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6 UNITED STATES DISTRICT COURT FOR THE
7 NORTHERN DISTRICT OF CALIFORNIA

8 UNLIMITED CIVIL JURISDICTION
9 CLASS ACTION

12 PATRICK A. MISSUD, Plaintiff on behalf of
13 himself and others similarly situated, VS.

Case No.:
Dept.

14 D. R. HORTON INC.; DHI MORTGAGE
15 COMPANY, LTD. LP; DONALD HORTON;
16 DONALD TOMNITZ; CURTIS
17 COLTRANE; SUSAN ECKHARDT; DUANE
18 WADDILL; RICHARD PERRY; GREG
19 ABBOTT; SAUNDRA B. ARMSTRONG;
20 ROGER BENITEZ; BERRY EDENFIELD;
21 MARTIN REIDINGER; YAHOO INC.;
22 WENDEL ROSEN BLACK & DEAN LLC.;
23 WOOD, SMITH, HENNING & BERMAN
24 LLC.; LUCE, FORWARD, HAMILTON &
25 SCRIPPS LLP; RYAN & DAWSON;
26 STRAND SYSTEMS ENGINEERING;
27 DOES 1-200. Defendants.
28

**COMPLAINT FOR VIOLATIONS OF:
U.S.C. TITLE 18 SECTION 1962
RACKETEERING, CONSPIRACY TO
COMMIT RICO, OFFICIAL
CORRUPTION; U.S.C. TITLE 18
SECTION 1513 THREATENING A
FEDERAL INFORMANT; FIRST
AMENDMENT SPEECH AND
ASSEMBLY; FIFTH AMENDMENT DUE
PROCESS; SEVENTH AMENDMENT
RIGHT TO JURY TRIAL;
FOURTEENTH AMENDMENT DUE
PROCESS AND EQUAL PROTECTIONS
CLAUSES.**

Date:
Time:
Dept:
Judge:

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION EXPLAINING THE GRAVITY OF THIS RICO ACTION:**

2 “We are reminded today that we are a nation of laws, and not of men.” Eastern Virginia’s US
3 Attorney Boente made this August 5, 2009 statement following the prosecution of a Louisiana
4 public official “putting his office up for sale, thereby betraying that office.”

5 <http://washingtondc.fbi.gov/dojpressrel/pressrel09/wfo080509.htm> Just one month prior in
6 New York’s Tri State Area, the FBI netted 44 conspirators including state legislators and city
7 mayors also selling their offices. http://www.fbi.gov/page2/july09/corruption_072409.html
8 Federal Congressmen James Traficant, Randy “Duke” Cunningham, and only four months ago
9 William Jefferson were convicted of similar official corruption.

10 http://www.nola.com/politics/index.ssf/2009/11/william_jefferson_sentenced_ye.html Over
11 the years, 13 federal judges have been impeached, many for selling their offices, and a 14th is
12 now set to lose his job on bribery charges.

13 [http://washingtontimes.com/news/2009/dec/19/impeachment-appears-imminent-for-](http://washingtontimes.com/news/2009/dec/19/impeachment-appears-imminent-for-federal-judge/)
14 [federal-judge/](http://washingtontimes.com/news/2009/dec/19/impeachment-appears-imminent-for-federal-judge/) On June 8, 2009, the Supreme Court ruled that West Virginia’s Supreme Court
15 Appellate Justice Brent Benjamin was found to have “conflicts of interest” when receiving \$3
16 million while presiding over disputes upon which he in turn was to rule.

17 <http://www.reuters.com/article/idUSN0832244320090608> Just this past year, no less than five
18 state governors have been found abusing or selling their elected offices. New York’s Spitzer,
19 Nevada’s Gibbons, New Jersey’s McGreevy, North Carolina’s Sanford, Illinois’ Ryan and
20 Blagojevich have each corrupted their offices by at least using state resources to cover up their
21 myriad criminal activities and indiscretions.

22 This case not only identifies just a single public servant from just a solitary governmental
23 branch. Rather, this case identifies dozens of co-conspiring officials from each branch of
24 government, at both state and federal level all working in concert with billionaire Donald Horton
25 to further predatory lending, mortgage fraud and other crimes. Infra you will find non-hearsay,
26 concrete evidence in the form of defendants’ admissions, judicial records/opinions, and official
27 government records. These exhibits prove to a criminal standard, that the 606th richest man on
28 the planet, Donald Horton, and his \$8 Billion, Fortune 500 company, D R Horton Inc., have
colluded with state commissioners, state and federal judges, Congressional members, a state

1 governor and attorney general, to promote racketeering and “perform a wide range of official
2 acts” in return for “things of value.”

3 “Trust and integrity in public officials is at the heart of our democracy.”

4 <http://washingtondc.fbi.gov/dojpressrel/pressrel09/wfo080509.htm> I beg to differ with FBI
5 Agent Persichini. Superseding the importance of public officials’ integrity, and created to
6 maintain our democracy, are 222 year old scraps of paper called the Constitution and Bill of
7 Rights. This RICO complaint already proves that 300 million Americans’ Rights under the
8 Constitution have been violated by the very public officials entrusted and commissioned to
9 maintain its integrity, merely for per\$onal gain and in return for “things of value.” Our
10 American democracy is currently in peril, but not at the hands of overseas Jihadists. Rather the
11 danger comes from the corporate elite, who operate from within our very own borders, and who
12 have brought our American economy to its knees.

13 The law has always been a “search for the truth.” In no courts in any jurisdiction are motions,
14 pleadings, or other papers be submitted to delay, harass or increase costs of litigation. Every
15 state bar in the Country created to regulate attorneys and judges strives to “preserve and improve
16 our justice system in order to assure a free and just society under the law.” [California State Bar
17 mission statement]. Nevertheless, the judicial and regulatory agents individually named in this
18 RICO action are expected to delay and conceal the truth by frivolously asserting their respective
19 “privileges” of judicial and/or official immunity for their acts, notwithstanding such acts were
20 outside the scopes of their respective employment or elected position. Each individually named
21 defendant will ignore the undeniable and irrefutable proof concurrently submitted as evidence in
22 a futile attempt to further conceal this ongoing conspiracy.

23 By the end of July 2010, a federal court in the Southern District of California will either certify
24 a class action protecting consumers’ rights in the golden state, or shield a corporate billionaire
25 from liability. Within several months, Nevada’s Supreme Court will decide whether consumers
26 in the silver state will have their rights upheld, or assist that same corporate billionaire in again
27 prevailing. [http://www.lvrj.com/news/breaking_news/Punitive-damages-cap-challenged-in-](http://www.lvrj.com/news/breaking_news/Punitive-damages-cap-challenged-in-home-loan-case-80671637.html)
28 [home-loan-case-80671637.html](http://www.lvrj.com/news/breaking_news/Punitive-damages-cap-challenged-in-home-loan-case-80671637.html) The overwhelming attached evidence should assist these
judges in making their decisions, or will otherwise definitively prove the RICO conspiracy.

1 Certified judicial notice of this complaint to Judge Benitez and the Nevada Supreme Court has
2 also been supplied by USPS #7009 2820 0004 1808 -3213 and -3220.

3 Note that this RICO action was filed the day after the federal court holiday in honor of Martin
4 Luther King Jr. No one needs a reminder that King was a civil rights activist who met his death
5 championing minorities and the underprivileged under the Constitution of the United States.
6 This filing is in very small part a continuation of his fight.

7 **II. JURISDICTION:**

8 The Federal District Court of Northern California is a court of general jurisdiction. These causes
9 of action come under its authority by way of subject matter jurisdiction and violation of federal
10 laws. U.S.C. Title 18, section 1962 RICO statutes, section 1513 federal informant statutes, and
11 violations of the 1st, 5th, 7th and 14th Amendments are alleged and properly filed in this court. The
12 Defendants have directly or indirectly made use of the means or instrumentalities of interstate
13 commerce, or of the mails or wire in connection with the transactions, acts, practices and courses
14 of business alleged in this complaint.

15 **III. INTRADISTRICT ASSIGNMENT:**

16 The Federal District Court of Northern California is the proper venue for this action pursuant to
17 28 U.S.C. section 1391 as it is where several of the named defendants reside, work, and/or
18 transact business. Further, certain of the transactions, acts, practices and courses of conduct
19 constituting violations of the federal laws alleged in this complaint occurred within this district.

20 **IV. CLASS ACTION STATUS:**

21 Although several theories of liabilities and federal causes of action are listed in the caption and
22 detailed within the complaint, only the RICO ACT will be asserted in COUNT ONE as the basis
23 for this class action on behalf of the victims found nationwide. The remaining COUNTS TWO
24 through SIX list further violations by some of the named defendants also listed under COUNT
25 ONE. This case has been filed in January 2010 to prevent additional tax payer losses brought on
26 by the Defendants' RICO acts, and to preserve the statute of limitations for thousands of victims
27 represented by this Class.

1 This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set
2 forth in F.R.C.P. 23, in that:

3 (a) The persons who comprise the Class are so numerous that the joinder of all such persons is
4 impracticable and the disposition of their claims as a class will benefit the parties and the Court;

5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in
6 this Complaint are common to the Class and will apply uniformly to every member of the Class;

7 (c) The claims of the representative Plaintiffs are typical of the claims of each member of the
8 Class; and,

9 (d) The representative Plaintiffs will fairly and adequately represent and protect the interest of
10 the Class, and will retain additional counsel which is competent and experienced in Class Action
11 litigation. There are no material conflicts between the claims of the representative Plaintiffs and
12 the members of the Class that would make class certification inappropriate. Counsel for the Class
13 will vigorously assert the claims of all Class Members.

14 In addition to meeting the statutory prerequisites to a Class Action, this action is properly
15 maintained as a Class Action pursuant to F.R.C.P. 23, in that:

16 (a) Without class certification and determination of declaratory, injunctive, statutory and other
17 legal questions within the class format, prosecution of separate actions by individual members of
18 the Class will create the risk of:

19 1) Inconsistent or varying adjudications with respect to individual members of the Class which
20 would establish incompatible standards of conduct for the parties opposing the Class; or,

21 2) Adjudication with respect to individual members of the Class which would as a practical
22 matter be dispositive of interests of the other members not party to the adjudication or
23 substantially impair or impede their ability to protect their interests.

24 (b) The parties opposing the Class have acted on grounds generally applicable to the
25 Class, making appropriate class-wide relief with respect to the Class as a whole in that the
26 Defendants routinely engaged in unfair and deceptive business practices as described infra; and,

27 (c) Common questions of law and fact exist as to the members of the Class and predominate over
28 any question affecting only individual members, and a Class Action is superior to other available

1 methods for the fair and efficient adjudication of the controversy, including but not limited to
2 consideration of the following:

3 1) Whether Defendants' multi-faceted scheme of coercing the members of the Class to accept
4 DHIM originated mortgages constituted unlawful, criminal actions within the meaning of Title
5 18, Section 1962, RICO ACT.

6 2) Whether Defendants' multi-faceted schemes and common goals of increasing and protecting
7 the financial position of the enterprise constituted unlawful, criminal actions within the meaning
8 of Title 18, Section 1962, RICO ACT.

9 3) Whether Defendants' multi-faceted schemes and common goals of increasing and protecting
10 the financial position of the enterprise caused financial damages to every taxpaying American
11 who provided TARP funds, and whose tax dollars are now being used to defray the enterprise's
12 recent tax carry back provisions which was secured by Congressional lobbying constituted
13 unlawful, criminal actions within the meaning of Title 18, Section 1962, RICO ACT;

14 4) What measure of restitution is appropriate; and,

15 5) What measure of injunctive relief is appropriate.

16 This Court should permit this action to be maintained as a Class Action pursuant to
17 F.R.C.P. 23 because:

18 (a) The questions of law and fact common to the Class predominate over any question affecting
19 only individual members;

20 (b) A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the Class;

22 (c) The members of the Class are so numerous that it is impractical to bring all members of the
23 Class before the Court;

24 (d) Plaintiffs, and the other Class Members, will not be able to obtain effective and economic
25 legal redress unless the action is maintained as a Class Action;

26 (e) There is a community of interest in obtaining appropriate legal and equitable relief for the
27 common law and statutory violations and other improprieties, and in obtaining adequate
28

1 compensation for the damages and injuries which Defendants' actions have inflicted upon the
2 Class;

3 (f) There is a community of interest in ensuring that the combined assets and available insurance
4 of Defendants are sufficient to adequately compensate the members of the Class for the injuries
5 sustained;

6 (g) Defendants have acted or refused to act on grounds generally applicable to the
7 Class, thereby making final class-wide relief appropriate with respect to the Class as a whole;
8 and

9 (h) The members of the Class are readily ascertainable from the business records of Defendants.
10 To the extent that Defendants have failed to maintain records sufficient to establish the basis for
11 the exemption, Defendants are estopped, as a matter of law, to assert the existence of the
12 exemption.

13 **V. Internet Web Site Information and Accompanying Declaration with Attachments**

14 Throughout the below discussion, there are cites to reliable internet sources. Per DHI's own
15 admission in *Wilson v. D R Horton Inc.*, which recognizes and favors online information: "there
16 is an abundance of up to date literature easily retrievable from the World Wide Web.... taking
17 judicial notice of information where it is readily accessible through the internet.... federal
18 circuits take judicial notice of reliable information published on the internet." [08-cv-592-BEN-
19 RBB, Request for Judicial Notice at page 2]. For the purposes of this complaint, I agree. This
20 complaint is fully fact driven, and as some might say "long on facts, and short on hyperbole."
21 [Id., paraphrased Memorandum of Points and Authorities in Support of Motion No. 1: All
22 Defendants' Motion to Dismiss Antitrust Claims, at page 2, lines 4-6].

23 **VI. THE PARTIES:**

24 **1. D R Horton Inc.**

25 D R Horton Inc. [DHI], is this Country's largest residential builder. It is a Fortune 500 company
26 which has been incorporated since 1978. In record breaking fiscal 2006, DHI had nearly \$15
27 Billion in total assets and generated over \$15 Billion in revenues by recording the industry's
28

1 highest ever sales volume of 53,099 home sales. DHI also fully owns in-house lender and
2 subsidiary DHI Mortgage [DHIM] which originates mortgage loans for its building operations.
3 On July 1, 2009, the Country's 8th largest builder/affiliated lender Beazer Homes signed a
4 deferred prosecution agreement, admitted to predatory lending/mortgage fraud, and agreed to
5 \$50 Million in restitution for defrauded Beazer consumers in and around the North Carolina
6 area. The FBI, SEC and HUD agreed to settle in lieu of prosecuting "Beazer's participation in a
7 scheme designed to increase its mortgage company's profits and sell homes, ... arranging larger
8 loans that consumers could afford, ... fraudulently inflating home prices to offset (incentives),"
9 generally inflating interest rates on the back end, and intentionally overstating consumer income
10 to qualify for home purchases. <http://charlotte.fbi.gov/dojpressrel/2009/ce070109.htm> Scores
11 of North Carolinians have been foreclosed upon, with scores more having been financially
12 bankrupted and as a direct result of Beazer's predatory loan practices.

13 **2. DHI Mortgage**

14 From fiscal years 2006-9, DHIM averaged better than a 65% capture rate, and 91% captive
15 business percentage. [D R Horton Annual Report and Form 10K, 2009].

16 <http://www.drhorton.com/corp/RedirectDisclaimer.do?irRedirect=finAnnualReportDef> In
17 1945, the U.S. Supreme Court determined that a 60% market share is presumed anticompetitive
18 and an antitrust violation. [US v. Alcoa, 148 F.2d 416]. Anti-competitiveness includes the
19 exclusion of competition, wrongful means to maintain market share, or some other attempt to
20 establish a monopoly. In fiscal 2006, DHIM generated over \$290 million in revenue for parent
21 company DHI. Federal Trade Commission Freedom Of Information Act search request #2009-
22 00355 yields 205 pages of responsive records regarding DHIM complaints. Among those
23 complaints are 44 predatory loan originations written in 17 of DHI's 27 market states. No less
24 than 48 DHI and DHIM agents have been implicated in, or found at least civilly liable for fraud
25 and predatory loan origination like in Beazer, and including: "arranging larger loans that
26 consumers could afford, fraudulently inflating home prices to offset incentives, generally
27 inflating interest rates on the back end, and intentionally overstating consumer income to qualify
28 for home purchases." DHI and DHIM insiders have corroborated that it is DHI/DHIM policy to
bundle DHIM originated loans with DHI built homes. Other DHI and DHIM insiders have

1 corroborated that it is DHI/DHIM policy to impose large yield spreads and to increase APR
2 financing just before the close of escrow. Since the mortgage melt-down began in 2007, millions
3 of home owners have lost their homes to foreclosure because of predatory loans. In DHI's 2009
4 10K, at page 46, DHIM's recourse expenses have jumped a whopping 52% in the year to cover
5 \$33 million of just a portion of the defaulting mortgages that DHIM recently originated.
6 [Declaration in Support of Complaint, Exhibits 1].

7 **3. Donald Horton**

8 On June 12, 2007, Donald Horton, the founder and Chairman of the D R Horton Corporation,
9 waived formal federal service of summons and complaint and accepted his personal copy of a
10 fraud/suspicious of racketeering complaint registered in the Northern District of California as 07-
11 cv-02625-SBA, registered documents #4 and 5. In that detailed complaint, it was alleged that
12 since 2005, Donald Horton did nothing to ensure compliance with antitrust law and the
13 prevention of predatory loan origination by subsidiary DHIM despite years of notification of
14 criminal activity.

15 [Declaration in Support of Complaint, Exhibits 2].

16 **4. Donald Tomnitz**

17 On June 8, 2007, Donald Tomnitz, the Chief Executive Officer of the D R Horton Corporation,
18 waived formal federal service of summons and complaint and accepted his personal copy of a
19 fraud/suspicious of racketeering complaint filed in the Northern District of California as 07-cv-
20 02625-SBA, registered documents #4 and 5. In that detailed complaint, it was alleged that since
21 2005, Donald Tomnitz did nothing to ensure compliance with antitrust law and the prevention of
22 predatory loan origination by subsidiary DHIM despite years of notification of criminal activity.

23 On April 19, 2007, during a shareholders' conference call, Tomnitz's stated that "if a buyer is
24 warm and has a pulse, [he] wants to put them on paper," and presumably regardless of buyer
25 eligibility. This transcript is no longer available on the web but can be ordered for corroboration
26 from this following site [http://seekingalpha.com/article/42561-dr-horton-f3q07-qtr-end-6-
27 30-07-earnings-call-transcript](http://seekingalpha.com/article/42561-dr-horton-f3q07-qtr-end-6-30-07-earnings-call-transcript) .

28 In a November 21, 2005 email, CEO Tomnitz implored his employees to meet sales targets by
any and all means:

1 “OUR STOCK PRICE OVER THE LAST NUMBER OF DAYS HAS OUTPERFORMED THE
2 INDUSTRY, JUST AS YOUR FYE05 AND Q4 FINANCIAL RESULTS DID. IT IS MY
3 STRONG BELIEF, AND SOMETHING WE HAVE BEEN WORKING FOR OVER THE
4 LAST NUMBER OF YEARS, THAT OUR STOCK PRICE WILL ULTIMATELY TRADE AT
5 A PREMIUM TO OUR PEERS. WE HAVE EARNED IT AND IT IS WILL ULTIMATELY
6 BE RECOGNIZED BY INVESTORS. ALONG THOSE LINES, IT IS VERY ESSENTIAL
7 THAT WE ALL CONTINUE TO HIT OUR BUDGETED INDIVIDUAL SALES AND
8 CLOSINGS GOALS, SUCH AS THEY TRANSLATE INTO OUR DIVISIONS AND
9 REGIONS HITTING THESE SAME GOALS. THIS PERFORMANCE WILL ASSIST IN
10 THE CONTINUATION OF US DISTANCING DHI FROM OUR PEERS. SOOOOO, AS WE
11 ALL WAKE UP DAILY AND SHOWER, SHAVE, AND PUT OUR MAKEUP ON, LET'S
12 FOCUS ON THESE GOALS. WE ARE THE LEADER IN THE INDUSTRY.....NOW, WE
13 WANT TO BE THE CLEAR LEADER IN TERMS OF STOCK VALUATION!!!!”

14 [Declaration in Support of Complaint, Exhibits 3].

15 **5. Former South Carolina Magistrate Curtis Coltrane**

16 During South Carolina’s hot real estate market of 2006, Curtis Coltrane was a Special Magistrate
17 for the South Carolina Court of Common Pleas, County of Beaufort. In cases 06-CP-07-01658
18 and 02224 Magistrate Coltrane twice imposed temporary restraining orders censoring individuals
19 who were making public commentary and exercising their 1st Amendment Rights of Speech and
20 Association on streets, in developments, parks, golf courses and at other recreational facilities.

21 The group from case 01658 wanted to broadcast that DHI had fraudulently sold homes in a golf
22 course community, claiming that the course would remain in operation, when in fact it was
23 already sold for further development. <http://www.hobb.org/content/view/979/319/> The group
24 from case 02224 wanted to picket DHI with banners which read that the builder had constructed
25 their home with termite damaged structural roof trusses.

26 http://www.drhortonhomeofhorrors.info/South_Carolina.html Prior restraints on speech, in
27 regulation of content, in traditional public forums, are the most highly scrutinized acts that
28 judges impose under the Constitution, -bar none. They are very rarely allowed since public
property is so historically associated with the exercise of First Amendment rights such as

1 pamphleteering, broadcasting, picketing, etc., that denial of all access to it for the purpose of
2 exercising such rights is forbidden. [Hague v. CIO, 307 U.S. 496 (1939)]. Only obscene and
3 hate speech either “inciting riots,” or posing a “clear and present danger of imminent lawless
4 action” can be prohibited even in the deepest parts of the Confederate South. [Brandenberg v.
5 Ohio, 395 U.S. 444 (1969)]. Incredibly, magistrate Coltrane supported DHI’s private corporate
6 interests citing the likelihood of “immediate and irreparable harm” to the corporation’s
7 reputation if DHI’s critics were allowed to make disparaging comments about the builder.
8 According to Beaufort County bench, Magistrate Coltrane is no longer in County service, nor
9 even practicing law. There are also other cases ruled on by the former Magistrate which seem to
10 also corroporate [spelling correct] that his decisions inexplicably favor corporate interests over
11 the 221 year old Constitutional speech right.

12 [Declaration in Support of Complaint, Exhibits 4].

13 **6. Former Nevada Division of Mortgage Lending Deputy Commissioner Susan Eckhardt**

14 During Nevada’s hot real estate market of 2006, Susan Eckhardt was the Deputy Commissioner
15 for Nevada’s Division of Mortgage Lending [NDML]. The NDML is charged with regulating
16 mortgage companies and their agents through licensing. In 2006, DHIM possessed 6 licenses
17 issued by the NDML. By May 2006, a third subpoena was required to compel Eckhardt to abide
18 by state law and produce a written explanation as to why she did not investigate DHIM despite
19 receiving 20 acknowledged consumer complaints claiming that DHIM had originated a variety of
20 predatory loans throughout the state. Deputy Commissioner Eckhardt’s tardy answer was that
21 her “Division does not have jurisdiction over builders and their actions concerning the contract
22 related to the real estate transaction, therefore, there is no violation related to DHIM, the licensed
23 mortgage company related to the real estate transaction.” Within 26 days, the Nevada Attorney
24 General was searching for her replacement. <http://www.drhortonfraud.com/> -last four
25 documents when scrolling down.

26 [Declaration in Support of Complaint, Exhibits 5].

27 **7. Former Executive Director for the Texas Residential Construction Commission Duane** 28 **Waddill, Defense Attorneys Ryan and Dawson, and Strand Systems Engineering**

1 Until he was dismissed, Texas State Commissioner Duane Waddill was the Executive Director at
2 the Texas Residential Construction Commission [TRCC]. In that capacity, he was to abide by
3 the following TRCC policy which is available on the web at

4 <http://www.trcc.state.tx.us/Policy/compact.asp> .

5 Compact with Texans:

6 “The Texas Residential Construction Commission promotes quality construction for Texans by
7 registering industry members and residential construction projects; providing information and
8 educating homeowners and the residential construction industry; acting as a resource for
9 complainants; and offering a neutral, technical review of alleged post-construction defects.”

10 Overseeing the state inspection process when a post-construction defect is alleged:

11 “Once a home or remodeling project is complete, a builder or remodeler must provide a set of
12 minimum warranties to a homeowner. If a dispute arises over an alleged defect during the
13 warranty period, the commission can send a professional engineer, architect, or inspector to
14 provide an unbiased, technical review.”

15 State Minimum Warranties and Performance Standards:

16 “Each builder and remodeler must provide a set of state minimum warranties for every project
17 they complete under the commission's jurisdiction. This set of warranties includes a:

18 1-year workmanship and materials warranty;

19 2-year mechanical delivery systems warranty;

20 10-year structural warranty; and a

21 10-year warranty of habitability.”

22 Since its creation by Governor Perry in 2003, consumers have used the TRCC as a “resource for
23 filing complaints” against their builders. One such typical consumer was Corrente whose DHI
24 built home experienced unusual settling, water intrusion and resulting mold shortly after closing.

25 In 2004, Corrente asked that the TRCC provide a “neutral review of her home’s post
26 construction defects” per their own guidelines. The TRCC then began its investigation of the
27 Corrente matter together with DHI’s outside counsel Carl Dawson of Ryan and Dawson.

28 Thereafter, both the TRCC and Dawson repeatedly claimed that Corrente was obstinate and
unwilling to accept DHI’s offers to repair just the minor defects. Corrente’s defects, then and

1 now, include a shifting foundation which should be covered by the 10-year structural warranty,
2 as well as mold throughout the home which triggers the 10-year warranty of habitability.
3 Corrente's case dragged on for five more years without resolution until May 6, 2009 at 2:33 PM
4 PCT when Waddill, the TRCC, and Corrente all agreed to have Dawson's highly recommended
5 Strand Systems Engineering [Strand] perform an "unbiased" structural inspection. Corrente also
6 wisely ordered additional general building inspections to protect her own interests which was
7 confirmed by Dawson on May 25, 2009 at 1:12 PM PCT. In a May 6, 2009 email attachment,
8 DHI through Dawson expressly agreed to "not pick and choose which repairs to perform (from
9 the two inspections), but would repair both." DHI's Strand predictably found no structural or
10 slab movement, but Corrente's other investigators found otherwise. Following all these
11 inspections, Corrente requested that Strand provide an acknowledgement that it had no conflicts
12 of interests, such as business affiliations with DHI, as is required under the TRCC guidelines. In
13 response to the law abiding reasonable request, Strand refused and instead hired legal
14 representation. By this time, it was already discovered that Strand had also performed structural
15 inspections for DHI in the Huffines Signature Community in Savannah Texas where the
16 foundations are failing one after another. At Huffines, DHI is similarly downplaying the defects,
17 denying warranty, and again citing Strand's findings that those foundations' upward heaving
18 movements are normal. <http://site.crackedhouses.com/> One can find throughout the web
19 hundreds of consumer complaints at dozens of sites all showing that DHI has among the highest
20 rates of construction defects and the lowest warranty satisfaction. No less than 19 pages of
21 complaints are represented only at http://www.consumeraffairs.com/housing/dr_horton.html
22 In fact, www.jdpower.com, a neutral 3d party ratings firm, consistently ranks DHI at the lowest
23 levels of satisfaction for both construction quality as well as in warranty. As of January 2010,
24 Waddill has been replaced after perjuring himself at the state Capitol, the TRCC is winding
25 down after the state legislature called it a "builder protections agency," Dawson has stopped
26 communicating on behalf of DHI, and Strand is still lawyered up without having provided the
27 acknowledgement per Texas law.
28 [Declaration in Support of Complaint, Exhibits 6].

8. Texas Governor Richard Perry

1 Richard Perry is the current Governor of the state of Texas. In his capacity as Governor in 2003,
2 he established the Texas Residential Construction Commission [TRCC]. Per the TRCC website,
3 the commission is comprised of “nine members appointed by the Governor: four registered
4 builders, three members of the general public, one engineer who practices in the area of
5 residential construction, and one either architect or inspector who practices in the area of
6 residential construction.” Therefore, at least five of the nine seats on the commission, a majority,
7 are representatives of the homebuilding industry. A theoretical example of a possible
8 commission is as follows- (4) Texas builders such as Perry homes
9 http://seattletimes.nwsourc.com/html/nationworld/2002010524_perry20.html , Tremont
10 Homes <http://bayareahouston.blogspot.com/2007/08/tremont-homes-and-jordan-fogal.html>,
11 Centex, DHI, (1) engineer such as from Strand Systems Engineering, and any (4) others. Five
12 will get you nine that the builders and engineer will all band together like peas in a pod. It was
13 also reported that at inception, the procedures outlined by the TRCC placed additional costs and
14 burdens of proof on the complainant homeowners. According to a wide variety of reliable
15 sources including TRCC records, media reports, Texas State Representatives, and other officials,
16 the claims were that the TRCC was a “builder protections agency which overwhelmingly favored
17 the builders.”
18 <http://www.theexaminer.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=157>
19 Recent testimony in the Texas State Legislature included dozens of consumer accounts on how
20 the TRCC heavily favored the building industry, which in turn contributed mightily to Governor
21 Richard Perry’s re-election campaigns. One of Perry’s main backers was Houston builder Bob
22 Perry, who has given about \$2.3 million to all too many Texas candidates and causes in just
23 2008. http://www.mysanantonio.com/news/Sunset_commission_targets_TRCC.html In
24 2009, Texas’ Sunset Advisory Commission staff recommended abolishing the TRCC, in part
25 because of its inability to force builders to repair shoddy construction work. Homeowners were
26 forced to first go through the TRCC before going to court, the only other consumer recourse.
27 The report read that “no other regulatory agency has a program with such a potentially
28 devastating effect on consumers' ability to seek their own remedies.” In 2006, another audit
from the Texas comptroller's office branded the agency a “paper tiger” and said that it “shields

1 builders from responsibility.”

2 http://www.mysanantonio.com/business/TRCC_dies_leaving_questions.html There are
3 dozens of similar reliable sources on the web by simply searching: ‘trcc abolished, trcc rick
4 perry, rick perry campaign contributions, rick perry builder.’ Most recently on December 16,
5 2009, Governor Perry was again recognized for his efforts as Governor, and received the
6 endorsement of Associated Builders and Contractors (ABC) of Texas PAC, Associated General
7 Contractors of America (AGC) Texas Building Branch PAC, and Texas Construction
8 Association (TCA) PAC at a press conference in Dallas. Dallas is also where Centex, the
9 County’s third largest residential builder is headquartered, and DHI, the Country’s largest builder
10 is just a stone’s throw away in neighboring Fort Worth. Governor Rick Perry was even proud
11 enough of his friends’ endorsements to list them on his own web site:

12 [http://www.rickperry.org/release/gov-perry-earns-endorsements-three-statewide-building-](http://www.rickperry.org/release/gov-perry-earns-endorsements-three-statewide-building-groups)
13 [groups](http://www.rickperry.org/release/gov-perry-earns-endorsements-three-statewide-building-groups)

14 [Declaration in Support of Complaint, Exhibits 7].

15 **9. Texas Attorney General Greg Abbott**

16 At 11:13 am on September 26, 2008, Attorney General Greg Abbott received certified letter
17 #7008 1300 0002 0826 1079 entitled “Texas Penal Code 31.03 THEFT.” Within that letter was
18 a very detailed and exhaustively supported outline proving that DHI and its Board members were
19 actively taking part in RICO. I followed up on November 23, 2008 with #7009 1410 0000 1337
20 6505 entitled “Follow up to my 9-22-08 letter describing D R Horton’s ongoing RICO, and
21 violations of Texas Penal Code 31.03.” Within both letters, I adamantly requested that Texas
22 AG Abbott investigate his own constituents who are in very large part directly responsible for
23 this Country’s mortgage melt down and current financial crisis. A copy of the September 22,
24 2008 letter is available on the web starting at page 22 of 60 at the SEC’s official website, where
25 years of federal notification, and notice to Greg Abbott’s office, have been publicly recorded:

26 <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2008/patrickmissud112108-14a8.pdf>

27 Rather than reply to my requests, on January 5, 2010 Attorney General Abbott prepared a letter
28 for Republican Texas Senators Cornyn and Hutchison regarding “Potential Constitutional

1 Problems with H.R. 3590,” or the current House version of the health care bill.

2 <http://www.oag.state.tx.us/newspubs/releases/2010/010610healthcare.pdf> In that letter,
3 Abbott mentions that “pure political payoffs are a naked transfer of wealth,” and that such
4 actions are “contemptible and corrupt.” He goes on to assert that “laws that infringe upon the
5 rights and protections guaranteed under the U. S. Constitution” are of “grave constitutional
6 concern.” Abbott even adamantly states that “the government has never required people to buy
7 any good or service as a condition of lawful residence in the United States, (and that such)
8 unprecedented congressional mandates threaten individual liberty and raises serious
9 constitutional questions.” He describes such mandates as “forcing (consumers) to purchase,” and
10 calling them “coerced transactions.” Yet when it was demanded that he investigate DHI, the
11 Country’s largest residential builder for the same exact coerced transactions and violations of the
12 Constitution’s Liberty and Property Rights, he was no where to be found. It is also highly
13 interesting to note that in 2006, Bob Perry of Perry Homes Inc. ‘donated’ \$320,000 for Abbott’s
14 2006 general election. www.ethics.state.tx.us/main/search.htm and
15 <http://www.perryhomes.com/> Bob Perry and Doanld Horton have Rights and Privileges that
16 ordinary non-millionaire/billionaire Texans do not possess.

17 [Declaration in Support of Complaint, Exhibits 8].

18 **10. Department of Housing and Urban Development**

19 On July 19, 2006, HUD Director Ivy Jackson personally requested the Missud file regarding
20 DHI’s regional predatory lending occurring throughout California and Nevada. Missud was
21 happy to oblige and quickly sent Jackson the documents. On November 19, 2006 AP syndicated
22 real estate columnist Ken Harney then printed “Builder-lender partnerships draw HUD eye.”
23 Within that article he wrote “the statute police have begun intervening in complaints brought by
24 individual consumers who say builders are unfairly forcing them to use their affiliated mortgage
25 companies.” His following paragraph then began to detail the same identical stories that Missud
26 had sent certified to HUD’s Director Jackson. [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/11/19/REG7TMEK8A1.DTL)
27 [bin/article.cgi?f=/c/a/2006/11/19/REG7TMEK8A1.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/11/19/REG7TMEK8A1.DTL)

28 Nothing was done by HUD for years to prevent the mortgage melt-down. A HUD cover up can
now be proven in three different ways. Said cover up is likely to suppress the information which

1 HUD should have acted on five years ago to prevent our currently growing \$3,000,000,000,000
2 bail out caused by Beazer and DHI-type rampant mortgage fraud and predatory lending:

3 1. On December 31, 2008 the FTC found 205 pages of responsive records to my FTC FOIA
4 request #2009-00355, which sought predatory lending complaints against DHI and DHI
5 Mortgage. One of the 190 pages that the FTC released even contained one of my complaints that
6 was originally directed to HUD, copied to the DOJ with exhibits #ET 650195990 US, and then
7 forwarded to the FTC by the DOJ. In fact, the FTC recorded 9 of my complaints and updates
8 that I had sent by certified mail. My predatory lending complaints were among 44 others from
9 16 other states. All of the FTC's records were sent as carbon copies of letters sent directly to
10 HUD. Ironically though, HUD has not been able to find any of my or any other complaints in its
11 vast archives, including the six that they signed for according to my returned receipts for #7003
12 3110 0001 594- 38313, 46561, 46424, 43560, 46585, 43584. Note that HUD is the primary
13 regulatory authority to receive, TILA, RESPA and mortgage fraud complaints not only from
14 myself, but from consumers in at least 16 other market states in which DHI sells homes.

15 2. On February 6, 2009 HUD's Office of the Inspector General sent a reply letter to my HUD
16 FOIA request which sought information regarding predatory lending by DHI, this Country's
17 single largest builder/affiliated lender. Their research indicated that there were "no responsive
18 records" to problematic DHI and DHI Mortgage transactions. However, three weeks later on
19 February 27, 2009, HUD miraculously managed to find nearly 7700 administrative records
20 proving builder/affiliated lender fraud against consumers in federal case 08-CV-01324-AJT-
21 TCB. Then on April 30, 2009, I made a second FOIA request merely seeking a set of the already
22 gathered 7700 administrative records, but HUD stubbornly reiterated its position that it had "no
23 responsive records."

24 3. On March 12, 2007 at 03:24:10 PM clerk 03 "accepted" and scanned both bar coded certified
25 packages 7006 2150 0001 1108 5058 and 5065 into a computer at the Onondaga Post office.
26 Both 5 ounce packages containing 30 double sided pages of proof of DHIM's predatory lending
27 were addressed to HUD, and copied to the FTC in Washington DC 20580. Computer-generated
28 receipt #0567830036-0096, is also logged into the USPS system as Bill #1000402285364. This
paper receipt was printed seconds after all this computer information was instantly registered

1 within the local USPS server, which within minutes then downloaded to the central USPS
2 database. Inexplicably though, when one now tries to track the packages on www.usps.com ,
3 there is “no record” of 60 pages of tips to HUD/FTC which could have pre-empted our economic
4 crisis directly linked to Beazer/DHI-type predatory lending and mortgage fraud. The USPS is
5 very reliable especially when sending certified mail. Of the hundreds that I have sent, these are
6 the only two to have been mysteriously lost.

7 On December 22, 2008, HUD was sued by the National Association of Home Builders
8 [NAHB] because the federal “consumer protections” agency had the gall to try and protect
9 consumers with stronger RESPA safeguards. [08-cv-01324]. The Real Estate and Settlement
10 Procedures Act [Act] is supposed to insure that consumers’ home closings are not needlessly
11 made more expensive with bogus or inflated fees. The Act also promotes truth in lending and
12 responsible non-abusive business practices. HUD claimed that the builder consortium was
13 abusing consumers and violating RESPA laws. HUD even managed to find nearly 7700
14 administrative records to prove coercion and extortion and submitted them as evidentiary
15 document 33 on February 27, 2009. In support of the NAHB, DHI registered “Exhibit G” within
16 “Documents 1-8.” Within Exhibit G is DHI’s sworn statement found at page 16: “The J D
17 Power study discussed in the Regulatory Impact Analysis, as well as our very high customer
18 satisfaction scores, provides evidence that there is a personal level of service given to a customer
19 by an affiliated lender that simply is not there with non-affiliated entities.” The referenced J D
20 Power study was delisted from web access shortly after web publication; however I had already
21 printed a hard copy for my files. I sent a copy to HUD to help its defense against the powerful
22 NAHB lobby which was requesting an injunction to prevent consumer protections. The actual
23 survey submitted herewith empirically proves that DHIM ranks fourth from the bottom of
24 lenders surveyed, just slightly better than Ryland, KB and Countrywide, all three mortgage
25 companies having already been caught in predatory lending and fraudulent mortgage origination.
26 Unbelievably, with this absolute physical proof of DHI’s perjury in hand, on May 14, 2009 HUD
27 decided to capitulate to DHI and the rest of the powerful builder consortium, and dismissed the
28 case that it had started to protect America.

[Declaration in Support of Complaint, Exhibits 9].

1 **11. Securities and Exchange Commission**

2 For two successive years, I requested that the SEC compel DHI to print the “Missud Proposal for
3 Action” for consideration by the shareholders at their 2009 and 2010 meetings. The SEC refused
4 both years. Some agents at the Commission did however have the foresight to at least publish 60
5 pages of my tips to various state and federal agencies on the official SEC website:

6 <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2008/patrickmissud112108-14a8.pdf>

7 The 2010 Proposal in verbatim was as follows:

8 PROPOSAL FOR ACTION

9 On July 1, 2009 the DOJ, HUD and SEC deferred prosecution against Beazer Homes which
10 admitted to several fraudulent mortgage origination and accounting practices, and agreed to
11 provide \$50 million in restitution for consumers in and around North Carolina. Some of
12 Beazer’s mortgage fraud included interest rate manipulation, inflating home base prices to cover
13 incentives, and lack of due diligence when completing stated income loans.

14 There is overwhelming evidence that DHI has also engaged in the same fraudulent activities as
15 Beazer, but on a larger nationwide scale. Under the Freedom of Information Act, over 205 pages
16 of consumer complaints are available from the FTC regarding DHI’s fraudulent nationwide
17 mortgage origination in over 17 states. In Virginia’s federal circuit, HUD submitted nearly 7700
18 administrative records showing that DHI and other builders violated RESPA laws [08-cv-01324].
19 In Georgia, the Yeatman class action alleges similar RESPA violations specific only to DHI, [07-
20 cv-81]. At DHI Virginia’s Rippon Landing development, the FBI discovered appraisal fraud to
21 boost home sale prices. The Southern California Wilson class action alleges antitrust tying of
22 DHI’s mortgage services to home sales [08-cv-592]. Dozens of other private actions such as
23 Betsinger, Dodson and Moreno have been filed in state and federal courts from coast to coast
24 alleging similar DHI Mortgage fraud. Publicly posted web sites also corroborate these findings
25 with hundreds of consumer complaints dealing with DHI’s fraudulent mortgage originations and
26 illegal tying of DHI Mortgage’s services to home sales. The “consumeraffairs” website is
27 already a top search result when merely searching for “D R Horton.” Dozens of other consumer
28 protections sites similarly and independently report the same fraudulent DHI mortgage

1 origination. Even the most recent J D Power’s new home builder origination study rates DHI
2 Mortgage with only 679 points out of 1000. The resulting ranking is just slightly better than
3 Countrywide, one of DHI’s “preferred lenders,” and Ryland, two companies already found
4 involved in rampant predatory lending and mortgage fraud.

5 Compounding these findings is that as early as June 2007, Chairman Horton and CEO Tomnitz
6 each personally acknowledged receipt for summons and complaints, wherein their participation
7 in predatory lending was exhaustively detailed [07-cv-2625 and

8 http://www.donaldtomnitzisacrook.info/Demand_on_Board.html To this day, CEO
9 Tomnitz still materially misleads investors in claiming that DHI Mortgage “does an excellent job
10 underwriting mortgages and the related risk associated with it...” [End 2d Qtr 2009 Earnings
11 Conference Call].

12 Resolved: That DHI audit its subsidiary DHI Mortgage for compliance with all federal and
13 state laws, and confirm that DHI Mortgage conforms to the requirements contained within DHI’s
14 own corporate governance documents.

15 [Declaration in Support of Complaint, Exhibits 10].

16 **12. Yahoo Inc.**

17 Shortly after December 8, 2008, Yahoo’s legal department received certified letter #7008 1300
18 0002 0824 3792. Within that letter was the following paragraph: “My suspicions are that your
19 company de-listed my consumer advocacy web site which has protected would-be consumers for
20 several months in favor of your RICO business partner, D R Horton Inc [DHI]. I am a federal
21 whistle blower as defined under USC Title 18, Section 1513 et seq. My web site was used for
22 consumer protections and as a federal informant.” In November of 2008,

23 www.drhortonfraud.com was an ascending 13th returned search result in a Yahoo search
24 window when merely typing ‘d r horton.’ After I mentioned this to DHI’s Washington D.C.
25 counsel countering the “Missud Proposal for Action,” she no doubt contacted her client which
26 then in turn reminded Yahoo of their lucrative ongoing business arrangement as advertising
27 partners. On May 11, 2009 I followed up with certified letter #7009 0080 0001 6752 8566.

28 Within that letter was the following paragraph: “I have within my possession all the evidence to

1 prove extensive nationwide RICO by your company's advertising partner, D R Horton [DHI],
2 profits from which Yahoo has shared. Yahoo is a co-conspirator in at least the racketeering
3 activities of mortgage fraud, predatory lending, misrepresentation, extortion and other crimes.
4 The nationwide corruption that I have uncovered includes bribery of state officials, federal non
5 and malfeasance, a federal cover up, and enablement of the same by federal judicial circuits.
6 These are but a few of the transgressions that make Enron, Madoff and even Watergate seem
7 tame."

8 [Declaration in Support of Complaint, Exhibits 11].

9 **13. Sandra Armstrong**

10 In October 2007, Northern District of California Judge Sandra Armstrong quickly closed a DHI
11 predatory lending case which precisely mirrors the smallish \$50 Million Beazer deferred
12 prosecution case described supra. In *Missud et al. v. D R Horton et al.* [07-cv-02625],
13 Armstrong resoundingly refused the plaintiff's offer to bring in dozens (now hundreds) of
14 "statements already *forwarded under the penalty of perjury to their respective state regulatory*
15 *authorities,*" and "internet consumer contacts available to the court for direct communications"
16 at the time of the hearing, received from nationally defrauded consumers. [Declarations in
17 Opposition, documents #26 and 27]. Had there been a hearing, there would also have been a
18 public record. DHI's defense counsel even lodged its own objection to all this evidence
19 registered as document #29 citing "irrelevance and hearsay" under Federal Rule of Evidence
20 802. Armstrong then ignored registered document #36, Request for Judicial Notice of a Clark
21 County court finding of fraud and deceptive trade practices by DHI and DHIM in A503121. Per
22 the Constitution's Article IV, Section 1, she should have given that ruling full faith and credit.
23 "A judgment or record shall have the same faith, credit, conclusive effect, and obligatory force in
24 other states as it has by law or usage in the state from whence taken." [*Pennsylvania Fire v. Gold*
25 *Issue*, 243 U.S. 93]. Judge Sandra Armstrong even dismissed a Federal Rule of Evidence
26 803(7) hearsay *excepted* official police report which was generated in the ordinary course of
27 business, by an officer whose official duty was to accurately document the bombing of the
28 federal whistleblower's truck at 10:00 PM on August 3, 2007.

<http://drhortoncouldhavekilledme.com/index.html> Coincidentally, that same evening of

1 August 3, 2007, at approximately 10:00 PM, the whistleblower's already month-long sponsored
2 internet campaign had informed yet another 1000 people of DHI's nationwide RICO. In light of
3 Beazer's deferred prosecution, the whistleblower can now point to 200 million reasons why DHI
4 would want to silence him through fear and intimidation. Perhaps Armstrong can point to
5 Several hundred thousand reasons why she ruled ignored concrete hearsay-excepted, and non-
6 hearsay evidence in favor of billionaire Donald Horton. More disturbing yet is that on August
7 11, 2009, Armstrong's clerk registered document #55 into PACER, misrepresenting that it was
8 "filed" by Julie Missud despite her never having submitted any papers whatsoever in these DHI
9 RICO related matters. The likely motivations of this official act were no doubt to somehow taint
10 Julie Missud, who is a licensed attorney, send whistleblower Patrick Missud a message, and to
11 try and pre-empt the RICO's exposure. The northern district's federal judiciary has now taken
12 its own registered and official retaliatory judicial action to prevent a federal informant from
13 truthfully informing government and the public of DHI's nationwide crimes in contravention of
14 CFR Title 18, Section 1513(e). [http://www.law.cornell.edu/uscode/18/usc_sec_18_00001513-
15 ---000-.html](http://www.law.cornell.edu/uscode/18/usc_sec_18_00001513-000-.html) It should be noted that *yet another* questionable directed verdict by Armstrong was
16 her dismissal of big money tobacco companies in a suit which should have been the seventh in a
17 row favoring consumers. By the time that she ruled in December 2003 to break the consumer
18 win streak, it was very common knowledge that tobacco companies manipulated nicotine levels
19 and hooked kids into smoking. <http://stic.neu.edu/ma/8macomplaint.htm> and
20 <http://www.tobacco.org/articles/lawsuit/conley/> To top that off, *yet another* very questionable
21 ruling was when Armstrong just recently refused to accept a settlement agreement which would
22 have required nearly \$1.2M in fines and the shuttering of a biotech business. Rather than let
23 those expensive conditions happen, Armstrong took the very unusual move of not accepting a
24 mutual settlement already drafted by prosecutors, but instead required a new deal be stricken
25 with the wealthy entrepreneur. <http://www.law.com/jsp/article.jsp?id=1202423114944>
26 [Declaration in Support of Complaint, Exhibits 12].

27 **14. Roger Benitez**

28 In March 2009, Southern District of California's Judge Roger Benitez compelled arbitration for
five blatantly defrauded DHIM predatory lending victims. In *Wilson v. D R Horton*, victims

1 from San Diego and Stockton communities were separated by nearly 500 miles, with their DHIM
2 originated mortgages issued by different branch offices. A corporate insider from Texas, 1500
3 miles away, also confirmed that DHI Mortgage's policy in Texas, as well as in California,
4 Nevada, Virginia, Florida, Oregon, Washington, Illinois, Colorado..... is to require consumers
5 to use DHI's affiliated lender otherwise "forfeit" their thousands in deposits. On May 20, 2009,
6 the consumer advocacy group Public Citizen printed "Home Court Advantage, How the Building
7 Industry Uses Forced Arbitration to Evade Accountability"

8 <http://www.fairarbitrationnow.org/uploads/HomeCourtAdvantage.pdf> In the very well
9 researched 53 page document citing 340 sources, Public Citizen determined that arbitration is
10 overwhelmingly effective for corporations which keep arbitrators in business by requiring
11 consumers to capitulate to boilerplate and unconscionable mandatory arbitrations clauses.
12 Indeed, this was the very same finding in document #24 which was timely submitted to this
13 Court for consideration. The undeniable mathematical statistics from both these documents are
14 that forced arbitration causes consumers additional damages on top of the money they have
15 already lost in the original fraud. I have at least two more DHI corporate insider/informants who
16 also agree with the first that DHI illegally ties home sales to mortgage services. There were
17 many ample grounds that Benitez could have relied upon for invalidating the arbitrations clause.
18 1. After all, "arbitration agreements are favored and 'shall be valid, irrevocable, and enforceable,
19 save upon such grounds as exist at law OR IN EQUITY for the revocation of any contract.'" [3:08-CV-00592-BEN-RBB, Order to Compel Arbitration, page 4, lines 13-15]; 2. Under first
20 year contracts 101, fraud and non-mutuality rescinds contracts and clauses; and 3. Any contract
21 in which fraud is contemplated is also an illegal unenforceable contract. DHI surely could not
22 have contemplated by design that contractual fraud would have to be arbitrated under terms of
23 the agreement. Note the irony that months prior to DHI's very favorable decision compelling
24 arbitration, DHI voluntarily announced that it had "a direct, pecuniary interest in the outcome of
25 this case," and notified the Court as such. This was done in the event that there was a conflict of
26 interest which would require recusal by the judge. [Notice of Party with Financial Interests of
27 Defendants D R Horton,..., Document #6 in PACER]. DHI's "financial interest in the outcome"

1 of Wilson likely exceeds \$500,000,000.00. Benitez's decision to force corporate-favoring
2 arbitration on these blatantly defrauded consumers is either incompetent or corrupt.

3 [Declaration in Support of Complaint, Exhibits 13].

4 **15. Berry Edenfield**

5 Federal Judge Edenfield holds court in the District Court of Georgia, Atlanta Division. Judge
6 Edenfield dismissed the Yeatman RESPA class action which alleged that DHI was forcing
7 consumers to use their in house affiliated mortgage company in contravention of RESPA and
8 regulation X. [07-cv-00081-BAE-GRS]. This \$50-million-Beazer-type/ admission-of-
9 guilt/deferred-prosecution kind of case also concerns the same claims that HUD was also trying
10 to champion in federal case 08-cv-01324, National Association of Home Builders vs. HUD.
11 This HUD case could have as easily been captioned \$pecial \$Billion Intere\$t\$ to Evi\$cerate
12 Con\$umer Right\$ vs. TARP Providing America.

13 Recall that FOIA request #2009-00355 returned 205 pages of responsive FTC records
14 corroborating DHI's nationwide RICO including RESPA violations and forcing consumers into
15 using DHIM, their affiliated lender. Recall that seven thousand seven hundred pages of
16 administrative records were submitted into evidence by HUD for 01324 which in part proved
17 DHI's participation in the RICO which illegally forced consumers into using fully owned
18 affiliate DHIM. Recall that over 500 pages of evidence including hundreds of consumer contacts
19 proving DHI's RICO were sent by Express Mail under #EB527695415US, to the DOJ's Dennis
20 Barghaan who was the lead attorney in 08-cv-01324. Now know that within that hefty package
21 was a copy of the 2007 J D Power warranty satisfaction survey. These surveys are normally
22 available online at www.jdpower.com. For Some rea\$on though, after the warranty surveys
23 were publicly posted to the web, they \$uddenly became unavailable. However, I was fortunate
24 enough to down load a hard copy for my records during the brief time that they electronically
25 existed. To counter DHI's claims which reference the now unavailable J D Power survey and
26 other "high customer satisfaction scores" that it attains with consumers when originating
27 mortgages, I submit the actual survey as physical proof that DHIM ranks fourth from the bottom
28 of lenders surveyed, just slightly better than Ryland, KB and Countrywide, all three mortgage
companies having already been caught in predatory lending and fraudulent mortgage origination.

1 Despite this overwhelming evidence of fraud, on May 14, 2009, HUD decided to capitulate to
2 DHI and dismiss the case that it had started to protect America. It was Deja-Vu (all over again);
3 same claims, same result. Just like HUD's release of the NAHB, Edenfield dismissed Yeatman.
4 [Declaration in Support of Complaint, Exhibits 14; revisit Exhibits 1 and 9].

5 **16. Martin Reidinger**

6 Federal Judge Reidinger, District Court of North Carolina, 09-cv-00065. Judge Reidinger
7 refused to grant class action status for Daniel Island's victims who all suffered from common,
8 typical, numerous, and severe construction defects, in favor of billion dollar DHI. This result
9 notwithstanding that communities across the Country have had to file class action suits to even
10 remotely interest the Country's largest builder in considering to warrant rampant defective and
11 non code compliant construction. Municipalities across the Country have even had to freeze
12 DHI's performance bonds to compel them to complete municipal projects or perform warranty
13 for their own consumers. http://www.drhortonhomelemon.info/In_The_News.html .

14 Colorado attorney Scott Sullan had to fight for years to get a \$39.5 million verdict for a
15 community whose foundations were crumbling.

16 <http://www.vsss.com/CM/Articles/Articles37.asp> Another Colorado community received
17 nearly \$24 million in class action defect damages.

18 <http://www.cobar.org/opinions/opinion.cfm?opinionid=7235&courtid=1> Judge Reidinger
19 has now required that individual victims in North Carolina now individually take on the billion
20 dollar builder and its bevy of expensive legal defense firms one on **one**. Visit

21 <http://www.jdpower.com/homes> where DHI consistently ranks among the lowest quality
22 builders and among the worst in warranty for a reason. Please also revisit the discussion
23 regarding the collusion between the TRCC, Duane Waddill, Strand Systems Engineering and
24 Governor Rick Perry above.

25 [Declaration in Support of Complaint, Exhibits 15].

26 **17. Luce, Forward, Hamilton and Scripps LLP**

27 Valentine Hoy, lead defense counsel for DHI in Wilson v. D R Horton referenced 51 pages of
28 correspondence and other media written or found by Patrick Missud resulting from of years of
discovery into his client. [Antitrust case #08-cv-592-BEN-RBB, Exhibit H In Support of Motion

1 to Dismiss, Document 7-8 in PACER]. These few pages are just a sampling of the mountain of
2 proof that DHI has received via email, certified letter, and court and regulatory agency
3 submissions regarding the discovery of their nationwide RICO. At the time that this evidence
4 was submitted, defense counsel Hoy knew with certainty that his client DHI was at the hub of
5 this nationwide RICO conspiracy. Rather than withdraw from representation, Attorney Hoy has
6 taken part in said conspiracy and received financial benefit from the criminal enterprise. Perhaps
7 in his answer to this complaint, Mr. Hoy can now address his own statement: “The judicially-
8 noticeable facts establish that the complaint, like Missud’s daily invective and vitriolic websites,
9 is long on hyperbole but short on actual facts.” [Memorandum of Points and Authorities in
10 Support of Motion No. 1: All Defendants’ Motion to Dismiss Antitrust Claims, at page 2, lines
11 4-6]. Perhaps Mr. Hoy would like to address the many facts as outlined within this instant
12 complaint, as supported by the hundreds of accompanying exhibits, thousands of referenced
13 sources of information, and also as to how they might be applied to the Wilson case.

14 [Declaration in Support of Complaint, Exhibits 16].

15 **18. Wendel, Rosen, Black and Dean LLC**

16 Attorneys Marquez and Ross learned of my absence from California and took that opportunity to
17 schedule an ex-parte motion the day before my return. Their motion was for a protective order
18 delaying discovery into DHI and DHIM so that they could help conceal DHI’s years of predatory
19 loan origination throughout the nation. The attorneys swore to the Court that they had tried in
20 “good faith” to contact me for the hearing but that I could not be reached. They had my cellular
21 number already three years by that time. The number was printed throughout the documents that
22 they themselves submitted in support of their motion. Four of my clients left me messages on
23 my machine recognizing that I would be away until a date certain, yet nevertheless, the Wendel
24 Rosen firm proceeded to have their ex-parte hearing without my chance for rebuttal. They had
25 knowledge of DHI’s extensive nationwide fraud, having by then already received roughly 1000
26 documents, and have taken part in the RICO conspiracy.

27 <http://www.drhortonconfidential.com/id3.html>

28 [Declaration in Support of Complaint, Exhibits 17].

19. State Bar of California

1 The State Bar of California has been repeatedly notified of California attorneys' perjury in
2 support of DHI's criminal acts, but has yet to discipline the co-conspirators. In December of
3 2009, Governor Schwarzenegger denied additional funding for the California Bar because it has
4 been riddled with inefficiencies since the Wilson Administration. Recently in January 2010, it
5 was discovered that \$676,000 was embezzled from the Bar's own bank accounts. It's hard to
6 police criminals when you have them working in the same office.

7 [http://www.calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20](http://www.calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/January2010&sCatHtmlPath=cbj/2010-01_TH_02_statebardues.html&sCatHtmlTitle=Top%20Headlines)
8 [Resources/California%20Bar%20Journal/January2010&sCatHtmlPath=cbj/2010-](http://www.calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/January2010&sCatHtmlPath=cbj/2010-01_TH_02_statebardues.html&sCatHtmlTitle=Top%20Headlines)
9 [01_TH_02_statebardues.html&sCatHtmlTitle=Top%20Headlines](http://www.calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/January2010&sCatHtmlPath=cbj/2010-01_TH_02_statebardues.html&sCatHtmlTitle=Top%20Headlines)

10 [Declaration in Support of Complaint, Exhibits 18].

11 **20. Wood, Smith, Henning and Berman LLC**

12 Joel Odou of the Wood-Smith firm has submitted over 1,945 documents into evidence for Clark
13 County Nevada case A556112. Among those documents are certified letters received by DHI,
14 DHIM, federal authorities, state authorities and all too many other regulatory agencies. Each
15 letter is supported with proof of DHI's nationwide RICO. On three separate occasions, Odou
16 perjured himself to aid in the conspiracy. He first denied receiving certified mail that was
17 positively delivered; made false statements to the corrupt Commissioner Eckhardt at Nevada's
18 Division of Mortgage Lending, and then misrepresented a court order that he was ordered to
19 draft by the judge for his opponent in Missud v. D R Horton, A551662. The Wood-Smith firm
20 had knowledge of the extensive fraud, but has nevertheless aided DHI as a co-conspirator for
21 pecuniary gain. <http://www.drhortonfraud.com/>

22 [Declaration in Support of Complaint, Exhibits 19].

23 **21. State Bar of Nevada**

24 Just as with California's Bar, Nevada opted to not police the Wood-Smith firm for the perjury.
25 Instead, it continues to nonfease while consumers nationwide get trapped, gutted and fleeced by
26 the billion dollar builder.

27 [Declaration in Support of Complaint, Exhibits 20].

28 **22. DHI Attorneys/Board of Directors Morice, Galland, Buchanan, Buchascher, Harbour**

1 Five of DHI's top officers and Board Members are themselves attorneys. Since early 2004, all
2 DHI Board Members had received return receipt certified mail, and had extensive notice of their
3 discovered nationwide RICO which went unchecked for years. They also know the legal codes
4 and regulations, and the best way to avoid them. They also know who to pay off to get the best
5 results like Dismissals of Federal Class Actions filed by individuals in Georgia, North Carolina,
6 Northern and Southern California, and filed by HUD in Virginia. It just so happens that one DHI
7 Board Member that received notices in regards to DHI's nationwide RICO was Francine Neff,
8 who was the Treasury Secretary in the Carter Administration. Ms. Neff announced her
9 resignation from DHI in November 2005. [http://google.brand.edgar-](http://google.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?ID=4038644&SessionID=4UQH)
10 [online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?ID=4038644&SessionID=4UQH](http://google.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?ID=4038644&SessionID=4UQH)
11 [WSP2nUGDYI7](http://google.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?ID=4038644&SessionID=4UQH) Recall that former HUD Director Henry Cisneros was a developer himself,
12 and also happened to be on the Board of Directors at both K B Homes, and Countrywide
13 Mortgages. <http://www.nytimes.com/2008/10/19/business/19cisneros.html?pagewanted=2>
14 and <http://www.washingtonpost.com/wp-srv/politics/special/cisneros/keystories.htm> Recall
15 that in April 2008 HUD dismissed Alphonso Jackson for steering contracts to friends and family.
16 http://www.allgov.com/agency/Department_of_Housing_and_Urban_Development_HUD_
17 Apparently, the top officers and Board Members at DHI knew all of the right people, at all of the
18 right times in Congress. Along with the banks, these guys "own the place."
19 http://www.huffingtonpost.com/2009/04/29/dick-durbin-banks-frankly_n_193010.html
20 [Declaration in Support of Complaint, Exhibits 21].

21 **23. State Bar of Texas**

22 Just like the California and Nevada Bars, Texas opted, and still opts to not police the five Board-
23 Ring Members. Power does have its privileges, especially in the "Lone Star State."
24 [Declaration in Support of Complaint, Exhibits 22].

25 **24. Recapping the RICO at the center of the conspiracy involving: DHI, DHIM, Donald** 26 **Horton and Donald Tomnitz**

27 In an emailed November 15, 2009 letter to the DOJ's Barghaan, were snippets from comments
28 made by Wall Street Industry Analysts during DHI's fourth quarter 2008 conference call:

1 [http://seekingalpha.com/article/109112-d-r-horton-inc-f4q08-qtr-end-09-30-08-earnings-](http://seekingalpha.com/article/109112-d-r-horton-inc-f4q08-qtr-end-09-30-08-earnings-call-transcript?source=bnet)
2 [call-transcript?source=bnet](http://seekingalpha.com/article/109112-d-r-horton-inc-f4q08-qtr-end-09-30-08-earnings-call-transcript?source=bnet)

3
4 **Rob Stevenson** – Industry Analyst for Fox-Pitt Kelton

5 Good morning guys. Most of my questions have been answered, but *can you talk to the*
6 *sort of attitude in Congress and the chances of getting any sort of help from action*
7 *there?*

8 **Donald Tomnitz** - Vice Chairman, President and CEO of DHI

9 Well, actually the high *production homebuilders* council has been working very hard in
10 terms of trying to visit, *have been visiting members of Congress* on what we think our
11 plight is. And frankly I'd suggest that you call back and *give Jester your number*, we'd
12 *love to update you on what they are working on*, because basically they're working on
13 something that is very similar to the last time we had had a major downturn in terms of
14 homebuyer credits, something that's more substantial than what they passed the first
15 time which is \$7,500 credit that you have to pay back. So frankly it is a good initiative.
16 We believe strongly in it, we're supporting it, but *something has to be done much more*
17 *than what's been done so far*, because the only way people are going to buy homes is
18 when they realize and a substantial number of homes being sold that they have to have
19 value, their value is not going to erode after they've purchased the home, and that's just
20 not appealing in the marketplace today.

21 **Rob Stevenson**

22 Are you feeling that there is some *give on the part of Congress* to accept something
23 along those lines?

24 **Donald Tomnitz**

25 I don't really have a good feel for that right now. My initial reaction is I don't – I think
26 *we are such a small industry although clearly we have something to do with this*
27 *economic downturn as they found out*. I look back and listen to three and four months
28 ago when *officials were talking about how housing was insignificant to the overall*
economy. *I think they've found otherwise*. But I just don't get a good feel for it right
now. I think they are focused on the Citigroups of the world and AIGs of the world, the
D.R. Hortons of the world are rounding them to the right now, something needs to be
done, no doubt.

(Note- DHI "clearly" had a "significant" part in causing the mortgage melt down and
ensuing "economic downturn.")

Rob Hansen - Industry Analyst for Deutsche Bank

1 Alright, great. And given how aggressive you have been in taking advantage of the
2 potential tax refunds. *If the look back period was changed, would this cause another big
3 year in terms of cash flow generation?*

4 **Don Tomnitz**

5 *If the carry back period is expanded to beyond the two-year current period, it would
6 open up more potential carry back available to us for tax losses. And, however, we
7 would have to generate additional tax losses in order to take advantage of that.*

8 Then as if forecasted by an oracle spying a crystal ball, there was the article entitled “Home
9 Builders (You Heard that Right) Get a Gift.”

10 <http://www.nytimes.com/2009/11/15/business/economy/15gret.html> “...but tucked inside the
11 law was another prize: a tax break that lets big companies offset losses incurred in 2008 and
12 2009 against profits booked as far back as 2004. The tax cuts will generate corporate refunds or
13 relief worth about \$33 billion, according to an administration estimate.... Among the biggest
14 beneficiaries are home builders, analysts say. Once again, at the front of the government
15 assistance line, stand some of the very companies that contributed mightily to the **credit crisis** by
16 building and financing too many homes. This is getting to be a habit: companies that
17 participated on the upside and are now reaping rewards from the taxpayers on the downside.” For
18 years, 535 members of Congress, including corporate-favoring republican Texas Senators
19 Hutchison and Cornyn, have received certified letters regarding DHI’s nationwide TARP
20 creating RICO and have done less than nothing to prevent it.

21 <http://www.drhortonconfidential.com/>

22 [Declaration in Support of Complaint, Exhibits 23].

23 **VII. THEORIES OF LIABILITY**

24 C.F.R. Title 18, Section 1962 forms the basis for this Class Action

25 **1. Title 18, Section 1962: RICO ACT and What Constitutes a RICO Violation**

26 Section 1962(a) generally makes it unlawful for a person to use an enterprise to launder money
27 generated by a pattern of racketeering activity. *Lightening Lube, Inc. v. Witco Corp.*, 4 F.3d
28 1153, 1188 (3d Cir. 1993).

1 --Such as DHI's management using publicly traded DHI to launder illegal proceeds from affiliate
2 DHI Mortgage [DHIM]. Also like fraudulently denying warranty to consumers in 27 market
3 states to minimize losses from the warranty operations.

4 Section 1962(b) makes it unlawful for a person to acquire or maintain an interest in an enterprise
5 through a pattern of racketeering activity.

6 -- Such as DHI's maintaining DHIM's "captive and capture rates," while excluding the
7 competition for at least five years throughout the country; and consistently ranking highest
8 among construction defects, yet counter-intuitively spending the least in warranty.

9 Section 1962(c) makes it unlawful for a person to manipulate an enterprise for purposes of
10 engaging in, concealing, or benefiting from a pattern of racketeering activity.

11 --Such as DHI's: Board of Directors who have crafted the RICO, and forty or so employees
12 found nationwide, who have carried it out as listed in the FTC FOIA archives.

13 **a. How to Establish a RICO Violation**

14 The elements of a section 1962(c) civil claim can be described in many ways. Generally, to
15 establish a claim under section 1962(c), the plaintiff must prove that (1) a defendant person (2)
16 was employed by or associated with an enterprise (3) that engaged in or affected interstate
17 commerce and that (4) the defendant person operated or managed the enterprise (5) through a
18 pattern (6) of racketeering activity, and (7) the plaintiff was injured in its business or property by
19 reason of the pattern of racketeering activity.

20 (1) defendants = corporations and individuals;

21 (2) employed = Tomnitz, Horton..., associated = Strand Systems Engineering, Marquez,
22 Ross, Odou, Hoy, Wendel-Rosen, Wood-Smith, Luce-Forward, Ryan & Dawson.....,
enterprise = common purpose of making money;

23 (3) interstate commerce = mail/fax/internet communication. The mail and wire fraud statutes
24 essentially make it criminal for any one to use the mails or wires to advance a scheme to
25 defraud. "[t]o satisfy [RICO's] interstate commerce requirement, only a slight effect on
interstate commerce is required." *United States v. Beasley*, 72 F.3d 1518 (11th Cir.), *cert.*
denied, 518 U.S. 1027 (1996);

26 (4) as in (2);

27 (5) pattern = 27 market states for at least 5 years;

28 (6) Predatory lending, warranty fraud, bank fraud, grand larceny, breach of contract

(7) Plaintiff injury = hundreds/thousands of nationwide victims, bankrupted and foreclosed
from each scheme. Millions of taxpayers paying for Defendants' criminal actions and
greed.

1
2 Section 1962(d) makes it unlawful for a person to conspire to violate subsections (a), (b) or (c) of
3 the RICO Act.

4 --Such as: Strand Systems Engineering which together with DHI denies warranty; judges
5 Coltrane, Armstrong, Benitez, Edenfield, and Reidinger who rule in DHI's favor by eliminating
6 speech, due process and jury trial Rights; commissioners Eckhardt and Waddill, Governor Perry
7 and Attorney General Abbott who intentionally look the other way despite hard evidence of
8 DHI's criminal actions.

9 Section 1964(c) So long as a civil RICO plaintiff is injured by reason of the defendant's
10 operation or management of the enterprise through a pattern of racketeering, the plaintiff is
11 entitled to treble damages, attorneys' fees and costs.

12 -- Such as the thousands of DHI consumers who received Beazer-type predatory loans originated
13 by DHIM. Such as about 300,000,000 TARP providing tax-paying Americans whose
14 congressional representatives have already bailed predatory lender DHIM out by extending the
15 tax carry back provisions lobbied for and secured by Defendant Donald Tomnitz' congressional
16 lobbyist Jester.

17 **b. Defendants' Operation or Management of the Enterprise**

18 Officials, Judges and Commissioners: An enterprise is "operated" not just by upper management
19 but also by lower-rung participants in the enterprise who are under the direction of upper
20 management. An enterprise also might be "operated" or "managed" by "others associated with"
21 the enterprise who exert control over it as, for example, by bribery.

22 --Such as South Carolina's former Magistrate Judge Coltrane; Nevada's former Deputy
23 Commissioner Eckhardt; Texas' former Director Waddill, Governor Perry, and Attorney General
24 Abbott; and the four named Federal judges. Any further attempts to claim judicial or official
25 immunities as an affirmative defense will be presumed frivolous, and an attempt to further the
26 RICO conspiracy and thwart discovery of the truth, ie: the thousands of submitted exhibits, in
27 this legal proceeding. Any attempts to disingenuously delay this legal proceeding will be met
28 with a motion for sanctions, stating in part that said delay is being used to increase costs of
litigation in an attempt to derail the search for truth, the cornerstone of American Jurisprudence.

1 Attorneys and Engineers:

2 Generally, courts have held that a professional (such as a lawyer, banker, consultant or an
3 accountant) carrying out their duties in accordance with *generally accepted standards* of the
4 professional and *without knowledge of the RICO violations*, cannot be considered operators or
5 managers of an enterprise and, thus, cannot be held liable under the statute.

6 -- Consider the mal or non feasance by: attorneys Ross and Marquez at Wendel-Rosen; Odou at
7 Wood-Smith; Hoy at Luce-Forward; Dawson at Ryan & Dawson; Richard Marter of Strand
8 Systems Engineering; Attorney General Greg Abbott.

9 **c. The Pattern**

10 The factors of relatedness and continuity combine to produce a pattern of racketeering. To be
11 related, the criminal actions that form the pattern must "have the same or similar purposes,
12 results, participants, victims, or methods of commission, or otherwise are interrelated by
13 distinguishing characteristics."

14 *United States v. Daidone*, 471 F.3d 371, 376 (2d Cir. 2006) (defendants acts of money
15 laundering were sufficiently related in that the acts of racketeering shared common goals (ie:
16 increasing and protecting the financial position of the enterprise) and common victims (ie:
17 DHI home buyers forced to use DHIM), and drew their participants from the same pool of
18 associates (ie: those who were members and associates of the enterprise)).

18 Continuity may be close-ended or open-ended. *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229
19 (1989), at 241. "A party alleging a RICO violation may demonstrate continuity over a closed
20 period by proving a series of related predicates extending over a substantial period of time."

21 Open-ended continuity exists when criminal conduct is specifically threatened to be repeated or
22 to extend indefinitely into the future. *H.J. Inc.*, 492 U.S. at 242-43.

23 --According to official FTC FOIA records, widely reported internet postings, and defendants'
24 own admissions, DHI's "criminal conduct" has been ongoing for at least five years *and counting*.

25 **d. Multiple Schemes and the Pattern**

26 -- Such as interstate warranty fraud, predatory lending, grand larceny, artificially inflated title
27 appraisals, bait and switch pricing, mortgage fraud, bank fraud, forgery, deceptive business
28 practices, deliberate non payment of transfer taxes, mischaracterization of work force to evade

1 employment taxes, land sale misrepresentations, intentional concealment of hazardous land
2 conditions.....

3 **e. Racketeering Activity**

4 A RICO claim can be predicated on not only numerous federal criminal violations, but also on
5 violations of certain state criminal laws. With regard to the state crimes, the RICO Act states that
6 a violation can be predicated upon "any act or threat involving bribery, extortion. . . which is
7 chargeable under State law and punishable by imprisonment for more than one year." Regardless
8 of whether a RICO claim is predicated upon state or federal criminal violations (or a
9 combination of both), the defendant need not be criminally convicted before a civil plaintiff can
10 sue for treble damages under RICO. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 493 (1985).
11 The statute requires only that the criminal activities are "chargeable" or "indictable" under state
or federal law, not that the defendant has already been charged or indicted.

12 -- State crimes regarding warranty fraud, predatory lending, grand larceny, artificially inflated
13 title appraisals, bait and switch pricing, mortgage fraud, bank fraud, forgery, deceptive business
14 practices, deliberate non payment of transfer taxes, mischaracterization of work force to evade
15 employment taxes, land sale misrepresentations, intentional concealment of hazardous land
16 conditions..... Apply.

17 **f. Mail and Wire Fraud**

18 The mail and wire fraud statutes essentially make it criminal for any one to use the mails or wires
19 to advance a scheme to defraud.

20 -- DHI made extensive use of phone and fax lines to consummate fraudulent transactions.

21 **g. Bank Fraud**

22 Whoever knowingly executes, or attempts to execute, a scheme or artifice:

- 23 1. to defraud a financial institution, or
- 24 2. to obtain any of the moneys, funds, credits, assets, securities, or other property owned by,
25 or under the custody or control of, a financial institution, by means of false or fraudulent
26 pretenses, representations, or promises shall be fined not more than \$1,000,000 or
imprisoned for not more than 30 years, or both.

27 Bank fraud arguably occurs whenever a scheme to defraud enables the perpetrator to obtain any
28 funds "under the custody or control of" a bank.

1 -- Such as with Donald Tomnitz stating that “if buyers have a pulse” he wants them “written for
2 a loan” regardless of eligibility; and imploring his nationwide agents to hit their “budgeted
3 individual sales and closing goals” so that DHI stock valuation will “trade at a premium to
4 peers.”” Recall that his reckless actions have resulted in this past quarter’s 52% increase in non-
5 recourse provisions due to defaulting loans originated by DHIM.

6 **h. Extortion**

7 Extortion under color of official right occurs when an agent of the government uses his or her
8 legitimate governmental powers to obtain an illegitimate objective. When a government agent
9 engages in extortion "under color of official right," he is essentially using the governmental
10 powers with which he has been trusted to gain personal or illegitimate rewards.

11 --Such as when city council members rezone an area of town to favor the racketeer’s plans for
12 development in Ho’opili Hawaii, Vacaville and San Diego California, Henderson Nevada; South
13 Carolina’s Magistrate Coltrane who favored DHI’s corporate interests over individuals’ speech
14 rights; Nevada Deputy Commissioner Eckhardt who allowed DHIM’s predatory lending despite
15 20 officially submitted complaints acknowledged under the penalty of perjury; Pennsylvania
16 building code officials who passed DHI’s intentional construction shortcuts/defects; Texas
17 Governor Perry who allowed builders to deny warranty through fronts like the Texas Residential
18 Construction Commission, and who has taken mighty campaign contributions to favor those
19 special interests; Texas Attorney General Abbott who gives his own constituents, and DHI Board
20 Members, protections while they fleece 26 other states’ constituents;

21 **i. Federal Jurisdiction**

22 At [http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/110mcrm.htm#9-](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/110mcrm.htm#9-110.310)
23 **110.310**, a government attorney should seek approval for a RICO charge only if one or more of
24 the following requirements is present:

25 (7) The case consists of violations of State law, but involves *prosecution of significant or*
26 *government individuals*, which may pose special problems for the local prosecutor.

27 -- The SEC, DOJ, FTC, FBI, and Congress have received hundreds/thousands of certified and
28 email notices of rampant DHI RICO activities which have violated both federal and state laws

1 across the Country, as well as corrupted several officials. Just as with MCI-Worldcom, TYCO,
2 Enron, Countrywide, IndyMac, Madoff,all these agencies have yet to act.

3 **2. USC, Title 18, Section 1513: Retaliating Against a Witness, Victim, or an Informant**

4 (c) Whoever knowingly engages in any conduct and thereby causes bodily injury to another
5 person or damages the tangible property of another person, or threatens to do so, with intent
6 to retaliate against any person for (2) any information relating to the commission or possible
7 commission of a Federal offense; or attempts to do so, shall be fined under this title or
8 imprisoned not more than 20 years, or both.

9 (e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person,
10 including interference with the lawful employment or livelihood of any person, for providing
11 to a law enforcement officer any truthful information relating to the commission or possible
12 commission of any Federal offense, shall be fined under this title or imprisoned not more
13 than 10 years, or both.

14 **3. United States Constitution: First Amendment Right of Speech and Assembly**

15 “Congress shall make no law respecting an establishment of religion, or prohibiting the free
16 exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people
17 peaceably to assemble, and to petition the Government for a redress of grievances.”

18 **4. United States Constitution: Fifth Amendment Right of Due Process**

19 “No person shall be deprived of life, liberty, or property, without due process of law.”

20 **5. United States Constitution: Seventh Amendment Right to Jury Trial**

21 “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of
22 trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any
23 Court of the United States, than according to the rules of the common law.”

24 **6. United States Constitution: Fourteenth Amendment Right of Due Process, and Equal**
25 **Protections**

26 “Nor shall any State deprive any person of life, liberty, or property, without due process of law;
27 nor deny to any person within its jurisdiction the equal protection of the laws.”

28 **VIII. CAUSES OF ACTION**

1 **1. COUNT ONE:** Violations of the RICO ACT and CONSPIRACY TO COMMIT RICO, as
2 against ALL DEFENDANTS, and which forms the basis of the Class Action.

3 Class Action Plaintiffs hereby adopt Sections I-VII, which are incorporated by reference as
4 though fully set forth herein. DHI, Donald Horton and Donald Tomnitz shared the common goal
5 of maintaining DHI's market share and dominance as the County's largest residential builder in
6 the home building industry, and by making their "stock price trade at a premium to their peers."
7 DHI, Donald Horton and Donald Tomnitz protected the financial position of their enterprise in
8 part by forcing DHI consumers to close on homes in record numbers bundled with predatory
9 loans originated by DHIM, by requiring large cash deposits thereby creating "greater consumer
10 buy in," and making those deposits "forfeitable" at DHI's discretion for virtually any failure to
11 obtain loan financing either through DHIM or any outside lender. DHI, Donald Horton and
12 Donald Tomnitz' associates, and remainder of the named Defendants, shared the common goal
13 of maintaining DHI's market share and dominance so that they in turn could benefit from the
14 RICO enterprise by receiving benefits such as campaign contributions, defense attorney and
15 professional fees, or other things of value in exchange for favorable rulings, or other acts, all in
16 furtherance of the enterprise.

17 **2. COUNT TWO:** Violations of USC, Title 18, Section 1513: Retaliating Against a Witness,
18 Victim, or an Informant as against D. R. HORTON INC.; DHI MORTGAGE COMPANY, LTD.
19 LP; DONALD HORTON; DONALD TOMNITZ; SAUNDRA B. ARMSTRONG.

20 Plaintiff Patrick Missud hereby adopts Sections I-VII, which are incorporated by reference as
21 though fully set forth herein. On or about August 3, 2007, an explosion created a dent in the
22 hood of federal whistle blower Missud's truck which had featured with a 2 by 8 foot sign
23 broadcasting www.drhortonfraud.com. D. R. HORTON INC., DHI MORTGAGE
24 COMPANY, LTD. LP, DONALD HORTON, and DONALD TOMNITZ had received a
25 photograph of said truck and sign sent months prior to their agents. D. R. HORTON INC., DHI
26 MORTGAGE COMPANY, LTD. LP, DONALD HORTON, and DONALD TOMNITZ's intent
27 to car bomb and damage Missud's tangible property was to retaliate against Missud for relaying
28 accurate information relating to the commission of Federal crimes to Federal authorities. In
similar retaliation, on August 11, 2009, Defendant SAUNDRA B. ARMSTRONG directed her

1 clerk to register document #55 into PACER, misrepresenting that it was “filed” by Julie Missud
2 rather than by whistleblower Patrick Missud. Defendant SAUNDRA B. ARMSTRONG’s intent
3 was to interfere with the lawful employment or livelihood of Julie Missud, for Patrick Missud’s
4 providing to law enforcement officers the truthful information relating to the commission of
5 Federal offenses by the other Defendants.

6 **3. COUNT THREE:** Violations of the United States Constitution: First Amendment Right of
7 Speech and Assembly as against CURTIS COLTRANE.

8 Plaintiffs hereby adopt Sections I-VII, which are incorporated by reference as though fully set
9 forth herein. On or about June 2006, CURTIS COLTRANE imposed preliminary injunctions
10 censoring speech and assembly rights improperly citing only DHI’s corporate interests, namely
11 damage to reputation and lost sales, as the compelling government interest trumping the
12 individuals’ Constitutional Rights.

13 **4. COUNT FOUR:** Violations of the United States Constitution: Fifth Amendment Right of
14 Due Process as against CURTIS COLTRANE; SUSAN ECKHARDT; DUANE WADDILL;
15 RICHARD PERRY; GREG ABBOTT; SAUNDRA B. ARMSTRONG; ROGER BENITEZ;
16 BERRY EDENFIELD; MARTIN REIDINGER.

17 Plaintiffs hereby adopt Sections I-VII, which are incorporated by reference as though fully set
18 forth herein. Defendants CURTIS COLTRANE, SUSAN ECKHARDT, DUANE WADDILL,
19 RICHARD PERRY, GREG ABBOTT, SAUNDRA B. ARMSTRONG, ROGER BENITEZ,
20 BERRY EDENFIELD, and MARTIN REIDINGER allowed the RICO enterprise’s victims to be
21 deprived of property without Due Process under the Laws of the United States Constitution.

22 **5. COUNT FIVE:** Violations of the United States Constitution: Seventh Amendment Right to
23 Jury Trial as against CURTIS COLTRANE; SUSAN ECKHARDT; DUANE WADDILL;
24 RICHARD PERRY; GREG ABBOTT; SAUNDRA B. ARMSTRONG; ROGER BENITEZ;
25 BERRY EDENFIELD; MARTIN REIDINGER.

26 Plaintiffs hereby adopt Sections I-VII, which are incorporated by reference as though fully set
27 forth herein. Defendants CURTIS COLTRANE, SUSAN ECKHARDT, DUANE WADDILL,
28 RICHARD PERRY, GREG ABBOTT, SAUNDRA B. ARMSTRONG, ROGER BENITEZ,

1 BERRY EDENFIELD, and MARTIN REIDINGER did not preserve the RICO enterprise
2 victims' rights to jury trials under the Seventh Amendment to the United States Constitution.

3 **6. COUNT SIX:** Violations of the United States Constitution: Fourteenth Amendment Right of
4 Due Process and Equal Protections Clauses as against CURTIS COLTRANE; SUSAN
5 ECKHARDT; DUANE WADDILL; RICHARD PERRY; GREG ABBOTT; SAUNDRA B.
6 ARMSTRONG; ROGER BENITEZ; BERRY EDENFIELD; MARTIN REIDINGER. Plaintiffs
7 hereby adopt Sections I-VII, which are incorporated by reference as though fully set forth herein.
8 Defendants CURTIS COLTRANE, SUSAN ECKHARDT, DUANE WADDILL, RICHARD
9 PERRY, GREG ABBOTT, SAUNDRA B. ARMSTRONG, ROGER BENITEZ, BERRY
10 EDENFIELD, and MARTIN REIDINGER deprived the RICO enterprise's victims of their
11 property, without due process of law, and denied the RICO enterprise's victims the equal
12 protection of the laws guaranteed by the Fourteenth Amendment under the United States
13 Constitution.

14 **IX. PRAYER FOR RELIEF**

- 15 1. For disgorgement of profits, and restitution to Class Action Plaintiffs under COUNT 1;
- 16 2. For treble damages to Class Action Plaintiffs under COUNT 1 per RICO ACT 1964(c);
- 17 3. For actual and punitive damages for Patrick Missud under COUNT 2 per Title 18,
18 Section 1513(c) and (e);
- 19 4. For nominal damages and declaratory relief under COUNT 3 that there were First
20 Amendment violations of the Constitutional Right to Free Speech and Assembly;
- 21 5. For nominal damages and declaratory relief under COUNT 4 that there were Fifth
22 Amendment violations of the Constitutional Right to Due Process;
- 23 6. For nominal damages and declaratory relief under COUNT 5 that there were Seventh
24 Amendment violations of the Constitutional Right to Jury Trial;
- 25 7. For nominal damages and declaratory relief under COUNT 6 that there were Fourteenth
26 Amendment violations of the Constitutional Right to Due Process and Equal Protections;
- 27 8. That Defendants be enjoined from furthering their criminal actions and RICO enterprise;
- 28 9. For attorneys' fees and costs in this suit;
10. For maximum allowable pre judgment interest;

1 11. For any other equitable relief deemed just and proper by this court;

2 12. If in the event of yet another favorable ruling for \$8,000,000,000.00 D. R. Horton Inc.

3 and Donald Horton, the 606th richest man on the planet, a very detailed ruling explaining
4 the Court's decision considering the facts, which have been concurrently submitted as
5 evidence, and prior to any evidentiary hearings being set and then abruptly cancelled.

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8 **Verification by Attorney**

9 I, Patrick Missud, declare as follows:

10 I have prepared and read the foregoing Complaint and know the contents thereof. I have
11 prepared and concurrently registered the Declaration in Support of this Complaint and the
12 hundreds/thousands of attached and referenced exhibits. Everything represented in both said
13 documents is truthful and accurate, except to those matters which are therein stated upon my
14 information or belief, and to those matters I believe the representations to be true.

15 I declare under the penalty of perjury that the foregoing is true and correct, and that this
16 verification was executed in San Francisco, California.

17
18
19 /S/ Patrick Missud

1-19-2010

20 _____
21 Patrick Missud

Dated

22 Cc: Syndicated Media under the 1st Amendment right of speech and press.
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