits of his previously negotiated purchase of the real property which is the subject of this action as well as the benefits of the initial interest rate for the mortgage/promissory note that was to be issued by Defendant, DHI MORTGAGE COMPANY, LTD. f/k/a CH Mortgage Company I, Ltd.. with respect to this transaction.

41. That Plaintiff has been caused to obtain the services of an attorney in order to prosecute this action and is entitled to reasonable attorney's fees therefor, together with costs of suit incurred herein.

WHEREFORE, Plaintiff, STEVEN M. BETSINGER, prays for judgment against Defendants DR Horton, Inc., DHI MORTGAGE COMPANY, LTD. f/k/a CH Mortgage Company I, Ltd., JEFF WARD and DEBRA DOE as follows:

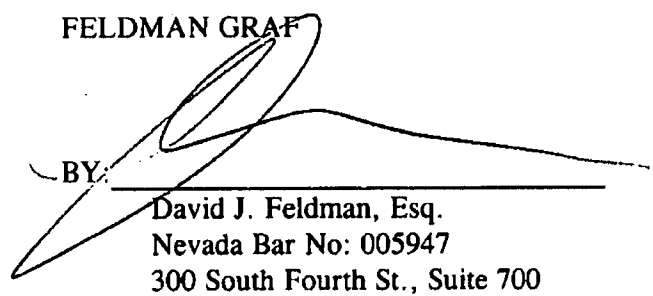
1. For actual damage in an amount in excess of \$10,000.00;
2. For punitive damages in an amount in excess of \$10,000.00;
3. For attorney's fees and costs of suit incurred herein;

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- 4. Pre-Judgment interest; and
- 5. For such other relief as the Court may deem proper in the premises.

DATED this 21 day of April, 2005.

FELDMAN GRAF



BY: \_\_\_\_\_

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(702) 949-5096  
Attorneys for Plaintiff

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**ORDR**  
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*Attorneys for Plaintiff Steven M. Betsinger*

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**DISTRICT COURT OF NEVADA**

**COUNTY OF CLARK**

STEVEN M. BETSINGER,

Plaintiff,

vs.

D. R. HORTON, INC., a Nevada Corp., JEFF  
WARD, DEBRA MARTINEZ, RICK  
KNOBLOCH, DHI MORTGAGE  
COMPANY, LTD., a Texas Limited  
Partnership f/k/a CH MORTGAGE  
COMPANY I, LTD., a Nevada Limited  
Partnership, DANIEL CALLIHAN,  
individually, and DOES I through V, inclusive,

Defendants.

) Case No.: A 503121

) Department XV

**SECOND AMENDED ORDER AND JUDGMENT ON JURY VERDICT**

This matter having come on for jury trial on August 27 through August 31, 2007, and punitive damages having been tried to the same jury on September 10, 2007, the jury having reached its verdicts, whereas the jury found as follows:

As to Plaintiff Steven Betsinger's claims for Fraud, liability was assessed against Defendants DHI Mortgage Company, Ltd., and Daniel Callihan.

As to Plaintiff Steven Betsinger's claims for violations of the Deceptive Trade Practices Act, liability was assessed against Defendants D. R. Horton, Inc., DHI Mortgage Company, Ltd., Daniel Callihan, Jeff Ward, and Debra Martinez.

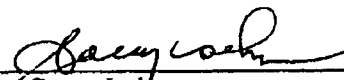
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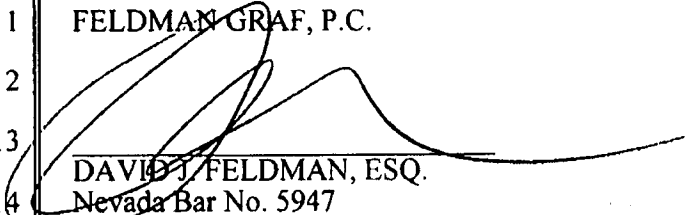
1 As to Defendant Daniel Callihan, Ten Thousand Dollars (\$10,000.00), and interest accruing  
2 from April 26, 2005 in the amount of Two Thousand, Three Hundred Sixteen Dollars (\$2,316.00),  
3 as of September 14, 2007, with interest accruing thereafter at the statutory rate until satisfied.  
4 Additionally, punitive damages are due to Plaintiff Steven Betsinger from Defendant Daniel  
5 Callihan in the amount of Forty-Two Thousand, Five Hundred Dollars (\$42,500.00), with interest  
6 accruing at the statutory rate from the date of this Judgment until satisfied.

7 IT IS SO ORDERED.

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9 Dated: 10/16/07   
District Court Judge

10 Submitted by:

11 FELDMAN GRAF, P.C.

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13   
14 DAVID J. FELDMAN, ESQ.  
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17 Attorneys for Plaintiff Steven M. Betsinger

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