

JUL 01 2009

JAMES N. HATTEN, Clerk  
By: *JNH* Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**MICHAEL T. RAND,**

**Defendant.**

**Civil Action  
File No.**

**1 09 - CV - 1780**

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The Securities and Exchange Commission ("Commission") files this Complaint for Injunctive and Other Relief and alleges as follows:

**INTRODUCTION**

1. This case involves a fraudulent earnings management scheme perpetrated at Beazer Homes USA, Inc. ("Beazer"), an Atlanta-based homebuilder and public issuer. Between January 2000 and April 2007, Michael T. Rand ("Rand"), initially as Corporate Controller, then as Chief Accounting Officer of Beazer, fraudulently manipulated Beazer's reported quarterly and annual income in

order to meet or exceed analysts' expectations for Beazer's diluted earnings per share (EPS) and maximized yearly bonuses of certain officers and senior employees. As part of his misconduct, Rand took affirmative steps to conceal the fraud from Beazer's outside auditors and certain internal Beazer accountants.

2. Rand caused Beazer to fraudulently decrease its reported net income during fiscal years 2000 through 2005, a period of strong growth and financial performance, by recording improper reserves and/or liabilities (collectively "reserves"). Then, beginning in the first quarter of fiscal year 2006, to offset its declining financial performance, Rand caused Beazer to reverse these improper reserves, thereby fraudulently inflating Beazer's income. Additionally, during fiscal 2006 and the first quarter of fiscal 2007, Beazer improperly recognized revenue from the sale and leaseback of certain model homes. Cumulatively, Beazer fraudulently understated its income by \$63 million during fiscal years 2000 to 2005 (\$37 million after income taxes), representing over 7% of Beazer's cumulative actual restated net income of \$955 million for the period (4% after income tax effect). During fiscal year 2006 and the first two quarters of fiscal year 2007, Rand caused Beazer to overstate its income by approximately \$47 million (\$30 million after income taxes), representing 20% of Beazer's cumulative restated net income of \$232 million for the period (13% after income tax effect).

3. Beazer's improper manipulation of reserves involved principally two categories: (i) land acquisition and development inventory accounts (collectively "land inventory accounts"), *i.e.*, expenses necessary to develop and complete subdivisions as it pertains to the land surrounding individual home lots; and (ii) house costs-to-complete accounts, *i.e.*, contingencies to cover specific costs (*e.g.*, cabinetry, driveway repairs, etc.) expected to be incurred within four to nine months after Beazer and its customer had closed on the purchase of the home. Beazer's improper sale-leaseback accounting involved recognizing revenue upon the sale of model homes to, and those homes' leaseback from, third-party investors, while retaining a financial interest in profits obtained when the investors subsequently sold the homes to homebuyers.

4. Defendant Rand has engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and ; Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2], and acts and practices that aided and abetted violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§

78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13].

### **JURISDICTION AND VENUE**

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

6. This Court has jurisdiction of this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

7. Defendant Rand, directly and indirectly, has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

8. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Beazer was based in this district, many of the acts constituting the scheme occurred within this district, and the defendant resides in this district.

### **THE DEFENDANT**

9. Michael T. Rand, 47, of Sandy Springs, Georgia, is a CPA licensed in Georgia. He began his career at Beazer in November 1996 as its Vice President-Operational and Controls and thereafter was promoted to Vice President-Corporate Controller (June 1998), Senior Vice President-Corporate Controller (October 2002), and Senior Vice President-Chief Accounting Officer (August 2004). At all relevant times, Rand served as Beazer's Principal Accounting Officer. On June 27, 2007, he was terminated. Prior to Beazer, from 1984 to 1996, Rand was employed by KPMG Peat Marwick, leaving as a senior manager.

### **ISSUER INVOLVED**

10. Beazer Homes USA, Inc. is a Delaware corporation headquartered in Atlanta, Georgia. During the relevant conduct, Beazer engaged in the business of homebuilding through approximately 30 regional divisions. Since March 1994, Beazer's common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol BZH. At all relevant times, Beazer's independent auditor has been Deloitte & Touche LLP ("Deloitte"). Beazer filed various reports with the Commission during the relevant period on Forms 8-K, 10-Q and 10-K, and registration statements on Forms S-3, S-4 and S-8. The registration statements

were filed in conjunction with the issuance of various stock or debt, and the Forms 8-K included press releases related to Beazer's results of operations, and/or various financial statements and information.

### **Manipulation of Land Inventory Accounts**

11. As part of its home building and sale operations, Beazer purchased parcels of land upon which it constructed houses to form subdivisions. Beazer recorded the acquired land, along with costs for the common development of the parcel—such as sewer systems and streets—as an asset on Beazer's balance sheet in the land inventory accounts.

12. As subdivisions were built, Beazer allocated the costs accumulated in the land inventory accounts to individual home lots, which were then offered for sale. When the home sale was recorded in Beazer's books, all associated homebuilding costs, including allocated costs recorded in the land inventory accounts, were expensed as a cost of the sale, with a corresponding reduction, or credit, in the land inventory account.

13. Because Beazer sold houses within a subdivision as the development of that subdivision progressed, the land inventory expense recorded for any particular house sale was necessarily an estimate. The setting of inventory credits was done by each division based on estimates of costs to acquire, develop and

complete subdivisions plus an added amount for contingencies. Once established, divisions needed approval from Rand, who reviewed the reserves on a monthly basis, to make adjustments.

14. As additional houses in a subdivision were sold, the land inventory account continued to be decreased (credited) by amounts representing the land acquisition and development costs allocated to each individual house. If costs had been allocated properly, then shortly after the final house in a development had been sold, the balance in the land inventory account should have been at or near zero.

15. During all four quarters in fiscal year 2000, all four quarters in fiscal year 2001, all four quarters in fiscal year 2002, the first three quarters in fiscal year 2003, all four quarters in fiscal year 2004, and all four quarters in fiscal year 2005, Rand manipulated the amounts recorded in the land inventory accounts by over-allocating land inventory costs in material amounts.

16. During fiscal year 2000 (beginning October 1, 1999), these land inventory costs were overstated by approximately \$902,000 in the first quarter (ending December 31, 1999); \$791,000 in the second quarter (ending March 31, 2000); \$727,000 in the third quarter (ending June 30, 2000); and \$987,000 in the fourth quarter (ending September 30, 2000).

17. During fiscal year 2001, these land inventory costs were overstated by approximately \$1,455,000 in the first quarter; \$584,000 in the second quarter; \$1,322,000 in the third quarter; and \$2,571,000 in the fourth quarter.

18. During fiscal year 2002, these land inventory amounts were overstated by approximately \$1,827,000 in the first quarter; \$2,761,000 in the second quarter; \$1,270,000 in the third quarter; and \$2,586,000 in the fourth quarter.

19. During fiscal year 2003, these land inventory amounts were overstated by approximately \$2,440,000 in the first quarter; \$1,422,000 in the second quarter; and \$1,086,000 in the third quarter.

20. During fiscal year 2004, these land inventory amounts were overstated by approximately \$3,996,000 in the first quarter; \$4,253,000 in the second quarter; \$5,963,000 in the third quarter and \$2,227,000 in the fourth quarter.

21. During fiscal year 2005, these land inventory amounts were overstated by approximately \$3,388,000 in the first quarter; \$4,443,000 in the second quarter; \$5,122,000 in the third quarter and \$4,469,000 in the fourth quarter.

22. For example, in order to reduce its first quarter fiscal 2002 earnings, which had exceeded analysts' EPS expectations, Rand fraudulently increased the land inventory expense recorded for homes sold during the quarter.

23. On January 8, 2002, after the end of the first quarter, Rand emailed a

target earnings amount to the relevant financial personnel in numerous Beazer divisions, including Northern California, Southern California, Arizona and Las Vegas, with instructions not to exceed the target by a certain amount. The distributed target for each division was less than each division's previously expected quarterly results.

24. Rand advised the divisions to review their land inventory accounts in order to increase expenses and reduce earnings. In one particular email, Rand instructed the Florida division to provide "more than adequate land allocations in communities closing out this year" as a means to reduce their earnings.

25. On January 10, 2002, Rand, via emails, directed certain divisions to, "[s]et aside all the reserves you reasonably can....the quarter is too high." This was followed by a series of emails in which Rand specified the amounts by which certain divisions should increase their reserves, along with targets for their EBIT (Earnings Before Interest and Taxes).

26. The divisions substantially carried out his directions, and Rand was able to reduce Beazer's quarterly EPS from \$2.60 to \$2.47 a share, which exceeded analysts' consensus of \$2.00 per share. In total, Beazer recorded approximately \$1.827 million in excess land inventory costs for that quarter, or approximately 8% of its reported net income.

27. By increasing land inventory expenses, Rand caused Beazer to understate its net income by a total of \$56 million (\$33 million after tax effect)(approximately 5% of reported net income) between fiscal years 2000 and 2005.

28. Beginning in the first quarter of 2006, Rand began to reverse the reserves existing in the land inventory accounts, which increased then-current period earnings. The credit balances in land inventory accounts were debited, *i.e.*, zeroed out, and a cost of sales expense credited, *i.e.*, reduced. These reversals improperly reduced expenses and increased Beazer's earnings. During all four quarters of 2006, Rand caused Beazer to release these land inventory reserves, boosting then-current period earnings by approximately \$100,000 in the first quarter of 2006, approximately \$301,000 in the second quarter of 2006, approximately \$14,278,000 in the third quarter of 2006, and approximately \$10,816,000 in the fourth quarter of 2006.

29. During 2006, Beazer overstated its net income by approximately \$16 million by "zeroing out" credit balances in its land inventory accounts. These journal entries were made by the divisional financial managers acting at Rand's specific direction. For example, in the second quarter of 2006, Rand directed the reversal of a credit balance of \$3.1 million in the land inventory accounts of the

Las Vegas division. On April 1, 2006, just prior to the close of Beazer's second quarter 2006, a senior Beazer Corporate Controller, acting with Rand's knowledge, directed the Las Vegas division, by e-mail, to "takedown \$3.1 million in land reserves."

30. The Las Vegas Finance VP complied with the request. A total of \$3.1 million of previously expensed land inventory costs were reversed from Beazer's general ledger system. Included in the reversal was over \$2 million of excess land inventory costs that had been held open in Beazer's general ledger from two Las Vegas subdivisions that had closed in August and September 2004. This entry added approximately \$2 million to Beazer's quarterly net income after income taxes, which in turn added approximately \$0.05 to Beazer's reported quarterly earnings per share of \$2.35, thereby allowing Beazer, along with other improper accounting entries, to exceed analyst EPS expectations.

#### **Manipulation of "House Cost to Complete" Reserves**

31. Under its accounting policies, Beazer recorded revenue and profit on the sale of a house after the close of the sale of that house to a homebuyer. In the journal entries to record the sale, Beazer typically reserved a portion of its profit earned on the house. This reserve, called a "house cost-to-complete" reserve, was established to cover any unknown expenses that Beazer might incur on the sold

house after the close, such as minor repairs or final cosmetic touchups. Although the amount of this reserve varied by region, it was typically \$1,000 to \$4,000 per house.

32. Beazer's policy was to reverse any unused portion of the house cost-to-complete reserve within four to nine months after the close, taking any unused portion into income at that time. Although creation of such a house cost-to-complete reserve is proper, Rand fraudulently utilized these reserves to manage Beazer's earnings. As specified below, in various quarters between 2000 and 2005, Rand over-reserved house cost-to-complete expenses in order to defer profit to future periods. Rand then took steps to maintain these reserves beyond the typical four to nine months and until increased earnings were required in future periods.

33. In fiscal year 2000, the cost-to-complete expense was over-reserved by approximately \$610,000 in the second quarter; \$5,000 in the third quarter; and \$2,288,000 in the fourth quarter.

34. In fiscal year 2001, the cost-to-complete expense was over-reserved by approximately \$1,138,000 in the first quarter; and \$543,000 in the second quarter.

35. In fiscal year 2002, the cost-to-complete expense was over-reserved

by approximately \$2,184,000 in the first quarter; and \$813,000 in the second quarter.

36. In fiscal year 2003, the cost-to-complete expense was over-reserved by approximately \$1,380,000 in the first quarter.

37. In fiscal year 2004, the cost-to-complete expense was over-reserved by approximately \$1,057,000 in the first quarter; \$1,137,000 in the third quarter; and \$2,051,000 in the fourth quarter.

38. In fiscal year 2005, the cost-to-complete expense was over-reserved by approximately \$805,000 in the second quarter; and \$1,427,000 in the third quarter.

39. For example, at the end of the fourth quarter of fiscal 2000, Rand instructed the Virginia division to decrease their EBIT for the quarter to \$5.2 million. Rand suggested, among other methods, that the balance in the house cost-to-complete accounts be increased. There was no reasonable accounting basis for recording these increased amounts.

40. By the end of the first quarter of fiscal 2001, Beazer had excess house cost-to-complete reserves of approximately \$3 million spread out over various divisions. On other occasions, Rand took steps to maintain these reserves beyond the four to nine month period until increased earnings were required in future

periods.

41. Near the end of the first quarter of fiscal 2001, Rand instructed the Virginia division to defer reducing house cost-to-complete reserves greater than nine months old, so the division would not exceed its targeted quarterly EBIT.

42. Beginning in 2006, Beazer—requiring additional income—manipulated its house cost-to-complete reserve to increase its profits. First, during the first quarter of 2006, Rand caused Beazer to begin reversing some of the excess cost-to-complete reserves that it had previously recorded. As a result of Rand's directives, Beazer reduced its cost of sales expense by approximately \$1.5 million by reducing the cost-to-complete reserve to zero on a number of houses.

43. In the first quarter of fiscal year 2006, the reversal of excess cost-to-complete reserves previously recorded fraudulently added \$183,000 to earnings for that period.

44. In the third quarter of fiscal year 2006, the reversal of excess cost-to-complete reserves previously recorded fraudulently added \$2,130,000 to earnings for that period.

45. In the fourth quarter of fiscal year 2006, the reversal of excess cost-to-complete reserves previously recorded fraudulently added \$209,000 to earnings for

that period.

46. In the first quarter of fiscal year 2007, the reversal of excess cost-to-complete reserves previously recorded fraudulently added \$1,549,000 to earnings for that period.

47. Additionally, at Rand's instruction, certain Beazer divisions in order to report more income failed to establish a house cost-to-complete reserve on house sales closing during the quarter. Beazer's Las Vegas division failed to record any cost-to-complete reserve for approximately 85 houses sold during December 2005. This resulted in an improper recognition, in violation of GAAP, of more than \$200,000 of income for the period.

48. Combined, the additional income due to this misconduct added approximately \$0.03 to Beazer's EPS.

### **The Fraudulent Sale-Leaseback Transactions**

49. Beginning in the first quarter of fiscal 2006, Rand intentionally recorded certain lease transactions involving approximately 360 Beazer model homes as sale-leasebacks, with full knowledge that the transactions did not qualify for such accounting treatment under GAAP. This misconduct caused Beazer to report improperly approximately \$22 million of pre-tax income, or 4% of

consolidated net income, during fiscal 2006. Specifically, Beazer overstated income by approximately \$8,306,000 in the first quarter of fiscal year 2006, \$4,179,000 in the second quarter of fiscal year 2006, \$1,583,000 in the third quarter of fiscal year 2006, and \$8,341,000 in the fourth quarter of fiscal year 2006.

50. Beazer retained a continuing interest in the potential appreciation of the model homes based upon terms contained in side agreements with certain investor pools purchasing the model homes. These pools were organized by a subsidiary of GMAC, LLC. Pursuant to GAAP, this continuing interest required the transactions to be treated as financing transactions. Continuing involvement includes an obligation by the buyer-lessor to share with the seller-lessee any portion of the appreciation of the property, or when the seller retains an interest in future profits of the leased asset.

51. The sale-leaseback transactions included continuing involvement by the seller-lessee (Beazer) and should have been accounted for as a financing or by the deposit method, with no revenue recognition. Rand nevertheless recorded them as sale-leasebacks, recognizing sales revenue at the inception of the lease.

52. Beazer's auditor, Deloitte and certain internal Beazer accountants

reporting to Rand, specifically advised Rand via email that Beazer's appreciation rights in the homes represented a continuing interest that, pursuant to GAAP, precluded Beazer from recognizing revenue when the homes were sold to GMAC.

53. In an attempt to circumvent GAAP, and to deceive Deloitte and certain Beazer internal accountants, Rand caused the final, written versions of the sale-leaseback agreements to omit any reference to Beazer's continuing profit participation. Rand then directed, by email, his subordinates to record revenue at the time the model homes were initially sold to the GMAC investor pools. In order to deceive Deloitte and certain internal Beazer accountants involved in the transactions, Rand provided Deloitte with copies of the sale-leaseback agreements which intentionally omitted the provisions relating to the continuing profit participation by Beazer. Rand also failed to disclose the side agreements to Deloitte and certain Beazer internal accountants.

54. Additionally, on January 18, 2006, Rand provided to Deloitte and certain Beazer internal accountants a memo which specifically stated that Beazer would *not* "participate in the appreciation" of the leased assets (model homes). Based on Rand's concealment and misrepresentations, Deloitte agreed that immediate revenue recognition was proper.

55. As a result of the improper accounting practices described above, Beazer's books and records and financial statements were materially inaccurate beginning in the first quarter of fiscal year 2000 and continuing at least through the second quarter of fiscal year 2007.

**Fraudulent Reports and Other Filings**

56. The inaccurate results described above were included in financial statements in Beazer's periodic reports on Form 10-Q filed shortly after the respective quarter ends, beginning at least with Beazer's Form 10-Q for the quarter ended December 31, 1999, filed on February 14, 2000 and continuing at least until Beazer's quarterly report on Form 10-Q for the quarter ended March 31, 2007, filed on April 26, 2007. Rand was aware at all times that the results would be included in such reports.

57. The inaccurate results described above were included in Beazer's annual reports on Forms 10-K filed with the Commission after the ends of the respective fiscal years, as described below. Rand was aware at all times that the results would be included in such reports. The various Forms 10-K were signed by Rand.

58. Beazer's Form 10-K for the fiscal year ended September 30, 2000,

filed on December 22, 2000, understated its pre-tax income for the fiscal year by approximately \$6,199,000 as the result of Rand's fraudulent overstatement of land inventory and cost-to-complete reserves.

59. Beazer's Form 10-K for the fiscal year ended September 30, 2001, filed on December 21, 2001, understated its pre-tax income for the fiscal year by approximately \$6,057,000 as the result of Rand's fraudulent overstatement of land inventory and cost-to-complete reserves.

60. Beazer's Form 10-K for the fiscal year ended September 30, 2002, filed on December 20, 2002, understated its pre-tax income for the fiscal year by approximately \$9,627,000 as the result of Rand's fraudulent overstatement of land inventory and cost-to-complete reserves.

61. Beazer's Form 10-K for the fiscal year ended September 30, 2003, filed on December 19, 2003, understated its pre-tax income for the fiscal year by approximately \$3,207,000 as the result of Rand's fraudulent misstatement of land inventory and cost-to-complete reserves.

62. Beazer's Form 10-K for the fiscal year ended September 30, 2004, filed on December 7, 2004, understated its pre-tax income for the fiscal year by approximately \$20,094,000 as the result of Rand's fraudulent overstatement of

land inventory and cost-to-complete reserves.

63. Beazer's Form 10-K for the fiscal year ended September 30, 2005, filed on December 9, 2005, and its amended annual report on Form 10-K for year ended September 30, 2005, filed on May 25, 2006, understated its pre-tax income for the fiscal year by approximately \$18,219,000 as the result of Rand's fraudulent overstatement of land inventory and cost-to-complete reserves.

64. Beazer's Form 10-K for the fiscal year ended September 30, 2006, filed on December 8, 2006, overstated Beazer's pre-tax income by approximately \$49,923,000 as the result of Rand's use of previously misstated land inventory and cost-to-complete reserves and his fraudulent recording of sale-leaseback transactions.

65. Beazer's current report on Form 8-K dated January 19, 2006, filed on January 19, 2006, reported First Quarter 2006 EPS of \$2.00, up 27%. The Report further stated that "Beazer announced results for the quarter ended December 31, 2005, reporting a record for quarterly earnings per share. Highlights of the quarter, compared to the same period of the prior year, are as follows..... Net income of \$89.9 million, or \$2.00 per diluted share (up 29.0% and 27.4%, respectively)."

66. In fact, Beazer's pre-tax income was overstated by at least \$8,306,000

as a result of defendant Rand's fraudulent recoding of model sale-leaseback transactions.

67. Beazer's current report on Form 8-K dated April 27, 2006, filed on April 27, 2006 announced net income of \$104.4 million, and "... Record Second Quarter 2006 EPS of \$2.35."

68. In fact, Beazer's pre-tax income for the second quarter of fiscal year 2006 was overstated by at least \$4,480,000 as a result of Rand's improper use of Land Inventory reserves and his recording of model sale-leaseback transactions.

69. Beazer's current report on Form 8-K dated July 27, 2006, filed on July 27, 2006, announced third quarter 2006 net income of \$102.6 million, or \$2.37 per diluted share, compared to net income of \$112.7 million, or \$2.50 per diluted share in the prior year's third quarter.

70. In fact, Beazer's pre-tax income for the third quarter of fiscal year 2006 was overstated by approximately \$17,991,000 as a result of Rand's fraudulent use of the land inventory reserve and the cost-to-complete reserve and his fraudulent recording of model sale-leaseback transactions.

71. Beazer's current report on Form 8-K dated November 7, 2006, filed on November 7, 2006, announced fourth quarter and FY 2006 financial results

including net income for the quarter of \$91.9 million, or \$2.19 per diluted share, compared to net income of \$164.4 million, or \$3.61 per diluted share in the prior year's fourth quarter. For the year ended September 30, 2006, Beazer reported net income of \$388.8 million, or \$8.89 per diluted share, compared to reported net income of \$262.5 million, or \$5.87 per diluted share, and adjusted net income of \$392.8, or \$8.72 per diluted share in FY 2005.

72. In fact, Beazer's pre-tax income for the fourth quarter of fiscal year 2006 was overstated by approximately \$19,366,000 as a result of Rand's fraudulent use of the land inventory reserve and the cost-to-compete reserve and his fraudulent recording of model sale-leaseback transactions. Beazer's pre-tax income for the fiscal year was overstated by approximately \$50,143,000 as the result of Rand's scheme.

73. Beazer's current report on Form 8-K dated January 25, 2007, filed on January 25, 2007, announced financial results for the quarter ended December 31, 2006, which included a reported net loss of \$(59.0) million, or \$(1.54) per share, including charges related to inventory impairments and abandonment of land option contracts of \$119.9 million on a pre-tax basis, compared to net income of \$89.9 million, or \$2.00 per diluted share in the first quarter of the last fiscal year.

Excluding charges for inventory impairments and abandonment of land option contracts, adjusted net income was reported at \$15.9 million, or \$0.41 per diluted share.

74. In fact, Beazer's pre-tax income for the quarter ended December 31 included \$1,549,000 of improper income resulting from Rand's fraudulent use of the cost-to-complete reserve.

75. Beazer's current report on Form 8-K dated April 26, 2007, filed on April 26, 2007, announced financial results for the quarter ended March 31, 2007, which included a reported net loss of \$(43.1) million, or \$(1.12) per share, including charges related to inventory impairments, impairments from joint ventures, and abandonment of land option contracts totaling \$86.9 million on a pre-tax basis. Excluding charges for inventory impairments, impairments of investments in joint ventures and abandonment of land option contracts, adjusted net income was reported to be \$11.2 million, or \$0.30 per diluted share. For the second quarter of the prior year, net income was \$104.4 million, or \$2.35 per diluted share.

76. In fact, Beazer's pre-tax income for the quarter ended March 31, 2007 included approximately \$2,544,000 of income improperly recorded as a result of

Rand's fraudulent use of the land inventory and cost-to-complete reserves.

77. Beazer's registration statement on Form S-3, filed on August 4, 2004, in connection with the sale of 4 5/8% Convertible Senior Notes due 2024 and Common Stock Issuable Upon Conversion of the Notes, incorporated by reference Beazer's Form 10-K for the fiscal year ending September 30, 2003 and Forms 10-Q for the quarters ending December 31, 2003, March 31, 2004 and June 30, 2004.

78. Beazer's registration statement on Form S-4, filed on January 23, 2004, which registered the exchange of \$200 million of 6 1/2% Notes due 2013 for like notes not previously registered, incorporated by reference Beazer's Form 10-K for fiscal year ending September 30, 2003.

79. Beazer's amendment no. 1 registration statement on Form S-4, filed on March 16, 2004, and amendment no. 2, filed on March 30, 2004, and Amendment No. 3, filed on April 7, 2004, and Amendment No. 4, filed on April 9, 2004, all of which registered the exchange of \$200 million of 6 1/2% Notes due 2013 for like notes not previously registered, incorporated by reference Beazer's Form 10-K for the fiscal year ended September 30, 2003, Beazer's Form 10-Q for the quarter ended December 31, 2003 and Beazer's Form 8-K dated January 27, 2004 and filed January 27, 2004.

80. Beazer's registration statement on Form S-4, filed on August 3, 2005, which registered the exchange of \$350 million of 6.875% Notes due 2015 for like notes not previously registered, incorporated by reference Beazer's Form 10-K for the fiscal year ended September 30, 2004, and its Forms 10-Q for the quarters ended December 31, 2004, March 31, 2005 and June 30, 2005.

81. Beazer's registration statement on Form S-4, filed on August 15, 2006, which registered the exchange of \$275 million of 8.125% Notes due 2016 for like notes not previously registered, included financial statements for the three years ended September 30, 2005 and financial statements for quarters ended June 30, 2005 and 2006.

82. Beazer Homes USA, Inc. registration statement on Form S-8, filed on November 12, 2002, registering the offer of 2,875,000 shares of Beazer common stock, incorporated by reference Beazer's Form 10-K for the fiscal year ending September 30, 2001, its Form 10-Q for the quarters ending December 31, 2001, March 31, 2002 and June 30, 2002, and Forms 8-K or amendments dated April 4, 2002, April 17, 2002, July 23, 2002, August 8, 2002, and November 5, 2002.

83. Beazer also issued numerous press releases announcing the misstated financial results throughout the scheme, including releases dated July 23, 2002,

August 8, 2002, November 5, 2002, April 22, 2003, July 22, 2003, November 5, 2003, January 27, 2004, April 22, 2004, July 29, 2004, November 5, 2004, January 27, 2005, April 28, 2005, July 28, 2005, November 2, 2005, January 19, 2006, April 27, 2006, July 27, 2006, November 7, 2006, January 25, 2007 and April 26, 2007.

84. With his extensive accounting knowledge, defendant Rand knew, or was severely reckless in not knowing, that the method for accounting for the land inventory reserves, the cost-to-complete reserves, and the model sale-leasebacks, was fraudulent and did not conform to GAAP.

85. Defendant Rand signed the fraudulent Forms 10-K and registration statements listed above. At the time that he signed the documents, Rand knew, or was severely reckless in not knowing, that his actions resulted in the inclusion of false and misleading information.

86. Defendant Rand shared responsibility to keep Beazer's books, records and accounts, and establish and maintain its internal accounting controls. Defendant Rand failed to implement accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain

accountability for assets. Defendant Rand knowingly caused transactions to be recorded improperly and in a manner which caused the financial statements to be inconsistent with GAAP.

**Rand's Stock Sales**

87. During the course of the fraud, Rand sold at least 47,355 shares of Beazer common stock for gross proceeds of over \$3 million. Additionally, he received bonuses under the Company's Value Created Incentive Plan of over \$1.7 million.

**CLAIMS FOR RELIEF**

**COUNT I--FRAUD**

**Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. §**

**77q(a)(1)]**

88. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

89. Defendant Rand, in connection with the offer or sale of securities described herein, by the use of the means and instruments of interstate commerce

and by use of the mails, directly and indirectly, employed devices, schemes, and artifices to defraud.

90. Defendant Rand knowingly, intentionally or with severe recklessness, engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate and defraud or with a severe reckless disregard for the truth.

91. By reason of the foregoing, Defendant Rand, violated and unless enjoined, will continue to violate and cause the violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

## **COUNT II--FRAUD**

### **Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15**

### **U.S.C. § 77q(a)(2) and 77q(a)(3)]**

92. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

93. Defendant Rand, in connection with the offer or sale of securities described herein, by the use of the means and instruments of interstate commerce and by use of the mails, directly and indirectly:

(a) obtained money or property by means of untrue statements of material facts and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(b) engaged in transactions, practices, and courses of business which operated and would operate as a fraud or deceit upon the purchasers of securities, all as more particularly described in the paragraphs above.

94. By reason of the foregoing, Defendant Rand, violated and unless enjoined, will continue to violate and cause the violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and 77q(a)(3)].

### COUNT III--FRAUD

#### **Violations of Section 10(b) of the Exchange Act [15. U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

95. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

96. Defendant Rand, in connection with the purchase and sale of

securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a) employed devices, schemes, and artifices to defraud;
- b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described in the paragraphs above.

97. Defendant Rand intentionally, or with severe recklessness engaged in the aforementioned conduct.

98. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate and defraud or with a severe reckless disregard for the truth.

99. By reason of the foregoing, Defendant Rand, violated and unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## COUNT IV-REPORTING PROVISIONS

**Aiding and Abetting Beazer's Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13]**

100. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

101. Defendant Rand aided and abetted Beazer's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1 and 240.13a-13], which occurred when Beazer filed annual, current and periodic reports that contained financial statements that were not prepared in conformity with GAAP and contained material misstatements.

102. Through the conduct described in the above paragraphs, the Defendant knowingly or with severe recklessness substantially assisted Beazer's violations of this section and rules.

103. By reason of the foregoing, Defendant Rand, aided and abetted and unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13

thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1 and 240.13a-13].

## **COUNT V- RECORD-KEEPING VIOLATIONS**

### **Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and Violations of Rule 13b2-1 [17 C.F.R. § 240.13b2-1]**

104. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

105. Defendant Rand aided and abetted Beazer's violations of Section 13(b)(2)(A) of the Exchange Act, which occurred when Beazer failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Just for Feet's assets.

106. Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing the falsification of any such books, records or accounts.

107. Through the conduct described in the above paragraphs, Defendant Rand violated Rule 13b2-1 and aided and abetted violations of 13(b)(2)(A) of the Exchange Act and unless enjoined will continue to do so.

## **COUNT VI – BOOKS AND RECORDS AND INTERNAL CONTROLS VIOLATIONS**

**Aiding and Abetting Violations of Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act and Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]**

108. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

109. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing and knowingly failing to implement a system of internal accounting controls and knowingly falsifying any book, record, or account required by Section 13(b)(2)(A) of the Exchange Act.

110. Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's authorization and that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets.

111. Through the conduct described above, Defendant Rand aided and abetted violations of Section 13(b)(2)(B) and violated Section 13(b)(5) of the Exchange Act and unless enjoined will continue to do so.

**COUNT VII – LYING TO ACCOUNTANTS**

**Violation of Rule 13b2-2 promulgated under the Exchange Act**  
**[17 C.F.R. § 240.13b2-2]**

112. Paragraphs 1 through 87 are hereby realleged and are incorporated herein by reference.

113. Rule 13b2-2 prohibits officers and directors from, directly or indirectly, making and causing to be made materially false and misleading statements or omitting to state, or causing another to omit to state, any material fact in order to make statements made not misleading to an accountant in connection with any audit or examination of the financial statements required to be filed with the Commission or the preparation or filing of any document or report to be filed with the Commission.

114. Through the conduct described above, Defendant Rand violated Rule 13b2-2 promulgated under the Exchange Act and unless enjoined will continue to do so.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Defendant Rand and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them:

- a. from violating Section 17(a) of the Securities Act [15 § U.S.C. 77q(a)];
- b. from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- c. from violating Section 13(b)(5) of the Exchange Act [§ 78m(b)(5)];
- d. from violating Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-2];
- e. from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13];
- f. from violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1]; and

g. from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

III.

Issue an Order awarding disgorgement of ill-gotten gains and prejudgment interest thereon against Defendant Rand.

IV.

Issue an Order requiring Defendant Rand to pay civil monetary penalties, pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

V.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Defendant Rand from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VII.

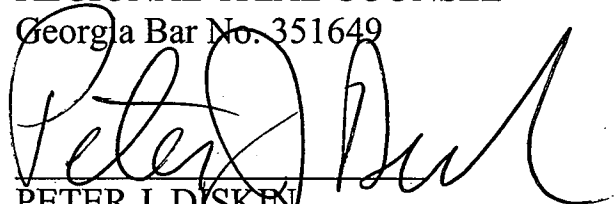
Grant such other and further relief as may be necessary and appropriate.

Dated: July 1, 2009

RESPECTFULLY SUBMITTED,



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