# **Superior Court of California County of Orange**



Case Number: 30-2018-00988051-CU-NP-CXC

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1 2 3 4 5	Todd M. Friedman, Esq State Bar #216752 LAW OFFICES OF TODD M. FRIEDMAN, P 21550 Oxnard Street, Suite 780 Woodland Hills CA 91367 Phone: (877) 206-4741 Fax: (866) 633-0228 Email: tfriedman@toddflaw.com Attorneys for Plaintiff, MOHAMED ELHENDI	<b>04/23/2018</b> at 01:24:24 PM Clerk of the Superior Court By Sarah Loose,Deputy Clerk
6	COUNTY OF LOS ANGELES	
7	MOHAMED ELHENDI, on behalf of	Case No.: 30-2018-00988051-CU-NP-CXC
8	themselves and all others similarly situated,	PLAINTIFF'S CLASS ACTION COMPLAINT FOR DAMAGES
9	Plaintiff,	(Amount to Exceed \$25,000)
10	VS.	) Assigned: Judge Randall J. Sherman
11	LENNAR HOMES OF CALIFORNIA, INC.,	Dept: CX105
12	Defendant.	)
13	COMPLAINT	
14	NOW COMES the Plaintiff, MOHAMED ELHENDI, by and through Plaintiff's attorney	
15	LAW OFFICES OF TODD M. FRIEDMAN, P.C., and for Plaintiff's Complaint against	
16	LENNAR HOMES OF CALIFORNIA, INC., alleges and affirmatively states as follows:	
17	<u>PARTIES</u>	
18	1. Plaintiff, MOHAMED ELHENDI ("Plaintiff"), is an individual who purchased	
19	subject product in the State of California.	
20	2. LENNAR HOMES OF CALIFORNIA, INC. ("Defendant"), is corporation,	
21	authorized to do business in the State of California and is engaged in the maintenance and sale of	
22	residential units.	
23	JURISDICTION AND VENUE	
24	3. Defendant sold, advertised, and marketed its products within the State of California.	
25	Therefore, this Court has personal jurisdiction over Defendant.	

CLASS ACTION COMPLAINT

4. Venue is proper in the Superior Court of the State of California for the County of Los Angeles because significant events giving rise to this action occurred here.

### **FACTUAL ALLEGATIONS**

- Plaintiff MOHAMED ELHENDI bring this action individually for himself and on behalf of all persons who purchased in California certain residential units advertised and sold by LENNAR HOMES OF CALIFORNIA, INC. ("Defendant"), as described below.
- 6. This action is brought to remedy violations of law in connection with DEFENDANT's marketing, advertising, and selling of its residential units ("Class Products.")
- 7. Defendant advertises that the homes available for purchase are substantially identical to the model home that it provides pictures of. However, Plaintiff is informed and believes that this is in fact false.
- 8. Plaintiff is informed, believes and based thereon alleges that Defendant uses the model home to misrepresent the homes that it provides for sale in order to deceive consumers in purchasing residential units that it would not otherwise purchase.
- 9. For example, prior to April of 2017, Plaintiff was represented a home that had a particular bathroom and shower entrance.
- 10. Based on these representations, Plaintiff sought to purchase and did purchase from Defendant one its homes.
- 11. However, contrary to Defendant's representations, the bathroom and shower entrance were completely different than advertised. In fact, the bathroom was not even ADA compliant and would costs thousands of dollars to make it compliance.
- 12. Plaintiff alleges that such representations were part of a common scheme to mislead consumers and incentivize them to purchase residential units at a higher value than in fact worth.
- 13. Plaintiff would not have purchased the residential unit if he knew that the above-referenced statements made by Defendant were false.

- 14. Had Defendant properly marketed, advertised, and represented the Class e, Plaintiff would not have purchased the residential unit.
- 15. Plaintiff gave his money to Defendant because of the representations made by Defendant. Defendant benefited from falsely advertising its residential units. Defendant benefited on the loss to Plaintiff and provided nothing of benefit to Plaintiff in exchange.
- 16. Had Defendant properly marketed, advertised, and represented the Class Products, no reasonable consumer who purchased a residential home would have believed that it was substantially similar to the model home.

### **CLASS ALLEGATIONS**

- 17. Plaintiff brings this action for themselves and on behalf of the Class Members.
- 18. Plaintiff brings this lawsuit as a class action on behalf of herself and all other similarly situated individuals pursuant to California Code of Civil Procedure ("CCP") section 382.
- 19. Plaintiff brings this class action on behalf of herself and all other similarly situated members of the proposed class (the "Class"), defined as follows:

### All residents of California who purchased or leased a Class Product.

- 20. Excluded from the Class are: (1) DEFENDANT, any entity or division in which DEFENDANT has a controlling interest, and its legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) claims for personal injuries resulting from the facts alleged herein. Plaintiff reserves the right to amend the Class definitions if discovery and further investigation reveal that the Class should be expanded, divided into subclasses, or modified in any other way.
- 21. As used herein, the term "Class Members" shall mean and refer to the members of the Classes described above.
- 22. Plaintiff reserves the right to amend the Class, and to add additional subclasses, if discovery and further investigation reveals such action is warranted.

- 23. Upon information and belief, the proposed class is composed of thousands of persons. The members of the class are so numerous that joinder of all members would be unfeasible and impractical.
- 24. No violations alleged in this complaint are contingent on any individualized interaction of any kind between class members and Defendant.
- 25. Rather, all claims in this matter arise from the identical, false, affirmative representations of the products, when in fact, such representations were false.
- 26. There are common questions of law and fact as to the Class Members that predominate over questions affecting only individual members, including but not limited to:
  - a. Whether Defendant engaged in unlawful, unfair, or deceptive business practices in selling Class Products to Plaintiff and other Class Members;
  - Whether Defendant made misrepresentations with respect to the Class Products sold to consumers;
  - c. Whether Defendants violated California Bus. & Prof. Code § 17200, et seq. and California Bus. & Prof. Code § 17500, et seq.;
  - d. Whether Plaintiff and Class Members are entitled to equitable and/or injunctive relief;
  - e. Whether Defendants' unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and
  - f. The method of calculation and extent of damages for Plaintiff and Class Members.
  - 27. The claims of Plaintiff are not only typical of all class members, they are identical.
- 28. All claims of Plaintiff and the class are based on the exact same legal theories. Plaintiff has no interest antagonistic to, or in conflict with, the class. Plaintiff is qualified to, and

will, fairly and adequately protect the interests of each Class Member, because Plaintiff bought Class Products from Defendants during the Class Period.

- 29. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all Class Members as demonstrated herein.
- 30. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent herself and the class. Common questions will predominate, and there will be no unusual manageability issues.

## COUNT I California False Advertising Act (Cal. Bus. & Prof. Code §§ 17500 et seq.)

- 31. Plaintiff incorporates by reference each allegation set forth above.
- 32. California Business and Professions Code section 17500, *et seq*.'s prohibition against false advertising extends to the use of false or misleading written statements.
- 33. Defendant misled consumers by making misrepresentations and untrue statements about the Class Products, namely, Defendant sold the Class Products to Plaintiff and Class Members, and made false representations to Plaintiff and other putative class members in order to solicit residential units that were of substantially lower quality and price than advertised.
- 34. Defendant knew that its representations and omissions were untrue and misleading, and deliberately made the aforementioned representations and omissions in order to deceive reasonable consumers like Plaintiff and other Class Members.
- 35. As a direct and proximate result of Defendant's misleading and false advertising, Plaintiff and the other Class Members have suffered injury in fact and have lost money or property, time, and attention. Therefore Plaintiff and other Class Members have suffered injury in fact.

- 36. Plaintiff alleges that these false and misleading representations made by Defendant constitute a "scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised."
- 37. Defendant advertised to Plaintiff and other putative class members, through written representations and omissions made by Defendant and its employees, that the Class Products would be of a particular quality.
- 38. Thus, Defendant knowingly sold Class Products to Plaintiff and other putative class members.
- 39. The misleading and false advertising described herein presents a continuing threat to Plaintiff and the Class Members in that Defendant persists and continues to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendant's conduct will continue to cause irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering Defendant to cease its false advertising, as well as disgorgement and restitution to Plaintiff and all Class Members Defendant's revenues associated with their false advertising, or such portion of those revenues as the Court may find equitable.

### COUNT II Violation of Unfair Business Practices Act (Cal. Bus. & Prof. Code §§ 17200 et seq.)

- 40. Plaintiff incorporates by reference each allegation set forth above.
- 41. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendants' business practices and the alleged

harm--that is, evidence that the defendants' conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the Defendant's conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

### **UNFAIR**

- 42. California Business & Professions Code § 17200 prohibits any "unfair . . business act or practice." Defendant's acts, omissions, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.
- 43. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or competition; and, (3) is not one that consumers themselves could reasonably have avoided.
- 44. Here, Defendant's conduct has caused and continues to cause substantial injury to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury in fact due to Defendant's decision to knowingly sell defective Class Products, and to falsely represent the quality of it homes. Thus, Defendant's conduct has caused substantial injury to Plaintiff and the members of the Class.

45. Moreover, Defendant's conduct as alleged herein solely benefits Defendant while providing no benefit of any kind to any consumer. Such deception utilized by Defendant convinced Plaintiff and members of the Class that the Class Products were of a certain value and price, in order to induce them to spend money on said Class Products. In fact, knowing that Class Products were not of a suitable quality to be sold, Defendant unfairly profited from their sale. Thus, the injury suffered by Plaintiff and the members of the Class is not outweighed by any countervailing benefits to consumers.

46. Finally, the injury suffered by Plaintiff and members of the Class is not an injury that these consumers could reasonably have avoided. After Defendant falsely represented the quality of the Class Products, Plaintiff and class members suffered injury in fact due to Defendant's sale of Class Products to them. Defendant failed to take reasonable steps to inform Plaintiff and class members that the Class Products were substantially lower quality than represented. As such, Defendant took advantage of Defendant's position of perceived power in order to deceive Plaintiff and the Class members to purchase these luxury Class Products at a luxury price point. Therefore, the injury suffered by Plaintiff and members of the Class is not an injury which these consumers could reasonably have avoided.

47. Thus, Defendant's conduct has violated the "unfair" prong of California Business & Professions Code § 17200.

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#### **FRAUDULENT**

- 48. California Business & Professions Code § 17200 prohibits any "fraudulent ... business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a consumer must allege that the fraudulent business practice was likely to deceive members of the public.
- 49. The test for "fraud" as contemplated by California Business and Professions Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200 violation can be established even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage.
- 50. Here, not only were Plaintiff and the Class members likely to be deceived, but these consumers were actually deceived by Defendant. Such deception is evidenced by the fact that Plaintiff agreed to purchase Class Products under the basic assumption that they were of a suitable quality and merchantable condition. Plaintiff's reliance upon Defendant's deceptive statements is reasonable due to the unequal bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that Defendant's fraudulent business practice would deceive other members of the public.
- 51. As explained above, Defendant deceived Plaintiff and other Class Members by representing the Class Products as being in a merchantable condition, and thus falsely represented the Class Products.
- 52. Thus, Defendant's conduct has violated the "fraudulent" prong of California Business & Professions Code § 17200.

#### UNLAWFUL

53. California Business and Professions Code Section 17200, et seq. prohibits "any unlawful…business act or practice."

### PRAYER FOR RELIEF Plaintiff requests that this Court award Plaintiff and the Class all forms of relief, 58. including without limitation, both statutory and actual damages, attorneys' fees and costs, equitable relief, and all other forms of relief that this Court finds due and proper. PLAINTIFF HEREBY REQUESTS A JURY TRIAL IN THIS MATTER. Date: April 2, 2018 LAW OFFICES OF TODD M. FRIEDMAN, P.C. By:\_ TODD M. FRIEDMAN, ESQ. Attorneys for Plaintiff MOHAMED ELHENDI